

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE-25-006694

SIGNALWAVE, LLC,

Plaintiff,

v.

VILLA VIE RESIDENCES CORPORATION
d/b/a VILLA VIE RESIDENCES INC.
MARSHALL ISLANDS,

Defendant,

AMENDED¹ DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant, Villa Vie Residences Corporation (“Defendant”),² through undersigned counsel, moves to dismiss the Complaint filed by Plaintiff, SignalWave, LLC (“Plaintiff”), and states as follows:

I. Introduction

Plaintiff's Complaint alleges three counts—Breach of Contract, Conversion, and Negligent Misrepresentation—stemming from a Purchase Agreement executed on August 30, 2024, between Plaintiff and Villa Vie Residences Inc., a Marshall Islands entity, granting Plaintiff a “Right to Occupy” Villa No. 7020 on the ship named Villa Vie Odyssey (“Agreement”). The Agreement

¹ No substantive changes have been made to the arguments, legal propositions, or substance of the Motion. Defendants file this Amended Motion to Dismiss solely to correct certain case citations.

² Plaintiff has incorrectly sued Villa Vie Residences Corporation, a Florida corporation, erroneously and impermissibly, alleging in a vague and conclusory manner that it does business as Villa Vie Residences Inc., a Marshall Islands entity.

incorporates Terms and Conditions dated April 6, 2024 (“Terms”).³ Plaintiff claims Defendant breached the Agreement by omitting itinerary stops, opening a pickleball court, causing percussion noise in the Villa, failing to provide promised amenities, and taking unilateral actions, such as freezing Plaintiff’s use of the Villa, listing the Villa for sale, and barring Plaintiff’s rental of the Villa. These alleged actions also form the basis for the tort claims. Plaintiff erroneously names *Villa Vie Residences Corporation*, a Florida corporation, as Defendant, despite the Agreement identifying *Villa Vie Residences Inc.*, Marshall Islands, as the contracting party. Plaintiff’s Complaint, suing the wrong entity and lacking viable claims, is fatally flawed and cannot proceed.

II. Legal Argument

A. Choice of Law

Federal substantive maritime law governs this dispute. *First*, the parties agreed to maritime law.⁴ *See Great Lakes Reinsurance PLC v. Yellow Fin 36 LLC*, 736 F. Supp. 2d 1302 (M.D. Fla. 2010)(“Under federal maritime choice of law rules, contractual choice of law provisions are generally recognized as valid and enforceable”). *Second*, even in the absence of the contractual stipulation to maritime law because the claims arise out of and relate to maritime transactions, maritime law applies. *See, F.W.F., Inc. v. Detroit Diesel Corp.*, 494 F. Supp. 2d 1342 (S.D. Fla 2007)(when the subject matter of a lawsuit relate to maritime transactions, the agreement was a maritime contract, and the court applied federal maritime law); *Norwegian Cruise Lines Ltd. v.*

³See Compl. ¶31 (“In addition, Moses, on behalf of SignalWave, agreed to and accepted Villa Vie’s terms and conditions (the “Terms and Conditions”), a copy of which is attached as Exhibit “B”.”)

⁴ The Terms state, “the Agreement and all disputes or claims whatsoever by Resident arising from or related to the Agreement shall in all respects and without regard to conflict of law principles, be governed by and construed in accordance with the general maritime law of the United States of America.”

Zareno, 712 So. 2d 791 (Fla. 3d DCA 1998)(federal maritime law applies to lawsuits arising from torts on navigable waters).

However, Florida state law may be applied where it neither conflicts with nor disturbs the uniformity of maritime law, and it may also be applied in the absence of controlling maritime precedent. *Id.* at 793 (state court may apply state law to maritime action provided there is no conflict with federal maritime law); *Royal Caribbean Cruises, Ltd. v. Cox*, 137 So. 3d 1157 (Fla. 3d DCA 2014)(same); *Sagaan Developments & Trading Ltd. v. Quail Cruise Shio Management*, 2013 WL 2250793 (S.D. Fla. 2013)(applying Florida law to a maritime contract dispute where maritime law is silent).

Florida procedural law applies to this dispute. *God's Blessing Ltd. v. Salas*, 339 So. 3d 1086 (Fla. 3d DCA 2022)(while state courts hearing admiralty cases generally utilize the substantive law of admiralty, they use the procedural law of their own jurisdiction.).

B. Plaintiff Sued the Wrong Party

The Complaint is defective by naming the incorrect defendant. It identifies Villa Vie Residences Corporation d/b/a Villa Vie Residences Inc., Marshall Islands, as the defendant. However, the Agreement clearly designates *Villa Vie Residences Inc.*, Marshall Islands, as the contracting party. The signature certificate and audit log confirm *Villa Vie Residences Inc.* as the contracting party, with no mention of Defendant, *Villa Vie Residences Corporation*.⁵

Plaintiff's assertion that Defendant operates as a "d/b/a" of Villa Vie Residences Inc. is a conclusory allegation unsupported by facts, insufficient to establish liability. *Jordan v. Nienhuis*,

⁵ Although the court is confined to the four corners of the complaint, the distinction between the two separate legal entities is not immaterial. *Villa Vie Residences Corporation* is a Florida corporation with Document Number P23000062680. *Villa Vie Residences Inc.*, was a Delaware corporation with File Number 7550281 that was redomiciled to a Marshall Islands entity.

203 So. 3d 974 (Fla. 5th DCA 2016)(general, vague, and conclusory statements are insufficient to state a claim); *Barrett v. City of Margate*, 743 So. 2d 1160 (Fla. 4th DCA 1999)(opinions, theories, or legal conclusions are inadequate to plead a cause of action).

When exhibits attached to a complaint contradict its allegations, as they do here, the exhibits prevail, rendering the allegations void. *Am. Seafood, Inc. v. Clawson*, 598 So. 2d 273, 274 (Fla. 3d DCA 1992)(dismissing complaint for failure to state a cause of action where exhibits demonstrated that a third party, not the named defendant, was liable). Maritime law and Florida law bar suing a non-party for breaching a contract. *Central Boat Rental, Inc. v. Pontchartain Partners, LLC*, 744 F. Supp. 3d 635 (E.D. La 2024)(the first element for breach of contract under federal maritime law is the existence of a contract *between the parties*); *Morgan Stanley DW Inc. v. Halliday*, 873 So. 2d 400 (Fla. 4th DCA 2004)(holding that only parties to a contract can be sued for its breach); *Cohen's Organization v. Premier Fire Alarms and Integration Systems, Inc.*, 318 So. 3d 573 (Fla. 4th DCA 2021)(finding no liability for a non-party to the contract). Plaintiff's misidentification of the defendant warrants dismissal of all claims against Villa Vie Residences Corporation.

C. Count I: Breach of Contract Fails to State a Cause of Action

Count I, alleging breach of contract, also fails because Plaintiff does not identify a specific contractual provision that Defendant allegedly breached. A breach of contract claim requires a valid contract, a material breach of a specific contractual obligation, and resulting damages. *Central Boat Rental, Inc.*, 744 F. Supp. 3d at 635 (elements of a breach of contract under maritime law); *J.J. Gumberg Co. v. Janis Services Inc.*, 847 So. 2d 1048 (Fla. 4th DCA 2003)(elements of a breach of contract claim under Florida law); *Patton v. Carlson*, 132 So. 2d 793, 796 (Fla. 1st DCA 1961)(requiring specific contractual terms to be alleged). Plaintiff must pinpoint the

contractual covenant breached. *Ins. Concepts & Design, Inc. v. Healthplan Serv., Inc.*, 785 So. 2d 1232, 1236 (Fla. 4th DCA 2001)(dismissing claim for failure to identify specific provision breached). Plaintiff alleges four bases for breaches, none of which are tied to a contractual obligation in the Agreement or its Terms:

- **Omitted Itinerary Stops:** Plaintiff claims Defendant breached the Agreement by omitting itinerary stops during the 2025 Cruise. Compl., ¶40. The Terms expressly permit Defendant to “change the itinerary at any time without notice” and “for any reason whatsoever.” This broad discretion negates any covenant requiring adherence to a fixed itinerary, rendering Plaintiff’s claim baseless.

- **Opening a Pickleball Court:** Plaintiff alleges Defendant breached the Agreement by opening a pickleball court that generated “loud percussion noise,” interfering with the use of the Villa. Compl., ¶¶43-47. The Agreement and Terms contain no covenant guaranteeing a noise-free environment or prohibiting recreational facilities, such as a pickleball court. To the contrary, the Terms expressly permit Defendant to “make changes/retrofits/modifications to the ship provided for its voyages at any time,” encompassing the addition of a pickleball court. Plaintiff’s claim of interference lacks any contractual basis, as no provision restricts shipboard activities that may generate noise.

- **Failure to Provide Amenities:** Plaintiff alleges Defendant failed to provide amenities such as pools, hot tubs, a culinary center, laundry equipment, routine medical care, restaurants, free non-alcoholic drinks, and a golf simulator. Compl., ¶¶28, 41. The Agreement and Terms list “inclusive amenities” like dining three times daily, snacks, limited house beer and wine, WiFi, weekly housekeeping, laundry service, and primary health visits. However, they do not

obligate Defendant to provide pools, hot tubs, a culinary center, or a golf simulator. Plaintiff's assertion lacks any contractual promise to support a breach.

- **Unilateral Actions:** Plaintiff contends Defendant breached the Agreement by freezing use of the Villa, listing it for sale, and barring rentals. Compl., ¶¶49(c)-(e). The Complaint fails to identify any covenant in the Agreement prohibiting these actions. The Terms allow Defendant to “make changes/retrofits/modifications to the ship provided for its voyages at any time” and to change “policies, procedures, and requirements... without notice.” Without a specific contractual restriction, these actions do not constitute a breach.

The Agreement's terms, as an exhibit, control over contradictory allegations. *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994)(holding that exhibits prevail over contradictory allegations); *Fladell v. Palm Beach Cnty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000)(same). Plaintiff's attempt to impose liability on a non-party, *see supra* II(B), and failure to plead a breach of an actual covenant in the Agreement mandates dismissal of Count I.

D. Count II: Conversion Fails to State a Cause of Action

1. The Villa is not a “Chattel” Capable of Conversion.

Count II, alleging conversion, fails because the Villa is not a “chattel” capable of conversion. *Evergreen Marine Corp v. Six Consignments of Frozen Scallops*, 4 F. 3d 90 (1st Cir 1993)(conversion is an intentional and wrongful exercise of dominion or control over *a chattel* in the admiralty context); *Edwards v. Landsman*, 51 So. 3d 1208 (Fla. 4th DCA 2011)(defining conversion as unauthorized dominion over *chattel*); *Middleton v. M/V Glory Sky*, 567 Fed. Appx. 811 (11th Cir. 2014)(*e.g.*, conversion of a bag of beans); Black's Law Dictionary 12th ed. 2024 (defining chattel as “moveable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property”).

2. Plaintiff's Interest in the Villa is Insufficient for a Conversion Claim.

Count II also fails because Plaintiff lacks a sufficient property interest in the Villa to sue for conversion. Conversion occurs when a person exercises dominion over chattel inconsistent with the owner's possessory rights, depriving the owner of possession. *See supra* II(D)(1).

However, the Agreement only grants Plaintiff a "Right to Occupy" the Villa, not ownership. Compl., Ex. A. As an occupant with a contractual right to use, Plaintiff does not have a sufficient possessory right to maintain a claim for conversion against Defendant where the Terms establish that Defendant's rights to the Villa are superior to Plaintiff's rights. Specifically, the Terms provide that Defendant retains control over the ship, permits Defendant to make policy changes and modifications to the ship, and grants Defendant entry rights into the Villa, all of which establish that Plaintiff's interest is subordinate to Defendant's authority. *See Negron v. Celebrity Cruises, Inc.*, 360 F. Supp. 3d 1358 (S.D. Fla. 2018)(applying maritime law, dismissing plaintiff's claim for trespass, finding plaintiff did not have a sufficient possessory interest in cabin to state a claim for trespass where interest in cabin was subordinate to that of the Defendant).

3. Count II is Barred by the Maritime Economic Loss Rule.

The economic loss rule under federal maritime law bars Counts II, as the conversion claim is rooted in the Agreement and only seeks economic damages. In admiralty, the economic loss rule states that "a party may not recover [in tort] for economic losses not associated with physical injury." *Kingston Shipping Co v. State of Florida*, 667 F. 2d 34 (11th Cir. 1982).

The maritime economic loss rule bars tort claims, such as here, where a maritime contract exists governing the subject matter of the dispute. *Holekamp v. WestPort LLC*, 2025 WL 592842 (W.D. Wash. 2025)(dismissing plaintiff's tort claims because the maritime economic loss rule bars tort claims where there was a maritime contract governing the subject matter of the dispute).

Similarly, even if Florida law were applicable, under Florida law, tort claims in contract disputes must involve independent wrongful conduct and distinct damages.⁶ *Island Travel & Tours, Ltd. Co. v. MYR Indep., Inc.*, 300 So. 3d 1236, 1240 (Fla. 3d DCA 2020)(requiring tort claims to be independent of contract breach).

Count II's allegations of unilateral actions (e.g., freezing use, listing the Villa) mirror Count I's claims of the same conduct. Moreover, Plaintiff even references and cites provisions of the Agreement within its claim for conversion and as support thereof. Compl., ¶¶64-65. *See Gary v. D. Agustini & Associates, S.A.*, 865 F. Supp. 818 (S.D. Fla. 1994)(applying maritime law, dismissing plaintiff's conversion claim holding that it was fatal to the conversion claim that the claim was rooted in contract); *Ginsberg*, 645 So. 2d 490 (finding tort claim for conversion failed to state a cause of action because the claim was contractual).

Additionally, the conversion count seeks only economic losses (i.e., "compensatory, consequential, and actual damages"), which are identical to the damages sought for the breach of contract count. *Kingston Shipping Co*, 667 F. 2d 34 (where a contract exists, cannot recover in tort for economic losses not associated with physical injury); *Island Travel*, 300 So. 3d at 1240 n.7 (barring tort claim where damages overlap with contract claim).

⁶ Maritime law and Florida law conflict regarding the economic loss rule, with maritime law applying it broadly to all torts, whereas Florida restricts its application to products liability cases. *See BVI Marine Const. Ltd. v. ECS-Florida, LLC*, 2013 WL 6768646 (S.D. Fla. 2013)(dismissing tort claims as barred under maritime law, explaining the conflict with Florida's limited economic loss doctrine and holding that admiralty law governs, rejecting Florida's narrower application of the economic loss doctrine).

E. Count III: Negligent Misrepresentation Fails to State a Cause of Action

1. Lack of Particularity in Pleading

Count III, alleging negligent misrepresentation, fails due to insufficient particularity. Negligent misrepresentation requires a false statement of material fact, made negligently, with intent to induce reliance, justifiable reliance, and damages. *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010)(listing elements of negligent misrepresentation). Such claims must be pled with particularity, specifying who made the statement, its substance, the time and place, and the context. Fla. R. Civ. P. 1.120(b); *Bankers Mut. Capital Corp. v. U.S. Fid. & Guar. Co.*, 784 So. 2d 485, 490 (Fla. 4th DCA 2001)(requiring specific identification of misrepresentation details).

Plaintiff alleges Defendant misrepresented the “soundness of its finances” and amenities to induce the Villa purchase. However, the Complaint lacks specificity, failing to identify the speaker, recipient, timing, location, or precise content of the representations. Vague references to financial soundness and amenities do not suffice. *Batlemento v. Dove Fountain*, 593 So. 2d 234, 238 (Fla. 5th DCA 1992)(finding fraud claim lacked particularity for identifying only subject matter); *Robertson v. PHF Life Ins. Co.*, 702 So. 2d 555, 556 (Fla. 1st DCA 1997)(affirming dismissal for failure to specify misrepresentation details).

2. Non-Actionable Statements

The alleged statements about financial soundness and amenities constitute non-actionable opinions or puffery, not material facts. *MDVIP, Inc. v. Beber*, 222 So. 3d 555, 561 (Fla. 4th DCA 2017)(holding statements about being the “best” are non-actionable puffery); *Wasser v. Sasoni*, 652 So. 2d 411, 412 (Fla. 3d DCA 1995)(finding statements like “excellent deal” are opinions); *Simon v. Celebration Co.*, 883 So. 2d 826, 832 (Fla. 5th DCA 2004)(dismissing vague promises like “best practices” as insufficient for fraud).

Moreover, the Terms' merger clause, which states, "[t]his Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and all understandings, oral agreements" and "any current or prior representations, understandings, or oral statements, including without limitation, representations made in sales brochures, sales materials or oral representations made by sales representative as to incentives or any other matter associated with the Villa are of no force and effect unless set forth in the Special Conditions Sections and approved by VVR" voids prior any representations unless included in the Agreement's Special Condition, rendering any reliance on such representations unreasonable as a matter of law. *Lafarge N.A., Inc. v. Matraco Co., Inc.*, 2008 WL 2277503 (S.D. Fla. 2008)(finding counterclaim for fraudulent misrepresentations fails in face of contract's merger clause because reliance on any representations not contained in the contract was unreasonable as a matter of law).

3. Count III is Barred by the Maritime Economic Loss Rule

Count III is also barred by maritime law's economic loss rule because it relates to the Agreement, and it only seeks damages for economic losses. *See supra* II(D)(3); *see also Holekamp*, 2025 WL 592842 (W.D. Wash. 2025)(dismissing negligent misrepresentation claim because it was barred by the maritime economic loss rule).

F. Consequential Damages Are Barred

Plaintiff impermissibly seeks "consequential" damages in all counts of the Complaint. The Terms state, "in no event will VVR be liable to the Resident for any consequential, incidental, exemplary, or punitive damages." *See* Compl., Ex. B. Courts applying federal maritime law and Florida courts universally enforce such limitation clauses. *See Tri-Lady Marine, Ltd. v. Bishop Mechanical Services, LLC*, 2018 WL 10466997 (S.D. Fla. 2018)(analyzing court's rulings on the effect of a limitation of damages clause on maritime claims and holding that "[i]t is clear as a

matter of law, Tri-Lady cannot recover the damages it claims because they are barred by the limitation of damages clause.”); *Black v. Frank*, 176 So. 2d 113, 115 (Fla. 1st DCA 1965)(upholding contractual stipulations limiting breach consequences); *Cessna Aircraft Co. v. Avior Techs., Inc.*, 990 So. 2d 532, 537 (Fla. 3d DCA 2008)(enforcing limitation of damages provision). The claims for impermissible damages must be stricken.

Accordingly, the Complaint must be dismissed because Plaintiff erroneously sued Villa Vie Residences Corporation instead of Villa Vie Residences Inc. and fails to state any valid cause of action. Defendant requests dismissal of the Complaint, the striking Plaintiff’s request for consequential damages, and any further relief the Court deems just and proper.

CERTIFICATE PURSUANT TO FLA. R. CIV. P. 1.202

I hereby certify that conferral prior to filing this motion is not required under Florida Rule of Civil Procedure 1.202.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Court and served via email through the Florida Courts eFiling Portal on the 19th day of November, 2025, in accordance with Rule 2.516 of the Florida Rules of Judicial Administration.

/s/ Alex P. Rosenthal
Alex P. Rosenthal, Esq.