

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/Counter-Defendant,

and

CARL L. KENNEDY, II

Defendant/Counter-Plaintiff.

Case No.: CACE 20-005993

Division (8)

RESPONSE TO AND MOTION FOR SANCTIONS DUE TO
PLAINTIFF'S FRIVOLOUS FILING OF MOTION TO COMPEL

I, Carl L. Kennedy, II, Defendant and Counter-Plaintiff, respectfully represent as follows:

1. The Motion to Compel filed by Plaintiff at 2:27 p.m. on October 1, 2020 was filed frivolously and in bad faith. It is also misleading and otherwise lacks full candor with the Court.
2. See attached Exhibit A of chronology of events from September 30, 2020 through October 2, 2020. Plaintiff and I had reached an agreement concerning my discovery responses during a telephone conversation which took place on September 30, 2020 and was reduced to writing in time-stamped confirming emails to/from Plaintiff's attorney on October 1 and October 2, 2020. See Exhibit B.
3. After the agreement reached between myself and Plaintiff's attorney, evidenced by Exhibit B, Plaintiff attempted to inject other items into the agreement which he proposed as an "Agreed Order", which items were not only never agreed to, they were never even raised during our telephone conversation on September 30, 2020. See proposed Agreed Order at Exhibit C.
4. See Exhibit D, which are emails between myself and counsel for Plaintiff of October 1 and October 2, 2020. The Court is respectfully directed to the Exhibit A chronology of time-stamped emails between myself and Plaintiff's counsel regarding this issue on October 1 and October 2, 2020, and are included in the attached Exhibits B, C and D.
5. Plaintiff's Motion to Compel, filed at 2:27 p.m. on October 1, 2020 conspicuously neglects to mention our agreement on discovery issues and the emails reflecting this agreement

as evidenced in Exhibit B. This omission is not just aggressive lawyering but is instead intentionally purposed to mislead and deceive the Court with respect to this matter. I am being “painted” by Plaintiff both inaccurately and unfairly. In accordance with our telephone conversation of September 30, 2020, I had already agreed to provide discovery responses to Plaintiff by November 2, 2020, as is confirmed in my email to Plaintiff’s counsel at 10:54 a.m. on October 1, 2020. Therefore, Plaintiff’s Motion to Compel was filed prematurely and unnecessarily.

6. This simple agreement reflecting our September 30, 2020 telephone conversation was conclusively reached and confirmed by Plaintiff’s email stating “I agree” at 10:37 a.m. on October 2, 2020.

7. Plaintiff should be required to comply with the terms of the agreement reached during our telephone conversation, which terms are as stated in full, and agreed to by Plaintiff conclusively, at 10:37 a.m. on October 2, 2020. Plaintiff’s attempt thereafter to have me agree to additional terms and placing an all-or-nothing condition on our agreement (as is reflected in its proposed “Agreed Order”, sent to me at 10:28 a.m. on October 2, 2020) should not be condoned by this Court.

8. Further, Plaintiff’s attempt to have our agreement be connected to its Motion to Compel is also improper, as its Motion to Compel filed at 2:27 p.m. on October 1, 2020, did not even exist when we had our telephone conversation of September 30, 2020 and confirmed our agreement in writing reflecting it as contained in the emails of September 30 and October 1, 2020. See Exhibit B.

9. Plaintiff also affirmatively lied to me when it states in its email of October 2, 2020 at 10:49 a.m. that he filed Plaintiff’s Motion to Compel because something had to be pending to which the Agreed Order was directed, since my Motion for Extension of Time to respond to Plaintiff’s discovery requests *had already been pending since June 30, 2020*. This is nothing short of intentional deceit and unethical conduct on Plaintiff’s part.

10. Plaintiff’s lack of candor with the Court should be sanctioned.

11. Plaintiff’s Motion to Compel is an unnecessary and frivolous Motion, in addition to wasting corporate assets, because Plaintiff and I had already agreed, on September 30, 2020 to November 2, 2020 as the deadline for my discovery responses. Exhibit B. I did not need to be compelled to provide discovery responses, and the Court’s file shouldn’t reflect that I did. This

is an attorney's fees issue if I am perceived as to having been needed to be compelled to provide discovery.

12. Plaintiff's attempt, after our agreement, to "slip in" a clause in a proposed Agreed Order which would have me agree to waive my right to make proper objections in these responses is improper.

13. The timely filing of my Motion for Extension of Time on June 30, 2020 preserved my right to make reasonable and proper objections to Plaintiff's Interrogatories and Request for Production of Documents as are necessary and appropriate.

14. For example, several of Plaintiff's discovery requests are relevant to an actual accounting and are properly objectionable because they are irrelevant to the first step requiring Plaintiff to establish their entitlement to an accounting. This is a proper and reasonable objection and permitting Plaintiff to conduct discovery which is relevant only to "step 2" of this matter, before "step 1" is resolved, would be an error. Also, Plaintiff has requested documents going back 6 years which may no longer be in my possession, custody or control. I should be able to object to this overbroad request.

15. Plaintiff's Motion to Compel filed at 2:27 p.m. on October 1, 2020 was without cause, was filed frivolously and in bad faith, and has wasted not only the Court's time, but also valuable corporate assets of the Plaintiff of which corporation I remain a member/shareholder.

WHEREFORE, I, CARL L. KENNEDY, II, Counter-Plaintiff, respectfully request that Plaintiff's Motion to Compel be denied, that appropriate sanctions be imposed upon Plaintiff and/or its counsel due to its frivolous Motion and lack of candor with the Court, and that I be awarded all other relief consistent with this Motion.

I hereby certify that I sent a copy of the foregoing via the e-portal to Edward F. Holodak, Esquire, on the 8th day of October, 2020.

Respectfully submitted,
/s/ Carl L. Kennedy, II
Carl L. Kennedy, II
2929 S. Ocean Blvd., #510
Boca Raton, FL 33432
304-552-0206
E-Mail Address: clktx@aol.com