

IN THE CIRCUIT COURT OF
THE 17TH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY
FLORIDA

POMPANO SENIOR SQUADRON
FLYING CLUB, INC., a Florida
corporation,

CASE NO.: CACE 20-005993 (08)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO TRANSFER VENUE**

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff "Club"), by and through its undersigned counsel, files this Response to Defendant Carl Kennedy's (Defendant "Kennedy"), Motion to Transfer Venue as says:

1. Plaintiff Club sued Defendant Kennedy for an accounting and an injunction based upon Defendant Kennedy's prior position as a Board of Director and Treasurer of the Club.
2. Plaintiff Club is seeking the accounting based upon Defendant Kennedy's fiduciary position to the Club as prior Treasurer and is seeking information regarding various payments made to Defendant Kennedy's person American Express card using the Plaintiff Club's financial accounts, as well as payments to Wendy Hausmann, Esq. regarding an alleged loan made by Ms. Hausmann to the Club at the time Ms. Hausmann was the Club's attorney as well as purporting to serve as Mr. Kennedy's personal attorney.
3. Plaintiff Club operates airplanes and members of the Club may utilize the airplanes for private trips. The entire business of the Club, vis-a-vis the airplanes takes place in

Pompano Beach, Broward County, Florida.

4. Plaintiff Club is currently operating its business from Pompano Beach, Florida, including its corporate operations, as well as the actual business of the Club which is maintaining and renting the airplanes as well as maintenance of the airplanes, payments for loans secured with the airplanes, etc.

5. After Defendant Kennedy left or was removed from his position as director and treasurer of the Club, the Club asserts that Defendant Kennedy failed to provide any of the accounting and financial records of the Club to the new board members, failed to explain and provide a basis for his paying his personal American Express card with Club funds, and failed to explain the existence of payments to Ms. Hausmann in the face of the fact that no promissory note exists and there is no documentation whatsoever for this alleged loan except in the form a check.

6. After requesting two (2) extensions of time to obtain counsel in this case, Defendant Kennedy files a pro se Motion to Transfer Venue.

7. As this Court is fully aware, there is a pending Order giving Defendant Kennedy thirty (30) days to obtain counsel or appear pro se in this matter.

8. Plaintiff Club now asserts that Defendant Kennedy's pro se filing is his election to appear pro se in this matter and as such, an answer or responsive pleading is now due to Plaintiff Club's Complaint.

9. As to the Motion to Transfer Venue, Defendant Kennedy makes no distinction in his Motion as to whether or not he believes Broward County is an improper venue or whether this is a Motion based upon *forum non-conveniens*.

10. As to the fact that Broward County is an appropriate venue, §47.011 Fla. Stat. provides that venue is appropriate where the cause of action has accrued. As Plaintiff

Club performs its major operations in Broward County, Florida, as the Club now maintains its business office in Broward County, Florida, and as the Club performs all of its functions in Broward County, Florida, the cause of action for an accounting against the former director sitting in a fiduciary position to the Club is Broward County, Florida. See *Residential Sav. Mortg., Inc. v Keesling*, 73 So.3d 280 (Fla. 2nd DCA 2011). See also *Sheffield Steel Products, Inc. v Powell Bros., Inc.*, 385 So.2d 161 (Fla. 5th DCA 1980).

11. If Defendant Kennedy is attempting to state a motion for *Forum Non-Conveniens*, Defendant Kennedy fails to meet a condition precedent in that the Motion must be verified or supported by Affidavits. Defendant Kennedy's Motion is neither verified nor supported by any affidavit.

12. A party seeking to change venue must establish a sufficient record for the change of venue and in absence of an evidentiary record, the Court is without power to change venues. See *Powel Bros., Inc. at 162*.

13. Furthermore, according to the Affidavit in Opposition to Defendant Kennedy's Motion, the Club maintains its principal place of business and operates its entire business in Broward County, Florida. As this affidavit is now the only record evidence before this Court, it is undisputed and as such, Defendant Kennedy's Motion must fail. See *RBC I, Inc. v Ajar I, Inc.*, 519 So.2d 743 (Fla. 3rd DCA 1988). Additionally, based upon the fact that the Club's airplanes, which is its major function and business, are located in Pompano, Broward County, Florida, venue for this cause of action is properly in Broward County, Florida. See *Ashemimry v BA Nafa*, 778 So.2d 495 (Fla. 5th DCA 2001).

14. As this Court is fully aware, if plaintiff has multiple choices for venue, the choice of venue is determined and made by the plaintiff. See *R.J. Reynolds Tobacco Co. v Mooney*, 147 So.3d 42 (Fla. 3rd DCA 2014). See also *Brown and Williamson Tobacco*

Corp. v Young, 690 So.2d 1377 (Fla. 1st DCA 1997).

15. In seeking a change of venue, Defendant Kennedy has the burden of proving that Plaintiff's venue selection is improper and it is insufficient to merely establish that venue may be proper elsewhere. As Defendant Kennedy has put no evidence before this Court, Defendant Kennedy has failed to meet his burden of proof and as such, his Motion must be denied. See *Bickford v Drogan*, 198 So.3d 1001 (Fla. 4th DCA 2016).

WHEREFORE, Plaintiff Club moves this Honorable Court for an Order denying Defendant Kennedy's Motion to Transfer Venue, an Order requiring Defendant Kennedy immediately file responsive pleadings to Plaintiff Club's Complaint as he has chosen to act pro se, and any other relief that this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 28 day of July 2020, to Carl L. Kennedy, II, clktax@aol.com

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