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Golf Dispute Resolution

Court Refuses To Let Club Members Withdraw

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By: **Rob Harris**

A number of months ago, we discussed a lawsuit brought by Arizona's **Desert Mountain Club** against members who had purported to withdraw.

The club claimed that the members' purported withdrawal was ineffective and that they remained liable for the ongoing payment of their dues, until such time as their names were reached on a membership surrender list and they paid a surrender fee. The club's argument was based on bylaws that had been adopted over the years.

The legal question that seemed potentially interesting was whether members could be held responsible for membership termination conditions that were embodied in bylaws adopted AFTER they had joined the club. Arguably, such provisions would be a unilateral alteration of the contractual terms to which they agreed at the time they joined.

Recently, **an Arizona court ruled in favor of the club**. As the court's opinion explains:

Plaintiff [the club] points out that the bylaws contain no provision allowing an equity member to simply "resign" and stop paying dues. It further argues that the bylaws' provisions are unambiguous with respect to transfers of memberships, and regardless of whether the word "resign," "transfer," or "surrender" is used, it is clear that the only way an equity member in Defendants' position can divest themselves of their membership is through the Club, and until a sale or reissuance occurs, they must continue to pay dues.

Under Arizona law, a trial court should read a contract "in light of the parties' intentions as reflected by their language and in view of all the circumstances," and if their intention "is clear from such a reading," the contract is unambiguous. Smith v. Melson, Inc., 135 Ariz. 119,121, 659 P.2d 1264, 1266

(1983). It must also construe a contract “to give effect to all its provisions and to prevent any of the provisions from being rendered meaningless.” *Scholten v. Blackhawk Partners*, 184 Ariz. 326, 329, 909 P.2d 393, 396 (App. 1995).

Reading the bylaws as a whole, it is clear that Club equity memberships are not simply agreements to pay for the use of facilities, such as a membership at a gym. They have no contractual time periods or expiration dates. Payment of the Membership Contribution procures the equity member an ownership interest in the Club. The membership can be bought and sold on the market (albeit only through the procedures set forth in the bylaws). In addition, equity members are entitled to vote, and if dissolution and liquidation were to occur, they are entitled to a pro rata share of remaining assets. In contrast, non-equity members have no vote and may not hold office or participate in any share of liquidation proceeds.

Further, the Club has established a certain number of equity memberships and relies on the dues, fees and assessments paid by those members to maintain the Club. If equity members were permitted to simply “resign” and stop paying their dues, the viability of the Club would be jeopardized. Permitting such resignations would therefore be contrary to any reasonable business objective of 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 this 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.

The court’s opinion must be read as an emphatic protection of the entity at the expense of individual members’ desires. While the business logic underlying the decision is clear and, in the minds of many, warranted, the opinion is notable in that it did not even address the legal significance of the fact that the bylaws at issue were adopted after the members joined the club. While it may be true that the original membership documents provided that members would be subject to subsequently adopted restrictions, one might have expected to see a discussion of that point in the court’s opinion.

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