

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-015334

10/16/2015

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT
C. Fitch
Deputy

DESERT MOUNTAIN CLUB INC

CHRISTOPHER L CALLAHAN

v.

THOMAS CLARK, et al.

DARYL M WILLIAMS

UNDER ADVISEMENT RULING

The Court has reviewed the following:

1. Plaintiff's Motion for Summary Judgment against Defendants Barry and Lori Fabian, and accompanying Statement of Facts filed on May 5, 2015 in CV2014-015335; Defendants' Response and accompanying Statement of Facts; and Plaintiff's Reply;
2. Defendants Barry and Lori Fabian's Motion for Judgment on the Pleadings filed on July 9, 2015 in CV2014-015335 ; Plaintiff's Response; and Defendants' Reply; and
3. Defendants Thomas and Barbara Clark's Motion for Judgment on the Pleadings filed on May 26, 2015 in CV2014-015334; Plaintiff's Response; and Defendants' Reply.¹

Having considered the briefing outlined above and the arguments of counsel at the August 19, 2015 hearing, the Court now makes the following findings and orders.

¹ Cases CV2014-015334 and 015335 were consolidated into CV2015-015334 on July 1, 2015. The motions were filed prior to consolidation.

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Factual Background

Plaintiff Desert Mountain Club, Inc. (the “Club”) is a non-profit member-owned recreational Club that provides various facilities and services to its members. Two types of equity memberships are available through the Club: Equity Golf Memberships, which allow members full access to all facilities; and Equity Club Memberships (Lifestyle), which allow members to use all non-golf facilities. To procure an equity membership, an applicant, after being approved by the Club, must pay a “Membership Contribution” (*i.e.*, the purchase price) and is required to pay monthly dues and various fees and assessments. The Fabians and the Clarks are Equity Golf Members.

Three sets of bylaws were in effect during the relevant time frame. Under each set, equity members could sell or transfer their memberships only through the Club, and were required to continue to pay dues until a sale occurred.² The member would receive from the sale the full Membership Contribution from the buyer less a transfer fee equal to the greater of: (1) 20% of the new Member Contribution; or (2) \$65,000.

Unfortunately, the value of the equity memberships and the pool of prospective buyers have substantially declined, making it difficult for an equity member seeking to divest herself of her membership to even recoup the initial Membership Contribution. Consequently, as set forth in more detail below, Defendants Clark and Fabian gave notice to the Club of their “resignation,” and stopped paying dues. Plaintiff has sued them for breach of contract and declaratory relief.

The Clarks

The Clarks purchased their Equity Golf Membership on or about December 21, 2010. On June 26, 2013, they surrendered their membership to the Club for reissuance as provided for in the March 19, 2012 bylaws. When the Club failed to procure a sale/reissuance of their membership, the Clarks purported to “resign” their membership by notice dated January 1, 2014, and stopped paying dues.

² For example, under the March 19, 2012 bylaws, members would “surrender” their membership to the Club, which would place it on a “Surrender List” and then reissue (sell) it to a willing buyer. The July 1, 2013 bylaws required members to submit memberships for reissuance by written notice to the Club, which would place it on a “Reissuance List,” and reissue (sell) it to a willing buyer. Under the August 1, 2014 bylaws, members would submit a “Resale Notice” to the Club identifying his/her “ask price” for the membership, and the Club would advise prospective candidates of the memberships available through the Membership Resale Program.

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The Fabians

The Fabians acquired their Equity Golf Membership on or about March 29, 2012. On January 1, 2014, they requested a downgrade from an Equity Golf Membership to a Lifestyle Membership. They threatened to stop paying dues if the Club refused the downgrade.

The July 1, 2013 bylaws, which were in effect at that time, provided:

Downgrades shall not be permitted by the Club. However, the Board reserves the right, on a limited basis due to exceptional circumstances as determined by the Board in its sole discretion, to allow a downgrade to a lower category of Membership.

The Club denied the Fabians' downgrade request, and on February 3, 2014, they advised the Club that they were "resigning" their membership as of January 1, 2014 and stopped paying dues.

Legal Analysis

Defendants argue that: (1) nothing in the bylaws precludes them from simply "resigning" from the Club and terminating their dues payments; and (2) A.R.S. §10-3620 permits them to do so.

Construction of the Bylaws

Plaintiff 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' position³ 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).

³The bylaws also contain provisions addressing transfers by members who own property in Desert Mountain Community to subsequent purchasers of the property, legacy transfers and transfers upon death. None of these provisions are relevant here, however.

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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.⁴

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. *Burkons v. Ticor Title Ins. Co. of California*, 168 Ariz. 345, 351, 813 P.2d 710, 716 (1991) (a court may not conclude as a matter of law that an agreement “expresses an intent contrary to any reasonable business objective unless it [finds] that one party [was] incompetent to make the contract, had been led to do it through fraud, or both.”)

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.

Section 10-3620

Defendants also argue that because the bylaws do not explicitly address resignation, Section 10-3620, which applies to member resignations from non-profit corporations, allows them to resign and stop paying dues. It reads as follows:

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

⁴ While no information was provided on the terms of non-equity membership agreements, the bylaw procedures discussed in this ruling explicitly apply only to equity members.

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

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. Second, even 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).

Having determined that no ambiguity exists regarding the methods by which the Fabians can divest themselves of their membership and that no fact issue exists with respect to the parties’ intentions,⁵

IT IS ORDERED granting Plaintiff’s Motion for Summary Judgment against Defendants Barry Fabian and Lori Fabian.

IT IS FURTHER ORDERED awarding Plaintiff damages in the amount of \$103,087.67 (as of April 30, 2015), against Barry and Lori Fabian, plus a future transfer fee (unliquidated at this time) and accruing dues and late charges as prescribed by the parties’ contract.

IT IS FURTHER ORDERED denying Barry and Lori Fabians’ Motion for Judgment on the Pleadings.

IT IS FURTHER ORDERED denying Defendants Thomas and Barbara Clark’s Motion for Judgment on the Pleadings, as Plaintiff has stated valid claims against them for breach of contract and declaratory relief.

⁵ The Court addresses only the Fabians in this paragraph because Plaintiff has moved for summary judgment only against them.