STATE OF MICHIGAN

COURT OF APPEALS

CHAMPAGNE-WEBBER, INC.,

Plaintiff-Appellee,

v

SCALAWAGS GOLF CLUB, INC., a/k/a SCALAWAGS COUNTRY CLUB,

Defendant-Appellant.

UNPUBLISHED
May 10, 1996

No. 168373
LC No. 91-001455-CK

Before: Taylor, P.J., and Fitzgerald and P.D. Houk,* JJ.

PER CURIAM.

Defendant appeals as of right from a judgment in favor of plaintiff in this breach of contract action. We affirm.

Defendant, Scalawags Golf Club, owns and operates a golf club in Macomb County. In October 1986, defendant's former president, Regis P. Sauger, offered plaintiff, Champagne-Webber, Inc., a Charter Life Membership at Scalawags for $15,000. After receiving the details of Sauger's offer in writing, plaintiff accepted the offer and paid defendant consideration in the amount of $15,000 on October 22, 1986. In a letter dated November 10, 1986, Sauger, on behalf of defendant, acknowledged and confirmed plaintiff's Charter Life Membership.[1] In 1988, Sauger left Scalawags and was replaced by Steve Messina. Messina sought to renegotiate the contract with plaintiff, claiming it to have been made without authority and without board approval. After unsuccessful attempts to renegotiate the contract, defendant suspended plaintiff's lifetime membership and all of its club privileges. Plaintiff thereafter brought this action, alleging breach of contract arising from defendant's revocation of the Charter Life Membership.

The trial court found, after a bench trial, that Sauger had represented himself as president and operating manager of Scalawags, and had acted with apparent authority in negotiating the contract with plaintiff. The trial court entered a judgment of $50,000 in favor of plaintiff.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant first argues that the trial court clearly erred in finding that Sauger had apparent authority to bind Scalawags to the terms of the alleged contract. The authority of an agent to bind a principal may be either actual or apparent. *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). Apparent authority arises where the acts and appearances lead a third person to reasonably believe that an agency relationship exists. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 528; 529 NW2d 318 (1995). Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such a belief. Restatement Agency, 2d, § 27, p 104. Apparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent. *Alar, supra* at 528. In determining whether an agent possesses apparent authority to perform a particular act, a court must look to all the surrounding facts and circumstances. *Meretta, supra* at 699.

Sauger offered the Charter Life Membership to plaintiff in 1986, at a time when Sauger was both president and operating director of Scalawags. Francis Champagne, plaintiff's principal, testified at trial that Sauger told him, both orally and in writing, that he was offering only ten lifetime memberships for $15,000. Champagne also testified that when he entered into the contract for the membership, Sauger appeared to be in charge of running the Club. This fact was corroborated by the testimony of Cecilia Kebbe, the secretary of Scalawag's board of directors in 1986, who testified that Sauger was running the daily operations of the Club during that time. According to Kebbe, the entire concept of constructing Scalawag's was Sauger's idea, and that the other members of the board of directors deferred to Sauger's suggestions regarding the operation of the Club. Similarly, Richard Domenick, another member of defendant's board of directors in 1986, testified that Sauger was the person who wrote memberships for the club.

Where the president of a corporation is also the general manager of the corporation, with full direction and charge of the business, he has the power to do any act or to make any contract that the president or general manager of such a corporation could do or make in the ordinary course of corporate business. *Gronholz v Saginaw S & L Ass'n*, 41 Mich App 735, 737; 201 NW2d 98 (1972); see also *Jackson v Goodman*, 69 Mich App 225, 228; 244 NW2d 423 (1976)(stating that the authority to contract may be inferred from the authority to manage a business). He also has the power to do any act that the directors could authorize or approve, unless some special limitations or restrictions are placed on that power and the person dealing with the president knows of those limitations. *Id.* Here, as president and managing director of Scalawags in 1986, Sauger undisputedly had actual authority to write golf memberships for defendant.

Defendant argues, however, that the board of directors set the guidelines for golf membership, and that the membership offered by Sauger to plaintiff did not fall within the guidelines. However, this Court has held that:

> An officer or agent of a private corporation, intrusted with the general management and control of its business and affairs, has implied or apparent authority to do acts or make any contracts in its behalf falling within the scope of the ordinary and

> usual business of the company, and limitations and restrictions placed upon his express or implied authority, of which persons dealing with him have neither actual nor constructive notice, will not serve to restrict such powers to the prejudice of innocent third parties. [*Dimmitt & Owens Financial, Inc v Realtek Industries, Inc,* 90 Mich App 429, 434; 280 NW2d 827 (1979).]

Because Sauger was acting within the scope of his authority in writing memberships for defendant, the mere fact that he may have exceeded his authority does not extinguish defendant's responsibility for Sauger's acts where plaintiff had neither actual nor constructive notice that the membership offered by Sauger was not within the membership guidelines. Given Sauger's representations to plaintiff and plaintiff's observations of Sauger at the Club, plaintiff's belief that Sauger had authority to negotiate a lifetime membership for $15,000 was reasonable. Hence, the trial court's finding that Sauger acted with apparent authority is not clearly erroneous. *Townsend v Brown Corp,* 206 Mich App 257, 263; 521 NW2d 16 (1994).[2]

Defendant also argues that the trial court failed to offer an explanation for the court's calculation of damages and that the award is excessive. We disagree.

Generally, in an action for breach of contract, the injured party may recover those damages that are a direct, natural, and proximate result of the breach. *Ritchie v Michigan Consolidated Gas Co*, 163 Mich App 358, 374; 413 NW2d 796 (1987). It is well-settled that the appropriate amount of damages for breach of contract is that which would place the injured party in as good a position as it would have been in had the promised performance been rendered. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 98; 443 NW2d 451 (1989). A trial court need not compute damages with mathematical exactness. *Auto Electric & Service Corp v Rockwell Internat'l Corp*, 111 Mich App 292, 298; 314 NW2d 592 (1981). The evidence need only provide a reasonable basis for computing damages and may be approximate. *Id*.

An appellate court will not substitute its judgment for that of a trier of fact unless a judgment is secured by improper methods, prejudice, sympathy, or where it is so excessive as to shock the conscience. *Brunson v E & L Transport Co*, 177 Mich App 95, 106; 441 NW2d 48 (1989). When a judgment is within the range of the evidence presented, it should not be reversed as excessive. *Howard v Canteen Corp*, 192 Mich App 427, 435-436; 481 NW2d 718 (1992).

At trial, plaintiff's expert testified that plaintiff suffered $234,126 in damages as a result of the breach of contract. This figure was based on 184 days of golf being played per year for fifty years, with an annual inflation rate of four percent. Defendant's expert testified that plaintiff had suffered $15,000 in damages. This figure was based on the value of the first ten years of the contract. The trial court found plaintiff's estimation to be unreasonable and exaggerated because plaintiff's use of the club was minimal.[3] The trial court also found, however, that plaintiff was entitled to more than its original $15,000 expenditure. Given the testimony and exhibits presented, the trial court awarded plaintiff $50,000 in damages.

At trial, defendant's current president testified that the only type of lifetime membership offered by Scalawags would have cost $50,000 at the time of trial. Apparently, the trial court's award of damages was based on this figure, which represented the amount it would cost plaintiff to be in as good a position as it would have been had the contract for a lifetime membership not been breached. Under these circumstances, we do not believe the award was excessive.[4]

Affirmed.

/s/ Clifford W. Taylor
/s/ E. Thomas Fitzgerald
/s/ Peter D. Houk

[1] The terms of the Charter Life Membership were:

(1) All golf and carts were prepaid for life for two designated users of the club;

(2) The membership was transferable (if Champagne-Webber, Inc. was ever sold);

(3) After 10 years, if Scalawags was sold for use as a golf course, the Charter Life Membership became a condition of the sale;

(4) If within ten years Scalawags was sold for anything other than a golf club, the purchase price of the Charter Life Membership would be refunded;

(5) In the event Champagne-Webber, Inc., was ever sold, the owner of Champagne-Webber could convert the Charter Life Membership to one Family Charter Life Membership or two Single Charter Life Memberships.

[2] Given our conclusion that Sauger had the apparent authority to bind defendant to the lifetime membership contract, we need not discuss whether defendant ratified Sauger's action, which is an additional argument made by defendant.

[3] Frances Champagne testified that the membership had been used approximately thirteen times between 1986 and 1990. Plaintiff's expert witness, however, based his calculation of damages on 184 days of golf being played per year.

[4] Defendant cites *Vowels v Arthur Murray Studios of Michigan, Inc.*, 12 Mich App 359; 163 NW2d 35 (1968), and *Kraus v Arthur Murray Studios*, 2 Mich App 130; 138 NW2d 512 (1965), in support of the proposition that rescission of the contract and return of the $15,000 membership fee is the proper measure of damages. Those cases, however, are inapposite. The decision in *Vowels*

revolved around a lack of consideration, which is not the situation in the present case. In *Kraus*, this Court characterized the remedy the plaintiff received as damages for breach of contract. Consequently, *Kraus* does not support defendant's argument that rescission and restitution is the proper remedy in the present case.