

IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

STEVEN J. BORER,
MICHAEL W. BORER,

CASE NO.: COWE20022099 (81)

Plaintiffs,

vs.

POMPANO BEACH FLYING CLUB,
GREGORY GILHOOLY,

Defendants.

**DEFENDANT'S REPLY TO PLAINTIFF'S POST-TRIAL
MOTION AND MEMORANDUM**

Defendant, POMPANO SENIOR SQUADRON FLYING CLUB D/B/A POMPANO BEACH FLYING CLUB (Defendant "Club"), by and through its undersigned counsel, files this Reply to Plaintiff, STEVEN J. BORER (Plaintiff "Borer")'s Post-trial Motion and Memorandum and says:

1. Plaintiff STEVEN J. BORER, on or about January 12, 2021, filed a Post-trial Motion or Memorandum of Law in which he asserts that the attorney for the Club "testified," as to the Club's subpoena of bank records.

2. While the attorney for the Club was not under oath and did not "testify," during closing arguments of the Trial, counsel for the Club made a statement to the Court that bank records had been subpoenaed. Counsel admits that the word subpoena was inaccurate and that the Club had requested bank records from its bank for the years in question, pursuant to the issues of trial, and had not yet received a response to the request. As inadvertently stated by Club or Club's attorney no formal subpoena was ever served. Counsel for Defendant Club has already filed a separate Notice of Correcting Record on this point.

3. Defendant's counsel apologized therein to the Court and to Mr. Borer for inadvertently using the word subpoenaed, rather than requested. Nonetheless, the spirit of the reply was accurate in that the Club had requested the bank records for the years in question and was not in possession of those records at trial.

4. Plaintiff Borer also asserts in his Motion that there was no direct evidence as to the Club's financial condition (he did cite to Mr. Gilhooly's testimony). This statement is thus misleading if it was intended to say that there was no evidence submitted. Gregory Gilhooly, president of Defendant Club testified as to the Club's financial position, and to the very real possibility that the Club will file for bankruptcy. Accordingly, there was direct testimony and evidence regarding this issue.

5. Finally, Plaintiff Borer argues in his Motion that he, "...completed my part of the contract." As Defendant Club pointed out to this Court in the closing arguments at trial, Plaintiff Borer never introduced evidence that he was a, "member in good-standing," during his case in chief. The Club's Bylaws, which were entered into evidence as Defendant's exhibit, specifically state that in order to qualify for a refund, a member must be "in good-standing," at the time of the member's withdrawal. Gregory Gilhooly, President of Defendant Club, testified that to be a member in good-standing a member must not only pay the initiation fee, but must also pay monthly dues. The record is deplete of any evidence, either documentary or testimonial, for Plaintiff Borer to carry his burden of proof on this issue. Accordingly, Defendant Borer's statement in his Post-trial Motion, that he completed his obligation of the contract, is not supported by the evidence at trial.

I HERBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. Mail this 12th day of December, 2020 to pro se Plaintiffs Steven J. Borer and Michael W. Borer at 601 NW 73rd Avenue, Plantation, Florida 33317.

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