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February 10, 2015

Sent via email

Thomas and Barbara Clark
39558 N. 104th St.
Scottsdale, AZ 85262
tomclark1230@gmail.com

Re: Desert Mountain Club, Inc. v. Thomas Clark and Barbara Clark

Dear Tom and Barbara:

This letter will outline some of the main issues you face in this complaint and will describe the general strategy your defense could take. As we discussed, it might make sense for you to speak with other similarly situated club members who are facing such lawsuits so that you can pool resources to challenge the club's attempts to force this unconscionable "transfer fee" upon club members. And to that point, there may very well be sufficient support club members generally to amend the bylaws and eliminate (or at least significantly reduce) the immense financial burden imposed by this transfer fee.

First by way of background, I have reviewed your correspondence with Fennemore Craig, have evaluated the various iterations of the club's bylaws, and I have analyzed the claims raised in the complaint. I have also looked at Gary Moselle's website and researched cases that support your position. It seems that the club intends to use you and similarly situated residents as examples to prevent a flood of no-cost resignations. The club's approach is to rely on two basic arguments: (1) you signed a membership agreement in 1996 (and subsequent "Membership Conversion Agreement" in 2010) in which you agreed to abide by any club bylaws, and (2) the amended by-laws require payment of this exorbitant transfer fee.

Interestingly, there do not appear to be any Arizona cases that specifically govern what the club is attempting to do here. You will note that in support of its position, even Fennemore Craig

had to rely on a case out of Delaware as support for the club's attempts to bind club members to such amended bylaws. And even that case does not provide an overwhelming argument to back the club's claims. As a result, the club will need to rely on general contract principles to enforce its attempted actions.

In conjunction with such contract principles, Arizona also has a long history of cases providing courts with strong equitable powers to accomplish individual justice in the context of the specific facts of specific cases. These equitable powers are inherently flexible and are not shackled by rigid rules of procedure. Equity gives courts the power to evaluate and balance competing claims and to adapt relief and mold decrees to satisfy the requirements of the particular case before it. There are many facts here that would support a court's use of these equitable powers. As an example, the transfer fee is exorbitantly high when compared to the current market value of the memberships. In short, it does not reflect the current economic realities of club memberships. Further, given current property values in the area, selling a home without transferring the membership could force a homeowner to pay 25% (or more) of the sales price to the club to satisfy the transfer fee. Beyond that, your own individual financial circumstances and life situation could play a role in the court's ultimate resolution.

Even beyond these equitable powers, you have arguments related to the specific "contracts" relied on in the complaint. For example, every contract in Arizona requires the parties to act in good faith toward one another, which means that neither party can do anything that would deprive the other party of the benefits of the contract. When the market value for club memberships is less than one-third the value of the club-mandated "transfer fee," the club's imposition of such a high transfer fee is depriving you of the benefits of the contract's provision entitling you to transfer your membership. Further, the club's own sales to third parties are depriving you of the value in your right to cancel your membership. Incidentally, this bad faith by the club could negate or significantly reduce any claims to damages it seeks.

As to those "damages," Arizona courts do not permit contracting parties to impose a penalty for a breach or violation of that contract. Here, the \$65,000 "transfer fee" arguably amounts to an impermissible and unenforceable penalty for any claimed "breach of contract" (based on the club's allegations from the complaint). For the club to prevail on this front, it must prove two things when considering all of the relevant circumstances: (1) the \$65,000 "transfer fee" is a reasonable forecast of just compensation for any harm caused by your supposed breach, and (2) the harm caused by this claimed breach is incapable or very difficult of accurate estimation. At this point, it is doubtful that the club could accurately prove both of those necessary elements. Obviously we are speculating somewhat about the club's motivation, but it seems that the \$65,000 transfer fee was created not as an estimate of actual damages but instead as a deterrent to keep members locked in to memberships for life. This fact, coupled with the current market rate of new memberships, supports the argument that the "transfer fee" (which the club seeks as damages for your claimed breach of contract) is merely a disguised penalty aimed at dissuading membership cancellation.

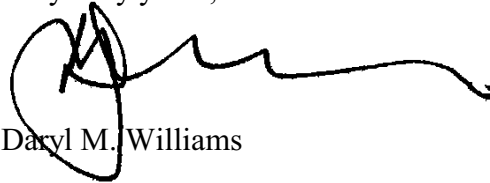
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Beyond the reliance on these arguments outlined above, our strategy would likewise include deposing the club's CEO as soon as possible (and likely even before the discovery or disclosure of any documents). We would seek an explanation for the decision making process behind the imposition of such a high transfer fee, we would inquire about the details of the transfer list, and we would explore the application of these transfer fee requirements to other members who have resigned.

As a final reminder, when we met I talked to you about the uncertainty and costs of litigation. Given the current landscape, I would expect the club to put up a vigorous push to fully enforce this \$65,000 transfer fee on you and others. If they lose this case, there would likely be a flood of attempted no-cost cancellations, which could dramatically impact the club's viability and finances. You need to understand that the club likely views you and the handful of other pending lawsuits as examples of the dangers and risks of challenging the bylaws.

If you have specific questions about any of the information I outlined here, please let me know. And if there are other club members facing similar lawsuits, I would welcome the opportunity to talk with them as well so that you can collectively mount a joint defense against the club's actions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Daryl M. Williams', with a long, sweeping horizontal stroke extending to the right.

Daryl M. Williams

/WDS