

STATE OF MICHIGAN
COURT OF APPEALS

CHARLOTTE KUMLER, THOMAS SMITH and
JANINE SMITH,

UNPUBLISHED
March 13, 1998

Plaintiffs-Appellants,

v

No. 198379
Otsego Circuit Court
LC No. 96-006622-CZ

GOLDEN LOTUS, INC., JOSEPH R. RAYMER,
MARK GERHARDSTEIN, GARY SAKS, ROBERT
KORB, BARBARA BRINER, RONALD W.
POWERS, BRIJ CHHABRA, BRUCE CAMPBELL
and DENNIS BOWMAN,

Defendants-Appellees.

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

In this dispute over the operation of a yoga retreat, plaintiffs appeal by right from the orders granting summary disposition for defendants on two counts of plaintiffs' complaint and dismissing the remaining two counts. We affirm.

Plaintiffs are former and current members of defendant Golden Lotus, Inc. (GLI), a nonprofit corporation that has operated a yoga retreat ranch in Otsego County since 1969. Plaintiffs became dissatisfied with the decisions of the GLI board of trustees and in 1996 requested GLI membership lists and other documents to facilitate the election of a new board of trustees by all retreat members. Defendants allegedly terminated plaintiff Kumler's membership in response to the request. Plaintiffs thereafter commenced this action to (1) enjoin defendants from discharging any members, (2) set aside the termination of plaintiff Kumler's membership as ultra vires, (3) obtain GLI minutes, financial records and membership lists, and (4) compel an election of a new GLI board of trustees in which all GLI members would vote. In ruling on defendants' motion for a protective order, however, the trial court held that GLI was a nonstock, nonprofit directorship corporation, not a membership corporation. The trial court subsequently granted defendants' motions for summary disposition and dismissed all counts of the complaint.

Plaintiffs first argue that the trial court erred in sua sponte granting summary disposition for defendants, without notice and opportunity to be heard, by concluding as a matter of law that GLI was a directorship corporation. We disagree. This Court generally reviews the trial court's rulings regarding discovery matters for an abuse of discretion. *Dorris v Detroit Osteopathic Hosp Corp*, 220 Mich App 248, 250; 559 NW2d 76 (1996). Here, plaintiffs mischaracterize the trial court's determination that GLI was a directorship corporation as a grant of summary disposition. The trial court properly considered the potentially dispositive issue whether GLI operated as a membership or directorship corporation during discovery proceedings because the determination was necessary to resolve defendants' motion for a protective order. Plaintiffs, in fact, conceded during argument in the lower court that the trial court had to determine GLI's corporate status in order to decide the motion. Whatever debilitating effect the trial court's determination had on plaintiffs' claims arose incidentally from the court's grant of a protective order, not from a grant of summary disposition.

Plaintiffs next contend that the trial court erred in concluding as a matter of law that GLI operated as a directorship corporation because GLI bylaws grant all members voting rights regarding corporate matters. We disagree. The question presented involves the construction of the GLI articles of incorporation, which, along with bylaws¹ and applicable statutes, govern the regulation and management of the corporation. MCL 450.1231; MSA 21.200(231); 7A Fletcher, *Cyclopedia Corporations*, § 3635, pp 218-223. This Court construes articles of incorporation using general contract principles. 7A Fletcher, *Cyclopedia Corporations*, § 3640, p 229. As with other contracts, the construction of the clear and unambiguous language of the articles of incorporation presents a question of law that this Court reviews de novo. *Brucker v McKinlay Transport, Inc (On Remand)*, 225 Mich App 442, 448; 571 NW2d 548 (1997).

In this case, the GLI articles of incorporation do not specifically state whether GLI is a directorship or membership corporation because GLI incorporated before enactment of the Nonprofit Corporation Act, which requires a status declaration. MCL 450.2202(f); MSA 21.197(202)(f). Article IX, § 1 of the articles of incorporation, however, addresses voting memberships, providing as follows:

[v]oting memberships in the corporation shall consist of three incorporators and such additional persons who are dedicated to the Science of Yoga in its broadest aspects and are disciples of Paramahansa Yogananda, as are from time to time selected by the then existing members. [Emphasis added.]

Article IX, § 3 reinforces this provision by stating that “only persons described in Section 1 above, shall be entitled to vote on any matter at any meeting of the voting members or on any other matter being decided by consent of the voting members.” Thus, by clear language, Article IX, §§ 1 & 3 establish one class of voting membership, initially consisting of the original incorporators and those selected by the incorporators to possess voting rights.

Plaintiffs correctly note that the articles contemplated more than one type of membership. Article IX, § 7 allows for creation of “classes of membership, other than voting memberships as described in Section 1.” Regarding a particular membership class other than the voting memberships

authorized by Article IX, § 1, Article V provides for, as a potential source of financing, “memberships and special memberships on individual, family and patron basis” We reject, however, plaintiffs’ argument that the failure of the trustees to formally create a nonvoting membership class renders all members voting members. Under the clear language of Article IX, §§ 1 & 3, only a person affirmatively selected by existing voting members may become a voting member.

The GLI articles of incorporation identified three incorporators, listed them as the GLI directors or trustees, and granted them the initial authority to bestow voting memberships. That the incorporators granted voting memberships to only those on the GLI board of trustees is evidenced by the fact that the trustees had regularly voted on all corporate matters. Plaintiffs concede that neither they nor similarly-situated GLI members who paid membership fees in exchange for meal and lodging discounts ever voted for the board of trustees or voted on any other corporate matter. We therefore conclude as a matter of law that the GLI articles of incorporation established GLI as a directorship corporation. Accordingly, the trial court properly dismissed this action because plaintiffs have no voting rights and cannot compel an election.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald

¹ The undated corporate bylaws proffered by plaintiffs contain the same substantive provisions as the articles of incorporation.