

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.

**Unofficial Copy**

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**DEFENDANT'S MOTION TO DISMISS**

COMES NOW, Defendant, PEN AND PILOT, INC. (Pilot), by and through the undersigned attorney, and files this Motion to Dismiss in response to Plaintiff, Flagler County's (County) Complaint.

1. The Complaint should be dismissed for failure to state a cause of action. In both the pleadings and the attached notices of termination, the County purports to have terminated the written lease at issue for no cause pursuant the terms of paragraph 13 of the lease. The Complaint, however, contains a litany of allegations that appear to be basing the termination upon vague allegations that Pilot somehow interfered with emergency operations at the airport by requesting access to the runway for its plane. Assuming for purposes of this motion that the allegations have some basis in fact, Pilot should be afforded an opportunity to challenge the factual basis for a termination for cause. The County's allegations appear to claim that the termination was based upon dealings between the airport manager and Pilot, resulting in the County terminating the lease. At a minimum, the County should be required to submit a more detailed pleading as to the basis for seeking termination of the lease.
2. Dismissal is further warranted as the County appears to be misstating the law applicable to this Court's authority to rule on this cause of action. In paragraph 20, the County is claiming it has unbridled discretion to terminate a written contractual contract with a party and then hide behind the skirts of an executive exemption. In other words, the County claims it can terminate its contractual obligations, file a lawsuit and tell the Court that it has no discretion as to how to rule on the merits.
3. The County's position is both novel and unsupported by the case law. The decisions cited by the County are not applicable to the circumstances presented here. Initially, the decisions cited in the complaint all relate to either employment law cases (*DeGroot and*

*Lee County*) or an ethics panel decision (*Fisher Island*). None of the decisions stand for the proposition that a county's contractually based decisions are immune or exempt from judicial scrutiny.

4. The well established case law in both Florida and Flagler county runs contrary to the County's position. For over forty years, case law in Florida has held that under the statute empowering counties to lease airport hangars to private parties, the counties have waived immunity for breach of contract cases, *Interair Services, Inc. v Insurance Company of North America*, 375 So.2d. 317 (Fla. 2<sup>nd</sup> DCA 1979). As noted in the opinion, one way contracts between the government and private citizens are abhorrent. *Id* at 869. A case even closer on point involved the Flagler County airport, *CKN Airways, Inc. v. Flagler County*, 441 So.2d. 1103 (Fla. 5<sup>th</sup> DCA 1983). The Fifth District Court of Appeals determined in the CKN case that the private party to a lease with the County was entitled to a jury trial on various issues presented in a case where the County sought to terminate a lease at the airport.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order dismissing the complaint filed in this action, 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](mailto:smoylan@flaglercounty.gov), [ahadeed@flaglercounty.gov](mailto:ahadeed@flaglercounty.gov) and [jmiller@flaglercounty.gov](mailto:jmiller@flaglercounty.gov) on this 13<sup>th</sup> day of February, 2023.

By:

  
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