IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

JOHN DORSO, *et. al.*,

Plaintiffs,

vs. Case No.: 2016-CA-5528

PLANTATION GOLF AND COUNTRY CLUB, INC. and CONCERT PLANTATION, LLC,

Defendants.
_____/

BEVERLEY WHITE, *et. al.*,

Plaintiffs,

vs.

PLANTATION GOLF AND COUNTRY CLUB, INC. and CONCERT PLANTATION, LLC,

Defendants.
_____/

JOAN YELDING, *et. al.*,

Plaintiffs,

vs.

PLANTATION GOLF AND COUNTRY CLUB, INC. and CONCERT PLANTATION, LLC,

Defendants.
_____/

ORDER GRANTING MOTION FOR CLASS CERTIFICATION

THIS CAUSE came before the Court on Plaintiffs' Motion for Class Certification [DIN 621] (the "Motion"). The Court held an evidentiary hearing on the Motion over a three (3) day hearing period on October 13 and 14, 2021, and November 1, 2021 (the "Hearing"). The Court has carefully considered the Motion, Plaintiffs' Memorandum of Law in Support of Motion for Class Certification [DIN 648], Defendants' Concert Plantation, LLC and Plantation Golf and Country Club, Inc.'s Response in Opposition [DIN 707], the evidence submitted into the record and at the Hearing, arguments by counsel, testimony from witnesses, and is otherwise fully advised.

I. BACKGROUND

On May 6, 2021, the Court granted leave and deemed filed the Fourth Amended Class Action Complaint filed by Plaintiffs, individually and on behalf of those similarly situated, (collectively, the "putative Class Members") against Plantation Golf and Country Club, Inc. (hereinafter "PGCC") and Concert Plantation, LLC (hereinafter "CONCERT"), collectively "Defendants" [DIN 500]. The Fourth Amended Class Action Complaint alleges four counts: Count I for Breach of Contract as to Defendants, Count II for Unjust Enrichment as to PGCC, Count III for Unjust Enrichment as to Concert, Count IV for Fraudulent Transfer as to Defendants, and Count V for Declaratory Judgment – Account Stated as to Defendants.

Plaintiffs' claims arise from Defendants' alleged failure to pay in full the resigned equity membership refunds due to Plaintiffs pursuant to the Bylaws in effect at the time of their effective resignation. Defendants raise a number of defenses to

Plaintiffs' claims, including defenses based on the ripeness of Plaintiffs' claims, certain Plaintiffs releasing their claims against Defendants, certain Plaintiffs being estopped from asserting claims related to the 2016 Bylaw Amendment due to their participation in the amendment process, certain Plaintiffs having waived claims by accepting prior payments from Defendants, and certain Plaintiffs' claims being subject to off-set. Plaintiffs allege that the 2016 Bylaw Amendment which changed the equity refund calculation does not apply retroactively. In the instant Motion, Plaintiffs seek class certification pursuant to Fla. R. Civ. P. 1.220.

II. BURDEN OF PROOF – CLASS ACTION UNDER FLORIDA LAW

To certify the Proposed Class in this matter, Plaintiffs bear the burden of presenting evidence and proving to the Court that all requirements are met. *InPhyNet Contracting Services, Inc. v. Soria*, 33 So. 3d 766, 771 (Fla. 4th DCA 2010). Class certification analysis requires this Court to accept substantive allegations as true by resolving doubts about class certification in favor of certification. *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 105 (Fla. 2011); *Pinnacle Condominium Association, Inc. v. Haney*, 262 So. 3d 260, 262 (Fla. 3d DCA 2019). In considering a request to certify a class, the court need not determine the merits of the underlying claim but may consider the merits of the case to the degree necessary to determine whether Plaintiffs have met the requirements of Fla. R. Civ. P. 1.220. *See Sosa*, 73 So. 3d at 105-106; *Morgan v. Coats*, 33 So. 3d 59, 63 (Fla. 2d DCA 2010).

III. FLORIDA RULES OF CIVIL PROCEDURE 1.220 – CLASS ACTIONS

Parties seeking class action certification must satisfy the four requirements of Fla. R. Civ. P. 1.220(a), commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *Morgan v. Coats*, 33 So.3d 59, 63 (Fla. 2d DCA 2010); *Canal Ins. Co. v. Gibraltar Budget Plan, Inc.*, 41 So.3d 375, 377 (Fla. 4th DCA 2010).

If the party seeking class action certification satisfies the requirements of Fla. R. Civ. P. 1.220(a), it must also satisfy one of the three subsections of Fla. R. Civ. P. 1.220(b) governing maintainable claims and defenses. *Sonic Automotive, Inc. v. Galura*, 961 So. 2d 961, 964 (Fla. 2d DCA 2007).

Here, Plaintiffs state that they have satisfied their burden of proof and met the class action requirements under Fla. R. Civ. P. 1.220(a) and specifically subsection (b)(3) of Fla. R. Civ. P. 1.220(b). Fla. R. Civ. P. 1.220(b)(3) requires that,

> ...the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. The conclusions shall be derived from consideration of all relevant facts and circumstances, including (A) the respective interests of each member of the class in individually controlling the prosecution of separate claims or defenses, (B) the nature and extent of any pending litigation to which any member of the class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated, (C) the desirability or undesirability of concentrating the litigation in the forum where the subject action is instituted, and (D) the difficulties likely to be encountered in the management of the claim or defense on behalf of a class.

For the reasons and evidentiary findings discussed below, the Court is satisfied that Plaintiffs have met their burden of proof and all the requirements for a class action have been met under Fla. R. Civ. P. 1.220(a), 1.220(b)(3) and Florida law.

IV. FINDINGS

A. Rule 1.220(a) of the Florida Rules of Civil Procedure

1. Numerosity – Fla. R. Civ. P. 1.220(a)(1)

The first requirement of Rule 1.220(a) is that the "the members of the class are so numerous that separate joinder of each member is impracticable." Fla. R. Civ. P. 1.220(a)(1).

Although this element was uncontested, the Court finds that Plaintiffs have satisfied the numerosity requirement through the evidence and testimony at the Hearing that there are potentially over seven hundred (700) Class Members. Moreover, Defendants do not contest that Plaintiffs' Proposed Class satisfies this requirement.

2. Commonality - Fla. R. Civ. P. 1.220(a)(2)

The second requirement is that "the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class" Fla. R. Civ. P. 1.220(a)(2). The commonality test is met when the resolution of at least one issue will affect all or a significant number of the putative class members. *Morgan v. Coats*, 33 So. 3d 59, 64 (Fla. 2d DCA 2010).

The threshold question for this litigation is whether the Defendants had the right to apply a bylaw amendment to resigned members of PGCC who were no longer active members of the club. Plaintiffs have shown that all putative class members are in nearly identical positions in that all were resigned equity members prior to the bylaw change on April 1, 2016 and all had this bylaw change applied retroactively to their equity refund. The rights of resigned equity members as a result of the bylaw amendment and whether or not the club had the right to impose that amendment on resigned members are questions that permeate each Plaintiff's claim.

3. Typicality - Fla. R. Civ. P. 1.220(a)(3)

The next requirement is that the claim or defense of the representative party be typical of the claim or defense of each member of the class. Fla. R. Civ. P. 1.220(a)(3). The typicality requirement is met when named plaintiffs advance legal and remedial theories similar to those that would be advanced by class members if they were pursuing parallel actions. *Leibell v. Miami-Dade County*, 84 So. 3d 1078 (Fla. 3d DCA 2012). The "key inquiry" is whether the named plaintiffs are "part of the class and 'possess the same interest and suffer the same injury' as the class members." *Morgan*, 33 So.3d at 65 (citing *Clausnitzer v. Fed. Express Corp.*, 248 F.R.D. 647, 656 (S.D. Fla. 2008)).

Plaintiffs have satisfied this requirement in the pleadings and through the evidence and testimony of the witnesses who appeared at the Hearing. The Court finds that they have satisfied the typicality element for much the same reasons as commonality: each Plaintiff is affected in a similar manner by the bylaw changes.

Although different Plaintiffs were at different positions on the resigned member refund list, all had their refund or potential refund limited by the bylaw change. Therefore, the Court finds that the Plaintiffs' interests, claims and legal remedies are typical to those of the putative class as all are challenging defendants' action with identical legal claims and seeking the same declaratory relief and damages.

4. Adequacy - Fla. R. Civ. P. 1.220(a)(4)

The final requirement under Rule 1.220(a)(4) requires the class representatives be able to "fairly and adequately protect and represent the interests of each member of the class." Two considerations exist to determine adequacy: (1) "whether plaintiff's counsel are qualified, experienced and generally able to conduct the proposed litigation," and (2) "whether plaintiffs have interests antagonistic to those of the rest of the class." *See, e.g., Discount Sleep of Ocala, LLC v. City of Ocala,* 245 So. 3d 842, 853 (Fla. 5th DCA 2018).

Plaintiffs and their counsel satisfy this requirement. There was no challenge to the qualifications, abilities, or experience of Plaintiffs' Counsel. The Court finds that they have adequately represented their clients' interests thus far and will be able to continue to adequately represent those interests. As to the named representatives, which include all of the named Plaintiffs in this case, there does not appear to be any conflicts of interest between any of the Plaintiffs named thus far and the putative class as the same conduct is being alleged and the same relief is being sought. Further, Defendants did not significantly challenge the ability of the

named Plaintiffs to represent putative class members and have acknowledged the adequacy of Plaintiffs' counsel.

B. Rule 1.220(b)(3) of the Florida Rules of Civil Procedure

Plaintiffs assert that certification is appropriate under Fla. R. Civ. P. 1.220(b)(3), which requires that "the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy." Under Florida law, Plaintiffs must demonstrate: (1) common questions of law or fact predominate over individual questions ("predominance"); and (2) a class action is the superior means of adjudicating the controversy ("superiority").

The Court has determined, after careful and thorough consideration of the case law presented and argued by Defendants, that Plaintiffs have satisfied the requirements under Fla. R. Civ. P. 1.220(b)(3), the predominance and superiority requirements.

1. Predominance

The Court finds that Plaintiffs have met their burden of proof as to predominance and in its analysis, it has applied Florida law requiring this Court to accept substantive allegations as true by resolving doubts about class certification in favor of certification. *See Sosa*, 73 So. 3d at 105 (Fla. 2011); *Pinnacle Condominium Association, Inc.*, 260 So. 3d at 262 (Fla. 3d DCA 2019).

The Court agrees that Plaintiffs are united by a predominant question of law: whether the 2016 bylaws were able to be changed to eliminate or reduce the Plaintiffs' refund amounts and retroactively applied to the Plaintiffs and the putative class. Defendants contend Plaintiffs cannot meet the burden of predominance as each Plaintiffs' membership would require individual scrutinization. While the Court recognizes that factual variations among the Plaintiffs' claims and those of the putative class may exist, such as Plaintiffs being on different positions on the resigned equity membership lists having still been a member of the club during the bylaw change (by virtue of having previously downgraded a different membership), having accepted payment prior to the sale of the Club assets to Concert, having resigned under different versions of the Bylaws, or signing or not signing a waiver and release; those variations can be dealt with universally by grouping like Plaintiffs into distinct categories and dealing with those issues or defenses as a group as the case evolves. Fl. R .Civ. P. 1.220(d)(4).

Instructive in this Court's finding was the case law presented by Defendants, *InPhyNet Contracting Services, Inc. v. Soria*, 33 So. 3d 766 (Fla. 4th DCA 2010). *InPhyNet* resolved this Court's concerns whether certification of the proposed class would lead to mini trials on every individual's circumstances. *InPhyNet* supports this Court's finding that class members who were on different positions on the resigned equity lists, class members who could vote at the time the 2016 bylaws were amended, and/or class members who signed waivers will not require individual mini trials of

each plaintiff. If necessary, subclasses can be created in order to address specific factual differences and defenses.

Further the testimony of Barbara "BJ" Camarota who provided specific guidance on how to calculate each class member's damages prior to the 2016 amended bylaws does not prevent class certification. This is further supported by the Florida Second District Court of Appeals decision in *Morgan v. Coats*, 33 So.3d 59 (Fla. 2d DCA 2010). The need for individual damages calculations in this case does not defeat a finding of Predominance. The common legal and factual issues identified in this case are significantly more substantial that the individualized issues emphasized by Defendants. Thus, the Court finds that the Predominance requirement under Rule 1.220(b)(3) is satisfied.

2. **Superiority**

Florida courts are required to consider three factors when deciding whether a class action is the superior means of deciding a controversy. *Morgan*, 33 So.3d at 66. These are: "(1) whether class action status would provide the plaintiffs with their only economically viable remedy; (2) whether there is a likelihood that the individual claims are sufficiently large to justify the expense of conducting separate litigation; and (3) whether the case is manageable as a class action." *Id.* The Rule itself requires the "consideration of all relevant facts and circumstances" to include "the respective interests of each member of the class in individually controlling the prosecution of separate claims," the "nature and extent of any pending litigation," the desirability of the forum, and difficulties in management of the claim. Fla. R. Civ. P. 1.220(b)(3).

Plaintiffs cite several reasons why a class action is a more desirable vehicle to adjudicate the claims, including that the average claim of each class member is relatively small when compared to the expense of litigation and there are over seven hundred (700) potential class members. The Court finds that class certification is superior to other methods for adjudicating this controversy and that the class action is manageable.

ORDER

Based upon this Court's foregoing Findings of Fact and Conclusions of Law, it is **ORDERED AND ADJUDGED** as follows:

1. The Plaintiffs' Motion for Class Certification is **GRANTED**;

2. The Court hereby certifies a class (the "Class") pursuant to Fla. R. Civ. P. 1.220 consisting of the following:

> All individuals (or their guardians or representatives) who had an effective resigned equity memberships before April 1, 2016, and who have not received their full refund amount. Excluded from the Class are defendants, any officers or directors thereof, together with the legal representatives, heirs, successors, or assigns of any defendant, and any judicial officer assigned to this matter and his or her immediate family.

3. The Court reserves the right to certify subclasses in the future, if necessary, and will provide the parties an opportunity to request the addition of any additional subclasses before trial. Florida Rule of Civil Procedure 1.220(d)(4).

4. The Court appoints each of the named Plaintiffs in this action as Class Representatives.

5. Maglio Christopher & Toale Law Firm is hereby certified as Class Counsel.

6. All future filings shall be filed in Case No.: 2016-CA-5528 NC and bear the following caption:

IN THE CIRCUIT CIVIL COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

BEVERLEY WHITE, *et. al.*,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

Case No.: 2016-CA-5528
CLASS ACTION

PLANTATION GOLF AND COUNTRY
CLUB, INC., and CONCERT
PLANTATION, LLC,

Defendants.
_____/

7. On or before November 16, 2021, the parties shall jointly file for approval by the Court a proposed notice to Class Members in accordance with Florida Rule of Civil Procedure 1.220(d)(2); alternatively, if the parties cannot agree on a proposed notice, Plaintiffs shall file a proposed notice on or before November 16, 2021, and Defendants shall file any objections within three (3) days of filing of Plaintiffs' proposed notice.

DONE AND ORDERED in Chambers in Sarasota County, Florida, on this

6 day of December, 2021.

The Honorable Andrea McHugh
Circuit Court Judge

CERTIFICATE OF SERVICE

On this 6 day of Dec., 2021, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email:

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