

STATE OF MICHIGAN
COURT OF APPEALS

FRED BRUSHER, MARGARET BRUSHER,
LEONARD CASILLO, SALLYANN CASILLO,
GREGORY CURRY, PATRICIA CURRY, JOHN
DELSIGNORE, LINA DELSIGNORE,
VICTORIA GROVE, VINCENT HEBEL, LEIGH
ANN HEBEL, MYRON PATTEN, GERALDINE
PATTEN, LLOYD SCHMALTZ, JUDY
SCHMALTZ, HOWARD SELLAND, JEAN
SELLAND, LC THOMPSON, VIN THOMPSON,
and CAROL THOMPSON,

Plaintiffs/Cross-
defendants/Appellees,

and

KATE FLEMING and DAVID R. GROVE,

Plaintiffs/Appellees,

and

THOMAS DEAGOSTINO, BARBARA
DEAGOSTINO, WILLIAM T. HJORTH,
JEANNE HJORTH, ROBERT MOORE, PAT
MOORE, DEAN PERAKIS, MARGARET
PERAKIS, PATRICIA E. SHANNON, JOSEPH
SPROLES, CHARLENE SPROLES, CHARLES
STEP, JODIE STEP, OLIVER E. TODD, and
ALICE M. TODD,

Plaintiffs/Cross-defendants,

and

LAWRENCE STIRLING, and LUCILLE
STIRLING

Plaintiffs,

UNPUBLISHED
March 23, 2004

BAY HARBOR YACHT CLUB

Defendant/Cross-
plaintiff/Appellant,

and

BH TRANSITION CORPORATION,

Defendant-Appellant,

and

BAY HARBOR YACHT CLUB LIMITED
PARTNERSHIP and BAY HARBOR
COMPANY, L.L.C.,

Defendants.

FRED BRUSHER, MARGARET BRUSHER,
LEONARD CASILLO, SALLYANN CASILLO,
GREGORY CURRY, PATRICIA CURRY, JOHN
DELSIGNORE, LINA DELSIGNORE, VINCENT
HEBEL, LEIGH ANN HEBEL, MYRON
PATTEN, GERALDINE PATTEN, LLOYD
SCHMALTZ, JUDY SCHMALTZ, HOWARD
SELLAND, JEAN SELLAND, LC THOMPSON,
VIN THOMPSON, and CAROL THOMPSON,

Plaintiffs/Cross-
defendants/Appellees,

and

KATE FLEMING, DAVID R. GROVE, and
VICTORIA GROVE,

Plaintiffs/Appellees,

and

THOMAS DEAGOSTINO, BARBARA
DEAGOSTINO, WILLIAM T. HJORTH,

JEANNE HJORTH, ROBERT MOORE, PAT
MOORE, DEAN PERAKIS, MARGARET
PERAKIS, PATRICIA E. SHANNON, JOSEPH
SPROLES, CHARLENE SPROLES, CHARLES
STEP, JODIE STEP, OLIVER E. TODD, and
ALICE M. TODD,

Plaintiffs/Cross-defendants,

and

LAWRENCE STIRLING, and LUCILLE
STIRLING

Plaintiffs,

v

No. 244322
LC No. 01-006731-CZ

BAY HARBOR YACHT CLUB LIMITED
PARTNERSHIP and BAY HARBOR
COMPANY, L.L.C.,

Defendants-Appellants,

and

BAY HARBOR YACHT CLUB,

Defendant/Cross-plaintiff,

and

BH TRANSITION CORPORATION,

Defendant.

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial court's order granting summary disposition to plaintiffs on the issue of whether continued membership in a newly organized yacht club was mandatory. We affirm. This case is a dispute over the meaning of language in master deeds and a membership plan that created mutual obligations for defendants, who developed and managed a yacht club and resort area, and owners of various condominiums within the resort area. As

explained in the master deeds for the Bluffs, the resort's developer, defendant Bay Harbor Company, originally intended to build the clubhouse and add facilities to the yacht club, charging members for dues, assessments, and large initiation fees as the club grew, but leaving equity ownership of the club with the condominium owners who became club members. Membership was originally mandatory for early purchasers of condominium units, but this obligation was conditioned on the availability of an equity ownership interest in the club.

The membership plan that was in force when plaintiffs joined the club, however, changed several aspects of the agreement contained in the first set of deeds. According to the plan and later deeds, members of the club had no ownership interest and no manifest authority to manage or govern the club. Rather, the Company, through its wholly owned partnership, owned and ran it. Application for membership, rather than membership itself, became mandatory, and the members could not unilaterally extinguish their membership interest. Dues were capped and members could veto modifications that required assessments for property purchases or affected their ability to use club facilities. The plan outlined a long-term scheme for transferring ownership and control of the club from the Company to its members. The scheme anticipated the continued income from initiation fees to pay the Company back for its investment in the clubhouse and facilities. The timeline for the transfer of ownership was April 2006 or whenever the Company recuperated \$4.5 million in initiation fees. At that point, the plan called for the establishment of a new Equity Club and the dissolution of the Company-owned club. Until that time, the Company ran the club at a loss so that it could attract more owners and boost the amount it received in initiation fees.

When the club realized that it needed to alter its business organization to obtain a "club" liquor license, the Company established a non-profit corporation and put the partnership's (club's) assets into it. While the new corporation called for management by the members, defendants assert, with undisputed affidavits, that the metamorphosis from a partnership to corporation did not affect the validity of the membership plan and did not give the members any greater right of ownership or control over the club.

In mid-1999, club members began investigating the financial benefits of negotiating an early buyout and transfer of the club to its members. The transfer favored the Company because it would receive the balance of the \$4.5 earlier and would no longer need to run the club as a losing venture without the ability of raising dues. The transfer also favored some members who saw the potential of operating the club at a profit, lowering dues, and expanding services in the long run. Several members, plaintiffs included, dissented from the early transfer because it meant raising the otherwise-capped dues, paying assessments, and assuming full financial liability for a club that was losing money. An early transfer agreement was proposed and a vote of the members held. After some controversial extensions, over sixty percent of the members voted in favor of adopting the early transfer agreement. The club's bylaws were amended and restated; additional dues, assessments, and purchase obligations were levied; and the transfer agreement was implemented. This lawsuit followed by members of the dissenting group.

Plaintiffs argued below that the early transfer violated the agreement in the membership plan that allowed them to enjoy capped dues, limited assessments, and freedom from personal liability for repaying the Company. Plaintiffs also argued that the plan allowed them to opt out of membership in the new Equity Club, so the new club cannot require them to transfer their membership from the Company-owned club to the Equity Club and pay the additional dues and

assessments. We agree. Because we find the second issue dispositive, we will address it alone. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The membership plan was a contract, complete with obligations, agreements, and benefits to its parties. *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989). When contract language is clear on its face, the trial court must accept the words as the parties' intent and apply the language as written. *UAW-GM v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The membership plan states,

Upon the conveyance to the Equity Yacht Club of all of the Club Facilities the Yacht Club will be deemed to have been dissolved and the Membership Interest of each and every Member will be deemed to have been terminated and each and every Member will not be a Member; and upon the dissolution of the Yacht Club the partners of the Yacht Club will liquidate the Yacht Club

This section compliments another section which states that,

any of the terms of this Membership Plan to the contrary notwithstanding, upon the earlier to occur of (A) payment to Bay Harbor Company of Initiation Fees in the total amount of \$4,500,000, and (B) April 30, 2006, the Yacht Club will establish a Michigan nonprofit corporation that will be known as Bay Harbor Yacht Club, Inc (the "Equity Yacht Club")., the Yacht Club will convey to the Equity Yacht Club all of the Club Facilities and the land upon which the Club Facilities are located, and each Member will be permitted to acquire one share of the stock of the Equity Yacht Club. The purchase price for that share of stock will be \$10.00. Each Member acquiring a share of the stock of the Equity Yacht Club will be a member of the Equity Yacht Club and will have the right to use the Club Facilities

Reading these unambiguous portions together, the plan allows members of the old club to opt out of membership in the new club by refraining from purchasing a share of stock in the membership-owned corporation. Because plaintiffs declined to purchase stock in the new membership-owned club, they are not bound by the membership plan to become or remain members of the newly organized club.

Defendants argue that the majority of members voted to approve the early transfer agreement, which modified the membership plan to include mandatory membership in the new club. The membership plan does not grant the majority power to modify the agreement, however, except that more than sixty percent must approve assessments for property acquisition and more than fifty percent must approve changes to members' access to club facilities. Moreover, the law does not allow majority members in ordinary associations to override and amend the fundamental tenets of a membership agreement, regardless of the limitless power granted them by the membership agreement. *Earl Dubey & Sons v Macomb Concrete Corp*, 81 Mich App 662, 676-677; 266 NW2d 152 (1978); 7 CJS, Associations, § 6(c), p 33. We are disinclined to extend the rule in this case, where the plan's language was not limitless, and the Company controlled the "association's" directors and greatly benefited from the transaction.

Because the transfer agreement could not modify plaintiffs' contracted ability to opt out of membership when the club transferred from the Company to the members, the trial court did not err when it held that plaintiffs were not required to become and remain members of the new membership-owned "Equity Yacht Club."

Affirmed.

/s/ Jessica R. Cooper

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood