

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-015333

11/14/2016

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Stogsdill
Deputy

DESERT MOUNTAIN CLUB INC

CHRISTOPHER L CALLAHAN

v.

ERIC GRAHAM, et al.

DARYL M WILLIAMS

MINUTE ENTRY

Courtroom 514 - ECB

10:00 a.m. This is the time set for Oral Argument re: Plaintiff's Motion for Summary Judgment in CV2014-015333 (Grahams) and Plaintiff's Motion for Summary Judgment in CV2014-015334 (Clarks). Plaintiff is represented by counsel, Christopher L. Callahan. Robert Jones, a representative of Plaintiff is also present. The Clark and Graham Defendants are represented by counsel, Darryl M. Williams and Annelise Dominquez.

Court reporter, April Hunt, is present and d record of the proceedings is made digitally.

Oral argument is presented.

For the reasons stated on the record,

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IT IS ORDERED taking the matter under advisement.

10:33 a.m. Matter concludes.

LATER:

Defendants Grahams and Clarks are equity members in Plaintiff Desert Mountain Club, Inc., a golf club. The Grahams and the Clarks want to resign their membership. Desert Mountain argues they may not resign their equity membership unless (1) they transfer the membership through Desert Mountain and (2) they continue paying dues, assessments, and other charges until the transfer is complete. The Grahams and the Clarks argue that under A.R.S. § 10-3620, they may resign at any time because Desert Mountain's articles of incorporation and bylaws are silent as to resignation. Desert Mountain is correct.

At issue are Plaintiff's Motion for Summary Judgment in CV2014-015333 (Grahams) (Docket # 36) and Plaintiff's Motion for Summary Judgment in CV2014-015334 (Clarks) (Docket # 40).

This matter involves three consolidated cases involving three different equity members, the [redacted] (CV2014-015334), the Grahams (CV2014-015333), and the Clarks (CV2014-015335). The [redacted] resolved their matter following an October 19, 2015 ruling. The present issues involving the Grahams and the Clarks are identical to the issues involving the [redacted] : May the Grahams and the Clarks resign their equity memberships under A.R.S. § 10-3620 despite the provisions in the Membership Conversion Agreement, the Desert Mountain Bylaws, and Desert Mountain's rules and regulations?

The October 19, 2015 order outlines Desert Mountain's history, including its various bylaws. The October 19, 2015 order also explains the factual background for the Clarks and the Fabians. The factual background for the Grahams is not substantively different. They all agreed to the Membership Conversion Agreement at or about the same time. They all attempted to resign their memberships at about the same time. The timing is not legally significant.

The Clarks signed their Membership Conversion Agreement on or about December 21, 2010. On June 26, 2013, the Clarks surrendered their membership to Desert Mountain for reissuance as provided in the bylaws. Desert Mountain did not sell or reissue the Clarks' membership. On January 1, 2014, the Clarks purported to "resign" their membership effective the same date. The Clarks stopped paying dues on January 1, 2014. The Clarks did not pay the \$65,000.00 transfer fee, which will come due when Desert Mountain reissues the Graham's equity membership. As of January 13, 2016, the Clarks' dues were \$47,531.74 in arrears.

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The Grahams signed their Membership Conversion Agreement on or about November 20, 2010. The Grahams purported to “resign” their membership by notice dated May 20, 2014 to be effective May 31, 2014. The Grahams stopped paying dues on May 20, 2014. The Grahams did not pay the \$65,000.00 transfer fee, which will come due when Desert Mountain reissues the Graham’s equity membership. As of January 13, 2016, the Grahams’ dues were \$37,022.09 in arrears.

The legal reasoning in the October 19, 2015 order remains solid. No authority in Arizona or elsewhere suggests a different outcome unless there is new material issue of fact. There is none.

IT IS THEREFORE ORDERED granting Plaintiff’s Motion for Summary Judgment in CV2014-015333 (Grahams) and Plaintiff’s Motion for Summary Judgment in CV2014-015334 (Clarks).

IT IS FURTHER ORDERED awarding Desert Mountain liquidated damages against the Clarks in the amount of \$47,531.74 as of January 13, 2016 and damages against the Grahams in the amount of \$37,022.09 as of January 13, 2016.

IT IS FURTHER ORDERED awarding Desert Mountain damages against the Clarks and the Grahams dues and late fees that have accrued since January 13, 2016 as liquidated damages.

IT IS FURTHER ORDERED awarding Desert Mountain damages against the Clarks and the Grahams for future dues and late fees and the future transfer fee.

IT IS FURTHER ORDERED that on or before **December 2, 2016**, Desert Mountain’s counsel shall submit the following:

1. An appropriate form of judgment for the Court’s review and signature.
2. Any application for attorney fees and costs shall be submitted with the proposed for of judgment for the Court’s review and signature.
3. Any application for further relief not identified in the above.

IT IS FURTHER ORDERED that any responses or objections and replies to Desert Mountain’s form of judgment, application for attorney’s fees and costs, and application for further relief shall be filed in accordance with the Arizona Rules of Civil Procedure.

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NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN MICROSOFT WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.

IMPORTANT NOTICE REGARDING ONLINE PROFILE

Judge Gass maintains an online profile that answers many questions about courtroom and division procedures. Litigants and their attorneys should familiarize themselves with the online profile. You can find the online profile at the following link:

<https://www.superiorcourt.maricopa.gov/JudicialBiographies/judges/profile.asp?jdgID=260&jdgUSID=9111>.