Filing # 180789976 E-Filed 08/29/2023 11:41:27 PM

**STATE OF FLORIDA**
**SECOND DISTRICT COURT OF APPEAL**

Case No.: 2D23-0637

**BEVERLY WHITE, ET AL.,**
Appellants,

v.

**PLANTATION GOLF AND COUNTRY CLUB, INC., ET AL.,**
Appellees.

# APPELLANT'S INITIAL BRIEF

On Appeal from the Twelfth Judicial Circuit
in and for Sarasota County, Florida

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## I. STATEMENT OF THE CASE AND OF THE FACTS

Plantation Golf and Country Club ("PGCC" or "Club") was a social club organized as a nonprofit corporation under Florida law. (A.177; A.1028, ¶4). Prior to its sale to Concert, it had operated as a private, member-owned golf and country club since 1994. (A.1028, ¶4). The Club offered both equity and non-equity memberships. (A.428-30). The Club bylaws, which were incorporated into the membership agreement, promised a refund of the equity contribution upon the resignation of an equity member (subject to certain restrictions). (A.180; A.199; A.216; A.233). Concert Plantation, LLC purchased PGCC in 2018 and did away with equity memberships, effectively eliminating the opportunity for any resigned equity members to obtain refunds. (A.1030, ¶10). Plaintiff-appellants are a class of former equity members of the Club who were owed refunds of their equity fees and received either partial refunds or no refunds. (A.816).

The following additional material facts were evidenced before the trial court:

### A. Equity Memberships

Equity members paid a one-time "equity contribution" to obtain an equity membership in the Club. (A.177; A.196-197; A.213-214). However, to maintain regular access to the Club, equity members had to pay annual dues. (A.427; A.441; A.445; A.606; A.622; A.1055). Equity members also had to agree to be bound by the Club's bylaws and general rules. (A.179). In exchange for these payments, equity members received the rights attendant in equity membership.

Equity members had ownership rights in the Club. (A.177-179; A.196-198; A.213-214). Equity members were entitled to vote on matters affecting the Club, including amendments to the bylaws. (A.181; A.197-198; A.214-215; A.218). Only equity members were permitted to serve on the Club's Board of Directors. (A.182; A.201; A.218). Equity members could access the Club and use the facilities in accordance with their membership. (A.520; A.710). Equity memberships also included the right to an equity refund. (A.180; A.199; A.216; A.233). All versions of the bylaws contained provisions for a refund of part of the equity contribution after the resignation of an equity member. (A.180; A.199; A.216; A.233).

### B. The Resignation Process

The Club permitted equity members to resign at will, subject to a constraint on when those resignations would become effective. (A.180; A.199; A.216). Equity members were required to provide written notice of their intent to resign. (A.180; A.199; A.216). Once the Club received notice, it would confirm the effective date of that resignation, based on the bylaws in effect at the time of the member's resignation. (A.199; A.216; A.295-363). The Club sent written confirmation to resigned members accepting the resignation, stating the effective date, and confirming the amount of the refund owed to the member *based on the bylaws in effect at the time of the resignation*. (A.295-363).

### C. Effect of Resignation on Membership

Once resigned, equity members ceased being members of the Club. (A.983-984; A.135 ("But they were resigned members. They were no longer members of the club.")). Resigned members were not allowed to vote on Club issues. (A.918). They were not permitted to attend informational meetings about changes to the Club's bylaws that occurred after they were members. (A.992). Resigned members

did not receive any communications about anticipated bylaw changes. (A.919; A.674). They could not sit on the Club's Board of Directors. (A.993). The only right that survived resignation was the right of a former equity member to receive a refund. (A.984). Former Board member Tom Kubik testified that the rights of an equity member (other than their right to a refund) were eliminated once their resignation had been accepted:

> Q: So is it your position that once they submitted their resigned equity – sorry, their resignation letter, at that date and time, resigned equity members no longer had rights to PGCC, whether it's votes or access to the country club?
>
> Kubik: They didn't have rights to vote or access to the country club. They certainly had rights to their refund.

(A.984).

Equity refunds to resigned members were calculated based on the bylaws in effect at the time of the member's resignation. ((A.199; A.216; A.295-363). As such, when an Equity Member resigned, the Club sent a letter to them confirming the refund amount they could expect. (A.295-363). The letters also stated that the amount of the refund was based on the bylaws in effect at the time of their resignation. (A.295-363).

### D. Operation of the Waiting List and Payment of Refunds

Once resigned, equity memberships would be placed on a refund waiting list to be repurchased by an incoming equity member (in chronological order of resignation). (A.714). Former members were permitted to contact the Club to inquire about the status of their refund but, as non-members of the Club, were not allowed to examine or inspect the refund list. (A.991-992). As new equity members joined the Club, a portion of their equity fees (20%) went to the operational fund for the Club. (A.661). The remaining 80% went towards the purchase of the membership itself. (A.661-662). The funds used to purchase the membership (the 80%) were deposited in an escrow account. (A.80-81; A.662). This account did not exist prior to 2005. (A.80). Once the escrow account was established, money from the escrow account was used to refund resigned members when their membership certificate reached the top of the resigned member waiting list. (A.917).

## E. The Bylaws Prior to Litigation

Prior to the bylaw amendments that are the subject of this litigation, the bylaws of the Club included the following provisions:

> 3.1 EQUITY MEMBERSHIP
> An Equity Membership shall constitute ownership of an equity interest in the Club.
>
> [. . .]
>
> 3.2 EQUITY MEMBER
>
> 3.2.1 An Equity Member is the owner of an Equity Membership. . . The owner's name shall appear on the Equity Membership Certificate.
>
> [. . .]
>
> 3.8 RESIGNATION OF AN EQUITY MEMBERSHIP
>
> 3.8.1 The owner(s) of an Equity Membership may resign said Membership by submitting a written letter of resignation to the Board. Resignations received between August 31 and January 1 shall be effective thirty (30) days after the date of receipt of the resignation. A resignation received after January 1 shall be effective September 30. All resignations shall only be effective if the Member's account is current.
>
> 3.8.2 The resigned Equity Membership shall be placed on the Resigned Members Waiting List to be purchased by the Club. The resigned membership will be purchased at eighty percent (80%) of the equity portion of the Membership fee in effect as of the effective date of the resignation.
>
> [. . .]

3.11 LIQUIDATION OF EQUITY MEMBERSHIPS

In the event the Club's assets are liquidated, distribution of the proceeds therefrom to the Equity Members shall be pro-rated on the basis of the Member's equity value.

[. . .]

4.1 ANNUAL MEETING

An Annual Meeting of the Club's Equity Members shall be held on the fourth Monday in March, commencing in 2009, for the purposes of receiving reports of officer and others, to elect the Members of the Board, and for such other business as may be properly brought before the Meeting.

[. . .]

4.4 NOTICES FOR ANNUAL AND SPECIAL MEETINGS

The Club's Secretary shall give notice of Annual and Special Meetings by mail and/or electronic transmission, including e-mail and facsimile, at least fifteen (15) days, but not more than sixty (60) days prior to the date of such Meeting, to all Equity Members of the Club. The notice shall state the Meeting's place, date and time, and in the case of a Special Meeting, the purpose or purposes for which the Special Meeting is called. . .

4.5 QUORUM

The presence, either in person or by proxy, of Equity Members having more than fifty percent (50%) of the votes then entitled to be voted shall constitute a quorum at any Meeting of the Equity Members.

4.6 VOTING PERCENTAGE

A majority of the votes cast in person or by proxy is necessary for the passage of any motion, except as otherwise expressly provided herein.

[. . .]

7.7 NO ACTION REDUCING VALUE OF EQUITY MEMBERSHIP

No action shall be taken that will result in the reduction in the value of an Equity Membership or lessen the rights or privileges of any Member without the amendment of these bylaws.

[. . .]

ARTICLE 13 – AMENDMENTS

These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, only by a majority vote of all Board Members and a majority of votes cast by the Equity Members in person or by proxy at any duly called and constituted Annual or Special Meeting of the Club's Equity Members at which a quorum of Equity Members is present either in person or by proxy. The proposed amendment shall be set forth in the notice of the Meeting.

[. . .]

(A.230-242).

### F. The Bylaws After April 1, 2016

At or just prior to the annual meeting in March 2016, an amendment to the bylaws was voted on. (A.146-147; A.509; A.519). Resigned equity members whose certificates were still on the refund list were not given notice of this meeting, permitted to attend this meeting, or allowed to vote at this meeting. (A.135-136). Pursuant to the March 2016 vote, new bylaws were adopted, effective April 1, 2016, which made the following pertinent changes:

> 3.3.3 The number of votes for each Equity Membership that is in good standing shall be as follows:
>
> [. . .]
>
> For clarity, resigned members shall not be entitled to vote.
>
> [. . .]
>
> 3.7 CALCULATION OF REFUNDABLE AMOUNT
>
> 3.7.1 The Club currently offers Equity Memberships with a non-refundable equity portion of the Joining Fees. Nevertheless, if a resigned member is entitled to receive a refund of a percentage of the equity portion such member paid to the Club pursuant to the Prior Bylaws ("Refundable Equity Member"), the Club shall refund the Refundable Amount to such resigned member in accordance with these Bylaws. The "Refundable Amount" in each such case shall be equal to 80% of the equity portion of the Joining Fees the Club receives for the issuance of an Equity Membership to a new Equity

> Member, less any amounts still owed to the Club by the resigning member. Notwithstanding the preceding sentence, the Club shall not pay any Refundable Amount until the Joining Fees have been paid in full by the new member.

(A.282-283). The "equity portion" of the "Joining Fees" payable to resigned equity members was equivalent to 5% of the refundable amount due under previous bylaws. (A.612). No notice was provided to resigned equity members that their refunds were to be reduced prior to the Annual Meeting in March. (A.135-136). No notice was provided to resigned members after the meeting that the Club had altered the bylaws to reduce these refunds. (A.135-136). Resigned members were not allowed to vote on the amendment to the bylaws that "clarified" they would no longer be allowed to vote on future amendments. (A.282).

### G. The Sale of PGCC to Concert

PGCC entered into a Purchase and Sale Agreement ("PSA") with Concert Plantation, LLC ("Concert") which became effective on February 2, 2019 (A.1030). Due to the sale, PGCC ceased operating as a club and did not sell any new equity memberships. (A.1030). Concert did not offer equity memberships. (A.1030). As such, no

funds were added to the escrow account. (A.1030). Without new equity funds added to the escrow account, resigned memberships could not be refunded. (A.662-663; A.1030). Without previously resigned memberships being refunded, more recently resigned memberships could not move up the list towards a refund. (A.662-663). As part of the sale agreement, Concert agreed to pay the resigned equity members the reduced rate from the 2016 Bylaws, provided that those resigned members signed a release in favor of Concert and PGCC. (A.502, A.505-506, A.511).

### H. The Current Litigation

As former members of PGCC moved up the resignation waiting list, they received refunds that were 5% of the amount that had been promised to them when they left the Club based on the bylaws in effect at the time of their resignations and the letters sent to them post-resignation confirming the amount. (A.612). Some of these resigned members sued upon receipt of these reduced payments. (A.612). After filing their Fourth Amended Complaint, plaintiffs moved for and were granted class certification. (A.806-818). The class is composed of all "individuals (or their guardians or

representatives) who had an effective resigned equity membership before April 1, 2016, and who have not received their full refund amount" exclusive of defendants and former officers and directors of the Club. (A.816). Defendants appealed class certification and this Court affirmed certification on December 5, 2020. (A.819-835).

Plaintiffs moved for summary judgment on their claims for breach of contract, unjust enrichment, and fraudulent transfer. (A.836-877). Defendants moved for summary judgment on their affirmative defenses of release and waiver. (A.1010-1026). The trial court denied plaintiffs' motion for summary judgment finding that:

> The membership agreement does not contain an express right to a refund, but rather incorporated the by-laws by reference and expressly states that the by-laws are subject to amendment, without limitation. . .the Court finds that the resigned member's entitlement to a refund did not accrue until that member reached the number one spot on the waiting list.

(A.29). Defendants later moved for summary judgement on all counts. (A.1073-1104). At summary judgment, the counsel for PGCC argued that:

> The bylaws define "equity member" as the owner of an equity membership, and that's what these folks were. They still owned their equity membership until they were redeemed or purchased by the club when they reached the top of the waiting list.

(A.1252).

Based on these arguments, the trial court granted defendants' motion for summary judgment, finding that:

> PGCC did not breach the membership agreement(s) with the class members, because the alleged right to a refund exists solely in the Bylaws, which were always subject to amendment from time to time. The Court finds that the class members' status as resigned members is irrelevant because the membership agreements contemplated that the Bylaws could be amended regardless of a members' status. By way of example, all applicable versions of the Bylaws contained a liquidation clause that governed the respective members' right to a refund, if any, in the event PGCC's assets were sold. Pursuant to the Bylaws, each and every member of the class still owned an "Equity Membership" as long as they were on the resignation waiting list.

(A.18-19). The trial court did not address in either opinion on summary judgment how the determination that "Equity Memberships" included memberships still on the resignation waiting list impacted other provisions of the bylaws. (A.17-36). Defendant PGCC has maintained throughout the lawsuit that the bylaws were amended in accordance with the terms contained therein. (A.382; A.1254). The trial court denied plaintiffs' motion for a rehearing which sought to address some of the apparent

inconsistencies in the summary judgment rulings. (A.14; A.1314-1352).

## II. SUMMARY OF ARGUMENT

Plaintiffs' case was structured around two basic presumptions: first, that resigned equity members had ceased being members of the Club when their resignations became effective; second, that there was a binding contract between the plaintiffs and the Club. These presumptions were based on undisputed testimony and binding caselaw, respectively. The trial court's rulings on summary judgment upended both presumptions by finding that "Equity Members" included resigned members of the Club and that the contract between the plaintiffs and the Club was modifiable by the Club alone, *without limitation*. (A.18-19; A.29).

The trial court's finding that resigned equity members continued to be "Equity Members" for the purposes of the bylaws created an obvious issue with the defendants' case: if resigned members remained members until their certificates were repurchased from the Club, then they were entitled to the other

privileges of equity membership; namely, voting on bylaw amendments. Without a quorum of "Equity Members" (as defined by the bylaws), notice to all "Equity Members" (as defined by the bylaws), and the opportunity for all "Equity Members" to vote, the bylaw amendments that are the subject of this litigation were *ultra vires* and without effect. Thus, by its own ruling, the trial court erred by giving effect to *ultra vires* amendments to the bylaws.

Additionally, the finding that the contract between plaintiffs and the Club could be modified at any time on the sole discretion of the Club created an illusory contract provision because it allowed the Club to determine the amount of equity refunds (or if there was a refund at all) absent any consent by the individuals who were to receive the refund. The trial court thus committed legal error when it created an illusory contract clause where it was not required to. *See Bethany Trace Owners' Ass'n, Inc. v. Whispering Lakes I, LLC*, 155 So. 3d 1188, 1191 (Fla. 2d DCA 2014) (citations omitted).

Lastly, the trial court erred in ignoring another pivotal issue: the actions that defendants took to prevent resigned members from rising to the top of the equity refund waiting list and redeeming their equity certificates for refunds. Since PGCC sold to Concert

under an agreement that provided Concert would not issue any further equity memberships, there were no equity memberships sold after the transfer of ownership. This meant that new members were unable to buy equity certificates from the resigned member waiting list, which, in turn, meant that no one on the resigned member waiting list could move up the list. In effect, the sale of the Club rendered the condition precedent of getting to the first position on the list impossible. The trial court committed legal error by disregarding this argument. *See, e.g.*, *N. Am. Van Lines v. Collyer*, 616 So. 2d 177, 179 (Fla. 5th DCA 1993) ("A party who, by his own acts, prevents performance of a contract provision cannot take advantage of his own wrong.").

For these reasons, plaintiff class members respectfully request that this Court reverse the trial court's rulings on summary judgment and remand for further consideration.

## III. STANDARD OF REVIEW

Since summary judgment is reached only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, the standard of review is de novo. *See*

*Redington Grand, LLP v. Level 10 Prop., LLC*, 22 So. 3d 604, 607 (Fla. 2d DCA 2009). *See also*, *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074, n.4 (Fla. 2001) ("Summary judgments present a classic example of the type of decisions that are subject to the *de novo* standard of review.") (citation omitted). Further, in an appeal over a court's interpretation of a contract, an appellate court reviews a trial court's construction of the parties' agreement de novo. *Charlotte 650, LLC v. Phillip Rucks Citrus Nursery, Inc.*, 320 So. 3d 863, 865 (Fla. 2d DCA 2021).

This Court is "free to 'reach a construction or interpretation of the contract contrary to that of the trial court.'" *Id.* (quoting *Hester v. Fla. Capital Grp., Inc.*, 189 So. 3d 950, 955 (Fla. 2d DCA 2016)). "Where the interpretation or construction of a written instrument and the legal effect to be drawn from the instrument is at issue, the appellate court is not restricted in its ability to reassess the meaning and effect of the instrument, and the appellate court may reach a conclusion contrary to the conclusion of the trial court." *Smith v. Frontier Commc'ns Int'l, Inc.*, 805 So. 2d 975, 977 (Fla. 2d DCA 2001). *See also*, *Famiglio v. Famiglio*, 279 So. 3d 736, 739 (Fla. 2d DCA 2019) (contracts are reviewed de novo, and because

contract interpretation is a matter of law, the appellate court "is on an equal footing with the trial court's interpretation of the contract."); *Gemini Vent. Of Tampa, Inc. v. Hamilton Eng'g. & Surveying, Inc.*, 784 So. 2d 1179, 1180 (Fla. 2d DCA 2001) (same).

## IV. ARGUMENT

The trial court made three basic errors: 1) it declined to extend its finding that resigned equity members were still considered "Equity Members" to the entirety of the bylaws; 2) it rendered the refund provision in the bylaws illusory; and 3) it ignored the fact that defendants made it impossible for resigned members to ascend the refund list and obtain refunds.

### A. The Trial Court Found That the Membership Contract Included the Bylaws and That Class Members Were "Equity Members" for Purposes of the Bylaws.

The trial court made two findings, both of which were essential to the judgment: the first was that resigned equity members were still "equity members" for the purposes of the bylaws and the second was that the membership agreements included the bylaws. (A.18-19; A.29). Taken together, these two findings would cause the

errors in the judgment that the class members now complain of. Therefore, it is critical to examine these two findings and their underpinnings before proceeding deeper into the analysis of the trial court's rulings.

### 1. The trial court found that "Equity Member" as referenced in the bylaws constituted any person whose equity membership certificate had not been repurchased.

This case boiled down to whether the Club was permitted to amend its bylaws without the assent of the people who would be affected by that modification. Pursuant to the bylaws themselves, an amendment requires the participation and assent of the Board and the Equity Membership. (A.190; A.210; A.227; A.242). As the Board can only be comprised of Equity Members, then the real question is: who are the Equity Members? Who can make up the Board and who's quorum, notice, and majority votes are required for amendment?

The trial court reached a simple answer based on the wording of the bylaws themselves: "pursuant to the bylaws, each and every member of the class still owned an 'Equity Membership' as long as they were on the resignation waiting list." (A.19). This statement

finds support in the wording of the bylaws, which define an "Equity Member" as "the owner of an Equity Membership" whose name appears on the membership certificate. (A.178; A.197; A.231).

The bylaws provided that an Equity Member could resign from the Club at-will (subject to a minimal notice provision and effective date). (A.180, A.199, A.216). However, the bylaws limited the transfer of ownership of the equity certificates. (A.232). Other than certificates which were transferred as part of the sale of a residence, the bylaws provided that only the Club itself could repurchase equity certificates from resigned members. (A.232-233). The trial court found that the resignation did not affect membership status. (A.18-19). Resigned members remained "Equity Members" unless and until their membership certificates were repurchased by the Club. (A.19).

### 2. The membership agreements were contracts that included the bylaws.

Although perhaps not fully acknowledged by the trial court, the court's orders and verbiage recognized the bylaws as part of the membership agreement, which in turn, was a contract between members and the Club. (A.17-18; A.29). Thus, doctrines of

contractual construction and interpretation apply. *See, e.g.*, *Fiddlesticks Country Club, Inc. v. Shaw*, 363 So. 3d 1177, 1181 (Fla. 6th DCA 2023) (analyzing membership rights through the "lens" of a contractual relationship) (citing *Sult v. Gilbert*, 3 So. 2d 729, 731 (Fla. 1941); *Feldkamp v. Long Bay Partners, LLC*, 773 F. Supp.2d 1273, 1279 (M.D. Fla. 2011)).

"It is a generally accepted rule of contract law that, where a writing expressly refers to and sufficiently describes another document, that other document. . .is interpreted as part of the writing." *OBS Co., Inc. v. Pace Const. Corp.*, 558 So. 2d 404, 406 (Fla. 1990). Language that a contract is "subject to" another writing expressly incorporates that writing into the contract. *See Franzen v. Lacuna Golf Ltd. P'ship*, 717 So. 2d 1090, 1092 (Fla. 4th DCA 1998). In addition, other courts have found that when a membership agreement to a social club expressly references and includes the club's bylaws, those bylaws become a part of the membership contract. *See Share v. Broken Sound Club, Inc.*, 312 So. 3d 962, 972 (Fla. 3d DCA 2021).

In this case, it was not disputed, and was accepted by the trial court that the membership agreements between members and the

Club were enforceable contracts. (A.18; A.29; A.383). Further, the parties acknowledged that the membership agreements were "subject to" the Club's bylaws. (A.383). The trial court agreed that the bylaws were incorporated into the membership agreement "by reference." (A.29). Therefore, the bylaws were a part of the membership agreements which were contracts between the members and the Club. Thus, it is indisputable that the contract in this case between the members of PGCC and the Club itself included both the membership agreement and the bylaws.

Further, it was clear from the evidence submitted that equity members provided consideration to secure the right to a refund in their membership agreements. The Club offered both equity and non-equity memberships. (A.428-30). Equity members, in exchange for their one-time equity payment, received ownership in the Club and certain voting rights. (A.178; A.181; A.197-198; A.214-15; A.218; A.231). Each member of the class, based on the bylaws in effect at the time they joined the Club, also received the right to a refund of 80% of their equity buy-in. (A.180; A.199; A.216; A.233). As such, the equity refund was part of the contract between members and the Club.

As part of the membership contract, the equity refund provision was subject to change only by a valid contract modification. *See, e.g.*, *Fiddlesticks*, 363 So. 3d at 1181-82. It is true that "when a contract contemplates amendment at the outset, subsequent amendments are in accordance with, and not in violation of, the contract even though they alter it." *Id.* However, the corollary is also true: to effectively amend the governing documents, the corporation must abide by the then-current documents. *See, e.g.*, *Id.* at 1181-82 (parties may contract terms of modification, and when so contracted "it is not the province of the court to. . .relieve either party from the burden of that bargain by rewriting the document."); *Word of Life Ministry, Inc. v. Miller*, 778 So. 2d 360, 363-64 (Fla. 1st DCA 2001) (finding elections and votes to alter church's articles of incorporation were ultra vires because they failed to comply with the articles that were current); *Yarnall Warehouse & Transfer, Inc. v. Three Ivory Bros. Moving Co.*, 226 So. 2d 887, 890 (Fla. 2d DCA 1969) (A "corporation and its directors and officers are bound by and must comply with the charter and bylaws."). In other words, to effectively amend the bylaws, PGCC

had to comply with whatever set of bylaws were in effect at the time of the proposed amendment.

The bylaws, in all their versions, contemplated amendment via a majority vote of the Board Members and Equity Members. (A.242). Specifically:

> These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, only by a majority vote of all Board Members and a majority of votes cast by the Equity Members in person or by proxy at any duly called and constituted Annual or Special Meeting of the Club's Equity Members at which a quorum of Equity Members is present either in person or by proxy.

(A.242). As such, a majority vote of equity members was insufficient on its own: the vote had to occur at a duly constituted annual or special meeting where a quorum was present. (A.242). The provisions for annual and special meetings required notice to all Equity Members. (A.236). Only Equity Members were eligible to be Board Members (whose majority vote was also required for any amendment). (A.235). Lastly, the bylaws themselves required an amendment of the bylaws to reduce the value of an equity membership or lessen the rights or privileges of an Equity Member. (A.239). Therefore, for an amendment of PGCC's bylaws to have been valid, it would have required a majority vote of the Board and

the Equity Membership at a duly constituted annual or special meeting. (A.242). *See, e.g.*, *Fiddlesticks*, 363 So. 3d at 1181-82.

### B. The Ruling of The Trial Court Gave Effect To *Ultra Vires* Bylaw Amendments.

The trial court acknowledged that the bylaws were a part of the membership contract and found, based on a reading of those bylaws, that "Equity Members" included resigned members who still owned equity certificates. (A.19; A.29). However, the trial court declined to take issue with these same "Equity Members" not being permitted to vote or to receive notice of annual or special meetings. Therefore, in effect, the trial court treated "Equity Members" differently between different provisions in the bylaws. The issue with the trial court's interpretation is that if resigned members were "Equity Members" and were not permitted to vote on bylaw amendments, then the amendments – which required the votes of Equity Members – were *ultra vires* and without effect.

Interpretation of contracts is a matter of law and requires the trial court to "arrive at a reasonable interpretation of the text of the entire agreement to accomplish its stated meaning and purpose."

*Murley v. Wiedamann*, 25 So. 3d 27, 29 (Fla. 2d DCA 2009) (citation omitted). "When interpreting contractual provisions, courts 'will not interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so.'" *Bethany Trace Owners' Ass'n, Inc. v. Whispering Lakes I, LLC*, 155 So. 3d 1188, 1191 (Fla. 2d DCA 2014) (citations omitted). Rather, "courts must strive to interpret a contract in such a way as to give meaning to all provisions while doing violence to none." *Id.* *See also*, *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000) (relying on "the rule of construction requiring courts to read provisions of a contract harmoniously in order to give effect to all portions thereof.") (citing, in part *Paddock v. Bay Concrete Indus., Inc.*, 154 So. 2d 313, 315 (Fla. 2d DCA 1963)).

In this case, the trial court found that the "Liquidation Clause" in the contract gave support to counsel's argument that resigned members were "Equity Members" within the meaning of the bylaws until their membership certificates "were redeemed or purchased by the club." (*compare* A.1252 *with* DIN A.19). The trial court reasoned that:

> PGCC did not breach the membership agreement(s) with the class members, because the alleged right to a refund exists solely in the Bylaws, which were always subject to amendment from time to time. . .By way of example, all applicable versions of the Bylaws contained a liquidation clause that governed the respective members' right to a refund, if any, in the event PGCC's assets were sold. Pursuant to the Bylaws, each and every member of the class still owned an "Equity Membership" as long as they were on the resignation waiting list.

(A.18-19). The trial court overlooked the fact that these very same amendments required the votes of the "Equity Members." (A.242). If the "Equity Members" included the resigned class members whose membership certificates had not been repurchased or redeemed for the purposes of the liquidation clause, then it must have included these individuals for the purposes of the clauses relating to bylaw amendments, voting, notice, quorum, Board membership, etc. *See*, *e.g.*, *City of Homestead v. Johnson*, 760 So. 2d at 84.

However, it was not disputed that resigned equity members, even if they still possessed their membership certificates, were not permitted to vote on the amendments at issue in this lawsuit. (A.135; A.520; A.673-74; A.781; A.784; A.919; A.984). Further, resigned members were not provided any notice of impending meetings or the opportunity to attend. (A.136; A.523; A.566).

Resigned members were ineligible to sit on the Board, whose votes were also required for an amendment to pass. (A.993).

Therefore, no resigned members received notice of impending meetings or the opportunity to vote on any of the amendments that are at issue in this suit. Since "Equity Members" were prevented from voting and did not receive notice (and thus the votes did not take place at duly constituted meetings), the amendments were *ultra vires* and without effect. (A.242). *See, e.g.*, *Word of Life Ministry, Inc*, 778 So. 2d at 363 (citing *Yarnall Warehouse & Transfer,* 226 So. 2d at 890). *See also*, *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 506, 514-15 (Fla. 2008) (Finding that amendment of hospital bylaws was void without approval of 60% of medical staff as required by bylaws; special law abrogating this requirement was unconstitutional).

There is, of course the issue of the 2016 Bylaw amendment purporting to "clarify" that resigned equity members were not permitted to vote. (A.282). The trial court did not explicitly address this provision, but it does not affect the analysis of the trial court's decision. If the "clarification" was in fact an alteration masquerading as a clarification, then it is *ultra vires* along with the

rest of the bylaw provisions that were not voted on by resigned members. If it is indeed simply a recording of a long-standing practice, then it is subsumed in the analysis of the other critical error in the trial court's decision: that the trial court permitted members of a club to affect the rights of non-members absent their consent.

### C. The Trial Court Created An Illusory Contract Provision By Permitting The Refunds To Be Altered *Without Limitation*.

The trial court was required to give effect to all provisions of the membership contract if possible. *Bethany Trace Owners' Ass'n, Inc.*, 155 So. 3d at 1191. Instead, the trial court's interpretation of the phrase "without limitation" in the clause governing bylaw amendments rendered the other bylaw provisions guaranteeing equity refunds illusory.

When "interpreting contractual provisions, courts 'will not interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so.'" *Id.* (citing *Moore v. State Farm Mut. Auto. Ins. Co.*, 916 So.2d 871, 877 (Fla. 2d DCA 2005); and *Publix Super Markets, Inc. v.*

*Wilder Corp. of Del.*, 876 So.2d 652, 654 (Fla. 2d DCA 2004)). Interpretation of contracts is a matter of law, rather than an issue of fact, and "courts must construe contracts in such a way as to give reasonable meaning to all provisions, rather than leaving part of the contract useless." *SHM Cape Harbour, LLC v. Realmarket META, LLC*, 335 So. 3d 754, 759 (Fla. 2d DCA 2022) (citations and quotations omitted). Courts should choose an interpretation that gives effect to the entire contract "over an alternative interpretation that relies on negation of some of the contractual provisions." *Nishman v. Stein*, 292 So. 3d 1277, 1280-81 (Fla. 2d DCA 2020) (citations omitted).

### 1. The trial court chose an interpretation of the membership contract that rendered the refund provision illusory and therefore meaningless.

The trial court found, based on the wording of the membership agreement, that the bylaws were subject to amendment "*without limitation*." (A.18; A.28). The trial court took this phrase to its farthest reach, finding that the Club did not need the participation of resigned members in altering their contracts, nor did it even need to provide notice of the amendments. Whether to pay refunds and how much to refund was left in the sole discretion of the Club, and

this rendered any refund provision illusory. *See Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984).

It is well established that where "only one party retains to itself the option of fulfilling or declining to fulfill its obligations under the contract, there is no valid contract and neither side may be bound." *Univ. of S. Fla. Bd. Of Trs. v. Moore*, 347 So. 3d 545, 548 (Fla. 2d DCA 2022) (quoting *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984)). Further, a unilateral modification of a contract is per se unenforceable. *SCG Harbourwood, LLC v. Hanyan*, 93 So. 3d 1197, 1200-1201 (Fla. 2d DCA 2012). Yet, the trial court reached an interpretation of the contract that gave one party (the payor) the sole discretion on whether to pay a refund and how much to pay. Further, the trial court permitted the enforcement of the reduction in refund amounts against resigned members. This, in essence, gave effect to a unilateral modification.

Resigned equity members were not allowed to vote on bylaw amendments. (A.135; A.520; A.673-74; A.781; A.784; A.919; A.984). Resigned equity members were not even provided any notice of impending meetings or the opportunity to attend. (A.136; A.523; A.566). Further, resigned equity members could not sit on the

Board, whose majority vote was required to pass an amendment. (A.993). As such, resigned equity members were completely and utterly disenfranchised from the amendment process.

Without the inclusion of resigned equity members, the Club and its then-current members were able to vote to reduce the refund amounts owed to the resigned equity members by 95% without any input from the resigned equity members who would be affected. (A.135; A.520). This created a situation where one party (the current membership/the Club) retained the "option of fulfilling or declining to fulfill its obligations under the contract." *Moore*, 347 So. 3d at 548. As such, the trial court's construction of the contract rendered the refund provision illusory because it permitted one party to alter the provision without the consent of the other. *See SCG Harbourwood, LLC*, 93 So. 3d at 1200-1201 (contract modification requires the consent of both parties to the modification). Under the trial court's interpretation, the Club was allowed to amend the bylaws *without limitation* and enforce these amendments against former members who had not consented to the change.

### 2. There was an alternate interpretation that did not render the refund provision illusory.

If courts are not to "interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so," the implication is that there must be a reasonable interpretation available to the court. *Bethany Trace Owners' Ass'n, Inc.*, 155 So. 3d at 1191. In this case, there was an alternate interpretation of the membership contracts that would not have rendered the refund provisions illusory. Such an interpretation would have also rendered the contract provisions harmonious and would have conformed with the evidence. That interpretation was the one that the class members advocated for: viewing resigned members as non-members of the Club and not applying post-hoc bylaw changes to individuals who had ceased to be members.

Class members had significant evidentiary support for this interpretation. Testimony was uncontroverted that Club members ceased being members once they resigned from the Club. (A.135; A.674; A.919-920). The corporate representative for PGCC provided deposition testimony that resigned members were no longer

members of the Club. (A.135: "But they were resigned members. They were no longer members of the club."). Former Club Board member Tom Kubik stated the same. (A.984). In its Answer, PGCC averred that the Club's bylaws were followed during the amendment process, which would be accurate if resigned equity members were not members and therefore were not required for votes on bylaw amendments. (A.383).

Indeed, plaintiffs argued this case under the assumption that resigned members were not Club members based on these representations in the record. (A.811; A.862; A.1134; A.1136). However, the trial court's ruling that the term "Equity Members" included resigned equity members put this at issue. (A.19). Plaintiffs tried unavailingly to have the trial court reconsider this inconsistency. (A.14; A.1314-1352).

As plaintiffs argued: if resigned members were no longer members of the Club, then any bylaw amendments that took place after their resignation could not be applied to them. (A.811; A.862; A.1134; A.1136). The amendments would be valid as to then-current members but would not have the effect of reducing refunds for members who had already resigned. Likewise, the sale of PGCC

to Concert would be valid. However, since the sale would have rendered the condition precedent of rising to the top of the resigned equity member waiting list impossible, defendants would have been unable to profit from that impossibility. *See infra* § IV.E. *See also, N. Am. Van Lines v. Collyer*, 616 So. 2d 177, 179 (Fla. 5th DCA 1993).

This interpretation would have rendered the contract provisions consistent throughout, with "Equity Member" read as consistently excluding resigned equity members in each provision of the bylaws. However, this is not to say that the plaintiffs' interpretation would have rendered the Bylaws unmodifiable. Pursuant to their terms (and under this theory), the bylaws could have been modified by the active Equity Members. *See, e.g.*, *Fiddlesticks*, 363 So. 3d at 1181-82. The issue is that defendants wish to have their cake and eat it, too; with resigned Equity Members being member enough to be subjected to the bylaw amendments and liquidation clause, but not member enough to vote on amendments that impact them or vote on sales of the Club that render the liquidation clause meaningless.

In essence, current members were permitted to vote on the money owed to resigned members as well as the rights attendant in

resigned membership without the input or consent of those resigned members. As the trial court described it: "the class members' status as resigned members is irrelevant because the membership agreements contemplated that the Bylaws could be amended regardless of a members' status." (A.18-19). However, this permitted the current members of the Club – who owed the debts to resigned members – to reduce the amount of that debt by 95%. (A.612). In other words, it permitted one party (the payor) to determine how or whether to comply with their obligation to the other party (the payee) *without limitation*. This is a classic illusory contract provision and void as a matter of law. *See Pan-Am Tobacco Corp.*, 471 So. 2d at 5.

### D. The Court Erred In Finding That The Class Members' Status As Resigned Members Was Irrelevant.

Who constituted an "Equity Member" for purposes of the bylaws became a critical issue for this case. If the resigned members were "Equity Members" as defined within the bylaws (and as the trial court determined), then they should have retained the rights of equity members. If, however, class members ceased being

equity members when they resigned from the Club (as stated by PGCC's corporate representative, and as confirmed by additional testimony), then the bylaws of a private, member-only social club could not be expanded to affect non-members.

Curiously, however, the trial court found that membership was a distinction without a difference and ruled that "the class members' status as resigned members is irrelevant because the membership agreements contemplated that the Bylaws could be amended regardless of a members' status." (A.18-19). While the bylaws could always have been amended in accordance with their terms, this is not to say that the governing documents of a private organization can be read to reduce the rights of people who are not members of the organization.

### 1. Just as a contract can only bind parties to the contract, the bylaws of a club can only regulate the members of the club.

As discussed, the bylaws and governing documents of a private social club (or similar nonprofit corporation) are interpreted in accordance with applicable principles of contract law. *See Fiddlesticks*, 363 So. 3d at 1181 (citing *Sult v. Gilbert*, 3 So. 2d 729, 731 (Fla. 1941); *Feldkamp v. Long Bay Partners, LLC*, 773 F. Supp.

2d 1273, 1279 (M.D. Fla. 2011)). It is a bedrock principle of contract law that a contract can only bind those who are parties to the contract. *See, e.g.*, *City of Tampa v. Thornton-Tomasetti, P.C.*, 646 So. 2d 279, 282 (Fla. 2d DCA 1994) ("Unless a contract is entered into for the direct and substantial benefit of a third party, it binds and benefits only the parties themselves."); *Onderko v. Advanced Auto Ins., Inc.*, 477 So. 2d 1026, 1028 (Fla. 2d DCA 1985) (A signature on a contract cannot bind the signor unless he is a party to the contract) (citing *Delta Air Lines, Inc. v. Wilson*, 210 So.2d 761 (Fla. 3d DCA 1968)). *See also*, *State v. Citrus Cnty.*, 157 So. 4, 6 (Fla. 1934) ("The obligation of a contract, whether a bond or otherwise, is defined as the law or duty which binds the parties to perform their agreement.").

The same is true for the modification of an existing contract. *See SCG Harbourwood, LLC*, 93 So. 3d at 1200-1201 ("Any subsequent modification requires consent and a meeting of the minds of the parties to the contract whose rights or responsibilities are sought to be affected by the modification.") (citation omitted). *See also*, *Newkirk Constr. Corp. v. Gulf Cnty.*, 366 So.2d 813, 815 (Fla. 1st DCA 1979) ("Modifications of contracts must be supported

by new consideration as well as the consent of both parties."). Therefore, it is analogous that a social club or other similar nonprofit corporation can only bind its members to changes of its governing documents. *See Share v. Broken Sound Club, Inc.*, 312 So. 3d 962, 972 (Fla. 3d DCA 2021) (finding that when a membership agreement to a social club expressly references and includes the club's bylaws, those bylaws become a part of the membership contract).

This view of Club membership comports with Florida law. A "member" of a nonprofit corporation is one who has "membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws or the provisions of [state law]." Fla. Stat § 617.01401(12). Members are, broadly speaking, subject to the bylaws so long as the bylaws comport with the law. *See, e.g.*, *Boca West Club v. Levine*, 578 So. 2d 14, 16 (Fla. 4th DCA 1991). It is well established that Florida law provides social organizations the right to regulate their own membership. *See Cat Cay Yacht Club, Inc. v. Diaz*, 264 So. 3d 1071, 1075 (Fla. 3d DCA 2019). This includes rules relating to the expulsion or removal of members. *See Boca West Club*, 578 So. 2d at 16. The obvious corollary is that

non-members are in no way bound by the edicts of membership. After all, membership is a privilege rather than a right, "terminable at the will of either the group or the individual." *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 266 (Fla. 4th DCA 1980). As such, a non-member can neither bound by the bylaws of an organization she is not a member of nor consent to the change of those bylaws.

Not only does the contention that club bylaws can only bind those who are subject to the bylaws (i.e. members of the club) comport with the law, it comports with the facts of this case. When members of PGCC resigned from the Club, they were sent letters that confirmed the effective date of their resignation and the amount of their equity refund. (A.295-363). As recognized by the trial court, the amount of their equity refund was ascertainable because it was calculated based on the bylaws in effect at the time of their resignation. (A.26).

Further, these letters evidence the assumption of the parties that this amount was not subject to change, else how could it have been fixed? Rather these letters show that PGCC was, at one point,

comporting with Florida law by not attempting to enforce post-hoc bylaw amendments on individuals who had already left the Club.

### 2. The fact that resigned Club members were treated as non-members distinguishes this case from other caselaw.

The issue of Club membership and whether it encompasses resigned equity members also impacts whether related caselaw is applicable to the facts at bar. There have been numerous judicial opinions reiterating that members are not protected from legitimate bylaw changes that impact their rights or increase their costs. The trial court looked to *Hamlet Country Club v. Allen* and *Share v. Broken Sound Club* as instructive. (A.19; A.28-29). *See Hamlet Country Club v. Allen*, 622 So. 2d 1081, 1082-83 (Fla. 4th DCA 1993); *Share v. Broken Sound Club, Inc.*, 312 So. 3d 962, 970 (Fla. 4th DCA 2021). However, if the testimony of PGCC's corporate representative is credited (along with the testimony of other witnesses), then resigned equity members were not members and these cases are easily distinguished. (A.135 ("But they were resigned members. They were no longer members of the club.")). Further, resigned equity members had no rights in the Club, which

under Florida law, would appear to render them non-members. *Compare* (A.984) *with* Fla. Stat § 617.01401(12).

The trial court found *Hamlet* instructive. (A.19; A.28-29). In *Hamlet*, the bylaws of a country club were allegedly unclear about the redemption rights of members upon resignation. *Hamlet*, 622 So. 3d at 1082. In 1986, the members voted to amend the bylaws to clarify the redemption rights. *Id.* Two years later, certain members sued to redeem their memberships (in violation of the then-existent bylaws) and the Fourth District Court of Appeals found that they were not able to do so, because the bylaws had not created a vested right to redemption. *Id.* at 1083. Importantly, however, the plaintiffs in *Hamlet* were still members of the club when they sued and, indeed, had been members when the membership voted to amend the bylaws to clarify their redemption rights. Such is not the case here.

*Share* poses a similar situation. Ms. Share was sued by the Broken Sound Club after she ceased paying her annual dues. *Share*, 312 So. 2d at 968-69. Ms. Share asserted in a counterclaim that her dues had been increased in violation of the bylaws. *Id.* at 969. The Fourth District found that, not only did the bylaws provide

the club's Board with the authority and ability to effect such changes to the membership plans, but that such changes were reasonable and made in good faith. *Id.* at 971-72. Ms. Share, still a member at the time of the suit, had "agreed to be bound by the Club's Bylaws, and the Bylaws expressly state that they may be amended. *Id.* Therefore, Share is bound by the amendments to the 2004 Bylaws." *Id.* at 972. Again, Ms. Share was a member prior to, during, and after these bylaw changes.

Although not relied on by the trial court, another recent opinion from the Sixth DCA follows similar logic. In *Fiddlesticks Country Club, Inc. v. Shaw*, the court looked to the governing documents of a deed-restricted golfing community to analyze whether "the Homeowners had a vested contractual right to the terms of the bylaws in place at the time they purchased their Equity Certificates such that the Club was prohibited from levying a nonrefundable assessment against them." *Fiddlesticks*, 363 So. 3d at 1181. Finding that the bylaws did not fix or vest a specific redemption rate for equity certificates, the court cited to *Share* in finding that "a private club's bylaws did not create vested rights where the bylaws were subject to amendment." *Id.* at 1182. (This, of

course, presumes that the bylaws were amended in accordance with the agreed-upon provisions for amendment. *Id.* at 1181-82.) Unlike the circumstances of this case, the plaintiffs in *Fiddlesticks* were all still members of the club and homeowners in the community when they sued and had been members and homeowners when the bylaw amending votes took place. *Id.* at 1179-1180.

Each of these three cases involved active, voting, participating members of organizations being subjected to the valid bylaw amendment processes for their respective organizations – processes that they had assented to when they joined. *See Hamlet*, 622 So. 3d at 1082; *Share*, 312 So. 2d at 971-72; *Fiddlesticks*, 363 So. 3d at 1179-1180. Such was not the case with the class member plaintiffs. (A.135; A.520; A.673-674; A.781; A.784; A.919; A.984). Although the plaintiffs assented to bylaw modifications when they joined PGCC and would have been bound by any such modifications that occurred while they were members, they were no longer members of the Club when the bylaw amendments at issue took place. (A.135 ("But they were resigned members. They were no longer members of the club."); A.984). *See* Fla. Stat § 617.01401(12).

As resigned members, they could not vote on these bylaw amendments, and indeed did not even receive notice that the amendments were set to occur. (A.135-136; A.520; A.523; A.566; A.673-674; A.781; A.784; A.919; A.984). As such, they could not consent to any modifications of the contract between them and the Club, as represented by their membership agreement. *Compare Share*, 312 So. 2d at 971-72 *with SCG Harbourwood, LLC*, 93 So. 3d at 1200-1201 ("Any subsequent modification requires consent and a meeting of the minds of the parties to the contract whose rights or responsibilities are sought to be affected by the modification."). Further, since members were already resigned, they had no option to leave the Club prior to the bylaw amendments going into effect to avoid the impact of the bylaw amendments.

Alternatively, if, as the trial court found, resignation did not terminate membership, then the class members remained "Equity Members" so long as they retained their membership certificates and should have been permitted notice of and the right to vote on bylaw amendments. The trial court attempted to avoid inequity by finding that resigned equity members *were* in fact still "Equity Members" of the Club post-resignation. Yet, the trial court neglected

to extend the impact of that finding to the rest of the bylaws, which would have required a majority vote of "Equity Members" (including resigned equity members) to amend the bylaws. *See supra* § IV.B.

Thus, far from being "irrelevant," the membership status of the class members was pivotal. (A.18-19). Each class member had resigned from the Club prior to the bylaw amendments that reduced their refunds going into effect. (A.816). If this resignation terminated their membership (as attested by PGCC's corporate representative), then the subsequent bylaw amendments could not be applied to resigned members. Membership was not irrelevant: it became the crux of the issue.

### E. The Court Erred In Failing To Address The Acts Defendants Took To Render It Impossible To Receive An Equity Redemption.

Regardless of plaintiffs' contentions as to whether the bylaws were properly amended and whether those amendments could be imposed post-hoc against non-members, the trial court effectively found that these considerations were moot. The trial court ruled that plaintiffs were not entitled to a refund of their equity memberships until they reached the top of the equity refund waiting

list and had their memberships repurchased by the Club. (A.19; A.29). In other words, whether PGCC unlawfully reduced the refund amounts (either by changing the bylaws without the consent of the resigned members or by enforcing changed bylaws against non-members) would be a moot point for a majority of class members who did not, in fact, reach the top of the waiting list and have their membership certificates repurchased.

However, this finding overlooks another fundamental aspect of contract law: a party cannot render impossible a condition precedent and then cite the failure to meet that condition as a defense to liability. *See Head v. Sorensen*, 220 So. 3d 569, 573-74 (Fla. 2d DCA 2017) (citing *Paparone v. Lake Placid Holding Co.*, 483 So. 2d 155, 157 (Fla. 2d DCA 1983)). In other words, a "party who, by his own acts, prevents performance of a contract provision cannot take advantage of his own wrong." *N. Am. Van Lines v. Collyer*, 616 So. 2d 177, 179 (Fla. 5th DCA 1993). Yet, this is exactly what happened in this instance.

The trial court ruled that reaching the top of the waiting list and having their membership repurchased by the Club were preconditions to class members receiving an equity refund. (A.19;

A.29). While this may be a fair interpretation of the refund rights of resigned members, the trial court ignored *why* class members had not reached the top of the refund list.

Based on a majority vote by its then-active membership, PGCC decided to sell the Club and its amenities to Concert Plantation, LLC. (A.146-147; A.509; A.519; A.1030). Resigned members did not receive notice of this vote and were not permitted to participate in it. (A.135-136; A.918; A.984). As a condition of the sale, Concert would no longer offer equity memberships. (A.1030). With no new equity memberships for sale, resigned equity members on the resignation waiting list were unable to advance up the list as membership certificates were repurchased. (A.662-663). Thus, it became impossible after the sale for a resigned equity member to advance to the first position on the list and have their certificate repurchased (what the trial court found was a prerequisite to receiving a refund).

This impossibility was orchestrated by PGCC and Concert, absent the notice, input, or consent of resigned members. PGCC and Concert eliminated the possibility that any resigned equity members could move up the refund list to receive refunds, thereby

rendering impossible a condition precedent. (*Compare* A.142; A.487; A.531-32; A.536; A.569-570; A.662-663 (discussing conditional or "contingent" liabilities) *with* A.1030). Florida law mandates that defendants cannot now use the failure to meet a condition precedent as a defense to their liability. *Head v. Sorensen*, 220 So. 3d 569, 573-74 (Fla. 2d DCA 2017). Thus, the trial court erred by crediting this failing of a condition precedent as a reason that the contract had not been breached. *Id.*

## V. CONCLUSION

The trial court created an obvious conundrum when it ruled for the defendants on summary judgment. By declaring that resigned members were still "Equity Members" of the Club unless and until their membership certificates were repurchased by the Club, the trial court avoided enforcing retroactive, post-hoc bylaw changes against individuals who were no longer members of the Club. However, the trial court overlooked the implication of its ruling on "Equity Members" in that if these individuals remained members of the Club until their membership certificates were repurchased, then they were entitled to the rights of equity

membership. This would have meant that their votes would have been required to affect the bylaw changes that were at issue in this case. It is uncontroverted that they were not permitted to vote.

Thus, the trial court either ratified *ultra vires* bylaw amendments; or, if it was wrong on the membership status issue, permitted a members-only club to make rule changes that affected the rights of non-members. Regardless, the trial court created a situation where money was owed and the entity that owed that money was permitted to declare how much it owed and if and when it would pay. That created an illusory contract provision where it was not necessary to do so. Lastly, the trial court overlooked the issues caused by the structure of PGCC's sale to Concert and the elimination of equity memberships. By eliminating future equity memberships, the defendants created a situation where previously resigned members could not move up the equity refund list and redeem their equity certificates. Thus, they rendered a condition precedent impossible while simultaneously benefitting from the condition not being met.

Such rulings were incompatible with Florida law and the facts of this case and must be reversed and remanded for consideration in line with current jurisprudence.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Initial Brief of Appellant* was served on counsel for Appellees via the Florida E-filing portal, which effectuated service of a true and correct copy of the above.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Initial Brief complies with the Florida Rules for Appellate Procedure because it contains 9,793 words and was drafted in Bookman Old Style 14-point font.

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