

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA

TAESOOON PARK,

Plaintiff,

vs.

MICHELLE CUTLER,

Defendant.

Case No. 17-266-CA

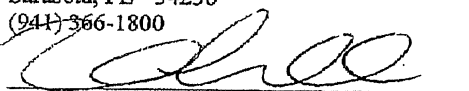
JAN 29 2018

STIPULATION AND ORDER FOR SUBSTITUTION OF COUNSEL

COME NOW, the undersigned counsel and file this their substitution of Don R. Cahall, Esq., of Moran, Sanchy & Associates, in place of Michael F. Savage, Esq., as attorney of record for Defendant, MICHELLE CUTLER, and further stipulate that Michael F. Savage is hereby released from any further responsibility with respect to the representation of the Defendant and all further pleadings, notices, correspondence, etc. should be directed to Don R. Cahall, Esq., Moran, Sanchy & Associates, 1800 Second Street, Suite 830, Sarasota, Florida 34236.

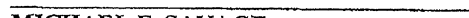

MICHELLE CUTLER

MORAN, SANCHY & ASSOCIATES
1800 Second St., Suite 830
Sarasota, FL 34236
(941) 366-1800



DON R. CAHALL
Florida Bar No. 110578
Date: 1/18/18

SAVAGE LAW, P.A.
126 E. Olympia Ave., Suite 301
Punta Gorda, FL 33950
(941) 347-8435


MICHAEL F. SAVAGE
Florida Bar No. 44911
Date: _____

ORDER FOR SUBSTITUTION OF COUNSEL

THIS CAUSE came before the Court on the above Stipulation for Substitution of Counsel, and the Court having reviewed the stipulation and being otherwise fully advised in the premises, it is therefore

ORDERED AND ADJUDGED that Don R. Cahall of Moran, Sanchy & Associates shall be counsel of record for the Defendant, MICHELLE CUTLER, and Michael F. Savage is hereby released from any further responsibility with respect to the representation of the Defendant. All further pleadings, notices, correspondence, etc.

shall be served on Don R. Cahall, Esq., Moran, Sanchy & Associates, 1800 Second Street, Suite 830, Sarasota, Florida 34236.

DONE AND ORDERED in Chambers at Charlotte County, Florida, this _____ day of January, 2018.

Original of this
document was signed

HON. LISA S. PORTER

Circuit Court Judge

JAN 24 2018

By Lisa S. Porter
Circuit Court Judge

Copies furnished to:

Don R. Cahall, Esq.
Michael F. Savage, Esq.
Jonathan P. Whitney, Esq.

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MOTION FOR LEAVE TO FILE COUNTERCLAIMS

COMES NOW, MICHELLE CUTLER, by and through her undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.170(e)-(f) and 1.190(a) hereby files this Motion for Leave to File Counterclaims and in support states as follows:

I. RELEVANT PROCEDURAL BACKGROUND AND FACTS

1. This case is premised on alleged negative comments made by the Defendant about the Plaintiff in reference to a raffle that was conducted by the Plaintiff. The operative complaint in this matter is the Amended Complaint which was filed on May 24, 2017. The Amended Complaint is a one count complaint for libel against the Defendant.

2. Defendant filed her Answer and Affirmative Defenses to the Amended Complaint on June 22, 2017 which included a one count counterclaim for breach of contract.

3. Shortly after the filing of Defendant's Counterclaim, a case management hearing was held and an Order granting the parties' Agreed Case Management Plan was entered on October 11, 2017.

4. However, Defendant's then counsel, Michael F. Savage, became suspended from practicing law in Florida just a few weeks after the agreed upon Case Management Plan was entered into. Defendant did not receive notice of her attorney's suspension until December 6,

2017. Upon receiving said notice, Defendant diligently sought new counsel and retained the undersigned to represent her. Prior to retaining the undersigned, Defendant filed a pro se Motion for a Continuance and Extension of all Case Management Dates on December 27, 2017. Defendant's Motion and requests made therein were predicated on her counsel's suspension.

5. Upon being retained, the undersigned promptly reviewed the subject case files, and discovered evidence that the Plaintiff's raffle – upon which this action is predicated – was an illegal raffle. According to the attached correspondence, Plaintiff was not employed by or affiliated with a 501(c)(3) nonprofit organization at the time he conducted the raffle making it an illegal raffle under Fla. Stat. § 849.0935.¹ The nonprofit was the organization that was a beneficiary of Plaintiff's raffle as opposed to an organization that conducted the raffle.

6. Further, even if Plaintiff were employed by a nonprofit at the time he conducted the raffle – which he was not - the raffle advertisement as posted by the Plaintiff did not meet the requirements of § 849.0935(3) and therefore is still considered illegal.

7. The legality of the raffle is relevant to the subject case as individuals or organizations that hold illegal raffles automatically violate the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). *Id.* at (6) ("a violation of this section is a deceptive and unfair trade practice").

8. Because all of the facts alleged in the Amended Complaint entirely relate to the parties' business dealings with respect to the raffle and subsequent communications about same, the illegality of the raffle provides Defendant with a compulsory counterclaim for violation of FDUTPA that is properly included in her Counterclaim action.

¹ Said raffle is referenced in paragraph 3 of the Amended Complaint and was the basis of alleged personal jurisdiction over the Defendant.

9. Additionally, upon the undersigned's review of the plethora of documents referenced by the Plaintiff in his Amended Complaint and prior filings, it appears that Plaintiff committed libel against the Defendant. The libelous statements appear to have been overlooked by prior counsel perhaps because – as acknowledged by Plaintiff in his Reply – there are over 1,600 pages of related online forum postings. In any event, Plaintiff referred to Defendant as “crazy” and “greedy” and “unintelligent.”

10. Plaintiff specifically references Defendant's communications with respect to the raffle when committing the aforementioned libel against her. Defendant's counterclaim for libel is a compulsory counterclaim as it arises from the same transaction and occurrence as the facts that gave rise to the Complaint and Amended Complaint.

11. Therefore, Defendant would like to amend her counterclaim to add a count for a FDUTPA violation based on the illegal raffle that was conducted and a count for libel. A copy of Defendant's proposed Amended Counterclaim is attached hereto as Exhibit “A.”

II. LEGAL ANALYSIS

A. It is Reversible Error to Disallow Amendment of a Counterclaim to Add a Compulsory Counterclaim.

Rule 1.170(f) states that an omitted counterclaim from the operative pleadings may be added to an action “when justice requires.” Further, “[l]eave of court [to amend a pleading] shall be given freely when justice so requires.” Rule 1.190(a). In determining “when justice requires”, courts have adopted a liberal standard. See *Advanced Energy Concepts, Inc. v. Waugh*, 510 So.2d 1081, 1082 (Fla. 1st DCA 1987) (it is long-settled that “special liberality should be accorded leave to amend so as to add a compulsory counterclaim.”); see also *Laurencio v. Deutsche Bank Nat'l Trust Co.*, 65 So.3d 1190, 1193 (Fla. 2d DCA 2011) (“[p]ublic policy favors the liberal

amendment of pleadings, and courts should resolve all doubts in favor of allowing the amendment of pleadings to allow cases to be decided on their merits.”)

This liberal pleading standard is particularly important in cases where compulsory counterclaims are involved which would not be permitted to be filed in a separate action. In *Fuente*, the court held that “[t]he trial court’s refusal to grant leave to assert a counterclaim would be an abuse of discretion if the counterclaim were compulsory and therefore barred in a subsequent action.” *Fuente v. Southern Ocean Transport Inc.*, 933 So.2d 651, 654 (Fla. 3rd DCA February 22, 2006) (citing *Bratcher v. Wronkowski*, 417 So.2d 1132 (Fla. 5th DCA 1982)).

B. No Prejudice to Plaintiff

Plaintiff will not be prejudiced by inclusion of Defendant’s proposed counterclaims in any way; they are quite compelling claims and in no way futile; and Defendants have never sought leave to file counterclaims prior to this Motion, so there is no danger of abuse of this privilege or prejudice to opposing parties. See *Reyes v. BAC Home Loans Servicing L.P.*, 226 So.3d 354, 356 (Fla. 2d DCA 2017) (reversing denial of motion to amend and observing that the primary considerations for a court are “prejudice to the opposing party, abuse of the privilege, and futility of the proposed amended pleading”).

Additionally, this case is relatively young as the original Complaint was just filed on March 22, 2017. Further, it appears that essentially zero discovery has been conducted by either party in the case. The case is currently set for trial in May which provides ample time to allow for the amendment of the pleadings and the filing of a response to same. Courts have permitted the amendment of pleadings even on the eve of trial when justice so requires. See, e. g., *Carib Ocean Shipping, Inc. v. Armas*, 854 So.2d 234, 236 (Fla. 3d DCA 2003) (reversing denial of leave to amend on eve of trial, asserting that “it is clear that the ‘interests of justice’ are far better

served by determining a case on its substantive merits, rather than a mistake in pleading,” and backstopping the above via string citations that include case holding that leave to amend to add a counterclaim can be granted even the day before a trial begins under the appropriate circumstances).

WHEREFORE, Defendant requests this honorable Court grant this Motion for Leave to File Counterclaims, deem the attached Amended Counterclaims filed as of the date of an order granting this Motion and any further relief that this Court deems just. Further, Defendant requests the Court extend any necessary case management deadlines to accommodate the inclusion of Defendant’s proposed Amended Counterclaim in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished via e-mail to Jonathan P. Whitney, Esq., Lutz, Bobo & Telfair, P.A., One Sarasota Tower, Two North Tamiami Trail, Fifth Floor, Sarasota, FL 34236 at [jwhitney@lutzbobob.com](mailto:jwhitney@lutzbobobob.com), on this 29th day of January, 2018.

MORAN, SANCHY & ASSOCIATES
1800 Second Street, Suite 830
Sarasota, FL 34236
P: (941) 366-1800
F: (941) 954-7101

/s/ Don Cahall

Don R. Cahall
Florida Bar No. 0110578
E-mail: dcahall@moransanchylaw.com



INTERNATIONAL REPTILE CONSERVATION FOUNDATION. SEND MONEY ORALY TO THE HONORABLE, PRESIDENT OF THE
121 408 700-6896

January 2, 2017

52

The IRCF is in receipt of your letter dated December 28, 2016.

We are truly disappointed that the March 2016 raffle results did not meet your expectations.

The IRCF has been involved with reptile conservation since 2001 with an outstanding reputation for all the hard work, effort, and results our organization has been able to achieve throughout all the years. Like most non-profits the IRCF solicits donations to support its existence and to carry out its mission, and is also the beneficiary of private donations, as well as, campaigns run by other parties.

The raffle that was held in March 2016 was organized and managed by Ty Parks. The IRCF was the designated beneficiary for the donation of \$100 per Ty's raffle ticket. You acknowledge this in the third paragraph of your letter. To restate, Ty organized, managed and would produce the prizes, in this case, albino tegus, with no agreement by/with the IRCF. The IRCF was only the raffles' beneficiary in the form of donations to our foundation. The IRCF does not now, or ever, offer prizes for donations.

We understand there is a conflict between you and Ty over the prize that remains unresolved, and from our understanding will be litigated in small claims court. The IRCF has always been respectful and sensitive of our donors in their wishes to support our mission, and we do our best to perform and provide them value for their donation. Clearly this is not the case here. That being, the IRCF feels compelled to return your donation in full. As such, please see the enclosed check #2252 in the amount of US\$400.00.

We request that you refrain from including the IRCF in your public discussions as this is not the fault of the IRCF.

Sincerely,

John F. Blinn
President/CEO
IRCF

cc: Ty Park

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v.

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MICHELLE CUTLER,

Defendant.

_____ /

AMENDED COUNTERCLAIMS

Defendant/Counter-Plaintiff, Michelle Cutler, by and through her undersigned attorney, sues Plaintiff/Counter-Defendant, Taesoon Park, and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00 exclusive of interest, attorney's fees and costs.
2. Counter-Defendant, Taesoon Park ("Park") is a resident of Charlotte County, Florida.
3. Counter-Defendant is a resident of Hudson, Massachusetts.
4. Any conditions precedent to the commencement of this action have been performed, waived or excused.
5. Counter-Plaintiff, Michelle Cutler ("Cutler") has retained the law firm of Moran, Sanchy & Associates to represent it in this action and is obligated to pay Moran, Sanchy & Associates reasonable attorney's fees for its services.
6. At all times relevant hereto, Park's course of conduct toward Cutler was intentional, deliberate and outrageous; that is, such conduct went beyond all bounds of decency and is generally regarded as odious and utterly intolerable in a civilized community.

COUNT I
Breach of Contract

7. Cutler realleges paragraphs 1 through 6 of the General Allegations above as though set forth fully.

8. This is a count for breach of contract.

9. Park solicited for an online raffle at \$100.00 per ticket and the winner would receive a baby albino blue tegu that Park would produce. If Park was unable to produce one, he would pay the winner \$3,000.00 “out of his own pocket.” See attached offer from Park (Exhibit “A).

10. Cutler bought four (4) raffle tickets and was declared a “winner.”

11. At this point, Park informed Cutler that he did not have a tegu to provide her an offered to send one from another breeder, but refused to supply information about the breeder.

12. The tegu being produced by Park was important and was the reason Cutler purchased the raffle tickets, so when it became clear Park could not produce the tegu, Cutler requested the \$3,000.00 he promised in the alternative. Park refused.

13. To date, despite demand, the Cutler has not received the benefit of the bargain to which she is entitled and accordingly, has been damaged.

WHEREFORE, Cutler demands damages in the amount of \$3,000.00, court costs and all such further relief as the Court deems just.

COUNT II
FDUTPA

14. Cutler realleges paragraphs 1 through 6 of the General Allegations above as though set forth fully.

15. This is a count by Cutler against Park for violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA").

16. Park violated Chapter 501, Florida Statutes, including but not limited to §§ 501.204 and 501.211 by engaging in unconscionable acts or practices and unfair or deceptive acts or practices.

17. Such acts involved advertising and conducting an illegal lottery for a Tegu in violation of § 849.09(c), Florida Statutes ("Lottery") which prohibits conducting a lottery drawing for the distribution of prizes by chance connected in any way to a lottery drawing. A person found guilty of violating this statute is guilty of a felony of the third degree.

18. Park held the Lottery individually and did not conduct the lottery as a 501(c)(3) nonprofit organization.

19. Further, even if Park was considered a 501(c)(3) organization, he did not advertise the raffle in accordance with § 849.0935(3) in that he failed to disclose the full name of the organization that the raffle would benefit including its principal place of business; the source of funds used to award cash prizes or to purchase prizes, the date, hour and place where the winner would be chosen and the prizes would be awarded, or that no purchase or contribution is necessary.

20. Finally, Park conducted the Lottery in a deceptive manner in that he implied that he would be producing one of his own bred albino tegu, or if he could not produce the tegu, he offered a prize of \$3,000.00 cash of his own funds in lieu of the tegu. After the Lottery, he only offered to produce another breeder's albino tegu to the Cutler and did not offer \$3,000.00 cash.

21. Park's violations of FDUTPA caused Cutler harm because she is a victim of an illegal lottery, caused Park to make libelous statements about her and resulted in her being named a Defendant in the subject lawsuit for speaking out about Park's misconduct.

WHEREFORE, Cutler requests judgment be entered against Park for damages, pre-judgment and post-judgment interest, attorney's fees, costs and such other relief as the Court deems just and proper.

COUNT III

Libel

22. Cutler realleges paragraphs 1 through 6 of the General Allegations above as though set forth fully.

23. This is a count for libel against Park.

24. Park illegally advertised and conducted the Raffle which was based on a lottery system and was in violation of 849.09(a)-(j).

25. Further, after conducting the Raffle and determining that Cutler was a winner of the prize, Park failed to produce the prize – an albino tegu bred by him or the alternate prize of \$3,000.00 in cash.

26. As a victim of Park's illegal and tortious conduct, Cutler wrote a complaint about Park's misconduct on faunaclassifieds, an online message board.

27. In retaliation for complaining about his misconduct, Park responded to the complaint by posting online, among other things, that Cutler was "crazy", "greedy" & "unintelligent." Said adjectives are false and unprivileged and exposed Cutler to distrust, hatred and contempt and caused injury.

28. As a direct and proximate result of Park's false and defamatory writings, Cutler has been damaged.

WHEREFORE, Cutler requests judgment be entered against Park for damages, pre-judgment and post-judgment interest, costs and such other relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE BY JURY.

CERTIFICATE OF SERVICE

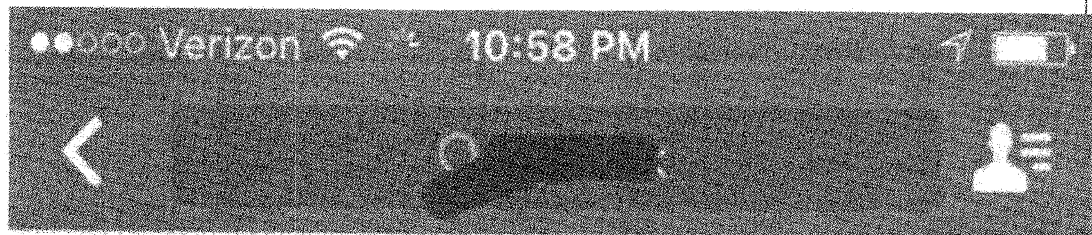
I HEREBY CERTIFY that a copy hereof has been furnished via e-mail to Jonathan P. Whitney, Esq., Lutz, Bobo & Telfair, P.A., One Sarasota Tower, Two North Tamiami Trail, Fifth Floor, Sarasota, FL 34236 at jwhitney@lutzbobobob.com, on this 29th day of January, 2018.

MORAN, SANCHY & ASSOCIATES
1800 Second Street, Suite 830
Sarasota, FL 34236
P: (941) 366-1800
F: (941) 954-7101

/s/ Don Cahall

Don R. Cahall
Florida Bar No. 0110578
E-mail: dcahall@moransanchylaw.com

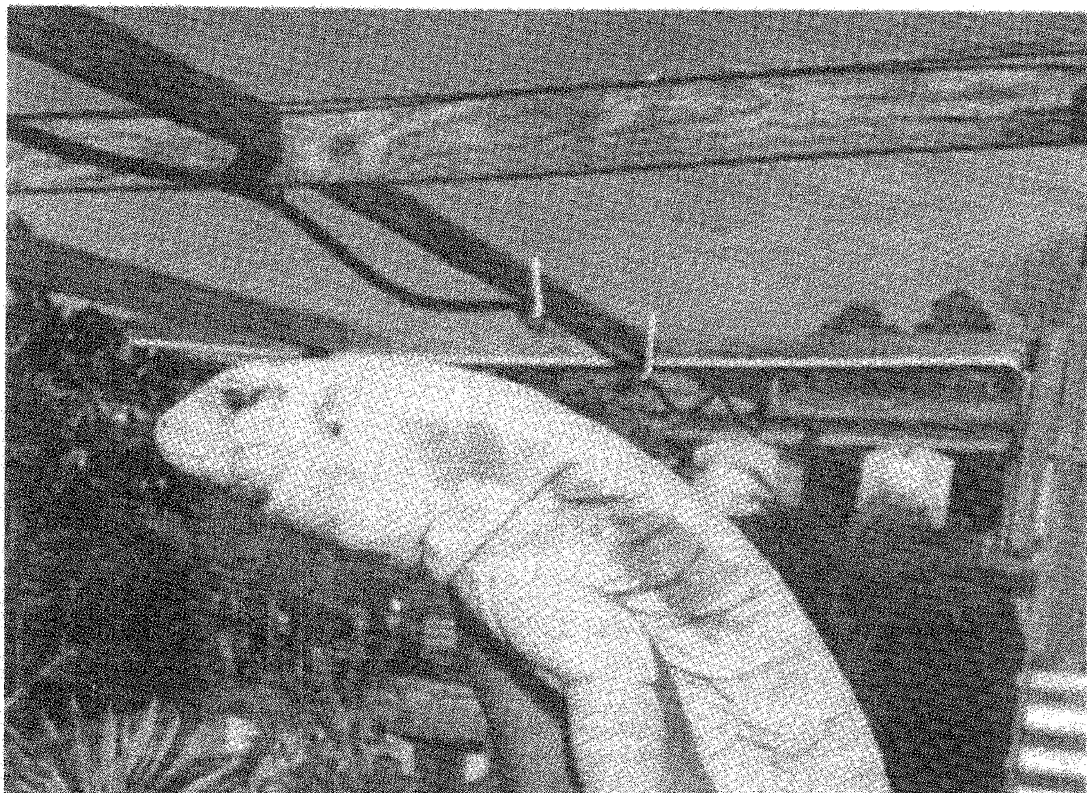
EXHIBIT.A.



Dark

March 9 · 🌐

How many of you would be interested if I ran an online-raffle for a baby albino blue tegu to be delivered in July? 100% of ticket sale would go to a good cause (nonprofit iguana group) and the each ticket would cost \$100. If for any reason, I do not produce any albino this year (chance of this happening will be almost none) I would pay the winner \$3000 out of my own pocket.



12-22-2016, 12:39 AM

#1

Sugarhedgie
Contributing
Member



Join Date: Dec 2016
Location:
Marlborough Ma
Posts: 455
Name : Michelle
Cutler
Trader Rating: (0)

Ty park/ ty lizards FL

this is a public warning about ty park, aka taesoon park and ty park reptiles.

march 2016 he held an online raffle. the terms were clear, they were

1. for an albino tegu
2. to be delivered by july 31 2016, and
3. that would be produced by him. it even stated that "if he did not produce any, chance of this happening is almost none, he would pay the winner \$3,000.00 out of his own pocket"

the tickets were \$100.00 each.

i purchased 4 tickets totaling \$400.00

i was one of the winners, but Mr. Ty park did not honor his contract on july 31 2016 i contacted him and asked him if he had produced any albino blue tegus yet. he said "not yet, soon i'm sure"

on aug 13 2016 i contacted him again and asked him again if he had produced any yet. he said "no all i produced were albino purple tegus, so i asked him if he would be willing to give me a purple albino as that was all he had produced but he said "NO i owe you \$2,500.00 the purple is \$5,000.00"

he further stated that he would go buy one for me from a friend "this weekend" and ship it to me on monday. i expressed my concerns about getting it from another breeder and i asked him if he could just pay me the money (\$3,000.00) instead. this is where his true colors came out!! he said NO!! and he became rude and hostile.

feeling backed into a corner i went ahead and asked him for the breeders info anyway as i wanted to work something out. he would not even give me this info which i feel is important as i would like to know where my animals come from (especially when i entered into this raffle for one of Ty Parks animals as i had heard he was a top notch breeder.)

because he tried to change the terms of the raffle prize several times at this time, i admit i did not trust him anymore....

we engaged in some private messages still in attempts to try and settle this, with no prevail. he continued to be rude, hostile and was talking to me like he was above me.(later finding out that he does this to many people. especially when they challenge him on something)

he called me greedy, uneducated, and thankless both in pm's and on his public posts.

he accused me on one of his posts of calling him a scammer, but that was a lie.

i never called him a scammer. what i did say to him in private message when he was denying me of my prize, was that " if i had known this (referring to the raffle)was going to be shady an scammy i probably wouldn't have bought any raffle tickets"

he made several posts on his page most with misleading information, where over 8,000 of his followers could see and engage in. he has many people that for some reason seam to worship the ground he walks on. those people were in total support of him and those people also made negative and slanderous comments about me, some even took it as far as making public threats of physical harm towards me.

what i found was interesting was that several people (on his page) private messaged me showing their support of me and their unhappiness with ty and how ty has dealt with this whole situation. they continue to support me.

i did file a small claims when i knew that i was not going to ever see the prize or the alternative prize which were offered. small claims hearing date was supposed to be on Nov. 8th 2016.

Mr. Park filed several motions, a counter claim for \$4,500.00 and a continuance (which was granted), and a motion to be allowed to be present at the rescheduled hearing date of dec. 13th 2016 via telephone most of his motion and answers he was not forthcoming and again dishonest. he asked the court for the continuance stating that he could not leave the farm at this time (for the scheduled Nov.8 2016 hearing date) because he has several animals that need his care and if he had to go to court in mass that his animals could die. on his own fb page he posted that he went on several out of state vacations during that time (Nov. 1-11th) which again proves that he is at the very least he is dishonest.

we are in different states, and each state has their own laws, different jurisdictions and rules on filing a small claims.

today i went in front of the clerk, where the clerk explained a few technicalities to me. the clerk contacted Mr park and asked him if he wanted to make any offers to me and told him that he was just trying to see if we could resolve this. Mr park said NO. the clerk was only aware of the things that Mr. Park represented to the court as my evidence was in my hand ready to be given at todays trial to the magistrate . but after i showed him a few things in my evidence / exhibits, rebutting a few things that were stated by Ty. the clerk asked me if i would be willing to take a tegu that he produced , i siD YES. (this is what i wanted the whole time) the clerk called him back and asked if he was still willing to give me one of the t+ albino purple tegus that he produced. (that he said many times to his followers that he offered me. with was not true) there was some conversation re: times of year that clutches hatched etc. ty said he had

raffled off the one he was going to give me (he sold 30 raffle tickets totaling \$3,000 and recently raffled for another \$3,500) he said he didn't have any more available this year (which is also not true) but when asked if he would be willing to give me one in july of next year he said NO. its clear that i will definitely get the money for court costs and the raffle tickets but the clerk set another date, so i could explore the option of retaining counsel if i wished and to further explore florida state laws pertaining to some issues raised in this transaction.

while somethings seam so clear cut, it is obvious that when you put your trust in something and enter a raffle, you may not end up with the prize as promised.

just like contracts they are only enforced if you pursue them..

this will be a lesson learned but i wanted to post this and urge people to use caution when dealing with Mr. Ty (taesoon) Park.....

I have our whole conversations on messenger, all of his posts he made about me where he called me greedy, uneducated, thankless etc and proof he shipped the other 2 winners an albino purple tegu. His public comments telling his followers that he offered me a purple albino which was a lie because when I asked him he said no saying he didn't feel I deserve one.

Attached Images