

**IN THE SUPREME COURT OF FLORIDA**

LEE SHAW, LOWELL D. HAMRIC  
and KATHERINE M. HAMRIC,  
LLOYD MULLIN and NANCY  
JAMIESON-MULLIN, PHILLIP  
ALLEN, JR., JEFFREY LITTLE,  
ALAN FOSTER, CORKEY GREY,  
DONNA MULLEN, ROCKEY  
PASSINTINO, VERNON SMEDLEY,  
WILLIAM WEFEL, JEFFREY WOOD,  
each individually,

Petitioners,

v.

FIDDLESTICKS COUNTRY CLUB, INC.,  
a Florida Not for Profit Corporation,

Respondent.

Case No. SC23-1029

L.T. Case Nos. 6D23-44  
19-CA-4901

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ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
SIXTH DISTRICT OF FLORIDA

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RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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## **STATEMENT OF THE ISSUES**

### **Issues presented by the jurisdictional brief.**

- I. Whether the Sixth District's holding that contracts may be amended in accordance with their terms creates an express and direct conflict?

### **Additional issues presented by the case if the Court accepts jurisdiction.**

- I. Whether Petitioners' case is barred by the statute of limitations?
- II. Whether Petitioners waived any cause of action based on the Club's 2013 Amendment?
- III. Whether the 2013 Amendment, which operates prospectively only, interferes with the vested rights of the Petitioners?

## **STATEMENT OF THE CASE AND FACTS**

This case presents a simple question: Whether the members of a private organization, such as a country club, can agree that their bylaws are amendable and agree to be bound by duly enacted amendments? The Sixth District answered this question in the affirmative applying long-settled black-letter law. As the District Court held, the bylaws of a club are a contract, and like all contracts, may be amended pursuant to their terms. There is no conflict and therefore no jurisdiction to review the decision below.

The facts stated by the Sixth District are straightforward and undisputed. Fiddlesticks Country Club, Inc. (“Fiddlesticks” or the “Club”) is a deed-restricted residential golfing community. Its governing documents require any person buying a lot within the community to become a member of the Club, subject to the Club’s bylaws. The Club’s bylaws have always been subject to amendment by a majority vote of the members. (Appendix “A” 6).<sup>1</sup>

Members purchase into the Club by buying an Equity Certificate. The price and terms of the purchase and redemption of

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<sup>1</sup> Page number references to Petitioners’ appendix are to the PDF pagination of the appendix.

the Certificate are provided for in the bylaws and have varied over the years. (A6).

The bylaws also provide for general, special, and member-approved assessments to fund capital improvements and other Club expenses. Historically, the Club had refunded assessments at 100% upon the sale of a member's Equity Certificate. However, in 2012, the Board proposed a bylaw amendment to make future assessments non-refundable. The proposed amendment operated prospectively, applying only to assessments issued after it went into effect. The Board presented the proposed amendment to the members which passed by majority vote, becoming effective on January 1, 2013 (the "2013 Amendment"). There is no dispute that the 2013 Amendment was duly adopted in accordance with the Club's bylaws. (A6-7).

In 2018, the Club proposed a \$9,000 special assessment, the first assessment after the 2013 Amendment (the "Assessment"). The purpose and economics of the assessment was explained to its members, and the members passed the Assessment by majority vote. (A7).

In 2019 a small group of members ("Plaintiffs") purported to challenge the Assessment. In truth, their litigation challenged the

2013 Amendment, arguing, in effect, that the now six-year-old Amendment which made future assessments non-refundable interfered with their vested rights. In support, the Plaintiffs argued that they had a vested right in the form of the bylaws in existence when they bought into the club and that *any* amendment to those bylaws interfered with their vested rights. (A8; R19-21; R499-511, R512-525, R693).<sup>2</sup>

The Club defended by arguing that it was too late to challenge the 2013 Amendment and that the Plaintiffs' pleadings which focused solely on the Assessment, waived any such challenge. (R705). On the merits, the Club argued that the bylaws were amendable, the Amendment was duly passed by a majority of the members, and that the Amendment, which operated prospectively only, did not interfere with any vested right. (A8-9).

The issue of the validity of the Assessment was presented to the trial court on cross-motions for summary judgment. The trial court ruled for the Plaintiffs, accepting their broad argument that any

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<sup>2</sup> The Plaintiffs also alleged that the Assessment also violated section 720.306(1)(c), Florida Statutes. The jurisdictional brief appears to have abandoned that issue, raising it neither in the body of the brief or the provisional statement of issues.

amendment of the bylaws interfered with the Plaintiffs' vested rights and entered final judgment for the Plaintiffs, invalidating the Assessment. (A9-10).

The Sixth District reversed. The court began with the proposition that any "right" held by the plaintiffs was created and enforced by the Club's bylaws. Then, using the same textual analysis used by other courts in other country club cases, determined that these bylaws, like any other contract, were subject to amendment on the terms agreed to by the members. Simply put, there was no vested right in the form of the bylaws as they existed at the inception of the Club. (A11-14).

Plaintiffs now petition for discretionary review of that decision.

## **SUMMARY OF THE ARGUMENT**

This case does not create an express and direct conflict. The Sixth District, following the example of every other court to analyze the issue, treated the bylaws as a contract. The court then noted that contracts are subject to amendment in accordance with their terms, and then, applying a textual analysis, determined that the bylaw provision at issue was both amendable and properly amended. Although the court recognized that some retrospective amendments could impact vested rights already earned, this case does not concern such an amendment, which was prospective in operation only.

The case is also a poor vehicle to analyze any such conflict, even if one were presented. Plaintiffs' complaint is barred by the statute of limitations. And even if this procedural hurdle could have been surmounted, during the many years of litigation, Plaintiffs never offered a test by which a court could determine whether a right is vested, arguing that *every* amendment interfered with vested rights. The issue of what is a vested right was never properly preserved, and this Court should decline to exercise its discretionary jurisdiction.

## **ARGUMENT**

### **I. This Court should decline Jurisdiction.**

#### **There is no conflict.**

This case was decided using non-controversial, black-letter principles. First, the bylaws of a membership organization, such as a golf or country club, are analyzed like any other contract. (A11). No conflict there. Second, club bylaws, like any other contract, can be amended in accordance with the terms agreed to by the parties. (A12). Once again, no conflict. The Sixth District merely examined the plain language of the Club's bylaws and determined that they were amendable and amended pursuant to the parties' agreement. This routine textual analysis creates no conflict. (A11-14).

Indeed, the Sixth District's approach was consistent with the approach taken in all the country club cases cited and analyzed by the court or raised by the Plaintiffs. For example, in *Share v. Broken Sound Club*, 312 So. 3d 962 (Fla. 4th DCA 2021) and *Hamlet Country Club, Inc. v. Allen*, 662 So. 2d 1081, 1082-83 (Fla. 4th DCA 1993), the Fourth District looked to the language of the bylaws to determine whether any vested rights were at stake. In each case, the court held that a private club's amendable bylaws do not create vested rights.

In *Verandah Development, LLC v. Gualtieri*, 201 So. 3d 654 (Fla. 2d DCA 2016), the Second District took the same approach. It started by analyzing the parties' bylaws. In that case it rejected the bylaw amendment, but only because the members had never agreed to permit the sort of amendment relied on by the club. *Id.* at 657-58. Similarly, in *Feldkamp v. Long Bay Partners, LLC*, 773 F. Supp. 2d (M.D. Fla. 2011), the federal district court resolved the question by analyzing the plain terms of the club's governing documents. *Id.* at 1280-81. Doing so, it rejected the club's attempt to change the terms of the members' equity certificates, because these certificates were governed by the articles of the club, which were not amendable, and not by the bylaws, which were. *Id.* at 1280-81. In *Surf Club v. Long*, 325 So. 2d 66 (Fla. 3d DCA 1975), the Third District rejected the amendment at issue because it was beyond the authority of the club's directors to pass. *Id.* at 69.

In other words, Florida courts take a consistent approach. They treat club bylaws as a contract, determine whether they were amendable, and then determine whether there was any limitation on that authority to amend. Although the courts reach different results based on the language of the bylaws in the particular case, they apply

the same governing principles. There is no conflict.

Indeed, Plaintiffs argue for an approach no Florida court has taken. Plaintiffs prevailed in the trial court by convincing the court that Club bylaws could never be amended because each member has a vested interest in the bylaws as they existed when they bought into the Club. (A14 n.2). There is no support for this proposition in Florida law and the Sixth District was correct to reject it.

The Plaintiffs attempt to create conflict by arguing that some courts have found the existence of “vested rights” that could not be changed by a later amendment. *See First Florida Bank, N.A. v. Fin. Trans.*, 522 So. 2d 891 (Fla. 2d DCA 1988); *Bhd. Relief and Comp. Fund v. Cagnina*, 155 So. 2d 820 (Fla. 2d DCA 1963). But the Sixth District did not disagree with this principle and its decision created no conflict on this point. The court carefully distinguished a bylaw amendment operating prospectively only from other amendments which may act to eliminate rights already earned retrospectively. The court’s decision specifically declines to address such retrospective amendments. (A16 n.3).

*First Financial* and *Cagnina* are also factually distinguishable. As the Fourth District noted in *Hamlet*, *First Florida* involved an

improper attempt to use a bylaw amendment to change a corporate charter. 522 So. 2d at 892 (“We find [*First Florida*] distinguishable because the corporation was attempting to change contractual rights emanating from its charter by altering the bylaws. In the present case the alleged vested rights are all contained in the bylaws which were subject to amendment”). Similarly, in *Cagnina*, the organization attempted to amend each members’ ownership certificate, by amending the organization’s constitution, without any evidence that the certificate was amendable. 155 So. 2d at 822.

Finally, even if these decisions could be read to create certain vested rights, they did so with virtually no analysis and without articulating any test to distinguish between a vested and non-vested right. Significantly, neither case supports the categorical rejection of bylaw amendments that Plaintiffs seek here. Instead, those decisions more likely reflected the conclusion that the rights and benefits at issue were already earned and therefore not subject to retrospective amendment. In any event, the Second District’s analysis was so “thin” in each case as to provide no principles for making this determination or to create a conflict, which is exactly what the Sixth District decided. (A15).

**This case is a poor vehicle for review.**

Even if this Court were concerned that a conflict existed, this case is a poor vehicle for resolving that conflict. As a threshold matter, the record reveals that Plaintiffs' challenge was too late. Their 2019 lawsuit, although it purports to attack the 2018 Assessment, necessarily requires a challenge to the 2013 Amendment. But the longest possible statute of limitations had expired for such a challenge. See Chapter 95, Fla. Stat.; 95.11(2)(b). See also *Hilton v. Pearson*, 208 So. 3d 108 (Fla. 1st DCA 2016) (suit challenging the validity of an amendment to a restrictive covenant must be filed within five years of the date the amendment is recorded); *Harris v. Aberdeen, Prop. Owners Ass'n, Inc.*, 135 So. 3d 365, 368 (Fla. 4th DCA 2014) (same); *Silver Shells Corp. v. St. Maarten at Silver Shells Condo. Ass'n, Inc.*, 169 So. 3d 197, 201-02 (Fla. 1st DCA 2015) (same).

Moreover, the parties never pleaded a case for overturning the 2013 Amendment (probably because of the statute of limitations problems). See *BAC Home Loans Servicing, Inc. v. Headley*, 130 So. 3d 703, 705 (Fla. 3d DCA 2013) ("As the Courts of this state have repeatedly held, a trial court lacks jurisdiction to hear and determine

matters that were not the subject of proper pleadings.”). Any challenge to the 2013 Amendment has been waived.

Equally important, if this case were about what rights are “vested,” Plaintiffs have created no record on this point. (A14 n.2). Their only argument is that every right in the bylaws is vested, a principle no court has embraced and which conflicts with the Florida Not for Profit Corporation Act which specifically permits bylaw amendments. See § 617.026 and 617.302, Fla. Stat. Assuming Plaintiffs’ blanket proposition is rejected, Plaintiffs have not preserved the issue of how to determine when a right is vested. Having provided no such test to either the circuit court or the Sixth District, it is too late to offer one now.

In short, there is no conflict and no good reason to take this case. Jurisdiction should be denied.

## **CONCLUSION**

This Court should decline to exercise its discretionary jurisdiction.

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel in the Service List below, on this 9th day of August 2023.

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.210(a)(2)(A).

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