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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12 Desert Mountain Club, Inc.,
13 Plaintiff,

14 vs.

15 Thomas Clark and Barbara Clark, husband
16 and wife,
17 Defendants.

18) No. CV2014-015334

19) **Motion for Judgment on the Pleadings**

20) (Assigned to the Honorable Dawn Bergin)

21 _____
22 The complaint in this case is twelve pages long, but it attaches fourteen exhibits, resulting
23 in 384 pages altogether. Notwithstanding its completeness—prolixity?—the defendants are entitled
24 to judgment on the pleadings.

25 The gravamen of plaintiff’s complaint centers upon paragraphs 24 and 25, which provide as
26 follows:

27 24. On or about January 1, 2014, Defendants attempted to resign
28 their Membership, effective January 1, 2014, through a letter tendered
to the Club. A true and correct copy of Defendants’ January 1, 2014
[sic, comma omitted] letter is attached as Exhibit L. In that letter,
Defendants claimed that the letter “officially serve[d] as [their]
resignation form [sic] the Desert Mountain Club, Inc. Effective
1/1/2014.” January 1 Letter at 1. Defendants averred that the letter
“terminates [their] obligation to pay dues nd assessments as a Desert
Mountain Club member.” *Id.*

25 25. Defendants have paid none of the dues or other charges against
26 their Membership Account since January 1, 2014.

27 The factual allegations of these paragraphs were admitted by the defendants, as was the
28 allegation of paragraph 1 that the plaintiff is an Arizona non-profit corporation.

1 The allegations in the complaint and the hundreds of pages of exhibits set forth no restriction
2 on the ability of a member of this non-profit corporation to resign. There is a mechanism in all of
3 these documents for a member to
4 surrender his membership to the
5 club for reissuance, a surrender that
6 gives the member the right to
7 receive a refund of dues and a
8 portion of his contribution to join
9 the club, but there is nothing that
10 says any member cannot simply
11 resign and walk away from
12 whatever benefit or equity the
13 member owns.

14 So that is what Tom Clark
15 did. He resigned. His letter of
16 resignation is shown in figure 1. The
17 corporation statute addressing the
18 right of a member to resign from a
19 non-profit is:

- 20 A. A member may resign at any time, except as set forth in or
21 authorizes by the articles of incorporation or bylaws.
- 22 B. The resignation of a member does not relieve the member from
23 any obligations the member may have to the corporation as a
24 result of obligations incurred or commitments made prior to
25 resignation.

24 A.R.S. § 10-3620(A), (B). As already noted, there is no exception in the articles or bylaws that
25 prevent a resignation.

26 Plaintiff's complaint alleges in paragraph 25 that Tom Clark has not paid any dues or
27 assessments since he resigned. There is no allegation that he failed to pay anything prior to his
28

Desert Mountain Club
10550 East Desert Hills Drive
Scottsdale, AZ 85262

Sirs:

This letter officially serves as my resignation from the Desert Mountain Club, Inc. Effective 1/1/2014. I understand that this terminates my obligation to pay dues and assessments as a Desert Mountain Club member, terminates all Club privileges, And is irrevocable.

All dues and charges through 12/31/2013 will be paid in full in January 2014.

Please cancel and remove my application for Senior Membership which we have found was really not attainable anyway.

Due to health and recent physical restraints, my wife nor I are able to play golf .

Our membership certificate from 1988 is already in your hands.

Sincerely,

Thomas M. Clark
Member # 352

Figure 1 Resignation Letter, Exhibit L to Complaint, ¶ 25

1 resignation. The only obligation he could have under A.R.S. § 10-3620(B) is for “obligations
2 incurred or commitments made prior to resignation.” There are none.

3 CONCLUSION

4 The Clarks are entitled to judgment on the pleadings and they are entitled to recover their
5 attorneys fees pursuant to A.R.S. § 12-341.01 and their costs. Wherefore, they request judgment
6 dismissing plaintiff’s complaint and awarding them fees and costs.

7 Respectfully submitted this 26th day of May 2015.

8 /s/ Daryl M. Williams
9 Daryl M. Williams
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11 6225 North 24th Street, Suite 125
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13 Attorneys for plaintiff

11 Original eFiled with the Clerk’s ECF
12 filing system this 26th day of May, 2015

13 Copy mailed this same day to:

14 The Honorable Dawn Bergin
15 Maricopa County Superior Court
16 201 W. Jefferson (CCB #7D)
17 Phoenix, AZ 85003-2243

18 and copies mailed this same day to:

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27 /s/ Diana L. Clark
28