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**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA**

REPUBLIC AIRWAYS HOLDINGS INC.,

Plaintiff,

v.

Case No: 2019 CA 2271

REPUBLIC AIRWAYS, INC., a Florida  
corporation; and FLORIDA DEPARTMENT  
OF STATE, DIVISION OF  
CORPORATIONS

Defendants.

**FINAL JUDGMENT**

This matter came before the Court on Plaintiff's Motion for Final Judgment. Having reviewed the Motion and all documents filed by the parties, and being otherwise fully advised in the premises, the Court finds as follows:

**Background**

1. On September 20, 2019, Plaintiff Republic Airways Holdings Inc.(RAHI) filed this action seeking declaratory and injunctive relief related to a false corporate registration filed by Defendant Republic Airways, Inc. (RAI) with the Division of Corporations.
2. The Complaint was served on the registered agent for Defendant RAI on September 27, 2019, making Defendant RAI's response to the Complaint due to be served on or before October 17, 2019.
3. On October 18, 2019, Plaintiff RAHI filed a motion for entry of clerk's default against Defendant RAI for failure to timely serve any response to the Complaint or otherwise to defend the action.

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4. On October 18, 2019, Defendant Department of State, Division of Corporations, filed an Answer generally admitting the Complaint's jurisdictional allegations and the Complaint's allegations regarding the duties of the Division of Corporations; stating that the Division of Corporations was without knowledge as to the allegations directed against Defendant RAI; and stating that the Division will comply with injunctive relief sought in the Complaint if ordered by the Court.

5. On October 21, 2019, the Clerk of Court entered a default against Defendant RAI for failure to serve or file any document as required by law.

#### **Findings of Undisputed Material Facts**

6. Plaintiff RAHI is a Delaware corporation based in Indianapolis, Indiana. RAHI, through its subsidiary, Republic Airways Inc., is the world's largest operator of E-Jet aircraft. Republic Airways Inc. operates a fleet of approximately 190 Embraer 170/175 aircraft and offers scheduled passenger service with over 1,000 daily flights to 100 cities in the United States, Canada, the Caribbean, and Mexico.

7. Plaintiff RAHI holds the federal trademark registration in the name "Republic Airways," which it uses in connection with its air transportation services. This mark was first used in commerce in 2002.

8. On December 11, 2018, Electronic Articles of Incorporation for Defendant RAI were filed with the Florida Department of State, Division of Corporations. The filing identified "Eleanor Kaupp" at an address in Davie, Florida, as the sole Registered Agent, President, Treasurer, Secretary, and Director of RAI.

9. Neither Defendant RAI nor its registered agent Eleanor Kaupp are associated with Plaintiff RAHI or its affiliates.

10. Defendant RAI's corporate registration was either intended to facilitate fraudulent activities or to create uncertainty and confusion with respect to its apparent affiliation with RAHI or its affiliates.

11. The Division of Corporations has a ministerial duty to file documents that are delivered to the Department of State for filing and that satisfy the requirements of section 607.0120, Florida Statutes.

12. The filing of a document by the Division of Corporations does not relate to the "correctness or incorrectness of information contained in the document" or create any presumption regarding information contained in the document. § 607.0125, Fla. Stat.

13. Florida law generally requires corporate names registered with the Division of Corporations to be distinguishable from the names of all other entities or filings on file with the Department of State. § 607.0401, Fla. Stat.

14. As a result of the false filing by Defendant RAI, RAHI cannot file a corporate registration with the Division of Corporations under the name of RAHI's corporate subsidiary, Republic Airways Inc.

15. RAHI has been harmed by its inability to register its corporate subsidiary, Republic Airways Inc., with the Division of Corporations.

16. All conditions precedent to the filing of this action have been performed or waived.

#### **Conclusions of Law**

17. As to Defendant RAI, Plaintiff seeks a final judgment after default under Florida Rule of Civil Procedure 1.500(e). The entry of default precludes Defendant RAI from contesting the well-pleaded allegations in the Complaint. See, e.g., Fla. Bar v. Porter, 684 So. 2d 810, 813

n.4 (Fla. 1996) (“[T]he entry of a default precludes a party from contesting the existence of a plaintiff’s claim and liability thereon.”); Rich v. Spivey, 922 So. 2d 326, 327 (Fla. 1st DCA 2006) (“A default admits liability as claimed in the pleading by the party seeking affirmative relief against the party in default.” (quoting Sec. Bank, N.A. v. BellSouth Adver. & Publ’g Corp., 679 So. 2d 795, 803 (Fla. 3d DCA 1996)). The factual allegations set forth in the Complaint directed to Defendant RAI are therefore “deemed admitted,” *Porter*, 684 So. 2d at 813, and have accordingly been identified above as findings of undisputed material fact. Plaintiff RAHI is therefore entitled as a matter of law to entry of final judgment after default against Defendant RAI.

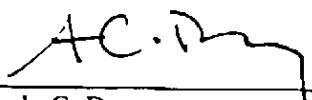
18. As to Defendant Department of State, Division of Corporations, Plaintiff seeks entry of final summary judgment under Florida Rule of Civil Procedure 1.510. Summary judgment is proper where there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fla. R. Civ. Pro. 1.510(c). As noted in the Complaint, the Division of Corporations was named as a necessary defendant for the purposes of facilitating the injunctive relief sought in this Complaint with respect to Defendant RAI. The Division has a ministerial duty to file documents that are delivered to the Department of State for filing and that satisfy the requirements of section 607.0120, Florida Statutes. And the filing of a document by the Division of Corporations does not relate to the “correctness or incorrectness of information contained in the document” or create any presumption regarding information contained in the document. § 607.0125, Fla. Stat. The Division’s Answer admits the Complaint’s jurisdictional allegations and the allegations relating to its own duties under Florida law. Because the Complaint’s allegations directed to Defendant RAI are deemed admitted as a result of its default, no genuine issues of material fact preclude the entry of final summary judgment directing the

Division of Corporations to revoke and cancel the existing corporate registration of RAI, and thereafter to accept a corporate registration in the name of Republic Airways Inc. from Plaintiff RAHI, in accordance with the requirements of Florida law. Plaintiff RAHI is therefore entitled as a matter of law to entry of summary judgment against Defendant Department of State, Division of Corporations.

Accordingly, it is hereby ORDERED and ADJUDGED that:

- a. Defendant RAI's purported corporate registration is false;
- b. Defendant RAI's purported corporate registration was made for an improper purpose;
- c. Defendant RAI had no legal authority to file Articles of Incorporation with the Division of Corporations under the name "Republic Airways Inc.," which is a mark owned by Plaintiff RAHI; and
- d. The Department of State, Division of Corporations, is hereby ordered to revoke and cancel the existing corporate registration of RAI, and thereafter to accept a corporate registration from Plaintiff's subsidiary in the name of Republic Airways Inc., in accordance with the requirements of Florida law.

DONE AND ORDERED this 25 day of November, 2019.

  
\_\_\_\_\_  
Angela C. Dempsey  
Circuit Judge

cc: Counsel of Record