

IN THE COUNTY COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2023 CC 000091

FLAGLER COUNTY, a political subdivision
of the State of Florida,

Plaintiff,

v.

PEN AND PILOT, INC, a Florida profit
corporation,

Defendant.

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DEFENDANT'S ANSWER AND COUNTERCLAIM

COMES NOW, Defendant, PEN AND PILOT, INC., ("Pilot") by and through the undersigned attorney, and files this Answer and Counterclaim in response to Plaintiff's Complaint.

ANSWER

1. Pilot denies the allegations contained in paragraph 4.
2. Pilot admits the allegations contained in paragraphs 1,2 and 3.

COUNT I TENANT EVICTION

3. Pilot restates and incorporates the answers to paragraphs 1-4.
4. Pilot admits that the county is an entity organized under Florida law but otherwise denies the allegations in paragraphs 6 and 7.
5. As to paragraph 8, Pilot would admit that at all times Pilot was a responsible tenant but would deny that Plaintiff has unfettered discretion in operating leaseholds at the airport.
6. Pilot admits the allegations in paragraphs 9 and 10 and would state that the terms of the lease speak for themselves.
7. Pilot admits the allegations in paragraphs 11, 12 and 13 but would affirmatively state that the airport remained open for normal operations as shown in the flight logs for the relevant period of time.

8. The allegations in paragraph 14 are denied as to the efforts by Mr. Abend to take a long-planned trip.
9. Pilot admits the allegations in paragraph 15 that Roy Seiger, airport manager, attempted to terminate the lease and refused, along with the county manager and county attorney's office to discuss the lease termination.
10. The allegations in paragraphs 17 and 22 are intended to be inflammatory, are not relevant to the cause of action and should be stricken. Plaintiff has a legal obligation like all parties to a contract to observe the proper standards for providing legal notice.
11. Pilot admits the allegations in paragraphs 18 and 19.
12. As to the allegations in paragraph 20, Pilot admits that the plane is still on the leased premises.
13. Pilot denies the allegations in paragraphs 20, 21, 24 and 26. There is no paragraph 25 to respond to by Pilot.
14. Pilot accordingly requests that this Court undertake jurisdiction over this cause of action and deny the relief requested by Plaintiff and award Pilot reasonable costs pursuant to section 83.251, Florida Statutes.

COUNTERCLAIM

COMES NOW, Defendant/Counter Plaintiff, PEN AND PILOT, INC. ("Pilot"), by and through the undersigned attorney, and sues Plaintiff/Counter Defendant, FLAGLER COUNTY, ("Counter Defendant"). In support thereof, Counter Plaintiff states as follows:

1. This Court has jurisdiction over this matter as the Complaint and Counterclaim are based upon the same incidents and allegations regarding a written lease agreement.
2. Counter Plaintiff ("Pilot") is a Florida corporation which conducts business in Flagler County. The Principal of Plaintiff is Les Abend, a licensed pilot and writer who contributes to various aviation journals, on-air media outlets as an analyst, and has been a licensed pilot for 49yrs and is certified as an Airline Transport Pilot, Flight Instructor, Glider Instructor, and Seaplane pilot, with various type ratings from DC-3 to Boeing 777.
3. As alleged in the Complaint filed herein, Counter Plaintiff leased a hangar from Counter Defendant at the Flagler County Airport. In addition, Les Abend served on the Flagler County Airport Advisory Board. In that capacity, he advocated for a variety of airport issues, including increased noise abatement procedures for nearby residential properties. The airport director, Roy Sieger, opposed many of the ideas proposed by Abend and other board members and ultimately took steps to terminate the advisory board entirely. Sieger has shown a propensity to not accept and to resent any recommendations for airport operations from third parties, including the duly appointed volunteer advisory board.

4. Since the time that the board was terminated Sieger has engaged in actions towards Abend that could be deemed hostile and retaliatory. Sieger has advised third parties that he thought Abend was seeking to have Sieger fired by the County.

5. Sieger has sought to terminate Counter Plaintiff's lease for no cause. Based upon a public records request filed by undersigned counsel, the County has admitted that, for the entire history of the Flagler County Airport, no tenant has ever been terminated for no cause.

6. As per an email sent by Roy Sieger explaining the presence of the FPL contractor after Hurricane Ian, other tenants expressed concern regarding access from the t-hangar area to the runways and taxiways. One tenant complained directly to AOPA (Airplane Owners and Pilots Assoc), a national aviation advocacy organization, without consulting Roy Sieger but did not suffer the consequences of lease termination.

7. The County has refused to meet both with Abend and undersigned counsel to discuss the issues surrounding the termination. The circumstances surrounding the termination do not include any issues to warrant the termination for no cause due to circumstances beyond the County's control- like hurricane damage to the tower, runway closure or major renovations that are beyond the parties' control.

8. Since termination notice was sent, the County is now trying to charge double rent to Counter Plaintiff even though the lease term never expired.

Count I Breach of Obligation of Duty of Good Faith and Fair Dealing

9. A well-established tenet of Florida contract law is that the parties to a written agreement have an implied obligation of good faith and fair dealing in carrying out the terms of the agreement. This obligation extends to all facets of performance under the terms of the contract herein, including termination.

10. As set forth above, the County, acting through Sieger, has breached this obligation of good faith and fair dealing by targeting Counter Plaintiff for the first termination without cause in the long history of the airport. The manner in which Sieger has treated Abend clearly establishes ill will and selective treatment of Abend as the principal agent for Pilot.

11. Accordingly, Counter Plaintiff should be awarded its reasonable attorney's fees and court costs in addition to having the lease reinstated.

Count II Retaliatory Termination of Contract

12. Counter Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1-11.

13. The contract at issue herein allows either party to terminate for no cause, which the County alleges that it is seeking to do in this case. The allegations contained in the complaint appear to raise an issue of termination for cause.

14. The County's decision to terminate cannot be exercised in a manner that is either retaliatory, discriminatory, or unlawful. In this instance, the termination is retaliatory and discriminatory towards Counter Plaintiff based upon Abend's lawful exercise of his First Amendment right of free speech.

15. The Complaint by the County appears to allege termination for cause related a flight taken by Pilot after a storm event. If the above scenarios were indeed the background to the termination, the subsequent requests by the Airport Director to all tenants were complied with in regard to Pilot's arranging with FBO line crew for airplane movement while EDS equipment was staged at the airport. Additionally, Abends attempted to communicate with the Airport Director via text and email, but he was ignored. No direction of personnel occurred but instead an amicable request was made to EDS Ops manager to allow for taxiway access in advance of a departure in two days.

16. At the time of the flight in question, the County airport was open to other flight activities, i.e., Embry Riddle training, Phoenix East training, transient aircraft and other uses but had restricted access for revenue-generating tenants. No other leases were terminated for tenants who used the airport during the emergency staging event.

17. In allowing the staging of EDS equipment to block taxiways, the County was not in compliance with Section 5 of the lease agreement, which involves hangar access.

18. Clearly the Airport Manager targeted Pilot for termination for reasons related to Abend's free speech. The Airport Manager advised third parties that he thought Abends was trying to get the Airport Manager's employment terminated. When combined with the way that the Airport Manager eliminated the advisory board due, in large part to Abend's advocacy, the termination here was taken for purposes of retaliation against Abend's exercise of free speech.

19. Pilot has been damaged by the improper termination and seeks either monetary relief or to have the county enjoined from terminating the lease. Pilot has also been obligated to retain counsel and is entitled to recover costs under chapter 83, Florida Statutes. If the lease is not reinstated, then the County should be obligated to pay all damages resulting from its bad faith conduct that are proximately related to Pilot being forced to relocate its airplane to another location, if one can be found.

WHEREFORE, Counter Plaintiff respectfully requests that this Honorable Court allow the matter to proceed to a trial by jury and then enter Judgment in favor of Counter Plaintiff for breach of contract, court costs, and any other relief that this Honorable Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Florida e-portal to the designated email address for Sean S. Moylan, Esq., smoylan@flaglercounty.gov, ahadeed@flaglercounty.gov and jmiller@flaglercounty.gov on this 21 day of April, 2023.

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