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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

DESERT MOUNTAIN CLUB, INC.,

Plaintiff,

v.

ERIC GRAHAM and RHONA GRAHAM, husband and wife,

Defendants.

DESERT MOUNTAIN CLUB, INC.,

Plaintiff,

v.

THOMAS CLARK and BARBARA CLARK, husband and wife,

Defendants.

DESERT MOUNTAIN CLUB, INC.,

Plaintiff,

v.

husband and wife,

Defendants.

No. CV2014-015333
No. CV2014-015334
No. CV2014-015335
(Consolidated)

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN CV2014-015333 (GRAHAMS)

(Consolidated Action: Assigned to the Hon. David Gass)

(Oral Argument Requested)

Pursuant to Rule 56, Ariz. R. Civ. P., Plaintiff Desert Mountain Club, Inc. (the "Club") respectfully requests summary judgment on all its claims against Defendants Eric and Rhona Graham (the "Grahams").[1] The Grahams entered into a valid, enforceable Contract,[2] which clearly and unambiguously provides that: (1) the Grahams can only terminate their Equity Membership by transferring it through the Club; and (2) the Grahams must pay all Club dues, assessments, and other charges until that transfer is complete.

There are no material facts in dispute, and the Club is entitled to judgment as a matter of law. The Grahams have not complied with the terms of their Contract. Instead, the Grahams have attempted unilaterally to resign their Equity Membership in a manner contrary to the Contract, and have stopped paying Club dues. The Contract does not differ materially from the Club's contracts with other Defendants, such as Defendants (the "; "), against whom this Court has previously granted summary judgment on the very same claims asserted here. The Club is therefore entitled to summary judgment for the reasons set forth herein and in the Ruling granting summary judgment against the Fabians.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The Club is a non-profit member-owned recreational club that provides various facilities and services to its members. SOF ¶ 1. At all times since December 30, 2010, the Club has been owned by its members with equity memberships ("Equity Members"). SOF ¶ 2. The Grahams are Equity Members of the Club. SOF ¶ 5.

A. The Grahams entered a Contract with the Club.

On or about November 22, 2010, as part of the Club's transition to Equity Member

[1] Contemporaneous with the filing of this Motion, the Club has sought summary judgment in the action against Defendants Thomas and Barbara Clark (the "Clarks"), in *Desert Mountain Club, Inc. v. Clark*, No. CV2014-015334, which has been consolidated with the Club's litigation against the Grahams and the . Both motions raise the same legal arguments and involve substantially similar contracts (the only real differences relate to the dates of the various contracts and of defendants' attempted resignations).

[2] The "Contract" is comprised of the Grahams' Membership Conversion Agreement with the Club, the Desert Mountain Club Bylaws ("Bylaws"), and the Club's rules and regulations. *See* Plaintiff's Separate Statement of Facts in Support of its Motion for Summary Judgment in CV2014-015333 (Grahams) filed herewith ("SOF") ¶ 6.

ownership, the Grahams entered into a Membership Conversion Agreement with the Club (the "Conversion Agreement").[3] SOF ¶ 5. Under the Conversion Agreement, the Grahams obtained an "Equity Membership" in the Club. *Id.* In exchange, the Grahams agreed to: (1) abide by the terms of the Contract, and (2) pay all dues, fees, assessments, and other charges, as provided in the Bylaws. SOF ¶ 6. In the Conversion Agreement, the Grahams explicitly acknowledged that they had received, read, and understood both the Bylaws and Conversion Agreement. SOF ¶ 8. The Conversion Agreement also expressly supersedes all previous agreements between the Grahams and the Developer and provides that the Bylaws effective December 31, 2010 supersede prior Bylaws. SOF ¶¶ 7–8.

B. <u>The Contract prohibits the unilateral resignation or termination of the Grahams' Equity Membership.</u>

The Conversion Agreement explicitly states "**Equity Golf Memberships may be transferred only through the Club, subject to the terms, conditions and restrictions set forth in the Club Bylaws**." SOF ¶ 9 (emphasis added). The Bylaws contain comprehensive provisions regarding the divestiture of Equity Memberships. SOF ¶ 10. At all relevant times, the Bylaws have required that the Grahams (1) surrender or submit their Equity Membership to the Club for reissuance, and (2) continue to pay all Club dues, fees, assessments, and other charges until reissuance. SOF ¶¶ 6, 9–12. The Bylaws have not allowed Equity Members to terminate their financial obligations by resigning from the Club unilaterally. SOF ¶ 11. In fact, the Bylaws prevent any party from adding terms or conditions not expressly stated therein. SOF ¶ 12.

C. <u>The Grahams breached the Contract, and the Club suffered resulting damages.</u>

The Grahams attempted unilaterally to resign from the Club effective May 31, 2014. SOF ¶ 13. Despite repeated communications from the Club, the Grahams have paid no dues or other charges incurred since May 20, 2014. SOF ¶ 14. As of December 31, 2015, the Grahams owe a total of $37,022.09 to the Club under the Contract. SOF ¶ 15. This amount will continue to

[3] Prior to the formation of the Club on or about December 30, 2010, the Grahams were members of the Club's predecessor, which was owned and operated by a developer, specifically Desert Mountain Properties Limited Partnership (the "Developer"). SOF ¶ 4.

increase on a monthly basis, reflecting additional charges, dues and late fees, until such time as the Equity Membership is either transferred, reissued or otherwise terminated in accordance with the Bylaws. *Id.* In addition, a transfer fee of $65,000 will be due from the Grahams to the Club upon the reissuance of the Grahams' Equity Membership. SOF ¶ 16.

D. <u>The Court has previously held that under the Contract terms, Equity Members cannot unilaterally resign from the Club, as the Grahams have done here.</u>

Previously, the Grahams moved to dismiss the Club's Complaint,[4] contending that notwithstanding the provisions of the Contract, A.R.S. § 10-3620 permitted them to resign from the Club. SOF ¶ 24(a). Both the Fabians and the Clarks have also made this same argument in Motions for Judgments on the Pleadings.[5] SOF ¶ 24. The Club moved for summary judgment against the , and the also raised this same argument in their response. SOF ¶ 23.

Following briefing and oral argument, the Court granted summary judgment against the and denied the and Clarks' Motions for Judgment on the Pleadings on October 19, 2015 (the "Ruling"). SOF ¶ 25. In the Ruling, the Court interpreted the Bylaws and held that they "contain comprehensive provisions regarding the divestiture of memberships" and "unambiguously require the member to surrender or submit his membership to the Club for resale or reissuance, and to continue to pay dues until that is accomplished." SOF ¶ 26. The Court further held that the Bylaws contain no provision allowing Equity Members to resign and stop paying dues and "can only be interpreted to preclude a member from resigning and ceasing payment of dues." *Id.* In addition, the Court held that A.R.S. § 10-3620 does not permit Equity Members to simply resign and stop paying dues. SOF ¶ 27. During relevant summary judgment proceedings against the , Daryl M. Williams jointly represented the Grahams, Clarks and the against the Club. SOF ¶ 28.

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[4] The Court denied the Grahams' Motion to Dismiss. SOF ¶ 24(a).

[5] The and the Clarks are also Equity Members of the Club and their contracts with the Club contain essentially the same terms as the Contract at issue here. SOF ¶¶ 17, 18, 20, 21. The Club's contracts with the Grahams, the Clarks, and the all provide that their Equity Memberships are subject to the Bylaws and that Equity Memberships can be terminated only in accordance with the Bylaws, as amended from time to time. SOF ¶¶ 5, 6, 9, 18, 21. Like the Grahams, the Clarks and the attempted to resign their Equity Membership unilaterally and stopped paying their dues and charges. SOF ¶¶ 13, 19, 22.

II. THE UNDISPUTED FACTS DEMONSTRATE THAT THE GRAHAMS HAVE BREACHED THE CONTRACT.

The Court must grant summary judgment when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). "The interpretation of a contract is generally a matter of law." *Powell v. Washburn*, 211 Ariz. 553, 555, ¶ 8 (2006). The Club is entitled to summary judgment on both its breach of contract and declaratory relief claims.

A. The Contract prohibits the Grahams' unilateral resignation from the Club.

The Grahams have admitted that they entered into the Conversion Agreement. SOF ¶ 5; Answer, ¶ 15. The Conversion Agreement expressly incorporated the Bylaws, as amended from time to time. SOF ¶ 6. In the Conversion Agreement, the Grahams avowed that they received, read, and understood the Bylaws. SOF ¶ 8. The terms of the Bylaws are clearly incorporated into the Conversion Agreement. *See Weatherguard Roofing Co., Inc. v. D.R. Ward Const. Co., Inc.*, 214 Ariz. 344, 346, ¶¶ 8–9 (App. 2007). The Grahams' obligations under the Contract are clear and unambiguous. Where, as here, the contractual undertakings of the parties are clear and unambiguous, the Court must enforce the contract as written. *Goodman v. Newzona Inv. Co.*, 101 Ariz. 470, 472 (1966).

The Bylaws contain no provision allowing the Grahams simply to resign and stop paying dues. In fact, the Bylaws expressly provide to the contrary, setting forth comprehensive provisions regarding the divestiture of Equity Memberships. SOF ¶ 10. Under the Bylaws, the only way the Grahams can divest themselves of their Equity Membership is through reissuance by the Club.[6] SOF ¶¶ 11–12. As previously set forth, Judge Bergin endorsed and adopted these legal positions in the Ruling. The Court should reach the same conclusions herein.

Further, accepting an argument that the Contact permits the Grahams to "resign" unilaterally and stop paying dues would be contrary to any reasonable business objective of the

[6] The Bylaws also allow Equity Members to transfer Equity Memberships to subsequent purchasers of property, through legacy transfer, and upon death. SOF ¶ 11. None of these provisions are relevant to the Grahams here, and, even if they were, they all require the Equity Membership to be transferred and reissued through the Club. SOF ¶ 11(a)-(c).

Club. SOF ¶ 26. Restrictions on the ability of private golf club members to resign their memberships with no further obligations to the club are common throughout the United States. The rationale for this restriction is simple and straight forward—private golf clubs, such as the Club, are dependent upon dues revenue derived from their members to conduct their day-to-day operations, such as the maintenance of the golf courses and other facilities and amenities. The Club establishes a certain number of Equity Memberships, SOF ¶ 3, and relies on the dues, fees, charges, and assessments paid by its Equity Members to maintain the Club. SOF ¶ 26. Club budgets (and the amount of dues charged to Equity Members) are based upon the number of Equity Members. Any reduction in Club revenues attributable to a decline in dues paying Equity Memberships results in a proportional increase in the dues, fees, charges, and assessments imposed upon the remaining Equity Members. Accordingly, restrictions upon an Equity Member's ability to simply resign the Equity Membership, the requirement that Equity Memberships must be transferred through the Club, and the obligation of the surrendering Equity Member to continue paying dues, fees, charges, and assessments attendant to Equity Membership during the period that reissuance of the Equity Membership is pending are critically important to the ongoing economic viability of the Club. SOF ¶ 26. As a result, the Contract does not permit such resignation. *See* SOF ¶ 26; *see also Burkons v. Ticor Title Ins. Co. of California*, 168 Ariz. 345, 351 (1991).

Courts have repeatedly upheld restrictions on the ability of members to resign and terminate their ongoing obligations to private associations, such as the Club. *E.g., Leon v. Chrysler Motors Corp.*, 358 F. Supp. 877 (D.N.J. 1973) (upholding bylaw provision allowing withdrawal from advertising association only by consent of a majority of members); *Caley v. Glenmoor Country Club, Inc.*, 1 N.E.3d 471 (Ohio App. 2013) (upholding bylaw provision deferring refund of initiation fee until membership had been reissued even though dues continued to accrue until the time of reissuance).

The reason for such a restriction on a member's ability to resign is readily apparent in the context of clubs, such as the Club, that are owned by their Equity Members. As owners of the Club, Equity Members are responsible to fund any operational deficits or shortfalls encountered

by the Club. SOF ¶ 2. If Equity Members were allowed to terminate their financial obligations to the Club, as the Grahams have attempted, the remaining Equity Members would be required to cover any shortfall in Club revenues attributable to the Club's loss of dues from the resigning Equity Member.

Thus, in considering the propriety of restrictions on the right to resign, courts have looked to the membership agreement as a contract not only between the particular member and the organization, but also between and among the members themselves. *Rowland v. Union Hills Country Club*, 157 Ariz. 302, 304 (App. 1988); *Bennett v. Appaloosa Horse Club*, 201 Ariz. 372 (App. 2001). In this context, as the Arizona Court of Appeals has recognized:

> This is not a situation where the court is asked to enforce a highly prejudicial term in a contract between two parties of significantly different bargaining power, which term is to the benefit of the stronger and the detriment of the weaker. Plaintiffs have entered into a contract with their fellow members, who adopted the instant bylaw for their mutual benefit.

Bennett, 201 Ariz. at 375–76; *accord Post v. Belmont Country Club, Inc.*, 805 NE2d 63, 68–69 (Mass. App. 2004). The Arizona Court of Appeals noted that restrictions on resignation, such as those in the Bylaws, are "applicable to every member, and is a provision adopted by the members via either a majority vote or the vote of the elected directors." *Bennett*, 201 Ariz. at 376.

B. The Grahams are precluded from arguing that the Bylaws do not foreclose their "resignation" under the doctrines of law-of-the-case and collateral estoppel.

1. The law-of-the-case doctrine precludes the Grahams from relitigating their ability to "resign" from the Club.

The law-of-the-case doctrine reflects the judicial policy of "refusing to reopen questions previously decided in the same case by the same court or a higher appellate court." *Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 150, ¶ 40 (App. 2004). That doctrine is fully applicable here.

The parties agreed and, on or about December 10, 2015, the Court ordered that the action commenced by the Club against the Grahams be consolidated with the Clark and l cases. SOF ¶¶ 23, 31. The Clark and cases had already been consolidated. *Id*. The Ruling

(which followed consolidation of the Clark and cases) addressed three separate motions: (1) the Club's Motion for Summary Judgment against the ; (2) the Motion for Judgment on the Pleadings; and (3) the Clarks' Motion for Judgment on the Pleadings. In resolving those motions, the Court clearly concluded that the Bylaws do not allow Equity Members to resign and thereby to terminate their financial obligations to the Club:

> In short, the bylaws contain comprehensive provisions regarding the divestiture of memberships, and those provisions unambiguously require the member to surrender or submit his membership to the Club for resale or reissuance, and to continue to pay dues until that is accomplished. The Court declines to engraft a new provision allowing equity members to resign and stop paying dues, when such a provision is nowhere suggested in the bylaws and would undermine the purpose of the equity membership program.
> . . .
> As explained above, the bylaws can only be interpreted to preclude a member from resigning and ceasing payment of dues.

SOF ¶ 26. Because the Ruling fully addressed and resolved the issue whether the attempted resignations violated the Bylaws, the law-of-the-case doctrine precludes the Grahams from relitigating that issue now.

2. Collateral estoppel precludes the Grahams from relitigating their ability to "resign" from the Club.

Collateral estoppel, or issue preclusion, binds a party to a decision on a previously litigated issue (most often, one litigated in a prior lawsuit) when: "(1) the issue was actually litigated in the previous proceeding, (2) the parties had a full and fair opportunity and motive to litigate the issue, (3) a valid and final decision on the merits was entered, (4) resolution of the issue was essential to the decision, and (5) there is common identity of the parties." *Campbell v. SZL Prop., Ltd.*, 204 Ariz. 221, 223, ¶ 9 (App. 2003). All five elements are met here.

There can be no question that the issue whether the Bylaws foreclose Equity Members from "resigning" their Equity Memberships was actually litigated in the context of the Club's Motion for Summary Judgment against the and the and Clarks' Motions for Judgment on the Pleadings or that the resolution of this issue was essential to Judge Bergin's resolution of these motions. The issue was fully briefed. *See* Motion for Summary Judgment,

3:2–4:6, 4:17–5:2 (5/5/15); Response to Motion for Summary Judgment, 1:20–2:6 (6/22/15); Amended Reply in Support of Motion for Summary Judgment, 2:15–20, 3:13–19, 7:1–15, 8:1–18 (7/16/15). As discussed *supra* (I.D, 3:12–23, II.B.1, 6:28–7:15), resolution of this issue was essential to Judge Bergin's determinations as set forth in the Ruling. Furthermore, the Grahams were jointly represented by counsel for the and Clarks during the relevant summary judgment proceedings. SOF ¶ 28. The Grahams' Motion to Dismiss actually raised virtually identical arguments as to those raised by the Clarks' and Motions for Judgment on the Pleadings and the Response to Motion for Summary Judgment.[7] *See* SOF ¶ 24.

It is also clear that the parties involved in the motion practice leading up to the Ruling—including the and Clarks with whom the Grahams shared a commonality of interests and were jointly represented—had a full and fair opportunity and were appropriately motivated to litigate the issue. The Grahams through their joint representation with the Clarks and , as the movants in two of the three motions resolved through the Ruling, a determination made in this very proceeding, had exactly the same motivation to litigate the issue of the claimed right to "resign" under the Bylaws in that context that they have in the context of the present motion.

Under the collateral estoppel doctrine, the Ruling constitutes a valid and final decision on the merits. The decision need not be appealable to be final in order for collateral estoppel to apply. *Elia v. Pifer*, 194 Ariz. 74, 80, ¶ 32 (App. 1998). Instead, "[f]or collateral estoppel purposes, a final judgment may include 'any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.'" *Garcia v. Gen. Motors Corp.*, 195 Ariz. 510, 515 (App. 1999) (quoting *Elia*, 194 Ariz. at 81, ¶ 33 (quoting Restatement (Second) of Judgments § 13 (1982))).

"Factors for determining whether a ruling is sufficiently final include the nature of the decision, the adequacy of the hearing, and the opportunity for review." *Garcia*, 195 Ariz. at 515, ¶ 11. These factors support finality here. The decision was a detailed and focused analysis of the

[7] The Fabians' Response to the Club's Motion for Summary Judgment consists of three paragraphs and is identical to motions filed by the Grahams and Clarks under Rules 12(b)(6) and 12(c), Ariz. R. Civ. P., specifically: (1) the Motion for Judgment on the Pleadings filed by the on July 9, 2015, (2) the Motion for Judgment on the Pleadings filed by the Clarks; and (3) the Motion to Dismiss filed by the Grahams.

very legal issues involved in the instant motion that was reached after thorough briefing, an extended oral argument and careful deliberation by Judge Bergin. The Clarks were represented at that time, as they are now, by Daryl M. Williams, a highly skilled and experienced attorney, who jointly represented the Grahams at that time (and now). Moreover, the Clarks provided Judge Bergin with a second opportunity to analyze the issues by seeking reconsideration. *See* Motion for Reconsideration (11/6/15). While Judge Bergin ultimately declined reconsideration, she did direct the Club to respond. *See* Minute Entry (11/13/15); Response to Motion for Reconsideration (11/20/15). The have provided Judge Bergin with yet another opportunity to revisit her analysis by moving to vacate the ruling on the grounds that Mr. Williams did not represent them. That motion has now been fully briefed and is awaiting ruling. Judge Gass even had an opportunity to consider these arguments when denying the Grahams' Motion to Dismiss. For these reasons, the Ruling is sufficiently firm to be accorded conclusive effect under the doctrine of collateral estoppel.

There can be no question regarding the common identity of parties as the Grahams are now, as a result of the Court's consolidation order of December 10, 2015, parties to the very proceeding in which the Ruling was issued. Moreover, at the time of the briefing and oral argument that resulted in the Ruling and the issuance of the Ruling itself, the Grahams were in privity with the defendants in the particular motion practice that generated the Ruling. Privies are as bound to a judgment as the parties themselves.

The Grahams were in privity with the Clarks and as all defendants shared a substantial identity of interests: all were Equity Members of the Club subject to contracts containing essentially the same terms since 2012,[8] and all attempted to resign and walk away from their obligations under their respective contracts. SOF ¶¶ 5, 13, 14, 17–22. In addition, the Grahams shared a relationship with the Clarks and whereby the Grahams' interests were presented and protected by the Clarks and through Daryl M. Williams' joint representation during the summary judgment proceedings. *See* SOF ¶ 28. There was, in fact, a

[8] In fact, both the Grahams and the Clarks entered the same Conversion Agreement with the Club in 2010. SOF ¶ 21.

joint representation agreement among, *inter alia*, the Clarks, the and the Grahams, relating to the defense of the claims asserted against them by the Club. SOF ¶¶ 29, 30. Before consolidation of the Grahams case, Mr. Williams coordinated the identical defense for all of the defendants. *See* SOF ¶ 24. The Grahams' interests and arguments were fully presented and protected by Mr. Williams when arguing the same issues for the Clarks and s. Not surprisingly, courts have found privity in situations like here—where parties have a joint defense arrangement and retain the same counsel to maximize the likelihood that they both would prevail against a mutual foe. *See Asahi Glass Co. v. Toledo Eng'g Co.*, 505 F. Supp. 2d 423, 434 (N.D. Ohio 2007). Accordingly, all requirements for application of the doctrine of collateral estoppel are satisfied.

C. The Grahams breached the Contract, and the Club suffered resulting damages.

The Grahams have admitted that they attempted to resign their Equity Membership, effective May 31, 2014, and that they have paid no dues or other charges against their Club account since May 20, 2014. SOF ¶¶ 13, 14. As of December 31, 2015, the Grahams' debt to the Club was $37,022.09.[9] SOF ¶ 15.

D. The Club is entitled to summary judgment on all its claims.

As shown above, in the case at bar, the following facts are not subject to dispute:

- The Grahams entered the Conversion Agreement with the Club in 2010. SOF ¶ 5.
- The Conversion Agreement provides that "Equity Golf Memberships may be transferred only through the Club, subject to the terms, conditions, and restrictions set forth in the Club Bylaws." SOF ¶ 9.
- The Conversion Agreement expressly and validly incorporates by reference the Bylaws as they may be amended from time to time. *See* SOF ¶¶ 6–9.
- The Contract obligates the Grahams as Equity Members to pay all dues, fees, charges, and assessments imposed by the Club until such time as their Equity Membership has been

[9] If the Court grants summary judgment, the Club will submit to the Court revised documentation regarding the amounts owed by the Grahams as of the date of judgment.

transferred or terminated in accord with the Bylaws. SOF ¶¶ 6, 9, 11.

- The Grahams stopped paying dues and other amounts owed to the Club under the Contract as of May 20, 2014 when they sought to "resign" from the Club effective May 31, 2014. SOF ¶¶ 13–14.
- The Grahams' attempted "resignation" from the Club, as of January 1, 2014, did not comply with the requirements of the Contract. *See* SOF ¶¶ 6, 9, 11, 13, 14.
- As of December 31, 2015, the Grahams owed $37,022.09 to the Club. SOF ¶ 15.

These facts clearly establish both the Club's entitlement to declaratory relief and the Grahams' liability to the Club for breach of contract as a matter of law, as the Grahams cannot dispute the parties' valid and enforceable Contract, the Grahams' breach, and the Club's resulting damages. As the Court "must give effect to the contract as it is written, and the terms or provisions of the contract, where clear and unambiguous, are conclusive," the Club is entitled to judgment as a matter of law on all its claims. *Goodman*, 101 Ariz. at 472.

III. A.R.S § 10-3620 DOES NOT RELIEVE THE GRAHAMS OF THEIR BREACH.

The Grahams' Motion to Dismiss was premised on A.R.S. § 10-3620. The Club anticipates that the Grahams may re-raise their statutory arguments in an effort to defeat the Club's entitlement to summary judgment. Joint Status Report, 5:14–16 (12/11/15). The statute, however, is inapplicable because the Contract does foreclose the Grahams from resigning. Moreover, even if the statute were applicable, it would not impact the Grahams' financial responsibilities at issue because their obligations/commitments giving rise to those responsibilities arose before their attempted resignation.

In the Ruling, Judge Bergin concluded that the statute was inapplicable to the Club's relationship with its Members:

> The Court agrees with Plaintiff that A.R.S. § 10-3620 accords Defendants no relief. Subsection (A) limits the entitlement to resign "as set forth in or authorized by the . . . bylaws." As explained above, the bylaws can only be interpreted to preclude a member from resigning and ceasing payment of dues.

SOF ¶ 27. This legal determination forecloses the Grahams from relying upon the statute in an attempt to defeat the Club's entitlement to summary judgment.

Even were the statute applicable here, it would not defeat the Club's right to recover outstanding dues and other charges owed by the Grahams. The basis for those obligations consists of the Contract, which includes the Conversion Agreement, dated November 22, 2010, and the Bylaws, as they have been amended from time to time. SOF ¶¶ 5, 6. The statute relieves "resigning" members of non-profit organizations from only those obligations or commitments that arose after the "resignation." Because the Grahams' obligations/commitments arose prior to their attempted resignation on or about May 20, 2014, the statute, even if applicable, would accord them no relief. As Judge Bergin determined:

> [E]ven if the statute allowed Defendants to "resign," they would not be relieved of their prior commitment to pay dues pending reissuance or resale of their membership, a "commitment made prior to resignation." § 10-3620(B).

SOF ¶ 27.[10]

IV. CONCLUSION

The Club is entitled to summary judgment as a matter of law on both its breach of contract and declaratory relief claims. The Court should grant summary judgment against the Grahams and enter a declaration in accord with the declaratory relief requested in the Club's Complaint. In addition, the Court should award the Club damages in the amount of $37,022.09 against the Grahams, plus a future transfer fee (unliquidated at this time) and accruing dues and late charges as prescribed by the Contract. The Court should also award the Club its costs, expenses, and reasonable attorneys' fees incurred in this action against the Grahams pursuant to the parties' Contract, specifically the 2014 Bylaws, § 6.6, and A.R.S. §§ 12-341, 12-341.01.

[10] As previously set forth (6:18–10:10), the doctrines of law-of-the-case and collateral estoppel preclude all of the defendants from challenging Judge Bergin's determinations that: (1) Section 10-3620(A) is inapplicable to the relationship between the Club and its Equity Members because the Bylaws foreclose resignation; and (2) even were the statute otherwise applicable, Section 10-3620(B) would not relieve the defendants from their obligations at issue in this lawsuit because they arose prior to the defendants' attempted resignation.

DATED this 13th day of January, 2016.

FENNEMORE CRAIG, P.C.

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