

IN THE ARIZONA COURT OF APPEALS

DIVISION ONE

Desert Mountain Club,)
) No. 1 CA-CV 17-0100
 Plaintiff/Appellee,)
) Maricopa County Superior Court
 vs.) No. CV2014-015333
) CV2014-015334
 Eric Graham, et al.,) CV2014-015335
)
 Defendants/Appellants.)
)
 _____)

APPELLANTS' OPENING BRIEF

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INTRODUCTION

Welcome to the Hotel California.
Such a lovely place (such a lovely place)

....

Mirrors on the ceiling,
The pink champagne on ice,
And she said, “we are all just prisoners here”

....

Last thing I remember, I was
Running for the door
I had to find the passage back to the place I was before
“Relax,” said the night man,
“We are programmed to receive.
You can check out any time you like,
But you can never leave!”¹

Desert Mountain Golf Club is akin to the lovely place in the 1978 Grammy Award-winning song by the Eagles. Members have paid handsomely—as much as \$325,000.00—to join the exclusive Desert Mountain Golf Club, which is owned by the members themselves via a non-profit corporation, Desert Mountain Club, Inc. The appellants paid a lot of money to join the club years ago and have paid a lot of money during the terms of their memberships, but they decided to leave when finances and age made golf meaningless and continued membership a financial ruination. They resigned. Desert Mountain did not like that, so it sued them, and the trial court ruled

¹The Eagles, *Hotel California*, on Hotel California (Asylum 1977).

that they could not resign: they must continue to pay dues and fees and assessments until Desert Mountain sells the I-just-want-out membership to a replacement member, a process that can take years.

At the time of the just-let-me-out resignations, there was nothing in the then-current bylaws,² that mentioned resignation in any form. Desert Mountain's bylaws during its development phase expressly allowed both resignations and, as they still do, sales of memberships. Resignations permit a member to just walk away, but a sale is done through the club so the club can maintain club standards (exclusivity). A sale allows, in theory, the member to recoup what has been paid to the club. The selling member gets the price paid by the new member less a transfer fee paid to the club. The sale-through-the-club mechanism, though, requires the member to continue to pay dues until the membership is sold. Selling through the club made economic sense when the value of the membership was high or increasing, and the transfer fee was relatively small.

The sale-through-the-club/transfer-fee provisions in the bylaws are very complicated and have changed over time. The complications include, *inter alia*, the fact that Desert Mountain, itself, has memberships it sells in competition with a

²The complaints in these consolidated cases claim rights based on the corporate bylaws only. Record on Appeal (hereafter referred to as "RA") 1 (Grahams CV2014-015333, Clarks CV2014-015334, and Fabians CV2014-015335).

member who wants to sell. This means that it can take years before Desert Mountain actually sells the member's membership.

Another complication is the transfer fee. Originally, the transfer fee was twenty percent of the resale price; this was \$65,000.00 when the memberships were selling at their peak price, \$325,000.00. The amount of the transfer fee, however, changed to the greater of twenty percent or \$65,000.00 when the price of memberships began to fall to the present-day value of about \$32,000.00.

The present-day value makes sales through Desert Mountain unattractive because of the time it takes the club to sell the member's membership and the minimum transfer fee. The member must continue to pay dues and other charges during the years that it takes to sell a membership through Desert Mountain, the selling member must pay the difference between what the new member pays and the \$65,000.00 transfer fee. A selling-member can easily end up paying a six figure amount to sell the membership.

Resignation makes more sense than paying to get out. The resigning member can walk away, stop paying ongoing dues and other charges, and avoid the transfer fee, but the member also forfeits the right to share in the price paid by the replacement member. A resignation did not make sense when the value of membership was high, even though the resignation provision existed in the original

bylaws. The original bylaws, however, have been replaced with bylaws that omit the resignation provision. Still, the right to resign is part of the bylaws because an Arizona statute—which is part of the contract between the member and Desert Mountain as a matter of law—says, “A member may resign *at any time*, except as set forth in or authorized by the articles of incorporation or bylaws.”³

This statutory right to resign is unrestricted in the case of Desert Mountain because there is nothing in the bylaws⁴ affecting or even mentioning resignation by members of Desert Mountain. Moreover, the except-as-set-forth language quoted in the prior paragraph modifies the next-previous antecedent in the pertinent sentence of the statute.

When the appellants decided that it was time for them to resign, Desert Mountain took the position that they could not. It sued them. Desert Mountain then and now takes the position that the comprehensive scheme in the bylaws for sales of memberships through the club with the associated transfer fee and ongoing obligations for dues includes resignations. The trial court adopted this argument even

³A.R.S. § 10-3620(A) (emphasis added). Articles of incorporation are not at issue in these consolidated cases. Desert Mountain’s claims are based on the corporate bylaws only.

⁴The parties agree that the bylaws are the applicable agreement so far as the right to resign is concerned.

though the sell-through-the-club provisions—considered individually or read as a whole—address only sales and transfers through the club, not resignations.

The trial court recognized that the bylaws do not have any language that addresses what happens when a member resigns. But the trial court, giving lip-service to the principle that prevents a court from writing something into a contract that is not there, ruled that a resignation is the same thing as a sale.

The trial court’s equation making a resignation the same as a sale ignored the law that makes the statutory right to resign an express part of the contract between the member and the club. Having ignored this express right to resign, the court then ruled that the right to resign was controlled by the sell-through-the-club provisions of the agreement.

Having found that resignations were not mentioned in the bylaws and were the same as a sale, the trial court then addressed the effect of the statute giving the appellants the right to resign. The statute says, “A member may resign *at any time*, except as set forth in or authorized by the articles of incorporation or the bylaws.”⁵ The trial court ruled that the qualifying exception in this sentence skips over its proximate antecedent to modify the right to resign, a reading that renders *at any time*

⁵A.R.S. 10-3620(A) (emphasis added).

superfluous, but it was a reading that allowed the court to rule that its equation of resign with sell meant that the statute was inapplicable.

This *de novo* appeal seeks a ruling that the Clarks and the Grahams had the right to resign.

STATEMENT OF THE CASE

Desert Mountain filed three separate complaints against the Fabians, the Clarks, and the Grahams on December 29, 2014.⁶ The Fabians' case was originally assigned to the Honorable J. Richard Gama,⁷ the Clarks' case was assigned to the Honorable Dawn Bergin,⁸ and the Grahams' case was assigned to the Honorable David Gass.⁹ Each complaint alleged that the former members breached Desert Mountain's bylaws by resigning.¹⁰ The Fabians filed an answer and counterclaim on March 5, 2015,

⁶ RA 1 (Grahams CV2014-015333, Clarks CV2014-015334, and Fabians CV2014-015335).

⁷ See RA 12, 13 (Fabians CV2014-015335).

⁸ See RA 8 (Clarks CV2014-015334).

⁹ See RA 11 (Grahams CV2014-015333).

¹⁰ RA 1 (Grahams CV2014-015333, Clarks CV2014-015334, and Fabians CV2014-015335).

stating that Desert Mountain had allowed other former members to resign without further obligations and that the termination fee was an unenforceable penalty.¹¹

The Clarks filed an answer on March 23, 2015.¹² Desert Mountain filed a motion for summary ruling on motion to dismiss and a motion for summary judgment against the Fabians on May 5, 2015.¹³ The Clarks and the Fabians filed motions to consolidate their cases on June 22, 2015.¹⁴ Their cases were consolidated on July 6, 2015 under the cause number CV2014-015334.¹⁵

The Fabians filed a motion for judgment on the pleadings on July 9, 2015.¹⁶ Desert Mountain filed an amended reply in support of its motion for summary judgment against the Fabians on July 16, 2015.¹⁷

The Grahams filed an answer in their case on August 18, 2015.¹⁸

¹¹ RA 7–8 (Fabians CV2014-015335).

¹² RA 8 (Clarks CV2014-015334).

¹³ RA 12–13 (Fabians CV2014-015335).

¹⁴ RA 24 Fabians CV2014-015335).

¹⁵ RA 31 (Fabians CV2014-015335).

¹⁶ RA 46 (Clarks CV2014-015334).

¹⁷ RA 47 (Clarks CV2014-015334).

¹⁸ RA 20 (Grahams CV2014-015333).

On October 19, 2015, Judge Bergin granted summary judgment against the Fabians and concluded that “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.”¹⁹

Desert Mountain subsequently filed a motion to consolidate the Clark, the Fabian, and the Graham cases on October 29, 2015.²⁰ The Fabians filed a motion to vacate summary judgment against them on December 9, 2015.²¹ The trial court further consolidated the cases on December 14, 2015 under the cause number CV2014-015333 and assigned the case to Judge Gass.²² The minute entry stated that Judge Bergin would resolve the issues with regard to any request to set aside her ruling on Desert Mountain’s motion for summary judgment against the Fabians, the award of attorneys fees based on that ruling, and whether the judgment as to the Fabians would include rule 54(b) language.²³

¹⁹ RA 54, at p. 4 (Clarks CV2014-015334).

²⁰ RA 58 (Clarks CV2014-015334).

²¹ RA 87 (Clarks CV2014-015334).

²² RA 93 (Clarks CV2014-015334).

²³ RA 93 (Clarks CV2014-015334).

Desert Mountain filed a motion to enforce its settlement with the Fabians on December 24, 2015.²⁴ Desert Mountain filed notice of non-settlement with the Fabians on March 18, 2016²⁵ and the court entered a rule 54(b) judgment against the Fabians on April 21, 2016.²⁶ The Fabian judgment is not part of this appeal.

On January 13, 2016, Desert Mountain filed separate motions for summary judgment against the Clarks and the Grahams.²⁷ The Clarks and the Grahams filed responses to the motions for summary judgment on September 16, 2016.²⁸ Judge Gass held oral argument on the motions for summary judgment on November 14, 2016.²⁹ After oral argument, the trial court granted Desert Mountain's motions for summary judgment against the Clarks and the Grahams.³⁰ Judgment was entered in favor of

²⁴ RA 31–32 (Grahams CV2014-015333).

²⁵ RA 95–96 (Grahams CV2014-015333).

²⁶ RA 109 (Grahams CV2014-015333).

²⁷ RA 41–51 (Grahams CV2014-015333).

²⁸ RA 115–116 (Grahams CV2014-015333).

²⁹ RA 122 (Grahams CV2014-015333).

³⁰ RA 125 (Grahams CV2014-015333).

Desert Mountain on December 22, 2016.³¹ The notice of appeal was filed on January 10, 2017.³²

This court has jurisdiction by virtue of A.R.S. § 12-120.21 and A.R.S. § 12-2101(A)(1). The standard of review is *de novo*.³³

STATEMENT OF FACTS

Desert Mountain is an Arizona non-profit corporation that operates a golf club in north Scottsdale.³⁴ Desert Mountain was created on December 31, 2010.³⁵ Its predecessor entity was formed by the developer of Desert Mountain and dates back to the 1980s.³⁶ Members of the predecessor entity were deferred equity members—the developer retained the equity ownership until the club was transferred to the non-profit formed by the members to take over operations.³⁷ The non-profit then offered

³¹ RA 133, 134 (Grahams CV2014-015333).

³² RA 136 (Grahams CV2014-015333).

³³ *Dreamland Villa Community. Club, Inc. v. Raimey*, 224 Ariz. 42, 45, ¶ 6, 226 P.3d 411, 414 (App. 2010).

³⁴ RA 116 (Grahams CV2014-015333).

³⁵ RA 116, ¶ 32 (Grahams CV2014-015333).

³⁶ *Id.*

³⁷ *Id.*

the deferred equity members the opportunity to become equity members of the current entity when the developer sold the club to the non-profit that now owns it.³⁸

The predecessor entity and the newly formed non-profit had bylaws.³⁹ Desert Mountain subsequently amended its bylaws in 2012, 2013, and 2014, by vote of the board of directors without membership approval.⁴⁰

Members must pay an entrance fee to be a member of Desert Mountain.⁴¹ Historically, the fee has been as much as \$325,000.00.⁴² After paying the entrance fee, an equity member pays monthly dues and other charges so long as he or she is a member.⁴³

The bylaws have always provided that the only way to sell a membership is through Desert Mountain,⁴⁴ but earlier bylaws expressly allowed resignations.⁴⁵

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

⁴¹RA 116, ¶ 33 (Grahams CV2014-015333).

⁴²*Id.*

⁴³*Id.*

⁴⁴*See* Exhibit I to complaint at art. 4, RA 1 (Grahams CV2014-015333).

⁴⁵*See* Exhibit B to complaint, Bylaws dated July 1, 1994, at art. 6, § 1(b), RA 1–2 (Clarks CV2014-015334).

There has never been an option to sell a membership on the open market; instead, a member must notify Desert Mountain of his or her intent to sell the membership.⁴⁶ The membership is then placed on a wait or surrender list where the member waits for his or her membership to move to the top of the list before the club will transfer it to a new member.⁴⁷ The wait is long because Desert Mountain had a 2:1 policy that required two new memberships owned by the club to be sold before a membership could be sold from the surrender list.⁴⁸ The typical ratio has been 3:1.⁴⁹

Originally, when an equity member sold a membership, Desert Mountain would give 80% of the selling price to the selling member, keeping 20% as a transfer fee.⁵⁰ Over time, the price of an equity membership declined significantly.⁵¹ To avoid losing revenue from falling transfer fees, Desert Mountain's board of directors amended the bylaws to make the transfer fee the greater of 20% of the sale price or \$65,000.00.⁵²

⁴⁶RA 116, ¶ 33 (Grahams CV2014-015333).

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰RA 116, ¶ 34 (Grahams CV2014-015333).

⁵¹*Id.*

⁵²RA 116, ¶ 35 (Grahams CV2014-015333); \$54,000.00 is 20% of \$325,000.00, the peak price for membership.

Membership prices have continued to decline. Some membership prices have been as low as \$32,000.00.⁵³ Now, instead of the member receiving an 80% refund and the club retaining 20% as a transfer fee, Desert Mountain mandates payment of the full \$65,000.00 transfer fee.⁵⁴ In other words, selling members must pay the difference between the price received and the mandatory \$65,000.00 transfer fee. Members no longer receive any money from a sale.⁵⁵

The Clarks purchased a membership from the predecessor entity in 1988.⁵⁶ They converted their membership to an equity golf membership in December 2010.⁵⁷ The Clarks never agreed to the changes in the bylaws implemented by Desert Mountain's board of directors, but they understand economic reality. They tendered their resignation from Desert Mountain effective January 1, 2014,⁵⁸ rather than pay and

⁵³RA 115 at 2 (Grahams CV2014-015333).

⁵⁴RA 115 at 2–3 (Grahams CV2014-015333).

⁵⁵RA 115 at 3 (Grahams CV2015-015333).

⁵⁶RA 116, ¶ 36 (Grahams CV2014-015333)

⁵⁷*Id.*

⁵⁸RA 116, ¶ 37 (Grahams CV2014-015333).

then be obligated to pay the \$65,000.00 transfer fee. At the time of their resignation, the Clarks were paid in full for all prior dues and obligations.⁵⁹

The Grahams purchased a membership from the predecessor entity in 2006.⁶⁰ They converted their membership to an equity golf membership in November 2010.⁶¹ The Grahams paid \$325,000.00 to become members of Desert Mountain.⁶² The Grahams never agreed to the changes to the bylaws implemented by Desert Mountain's board of directors.⁶³ Thus, the Grahams tendered their resignation from Desert Mountain in May 2014.⁶⁴ At the time of their resignation, the Grahams were paid in full for all prior dues and obligations.⁶⁵

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⁵⁹*Id.*

⁶⁰RA 116, ¶ 36 (Grahams CV2014-015333).

⁶¹*Id.*

⁶²*Id.*

⁶³RA 116, ¶ 37 (Grahams CV2014-015333).

⁶⁴*Id.*

⁶⁵*Id.*

Desert Mountain sued the Clarks, the Grahams, and the Fabians, who are not a party to this appeal, in three separate actions on December 29, 2014, that were consolidated.⁶⁶

STATEMENT OF ISSUES

I. MEMBERS OF A NON-PROFIT CORPORATION HAVE THE RIGHT TO RESIGN

A.R.S. § 10-3620(A) gives members of a non-profit corporation the right to resign. Arizona's statutes are included in the terms of every contract by operation of law.⁶⁷ The bylaws are a contract.⁶⁸ Do members have the right to resign?

II. DESERT MOUNTAIN'S DISPARATE TREATMENT OF SIMILARLY SITUATED MEMBERS NULLIFIES ITS CLAIM

A.R.S. § 10-3610 mandates equal treatment for all members of a non-profit corporation. Numerous former members of Desert Mountain resigned without paying the transfer fee or being sued. The Clarks and the Grahams were treated differently

⁶⁶ RA 1–2 (Grahams CV2014-015333, Clarks CV2014-015334, and Fabians CV2014-015335).

⁶⁷ *Banner Health v. Medical Savings Ins. Co.*, 216 Ariz. 146, 150, ¶ 15, 163 P.3d 1096, 1100 (App 2007).

⁶⁸ *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 304 757 P.2d 105, 108 (App. 1988).

without an articulable, good-faith reason. Does Desert Mountain’s disparate treatment of similarly situated members nullify its claims against the Clarks and the Grahams?

ARGUMENT

I. DESERT MOUNTAIN’S BYLAWS ALLOW MEMBERS TO RESIGN

A. The Bylaws Include Arizona’s Statutes

1. The right to resign is statutory. The complaints in these matters claim the Clarks and Grahams did not have the right to resign because of a restriction in the bylaws of Desert Mountain. The bylaws, though, are a contract between the members and the non-profit,⁶⁹ and Arizona’s statutes are part of the contract as though the statute was expressly incorporated into the written agreement:

“It has long been the rule in Arizona that a valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract.” Therefore, **valid applicable laws existing at the time of the contract form a part of the contract as fully as if they were expressly incorporated in the contract.** Thus, contractual language must be interpreted in light of existing law, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law.⁷⁰

⁶⁹*Rowland v. Union Hills Country Club*, 157 Ariz. 301, 304, 757 P.2d 105, 108 (App. 1988).

⁷⁰*Qwest Corp. v. City of Chandler*, 222 Ariz. 474, 485, ¶ 37, 217 P.3d 424, 435 (App. 2009) (emphasis added) (*quoting Banner Health v. Medical Savings Ins. Co.*, 216 Ariz. 146, 150, ¶ 15, 163 P.3d 1096, 1100 (App. 2007)).

The statute expressly incorporated into Desert Mountain's bylaws provides in full as follows:

A. A member may resign *at any time*, except as set forth in or authorized by the articles of incorporation or bylaws.

B. The resignation of a member does not relieve the the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

C. This section does not apply to corporations that are condominium associations or planned community associations.⁷¹

Paragraph A of this statute allows bylaws to limit the time for a resignation, but not the right to resign. The exception language must be construed to modify the italicized portion of the foregoing quote for two reasons. First, such a reading comports with the last-antecedent rule of statutory interpretation. The rule is simply stated:

The plain meaning of a statute “will typically heed the commands of its punctuation.” *United States Nat’l Bank v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 454 [] (1993). Among the rules of punctuation we consider is the “last antecedent rule.” As applied in Arizona, the last antecedent rule “requires that a qualifying phrase be applied to the word or phrase immediately preceding as long as there is no contrary intent indicated.” *Phoenix Control Sys., Inc. v. Ins. Co.*, 154 Ariz. 31, 34, 796 P.2d 463, 466 (1990); *see also*

⁷¹A.R.S. § 10-3620 (emphasis added).

2A N. Singer, *Sutherland Statutes and Statutory Construction* § 47:33 (7th ed. 2011) (“referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent.”)⁷²

The second reason the exception language in the statute only modifies the at-any-time phrase is because a different interpretation renders *at any time* superfluous; after all, an unrestricted right to effect the resignations would include both whether and when one could resign, so the exception language must modify the proximate phrase about when a resignation may occur if *at any time* is to be given meaning as required by law.⁷³

Paragraph B of A.R.S. § 10-3620 underscores the difference between a resignation and the sell-through-the-club provisions of the bylaws at issue in this case. A resignation contemplates no further obligations to the non-profit corporation other than those incurred prior to the resignation.

The trial court’s rulings in this case say the appellants must pay post-resignation obligations because the court says the sell-through-the-club provisions of the bylaws modified the right to resign. There are two problems with this *ratio*

⁷²*Pawn 1st, LLC v. City of Phoenix*, 231 Ariz. 309, 311–12, ¶ 16, 294 P.3d 147, 149–50 (App. 2013).

⁷³*Ruiz v. Hull*, 191 Ariz. 450, ¶ 35, 957 P.2d 984, 993 (1998); *Grand v. Nacchio*, 225 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976).

decidendi. First, liability for ongoing future obligations is inconsistent with what a resignation is.⁷⁴ Second, the court does not have the power to “alter, revise, modify, extend, rewrite or remake an agreement,”⁷⁵ and “[i]ts duty is confined to the construction or interpretation of the [contract] which the parties have made for themselves.”⁷⁶ The trial court skirted these limitations by equating Desert Mountain’s convoluted and lengthy process of transfer and resale to a resignation so that a resignation is governed by that same process. A court, though, must read a contract in light of its actual language.⁷⁷ So reading the bylaws to say something they plainly do not say is wrong.

2. *The right to equal treatment is statutory.* Another one of Arizona’s non-profit statute states that “[a]ll members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles of incorporation or bylaws establish classes of membership with different rights or

⁷⁴See A.R.S. § 10-3620(B).

⁷⁵*Goodman v. Newzona Investment Co.*, 101 Ariz. 470, 472, 421 P.2d 318, 320 (1966).

⁷⁶*Id.*

⁷⁷*Smith v. Melson*, 135 Ariz. 119, 121, 659 P.2d 1264, 1266 (1983).

obligations or otherwise provide.”⁷⁸ This means all similarly situated members must be treated similarly; *i.e.*, all equity golf club members must be treated the same.

The club has not treated all equity golf members the same. This is important not only because it violates the statute, but because the prior actions of parties to a contract before an alleged breach are the best indication of the contract’s meaning.⁷⁹ By allowing some members to leave without paying the transfer fee, the club acknowledges that on-going payments after a resignation are subject to the whims of the then-current board, not a vital contractual provision.

Settling with Ms. Dillon-Jones or letting Mr. Stoffer simply walk away are clear examples of disparate treatment in violation of the statute. The club will likely respond that the bylaws give it discretion in how it deals with its members. Perhaps. But that discretion cannot be exercised arbitrarily.⁸⁰ There is neither rhyme nor reason why the Clarks and the Grahams have been pursued when other members

⁷⁸A.R.S. § 10-3610.

⁷⁹*United Cal. Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 266, 681 P.2d 390, 418 (App. 1983).

⁸⁰*Capital Options Invest., Inc. v. Goldberg Bros. Commodities, Inc.*, 958 F.2d 186, 189 (7th Cir. 1992) (“Contractual discretion must be exercised reasonably and not arbitrarily or capriciously.”)

have been allowed to leave without full payment obligations sought against the Clarks and the Grahams. This, at least, raises a factual issue.

More egregious, however, is the club's institution of an ETO, an Exit Transfer Option. There are almost 2,000 club members, many of whom want out. The ETO offered to the first 150 members the option of paying \$32,000.00 to the club in lieu of following the sell-through-the-club provision of the bylaws. The demand was overwhelming, so the board increased that limit to 199 members. Nonetheless, hundreds of remaining members do not have the option of a one-time, lump-sum payment of \$32,500.00. As any Black Friday shopper can attest, few things are more arbitrary than opening the doors to a mad rush for a sale when only the first 199 purchasers can get the deal.

The club clearly violated A.R.S. § 10-3610, because similarly-situated members are not treated equally. The club's illegal and arbitrary acts nullify its claims against the Clarks and the Grahams for breach of contract.

B. Bylaws Govern Procedural Matters

The function of bylaws in corporate law is narrow. Bylaws are used for procedural matters.⁸¹ Things like when the annual meeting will be held. How many votes are required to pass certain types of resolutions. The cost of participating in the

⁸¹A.R.S. § 10-3206; 18A AM. JUR. 2D *Corporations* § 258 (2014).

activities of a non-profit club like Desert Mountain. These sorts of bylaw-prescribed functions are appropriate decisions of a board of directors because they are the sorts of decisions essential to keep the non-profit corporation in operation. There need to be appropriate rules that control hours of operation, when things must be done, when votes will be taken, *etc.*

It is not the function of bylaws to trap a member by eliminating the right to resign. Such unlimited dominion is not the province of corporate bylaws. It is something that could, perhaps, be included in a membership agreement, but even then, such provisions would be subject to the rule of good faith and fair dealing which prevents unconscionable results. Desert Mountain's tortured reading of the bylaws in this case subverts their purpose and should not be sustained on appeal.

NOTICE OF CLAIM FOR ATTORNEYS FEES

Pursuant to ARCAP 21(a), the Clarks and the Grahams are seeking attorneys fees as allowed by A.R.S. § 12-341.01.

CONCLUSION

The bylaws of a non-profit corporation are a contract between the organization and its members. Arizona statutes are a part of contracts by operation of law. Arizona law gives members of a non-profit corporation the right to resign. A party to a contract may not subvert the express provisions of Arizona law that are part of the

contract. The Clarks and the Grahams had the right to resign from Desert Mountain. They did. They are entitled to judgment in their favor.

Wherefore, appellants request the following relief:

- A. An order vacating the trial court's summary judgment in favor of Desert Mountain;
- B. Directing the trial court to enter judgment in favor of the Clarks and the Grahams because they had the right to resign and did; and
- B. Awarding the Clarks and the Grahams attorneys' fees on appeal.

Dated this 10th day of April 2017.

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CERTIFICATE OF COMPLIANCE

Pursuant to ARCAP 14, I, Daryl M. Williams, certify that the attached brief uses proportionately spaced type of 14 points or more, is double-spaced using a roman font and contains 4,525 words exclusive of tables, certificates, title page, and appendix.

Dated this 10th day of April 2017,

/s/ Daryl M. Williams
Daryl M. Williams

MAILING CERTIFICATION

I, Daryl M. Williams, certify that the original Opening Brief and six copies were filed with the clerk of the Court of Appeals, and two copies each were mailed this 10th day of April 2017 to:

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