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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001295-MR

BRION TINSLEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 09-CI-006486

WILDWOOD COUNTRY CLUB, INC., DAVID
PEAKE, LYNN CLINE, WALTER J. SCHWARTZ,
BRADLEY MANTHEY, JAMES CROGAN, PHILLIP
BERRY, LEO GIES, DANIEL KOSEK, STEWART
MACKAY, THOMAS MEISNER, AND RAYMOND
RIGGS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, COMBS, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: The Appellant, Brion Tinsley, appeals the November 10, 2009, opinion and order of the Jefferson Circuit Court, denying his motion for partial summary judgment, and the June 7, 2010, opinion and order of the court

granting the motion for summary judgment filed by the Appellees, Wildwood Country Club, Inc., David Peake, Lynn Cline, Walter Schwartz, Bradley Manthey, James Crogan, Phillip Berry, Leo Gies, Daniel Kosek, Stewart Mackey, Thomas Meisner, and Raymond Riggs (collectively, “Wildwood”) on claims made by Tinsley that Wildwood violated his contractual rights by expelling him from the country club without providing him prior notice, a hearing, or an opportunity to defend himself, and for his claim for miscellaneous damages. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

Founded in 1952, Wildwood is a private country club located in Louisville, Kentucky. In 1982, Tinsley joined Wildwood as a “Regular Member.” Tinsley became a “Lifetime Member” when the Bylaws were amended in 2002 to allow for that membership classification.¹ Tinsley purchased the Lifetime Membership from Wildwood, pursuant to contract, for the sum of \$25,000.

During his time at Wildwood, Tinsley served on the Board of Directors. He also served three terms as Wildwood’s president. However, once out of office, Tinsley apparently became a vocal opponent of the Board’s actions. Recently, Tinsley complained that the current Board of Directors² knowingly and flagrantly violated the bylaws to the detriment of the members by: (1) changing the permissible number of “non-resident” and “honorary” members without notice; (2)

¹ A Lifetime Membership includes membership for the member’s spouse and children, up to age 23, if living at home. Furthermore, a Lifetime Member is exempt from any assessments, as well as annual golf, range and cart fees. Bag storage and locker privileges are also included at no charge. Tinsley was one of only ten individuals at Wildwood with a Lifetime Membership.

² These are the same individuals named in this lawsuit.

extending privileges reserved for members' spouses in the Bylaws to "significant others"; (3) unilaterally creating additional membership classifications such as, "single," "corporate members," "trial members" and "pool members" without notice; (4) failing to follow the application process for new members; (5) failing to keep track of how often guests used the facilities; (6) failing to post or publish a list of members who had not paid dues; (7) failing to balance the budget; and finally, (8) being illegally composed of only eleven members instead of the twelve required by the Bylaws.

By contrast, Wildwood asserts that Tinsley was expelled because he engaged in repeated acts of physical and verbal sexual harassment of female employees. Wildwood asserts that the first of these incidents occurred on April 28, 2008, when one Wildwood employee complained to management about Tinsley.³

³ According to Wildwood, the first incident occurred on April 28, 2008, when one Wildwood employee complained to management about Tinsley's conduct at a club cornhole tournament. According to the allegations, Tinsley rubbed his penis across the employee's buttocks and emphasized the double entendre in the game's title by "whisper[ing] how he wanted to start the cornhole tournament." Tinsley allegedly also made a crude remark to the employee that she liked sex standing up. According to Wildwood, when reprimanded, Tinsley admitted to having "too much to drink" and stated that he could not remember if the event occurred.

Wildwood states that one year later, it received another series of complaints against Tinsley regarding his treatment of the female staff. According to the club, on May 20, 2009, he grabbed an employee's hand, pulled her close to him, and then grabbed her buttocks. Later, after leaving his gym bag in the bar area, Tinsley allegedly reentered the bar area dressed in a towel and instructed an employee to bring the bag to him in the men's locker room. On that same date, Tinsley also allegedly started a conversation at the bar in front of the club's female bartenders about extreme pornographic movies that he had watched. Tinsley allegedly described in detail one movie in which a woman had intercourse with a horse, and how much the woman had enjoyed it. Tinsley then allegedly asked a female club employee if she had ever seen a "horse's cock."

Finally, on June 3, 2009, Tinsley allegedly spent the evening throwing popcorn at one of the Wildwood bartenders, who eventually retaliated by throwing two ice cubes at Tinsley. According to Wildwood, Tinsley responded by informing her that he took the pants off the last person who did that to him, and then asked the employee if she ever wanted to "have sex with an old man."

According to Wildwood, other incidents occurred thereafter, leading it to hold a special June 4, 2009, meeting of the Board of Directors to address “instances of inappropriate behavior by members.” According to Wildwood, the Board discussed inappropriate conduct by three different members of the club, including Tinsley. The members also discussed the expulsion process, including confirming that Tinsley would be provided with notice of: (1) the new complaints against him; (2) the intent of the Board to expel him; and (3) his opportunity to attend the next Board meeting “to present his side of the events in question.” Wildwood states that the Board’s vote was contingent upon this procedure. Tinsley disagrees, and alleges that the decision to expel him was final before he was ever offered the opportunity for a meeting.

Accordingly, on June 4, 2009, Tinsley received a telephone call informing him that the Board of Directors had voted unanimously to expel him from membership. Wildwood states that the Board informed Tinsley that the reason for his expulsion was sexual harassment of female employees. The Board also advised Tinsley that it had elected not to refund his lifetime membership fee, which Tinsley asserts is owed to him pursuant to the contract between Wildwood and himself. On June 5, 2009, Bradley Manthey, Wildwood’s Secretary, sent Tinsley a letter confirming this conversation, and signed by Manthey on behalf of the entire Board. This letter further stated, “Should you feel you have been wrongly accused, and if presenting the facts, from your point of view, would compel the Board to reverse the decision, you have the right to come before the

Board and present those facts.” The letter advised that the next Board meeting was Thursday, June 25, 2009. Tinsley was advised that if he wished to appeal, he should notify the Club Manager, Reza Abitorabi.

Thereafter, on or about June 18, 2009, Tinsley received a letter from Stephen F. Schuster, Esq., counsel for the Board. The Board had requested that Schuster review the bylaws in order to decide how to proceed, given Tinsley’s announcement that he intended to appear with counsel at the June 25, 2009, Board meeting. Tinsley asserts that Schuster admitted that he could not find any written procedures for the situations, but offered “30 minutes ...[for Tinsley] to present [his] side of the case and to ask for whatever relief [he] had in mind.” According to Tinsley, Schuster indicated that Tinsley would be dismissed from the meeting immediately after presenting his case. In response to Schuster’s letter, Tinsley sent a letter denying all accusations as “wholly baseless and unfounded.” Tinsley also objected to any hearing on the merits, stating that any discussion of the substance of the allegations, “must now be considered moot,” as the Board’s decision did not follow, in Tinsley’s opinion, the precise letter of the Bylaws. That letter detailed the Board’s allegedly numerous violations of the Bylaws and accused the Board of not providing him with timely notice of the allegations against him. Tinsley stated in the letter that he was “not obligated to provide any proof or defense” at the meeting, but did not ask for more elaborate hearing procedures than those that were offered. Subsequently, Tinsley and his counsel appeared at the June 25, 2009, meeting. Counsel for Tinsley read a prepared statement regarding the

alleged procedural errors, and departed the meeting without suggesting additional procedures or addressing the merits of the charges. Following the meeting, the Board affirmed Tinsley's expulsion.

Tinsley subsequently filed suit for what he asserted was an improper expulsion, and also to remedy what he asserted were the many violations of the Bylaws committed by the Board. In filing his complaint, Tinsley confirmed that he had no intention of addressing the merits of the allegations against him but rather asserted that review was limited only to whether the Board properly followed its own bylaws.⁴ Tinsley filed a verified complaint in Jefferson Circuit Court, alleging breach of contract and seeking injunctive relief for reinstatement of his membership. Tinsley also sought to enjoin the Board for refusing to enforce the bylaws for the benefit of all members. He also sought compensatory damages flowing from breach of contract. Wildwood responded and requested a jury trial.

On August 18, 2009, Tinsley filed a motion for partial summary judgment seeking an order reinstating his membership with Wildwood. The circuit court denied the motion, finding that, "Wildwood did not violate the club's bylaws ... [T]he court finds that Wildwood provided Tinsley with notice the Board had voted to expel him, but that it would not make a final determination until after Tinsley had the opportunity to present facts favorable to his position and request his preferred relief." Thereafter, Tinsley moved for reconsideration and Wildwood moved for summary judgment on Tinsley's remaining claims.

⁴ Indeed, Wildwood asserts that it was not until this appeal that Tinsley decided he wanted the opportunity to address the issue of his alleged harassment on the merits.

On June 11, 2010, the court entered a final and appealable order denying Tinsley's request for reconsideration and entering judgment for Wildwood on the remaining claims. It is from that order that Tinsley now appeals to this Court.

Prior to addressing the merits of the arguments made by the parties, we note that these issues are before us as a result of the lower court's decision to deny summary judgment to Tinsley, and to grant it to Wildwood. As our rules provide, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. Further, the record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id.* Finally, we note that the standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996). We review this matter with these standards in mind.

On appeal, Tinsley argues first, that Wildwood violated his contractual rights by expelling him without prior notice, a hearing, or an opportunity to defend himself. He directs our attention to the Wildwood Bylaws, of which Article III, Section 11, titled “Expulsion,” allows the Board to expel a member, but only in accordance with Article III, Section 10(B). Tinsley asserts that the relevant portions of this Article state that the Board, “shall conduct a hearing prior to taking such action,” and that before the hearing, the member shall receive “written notice,” which states the charge and sets the time and place for the hearing, such that the member shall have the “opportunity to appear before the Board,” and “defend himself or herself.”⁵ Tinsley argues that Wildwood did not comply with these requirements, but instead simply expelled him first, subsequently informed him of the decision and allowed him to show up at the next meeting to present his side of the story for thirty minutes. Tinsley refers to the Board’s actions in this regard as an “ad hoc directive” that failed to comply with the terms of the Bylaws, either substantially or otherwise. Accordingly, Tinsley argues that the circuit court erred in denying partial summary judgment for Tinsley and granting summary judgment in favor of Wildwood.

In response, Wildwood argues that Tinsley received and rejected all procedural rights afforded to him by Wildwood’s Bylaws. Wildwood states that Tinsley has purposely misread and misinterpreted the Bylaws. Wildwood agrees that the contractual rights upon which Tinsley’s lawsuit is premised are contained

⁵ See Article III, Section 10(B)(3), of the Wildwood Country Club Bylaws.

within Sections 10 and 11 of the Wildwood Bylaws. Wildwood asserts that its Bylaws establish the Board's right to expel Tinsley or any other member for "any act that is prejudicial to the best interest, reputation, or welfare of the Club."⁶

Wildwood argues that Tinsley's alleged harassment of its employees easily satisfies this broad provision.⁷ Wildwood acknowledges that it was obligated to substantially comply with the procedures for expulsion outlined in the bylaws.

Contrary to Tinsley's arguments, however, Wildwood asserts that these procedures are simple and finite, namely: (1) that it was required to provide Tinsley with "written notice stating the charge, and setting the time and place of the hearing";⁸ and (2) that it grant Tinsley the opportunity to appear before the Board of Directors as directed in the notice and defend himself.

Wildwood asserts that it fulfilled its first duty by providing Tinsley with clear details of the allegations against him, including the details of his allegedly harassing conduct, the names of the alleged victim, and the dates on which the actions were alleged to have occurred. That letter also invited Tinsley to attend the June 25th Board meeting to present his defense. Thus, Wildwood argues that it fulfilled its duty of providing notice to Tinsley.

Wildwood also argues that it clearly fulfilled its second duty, to provide Tinsley with the opportunity to appear before the Board and defend

⁶ See Wildwood Bylaws, Section 10(B)(1).

⁷ Specifically, Wildwood alleges that Tinsley's acts risked undermining Wildwood's ability to keep qualified female staff members and threatened to jeopardize the financial welfare of the Club by inviting a lawsuit for sexual harassment.

⁸ See Wildwood Bylaws, Section 10(B)(3)(a).

himself. While Wildwood acknowledges that the word “hearing” is used elsewhere in the Bylaws in reference to this specific provision, it states that this is the sole clause in the Bylaws addressing the details of the hearing process.

Wildwood states that there is no requirement for a full hearing, no right to discovery, no right to call witnesses, and no right to “face accusers” as Tinsley implies. Wildwood states that to the contrary, Tinsley’s right was simply to appear before the Board, and defend himself, and that Tinsley was given ample opportunity to exercise that right. Wildwood disagrees with Tinsley’s assertion that the June 25th meeting was an invalid opportunity for Tinsley to defend himself because of the previous vote to expel.

To the contrary, Wildwood asserts that the June 4th meeting was necessary and first step in the disciplinary process, and that it could not have formed an opinion as to whether the accusations against Tinsley were sufficient enough to warrant expulsion. It denies that it had officially and finally expelled Tinsley at the June 4th meeting, and states that this was only an initial decision, which could later be changed, depending on Tinsley’s defense.⁹ Wildwood asserts that no final vote on expulsion was taken until after Tinsley had been afforded the opportunity to appear and defend himself, and that accordingly, it complied with both the letter and spirit of the bylaws. Wildwood thus argues that the circuit court should be affirmed on this issue.

⁹ In support of that decision, Wildwood directs this Court to Sealed Exhibit 1, indicating that, “Mr. Crogan said we would inform Mr. Tinsley immediately of the decision, send a written letter of confirmation, and inform him of his ability to attend the next Board meeting and present his side of the events in question. Upon the vote, the motion carried unanimously.”

In their briefs to this Court, the parties have argued in detail as to the application of various opinions in this Commonwealth to the facts *sub judice*.¹⁰ Having reviewed applicable case law, we believe *Hartung v. Audubon Country Club*, 785 S.W.2d 501 (Ky.Ct.App. 1990), to be almost directly on point to the matter *sub judice*. Hartung, a former member of Audubon Country Club, had been expelled following a drug-related conviction and then sued Audubon Country Club for reinstatement or alternatively, for a refund of various membership fees. Upon learning of the charges, Audubon sent Hartung a letter indicating that the Board had unanimously voted, and “proposed” to expel him from membership. Hartung was advised that he could attend an upcoming meeting, where he would be afforded an opportunity to be heard. Hartung attended the meeting, presented his side of the case, and was ultimately expelled. In affirming the expulsion, this Court noted that judicial review of a club’s actions concerning membership is limited only to enforcement of the club’s own rules. Finding that Audubon complied with its bylaws, the expulsion was affirmed.

Tinsley argues to this Court that *Hartung* is distinguishable from the case *sub judice* for two reasons: (1) that Audubon merely “proposed” to expel Hartung prior to the hearing, and (2) that Audubon’s bylaws provided only for an “opportunity to be heard,” whereas Wildwood’s bylaws afforded the opportunity for a “defense.” Ultimately, we find these to be distinctions focused largely on

¹⁰ See *Hartung v. Audubon*, 785 S.W.2d 501 (Ky.App. 1990); *Kirk v. Jefferson County Medical Society*, 577 S.W.2d 419, 422 (Ky.App. 1978); and *Terrell v. Palomino Horse Breeders of America*, 414 N.E.2d 334, 332 (Ind. Ct. App. 1980)(*cited with approval by Hartung*, 785 S.W.2d at 503).

semantics over substance. Audubon's bylaws provided Hartung with the right to "notice of the proposed action and opportunity to be heard," while Wildwood's bylaws provided Tinsley with the right to "a written notice," and "the opportunity to appear before the Board of Directors and defend himself." Tinsley now argues that the word "defense" should be interpreted as the equivalent of a defense one would put on in a court of law, but we are not persuaded that this is so. Rather, we agree with Wildwood that the bylaws provided Tinsley with the opportunity to speak in his own defense against the charges. Tinsley was given an opportunity to do so, which he declined.

Moreover, we are not persuaded by Tinsley's argument that because of the wording of the Board's letter, any opportunity to defend himself would have been fruitless. Wildwood's notice stated that the Board had voted to expel Tinsley, and not to return his membership fee because the expulsion was "for cause." In the very same letter, Tinsley was advised of the available opportunity to appear before the Board, present his side of the case, and "reverse this decision," prior to such time as a final vote was taken. Thus, in both cases, the Board learned that one of its members had allegedly engaged in inappropriate acts, and in both cases, the Board initially met and determined how it would proceed. In both cases, the Board determined that the allegations warranted expulsion, and in both cases, the members whose membership was at issue were given a chance to provide their side of the case. Finally, in both cases, the members appeared at the respective meetings, and a final vote for expulsion was rendered at the end of same.

Accordingly, finding *Hartung* to be almost directly on point to the facts *sub judice*, we are of the opinion that Tinsley, like Hartung, was afforded all of the benefits of the rules governing his relationship with Wildwood.¹¹ Therefore, we affirm.¹²

As his second basis for appeal, Tinsley argues that Wildwood violated his contractual rights by refusing to refund his lifetime membership fee before expulsion. Tinsley asserts that as a “Lifetime Member,” he paid a \$25,000 fee, which entitled him to valuable benefits,¹³ and that in accordance with the Lifetime Membership Agreement between himself and Wildwood, the club may only terminate his membership by refunding the fee in full. Tinsley thus argues that because Wildwood failed to refund his \$25,000 Lifetime Membership Fee first, his

¹¹ Moreover, as this Court held in *Kirk v. Jefferson County Medical Society*, 577 S.W.2d 419, 422 (Ky. App. 1978), wherein Kirk demanded strict technical compliance with all rules and procedures contained in the bylaws of the medical society which voted for his expulsion, the “technical formality” demanded by Kirk was unnecessary, and it was “sufficient that the constitution and bylaws are substantially observed.” While Tinsley asserts that he was not afforded the rudimentary and fundamental rights required by the bylaws, we disagree, for the reasons previously set forth herein.

¹² Having found *Hartung* and *Kirk* to be on point to the matter *sub judice*, we note that we need not further address the out-of-state cases cited by the parties, including *Terrell v. Palomino Horse Breeders of America*, 414 N.E.2d 332, 337 (Ind. Ct. App. 1980) and *Gibson v. Boy Scouts of America*, 359 F.Supp.2d 462 (E.D.Va. 2005), *aff’d*, 163 Fed. Appx. 206 (4th Cir. 2006). Regardless, we are not persuaded by the holdings therein to find otherwise than already held in this opinion.

¹³ With regard to Lifetime Members specifically, Appendix B to the Bylaws, titled “Lifetime Membership Agreement and Application” provides the following termination rights for Lifetime Members: “The Owner [Wildwood] reserves the right to terminate any Lifetime Membership, at any time, with or without cause, without giving any reason for such termination, by refunding the Lifetime Member’s entire Lifetime Application Fee. A Lifetime Member’s receipt of such a refund shall constitute and be a full release of any and all liability, claims, demands, actions, or causes of action arising out of or related to the Lifetime Membership or the Lifetime Application Fee. In the event of a transfer of ownership of the Club, the Lifetime Membership Agreement will continue under the new ownership or may be terminated with the entire Lifetime Membership Fee refunded.”

expulsion is void, and he must be reinstated as a Wildwood Lifetime Member. In the alternative, Tinsley argues that at a minimum, and even if his membership is not reinstated, his fee should be refunded.

In response, Wildwood argues first, that this issue was not preserved for review. Wildwood asserts that Tinsley failed to raise this argument to the Jefferson Circuit Court in his motion for partial summary judgment, his motion *in limine*, his motion to reconsider, his responses or replies to Wildwood's memoranda, or in either of his two oral arguments before the court.¹⁴ Furthermore, Wildwood asserts that although Tinsley had previously agreed that Wildwood was entitled to expel him so long as it complied with the bylaws, he now asserts that any attempt to expel him is void unless accompanied by a \$25,000 check. Wildwood argues that the very provision upon which Tinsley relies in seeking a refund of his fee, eviscerates the remainder of his arguments, as it provides that Wildwood, "reserves the right to terminate any Lifetime Membership, at any time, *with or without cause, without giving any reason for such termination, by refunding the Lifetime Member's entire Lifetime Application Fee.*" Thus, the

¹⁴ Tinsley asserts in response that he specifically demanded recovery of his "lifetime fee" in the complaint he initially filed with the court. He also asserts that he repeatedly made this argument in response to Wildwood's motion for summary judgment. A review of the complaint indicates that although Tinsley mentioned that his membership fee had not been refunded in his complaint, he never specifically made a demand for the return of same, and instead only vaguely requests, "a compensatory judgment in an amount sufficient to compensate him for damages incurred by breach of contract...." Moreover, neither the June 7, 2010, nor the November 10, 2009, order of the court specifically makes mention of the Lifetime Membership Fee, nor that Tinsley previously briefed this issue to the court. Nevertheless, for the reasons set forth herein, *infra*, we find that the refund of Tinsley's fee was appropriately denied, and thus consider the preservation arguments of the parties to be moot.

Board asserts that if it had refunded Tinsley's Lifetime Application Fee, Tinsley would never be entitled to any notice or hearing requirements.

Moreover, Wildwood asserts that Tinsley, in making his arguments on this issue, omitted citation to the several provisions of the Lifetime Membership Agreement that subject him to the same standards and expulsion procedures as regular members. Wildwood argues that the agreement explicitly states that, "A Lifetime Membership is subject to suspension and revocation for the failure to abide by the Bylaws and the Rules and Regulations, as may be amended. If a Lifetime Member failed to maintain the membership in good standing, or the membership is suspended or revoked for any other reason, the Lifetime Member's right to a refund of the Lifetime Application Fee is terminated." Thus, Wildwood asserts that if Tinsley was expelled for cause, he was not entitled to the return of his application fee, and if he was entitled to the fee, then he could have been expelled for any reason whatsoever. However, Wildwood argues that as he was terminated for cause, Tinsley's right to a refund of the fee was terminated.

Having reviewed the bylaws at issue in detail, we note that they do in fact specifically provide that any member who fails to maintain a membership in good standing, or has the membership suspended or revoked for any other reason loses the right to a refund of the Lifetime Application Fee.¹⁵ In the view of this Court, this provision is entirely in keeping with the "Termination Rights" provision relied upon by Tinsley, which provides that:

¹⁵See Bylaws of the Wildwood Country Club, Inc., Appendix B, Wildwood Country Club Lifetime Membership Agreement and Application.

The Owner reserves the right to terminate any Lifetime Membership, *at any time, with or without cause, without giving any reason for such termination*, by refunding the Lifetime Member's entire Lifetime Application Fee. *A Lifetime Member's receipt of such a refund shall constitute and be a full release of any and all liability, claims, demands, actions, or causes of action arising out of or related to the Lifetime Membership or the Lifetime Application Fee (Emphasis Added).*

Thus, it seems clear that the agreement provides either for: (a) termination without cause, in which case the member would be entitled to a full refund of the membership fee; (b) termination with cause, without further explanation, accompanied by a full refund of the membership fee; or (c) termination with cause, and without refund of the membership fee, but with the member receiving his or her rights to notice and an opportunity for a hearing. As previously set forth herein, we believe that Wildwood substantially complied with its bylaws in providing the latter and, accordingly, cannot find, based on the terms of the membership agreement, which Tinsley voluntarily entered into, that he was entitled to a refund of his Lifetime Membership Fee. Indeed, as previously set forth herein, judicial review of a club's actions concerning membership is limited only to enforcement of the club's own rules. *See Hartung, supra*, at 503. Having found that those rules were complied with *sub judice*, we decline to reverse on this issue.

As his third basis for appeal, Tinsley argues that the circuit court erred in denying Tinsley's reinstatement and by summarily dismissing his remaining claims. He argues that as a member of a private organization, he is entitled to

injunctive relief which includes, but is not limited to, reinstatement of membership and membership benefits, including a refund of his lifetime membership fee. Tinsley argues that the court's summary judgment was inappropriate for two reasons: (1) because the order was based on its previous ruling regarding his expulsion, which he asserts was inappropriate for reasons previously set forth herein; and (2) because the court found that he failed to produce evidence of damages resulting from the Board's breach of its bylaws, when in fact his \$25,000 Lifetime Membership Fee should qualify as same. Moreover, Tinsley argues that the court failed to consider his request for injunctive relief on behalf of all members based on the alleged violation of the bylaws. Tinsley argues that Wildwood's repeated violations of the bylaws work to the detriment of all members, and that injunctive relief was therefore warranted. He therefore asserts that the court's order of summary judgment should be reversed.

In response, Wildwood argues that Tinsley has no standing to pursue additional claims. It states that the primary flaw in Tinsley's argument is that as he is no longer a member of Wildwood, he has no standing to bring a claim "on behalf of all members." Moreover, Wildwood states that Tinsley did not seek to certify his lawsuit as a class action on behalf of Wildwood's members, and would not be an appropriate class member in any event. Thus, Wildwood asserts that Tinsley's request for injunctive relief on behalf of non-parties was rightly ignored.

Wildwood also argues that Tinsley's complaint seeks inappropriate relief for these miscellaneous violations.

First, Wildwood argues that Tinsley inappropriately asked the court to require Wildwood to “immediately terminate all classifications of membership not specifically provided in the bylaws,” which it states he was without authority to do, as those members were not parties to the lawsuit. Moreover, it notes that Tinsley’s assertion that the Board may have breached their fiduciary duties is without merit, as the Board owes fiduciary duties to the Club itself, not to individual members. Wildwood states that as Tinsley did not initiate this lawsuit on behalf of Wildwood itself, and is no longer a member, he has no standing to bring this claim. Finally, Wildwood argues that Tinsley failed to present the court with any evidence that would create a genuine issue of material fact regarding any damages he sustained as a result of any of these extraneous violations, as there would be no way to measure these alleged damages. Thus, Wildwood asserts that the court’s dismissal of these miscellaneous claims should be affirmed.

Upon review of the record and applicable law, we are in agreement with Wildwood that Tinsley is without standing to bring these claims. As of the time he filed his claim, Tinsley was no longer a Wildwood member himself. Moreover, this action was not certified as a class action nor were any of the other members named as parties to this suit. Accordingly, we believe the court appropriately declined to consider issues pertaining to other club members.¹⁶

¹⁶ For reasons previously set forth herein, we do not believe that the bylaws provided for a refund of Tinsley’s membership fee upon termination for cause. Accordingly, we are in agreement with the court below that Tinsley has failed to prove damages as a result of Wildwood’s alleged breach of contract, even if he did have standing to bring claims on behalf of other club members.

Having found that the Board substantially complied with its bylaws in terminating Tinsley's membership, and having found that the membership fee was appropriately not refunded because the termination was for cause and that Tinsley was afforded the opportunity for notice and a hearing, we find no error in the court's order denying Tinsley's motion for summary judgment, and affirming the motion for summary judgment filed by Wildwood. Further, finding that Tinsley has no standing to bring claims on behalf of other Wildwood members, we believe the court's decision not to consider those claims to have been appropriate as well. Accordingly, we affirm.

Wherefore, for the foregoing reasons, we hereby affirm the November 10, 2009, and June 7, 2010, orders of the Jefferson Circuit Court, denying Tinsley's motion for partial summary judgment, and granting the motion for summary judgment filed by Wildwood.

COMBS, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

THOMPSON, JUDGE, DISSENTING: I respectfully dissent because the contract is ambiguous as to whether Tinsley is owed a refund of the lifetime membership application fee.

First, the majority indicates that Tinsley waived the issue. This is simply incorrect. In his complaint, Tinsley specifically requested compensatory damages which include a refund of the application fee. I believe that the majority's reasoning on the merits of Tinsley's claim is likewise incorrect.

I begin with the rules relating to the judicial interpretation of contracts as recited in *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 384-85 (Ky.App. 2002):

The primary object in construing a contract or compromise settlement agreement is to effectuate the intentions of the parties. Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible.

Where a contract is ambiguous or silent on a vital matter, a court may consider parol and extrinsic evidence involving the circumstances surrounding execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties. Absent an ambiguity in the contract, the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence. A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations. The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms. (Internal citations and quotations omitted).

It is also a maxim of contract interpretation that when the contract is susceptible of two meanings, ambiguities will be construed against the drafter of a contract.

McMullin v. McMullin, 338 S.W.3d 315, 322 (Ky.App. 2011).

I cannot agree with the majority that the membership agreement is unambiguous and its terms regarding termination of membership can be reconciled. I point out the evident inconsistencies. Two provisions of the “Lifetime Membership Agreement & Application” are pertinent to Tinsley’s claim. The first, entitled “Termination Rights,” states that the membership can be

terminated with or without cause and without giving any reason by refunding the entire lifetime membership application fee. Thus, that provision clearly states that the refund of the fee terminates the membership.

The second provision is in an inconspicuous location in the agreement and in a subpart entitled “No Equity or Ownership Interest” which generally describes the members’ interest as a revocable interest to use the club’s facilities. However, seemingly unrelated to the preceding sentences, the final sentence states: “If a Lifetime Member fails to maintain the membership in good standing, or the membership is suspended or revoked for any other reason, the Lifetime Member’s right to a refund of the Lifetime Application Fee is terminated.

The majority holds that the two provisions are clear. The membership can be terminated with or without cause and, if a hearing is not held, the member is entitled to a full refund. According to the majority, it is equally clear that if the member is given the opportunity for a hearing before the board of directors and is terminated for cause, the member is not entitled to a refund. The inconsistency in the majority’s approach is apparent: By merely affording the opportunity for a non-adjudicatory hearing, the club can avoid refunding the lifetime membership fee. Thus, the “opportunity to be heard” becomes an opportunity for forfeiture of rights otherwise granted the member under the contract and an opportunity for profit by the club which retains the \$25,000.

The contract between the club and Tinsley is far from unambiguous and the parties’ intent is unclear from the language. I believe summary judgment

was improper and the case should be reversed and remanded with instructions that extrinsic evidence is admissible.

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