

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

POMPANO SENIOR SQUADRON FLYING CLUB, INC.
(aka POMPANO BEACH FLYING CLUB)

Plaintiff,

and

CARL L. KENNEDY, II

Defendant.

Case No.: CACE 20-005993

Division (8)

**MOTION TO DISMISS AND/OR STRIKE, TO JOIN INDISPENSABLE PARTIES
AND FOR MORE DEFINITE STATEMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

I, Carl L. Kennedy, II, in response to Plaintiff's Complaint, hereby respectfully represent as follows:

1. On April 7, 2020, Plaintiff social flying Club filed a lawsuit ("Complaint") in this matter, suing me individually, but strictly in connection with my capacity as the former Treasurer of Plaintiff's Club, for an accounting and an injunction.

2. The law with respect to Plaintiff's Complaint is directed to a "corporation". See Florida Statutes. I, as an individual, do not comprise and am not the "corporation", and therefore Plaintiff should have included all of the former Officers and members of the former Board of Directors in this lawsuit [the Officers and Board of Directors were at all relevant times hereto the same five (5) individuals]. The Plaintiff's Complaint itself establishes the former Officers and Directors as being necessary parties and clearly implies their interests in this matter. See Plaintiff's Complaint, paragraphs 7, 15, 16 and 25. Moreover, the Club's corporate documents delegate responsibility for maintaining records for the corporation among more than one Officer. For example, Plaintiff has

made a record request of me for Articles of Incorporation and corporate minutes, both of which records are to be held by the Club's former Secretary. Plaintiff's Complaint should be dismissed due to the failure to join all former Officers/Directors as indispensable parties.

3. Also, Plaintiff's Complaint should be dismissed because it fails to state a claim upon which relief can be granted.

4. Plaintiff's Complaint relies on Fl. Stat. §607 as its foundation. (Complaint, para.28). However, Plaintiff corporation is now, and was at all times that I was Treasurer of the Club, a non-profit corporation, as reflected by both its corporate documents and tax filings each year. As such, this lawsuit, and other matters pertaining to Plaintiff herein, must be evaluated and addressed in accordance with Fl. Stat. §617. Plaintiff's Complaint should be dismissed due to its failure to comply with the requirements of Fl. Stat. §617, both in the "record demand" directed to me (Plaintiff's sole Exhibit to its Complaint), and as alleged within, and as a primary basis for, the Complaint itself. Contrary to Plaintiff's allegation in paragraph 11 of the Complaint, Plaintiff has not satisfied all conditions precedent to bringing this action.

5. Plaintiff's Complaint is vague and overbroad, making wide and sweeping generalizations without the specificity required by Florida law, including paragraphs 9, 22, 24, 25, 29 and Plaintiff's requested relief, for which I request a more definite statement as to the allegations therein contained, including specificity as to the parameters of the "accounting" they seek, in addition to specifying with particularity which "corporate records" Plaintiff alleges I possess or control but have failed to turn over and/or return;

6. Plaintiff also fails to allege with specificity the "irreparable harm" it will suffer if an injunction is not granted, which is necessary to establish a claim for injunctive relief. Plaintiff's allegations as to this element are merely vague generalizations. A more definite statement should be required of Plaintiff in connection with this element.

7. I am still a dues-paying member/shareholder of Plaintiff's Flying Club, and in this lawsuit I am therefore, in essence, suing myself and using my own money to do so. I believe this poses a significant conflict.

8. Plaintiff's claim for attorney's fees should be stricken or dismissed due to the failure to provide a proper request for same.

WHEREFORE, I respectfully request I be granted all relief consistent with this Motion that the Court deems just and proper, including that the Court Dismiss Plaintiff's Complaint for failure to join all former Officers/members of the Board of Directors, or alternatively, that the Court enter an Order requiring Plaintiff to provide a more definite statement with respect to paragraphs 9, 22, 24, 25, 29, Plaintiff's requested relief for "corporate records" and the parameters of "an accounting", as contained in its Complaint.

I hereby certify that on the 13th day of August, 2020 I sent a copy of this document via the Florida e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com.

Respectfully submitted,

/s/ Carl L. Kennedy, II

Carl L. Kennedy, II

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