IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

S.M.P. COMMUNITY FUND, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action No.
ATLANTA NATIONAL LEAGUE BASEBALL CLUB, INC.; ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC,	)	
Defendant.	)	

COMPLAINT

Plaintiff S.M.P. Community Fund, Inc. (the "Community Fund") respectfully files this Complaint against Defendants Atlanta National League Baseball Club, Inc. and Atlanta National League Baseball Club, LLC ("Club, Inc." and "Club, LLC", respectively, and collectively the "Defendants"), stating as follows:

PARTIES

1. Plaintiff the Community Fund is a Georgia corporation with its principal place of business at 755 Hank Aaron Drive, Atlanta, Georgia 30315.

2. Defendant Atlanta National League Baseball Club, Inc. is a Georgia corporation that can be served at its principal place of business at 755 Hank Aaron Drive, Atlanta, Georgia, 30315 or through its registered agent, Corporation Service Company at 40 Technology Parkway Southsuite 300, Ben Hill, Norcross, Georgia 30092.

3. Defendant Atlanta National League Baseball Club, LLC is a Georgia limited liability company that can be served at its principal place of business at 755 Hank Aaron Drive

SW, Atlanta, Georgia 30315 or through its registered agent, Corporation Service Company at 40 Technology Pkwy South, #300, Norcross, Georgia 30092.

JURISDICTION & VENUE

4. Club, Inc. is subject to *in personam* jurisdiction in this Court because it is a Georgia corporation, and because it transacts business and maintains minimum contacts with the State of Georgia.

5. Club, LLC is subject to *in personam* jurisdiction in this Court because it is a Georgia corporation, and because it transacts business and maintains minimum contacts with the State of Georgia.

6. Venue is proper in this Court.

BACKGROUND FACTS

7. The City of Atlanta and Fulton County Recreation Authority (the "Authority") and Club, Inc. executed an Operating Agreement on March 16, 1993 (the "Agreement").

8. Upon information and belief, Club, Inc. converted to an LLC in March, 2015, taking the name Atlanta National League Baseball Club, LLC.

9. The Agreement contemplated the creation of a stadium for the 1996 Olympics, which, after the Olympics, would be converted for use as a Major League baseball stadium.

10. The Agreement further contemplated the creation and use of a Baseball Complex, which included parking lots, plazas, ramps, walkways and the 755 Club.

11. The Agreement required Club, Inc. to pay 8.25% of the gross revenues, less only any state, county or city sales or excise tax charged on parking fees, received for parking at the Baseball Complex "to the Authority or to such entity as the Authority may direct." This was denominated in the Agreement as a "Community Fee." Section 12.8 of the Agreement specifies

that: "The intent of the Community Fee shall be for purpose of benefitting the neighborhoods in which the Baseball Complex is situated or which are otherwise affected by the Olympic Stadium, as the Authority shall determine."

12. The Community Fund is a non-profit that serves and shares its resources with other non-profits serving the neighborhoods surrounding the Baseball Complex, including Summerhill, Mechanicsville and Peopletown.

13. The Authority identified the Community Fund as the recipient of the Community Fee.

14. The Agreement also provides that Defendants were permitted to hold Special Events at the Baseball Complex. The parties agreed in Section 12.9 that, absent agreement as to a specific Special Event, Net Ticket Revenues for each Special Event would be split with 25% going to "such entity as directed by the Authority for community purposes as contemplated for the Community Fee in Section 12.8."

15. The Agreement defines Special Events as: "Special Events. Any and all events, meetings, conventions, assemblages, shows, presentation, concerts, games, contests or other gatherings which involve paid admissions, renting of any part of the Baseball Complex or payment of other fees in regard to the use of any part of the Baseball Complex, for charity or for profit, and which are not Home Games or activities ancillary thereto."

16. The Agreement defines Net Ticket revenue as: "Net Ticket Revenues. The gross retail proceeds from the sale of tickets or charge of admission to Special Events at the Baseball Complex less direct, commercially reasonable operating expenses incurred in connection with or attributable to the conduct of such Special Event, and less any state, county, or city sales, admission or similar excise tax which is computed on or fixed by reference to any amount which

constitutes part of the price of such tickets and which is required to be collected by the Promotor from those from whom such receipts are collected or received, irrespective of whether such tax may be included in the price of admission or is required to be separately stated."

17. Defendants have made payments of the Community Fee, for both parking and Special Events, and are aware that Community Fund receives those funds.

18. The Community Fee in Sections 12.8 and 12.9 of the Agreement were intended for the benefit of the Authority's designee in the local neighborhood, which was the Community Fund.

19. Community Fund is an intended beneficiary of Defendants' promise to pay the Community Fees set out above.

20. Despite this contractual obligation, since at least 2010, Defendants have failed to make such payments in full. In particular, Defendants have mis-counted the number of parking spaces and so understated the percentage payable under Section 12.8 for the Community Fee for parking.

21. Additionally, Defendants have held Special Events which were reported as gratuitous when in fact fund were collected; rented parking facilities to third parties in exchange for in-kind benefits that were not accounted for a Net Ticket Revenue on those Special Events; allocated portions of flat fees for Special Events to parking, mischaracterizing Net Ticket Revenue as parking revenue; received reimbursement of expenses on Special Events which were nonetheless accounted as expenses netted out of the Net Ticket Revenue calculation; and held a variety of Special Events, such as tours and 755 Club events, which were not accounted for as Net Ticket Revenue and for which no Community Fee was paid. All of these resulted in at least

hundreds of thousands of dollars in unpaid Community Fees, directly damaging Community Fund, in an amount to be proven at trial.

22. The Authority has given Defendants notice that the Community Fee has not been paid in full, and Defendants have not cured their non-payment.

23. The Agreement provides that "[a]ll amounts payable hereunder by either party shall, from and after the date on which such party is in default of the payment thereof, bear interest at the rate determined from day to day of three percentage points (3%) in excess of the rate published in the Eastern Edition of The Wall Street Journal as the "Prime Rate."

COUNT ONE: BREACH OF OPERATING AGREEMENT

24. The Community Fund re-alleges and incorporates herein by this reference each and every allegation contained in the above paragraphs as though fully set forth herein.

25. The Authority and Club, Inc. entered a legally-binding Agreement.

26. Pursuant to this Agreement, Club, Inc., and Club, LLC after the conversion, had a duty to pay the Community Fees set forth in Sections 12.8 and 12.9 of the Agreement for the benefit of the Community Fund.

27. The Community Fund, as the Authority's designee, was the intended beneficiary of the Community Fees.

28. Defendants failed to make all such payments in full and so are in default of those payments.

29. Defendants' failure to make all these payments in full constitutes a material and continuing breach of the Agreement.

30. Defendants are without any just cause or excuse for their material and continuing breach of the Agreement.

31. Defendants' material breach of the Agreement has caused the Community Fund to suffer damages in an amount to be proven at trial.

32. Defendants owe interest at the contractual rate of Prime Rate plus 3% on the payments not made, from the date they were due.

33. All conditions precedent for the relief prayed for in this count have been fulfilled.

JURY DEMAND

The Community Fund requests and demands that it be granted trial by jury as to each and every issue herein.

WHEREFORE, the Community Fund respectfully requests that:

(a) Judgment be entered in favor of the Community Fund and against Defendants for damages in an amount to be proven at trial, including interest at the contractual rate;

(b) The Community Fund be granted a trial by jury as to all issues herein; and,

(c) The Court award the Community Fund such other, further and different relief as the Court may deem just and proper.

Respectfully submitted, this 30th day of December 2016.

/s/ Peter D. Coffman
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