

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

FREDERICK L. FELDKAMP and
JUDITH L. FELDKAMP,

Plaintiffs,

v.

CASE NO.: 2:09-CV-253-FIM-29SPC

LONG BAY PARTNERS, LLC, a
Florida limited liability company,

Defendant.

**SUPPLEMENT TO MOTION FOR
PARTIAL SUMMARY JUDGMENT WITH RESPECT TO
COUNTS I AND III OF THE FIRST AMENDED COMPLAINT**

Plaintiffs Frederick L. Feldkamp and Judith L. Feldkamp (“Plaintiffs” or the “Feldkamps”), by their undersigned attorneys, hereby supplement their motion for entry of partial summary final judgment (the “Motion”) against Long Bay Partners, LLC (“LBP” or “Defendant”) with respect to Counts I and III of the First Amended Complaint (the “Complaint”), to provide to the Court relevant evidence and case authority that has just become available, as follows:

1. The Motion and supporting memorandum of law were filed with the Court on September 4, 2009.

2. Plaintiffs have since obtained a copy of the deposition transcript of David Lucas (“Transcript”), which was taken on October 5, 2009 in Robert V. Housel and Mary Beth Housel v. Bonita Bay Group, Inc. and Long Bay Partners, LLC, Case No. 08-9437-CA, Karl Stingily and Phyllis Stingily v. Bonita Bay Group, Inc. and Long Bay Partners, LLC, Case No. 09-6053-

CA, and Michael Egan v. Bonita Bay Group, Inc. and Long Bay Partners, LLC, Case No. 09-4081-CA, and which is pending in the Circuit Court of Collier County, Florida. A true and correct copy of the Transcript is attached hereto as **Exhibit "A."**

3. David Lucas is the Chairman of the Board of the Bonita Bay Group, to which LBP belongs. The Transcript provides direct evidence of Defendant's conduct in the transactions at issue in this case and, in particular, bears significantly upon issues raised in Plaintiffs' Motion. Specifically, Mr. Lucas admits the following:

- Defendant regarded the agreement as **completely** amendable at its sole discretion. (Deposition, 43:5-24; 74:3; 75:19; 291:25 through 294:4).
- Strangely, however, though Mr. Lucas spent **17 straight minutes** looking through the rules and regulations for a section he "thought" allowed Defendant to change the agreement, as it related to the refund of the Plaintiffs' deposit, he admitted that no such section or language existed. (Deposition, 294:5-20).
- Rather, the agreements contain "unconditional" deposit repayment terms. When asked "What does an unconditional agreement mean to you?" the deponent answered "Means that it can't be changed." (Deposition, 9:9).
- "Membership in the club" is distinguished from the "deposit." A "membership" is what a "member" receives in exchange for the "deposit." (Deposition 249:23).
- The deposit was regarded and recorded by the Defendant, in the case of all its clubs, as a "loan" from members to Defendant. (Deposition, 249:24, *et al*).
- "Membership" is the right to use Defendant's property that the member obtained in exchange for the deposit. "Membership" is "only...a revocable license to use the Club Facilities that are not just "operated" by Defendant for members, they are "owned by Long Bay Partners", in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and the Application for Membership." (Deposition, 41:57 and 125:9-14).
- Defendant admits the "deposit" is a "loan" and that "instant refundability" of the loan was its intent. (Deposition, 33:8 through 35:23).

4. Plaintiff also advises the Court of a recent ruling in Glenn and Carole Bolles v. Long Bay Partners, d/b/a The Club at Mediterra, Case No. 09-4357-CA, pending in the Circuit Court of Collier County, Florida, whereby the circuit court orally granted summary judgment against the Defendant based upon facts, documents and arguments nearly identical to those presented in Plaintiffs' Motion here. A true and correct copy of the motion for summary judgment filed in the Bolles' case is attached as **Exhibit "B."** Plaintiffs will supply the Court with a transcript of the hearing and written Order as soon as it is available, and with a copy of the signed Order once it is entered.

/s/ Deborah H. Oliver

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 20th day of November, 2009, we electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties of record.

/s/ Deborah H. Oliver

Attorney