

IN THE CIRCUIT COURT OF THE ELEVENTH CIRCUIT JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

MILANA BACHAYEV,)	
)	
Plaintiff,)	
vs.)	
)	Case No. _____
BONAVENTURE PASSOVER, LLC, a Florida)	
limited liability company; KOSHERICA LLC, a)	
Florida limited liability company,)	CLASS REPRESENTATION
)	
Defendants.)	
_____)	

CLASS ACTION COMPLAINT

Plaintiff Milana Bachayev, individually and on behalf of all others similarly situated, files this class action against Defendants Bonaventure Passover, LLC and Kosherica LLC, and in support states as follows:

Introduction

1. This is an action to recover all deposits paid to Defendants by Plaintiff and others similarly situated in order to participate in 2020 Passover programs sponsored by Defendants. These Passover programs were cancelled as a consequence of the Covid-19 outbreak. Despite request, Defendants have not provided a 100% refund of deposits paid by program participants in breach of contract and in violation of Florida law. This class action seeks to recover 100% of the deposits paid.

2. This action is suitable for class treatment under Florida Rule of Civil Procedure 1.220 as all class members are in identical circumstances having paid

deposits to participate in 2020 Passover programs offered by Defendants and cancelled within weeks of Passover.

The Parties

3. Plaintiff Milana Bachayev (“Plaintiff”) is an individual residing in Aurora, Colorado.

4. Defendant Kosherica LLC (“Kosherica”) is a leader in the kosher travel and tourism industry and organizes and sponsors kosher Passover excursions catering to Orthodox and conservative Jewish travelers. Kosherica is a Florida limited liability company whose principal address is in Miami Beach, Florida. Its manager is Hilit Shifman.

5. Defendant Bonaventure Passover, LLC (“Bonaventure Passover”) is an entity created by Kosherica to promote and sell Passover tours at the Bonaventure Resort and Spa in Weston, Florida. Bonaventure Passover is a Florida limited liability company whose principal address is in Miami Beach, Florida. Its manager is Offy Shifman.

6. Kosherica and Bonaventure Passover are collectively referred to herein as Kosherica.

Jurisdiction and Venue

7. This is an action in which the amount in controversy exceeds \$30,000 exclusive of interest, costs and attorneys’ fees. This Court has subject matter jurisdiction pursuant to Florida Statutes ch. 26 & 34.

8. Venue exists in this County pursuant to Florida Statutes § 47.011 as Kosherica resides here.

Common Allegations

9. On about November 12, 2019, Plaintiff booked a program through Kosherica called “Pesach 2020” to spend Passover 2020 at the Bonaventure Resort and Spa commencing on April 8, 2020. The program fee was \$12,225 and included rooms, meals and a post-Pesach program. Plaintiff paid a \$1,000 deposit on booking to secure her participation in the program. To date, Plaintiff has paid over \$5,000 towards the Pesach 2020 program at the Bonaventure Resort.

10. On March 26, 2020, Broward County issued Emergency Order 20-03, “Directing Shelter-in-Place: Safer at Home Policy.” Among other things, this Order required the closure of all non-essential businesses, including restaurants and bars.

11. On March 30, 2020, the Governor of Florida signed Executive Order 20-89, ordering Broward County, among other counties, “to restrict public access” to non-essential businesses.

12. In or about late March 2020, Kosherica advised that all Passover 2020 programs would be cancelled in light of the Covid-19 pandemic.

13. Kosherica requested that 2020 Passover program participants accept a 65% refund of all monies paid by program participants in full and final settlement of any claims for a full return of a deposit.

14. Plaintiff seeks a full return of all amounts paid by her and others as deposits towards Kosherica’ 2020 Passover programs.

Class Representation Allegations

15. This action is maintainable as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(3) insofar as common questions of fact and law predominate

over any individual issues and class representation is superior to other available methods for the fair and efficient adjudication of this controversy.

16. This action is also maintainable as a class action pursuant to Florida Rule of Civil Procedure 1.220(2) because Kosherica has acted on grounds generally applicable to all members of the class thereby making final declaratory relief concerning the class as a whole appropriate.

17. The questions of law or fact that are common to the claim of Plaintiff include:

- a. Whether class members are entitled to a full refund of all deposits paid to Kosherica for Passover 2020 programs canceled by Kosherica;
- b. Whether Kosherica is in breach of contract by failing to provide a full refund for the purchase of Passover 2020 programs from Kosherica in circumstances where such programs were cancelled;
- c. Whether Kosherica's retention of 35% of deposit amounts from class members is unconscionable under Florida law; and
- d. Whether Plaintiff and class members are entitled to an award of reasonable attorney's fees, interest and costs.

18. The particular facts and circumstances that show Plaintiff's claim is typical of the claims of each member of the class include the following:

- a. Plaintiff purchased a 2020 Passover program from Kosherica;
- b. Plaintiff paid a deposit to Kosherica in connection with securing and reserving her place at the 2020 Passover program;

- c. The 2020 Passover program was cancelled through no fault of Plaintiff and as a consequence of the Covid-19 outbreak; and
- d. Kosherica refused to return to Plaintiff or deposit.

19. While the approximate number of class members is unknown, the number exceeds the minimum required to satisfy numerosity requirements.

20. The alleged class as to which certification is sought is: "All individuals who purchased a Passover 2020 program from Kosherica and paid a deposit to secure their participation in such program which deposit has not been returned in full by Kosherica." The class does not include any Passover 2020 program participants who executed a release in favor of Kosherica.

21. Plaintiff will fairly and adequately protect and represent the interests of each member of the class and she has agreed to do so. Plaintiff has retained counsel with experience in handling complex class-action litigation. Plaintiff and her counsel are committed to vigorously prosecute in this action on behalf of all class members and have the financial resources to do so.

22. This action may be maintained as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(3) because a class-wide determination of whether Kosherica has breached its identical agreement with each class member is a more efficient and superior method of proceeding since the factual and legal issues presented predominate over any particularized issues impacting any specific purported class member.

23. This action may also be maintained as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) because Kosherica has acted in the same manner

with respect to all members of the class in refusing to return class members' deposits such that declaratory relief discerning the class as a whole is appropriate.

24. All conditions precedent to the maintenance of this action have occurred, been waived, or both.

25. Plaintiff has agreed to retain undersigned counsel to represent her and all class members' interest in this action and has agreed the Council is entitled to reasonable fee based on any recovery obtained in this action.

COUNT I
(Breach of Contract)

26. The Common Allegations are incorporated by reference as though fully set forth herein.

27. Plaintiff brings this count individually and on behalf of all other class members. This count is for breach of contract.

28. Plaintiff and all class members paid a deposit to Kosherica to secure their participation in a Passover 2020 program sponsored by Kosherica.

29. All Passover 2020 programs sponsored by Kosherica were unilaterally cancelled as a consequence of the Covid-19 outbreak.

30. Plaintiffs and other class members did not cancel the 2020 Passover programs.

31. In breach of Kosherica's agreements with Plaintiffs and all class members, Kosherica has refused to return 100% of the deposits paid by Plaintiff and other class members to Kosherica.

32. Plaintiff and all class members have fully complied with their obligations under their agreements.

33. Plaintiff and other class members have suffered actual damages as a consequence of Kosherica's breach.

WHEREFORE, Plaintiffs, individually and on behalf of other class members, seeks compensatory damages resulting from Kosherica's breaches an amount to be determined, as well as all other relief deemed appropriate by this Court, including attorneys' fees and costs.

COUNT II
(Declaratory Relief)

34. The Common Allegations are incorporated by reference as though fully set forth herein.

35. This is a claim for declaratory relief pursuant to Florida Statutes, Chapter 86. Pursuant to Florida Statutes § 86.011 this Court has jurisdiction to declare the rights of the parties and to grant such additional relief as may be appropriate.

36. The dispute exists among the parties as to whether Kosherica is obliged to refund 100% of deposits paid by Plaintiff and other class members in connection with reserving their participation in Kosherica's 2020 Passover programs.

37. All 2020 Passover programs sponsored by Kosherica were unilaterally cancelled as a consequence of the Covid-19 outbreak.

38. Plaintiffs and other class members did not cancel their participation in Kosherica's 2020 Passover programs.

39. Kosherica has refused to refund the full deposits paid by Plaintiff and other class members notwithstanding Kosherica's cancellation of their Passover 2020 programs.

WHEREFORE, Plaintiff, individually and on behalf of other class members request that the Court issue a declaration finding as follows:

- a. Plaintiff and the class are not in breach of the parties' agreements;
- b. Kosherica's refusal to refund in full deposits to Plaintiffs and other class members is in breach of Kosherica's agreements with Plaintiffs and other class members; and
- c. Kosherica's attempt to retain 35% of all deposits is unconscionable and constitutes an illegal liquidated damages penalty in violation of Florida law.

Demand for Jury Trial

Plaintiff demands a jury trial of all issues so triable.

Respectfully submitted,

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Dated: April 24, 2020

By: /s/ Paul J. Schwiep

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Class of Similarly Situated Individuals*