UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ERICA KELLY; and MARILYN PAONE,

Plaintiffs,

v. Case No. 6:22-cv-1919-RBD-DCI

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Defendant.

ORDER

Before the Court is Plaintiffs' motion for class certification (Doc. 82) and Defendant Walt Disney Parks and Resorts U.S., Inc.'s ("Disney") motion for summary judgment (Doc. 87). Disney's motion is due to be granted and Plaintiffs' motion denied.

BACKGROUND

This breach of contract case involves Disney World's Platinum Pass, the highest-tier annual pass, and the reservation system Disney implemented during the COVID-19 pandemic.

Each of the plaintiffs held a Platinum Pass in March 2020, when Disney World temporarily shut down during the pandemic. (Doc. 88-4, p. 3; Doc 88-5, p. 7.) The Platinum Pass, unlike less expensive passes, was advertised as having no

"blockout dates"—predetermined days where passholders could not visit the parks using their passes. (*See, e.g.*, Doc. 50-10, p. 3.) All annual passholders—including Platinum Pass holders—agreed to the Ticket Store Terms and Conditions ("T&C") on Disney's website before purchasing their passes. (*See* Doc. 88-1, pp. 23–24.) The T&C included the following term: "Parks, attractions or entertainment may change operating hours; close due to refurbishing, capacity, low demand, weather, special events or other reasons; and may otherwise change or be discontinued without notice and without liability to the owners of the Walt Disney World Resort." (Doc. 85-2, p. 2.)

When Disney World closed during the pandemic, automatic monthly passholder payments stopped. (Doc. 85-7.) Disney sent periodic updates to all passholders on the park's reopening and previewed pandemic-related changes. (*E.g.*, Docs. 85-3, 85-4, 85-6, 85-7.) These changes included a new park reservation system to enforce capacity restrictions. (*See, e.g.*, Doc. 85-4.) Under this system, all Disney World guests—including Platinum Pass holders—would need both a valid ticket and a park-specific reservation to visit. (*See, e.g.*, Doc. 85-3.) Reservations were subject to availability, and annual passes were still subject to the same blockout dates as pre-pandemic. (*See, e.g.*, *id.*; Doc. 85-5.)

Before Disney World reopened, the two Plaintiffs here tried to make park reservations but saw that some days were already full. (Doc. 95-1.) They realized

that Disney allocated certain blocks of reservations per park to different groups of guests—for example, there were days that guests staying in Disney-operated hotels could make reservations, but annual passholders could not. (*See id.* at 7–10; Doc. 92-3.) Plaintiff Paone complained to Disney, and was informed that reservations were subject to availability. (*See* Doc. 85-19.)

Disney later offered passholders the option to keep their pass or cancel it and receive a refund. (Docs. 85-6, 88-3.) Both Plaintiffs chose to keep their passes and renewed them later in 2020. (Doc. 88-4, pp. 22–23; Doc. 88-5, p. 4.) When Disney World reopened and the reservation system was implemented, there were no days on which Platinum Pass holders were categorically excluded from using their passes to enter the parks. (*See* Doc. 89, ¶ 5.) Still, Plaintiffs assert that because their Platinum Passes were subject to blockout dates, they effectively held a lower tier of pass than what they paid for. (*See, e.g.*, Doc. 82, p. 22.)

So, Plaintiffs sued Disney for (1) breach of contract, (2) unjust enrichment, and (3) a violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). (Doc. 50, ¶¶ 56–131.) Plaintiffs then filed a motion for class certification (Doc. 82), and Disney filed a motion for summary judgment (Doc. 87). The parties filed timely responses to each. (Docs. 84, 91.) The matters are ripe.

STANDARDS[1]

[1] The Court need not address the standards for a motion for class certification because the

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the non-movant. *Battle v. Bd. of Regents for Ga.*, 468 F.3d 755, 759 (11th Cir. 2006). Then the Court must decide whether there is "sufficient disagreement to require submission to a jury." *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (cleaned up).

ANALYSIS

I. Summary Judgment

a. Breach of Contract

Disney raises three arguments for summary judgment on the breach of contract claim: (1) Plaintiffs ratified the changes to their passes; (2) the contract allowed for Disney's reservation system; and (3) Disney did not impose blockout dates on Plaintiffs. (Doc. 87, pp. 8–15.) The Court addresses each in turn.

i. Ratification

Disney first argues that Plaintiffs ratified the changes to their passes because they were aware of the modifications yet still accepted the benefits as modified. (Doc. 87, pp. 11–13.) Plaintiffs counter that they did not ratify the changes because

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Court does not decide that motion on its merits. *See infra*.

they were unaware of all material facts and circumstances concerning the reservation system. (Doc. 91, pp. 9–10.) The Court agrees with Disney.

A party can "ratify" an unauthorized modification to a contract by continuing to accept the benefits of the contract as modified. *See Herman v. Seaworld Parks & Ent., Inc.*, 320 F.R.D. 271, 297 (M.D. Fla. 2017); *Hendricks v. Stark*, 126 So. 293, 294 (Fla. 1930). To be effective, the ratifying party must have "full knowledge of all material facts and circumstances" related to the modification. *See Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So. 2d 1012, 1022 (Fla. 2000) (cleaned up). Where a party knows that she can rescind a contract but ratifies it anyway, she has no remedy. *See Hendricks*, 126 So. at 294 (Fla. 1930). Ratification is a question of law. *See Nagymihaly v. Zipes*, 353 So. 2d 943, 944 (Fla. 3d DCA 1978).

Here, Plaintiffs knew about the reservation system, the restricted park availability, and the fact that Disney gave different groups of ticketholders different reservation allotments. (Doc. 95-1; *see* Doc. 85-19.) Even if Plaintiffs believed that "no blockout dates" meant that Platinum Pass holders could access the parks whenever they wanted, they still had the option to cancel their contracts with Disney and get a refund. (Docs. 85-6, 88-3.) They did not. (Doc. 88-4, pp. 22–23; Doc. 88-5, p. 4.) So even if their interpretation of "no blockout dates" was correct, they ratified Disney's modification and thus have no remedy for breach of contract. *See Frankenmuth*, 769 So. 2d at 1022; *Hendricks*, 126 So. at 294. Disney is

entitled to summary judgment on the breach of contract claim.[2]

ii. Terms & Conditions

Even if Plaintiffs had not ratified, Disney next argues that it did not breach its contract with Plaintiffs because Disney reserved the right to impose capacity restrictions in the T&C when Plaintiffs purchased the passes. (Doc. 87, pp. 9–11.) Plaintiffs counter that Disney breached because it could not impose the reservation system's restrictions on Platinum Pass holders without notice. (Doc. 91, pp. 5–7.) Again, the Court agrees with Disney.

A breach of contract claim requires: (1) a contract; (2) a material breach; and (3) damages. *See Dixon v. Univ. of Mia.*, 75 F.4th 1204, 1208 (11th Cir. 2023) (applying Florida law). "Where a contract is clear and unambiguous, it must be enforced pursuant to its plain language." *Hahamovitch v. Hahamovitch*, 174 So. 3d 983, 986 (Fla. 2015).

Although the parties disagree on exactly which documents form their contract, there is unrefuted evidence that all passholders had to check a box agreeing to the T&C when purchasing. (*See* Doc. 88-1, pp. 23–24.) The T&C included a clause stating that "[p]arks . . . may change... . [or] close due to . . .

[2] Plaintiffs' argument that Disney waived ratification as an affirmative defense because it failed to specifically assert it in its answer (Doc. 91, pp. 7–9) does not hold water, as Disney did assert a waiver defense (Doc. 62, p. 35), which includes ratification. *See, e.g.*, *Rood Co. v. Bd. of Pub. Instruction of Dade Cnty.*, 102 So. 2d 139, 142 (Fla. 1958) (referring to ratification and resulting waiver); *Arbogast v. Bryan*, 393 So. 2d 606, 608 (Fla. 4th DCA 1981) (ratifying is a "kind of waiver" (cleaned up)).

capacity . . . or other reasons[] and may otherwise change . . . without notice and without liability." (Doc. 85-2, p. 2.) Under this reservation of rights clause, Disney was plainly permitted to restrict park capacity as needed without notice. *See Hahamovitch*, 174 So. 3d at 986; *Dixon*, 75 F.4th at 1209 (reservation of rights clause allowed university only to offer remote classes during the pandemic even if students contracted to receive in-person education).[3] So even if Plaintiffs had not ratified the addition of the reservation system, imposing that system did not breach the unambiguous terms of the parties' agreement.

iii. Blockout Dates

Finally, Disney argues that even assuming the term "no blockout dates" was part of the parties' contract, it did not breach because it never imposed blockout dates—meaning days on which passholders were *ineligible* to visit the parks—on Platinum Pass holders. (Doc. 87, pp. 11–14.) Plaintiffs do not necessarily disagree with Disney's definition of a blockout date but counter that there were days on which they were "ineligible" to visit because they wanted to visit, but reservations were already taken. (Doc. 91, pp. 10–11.) The Court agrees with Disney on the interpretation of the term blockout date.

[3] To the extent Plaintiffs imply the reservation of rights clause is unconscionable (Doc. 91, p. 7), this argument fails because it cannot be said that no reasonable consumer would have agreed to it or that it is so unfair as to be unconscionable per se. *See Pendergast v. Sprint Nextel Corp.*, 691 F.3d 1224, 1234 n.11 (11th Cir. 2012) (finding similar clause not substantively unconscionable); *see also Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119, 1141 (11th Cir. 2010).

Courts must "read provisions of a contract harmoniously in order to give effect to all portions thereof." *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000). "[A]ny ambiguity in the terms [of a contract] should be resolved in favor of upholding the purpose of the agreement and giving effect to every term in the agreement." *Id.* at 83. "[T]he meaning of particular terms may be ascertained by reference to other closely associated words in the agreement." *Id.* at 84. But multiple interpretations of a term do not necessarily signal ambiguity. *See Vyfinkel v. Vyfinkel*, 135 So. 3d 384, 385 (Fla. 5th DCA 2014). Where a reasonable interpretation competes with an absurd one, the court should interpret the contract in the reasonable way. *See id.* at 386.

Only Disney's definition gives effect to all provisions of the contract and renders the interpretation reasonable. *See id.*; *Johnson*, 760 So. 2d at 83. Unlike with lower-tier passes, Platinum Pass holders were always *eligible* to try and make park reservations. (Doc. 85, ¶ 22.) Just because reservations were taken does not mean the Platinum Pass holders were categorically excluded from visiting the park. Even before the pandemic, the T&C let Disney World restrict park capacity without notice—meaning that even before the reservation system, there were days when eligible Platinum Pass holders could have shown up to Disney and been turned away. (*See* Doc. 85-2, p. 2.) Plaintiffs' position would render other passholders' blockout dates meaningless. *See Johnson*, 760 So. 2d at 83. And it

would be absurd: if a Platinum Pass holder arrived at the Magic Kingdom on Christmas only to find it full, would Disney have to eject guests to make room? *See Vyfinkel*, 135 So. 3d at 386. Certainly not—reservation system or no. The only reasonable interpretation of the term blockout date is a day on which passholders were *ineligible* to go to the parks, not simply a day on which they tried to go but could not get in. *See id.*; *Johnson*, 760 So. 2d at 83. Given that there were no days on which Platinum Pass holders were categorically excluded from making park reservations (Doc. 89, ¶ 5), Disney never imposed blockout dates on them. So even if "no blockout dates" was part of the parties' contract, Disney did not breach as a matter of law.

b. Unjust Enrichment

Disney next argues that it is entitled to summary judgment on Plaintiffs' unjust enrichment claim because unjust enrichment is unavailable where there is an express contract. (Doc. 87, p. 24.) "[A] plaintiff cannot pursue a quasi-contract claim for unjust enrichment if an express contract exists concerning the same subject matter." *Diamond "S" Dev. Corp. v Mercantile Bank*, 989 So. 2d 696, 697 (Fla. 1st DCA 2008). As there was an express contract between Plaintiffs and Disney (*see, e.g.*, Doc. 85-2; Doc. 88-1, pp. 23–24), Plaintiffs' unjust enrichment claim fails as a matter of law.

c. FDUTPA

Disney finally argues that it is entitled to summary judgment on the FDUTPA claim because no reasonable juror could conclude that Disney's advertisement of the Platinum Pass was deceptive or unfair. (Doc. 87, pp. 19–21.) Plaintiffs counter that other customers' confusion over "no blockout dates" means there is a genuine dispute. (Doc. 91, pp. 13–15.) The Court agrees with Disney.

The elements of a FDUTPA claim are: (1) a deceptive act or unfair practice; (2) causation; and (3) damages. *See Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006). For a practice to be unfair, consumers must be unable to reasonably avoid injuries from it. *See Porsche Cars N. Am., Inc. v. Diamond*, 140 So. 3d 1090, 1098 (Fla. 3d DCA 2014), *review denied*, 157 So. 3d 1042 (Fla. 2014). For a practice to be deceptive, courts use an objective test to see if the act was "likely to deceive a consumer acting reasonably in the same circumstances." *See Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983–84 (11th Cir. 2016) (applying Florida law) (cleaned up). This standard requires probable, not possible, deception that is likely to injure a reasonable relying consumer. *See Zlotnick v. Premier Sales Grp., Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007) (applying Florida law). Acts in furtherance of or in compliance with a contract's terms are neither unfair nor deceptive. *See, e.g.*, *id.* at 1285; *Jones v. TT of Longwood, Inc.*, No. 6:06-cv-651, 2007 WL 2298020, at *7 (M.D. Fla. Aug. 7, 2007) (applying Florida law). Whether an act is deceptive or unfair may be decided as a matter of law. *See, e.g.*, *Zlotnick*, 480 F.3d at 1287;

Jones, 2007 WL 2298020, at *7.

Here, Disney's advertisement of the Platinum Pass as having "no blockout dates" was not unfair because, as explained above, all passholders could have opted for refunds and avoided any injury from Disney's changes (again, Plaintiffs opted not to). *See Porsche*, 140 So. 3d at 1098. Nor was it deceptive because, as explained above, Disney was contractually permitted to restrict park capacity and all passholders knew this possibility when they bought their passes. (Doc. 85-2, p. 2; Doc. 88-1, pp. 23–24.) No reasonable Platinum Pass holder would have likely been deceived into thinking they had unconditional access to Disney World post-pandemic—because their passes did not even give them unconditional pre-pandemic access.[4] *See Carriuolo,* 823 F.3d at 983–84 (the alleged practice must be *likely* to deceive); *see also Zlotnick*, 480 F.3d at 1285 (no reasonable consumer would believe contract promised something against its terms); *Jones*, 2007 WL 2298020, at *7 (no deception where defendant canceled the contract with plaintiff in accordance with its termination provisions). As Disney's advertisement was neither deceptive nor unfair as a matter of law, Disney is entitled to summary judgment on the FDUTPA claim.[5]

[4] Plaintiffs' isolated evidence of passholder confusion (Doc. 92-5) does not elevate the likelihood of deception from "possible" to "probable," *see Zlotnick*, 480 F.3d at 1284, especially as Disney counters with evidence of passholders who were not confused (*see* Docs. 85-15 to 85-17).

[5] The Court need not address Disney's benefit-of-the-bargain arguments on the contract and FDUTPA claims (Doc. 87, pp. 22–24) because it grants summary judgment on other grounds.

II. Class Certification

Having granted summary judgment to Disney on all claims, the Court now turns to Plaintiffs' motion for class certification. (Doc. 82.) Generally, when representative plaintiffs' claims are dismissed in full, a motion for class certification is moot. *See, e.g.*, *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1297 (11th Cir. 2005) ("Because we have found that summary judgment was properly granted as to the underlying claims of the class representatives, the issue of class certification is moot."); *Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333, 1343 (11th Cir. 2000) ("With no meritorious claims, certification of those claims as a class action is moot."). But even if the motion were not moot, Plaintiffs here would not be appropriate class representatives because their claims have been resolved via summary judgment. *See Wooden v. Bd. of Regents of Univ. Sys. of Ga.*, 247 F.3d 1262, 1289 (11th Cir. 2001) ("If the district court were to resolve a summary judgment motion in Defendants' favor . . . before ruling on class certification, then [plaintiff] would not be an appropriate class representative."). So Plaintiffs' motion for class certification is due to be denied.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED**:

1. Defendant's motion for summary judgment (Doc. 87) is **GRANTED**.
2. Plaintiffs' motion for class certification (Doc. 82) is **DENIED**.

3. The Clerk is **DIRECTED** to enter judgment in favor of Defendant and against Plaintiffs and then to close the file.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 11, 2024.

ROY B. DALTON, JR.
United States District Judge