

IN THE COUNTY COURT IN
AND FOR BROWARD COUNTY,
FLORIDA

STEVEN J. BORER, et al,

CASE NO.: COWE 20-22099 (81)

Plaintiffs

v.

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

Defendant.

TRIAL MEMORANDUM

Defendant, POMPANO SENIOR SQUADRON FLYING CLUB D/B/A POMPANO BEACH FLYING CLUB (Defendant "Club"), by and through its undersigned counsel, files this Trial memorandum as to Plaintiff Steven J. Borer's Statement of Claim (Plaintiff "Borer") and says:

FACTUAL BACKGROUND

1. Defendant Club is a social club wherein its members rent airplanes owned by Defendant Club and pay a monthly membership fee and an initial initiation fee.
2. Defendant Club is a Florida for-profit corporation and is controlled by the By-Laws of Defendant Club.
3. Plaintiff Borer alleges he was a member of the Club who withdrew from membership and has sued Defendant Club for a return of his initiation fee.
4. Attached to Plaintiff Borer's Complaint are various documents including:
 - a. His application for membership into Defendant Club;
 - b. a copy of a check to pay his \$1700 membership fee;

- c. invoices for monthly and non-recurring charges from Defendant Club;
- d. bank statements allegedly showing payment of those charges;
- e. a portion of the Defendant Club's By-Laws;
- f. Defendant Club's Operational Rules;
- g. Non-authenticated emails.

5. 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 Plaintiff Borer attached numerous documents, what is not attached to the Complaint is an actual complete contract - the By-Laws of Defendant Club. Such is the basis to dismiss the Complaint.

6. Interestingly, the check supposedly evidencing payment of Plaintiff Borer's application fee, and bank statements allegedly showing payment of invoices from Defendant Club – none of those financial documents are in Plaintiff Borer's name. Plaintiff's intended evidence unquestionably demonstrates that Plaintiff Borer did not make payment to Defendant Club for his membership or monthly charges and is therefore the wrong party in interest to bring this Complaint. See *Rule 1.210 Fla.R.Civ.P.*

7. As to Plaintiff Borer's general allegation that the Operating Rules require Defendant Club to return the \$1700 (regardless of who paid it), Plaintiff Borer misses the point and Florida law. Plaintiff Borer's application itself, directly under the signature line for new members, states that membership is subject to the terms of the By-Laws and Operational Rules as they may be amended.

8. As the Third District Court of Appeal stated in *Reynolds v The Surf Club*, 473 So.2d 1327, 1334 (Fla. 3rd 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 Defendant Club is, according to Florida law are governed by their by-laws.

9. The By-Laws of Defendant Club very specifically state that the Board will determine how much per annum of any member's initiation fee Defendant Club will return upon the withdraw of a member in good standing. Additionally, the "Operational Rules" that Plaintiff Borer attached to his Complaint provides that "the above rates are subject to change at the discretion of the Board of Directors." Clearly, these documents put Plaintiff Borer on notice that the Board of Directors has certain discretion in the operation of the Club vis-à-vis return of his initiation fee. See *Hamlet Country Club, Inc. v. Allen*, 622 So.2d 1081, 1083 (Fla. 4th DCA 1993).

10. In *Allen* members of a club argued their rights to withdrawal fees vested when they joined the club. The 4th disagreed and said that the rights derived from the by-laws of the club which could be amended and therefore no vested rights existed. *Id.* The members were subject to the amendments and the votes taken by the board pursuant to those amendments. *Id.* *Allen* is almost completely on all fours and is certainly binding upon this Court and Plaintiff Borer. See also *Reynolds v. The Surf Club*, 473 So.2d 1327 (Fla. 3^d DCA 1985); *Lee v. Harbour Preservation, LLC.*, 795 So.2d 181 (Fla. 3rd DCA 2001).

11. 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. 3rd DCA 1971); *Duke v HSBC Mortgage Services, LLC.*, 79 So.3d 778 (Fla. 4th DCA 2011).

12. In Plaintiff Borer's Complaint, he alleges that initially and then against after waiting almost one year after he submitted his resignation, he was informed that Defendant Club was "short of money." Then in 2020 Defendant Club informed Plaintiff Borer that Defendant Club's Board of Directors voted to not refund any initiation fees for the years 2017 – 2020 consistent with the financial position of Defendant Club as previously expressed to him on at least two occasions. As a Florida corporation, Defendant Club acts through its Board of Directors who have the right to ratify any prior actions of a previous Board and to use its best business judgment to operate Defendant Club to the best of its ability. See *Wimbledon Townhouse Condominium I Association, Inc. v. Wolfson*, 510 So.2d 1106, 1108 (Fla. 4th DCA 1998) (holding a board may ratify the decisions of a prior board even if initially improperly taken).

13. Certainly if Defendant Club was short of money due to excessive expenses (as pled by Plaintiff Borer) the Board utilized its best business judgment to not return funds as it had no money to do so.

14. So, while Plaintiff Borer alleges in his Complaint that the fees are unequivocally refundable, etc., the exhibits state that the fees change at the discretion of the Board of Directors. Once again, the law on this issue is strong in that the by-laws of a club are the controlling document between the club and its members. Those By-Laws grant the Board the authority to change the refundable amount. The prior Board notified Plaintiff Borer that the Club was short of cash (on two occasions) and the new Board voted accordingly that no refunds would be paid. As in *Allen*, Plaintiff Borer takes nothing.

CONCLUSION

Based upon all of the above, Defendant Club moves this Honorable Court for a Final Judgment in Defendant Club's favor and have Plaintiff Borer go forth without day, 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 8th day of January 2021 to Steve Borer.

/s/ Edward F. Holodak

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