

CAUSE NO. CC-25-01512-A

DR. KATHLEEN BAILEY,

Plaintiff,

v.

DALLAS ATHLETIC CLUB, INC.,

Defendant.

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IN THE COUNTY COURT

AT LAW NO. 1

DALLAS COUNTY, TEXAS

PLAINTIFF’S THIRD AMENDED PETITION AND AFFIRMATIVE DEFENSES

Plaintiff Dr. Kathleen Bailey asserts the following causes of action against, and affirmative defenses in response to the counterclaims asserted by, Defendant Dallas Athletic Club, Inc. In support thereof, Plaintiff respectfully show the Court as follows:

I. DISCOVERY CONTROL LEVEL

- 1. Plaintiff intends to conduct discovery under level two.

II. PARTIES

- 2. Plaintiff Dr. Kathleen Bailey is an individual residing in Dallas, Texas.
- 3. Defendant Dallas Athletic Club, Inc. is a 501(c)(7) organization with its principal place of business in Dallas, Texas.

III. JURISDICTION AND VENUE

- 4. This Court has jurisdiction over the subject matter of this lawsuit because the amount in controversy exceeds the minimum jurisdictional requirements of the Court.
- 5. Venue in this Court is proper because a substantial part of the acts or omissions giving rise to the claims asserted herein occurred in Dallas County, Texas.

IV. RELEVANT FACTS

6. Defendant is a country club that operates in Dallas, Texas. Defendant offers swimming, golf, tennis, retail, and other exhibition and entertainment, including social and dining activities, to its members and, in some instances, the public.

7. Defendant is a member-owned club that is controlled by its members. Its members elect a board of directors to govern the organization.

8. Members have the obligation to pay dues and fund projects at the club.

9. In April 2015, Plaintiff Dr. Kathleen Bailey met with Defendant's membership director to discuss joining the club with a resident golf membership. At that time, Plaintiff did not reside in Dallas full time, despite considering it her homestead.

10. Plaintiff told Defendant's membership director that Defendant was one of several clubs she was considering and that she had received an attractive incentive offer from another club.

11. Defendant's membership director offered Plaintiff two rounds of golf to become acquainted with the facilities, which Plaintiff accepted. Defendant's membership director asked to make a copy of Plaintiff's driver's license as a requirement for the free rounds. Defendant's membership director noticed that Plaintiff used a Houston address on her driver's license and asked Plaintiff about it. Plaintiff explained that it was only a mail service address, not a residence, which she used because she traveled so frequently.

12. Defendant's membership director informed Plaintiff that Defendant could offer Bailey a non-resident membership, which comes with lower dues and a lower initiation fee than the resident membership.

13. Defendant further conveyed that, should Plaintiff ever wish to upgrade her membership status to resident, she would pay the upgrade fee based on the 2015 rates.

14. Plaintiff did not ask for nor raise the option of a non-resident membership.

15. Relying on these representations, Plaintiff entered into a membership contract with Defendant and proceeded to pay the non-resident membership dues for the next nine-and-a-half years.

16. Upon information and belief, it is a part of Defendant's procedures to offer incentives for joining the club.

17. In December 2021, Defendant opened a restaurant and lounge adjacent to the golf course. The space is a luxury facility featuring a surround-glass vista overlooking the club's outdoor dining patio with firepits and a view of the golf course. The room serves as a social dining and drinking facility that has a built-in bar, staff, a menu, and daily meal service. The restaurant has one other unique feature: women members are prohibited from entering the space. In fact, Defendant specifically named the facility the "men's lounge."

18. Perhaps understanding that such a practice in the twenty-first century is unlawful and discriminatory, Defendant claims that a "separate but equal" space, open solely to women, was available at the club, called the "women's lounge." However, the women's lounge is hardly equal to the men's lounge. In reality, the women's lounge is inferior in every possible way despite the fact that women are charged fees equal to men.

19. The women's lounge is a cramped, old room that looks and feels like an oversized walk-in closet. It is not staffed and has no bar. Dining at the women's lounge requires special arrangements. The women's lounge has no luxury view of the golf course—or anything substantive, for that matter. It is in no respect comparable to the men's lounge.

20. Plaintiff was opposed to the blatant discrimination and unlawful prohibition against women members using the dining facility. Plaintiff met with the president of the board of directors

to discuss the matter. The president advised Plaintiff to draft a letter to the board of directors and run for a position on the board to effect change herself from within. Plaintiff responded that she would need to change her membership to resident status in order to run for office.

21. In a letter to Defendant's president, Plaintiff expressed a desire to allow women into the men's lounge. In response, Defendant stated that it had no intention of opening the space to women. Thereafter, Defendant and its employees began to treat Plaintiff with open disdain and hostility.

22. On July 10, 2024, Plaintiff initiated steps to upgrade her membership status from non-resident to resident. Defendant's membership director agreed with Plaintiff that upgrading the membership status based on the 2015 resident initiation rate was appropriate, stated that she would look up the 2015 fee, and promised to send it to Plaintiff.

23. The following day, Defendant's membership director changed course. She told Plaintiff that, to upgrade her membership status to resident, she would have to pay the 2024 initiation fee (\$37,500.00) rather than the 2015 initiation fee, which was significantly lower.

24. After learning about the substantial unexpected costs to upgrade her membership, which directly contradicted the statements of the 2015 and 2024 membership directors, Plaintiff rescinded her request to upgrade her membership.

25. Plaintiff explained to Defendant's membership director that she believed that it was unfair to be charged the 2024 membership fees when she was told at the time of joining that she would be able to upgrade at the 2015 fees. The membership director promised to discuss Plaintiff's concerns with management.

26. Thereafter, Defendant's membership director informed Plaintiff that she did not qualify to receive the lower fee for initiation but that the board of directors would officially decide the issue at the August 2024 board meeting, which Plaintiff was requested to attend.

27. After Plaintiff explained her position at the August 2024 board meeting, the board of directors unanimously voted to find Plaintiff in violation of the bylaws and to impose a mandatory transfer to resident status using the 2024 rates.

28. Defendant's board of directors informed Plaintiff that, if she did not upgrade her membership within two weeks, her membership would lapse.

29. On September 4, 2024, to prevent her membership from lapsing, Plaintiff paid Defendant \$40,593.75, which reflects the initiation fee and applicable taxes. Plaintiff's membership was accordingly upgraded to resident status.

30. Perhaps discouraged that Plaintiff paid the membership upgrade fee, on February 11, 2025, the Defendant's counsel informed Plaintiff that her membership was suspended pending a board meeting on February 25, 2025, to discuss her expulsion from the organization. Defendant's attorney explained that this potential expulsion was due to Plaintiff's persistence that the men's lounge be opened to all members of the club. According to Defendant, Plaintiff's statement in a letter that both the public and leadership in Dallas condemn discrimination was sufficient grounds for suspension and termination.

31. On February 25, 2025, Defendant's board of directors terminated Plaintiff's membership. Contrary to previous representations by Defendant's attorney, Defendant has since refused to refund Plaintiff's membership upgrade fee, paid mere months beforehand in reliance on Defendant's representation that payment of the fee was necessary to maintain membership.

32. This suit addresses Defendant’s unlawful discriminatory practices and seeks to provide access to social and dining facilities to all adult members on an equal basis.

33. Defendant’s offerings render it a public accommodation.¹ Accordingly, it is subject to the Dallas City Ordinance, which prohibits the act of any public accommodation in Dallas which “directly or indirectly exclude[s], segregate[s], limit[s], refuse[s], or den[ies] to any person any of the accommodations, advantages, facilities, benefits, privileges, services, or goods offered to the general public” due to “a person’s sexual orientation or gender identity and expression.” Dallas City Ordinance § 46-6.1(a)(1) (2024). Though the ordinance does not apply to “bona fide social . . . organization[s],” the profits of which “are solely for the benefit of the organization,” *id.* at 46-6.1(c)(2), Plaintiff alleges that Defendant does not qualify for the protection of this carve-out.

34. Plaintiff alleges that Defendant’s actions—including but not limited to its deprivation of Plaintiff’s rights to use and enjoyment of Defendant’s facilities, gender discrimination, and failure to uphold various representations with the intent to induce Plaintiff’s membership and upgrade—are the result of Defendant’s fraud, malice, and/or gross negligence, entitling Plaintiff to punitive damages.

V. STANDING

35. The preceding paragraphs are incorporated as if fully set forth herein.

36. Generally, Texas courts will not interfere with the internal management or disciplinary processes of a private club unless it violates its own rules, acts in an illegal manner, or engages in conduct that is arbitrary, capricious, fraudulent, or against some public policy. *Butler*

¹ Defendant’s offerings rendering it a public accommodation include, *inter alia*, its restaurant(s) or other provision of food for consumption on its premises, its provision of exhibition and entertainment, its bars or other provision of alcoholic beverages throughout its facilities, and its retail nature and provision of goods and services.

v. Hide-A-Way Lake Club, Inc., 730 S.W.2d 405 (Tex. App.—Eastland 1987); *Juarez v. Tex. Ass’n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274, 279 (Tex. App.—El Paso 2005).

37. Plaintiff alleges that Defendant: (i) breached its own rules and procedures by violating a verbal contract with Plaintiff, by expelling Plaintiff, and by retaining Plaintiff’s upgrade fee after expelling Plaintiff; (ii) breached its own bylaws and acted against public policy by operating the men’s lounge; (iii) fraudulently induced Plaintiff to join the club and to pay the 2024 upgrade fee, only to terminate her membership five months later and retain the fee after representing that the fee would be refunded upon expulsion.

38. Plaintiff maintains standing to sue Defendant regardless of whether Defendant is found to be a private club, giving this Court jurisdiction over this suit.

VI. CLAIMS

Claim One: Breach of Verbal Contract

39. The preceding paragraphs are incorporated as if fully set forth herein.

40. In April 2015, Plaintiff and Defendant verbally agreed that Plaintiff would join Defendant under a non-resident membership with the option to upgrade at the 2015 rate in the future.

41. Plaintiff fully performed her obligations by joining Defendant as a non-resident member and paying all necessary dues and fees.

42. Defendant’s subsequent actions, including but not limited to its refusal to honor the 2015 fee and its imposition of the 2024 fee, breached the parties’ verbal contract.

43. As a result of Defendant’s breaches, Plaintiff has suffered harm in an amount to be determined at trial.

Claim Two: Breach of Contract (Bylaws)

44. The preceding paragraphs are incorporated as if fully set forth herein.

45. The bylaws are a valid, enforceable contract between the parties.

46. Plaintiff tendered an initiation fee and monthly dues to Defendant pursuant to the bylaws. At all relevant times, Plaintiff has tendered performance as required by the bylaws.

47. In exchange for payment of the initiation fee and monthly dues, Defendant agreed to operate as a “golf, tennis, fitness[,] and social club for the pleasure, recreation and social benefit of its [m]embers.” Inherent in this promise is Defendant’s provision of equal access to all of its members, regardless of gender.

48. In 2021, Defendant built and opened the men’s lounge with the use of the members’ initiation fees and dues, including Plaintiff’s financial contributions.

49. Despite using the funds provided by Plaintiff, and despite promises to give *all* of its members access to all of its amenities, Defendant denied Plaintiff access to the men’s lounge.

50. Defendant’s exclusion of women members from the space is not only in violation of Defendant’s bylaws but is arbitrary and capricious, as there is no justifiable reason to exclude women from this space. Defendant materially breached its bylaws and agreement with its members by depriving women of enjoying the men’s lounge.

51. Further, the bylaws state that a member may be expelled from the DAC “for cause.”

52. Plaintiff was arbitrarily and capriciously expelled from the DAC “for cause” on February 25, 2025. However, Defendant has provided no explanation to Plaintiff regarding the “cause” for her expulsion.

53. Inferring from a letter from Defendant’s counsel on February 11, 2025, Defendant alleges that the “cause” for Plaintiff’s expulsion was the threat that she might defame the club,

make false allegations against it, and defraud it. However, these allegations were fabricated to facilitate Plaintiff's wrongful expulsion.

54. After Plaintiff's expulsion, the upgrade fee was withheld despite Defendant's prior representation that the fee would be refunded if Plaintiff was expelled from the club.

55. Defendant acted in contravention of this promise, which Defendant represented was a club procedure, by arbitrarily misapplying its own rules—both in Plaintiff's expulsion “for cause” and in the club's refusal to return the upgrade fee. Defendant intended to punish Plaintiff for voicing her opposition to Defendant's gender discrimination.

56. As a result of Defendant's conduct, Plaintiff has suffered economic, emotional, and social harm in an amount to be proven at trial but which increases daily.

Claim Three: Fraudulent Inducement (to Join)

57. The preceding paragraphs are incorporated as if fully set forth herein.

58. Defendant misrepresented the terms of the membership agreement when recruiting Plaintiff to join the club. Specifically, Defendant's membership director falsely represented that Plaintiff could join Defendant with a non-resident membership despite considering Dallas her homestead. Additionally, the membership director falsely represented that, should Plaintiff ever wish to upgrade to resident status, she would pay the upgrade fee based on the 2015 rates.

59. Defendant's membership director also falsely represented that Defendant did not and would not engage in racist or sexist practices.

60. Defendant's representations were false. Plaintiff was stripped of her non-resident membership status and coerced into paying the upgrade fee at the 2024 rate. Further, Defendant's construction, maintenance, and operation of the men's lounge discriminates against women on the basis of sex.

61. But for these misrepresentations, Plaintiff would not have applied for membership at the club nor entered into the membership agreement, rendering the representations material. Specifically, Plaintiff would have instead joined another country club.

62. Defendant knew or recklessly disregarded the falsity of its representations at the time that the representations were made.

63. Defendant made these representations to Plaintiff with the intent that Plaintiff would rely on them when applying for membership at the club.

64. Plaintiff actually and justifiably relied on Defendant's misrepresentations. Plaintiff's reliance was justified because, among other things, the misrepresentation came from someone with authority at the club—the membership director.

65. As a result of Plaintiff's reliance on Defendant's misrepresentations, Plaintiff has suffered damages in an amount to be determined at trial.

Claim Four: Fraudulent Inducement (to Upgrade)

66. The preceding paragraphs are incorporated as if fully set forth herein.

67. Defendant misrepresented the terms of Plaintiff's upgrade to resident status. Specifically, Defendant represented that Plaintiff would be in good standing and continue to enjoy the benefits of membership as a resident after paying the upgrade fee.

68. This representation was false and misleading: Defendant expelled Plaintiff five months after accepting her payment of the upgrade fee.

69. The representation was material because, without it, Plaintiff would not have upgraded her membership. In particular, Plaintiff would not have paid the substantial upgrade fee if she knew Defendant was planning to expel her soon thereafter.

70. Defendant knew or recklessly disregarded the falsity of its representation when made. Defendant made this representation with the intent that Plaintiff would rely on it, upgrade her membership, and pay the fee.

71. Plaintiff actually and justifiably relied on Defendant's misrepresentation, with particular weight to the fact that the representation was made by someone with authority within Defendant—the membership director.

72. As a result of Defendant's conduct and Plaintiff's reliance, Plaintiff has suffered damages in an amount to be proven at trial.

Claim Five: Unjust Enrichment

73. The preceding paragraphs are incorporated as if fully set forth herein.

74. On September 4, 2024, Plaintiff paid Defendant more than \$40,000.00 to upgrade her membership to resident status despite previous representations that she could upgrade at the 2015 rates.

75. Less than six months after Plaintiff paid this fee, Defendant terminated Plaintiff's membership, depriving her of use and enjoyment of the facilities for which she paid.

76. In the alternative to her breach of contract claims, Plaintiff alleges that Defendant was unjustly enriched by Plaintiff's upgrade fee without having to provide the services and enjoyment promised.

77. Defendant obtained this benefit by coercion. Specifically, Defendant forced Plaintiff to upgrade her membership status under the threat of revocation of her current membership. Defendant's motivation for this coerced upgrade was to retaliate against Plaintiff for her critiques of Defendant's sexist practices—namely, its operation of the men's lounge.

78. Defendant acted outside of its own rules and procedures by retaining the upgrade fee after promising that it would refund Plaintiff in a letter from its attorney on February 11, 2025.

79. As a result of Defendant's actions, Plaintiff has suffered damages in an amount to be proven at trial.

Claim Six: Breach of Implied Contract

80. The preceding paragraphs are incorporated as if set fully herein.

81. Plaintiff alleges that Defendant is not truly a private club. In that case, Defendant has breached an implied contract with Plaintiff by operating the men's lounge in violation of a Dallas city ordinance.

82. The bylaws, forming the parties' membership agreement, constitute a valid, enforceable contract which implies the agreement by the parties to abide by all regulations and laws. This agreement is not explicitly written because it is "too obvious to need expression." *Gaspar v. Lawnpro, Inc.*, 372 S.W.3d 754, 757 (Tex. App.—Dallas 2012) ("Terms of a contract are implied when they are necessarily involved in the contractual relationship such that the parties must have intended to include them, but failed due to inadvertence or because they were too obvious to need expression.").

83. It is unlawful for any place of public accommodation in Dallas to "directly or indirectly exclude, segregate, limit, refuse, or deny to any person any of the accommodations, advantages, facilities, benefits, privileges, services, or goods offered to the general public" due to "a person's sexual orientation or gender identity and expression." Dallas City Ordinance § 46-6.1(a)(1) (2024). Though the ordinance does not apply to "bona fide social . . . organization[s]," the profits of which "are solely for the benefit of the organization," *id.* at 46-6.1(c)(2), Plaintiff alleges that Defendant is not afforded the protection of this carve-out.

84. Plaintiff, and all women members at the club, has been subjected to discriminatory treatment on the basis of gender, as evidenced by Defendant's refusal to allow women to enjoy the men's lounge.

85. Defendant has deprived Plaintiff of privileges and benefits extended to men in violation of the ordinance. By engaging in such an unlawful practice, Defendant has breached its implied contract with Plaintiff.

86. As a result of Defendant's conduct, Plaintiff has suffered damages in an amount to be proven at trial but which increase daily.

Claim Seven: Declaratory Judgment

87. The preceding paragraphs are incorporated as if fully set forth herein.

88. Plaintiff seeks declaratory judgment under the Texas Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.*

89. A justiciable controversy exists between Plaintiff and Defendant regarding Defendant's categorization as a private club. Plaintiff asserts that Defendant has forfeited its private club status and is considered a public accommodation, subjecting it to the Dallas city ordinance at issue in this case. Dallas City Ordinance § 46.6.1(a).

90. In determining whether a social club is truly private, courts consider, *inter alia*: (i) the extent to which membership is genuinely selective on some reasonable basis; (ii) the measure of control the members have over the organization's operations; (iii) the manner in which the membership corporation was created; (iv) the purpose of the organization's existence; (v) formalities which many private clubs observe; and (vi) general characteristics which many private clubs possess. *Durham v. Red Lake Fishing & Hunting Club*, 666 F. Supp. 954 (W.D. Tex. 1987).

91. Plaintiff maintains that Defendant is not truly a private club. Therefore, Plaintiff seeks the following declarations from the Court:

- a. Defendant is not a private club;
- b. Defendant has failed to act as a bona fide social organization;
- c. Defendant is a public accommodation;
- d. Defendant is subject to, and in violation of, Dallas City Ordinance § 46-6.1(a)(1).

Claim Eight: Fraud, Malice, and/or Gross Negligence

92. The preceding paragraphs are incorporated as if fully set forth herein.

93. Defendant retaliated against Plaintiff, deprived her of use and enjoyment of facilities in violation of her rights as a member and in violation of applicable city laws against gender discrimination, and failed to uphold various representations made with the intent to induce Plaintiff into joining the club and upgrading her membership.

94. Defendant's conduct is the result of fraud, malice, and/or gross negligence.

95. As a result of Defendant's conduct, Plaintiff has suffered in an amount to be proven at trial but which increases daily.

VII. CONDITIONS PRECEDENT

96. All conditions precedent to Plaintiff's rights and claims herein have been performed, occurred, or been waived.

VIII. REQUEST FOR EXEMPLARY DAMAGES

97. The preceding paragraphs are incorporated as if fully set forth herein.

98. Defendant has engaged in highly discriminatory and unlawful conduct to Plaintiff's detriment, retaliated against her, and acted in a fraudulent, malicious, and/or grossly negligent

manner toward her. Defendant has accordingly breached various duties owed to Plaintiff. Plaintiff seeks an award of exemplary damages against Defendant. Tex. Civ. Prac. & Rem. Code § 41.003.

IX. ATTORNEYS' FEES

99. Plaintiff retained the undersigned counsel to pursue this suit on her behalf. Plaintiff agreed to pay counsel reasonable and necessary attorneys' fees and costs. As an award of attorneys' fees and costs to Plaintiff would be equitable and just, Plaintiff seeks recovery of reasonable and necessary attorneys' fees and court costs pursuant to Sections 37.009 and 38.001 of the Texas Civil Practice and Remedies Code.

X. AFFIRMATIVE DEFENSES

99. Subject to and without waiving Plaintiff's presumed general denial, Tex. R. Civ. P. 92, Plaintiff asserts the following affirmative defenses to Defendant's counterclaims.

- 100. Plaintiff asserts the affirmative defense of prior material breach.
- 101. Plaintiff asserts the affirmative defense of unclean hands.
- 102. Plaintiff asserts that the economic loss doctrine precludes Defendant's recovery.
- 103. Plaintiff asserts the affirmative defense of fraud.
- 104. Plaintiff asserts the affirmative defense of fraudulent inducement.
- 105. Plaintiff asserts the affirmative defense of offset.
- 106. Plaintiff asserts the affirmative defense of statute of limitations.
- 107. Plaintiff asserts the affirmative defense of waiver.

XI. PRAYER

Plaintiff prays and respectfully requests that this Court make the following findings against Defendant in this case:

- a. That Defendant breached a verbal contract with Plaintiff;

- b. That Defendant breached its bylaws;
- c. That Defendant fraudulently induced Plaintiff to join the club and to upgrade to a resident membership;
- d. That Defendant was unjustly enriched by its retention of Plaintiff's upgrade fee;
- e. That Defendant breached an implied contract with Plaintiff to act lawfully;
- f. That Defendant is not a private club;
- g. That Defendant failed to act as a bona fide social organization;
- h. That Defendant is a public accommodation;
- i. That Defendant is subject to, and in violation of, Dallas City Ordinance § 46-6.1(a)(1);
- j. That Defendant acted in a fraudulent, malicious, and/or grossly negligent manner toward Plaintiff;
- k. That Plaintiff is entitled to an award of all actual, consequential, and expectancy damages suffered as a result of Defendant's conduct;
- l. That Plaintiff is entitled to an award of exemplary damages;
- m. That Plaintiff is entitled to an award of pre- and post-judgment interest in the maximum amount permitted by law;
- n. That Plaintiff is entitled to an award of all reasonable and necessary attorneys' fees and costs incurred in pursuit of her claims;
- o. That Defendant should take nothing in pursuit of its claims asserted against Plaintiff; and
- p. For such other and further relief as the Court may deem equitable and just.

Respectfully submitted,

/s/ Elizabeth H. Gebert

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ATTORNEYS FOR PLAINTIFF

DR. KATHLEEN BAILEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served electronically on all counsel of record in this matter on February 2, 2026.

/s/ Elizabeth H. Gebert
Elizabeth H. Gebert