

IN THE SMALL CLAIMS COURT
NORTH REGIONAL COURTHOUSE, BROWARD COUNTY, FLORIDA

LLOYD DAVID HILL, and
GRAHAM DAVID HILL

Co-Plaintiffs,

vs.

Case No.: CONO 20 010538 (71)

POMPANO SENIOR SQUADRON FLYING CLUB,
DBA – POMPANO BEACH FLYING CLUB,
A Florida corporation,

Defendant.

REPLY TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs LLOYD DAVID HILL and GRAHAM DAVID HILL, proceeding in Small Claims Court *pro se*, respectfully submit this reply to the MOTION TO DISMISS filed by Defendant POMPANO SENIOR SQUADRON FLYING CLUB, INC. dba POMPANO BEACH FLYING CLUB on July 30, 2020 and say:

1. Neither Plaintiffs are attorneys, are proceeding *pro se* in Small Claims Court (“The People’s Court”), and state that – with consent of Plaintiff Graham Hill – the undersigned Plaintiff Lloyd Hill will be the advocate and representative for both himself and Plaintiff Graham Hill in the same manner accepted by Defendant for all prior business dealings.
2. Plaintiffs believe the filing of written motions in Small Claims Court, especially before any pretrial conference, is not necessary and is actually discouraged.¹

¹ “Small claims cases are processed under a set of rules with a stated goal to reach a ‘simple, speedy, and inexpensive’ resolution of these cases. Because of the stated goals and tight timeframes of the rules, an active motion practice is discouraged. *In re Amendments to Florida Small Claims Rule 7.090*, 64 So.3d 1196 (Fla. 2011) (Pariente, J., concurring).” – *See Florida Small Claims Rules Annotated, 2020-2021 Edition*, February 28, 2020, Robert W. Lee, Broward County Court Judge, Fort Lauderdale, page 4.

3. Additionally, Defendant made several references in their Motion to Florida's Rules of Civil Procedure, some with citation, some without. However, Florida Small Claims Rule 7.020 explicitly limits the application of Florida's Rules of Civil Procedure to rules 1.090(a), (b), and (c); 1.190(e); 1.210(b); 1.260; 1.410; and 1.560 and, further, requires an order of the Court before applying any other rules from the Florida's Rules of Civil Procedure.

POINT-BY-POINT REPLY TO DEFENDANT'S MOTION

The paragraphs below are consecutively numbered restarting with "1" to identify Plaintiffs' response to the same numbered paragraph in Defendant's Motion in an effort to provide easier cross-reference between the Defendant's Motion and this Reply.

1. It is material omission of fact for Defendant to imply that Defendant is merely a "social club that allows members to rent its airplanes" because numerous publicly available documents describe the actual nature of the club:

a. *"The Pompano Beach Flying Club is a non-profit organization and our members are the shareholders."*²

b. *"This Corporation has been incorporated as a stock corporation under the laws of the State of Florida." ... "Upon receipt of the initiation fee and acceptance into membership, each new member shall be deemed to own a certificate for one (1) share of stock of the Corporation."*³

² <http://pompanobeachflyingclub.com/about-us/>, Retrieved July 31, 2020

³ Article VI, Sections 1 and 4, of Defendant By-Laws, Retrieved July 31, 2020

c. *“30 members in the flying club. Each member owns one share of stock and has the equivalent of 1/30 (3.33%) of ownership in the club.”*⁴

d. Also, Defendant has consistently claimed in all subsequent IRS Forms 990 that no changes were made to its governing documents during the covered reporting period.

Since Plaintiffs see no valid reason for Defendant to inaccurately or incompletely characterize its nature to the Court, Plaintiffs surmise one motive may have been to conceal Defendant’s highest self-governance document – its By-Laws – which describe members as owners of stock with associated rights by virtue of their membership status.⁵ In any event, by making such a claim, Defendant has intentionally made material omissions and misrepresentations of fact that fundamentally call into question their credibility.

2. Defendant also incompletely cites the control applicable to their conduct as being limited to the “By-Laws of Defendant Club.”⁶ This is incomplete because Defendant does not reflect its obligation to also be controlled by its own “Operational Rules” in addition to

⁴ IRS Form 990 for the 2007 year filed by Defendant on May 25, 2008, Retrieved May 26, 2020.

⁵ Defendant has moved that Plaintiffs’ Complaint should be dismissed at least in part because Plaintiffs did not attach a copy of Defendant’s By-Laws to the Complaint. However, Defendant has also asserted the substance of one or more provisions of its By-Laws are exculpatory in that they are effective in defeating the Complaint. Elsewhere in this Reply, Plaintiffs explain again why excerpts of the By-Laws were not included with the Complaint, but now that Defendant has made representations about the content of the By-Laws and refer to such content in defensive arguments, Plaintiffs are entitled to quote those By-Laws as needed and, if this case goes to trial, introduce those By-Laws and other relevant governing or regulatory documents into evidence. Contrary to Defendant’s inference that its Club is merely a “social club,” the By-Laws make clear it is a stock corporation in which its members are stockholders with rights:

“STOCK OWNERSHIP. Each member in the Club shall be deemed to own one share of Stock. No Stock Certificates will be issued. When a Club member resigns and his membership fee is returned, the share of Stock will be deemed to have been returned to the Corporation.” – See Defendant’s By-Laws, Article V.

⁶ By making the argument that only its “By-Laws of Defendant Club” control its affairs and effectively take supremacy over any other agreements that Defendant solicits or makes, Defendant opens itself to examination of provisions its By-Laws even though Plaintiffs did not attach the By-Laws as an exhibit to their complaint.

controls exerted by the State of Florida, reporting requirements of the United States Internal Revenue Service, and even the Federal Aviation Administration (“FAA”). The claim that the only relevant controls are contained within the “By-Laws of Defendant Club” is inaccurate and dishonest, and once again damages Defendant’s credibility.

3. When Defendant states that Plaintiffs “*allege*” they are members of Defendant’s Club, they make a key misrepresentation: they infer that Plaintiffs claim to be current members of Defendant’s Club. However, Plaintiffs’ Complaint is based, in part, upon Defendant’s documented failure to refund the initial fee due after leaving Defendant’s Club, so Plaintiffs make clear they are no longer in Defendant’s Club. Additionally, Plaintiffs have already produced ample evidence, some from Defendant, of prior involvement with Defendant’s Club. Plaintiffs do not understand why Defendant would inject such a misleading and dishonest implication that there is any doubt as to Plaintiffs standing and status, but Plaintiffs will vigorously defend against such dishonesty.

4. Defendant claims that Plaintiffs violated Florida Rules of Civil Procedure 1.120(b) by making an allegation of fraud without the required specificity and elements distinct from the breach of contract claim. Plaintiffs’ characterization of fraud has only been described as an *alternative* claim to be advanced in the event that Defendant might claim (as they now have) that, even though they advertised within numerous publicly-available documents that the \$1,700 was a refundable deposit, they did so with the nefarious intent to later adopt a policy with the practical effect of unilaterally seizing that deposit after it was tendered by an applicant and accepted by Defendant under the terms offered by Defendant. Plaintiffs argue such an action would represent common law fraud – false advertising – by Defendant. Plaintiffs believe

that the “specificity and elements” needed to make the claim of common law fraud are incorporated, taken as a whole, within Plaintiffs’ Complaint, even if they do not satisfy Defendant’s misplaced reliance on Florida Rules of Civil Procedure 1.120(b) that Plaintiffs believe cannot be cited in Small Claims Court.

5. Defendant alleges that Plaintiffs’ Complaint does not meet the pleading requirements of “Florida law,” but does not cite this alleged “law” or even that this alleged “Florida law” applies in Small Claims Court. As such, this statement is at best without any value and, at worst, intentional misrepresentation of standards that do not apply.

6. Defendant states that Plaintiffs are “*attempting to combine a claim for Breach of Contract and Fraud*” and that this “*violates Florida’s Rules of Civil Procedure and accordingly fail to state a cause of action.*” However, Defendant misrepresents the nature of relationship between a breach of contract claim and a fraud claim. As clearly stated in Plaintiffs’ Complaint, if Defendant argues that they did not breach a contract, then an allegation of fraud becomes active because – in short – Defendant falsely advertised that the application fee was a refundable deposit at the value it was solicited by – and tendered to – Defendant. Additionally, Plaintiffs have never alleged both Breach of Contract and Fraud as Defendant has sloppily stated here. Elsewhere in their Motion, Defendant shows they understood the meaning of “or” as used within Plaintiffs’ Complaint.⁷ Plaintiffs plainly explained that if Defendant claimed or the Court ruled that Defendant did not breach their contract, then Plaintiffs argue Defendant committed fraud. Finally, Defendant does not state which of Florida’s Rules of Civil Procedure

⁷ “Plaintiffs Hill allege they are members of the Club and have sued Defendant Club for a Count labeled Breach of Contract or Fraud.” (Emphasis added). (See Defendant’s Motion, ¶13).

Plaintiffs allegedly violated in offering two mutually exclusive possible bases of claim, so it cannot be known if the alleged violation has any legitimate application in Small Claims Court. But, given the narrow scope of application of such rules, if Defendant's reliance is on a rule other than those declared in Florida Small Claims Rule 7.020, their claim seems out of order.

7. Defendant claims that Plaintiffs violated Florida Rules of Civil Procedure 1.130 by failing to attach what they deem to be "*material documents*" to the complaint. Defendant notes that Plaintiffs *did* include numerous documents with their Complaint. However, Plaintiffs believe the nature, relevance, and authenticity of the documents that Plaintiffs supplied is not up to Defendant to challenge in an improperly-filed Motion before even any pretrial hearing. In any case, Defendant's reliance on Rule 1.130 is out of order and therefore any alleged statements of fact or arguments related thereto should not be considered by this Court.

8. Defendant essentially claims the supremacy of its By-Laws and laments the fact that Plaintiffs did not include a copy of Defendant's By-Laws with Plaintiffs' Complaint. However, as noted in Plaintiffs' Complaint, the By-Laws of Defendant were not available on Defendant's web site from at least December 2018 through May 2020.⁸ Even though the By-Laws were not available when Plaintiffs applied, Plaintiffs concluded that the terms of the Defendant's Operational Rules "Attachment A" could only exist as an incorporated element of the contract and be operative if they were compliant with the "By-Laws."⁹ Defendant's By-Laws were finally made available on Defendant's web site sometime in May 2020. Additionally, even though Defendant has reported to the IRS that its governing documents have not been

⁸ See Plaintiffs' Complaint, ¶17, fn. 7, ¶66, and Exhibit 11.

⁹ See Plaintiffs' Complaint, fn. 7.

amended since at least 2005, Defendant's By-Laws on the web site today bear a revision date of May 5, 2010. Thus, Defendant's By-laws appear to have been amended subsequent to 2005, so Defendant apparently made false statements to the IRS. In any case, Plaintiffs do not believe Defendant's By-laws have been amended since December 2018. Plaintiffs have only recently discovered that these By-Laws contain provisions that are wholly consistent with Plaintiffs' claim that the application fee is fully refundable because the By-Laws directly state that the one share of stock is returned to the Defendant after a "Club member resigns and his membership fee is returned."¹⁰ Thus, even though Plaintiffs acknowledge Defendant's ability to establish the "initial fee" tendered by any future applicant, Defendant's By-Laws clearly mean that the membership fee that is to be returned to a member upon resignation is to have the same cash value as the "initial fee" (refundable deposit) the member paid when joining Defendant's Club. It cannot possibly be legal for Defendant to reduce or eliminate the cash value of a fee already paid that is due to a member when they resign. If Defendant is now claiming they can do so, that becomes a key element proving fraud. Finally, since Defendant claims that its By-Laws are authoritative "absent some statutory provision," Plaintiffs take this opportunity to remind Defendant that the "statutory provisions" in Florida Codes § 501.203 and § 501.204 prohibit unfair or deceptive advertising of any good or service. Some of the penalties that fraudulent or

¹⁰ "Sec. 3. PAYMENTS. A person elected to membership in the Corporation shall become a member upon payment of an initial fee to be determined by the Board. [...]"

"Sec. 4. STOCK CERTIFICATES. Upon receipt of the initiation fee and acceptance into membership, each new member shall be deemed to own a certificate for one (1) share of stock of the Corporation."

See Defendant's By-Laws, Article VI.

"Sec.1 STOCK OWNERSHIP. Each member in the Club shall be deemed to own one share of Stock. No Stock Certificates will be issued. When a Club member resigns and his membership fee is returned, the share of Stock will be deemed to have been returned to the Corporation."

See Defendant's By-Laws, Article VI.

deceptive advertisers may suffer in Florida include up to \$10,000 for each willful violation of the law against unfair or deceptive advertising (Florida Code § 501.2075).

9. Defendant misrepresents the scope of the authority of the Board of Directors in that they claim the “operational rules” cited by Plaintiffs grant the Board of Directors to not only set the membership fees going forward (authority that Plaintiffs do not dispute), but also to reach back and unilaterally seize what should be restricted assets, the refundable application fees tendered by applicants in the amount in effect when they joined. This is an absurd proposition contradicted by the obvious plain meaning language in the By-Laws as recited in the preceding paragraph, as well as the unequivocal language in “Attachment A” of Defendant’s Operational Rules as published at the time Plaintiffs affiliated with the Defendant’s Club.¹¹

10. Defendant makes an entirely unsubstantiated allegation that Plaintiffs did not attach Defendant’s By-Laws to Plaintiffs’ Complaint because Plaintiffs knew the By-laws were exculpatory and conflicted with Plaintiffs’ allegations. However, the reasons that Defendant’s By-Laws were not attached have already been explained in Plaintiffs’ Complaint and expanded upon in preceding paragraphs, but include the beliefs that (a) the By-Laws could not be part of the contract because they were not available to Plaintiffs and were not made available to members until a year and a half after Plaintiff Lloyd Hill began repeatedly notifying Defendant they were not available,¹² and (b) if the By-Laws contained provisions that negated or conflicted with multiple provisions of Defendant’s documents (applications, web site, Operational Rules,

¹¹ See Plaintiffs Complaint Exhibit 3.

¹² See Plaintiffs Complaint Exhibit 11 (Plaintiff Lloyd Hill’s most recent notice to Defendant on April 9, 2020 that their By-laws were still unavailable, all such notices remaining unanswered at any time by Defendant).

etc.) then all of such Defendant's documents fraudulently misrepresented the nature of the refundable deposit. That said, because Defendant has claimed that Plaintiffs case is lost because we did not attach a copy of Defendant's By-Laws and Plaintiffs omission was intended to conceal exculpatory provisions within Defendant's By-Laws, Plaintiffs are entitled to cite the provisions of these By-Laws and submit them into evidence at the appropriate time. Recent examination of those By-Laws reveal that, contrary to Defendant's claim that the By-Laws *conflict* with Plaintiffs' claim, the By-Laws strongly *support* Plaintiffs' claim. Plaintiffs will stop short of asserting that the reason Defendant withheld the By-Laws from its membership for over a year and a half was to keep them in the dark as to their provisions so outgoing members would not be able to cite the specific provisions of the By-Laws if Defendant decided to seize their initial fee and not return it up resignation as the By-Laws dictate.

11. Defendant essentially argues there is no written contract and that a claim of breach of an oral contract must fail because Plaintiffs did not allege facts that *"demonstrate that the parties mutually assented to a certain indefinite proposition and left no essential terms open."* In fact, even though Plaintiffs' Complaint was not intended to reflect an entirely written contract, Plaintiffs believe these elements for an oral contract are evident in their Complaint taken as a whole and even with substantial written record: Plaintiffs applied for membership in Defendant's Club using the application supplied by Defendant at the time, were approved for that membership for an indefinite period, made payment of the refundable initial fee, were accepted, operated Defendant's aircraft, attended meetings, paid monthly dues, and finally withdrew, but have been denied the refund of the initial fee in direct contravention with every document Plaintiffs knew about at the time, and even the explicit provisions of the By-Laws

discovered since. There seems to be little missing from the record to demonstrate mutual assent of indefinite proposition, and there is ample evidence that nothing has been left open. In short, if Defendant accurately recites the standard for demonstrating existence of an oral contract, Plaintiffs have met that standard and then some.

12. Defendant makes a broad and inconclusive statement implying that unspecified exhibits to Plaintiffs' Complaint contradict Plaintiffs' allegations. It is impossible to respond to such vague statements, but to the extent Defendant is making claims based on any rule that is not expressly included within Florida Small Claims Rule 7.020, their claim is out of order and therefore any alleged statements of fact or arguments related thereto should not be considered by this Court.

13. Defendant seems to unwittingly acknowledge that the internal conflict, dysfunction, and disconnect within the Defendant's governing documents and related policies leave much to be desired. It seems clear enough to Plaintiffs that Defendant's governing documents and policies have been amended in a hodge-podge and uncoordinated manner in the nearly fifty years of the Club's existence. Thus, the use of many different words and terms for the same thing creates a confusing picture whose true meaning can be best understood not by just selectively quoting words on the page, but considering the intent and interrelationships between words and documents. It is ridiculous for Defendant to attempt to mischaracterize the meaning of a quote extracted from the Operational Rules attached to Plaintiffs' Complaint, Ex.3 ("above rates are subject to change at the discretion of the Board of Directors") to say that it means that Defendant can decide – at any time – to seize and never return the consistently advertised-to-be-refundable initial fee after it has been tendered (in this case, the \$1,700 initial

fee in effect and tendered by Plaintiffs on December 1, 2018). When Plaintiffs tendered the initial fee, the Operational Rules directly specified that the membership fee was \$1,700 and that \$1,700 would be returned when “a Members withdraws from the Club.” (See Plaintiffs’ Complaint Ex. 3.). Another reason Defendant’s assertions are ridiculous is that the By-Laws directly state the initial fee paid will be refunded to the member when they resign. There is no contemplation in the By-Laws that the amount of initial fees already paid can be retroactively reduced or confiscated by some future “discretion of the Board of Directors.” Defendant wrongly purports such confiscation to be authorized and legal under the terms of Operational Rules, but even if so, these Rules must – in fact – be subordinate and compliant under the By-Laws and Florida Codes.

14. Defendant seems keen to baffle the Court with nonsensical circular arguments that have no relation to the facts or allegations in Plaintiffs’ Complaint, and misstates the facts anyway. As previously explained, the By-Laws state that the “initial fee” paid by an applicant for membership must be refunded to the member when that member resigns from Defendant’s Club. In this case, in full conformance with the Operational Rules in force at the time, Plaintiffs tendered the initial fee of \$1,700 to Defendant’s Club. The amount of the refund can only be the actual dollars and cents tendered by a member applicant according to the explicit refundable characterization on the application (\$1,700), Defendant’s web site, and its Operational Rules in force at the time of membership application. It cannot logically mean anything else. Any alleged “discretion to change” authority within the Operational Rules can never be employed to violate the By-Laws by retroactively altering, reducing, or confiscating the actual dollars and cents previously tendered by an applicant. This is particularly evident in

that the black letter language in Defendant's By-Laws explicitly mandate return of that initial fee when the member resigns. To argue otherwise is to incriminate one's self as being involved in a fraudulent enterprise.

15. Defendant improperly states that Plaintiffs' Complaint alleges a "breach of contract" by Defendant rescinding Plaintiff Lloyd Hill's Club Flight Instructor qualification when Plaintiffs made no such claim. Plaintiffs intentionally and clearly separated different sections of their Complaint by using subtitles with bold, underlined, and centered text. Plaintiffs' allegations and supporting facts related to Defendant's breach of contract or fraud are found in Plaintiffs' Complaint in ¶¶ 5-80 (pp. 2-13) and are preceded with the Section II title, "**II. FACTS RELATED TO MATERIAL BREACH OF CONTRACT OR FRAUD.**" Plaintiffs' allegations and supporting facts regarding Defendant's bad faith termination of rights without just cause are found in Plaintiffs' Complaint separately and consistently set off in Section III of Plaintiffs' Complaint (See ¶¶ 81-110, pp. 13-17) and are preceded with the title, "**III. FACTS RELATED TO TERMINATION OF RIGHTS WITHOUT JUST CAUSE.**" Defendant laments that Plaintiffs did not cite or provide any agreement that would substantiate existence of a Flight Instructor contract, but Plaintiffs have not alleged breach of contract in this section. Plaintiffs maintain that the action by Defendant was retaliatory in nature and taken in bad faith. That is the key allegation within Section III of Plaintiffs' Complaint. Plaintiffs believe Defendant acted with malice aforethought and in bad faith, and retaliated for Plaintiff Lloyd Hill having to persistently report problems with Defendant's operations on behalf of Plaintiffs. Not being attorneys, Plaintiffs hope that the facts recited in Plaintiffs' Complaint are recognized by the Court to violate a

relevant statute, common law, or at least common sense such that the Court will see that the interests of justice will be best served by awarding Plaintiffs their relief sought.

REPLIES TO DEFENDANT'S SUMMARY ARGUMENTS

16. Contrary to Defendant's misrepresentations, omissions, and clumsy and unethical attempts at legal sleight-of-hand, Plaintiffs believe now more than ever that their Complaint must go forward. In fact, now that Defendant has played their hand, if it were permissible to do so according to Florida Small Claims Rules, Plaintiffs would be filing a motion for summary judgment.

17. Defendant's reliance on *Hamlet Country Club, Inc. v Allen* must fail for several reasons, not the least of which being that *Hamlet* involved amendments to their By-Laws. In the instant case, Defendant has not annotated any amendments to its By-Laws since at least 2010 and has reported to the IRS that they have not annotated any amendments to its By-Laws since at least 2005. What Defendant is doing is seizing what should be restricted capital (the initial fees already paid by members and due back to them upon their resignation) and claiming that a "discretionary" change to its policies, without amending the By-Laws and – indeed – in conflict with its By-Laws, give Defendant the unilateral authority to never refund the initial fee that it publicly, prominently, and consistently advertised as being fully refundable. Finally, it must again be noted that Defendant's attempt to apply Florida Rules of Civil Procedure 1.130 as a basis for dismissal must fail because Rule 1.130 is not within the few rules applied to Florida Small Claims.

18. Defendant's reliance on *Reynolds v The Surf Club*¹³ must also fail because, as previously explained, the By-Laws upon which Defendant so ardently wants to convince the Court to rely on actually undermines Defendant's claim that Plaintiffs are not entitled to relief. Defendant has had possession of its By-Laws for years... for decades. Plaintiffs argue the By-Laws were not available on Defendant's web site or provided to Plaintiffs at the time of Plaintiffs' applications to Defendant's Club despite Plaintiff Lloyd Hill's repeated notifications to Defendant of this defect.¹⁴ Further, even if the By-Laws contained exculpatory language allowing the initial fee to be seized by Defendant, Plaintiffs argue the By-Laws would not be admissible for this purpose because the By-Laws were not available to Plaintiffs when they applied in December 2018. Therefore, the By-Laws cannot be used to represent an understanding of both parties when the application contract was consummated by membership approval. In any event, it is now clear that the By-Laws explicitly *support* Plaintiffs' Complaint, so Defendant's claim that Plaintiffs' "failure to include" the By-Laws was a purposeful act of concealment of exculpatory evidence and is therefore a fatal defect that mandates dismissal, must fail as a matter of what should be undisputed fact. Still, if Defendant believes that the By-Laws include some kind of exculpatory "get out of jail free" evidence supporting their defense, Defendant has a copy of the By-Laws and can file them at any time. Even though Defendant makes representations about the provisions and supremacy of their By-Laws, Plaintiffs believe the reason Defendant has not provided them is that Defendant does not *actually* want their By-

¹³ See Defendant Motion ¶8.

¹⁴ See Plaintiffs' Complaint Exhibit 11 (Plaintiff Lloyd Hill's most recent notice to Defendant on April 9, 2020 that their By-laws were still unavailable, all such notices remaining unanswered at any time by Defendant).

Laws in evidence. By failing to quote, cite, and provide their By-Laws, Defendant is being dishonest and duplicitous in their empty claims that the provisions of the By-Laws will somehow exonerate them. In any case, Defendant has now opened the door for Plaintiffs and this Court to examine the By-Laws, their provisions, and intent.

CONCLUSION

Based upon all of the above, Plaintiffs pray for an Order dismissing Defendant's Motion to Dismiss and provide Plaintiffs with any other relief that this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been submitted electronically to Defendant via the Small Claims Court E-Filing System on the 3rd day of August 2020.

/s/ Lloyd D. Hill
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