

IN THE COUNTY COURT IN  
AND FOR BROWARD COUNTY,  
FLORIDA

LLOYD DAVID HILL and  
GRAHAM DAVID HILL,

CASE NO.: CONO 20 010538 (71)

Plaintiffs

v.

POMPANO SENIOR SQUADRON FLYING  
CLUB D/B/A POMPANO BEACH FLYING  
CLUB, A Florida corporation,

Defendant.

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**MOTION TO DISMISS**

Defendant, POMPANO SENIOR SQUADRON FLYING CLUB D/B/A POMPANO BEACH FLYING CLUB (Defendant "Club"), by and through its undersigned counsel, files this Motion to Dismiss Plaintiffs' LLOYD DAVID HILL and GRAHAM DAVID HILL'S (Plaintiffs "Hill") Complaint and says:

1. Defendant Club is a social club that allows members to rent its airplanes.
2. Defendant Club is a Florida corporation and is controlled by the By-Laws of Defendant Club.
3. Plaintiffs Hill allege they are members of the Club and have sued Defendant Club for a Count labeled Breach of Contract or Fraud.
4. As this Court is fully aware, a claim for fraud must be pled with specificity and has elements distinct and unique from a claim for breach of contract. See *Thompson v. Bank of New York*, 862 So.2d 768 (Fla. 4<sup>th</sup> DCA 2003) and Rule 1.120(b), Fla.R.Civ.P.

5. Furthermore, pursuant to Florida law, pleadings are required to be statements of ultimate facts with each separate cause of action being distinctly pled.

6. Plaintiffs Hill's Complaint by attempting to combine a claim for Breach of Contract and Fraud violates Florida's Rules of Civil Procedure and accordingly fail to state a cause of action.

7. As to a claim for Breach of Contract, Florida Rules of Civil Procedure 1.130 require the Plaintiff to attach all material documents to its Complaint. While Plaintiffs Hill have attached numerous documents consisting of approximately 40 pages, Plaintiffs Hill fail to attach an actual contract by which they allege Defendant Club has breached. Plaintiffs Hill had attached an application to join the Club, alleged guidelines by which the Club operates, numerous emails that are both unverified and unauthenticated. What is not attached to the Complaint is an actual contract or the By-Laws of Defendant Club.

8. As the Third District Court of Appeal has stated in *Reynolds v The Surf Club*, 473 So.2d 1327, 1334 (Fla. 3<sup>rd</sup> DCA 1985) absent some statutory provision it is the governing body of an incorporated club or association that has the authority to deal with the real and personal property of the club, subject always to the requirements of the corporation's charter and by-laws. Private clubs, which the Club is, according to Florida law are governed by its by-laws. Therefore, the by-laws are an essential document which Plaintiffs Hill have not attached. Such failure results in the fact that Plaintiffs Hill have failed to state a cause of action for breach of contract and this Court must dismiss the Complaint.

9. Additionally, the “operational rules” that Plaintiffs Hill have attached to their Complaint provides that “the above rates are subject to change at the discretion of the Board of Directors.” Clearly, this document has put Plaintiffs Hill on notice that the Board of Directors has certain discretion in the operation of the Club. Such discretion is outlined in the By-Laws of the Club thus further making the By-Laws an essential document required to be attached to the Complaint.

10. Defendant Club asserts that Plaintiffs Hill did not attach the By-Laws to their Complaint, because the By-Laws contradict the allegations of Plaintiffs Hill’s Complaint.

11. If Plaintiffs Hill are attempting to allege that the supposed contract, which they operate under and accuse Defendant Club of breaching, was an oral contract, they have failed to allege with specificity the terms of such oral contract. As such, under such theory, Plaintiffs Hill have failed to state a cause of action. See *Rubenstein v Primedica Healthcare, Inc.*, 755 So.2d 746, 748 (Fla. 4<sup>th</sup> DCA 2000) (holding in order to state a cause of action for breach of an oral contract, a plaintiff is required to allege facts that, if taken as true, demonstrate that the parties mutually assented to a certain indefinite proposition and left no essential terms open).

12. As this Court is fully aware, if exhibits to a complaint contradict the allegations of the complaint, the exhibits control. See *Harry Pepper & Associates, Inc. v Lasseter*, 247 So.2d 736 (Fla. 3<sup>rd</sup> DCA 1971); *Duke v HSBC Mortgage Services, LLC.*, 79 So.3d 778 (Fla. 4<sup>th</sup> DCA 2011).

13. In paragraph 16 of Plaintiffs Hill’s Complaint, they allege “although various terms were used in defendant documents to describe the \$1,700.00 “refundable deposit”, “membership fee”, “deposit” and “entry fee”, they universally made clear that

the \$1,700.00 being requested upon application was fully refundable upon withdrawal from PBFC membership. However, Exhibit #3 the “operational rules” specifically state “above rates are subject to change at the discretion of the Board of Directors.”

14. So, while Plaintiffs Hill allege in their Complaint that the fees are unequivocally refundable, etc., the exhibits state that the fees change at the discretion of the Board of Directors. Plaintiffs Hill then go on to allege that the Board of Directors changed the fees so that the full \$1,700.00 is non-refundable and alleges that this is a breach of contract despite the fact that the documents attached by Plaintiffs Hill to their Complaint state that the Board of Directors have the discretion to change rates and fees.

15. Plaintiffs Hill next allege that the Club terminated the Plaintiff as an approved flight instructor and allege that this is a breach of the contract. Nowhere in the body of the Complaint, however, do Plaintiffs Hill allege any agreement between Plaintiffs and the Club as to what constitutes a flight instructor, what authority the Club has to revoke a flight instructor’s qualifications or certification or any other alleged ultimate fact that would give the basis of any contract as it relates to a flight instructor.

16. Based upon a complete dearth of alleged ultimate facts as to these issues, Plaintiffs Hill has failed to state a cause of action and this Court should dismiss.

17. The Fourth District Court of Appeal in *Hamlet Country Club, Inc. v Allen*, 622 So.2d 1081 (Fla. 4<sup>th</sup> DCA 199) again pointed out that it is a social club’s by-laws that control issues between members and the club and pointed out that all alleged vested rights are contained within the by-laws which are subject to amendment. After finding that the club had amended its by-laws, reversed and remanded for entry of judgment in favor of the club. Once again, the law on this issue is strong in that the by-laws of a social

club are the controlling documents between the club and its members. Failure to attach the by-laws thus requires dismissal of this Complaint pursuant to Rule 1.130 Fla.R.Civ.P.

### **CONCLUSION**

Based upon all of the above, Defendant Club moves this Honorable Court for an Order dismissing Plaintiffs Hill's Complaint along with any other relief that this Court deems just and equitable.

I HERBY CERTIFY that a true and correct copy of the foregoing has been sent U.S. Mail this 30th day of July 2020 to Lloyd David Hill and Graham David Hill, 2728 NE 12 St., Pompano Beach, FL 33062.

\_\_\_\_\_/s/ Edward F. Holodak, Esq.,

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