

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 2011 CA018214(AI)

FREEDOM SOCCER, LLC and
MAGICTALK SOCCER CLUB, LLC,

Plaintiffs,

v.

WOMEN'S SOCCER, LLC,

Defendant.

**ORDER ON PLAINTIFFS' VERIFIED MOTION FOR TEMPORARY INJUNCTION
AND TO COMPEL CONTRACTUAL DISPUTE RESOLUTION PROCEDURES AND
ARBITRATION**

THIS CAUSE came before the Court on December 16, 2011 and January 5, 2012 for an evidentiary hearing on Plaintiffs' Verified Motion for Temporary Injunction and to Compel Dispute Resolution and Arbitration, and the Court having heard argument of counsel, testimony of witnesses and being otherwise fully advised in the premises, determines as follows:

1. On November 18, 2011, Plaintiffs Freedom Soccer, LLC and magicTalk Soccer Club, LLC (hereafter collectively "Plaintiffs" or "the Team") filed a Complaint in this Court asserting causes of action for specific performance and declaratory judgment arising out of a purported October 25, 2011 termination of their membership interest in Defendant Women's Soccer, LLC ("hereafter "Defendant" or "the League"). Plaintiffs claimed that such termination violated the parties' Operating Agreement and LLC Agreement, and, in particular, that such termination was effectuated without the League's decision to terminate the Team having first been submitted to the dispute resolution procedures set out in Article 12 of the LLC Agreement and Article 13.1(c) of the Operating Agreement (the "Dispute Resolution Procedures"); and

2. Plaintiffs having simultaneously filed in this Court a Verified Motion for Temporary Injunction and to Compel Contractual Dispute Resolution Procedures and Arbitration (hereafter “Motion for Temporary Injunction”), seeking, inter alia, temporary injunctive relief restoring the Team to its position as a member of the League while the parties engage in the Dispute Resolution Procedures, on the grounds that if such relief were not granted, the Team would suffer immediate and irreparable harm and there would be no adequate remedy at law; and

3. The Court, on December 16, 2011 and January 5, 2012, having heard testimony of witnesses and argument of counsel concerning Plaintiffs’ Motion for Temporary Injunction, has determined as follows:

(a) The parties’ relationship, and, accordingly, this action, is governed by the Second Amended and Restated Limited Liability Company Agreement of Women’s Soccer, LLC, Plaintiff’s Exhibit 41 (hereinafter “Px”), and Operating Agreement of Women’s Soccer, LLC, Px 42.

(b) On October 25, 2011, the Board of Governors of Defendant Women’s Soccer, LLC held a special meeting at which they made a decision to terminate Plaintiff’s membership in Women’s Soccer, LLC. Thereafter, by letter dated October 25, 2011, the League issued a Notice of Termination of the Team’s membership interest in the League, purportedly pursuant to Section 13 of the Operating Agreement, Px 42.

(c) That none of the Dispute Resolution Procedures were performed prior to the League’s issuance of the Notice of Termination

4. The Court has further reviewed the applicable contract provisions in Px 41 and Px 42, and has heard and considered the arguments of counsel for the parties with respect to the interpretation of such provisions. Based on the foregoing, the Court finds as follows:

(a) This dispute concerns a purported termination of Plaintiffs' membership interests in the League pursuant to Section 13 of the Operating Agreement, Px 42. While the parties dispute the merits of the termination, and the events that took place prior to the League's decision to terminate the Team's membership interest, the determination of the merits of the underlying disputes between the parties leading up to the purported termination, and whether the termination was proper, are not within the province of this Court, and do not affect the Court's decision whether Plaintiffs are entitled to the injunctive relief sought in this action.

(b) Plaintiffs assert that pursuant to the relevant sections of the LLC Agreement and the Operating Agreement, including, without limitation, Section 13.3(d) of the Operating Agreement, Px 42, that once the Board of Governors made a decision to terminate the Team's membership interest in the League, Plaintiffs were entitled to engage in all steps of the Dispute Resolution Procedures set out in Article 12 of the LLC Agreement, Px 41, before any purported termination could take effect. The Court, having reviewed all relevant provisions of the Agreements, agrees with Plaintiffs' position with respect to the provisions of Agreements.¹

(c) The Court further finds that the Agreements at issue are clear and unambiguous and do not require the resort to parol evidence to determine their meaning or intent.

(d) In particular, Section 13.3(d) of the Operating Agreement, Px 42, entitled "Decisions Subject to Arbitration", clearly and unambiguously provides that "any decision by the Board of Governors to terminate this Agreement shall be subject to arbitration in accordance with the procedures described in Article XII of the LLC Agreement". Other provisions of Section 13, on the other hand, provide for various procedures in the event of a "termination", as opposed to a "decision to terminate", the language which appears in Section 13.3(d) (see, e.g.,

¹ Defendant claims that the dispute resolution procedure process set forth in Section 13.3(d) of the Operating Agreement is in effect an "appeal" from a termination. The Court disagrees with Defendant's interpretation.

Section 13.3(a) and (b)). In addition, Section 13.3(d) is a mandatory clause, using the words “shall be subject to arbitration” in reference to any “decision to terminate” a team’s membership interest by the Board of Governors.

(e) Both parties agree that the Agreements in question must be read in their totality, and the Court finds that when reading the agreements as a whole, it is clear the Agreements provide that any decision by the Board of Governors to terminate a team’s membership interest is mandatorily subject to the Dispute Resolution Procedures set out in Article 12 of the LLC Agreement *prior* to any such decision to terminate being effectuated by the League.

While Defendant claims that such a construction and interpretation of the Agreements could lead to absurd results, the Court finds that procedures set forth in Article 12.01(c) of the LLC Agreement are mutual and provide that either party to the LLC Agreement may bring an action in Court seeking injunctive or other provisional relief to prevent immediate and irreparable harm, so that this provision provides a remedy to the Defendant, just as it does to the Plaintiffs, to prevent irreparable harm while the Article 12 Dispute Resolution Procedures with respect to any decision by the League to terminate a team’s membership interest are ongoing.

5. Therefore, in light of the foregoing, the Court makes the following findings of fact and conclusions of law:

(a) Likelihood of Success on the Merits

The Court finds that Plaintiffs have met their burden of establishing that they have a substantial likelihood of success on the merits of their claims, and a clear legal right to the relief requested, as it is clear from the Agreements that all steps of the Dispute Resolution Procedures are required *before* any decision to terminate the Team’s membership interest in the League can be effectuated. In making this finding, the Court is not making any determination as to the

underlying merits of the parties' dispute; rather, the Court is convinced that Plaintiff's interpretation and construction of the parties' Agreements is correct, and that Defendant failed to follow the Dispute Resolution Procedures, and, in particular, did not engage in all Dispute Resolution Procedures set out in Article 12 of the LLC Agreement after it reached its decision to terminate the Team, and prior to the issuance of the October 25, 2011 Notice of Termination.

(b) Irreparable Harm

As set forth above, Section 13.11 of the LLC Agreement provides that irreparable harm will result in the event any provision of the LLC Agreement has not been performed in accordance with its terms. While Plaintiffs claim that this element of injunctive relief has been met by virtue of the parties' Agreement, and is presumed, Defendant seeks to present evidence as to the irreparable harm to be suffered by Plaintiffs. The Court will reserve on the issue of irreparable harm.

(c) No Adequate Remedy at Law

Similarly, the Court will reserve on the issue of no adequate remedy at law.

(d) Public interest

The Court will reserve on the issue of public interest.

(e) Bond amount

The Court will reserve on the amount of a bond.

Based on this Court's findings, this matter is hereby scheduled for a four (4) hour evidentiary hearing solely on those issues on which the Court has reserved determination. Such

hearing shall be set on January 18th at 10:30 a.m.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida

this 9th day of January, 2012.


MEENU SASSER
Circuit Judge

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