STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH A. FOSTER, W. TIMOTHY YAGGI, SCOTT I. DEJONG, and THOMAS M. ELLSPERMANN, Plaintiffs-Appellants,	UNPUBLISHED February 17, 2009
v	No. 282650 Berrien Circuit Court
BERRIEN HILLS COUNTRY CLUB, Defendant-Appellee.	LC No. 2007-000061-CR

Before: Markey, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. For the reasons set forth in this opinion, we affirm.

I. Facts and Procedural History

At the time of the events giving rise to these proceedings, defendant was a non-profit private country club.[1] Plaintiffs were members of defendant country club. In its later years of operation, defendant began to have financial difficulties when the income from member dues could not keep pace with the club's operating expenses. Declining membership exacerbated the club's financial crisis. The club began to borrow significant amounts of money and incurred about $1 million in debt in an ultimately unsuccessful attempt to keep the club afloat. In June 2005, defendant established a new membership plan to attempt to increase revenue to the club. Under the plan, current members were given the option to remain as equity (shareholding) members or move to a non-equity position. In order to remain equity members, members were required to select that option and sign and authorize a "Selection of Equity Status" form and pay $825. Plaintiffs Thomas M. Ellspermann and W. Timothy Yaggi elected to pay the additional $825 to remain equity members; plaintiffs Joseph A. Foster and Scott I. DeJong did not.

[1] Defendant country club dissolved on July 12, 2006.

Between October 31, 2005, and January 10, 2006, plaintiffs each tendered separate written resignations from defendant country club. Article VIII of defendant's bylaws, which governs resignation of members, provides:

> Section 1. RESIGNATIONS. Any person may voluntarily resign their membership by tendering such resignation in writing addressed to the President or Secretary. No resignation shall be accepted unless the member is, at the time of tendering such resignation, in good standing and has paid all indebtedness to the Club, including dues for the full month in which his resignation is tendered. The member(s) must deliver and surrender their stock certificate to the Secretary. The value of the stock, as stated on the Stock Certificate, less an administrative/processing fee, shall be paid to the stockholder. Resignations will not be in effect until accepted by the Board of Directors. The termination of membership for any cause whatsoever shall operate as release of all the right, title to or interest in the property and assets of the Club and the membership certificate shall become null and void.

Defendant wrote each plaintiff a letter indicating that the board had accepted their resignation and that plaintiffs would be put on the wait list for processing stock refunds. Defendant thereafter issued checks to each plaintiff. The stock refund checks issued to plaintiffs Foster, Yaggi and Ellspermann included a reduction of $270 for dues for the month in which defendant accepted their resignations. Plaintiff DeJong had set up automatic dues payments through his Visa credit card, which paid his $270 dues for the month in which defendant accepted his resignation. None of the plaintiffs cashed the check that defendant issued to them.

On March 6, 2006, defendant received a formal offer from Chris Neuser to purchase defendant country club. Although the offer itself was silent regarding the full amount of the offer, Neuser paid $1.2 million in earnest money when he made the offer, and an article appearing in a local newspaper on March 30, 2006, stated that Neuser was purchasing the club for $4.2 million. The amount of the offer was unexpectedly high and, according to defendant's appellate brief, would result in an estimated payout to defendant's equity members of $25,000.[2] On April 20, 2006, each plaintiff wrote separate but nearly identical letters to defendant purporting to revoke their resignations from the club. In the letters, plaintiffs claimed that their resignation letters constituted an offer to resign and that defendant's response was not an acceptance, but a counter-offer that was not accepted by plaintiffs. Thus, according to plaintiffs' letters, plaintiffs were withdrawing their offers to resign. Counsel for plaintiff candidly acknowledged on the record at the summary disposition hearing that "after being members of [defendant] club for many, many years, [plaintiffs] wanted to share in the windfall of the sale . . . ."

[2] We note that because plaintiffs Foster and DeJong did not elect to become equity members and did not pay $825 under defendant's new membership plan of June 2005, they would not be entitled to share in the proceeds from any sale of defendant country club even if they had not resigned.

Thereafter, plaintiffs filed a complaint against defendant. Plaintiffs' complaint alleged that plaintiffs each offered to resign their memberships with defendant in accordance with Article VIII, Section 1 of defendant's bylaws, and defendant responded by making a counter-offer that plaintiffs' resignations would be accepted if plaintiffs each agreed to pay dues for an extra month in the amount of $270. The complaint further alleged that each plaintiff rejected defendant's counter-offer, revoked their offer to resign and tendered dues payments to make them current. According to the complaint, defendant rejected plaintiffs' payments and claimed that plaintiffs' actions did not restore them to equity status. Plaintiffs sought to recover from defendant "their full distributive share as full equity members and/or shareholders of Defendant[.]"

Defendant moved for summary disposition under MCR 2.116(C)(8) and (10). According to defendant, plaintiffs resigned pursuant to defendant's bylaws, and defendant accepted plaintiffs' resignations. Defendant maintained that the real dispute between the parties concerned whether defendant could, under its bylaws, charge resigning members dues for the month in which defendant accepted the member's resignation. Defendant asserted that charging the members $270 for the month in which defendant's board accepted the member's resignation did not amount to a counter-offer. Defendant further observed that because plaintiffs Foster and DeJong did not elect to become equity members or pay $825 under the new membership plan established in June 2005, they were not equity members of defendant country club.

The trial court agreed with defendant's argument that plaintiffs' resignation letters were not offers to resign, but rather an unconditional resignation effective immediately, and granted defendant's motion for summary disposition. According to the trial court, the only issue for it to resolve was whether plaintiffs were required to pay the $270 dues for the month in which the board accepted their resignation. The trial court ruled that defendant's bylaws did not permit defendant to charge plaintiffs dues for the month it accepted their resignations and ordered defendant to refund plaintiffs such amounts.

II. Standard of Review

Although plaintiffs moved for summary disposition under both MCR 2.116(C)(8) and (10), it appears that the trial court considered documents other than the pleadings in making its decision. Therefore, we review whether summary disposition was proper under MCR 2.116(C)(10). This Court's review of a trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) is as follows:

> This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix Co Rd Comm'rs*, 227 Mich App 621, 625; 576 NW2d 712 (1998). The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court when ruling on a motion brought under MCR 2.116(C)(10). *Downey*, *supra* at 626; MCR 2.116(G)(5). When reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), this Court "must consider the documentary evidence presented to the trial court 'in the light most favorable to the nonmoving party.'" *DeBrow v Century 21 Great*

Lakes, Inc (After Remand), 463 Mich 534, 539; 620 NW2d 836 (2001), quoting *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). A trial court has properly granted a motion for summary disposition under MCR 2.116(C)(10) "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). [*Clerc v Chippewa Co War Mem Hosp*, 267 Mich App 597, 601; 705 NW2d 703 (2005), remanded in part 477 Mich 1067 (2007).]

III. Analysis

Plaintiffs argue that the trial court erred in granting summary disposition to defendant. According to plaintiffs, their resignation letters constituted offers to resign, and defendant's response, to send stock refund checks reduced by $270 for dues for the month in which defendant accepted each plaintiff's resignation, constituted a counter-offer rather than an acceptance. Thus, plaintiffs contend, they had the right to revoke their offers to resign since defendant did not accept them. And, according to plaintiffs, they did revoke their offer to resign in separate letters to defendant dated April 20, 2006.

We reject plaintiffs' contention that their resignations from defendant country club constituted a contractual offer to resign. Rather, each plaintiff's resignation was an unequivocal resignation from defendant country club pursuant to the club's bylaws. Each letter clearly and unequivocally communicated plaintiffs' intent to resign from defendant country club. For example, plaintiff Ellspermann's resignation letter stated: "We are writing this letter to inform you of our decision to no longer be members of Berrien Hills Country Club. . . . Please process our membership withdrawal effective today January 10th, 2006." Plaintiff DeJong's resignation stated: "Please accept this letter as my official resignation as a Member at Berrien Hills Country Club, effective immediately." Plaintiff Foster's resignation stated: "After much thought, I have decided to resign from BHCC. . . . My dues are paid up through December and I assume I have a zero balance so the Board can approve my resignation." Plaintiff Yaggi's resignation stated: "Please . . . accept this as our letter of resignation from Berrien Hills Country Club." In light of the clear language in each plaintiff's resignation letter, we reject plaintiffs' claim that their resignation letters were merely an offer to resign. The unequivocal language in the resignations negates any such claim. Furthermore, defendant clearly accepted each plaintiff's resignation pursuant to its bylaws and communicated to each plaintiff that their unequivocal resignations had been accepted.

Plaintiffs argue that *Wiljamaa v Bd of Ed*, 50 Mich App 688; 213 NW2d 830 (1950), establishes that a resignation is akin to an offer to rescind a contract and that an offeree who purports to accept an offer of resignation with terms different than the terms contained in the offer has, under the law, made a counter-offer. In *Wiljamaa*, the plaintiff, a tenured teacher who had an employment contract with the Flint Board of Education, sought to resign from her teaching position. She submitted her resignation effective November 23, 1970, on a form supplied by the school board. The next day someone changed the effective date of the plaintiff's resignation to November 20, 1970, without the plaintiff's knowledge and consent. This Court stated that the plaintiff's resignation was akin to an offer to rescind her employment contract on November 23,

1970, and that by changing the effective date of the resignation to November 20, 1970, the board made a counter-offer. *Id.* at 690. According to the Court, the counter-offer was not communicated to or accepted by the plaintiff, so there was no meeting of the minds on plaintiff's offer to resign or on the board's counter-offer. *Id.* Thus, "the contract between the plaintiff and the board was not rescinded by the tender of plaintiff's resignation." *Id.*

Plaintiff's reliance on *Wiljamaa* for the proposition that a resignation constitutes an offer to rescind a contract is misplaced because of a critical factual distinction between the facts in this case and the facts in *Wiljamaa*. In *Wiljamaa*, the plaintiff was an employee with an employment contract who sought to resign from her teaching position. Thus, her resignation was an offer to rescind the employment contract. *Id.* This case is different, however, because plaintiffs were not resigning pursuant to an employment contract, and unlike the plaintiff's offer to resign in *Wiljamaa*, plaintiffs were not offering to rescind a contract at all. Rather, plaintiffs were resigning in accordance with defendant's bylaws.

Although bylaws are a contract between a corporation and its shareholders, *Allied Supermarkets, Inc v Grocer's Dairy Co*, 45 Mich App 310, 315; 206 NW2d 490 (1973), aff'd 391 Mich 729 (1974), we reject any suggestion that plaintiffs' resignations under the bylaws constituted offers to resign and essentially create a secondary contractual relationship under the bylaws. Even if plaintiffs' resignations did constitute offers to resign, however, we find that whether defendant charged plaintiffs dues for the month in which defendant accepted plaintiffs' resignations was not a material term of the offers. "For a response to an offer to be deemed an acceptance as opposed to a counteroffer, the material terms of the agreement cannot be altered." *Zurcher v Herveat*, 238 Mich App 267, 296; 605 NW2d 329 (1999). In this case, plaintiffs' resignation letters all indicate unequivocally that each plaintiff intended to resign from defendant country club. None of the resignation letters indicate that plaintiffs' resignations were contingent upon defendant not charging dues for the month in which defendant accepted plaintiffs' resignations. Thus, even assuming that plaintiffs' resignation letters constituted offers to resign, defendant's response, which included charging each plaintiff $270 for dues for the month in which defendant accepted the member's resignation, did not materially change the offer and transform defendant's response into a counter-offer. If plaintiffs' letters were offers to resign, defendant accepted those offers.

As the trial court recognized, the real issue in this case is whether, under the bylaws, defendant was authorized to charge resigning members dues for the month in which defendant accepted the member's resignation. "Bylaws are generally construed in accordance with the same rules used for statutory construction." *Slatterly v Madiol*, 257 Mich App 242, 250, 255; 668 NW2d 154 (2003). Courts must look at the specific language of the bylaws. *Id.* at 255. "If the language is unambiguous, the drafters are presumed to have intended the meaning plainly expressed." *Id.* at 255-256.

We agree with the trial court's interpretation of defendant's bylaws in this regard. Defendant's bylaws specifically allow defendant to charge resigning members dues for the month in which the member tenders their resignation. However, while the bylaws provide that "[r]esignations will not be in effect until accepted by the Board of

Directors[,]" the bylaws do not contain a provision requiring the resigning member to pay dues for the month in which defendant accepts the member's resignation. Just as courts must not read into a clear statute a provision that is not derived from the manifest intention of the Legislature as derived from the language of the statute itself, *Griswold Properties, LLC v Lexington Ins Co*, 276 Mich App 551, 564; 741 NW2d 549 (2007), we decline to read into defendant's bylaws a provision requiring resigning members to pay dues for the month in which the board accepts the member's resignation when such a provision cannot be derived from the plain language of the bylaws themselves. The trial court properly concluded that defendant's bylaws did not permit defendant to charge resigning members dues for the month in which defendant accepted the member's resignation.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Stephen L. Borrello