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August 23, 2017

VIA FIRST CLASS MAIL and EMAIL (lizshaw@delaire.org; ckarpel@delaire.org)

Board of Governors
Delaire Country Club
4645 White Cedar Lane
Delray Beach, Florida 33445

Re: Mr. Brecker's Position on Appeal

Dear Board of Governors:

Our firm represents Manfred Brecker ("Mr. Brecker") in connection with the grievance charge initiated by Delaire's President Curtis Karpel, dated June 23, 2017, against Mr. Brecker (the "Karpel Grievance"), and the Grievance Committee's recommendation, dated July 26, 2017, to suspend Mr. Brecker for one year in connection thereof. On July 28, 2017, Mr. Brecker, pursuant to Art. XIV(5) of the Bylaws, filed his formal notice of appeal of the Grievance Committee's recommendation.

The purpose of this correspondence is, in advance of the August 28, 2017 hearing on the appeal, to set forth the reasons why the Board of Governors should reject the Grievance Committee's recommendation. On July 10, 2017, Mr. Brecker tendered his written submission to the Grievance Committee in support of his position why the Karpel Grievance should be dismissed. A copy of the July 10, 2017 correspondence is attached hereto as **Exhibit "A,"** and incorporated herein.

As will be explained in further detail below, in contravention of Florida law, Mr. Brecker's suspension was not fair, reasonable, or carried out in good faith. Specifically, and as discussed in further detail below, the following issues present an obvious problem for Delaire: (1) the Grievance Committee did not have jurisdiction to entertain the Karpel Grievance; (2) the Karpel Grievance is based on an inapplicable standard; (3) Mr. Brecker's due process rights were violated; (4) a suspension for the complained of conduct is an infringement on Mr. Brecker's right to free speech; (5) a suspension for the complained of conduct is an infringement on Mr. Brecker's right to commence litigation; (6) Donald Snyder, a member of the Grievance Committee, called Mr. Brecker an "asshole" during the hearing casting doubt on the impartiality of the entire Grievance Committee; (7) Grievance Committee members constant interruptions during Mr. Brecker's questioning of Mr. Karpel, and the Grievance Committee's refusal to allow Mr. Brecker with the ability to cross examine Mr. Karpel on issues Mr. Karpel raised in the Karpel Grievance; and (8) Mr. Karpel's personal vendetta against Mr. Brecker, and his refusal to excuse himself from these proceedings.

The Karpel Grievance

As way of a brief background, it is important for the Board of Governors to understand precisely the basis of the Karpel Grievance. A copy of which is attached hereto as **Exhibit "B."** The Karpel Grievance is based on allegations that Mr. Brecker's conduct in (1) authoring his

website; and (2) filing a small claims lawsuit against Delaire are "injurious to the peace, tranquility, common welfare, and congenial social relationships between the Club and its membership."

A. The website - Delairegovernance.com

Delairegovernance.com is a website that was created and funded by Mr. Brecker. The website is not intended on being anything other than informative, and as a means to allow other members an opportunity to analyze certain core issues surrounding Delaire. The website is not commercial in nature. At its core, the website is intended to inform members of the truth of certain aspects of Delaire so that real and positive change can occur at Delaire, which would be a benefit to all members. A key aspect of the website being increased transparency between Delaire and its members. The website was not and is not intended to harm Delaire in any way, and Delaire has not presented any proof that the website has harmed the Club in any way.

In the Karpel Grievance, Mr. Karpel incorrectly states that Mr. Brecker had the intent, in creating the website, to cause a negative effect on the home sales in Delaire. Mr. Karpel basis this statement on an e-mail communication from Mr. Brecker whereby Mr. Brecker indicates that the content on the website is consistent with what Mr. Brecker believes; that is, that Delaire needs positive change so that members' home values can rise to the appropriate levels. Mr. Karpel takes Mr. Brecker's comments completely out of context, and twists them in a way to somehow suggest that the website itself is the cause in some decrease in home sales. Mr. Karpel's interpretation is simply wrong.

Yet still, even if the website is the cause of a decrease in home sales, Mr. Karpel offered nothing to prove that: (1) Mr. Brecker knew that the website would cause such a decrease; (2) there is a proven correlation between the website and decrease in home sales; or (3) that other factors are not the cause of the decrease in home sales.

Despite the foregoing, Mr. Karpel has made the decision, and the Grievance Committee has followed suit, to bring a grievance charge against Mr. Brecker for Mr. Brecker doing what he believes is in the best interests of the Club.

B. The lawsuit - *Brecker v. Delaire*

Mr. Brecker had previously made a statutory request for certain corporate documents. Delaire, however, did not respond to Mr. Brecker's request; thus, Mr. Brecker was forced to retain counsel. Mr. Brecker's counsel, after being promised payment for his services from Mr. Brecker, made a request to Delaire for the same documents Mr. Brecker had requested without the attorney's assistance. Only then, did Delaire produce the documents which Mr. Brecker is statutorily obligated to receive. Because of Delaire's refusal to provide the documents to Mr. Brecker after his initial (albeit without the assistance of counsel) demand, Mr. Brecker was forced to pay his attorney. Mr. Brecker then filed a small claims action against Delaire to recoup the damages he sustained as a result of Delaire's reluctance to respond to his initial request for the documents.

This lawsuit was filed pro se (without an attorney), and merely sought a few thousand dollars. Nevertheless, and despite the fact that but for Delaire the lawsuit would never had to have been filed, Mr. Karpel asserts that Mr. Brecker's conduct in filing the lawsuit was grounds for disciplinary action against Mr. Brecker. Essentially, Mr. Karpel believes, and the Grievance Committee apparently agreed, that if you file a lawsuit against Delaire, you should be suspended from the Club.

Basis for the Board of Governors to Ignore/Reject the Grievance Committee's Recommendation to Suspend Mr. Brecker for One year

The following are the reasons why the Board of Governors should ignore/reject the Grievance Committee's recommendation to suspend Mr. Brecker for one year:

A. Lack of Jurisdiction

The Grievance Committee has expressly denied nearly two identical grievances in the past. Moreover, the Grievance Committee took a clear and unequivocal position on jurisdiction less than 2 months before the Grievance Hearing by stating that it "only has jurisdiction over disputes between members that occur on Club or POA property or at events outside the confines of Delaire that are sponsored by the Club." *See* July 10, 2017 Correspondence, at Exhibit "A." Despite the same, the Grievance Committee ignored the prior decisions and rationale, and determined that it had jurisdiction over the Karpel Grievance. Based on the Grievance Committee's clear selective enforcement against Mr. Brecker, the procedure used to suspend Mr. Brecker was not fair, reasonable or carried out in good faith.

See the July 10, 2017 Correspondence (Section B), attached hereto as Exhibit "A," for a more detailed analysis.

B. The Karpel Grievance is Based on an Inapplicable Standard

The Karpel Grievance is based on allegations that Mr. Brecker's conduct is "injurious to the peace, tranquility, common welfare, and congenial social relationships between the Club and its membership." No such provision or standard exists in the Bylaws. As a result, it was unfair, unreasonable, and in bad faith to suspend Mr. Brecker for one year based on such an inapplicable standard. This is another example of the selective enforcement against Mr. Brecker.

Mr. Karpel, in support of his grievance, relies primarily on the case of *Barfield v. Florida Yacht Club*. According to Mr. Karpel, *Barfield* "stands for the proposition that courts leave to the members of a private social club, like Delaire, the right to determine if a member's action has been such that in the club's opinion, such action has interfered with the 'pleasant, friendly and congenial' social relationship between the members." Karpel Grievance, at p. 2. Mr. Karpel apparently cited *Barfield* to try and show the Grievance Committee that there is no concern that a court could interfere with and/or analyze whether Mr. Brecker was lawfully suspended. The *Barfield* case, however, is flawed in that: (1) *Barfield* was decided after Chapter 617 was amended to include the

statute expressly stating that a decision to suspend must be made "pursuant to a procedure that is fair and reasonable and is carried out in good faith;" (2) *Barfield* is factually distinguishable because the member suspended in *Barfield* filed a lawsuit against the club for an amount that exceeded the club's liability insurance; (3) the membership at issue in *Barfield* was not tied to property ownership, nor was it a mandatory membership; and (4) the club's bylaws in *Barfield* expressly stated that a member could be expelled for any conduct that "is likely to endanger the welfare, interest or character of the club"; however, no such language exists in Delaire's Bylaws.

See the July 10, 2017 Correspondence (Section C), attached hereto as Exhibit "A," for a more detailed analysis.

C. Mr. Brecker Did Not Have the Specific Intent to Harm the Club and its Members

Despite the Karpel Grievance stating an inapplicable standard, the Grievance Committee decided that the basis for the suspension was due to Mr. Brecker "creating the website and posting negative information about the Club on that website for the specific purpose of trying to harm the Club and its members and also by filing the frivolous lawsuit against the Club." This was a clear error on the part of the Grievance Committee.

Mr. Brecker, in forming his website, had the intent of providing full transparency to the members, so that positive change could be made at Delaire. At no time, has Mr. Brecker sought to harm the Club or its members. The e-mail communications the Grievance Committee purportedly relied on do not evidence Mr. Brecker's purported intent on harming the Club. Instead, the e-mails show merely that Mr. Brecker believes that other people are seeing things the same way he is seeing things, and that something needs to be done to change the problems at Delaire.

D. Mr. Brecker's Due Process Rights Have Been Violated

Fla Stat., § 617.0206 provides that the bylaws cannot contain a provision that is inconsistent with the law. Section 617.0206, Florida Statutes, coupled with Florida case law analyzing a members' rights, provides that Mr. Brecker has certain due process rights in connection with the manner in which the grievance proceedings were conducted. Mr. Brecker's due process rights were violated by: (1) Delaire refusing to allow Mr. Brecker the right to have his counsel serve as counsel in the proceeding; (2) Delaire refusing to allow Mr. Brecker with the right to record the grievance hearing; (3) Delaire refusing to allow Mr. Brecker with a reasonable opportunity to cross examine the witness;[1] and (4) Delaire allowing grievance committee members to appear by phone (instead of in person)[2].

[1] The Grievance Committee would not allow Mr. Brecker with the opportunity to cross examine Mr. Karpel in relationship to the *Barfield* case, despite that Mr. Karpel cited the *Barfield* case extensively in and attached it to the Karpel Grievance.

[2] Four Grievance Committee members, including the chairman, appeared by phone.

Delaire's violations of Mr. Brecker's due process rights are further evidence that the procedure used to suspend Mr. Brecker was not fair, reasonable, or carried out in good faith.

See the July 10, 2017 Correspondence (Section D), attached hereto as Exhibit "A," for a more detailed analysis.

E. Mr. Brecker's First Amendment Right to Free Speech

Accepting the Grievance Committee's recommendation to suspend Mr. Brecker for one year for what can be best described as a member voicing his frustration with Delaire is anything but fair, reasonable, or in good faith. As set forth in detail in the July 10, 2017 correspondence, it is undeniable that Mr. Brecker enjoys the constitutional right to free speech. Towards that end, Fla. Stat., 617.0206 provides that the Bylaws may not contain any provision inconsistent with Mr. Brecker's right to free speech. Thus, it is improper to uphold the Grievance Committee's recommendation to suspend Mr. Brecker for exercising his right to free speech.

See the July 10, 2017 Correspondence (Section E), attached hereto as Exhibit "A," for a more detailed analysis.

F. Mr. Brecker's Right to Commence Litigation

In filing the small claims lawsuit against Delaire, Mr. Brecker was merely trying to recoup his legal fees he incurred as a direct result of Delaire refusing to comply with his initial demands for certain documents which he had a statutory right to inspect. Stated differently, but for Delaire playing games with Mr. Brecker and ignoring his pro se requests; thus, forcing Mr. Brecker to retain counsel, the lawsuit would have never been filed. The Grievance Committee decided that the filing of the small claims lawsuit was worthy of a 1 year suspension, despite that Delaire has never suspended a member merely because they filed a lawsuit against Delaire – something each member has a right to do. This is another example of Delaire's selective enforcement against Mr. Brecker.

See the July 10, 2017 Correspondence (Section F), attached hereto as Exhibit "A," for a more detailed analysis.

G. Impartiality in the Proceedings

Impartiality is consistently used as a basis for overturning a fact finder's decision. Stated another way, when a judge/juror/arbitrator is found to be impartial to one side over the other, his/her decision will not stand.

There was impartiality in these proceedings from the beginning. For starters, the grievance charge was initiated by Mr. Karpel, the Club's President. That, in it of itself, presented a challenge for Mr. Brecker because Mr. Karpel, as the Club's President, has influence over the Grievance Committee. Notably, and in further support of the selective enforcement against Mr. Brecker, Mr. Karpel has initiated exactly two grievance charges against members – both against Mr. Brecker.

Making matters worse, Mr. Karpel, although he has indicated that he recused himself, is the member of the Board that is communicating directly with Mr. Brecker's counsel regarding the procedures to be used at the appeal hearing.

As evidence of the clear impartiality by the Grievance Committee, at the hearing, Grievance Committee member Don Snyder shouted out in front of all other members that Mr. Brecker was an "asshole." It is clear that the Grievance Committee was not impartial, and that, as a result, the procedure used to suspend Mr. Brecker was anything but fair, reasonable or carried out in good faith.

H. Accepting the Grievance Committee's Recommendation Will Result in Protracted Litigation

Mr. Brecker believes these matters should be resolved amicably without having to get judicial intervention. However, if the Board of Governors refuses to reconsider the one year suspension, Mr. Brecker is left with no real choice other than to file suit. Mr. Brecker needs to protect himself against what can only be described as a suspension that is unfair, unreasonable, and not carried out in good faith. Alternatively, the Board of Governors has an opportunity to analyze the Grievance Committee's Recommendation with objectivity. And, in doing so, the Board of Governors, in weighing each of the aforementioned issues, will come to the only decision that is fair, reasonable, and carried out in good faith; that is, a rejection of the suspension to avoid what should be unnecessary litigation.

Conclusion

Based on the foregoing, Mr. Brecker respectfully requests that the Board of Governors reject the Grievance Committee's recommendation, dismiss the Karpel Grievance in its entirety, and allow the Mr. Brecker and the Board of Governors to start the process of moving forward.

Regards,

STEPHEN J. PADULA
For the Firm

SJP/ljh
Enclosures

cc: Manny Brecker (w/ enc.)
James N. Krivok, Esquire (w/ enc. - via email jk@dkslaw.net)

EXHIBIT “A”

July 10, 2017

VIA EMAIL (rabbey220@gmail.com)

Richard Abbey
Grievance Committee Chair
Delaire Country Club
4645 White Cedar Lane
Delray Beach, Florida 33445

Re: Grievance by Curtis Karpel against Manfred Brecker

Dear Mr. Abbey:

Our firm represents Manfred Brecker ("Mr. Brecker") in connection with the grievance charge initiated by Curtis Karpel, dated June 23, 2017, against Mr. Brecker (the "Karpel Grievance"). As set forth in detail below, the Karpel Grievance should be summarily dismissed.

A. Applicable Law and Relevant Bylaw Provisions

It is black letter law in Florida that "[t]he relationship between a social club and its members is one of contract." *Susi v. St. Andrews Country Club, Inc.*, 727 So. 2d 1058, 1061 (Fla. 4th DCA 1999). Moreover, Chapter 617, Florida Statutes governs non-for profit corporations such as Delaire, and discuss what can and cannot be included in Delaire's governing documents. Specifically, Fla. Stat., § 617.0206 provides that the bylaws of a non-for profit corporation such as Delaire may contain any provision so long as the provision is "not inconsistent with law…." Stated simply, all provisions in Delaire's Bylaws must be consistent with the law. Further, Fla. Stat., § 617.0607 provides that a member may not be suspended "except pursuant to a procedure that is fair and reasonable and is carried out in good faith."

Delaire's Bylaws provide, in pertinent part, as follows:

- "Before conducting any hearing, the Grievance Committee shall consider whether any member of the Grievance Committee should recuse himself or herself from the proceedings." Art. XIV(1).

- "To conduct a grievance hearing, a quorum of Grievance Committee members must be present in person or be participating electronically at a grievance hearing, exclusive of any member(s) who may be recused." Art. XIV(1)(B).

- "The grievance hearing … shall be conducted in a manner similar to an administrative hearing…." *Id.*

- "At the grievance hearing, … the Respondent will be given reasonable opportunity to respond with respect to the allegations of the Complaint." *Id*.

- "An attorney may make the opening statement in lieu of the respective Complainant's or Respondent's opening statement, but shall not make any further verbal statements during the grievance hearing and will not be permitted to examine or question any witness or otherwise participate in the hearing." *Id*.

- "The Complainant and Respondent will be given an opportunity to present witnesses and other evidence relevant to the grievance charge(s) and also will be afforded an opportunity to question witnesses testifying in person. The scope of Complainant's and Respondent's questioning of any witness shall be strictly limited to facts directly related to the grievance charge(s)." *Id*.

Furthermore, and because Delaire sets forth in its Bylaws that grievance hearings "shall be conducted in a manner similar to an administrative hearing," Chapter 120, Florida Statutes (Administrative Procedure Act) is relevant to the inquiry of whether the grievance hearing procedures are fair and reasonable and carried out in good faith. The relevant provisions of Chapter 120, Florida Statutes are as follows:

- During an administrative hearing "all parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative." Fla. Stat., § 120.574(2)(c).

- The record of an administrative hearing shall consist of, in part, "the official transcript of the final hearing." Fla. Stat., § 120.574(2)(d).

- "The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost." Fla. Stat., § 120.574(2)(e).

B. Lack of Jurisdiction to Entertain the Karpel Grievance

Before the Grievance Committee hears any grievance complaint, the Grievance Committee is required to determine the validity of the complaint. Bylaws, at Art. XIV(1). In the past, the Grievance Committee (with you as the chair) has taken the official position that the Grievance Committee "only has jurisdiction over disputes between members that occur on Club or POA property or at events outside the confines of Delaire that are sponsored by the Club." *See* May 30, 2017 correspondence denying Mrs. Rosenberg's grievance against Mr. Silver attached hereto as **Exhibit "A."** Also, the Grievance Committee had previously denied a grievance charge on jurisdictional grounds because "the form of delivery [was] a private correspondence e-mailed [between two parties]…." Further still, the Grievance Committee had previously denied a grievance against a member who had stirred up controversy within the community by using a

pseudonym "Delaire Conscious," and sending out mass e-mails to members that purportedly discredited other members of the Club. The Grievance Committee's rationale for the denial of the grievance charge was that a grievance hearing on such conduct would not be "for the good of the Club."

Despite the Grievance Committee expressly denying nearly identical grievances in the past, and it's clear and unequivocal position on jurisdiction less than 2 months ago, the Grievance Committee has apparently decided that it does have jurisdiction over the Karpel Grievance. This decision is contrary to previous positions the Grievance Committee has taken. In light of the position the Grievance Committee has recently taken on jurisdictional grounds, the Grievance Committee must reconsider its position on the Karpel Grievance as the allegations against Mr. Brecker did not occur on the Club or POA property or at an event outside the confines of Delaire that was sponsored by the Club. If the Grievance Committee refuses to reconsider its position as it relates to whether it has jurisdiction over the Karpel Grievance, Mr. Brecker will be forced to commence litigation over what can only be considered to be a procedure that is anything but fair, reasonable, and carried out in good faith.

C. The Karpel Grievance is Based on an Inapplicable Standard

The Karpel Grievance is based on allegations that Mr. Brecker's conduct in authoring his website and filing a small claims lawsuit against Delaire are "injurious to the peace, tranquility, common welfare, and congenial social relationships between the Club and its membership." Notably, however, no such provision or standard exists in the Bylaws. The only conduct in the Bylaws which gives rise to a grievance is "misconduct." The words "peace," "tranquility," "common welfare," and "congenial social relationships" do not show up anywhere in the governing documents. Thus, it would be unfair, unreasonable, and in bad faith for the Grievance Committee to find Mr. Brecker in violation of the Bylaws because he purportedly injured the "peace, tranquility, common welfare, and congenial social relationships between the Club and its members" by: (1) creating a website which some members of the Club do not like; and/or (2) filing a small claims lawsuit against Delaire as a result of Delaire refusing to provide Mr. Brecker with his statutory right to certain corporate documents.

In support of his position, Mr. Karpel relies primarily on the case of *Barfield v. Florida Yacht Club*, 106 So. 2d 207 (Fla. 1st DCA 1958). According to Mr. Karpel, the *Barfield* case "stands for the proposition that courts leave to the members of a private social club, like Delaire, the right to determine if a member's action has been such that in the club's opinion, such action has interfered with the 'pleasant, friendly and congenial' social relationship between the members." Karpel Grievance, at p. 2. Mr. Karpel's analysis of the *Barfield* case is flawed for several reasons, including the following:

Barfield was decided in 1958. In 1958, Chapter 617, Florida was much different than it is today. Most notably, in 2009, Chapter 617 was amended to include Fla. Stat., § 617.0607 which provides that a member may not be suspended "except pursuant to a procedure that is fair and reasonable and is carried out in good faith." A member's right to a procedure that is fair,

reasonable and carried out in good faith did not exist previously; thus, it did not exist at the time *Barfield* was decided. If it did, the *Barfield* court would have reached a different conclusion.

More so to the point, the facts of Barfield are distinguishable from the underlying dispute. In *Barfield*, the member was expelled from the club because he had filed a lawsuit against the club for an amount that exceeded the club's insurance coverage. Here, Mr. Brecker is being threatened with suspension because he chose to exercise his right to free speech via his website, and because he filed a small claims action against Delaire. It would not be fair, reasonable, or in good faith for Mr. Brecker to be suspended for his actions.

Further still, in *Barfield*, the membership at issue was not tied to property ownership, nor was the membership a mandatory membership. Mr. Brecker, on the other hand, has no choice but to be a member of Delaire by virtue of his ownership of his residence. This is an important distinction because, unlike in *Barfield*, Mr. Brecker is faced with the likelihood that he could be suspended from a private social club (Delaire) that he is forced to pay membership dues to because of his ownership of his residence. Moreover, the member in *Barfield* was being expelled from a country club that had no impact on his residence and/or enjoyment of his residence. And, notably, because the member in *Barfield* was being expelled (rather than suspended), he no longer had to pay membership dues. On the other hand, Mr. Brecker is faced with the possibility of being suspended from Delaire, but continuing to have to pay membership dues. If Delaire wanted to simply expel Mr. Brecker from the Club, return Mr. Brecker's capital contribution, and allow him to stop paying membership dues, that would certainly be welcomed by Mr. Brecker.

The most glaring difference between *Barfield* and the Karpel Grievance, however, has to do with the actual language in the governing documents at issue. In *Barfield*, the club's bylaws expressly stated that a member could be expelled for any conduct that "is likely to endanger the welfare, interest or character of the club." Further still, the *Barfield* court focused on the conduct at issue affecting the "pleasant, friendly and congenial social relationship and association between the members." Notably, Delaire's Bylaws make absolutely no mention of any of the foregoing language. There is nothing in Delaire's Bylaws (unlike the bylaws at issue in *Barfield*) that mention the phrases "endanger the welfare, interest or character of the club," or "pleasant, friendly, and congenial social relationship and association between the members." Essentially, Mr. Karpel is trying to take the *Barfield* case, which examines materially different bylaws, and make the argument that the same standard should apply here. To apply this inapplicable standard to Mr. Brecker would, without a doubt, constitute a procedure that is unfair, unreasonable, and not carried out in good faith.

D. Mr. Brecker's Due Process Rights

In 2009, Chapter 617, Florida Statutes was amended to include Fla. Stat., § 617.0607, which provides that a member may not be suspended "except pursuant to a procedure that is fair and reasonable and is carried out in good faith." Even before this amendment, the law in Florida was that a member was entitled to notice and a hearing, and that any suspension or termination of membership must comport with the bylaws. *See, e.g., Everglades Protective Syndicate, Inc. v.*

Makinney, 391 So. 2d 262, 265 (Fla. 4th DCA 1980); *Boca West Club, Inc. v. Levine*, 578 So. 2d 14, 15 (Fla. 4th DCA 1991). The foregoing case law, coupled with Fla. Stat., § 617.0206 ("The bylaws may not contain any provision … not inconsistent with law….") and the Bylaws, provide Mr. Brecker with certain due process rights in connection with the manner in which the grievance proceedings are to be conducted.

i. Mr. Brecker's Right to Counsel

The Bylaws expressly provide that a respondent is entitled to have an attorney present at a grievance hearing. Bylaws, at Art. XIV(1)(B). The Bylaws further provide that the grievance hearing "shall be conducted in a manner similar to an administrative hearing." *Id*. Fla. Stat., § 120.574(2)(c), the statute governing the procedures at administrative hearings, further provides that all parties have the right "to be represented by counsel." Towards that end, it is clear that any prohibition in the Bylaws against a respondent's counsel from participating in the proceedings is "inconsistent with law;" thus, violates Fla. Stat., § 617.0206.

In the past, the Grievance Committee has taken the position that Mr. Brecker is not entitled to have an attorney participate in any portion of the proceedings except for the opening statement. As set forth above, such a position violates Mr. Brecker's due process rights. If the Grievance Committee is unwilling to allow Mr. Brecker's counsel to actually represent Mr. Brecker in the proceedings, Mr. Brecker will have no other choice but to commence litigation against Delaire on these grounds.

ii. Mr. Brecker's Right to Record the Grievance Hearing

As discussed above, the Bylaws provide that the grievance hearing "shall be conducted in a manner similar to an administrative hearing." Bylaws, at Art. XIV(1)(B). And, Fla. Stat., § 120.574(2)(d) provides that record in any administrative hearing shall consist of, in part, the official transcript from the final hearing. *See also* Fla. Stat., §§ 120.57(1)(f)-(g), 120.57(2)(c), and 120.574(e) (all discussing use of transcripts from final hearings).

Despite the same, the Grievance Committee in the past has refused to allow grievance hearings to be recorded. If the Grievance Committee is unwilling to allow the hearing to be recorded, Mr. Brecker will have no other choice but to commence litigation against Delaire for its refusal to allow the proceedings to be recorded in direct contravention to Florida law.

iii. Mr. Brecker's (or his Counsel) Right to Cross Examine Witness(es)

The Bylaws expressly provide that a respondent is entitled to question witness(es). Bylaws, at Art. XIV(1)(B). The Bylaws further provide that the grievance hearing "shall be conducted in a manner similar to an administrative hearing." *Id*. Fla. Stat., § 120.574(2)(c), the statute governing the procedures at administrative hearings, further provides that "all parties shall have an opportunity to respond, present evidence and argument on all issues involved, [and] to conduct cross-examination and submit rebuttal evidence…." Towards that end, it is clear Mr. Brecker shall

be allowed to cross-examine any and all witnesses, and that any prohibition by the Grievance Committee as to Mr. Brecker's right to cross-examine a witness is "inconsistent with law;" thus, violates Fla. Stat., § 617.0206.

In the past, the Grievance Committee has unlawfully restricted Mr. Brecker's right to cross-examine witnesses. As set forth above, such a prohibition violates Mr. Brecker's due process rights. If the Grievance Committee is unwilling to allow Mr. Brecker the right to fully cross-examine the witnesses, Mr. Brecker will have no other choice but to commence litigation against Delaire for this violation of Mr. Brecker's due process rights.

iv. Grievance Committee Member(s) Appearing by Phone

Pursuant to the Bylaws, a quorum of the Grievance Committee must be present in order to conduct a proper grievance hearing. Bylaws, at Art. XIV(1)(B). The Bylaws, however, allow Grievance Committee members to appear via electronically in lieu of appearing live. The Grievance Committee members serve as the trier of fact; thus, they are tasked with analyzing the evidence and weighing the credibility of the witnesses. There are no legal proceedings where the trier of fact is allowed to appear via electronically (as opposed to in person). The reason for this, as appellate courts routinely state, is because trial judges have the ability to see and listen first hand, which gives them a unique vantage point as the trier of fact. It would be inconsistent with law to allow a Grievance Committee member to appear electronically as opposed to in person.

E. Mr. Brecker's First Amendment Right to Free Speech

It is undeniable that everyone in this country enjoys the constitutional right to free speech pursuant to the First Amendment. Towards that end, Fla. Stat., § 617.0206 expressly provides that the Bylaws may not contain any provision inconsistent with the law. Thus, the Bylaws cannot have any provision which is inconsistent with a person's right to free speech.

Notwithstanding the foregoing, Mr. Karpel has decided to bring a grievance charge (and the Grievance Committee has apparently accepted jurisdiction) against Mr. Brecker for Mr. Brecker merely exercising such right. In doing so, the Grievance Committee must examine whether Mr. Brecker's exercise of his right to free speech via his website rises to the level of "misconduct" – the only applicable standard set forth in the Bylaws. If the Grievance Committee were to find that Mr. Brecker's conduct rises to the level of "misconduct," the Grievance Committee will essentially be finding that the Bylaws restrict Mr. Brecker's right to free speech. Such a finding, however, would violate Fla. Stat., § 617.0206 because the Bylaws may not contain any provision that is inconsistent with the law.

Further still, to the extent the Grievance Committee suspends Mr. Brecker because of the contents of the website, the decision to do so would certainly not be pursuant to a procedure that is fair, reasonable, and carried out in good faith; thus, it would be in violation of Fla. Stat., § 617.0607. Stated differently, suspending a member because the member voices his frustration with the Club's policies and/or procedures would be unfair, unreasonable, and clearly in bad faith.

The Florida legislature has created a statute that protects individuals such as Mr. Brecker from lawsuits aimed at seeking to restrict individuals' free speech. SLAPP (strategic lawsuits against public participation) are legal actions brought against individuals who are involved in speaking out on issues of concern to the public. In these suits, the plaintiff sues the speaker with the primary motivation to intimidate the target into silence. If the respondent is silenced because of the lawsuit, the claimant "wins" in attacking the respondent's First Amendment right to free speech.

Florida, like the majority of states, has an anti-SLAPP statute – Fla. Stat., § 768.295 – that protects a person's right to free speech. In 2015, Florida's anti-SLAPP statute was expanded to provide more broader protections against actions brought to chill speech. Specifically, Fla. Stat., § 768.295 protects speech made via a website.

Clearly, if the Grievance Committee were to find that Mr. Brecker's website rises to the level of "misconduct," such a finding would be inconsistent with the protections of Fla. Stat., § 768.295; thus, unfair, unreasonable, and in bad faith. If the Grievance Committee moves forward and finds Mr. Brecker guilty of "misconduct," Mr. Brecker will be commencing litigation against Delaire for the violation of his First Amendment rights, and because such a finding would violate Chapter 617, Florida Statutes.

F. Mr. Brecker's Right to Commence Litigation

As way of a brief background, Mr. Brecker had previously made a statutory request for certain corporate documents. Delaire, however, did not respond to Mr. Brecker's request; thus, Mr. Brecker was forced to retain counsel. Mr. Brecker's counsel, after being promised payment for his services from Mr. Brecker for doing so, made a request to Delaire for the documents. Only then, did Delaire produce the documents which Mr. Brecker is statutorily obligated to receive. Because of Delaire's refusal to provide the documents to Mr. Brecker initially, Mr. Brecker was forced to pay his counsel. Mr. Brecker then filed a small claims action against Delaire to recoup the damages he sustained because of Delaire's reluctance to respond to his initial request for the documents.

The second aspect of the Karpel Grievance against Mr. Brecker stems from Mr. Brecker's filing of the small claims action. Essentially, Mr. Karpel argues that because Mr. Brecker filed a small claims action against Delaire, that he is somehow injuring the "peace, tranquility, common welfare, and congenial social relationships between the Club and its membership." Notwithstanding that this standard is not applicable here (discussed above), such an allegation against Mr. Brecker is being made for the sole purpose of trying to punish Mr. Brecker for filing what he believed to be a legitimate small claims action against Delaire. Essentially, the Karpel Grievance attempts to cast liability on Mr. Brecker for his alleged abuse of process. For an abuse of process cause of action to exist, however, there must be a use of the process for an immediate purpose other than what it was designed. There is no abuse of process when the lawsuit is filed to accomplish the result for which it was filed. *Scozari v. Barone*, 546 So. 2d 750, 751 (Fla. 3d DCA

1989). Here, Mr. Brecker was simply attempting to recoup the damages he sustained as a result of Delaire ignoring his request for documents. The small claims lawsuit Mr. Brecker filed was clearly filed to accomplish this goal, and for no other reason. There should be no grievance charge against him for such conduct, and any suspension for the same reason would be unfair, unreasonable, and not in good faith. Furthermore, suggesting that a member should be suspended because he/she files a lawsuits against Delaire, in it of itself, would be unfair, unreasonable, and carried out in bad faith.

To the extent Mr. Karpel relies on the *Barfield* case in support of his position that a grievance charge is appropriate anytime a member sues Delaire, such a position is inconsistent with the actual holding in *Barfield*. As discussed in detail above, *Barfield* is distinguishable from the underlying dispute for a number of reasons. In *Barfield*, the member sued the club for an amount that exceeded the club's insurance coverage. Here, however, no such allegation can be made against Mr. Brecker as he has brought his claim in small claims court only seeking to recover a few thousand dollars in attorney's fees. Comparing *Barfield* to the underlying dispute is like comparing apples to oranges.

Conclusion

By even entertaining the Karpel Grievance, the Grievance Committee is trampling on Mr. Brecker's due process and First Amendment rights. Equally as troubling, the Karpel Grievance is based on a standard that is nowhere to be seen in Delaire's governing documents.

For all the reasons set forth herein, if Mr. Brecker is suspended as a result of the Karpel Grievance, Mr. Brecker will be forced to initiate litigation against the Club for what can only be viewed as a procedure that was unreasonable, unfair, and in bad faith.

Hopefully it does not come to that.

Regards,

STEPHEN J. PADULA
For the Firm

SJP/ljh
Enclosure

cc: Manny Brecker (w/ enc.)
James N. Krivok, Esquire (via email jk@dkslaw.net)
Curtis J. Karpel (via email ckarpel@delaire.org)

EXHIBIT “A”

DELAIRE
COUNTRY CLUB

4645 White Cedar Lane
Delray Beach, Florida 33445
561 / 499-9090

VIA MAIL & EMAIL

May 30, 2017

Mrs. Deborah Rosenberg
3719 Red Maple Circle
Delray Beach, FL 33445

Dear Mrs. Rosenberg,

On Friday, May 26, 2017, the Grievance Committee convened, reviewed and discussed your complaint against Sid Silver relating to the trimming of the podocarpus hedge that is planted on your side of the property line that separates your homes.

It is the position of the Committee that it only has jurisdiction over disputes between members that occur on Club or POA property or at events outside the confines of Delaire that are sponsored by the Club. Inasmuch as your complaint involves Mr. Silver's and your property, we do not have the authority to consider its merits.

Sincerely,

Richard Abbey, Chair

Judith Singer, Vice Chair

EXHIBIT “B”

Curtis J. Karpel
4429 White Cedar Lane
Delray Beach, FL 33445

June 23, 2017

Jeffrey White, Secretary
Delaire Country Club
4645 White Cedar Lane
Delray Beach, FL 33445

Re: Manfred Brecker

Dear Mr. White:

In my capacity as President of the Delaire Country Club Board of Governors, please accept this letter to be forwarded to the Chair of the Grievance Committee for that Committee to hold a formal meeting to determine if a grievance complaint be held against Manfred Brecker for certain actions taken by him that are injurious to the peace, tranquility, common welfare, and congenial social relationships between the Club and its membership. These actions, described below, constitute activities that are detrimental to the membership of our club.

These are two separate and distinct grounds for this complaint.

The first stems from his creation and maintenance of a website, known as Delairegovernance.com. What I believe is actionable on his part is a recent statement made to Richard Abbey in an email dated on or about June 9, 2017, in which Mr. Brecker represents that his website has had a knowingly negative and purposeful effect upon home sales in the community. That statement, in and of itself, establishes his intent and justifies this complaint. The appropriate language used by Mr. Brecker is "for all those people that follow our web. People that are interested in settling in a new home in Southern Florida. We have a large following that checks our site frequently. Having only sold 5 houses in the last 6 months says a lot for our web." (Emphasis supplied). This statement honestly establishes the intent and purpose of Mr. Brecker to harm financially and otherwise, the membership and the Club.

Attached is a copy of Mr. Brecker's email to Mr. Abbey with the relevant portion highlighted for your review. Do not confuse that statement to be the musings of a "reporter/journalist" as Mr. Brecker holds himself out to be as a result of his creating, maintaining and updating the website in question. He is no more a "reporter/journalist" than I am since I write articles for the *Good Life* magazine.

This should not be a discussion of whether this statement of Mr. Brecker is an example of his First Amendment right to free speech which should be protected. That statement is not his

opinion but rather an explanation of how his actions in creating this site for the purpose of harming the Club and its membership. Why else would he state there is a "large following" to his website and the small number of Delaire home sold this year is due to and "says a lot for our web."

Also find a copy of Mr. Brecker's June 22, 2017 email to Liz Shaw in which he attributes "horrible" home sales in Delaire to his website. I have again highlighted the relevant language evidencing his intent to effect home sales in our community.

The second grounds for filing this complaint, is the fact that Mr. Brecker has filed a civil lawsuit against Delaire Country Club in the County Court for Palm Beach, Florida, Manfred Brecker vs. Delaire Country Club, Case No. 50-2017SC-006234-XXXX-SB. The filing of this lawsuit, merits aside, justifies that action be taken against Mr. Brecker by your Committee.

The basis for my position is the case of Barfield v. Florida Yacht Club, 106 So.2d 207. This case stands for the proposition that courts leave to the members of a private social club, like Delaire, the right to determine if a member's action has been such that in the club's opinion, such action has interfered with the "pleasant, friendly and congenial" social relationship between the members. That case stands for the proposition that in the absence of clear allegations and convincing proof, of fraud or bad faith, the action of the club members in punishing that individual member should not be reviewed by the courts. Enclosed and made a part of this correspondence is a copy of the Barfield, supra, opinion. The filing of this lawsuit, in my opinion, has a negative impact upon the tranquility and congenial social relationships between the club and its members.

I understand that the filing of any grievance complaint against a club member should be, and is on my part, a serious and significant matter. I am clear that this complaint is both serious and significant; otherwise, I would not have brought this matter to the Committee's attention. My actions result from my belief that what Mr. Brecker has done, and continues to do, is harmful to both our Club and membership.

If additional information is required, please do not hesitate to contact me.

Very truly yours,

Curtis J. Karpel
President, Board of Governors

From: <MB3217@aol.com>
Date: Fri, Jun 9, 2017 at 9:24 AM
Subject: Re: Upcomming article on web your remarks will be printed if you have any
To: <rabbey220@gmail.com>

Dear Mr. Abbey,

My approach to you is not as a member of Delaire but as a" reporter/journalist" for www.delairegovernance.com . I have received information that you have turned down the grievance hearing requested by the Rosenbergs against Sid Silver on" *Jurisdictional Grounds".* That makes this a very thought-provoking and vital story for all of our readers both present and future. It is a significant story for members of Delaire and" *home hunters*" seeking information on the web.

That said, consider this an interview. I will ask you several questions which will be listed below. I hope you will answer them. Not answering my questions, allows me to draw my own conclusions, and write the story as I conjecture your remarkable reasons that you described as *"Jurisdictional Grounds".* The Webster's dictionary description of *"Jurisdiction"* is; *administration of law>right law>the administration of justice>authority or legal power to hear and decide cases> a law court or system of law courts.*

Having given you the dictionaries description of the word *"Jurisdiction",* make your choice as how you can best describe your notable motivation to your meaningful decision. Your answers, or my guesswork as to your answers, will be read not only by our members, they will be for all those people that follow our web. People that are interested in settling in a new home in Southern Florida. We have a large following that check our site frequently. Having only sold 5 houses in the last 6 month says a lot for our web.

Not selling homes forebode that changes must be made to get better acceptance in the real estate marketplace. People shun places to live that are not user friendly. Your latest exploit in justice for all, might be considered what to avoid in selection of a home site to retire to. Perhaps you have a valid reason for your earth-shattering decision so I am giving you that opportunity to freely express *your* interpretation. So let us get to work on my story with the following questions.

1. Where does the grievance committee's jurisdiction begin and end?
2. What are the qualifications necessary for someone to serve on the committee?
3. What training do members of the committee receive and by whom if they do?
4. Are all members required to have training before adjudicating a case?
5. Is there a system or a sentencing structure in place to follow which is observed?
6. Are prior grievances of a respondent allowed to be mentioned during a hearing?
7. Is there a transcript kept for a record to be referred to after the hearing has concluded?
8. Is *SELECTIVE ENFORCEMENT* practiced by the grievance committee?
9. Give an explanation how you have arrived at your decision of *Jurisdictional Grounds.*
10. What are the test standards for being able to by-pass Jurisdictional Grounds if any?
11. What is the reason for having a grievance committee system and what are the benefits for the members?

Thanking you for your cooperation even if you choose not to participate in this Q&A session. Your distinctive *Jurisdictional Grounds* decision is the center attraction for this posting on our web. We have given you the opportunity to participate in this explosive story the selection to partake is up to you.

Manfred Brecker
Web Master of www.delairgovernance.com

Delaire Office

From: MB3217@aol.com
Sent: Thursday, June 22, 2017 9:14 AM
To: lizshaw@delaire.org
Subject: Re: Message from Delaire Membership Committee Chair Art Newman

I have no idea as to what you are talking about or requesting. You have to be clearer if you want me to give you an answer. perhaps you can get some clarification by looking at our latest BUYER BEWARE page that we have launched with an explanation of the Hartman sale?

I am always at your disposal to answer and clarify any confusion. We will be analyzing home sale comparisons between our other clubs and Delaire . Our sales are horrible as compared to the others and that is partly due to us telling the facts as they are and the way our golf course impacts sales. People want to live in a golf course atmosphere not in a stockyard which is denoted by Brown ugly pine straw which is being continued not with grass as promised in membership correspondences.

Our comparison charts are being put together by our agency and will be available for display shortly of what I have seen of them so far they do tell an ugly story of the sales that are taking place or should I say not taking place at Delaire. I hope I have explained the problem plaguing Mr. Squire

With Warmest regards,

Manfred Brecker

In a message dated 6/22/2017 9:01:39 A.M. Eastern Daylight Time, lizshaw@delaire.org writes:

> Mr. Brecker,
>
> As per protocol, I forward all correspondence to Mr. Squire. He is a little confused by your message and respectfully requests some clarification.
>
> Sincerely,
>
> Liz Shaw
>
> Executive Coordinator
>
> Delaire Country Club
>
> 4645 White Cedar Lane
>
> Delray Beach, FL 33445
>
> 561-900-2510 (Direct)
>
> ---
>
> **From:** MB3217@aol.com [mailto:MB3217@aol.com]
> **Sent:** Wednesday, June 21, 2017 6:33 PM

106 So.2d 207

District Court of Appeal of Florida, First District.

STATE of Florida ex rel. William D. BARFIELD, Appellant,

v.

FLORIDA YACHT CLUB, a Florida corporation, Appellee.

No. A-366.

|

Oct. 28, 1958.

|

Rehearing Denied Nov. 18, 1958.

Proceeding on petition for mandamus requiring a social club to reinstate relator to membership in the club, or to show cause for refusal to do so. The Circuit Court, Duval County, H. B. Crosby, J., quashed an alternative writ granted upon a petition therefor, and relator appealed. The District Court of Appeal, Riegle, Horace D., Associate Judge, held that where due procedural requirements as to notice and hearing were met prior to expulsion of relator, and charge under which he was expelled, namely suing club for damages in excess of club's protection on a liability policy, did not indicate fraud or bad faith on the part of the club, and there was no other showing of fraud or lack of good faith in expelling relator from the club, court would not review sufficiency of the cause for relator's expulsion.

Affirmed.

West Headnotes (7)

[1] **Constitutional Law**

Other Particular Issues and Applications

Where bylaws of a social club provided that a member of the club could be expelled either by the club or board of governors by two-thirds vote but that before such action was taken the accused member would have five days' notice of the charges made against him and an opportunity to be heard in his own defense, and another bylaw provided that all interest in the club of anyone expelled would be vested in the club, and the procedural requirements of bylaws of the club, and statute under which they were adopted were met prior to expulsion of a member from the club, such member would not be deemed to have been deprived of his property without due process of law as a result of his expulsion from the club. F.S.A. § 617.10.

1 Cases that cite this headnote

[2] **Clubs**

Membership in General

Certain conduct which might not justify expulsion from some other type of association, where membership is a condition to earning a livelihood, or essential to the enjoyment of a contract or property right, may justify expulsion from a private social club.

2 Cases that cite this headnote

[3] **Clubs**

Membership in General

Principles announced in cases in which courts have intervened to protect a person from unreasonable expulsion from a trade union or professional society or organization do not and should not control with respect to expulsion from a private social club.

1 Cases that cite this headnote

[4] **Clubs**

Membership in General

Courts should leave to the members of a private social club, or to the proper board to which the members have lawfully delegated that power, the right to determine whether the action of a member has been such that, in the opinion of the club, it would interfere with the pleasant, friendly and congenial social relationship between the members, and in the absence of a clear allegation and convincing proof, of fraud or bad faith, action of club members or duly delegated board in expelling

a member should not be reviewed by the courts.

7 Cases that cite this headnote

[5] Clubs
⇦ Membership in General

Nonreviewability by the courts of expulsion of a member of a social club, in the absence of a clear allegation and convincing proof of fraud or bad faith, should not be set aside because the expulsion of the member is based upon the action of such member in exercising a constitutional right.

4 Cases that cite this headnote

[6] Clubs
⇦ Membership in General

Where due procedural requirements as to notice and hearing were met prior to expulsion of a member from a private social club and charge under which he was expelled, namely suing club for damages in excess of club's protection on a liability policy, did not indicate fraud or bad faith on the part of the club, and there was no other showing of fraud or lack of good faith in expelling member from the club, court, under such circumstances, would not review sufficiency of the cause for his expulsion.

1 Cases that cite this headnote

[7] Clubs
⇦ Membership in General

In cases of expulsions from private social clubs, due procedural requirements as to notice and hearing having been met, it is only required that those who exercise the power of expulsion act in good faith and without fraud. F.S.A. § 617.10(1, 2).

Cases that cite this headnote

Attorneys and Law Firms

*208 Rhydon C. Latham, William D. Barfield, Jacksonville, in pro. per., for appellant.

Bedell & Bedell, Jacksonville, for appellee.

Opinion

RIEGLE, HORACE D., Associate Judge.

The parties will be referred to as they appear in the Circuit Court.

In this case, upon petition therefor, an Alternative Writ of Mandamus was issued requiring the Florida Yacht Club, a Florida corporation, respondent, to re-instate the relator, William D. Barfield, to membership in said Club or show cause for its refusal so to do.

Motion to Quash the Alternative Writ of Mandamus was filed by the respondent Club, and, upon hearing, was granted. Appeal was improvidently taken to the Supreme Court of the State of Florida, which Court transferred the cause to the District Court of Appeal, First District, for consideration and determination.

Previous to the mandamus suit the relator had been a member of the respondent Club. The club owns extensive real property in Duval County, Florida, a large club house, swimming pools, tennis courts, wharves, docks, etc. The Club leases its facilities to non-member persons and organizations for use by such lessees for entertainment and the club serves food and other refreshments, and provides personnel for the enjoyment of its premises to the guests of such lessees.

The relator, while attending a function of a lessee, on January 20, 1951, was injured. In January 1955 the relator instituted a suit for damages, for the personal injuries sustained, in the amount of $50,000. In February 1956 the ad damnum clause of the relator's complaint was amended to $100,000. Upon trial the relator secured a judgment for $10,000.

On June 25, 1956, the relator received a registered letter from the Board of Governors of the Club that charges had been brought against him for conduct detrimental to the best interests of the Florida Yacht Club in maintaining an action for damages against the Club in excess of the

insurance coverage. Notice was given the relator of a hearing before the Board of Governors of the Club on the charges. A hearing was had at which relator was present and represented himself. Upon the hearing being had the relator was expelled by action of the Board of Governors. The relator demanded re-instatement, which was refused, and this mandamus suit followed.

Learned counsel for both parties have each submitted exhaustive briefs on the questions involved and this Court is indebted to them for this service.

The relator contends that, by his expulsion, he was deprived of his property without due process of law.

The respondent is a private social club, incorporated under the provisions of Section 617.10, Florida Statutes, F.S.A., the first two sub-sections of which are pertinent to this matter and are as follows:
*209 '617.10 Incorporation of social clubs or societies. Social clubs or societies not for profit may be incorporated under this chapter; provided, however, that any such club or society, in its by-laws:

'(1) Delegate to its board of directors full discretionary power of admitting or expelling members;

'(2) Prescribe that an incorporator or member shall not have any vested right, interest or privilege of, in or to the assets, functions, affairs or franchises of the corporation, or any right, interest or privilege which may be transferable or inheritable, or which shall continue after his membership ceases, or while he is not in good standing; provided, that before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located; and, * * *'

The respondent Club adopted By-Laws pursuant to the authority of said Section, the parts pertinent to this controversy are as follows:
'Article XIV. Section 4: Any member, whether Resident or otherwise, may be expelled either by the Club or Board of Governors by a two-thirds vote of the members present at the regular or any special meeting, for any conduct on his part likely to endanger the welfare, interest or character of the Club. Before such action is taken, the accused shall have five days' notice of the charges made against him, and an opportunity to be heard in his own defense.'

'Article XIV. Section 5: All interest in the Club or its property of any one resigning, expelled or otherwise ceasing to be a member shall be vested in the Club.'

In the case of Sult v. Gilbert, 148 Fla. 31, 3 So.2d 729, 731, a High School had been suspended from an Athletic Association. The Supreme Court of the State of Florida said '* * * we find no showing of a contractual or property right that would authorize the courts to interfere. It was purely an internal affair of the association and there is no showing of mistake, fraud, collusion or arbitrariness in the proceedings.'

[1] There is no claim here that Section 617.10 nor the club's by-laws are unconstitutional. There is no claim here that any notice or procedural requirements were defective or omitted. There is no claim that the Board of Governors was not the proper board to take action on expulsions.

The relator, by becoming a member of the Club, agreed to and became bound by Section 617.10, supra, and the Club's by-laws adopted pursuant thereto, and any property rights were subject to the provisions that 'a member shall not have vested right * * * in or to the assets * * * after his membership ceases.'

We hold that the procedural requirements of the By-Laws of the Club and statute referred to, having been met, the relator was not deprived of his property without due process of law.

The relator contends that the sufficiency of the cause for expulsion, by the appellee's Board of Governors, to whom full discretionary power of expelling has been committed, pursuant to Section 617.10, supra, should be reviewed by the courts.

[2] There is a valid distinction between those institutions such as trade unions, professional associations or trading exchanges and like organizations, affecting a person's right to earn a living on one hand, and private social clubs on the other. Certain conduct, which might not justify expulsion from some other type of association, where membership is a condition to earning a livelihood,

or essential to the enjoyment of a contract or property right, may justify expulsion from a private social club.

*210 [3] The principles announced in the cases in which the courts have intervened to protect a person from unreasonable expulsion from a trade union or professional society or organization do not and should not control with respect to a private social club.

The primary, if not the only, interest and purpose of a private social club is to afford pleasant, friendly and congenial social relationship and association between the members.

In the decision, Hopkinson v. Marquis of Exeter (1867) L.R. 5 Eq.Cases 63, it was held that whether the member's conduct was such as likely to endanger the welfare and good order of the club was for decision by the club members and that their decision was final if arrived at bona fide.

In Dawkins v. Antrobus (1879) L.R. 17 Ch.Div. 615, it was held that the courts could not consider a decision of expulsion in the absence of a showing of fraud or bad faith.

In the case of Commonwealth ex rel. Burt v. Union League, 1890, 135 Pa. 301, 19 A. 1030, 1035, 8 L.R.A. 195, the Court held:

'What is orderly, and what is disorderly, conduct, injurious to the interests and hostile to the objects of the league, must necessarily be determined by some proper tribunal; and the board of directors, to whom the practical management of its affairs is given, constitutes, in the first instance the tribunal which the members have themselves set up, to have and exercise jurisdiction over such offenses. When Mr. Burt became a member of the league, he voluntarily submitted himself to this jurisdiction. He was admitted upon the terms of the charter, with knowledge that he must submit to all such regulations as the by-laws might reasonably provide, and that, for any willful violation or infraction thereof, he was liable to be disfranchised.

'The offense of which he was convicted, it is true, was a minor offense; not such as would have justified his expulsion at the common law, but such as justified the league, acting in good faith, in the exercise of the powers conferred by the charter, in imposing that sentence * * *'.

To the same effect is the case of United States ex rel. De Yturbide v. Metropolitan Club, 11 App.D.C. 180.

In the case of La Gorce Country Club v. Cerami, Fla., 74 So.2d 95, 96, the Court, while holding that a member was entitled to notice and an opportunity to be heard, approved the ruling of the Circuit Court excluding all evidence with respect to the merits of the expulsion, holding '* * * the trial court properly decided at every juncture that it was not concerned with the merits, which were and are within the exclusive jurisdiction of the respondent's governing body.' (Italics supplied.) After referring to the authorities cited in 20 A.L.R.2d 344, the Court said:

> 'From the authorities before us, it appears to be the majority, and we think the better-reasoned, view, that if expulsion of a club member is accomplished without notice and hearing, the denial of these minimum procedural safeguards is violative of the 'principles of natural justice' and judicial intervention is indicated.'

On page 99 of the opinion the Court further said:

> 'To accept this ingenious argument would result in usurpation of the prerogatives which the club, under its by-laws and in accord with statute, has delegated to its own governing body. And since this body is the final arbiter of the sufficiency of causes for expulsion, we cannot presume, under any circumstances which we are able to foresee at this moment, that a hearing before it would be 'vain and useless."

*211 The Club does not dispute relator's right to sue it for personal injuries, nor does the Club dispute his right to sue it for damages in excess of the Club's insurance coverage. The Club's position is, that the relator has no constitutional right to remain a member of the Club when he has been expelled by a two-thirds vote of the Board of Governors after due notice and hearing, in the absence of fraud or bad faith.

[4] We agree that the courts should leave to the members of a private social club or to the proper board to which the members have lawfully delegated that power, the right to determine whether the action of a member has been such that, in the opinion of such Board, it would interfere with the pleasant, friendly and congenial social relationship between the members. In the absence of a clear allegation and convincing proof, if the case reaches that stage, of fraud or bad faith, the action of the members or duly delegated board should not be reviewed by the courts.

[5] Nor do we believe that this rule should be set aside because the expulsion of the member is based upon the action of such member in exercising a constitutional right. A member has, for example, the constitutional right of free speech, but we believe that such right might be exercised in such a manner as to interfere with the pleasant and congenial association that the Club was intended to afford. Let us assume that a member chooses to exercise that right by loud and boisterous conversation, or in deriding, or exposing the shortcomings of other members. Certainly the pleasant and congenial association that the Club was intended to afford would thereby be impaired.

[6] As we have heretofore indicated, no fraud or bad faith is alleged in the petition for the Alternative Writ of Mandamus, nor do we believe that the charge upon which the relator was tried for expulsion, of itself, indicates any fraud or bad faith. The increase in the ad damnum clause from $50,000 to $100,000 would at least make necessary the employment, by the Club, of an attorney to protect the interest of the Club on the exposure in excess of the $50,000 insurance coverage. Certainly had a judgment been secured in excess of the policy limits, the property-some property, of the Club would have been applied to satisfy such judgment. Who could say that the threat or possibility of such result would not impair or destroy the pleasant, friendly and congenial relationship and association among the members that the Club was intended to afford. In the well chosen words of the Circuit Judge who tried the case, 'Experience teaches us that a law suit, whatever its merits, frequently falls somewhat short of promoting a feeling of friendship or affection between the contending litigants.'

In order for the charge itself to be evidence of fraud or bad faith in a case of this nature, the charge would have to be such that the Court could hold that no reasonable man would say that the friendly, pleasant and congenial social relationship between the members would be impaired by the conduct complained of in the charge for expulsion.

We have, in America, no social castes but, each group has its own pattern of conduct and activity which it approves, and which it finds enjoyable and inoffensive to its members. Actions, conduct or activity which might be inoffensive to one group might be frowned upon by another. If the courts should be called upon to determine the reasonableness of charges for expulsion, then the action and decorum of the members of all clubs would of necessity be measured by the standard of action the particular Court hearing the controversy might himself or themselves find offensive or inoffensive, as the case might be. Courts should, therefore, not be required to look into the inner workings of private social clubs or the reasonableness of the charges upon which expulsion may be based.

[7] We hold that in cases of expulsions from private social clubs, due procedural *212 requirements as to notice and hearing having been met, it is only required that those who exercise the power of expulsion shall act in good faith and without fraud.

Affirmed.

STURGIS, C. J., and WIGGINTON, J., concur.

All Citations

106 So.2d 207

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