

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 MOTION TO STRIKE DEFENDANT'S ANSWER, CERTAIN
AFFIRMATIVE DEFENSES AND ENTRY FOR JUDGMENT ON THE
PLEADINGS OR IN THE ALTERNATIVE JUDICIAL DEFAULT**

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff
"Club"), by and through its undersigned counsel, files this Motion to Strike Defendant
CARL KENNEDY'S (Defendant "Kennedy") Answer, Certain Affirmative Defenses and
Entry for Judgment on the Pleadings or in the Alternative Judicial Default and says:

1. While Defendant Kennedy is pro se in this case, he is still obligated to comply
with the Florida Rules of Civil Procedure. See §454.18 Fla. Stat.; *Kohn v City of Miami
Beach*, 611 So.2d 538, 539 (Fla. 3rd DCA 1992) stating "We conclude that it is mistake to
hold a pro se litigant to a lesser standard than a reasonably competent attorney."

2. Pursuant to Rule 1.110 (c), Fla. R. Civ. P., Defendant Kennedy must admit,
deny, or state that he is without knowledge as to each allegation, by paragraph, in
Plaintiff Club's Complaint.

3. The Complaint filed by Plaintiff Club almost exactly six (6) months ago
today, Defendant Kennedy *finally* filed an alleged Answer. The Answer however
completely fails to comply with Rule 1.110.

4. As an example, but certainly not limited to, Paragraphs 15, 16, 17, 18, and 19, have no admission, denial, or without knowledge, but instead, is just pontificating by Defendant Kennedy. Furthermore, for some unexplained reason, Defendant Kennedy does not even bother attempting to respond to Paragraphs 19-29 of the Complaint.

5. Accordingly, Plaintiff Club moves for a judicial default against Defendant Kennedy as to Count II of the Complaint for Defendant Kennedy's failure to file any responsive pleading to the allegations of Count II.

6. Additionally, Plaintiff Club moves this Court for an Order striking paragraphs 15, 16, 17, and 18 as being noncompliant with Rule 1.110, Fla. R. Civ. P.

7. Assuming, that Paragraphs 15 – 18 of Defendant Kennedy's Answer are to be taken as affirmative defenses, Plaintiff Club moves this Court for an Order striking said affirmative defenses.

8. Pursuant to Rules 1.110 (d) and 1.140, Fla. R. Civ. P., every defense and all or factual basis for claim for relief must be asserted in the pleadings and, a party waives all defenses and objections if the party does not present them in the responsive pleading. See *Rule 1.140, Fla. R. Civ. P.* Rule 1.110(d) sets forth recognized affirmative defenses under Florida law.

9. Paragraph 15 of Defendant Kennedy's Answer states that the Plaintiff has generated unnecessary litigation. This clearly is not a recognizable affirmative defense under Florida law and accordingly, pursuant to Rule 1.140(f), should be stricken.

10. Similarly, in Paragraph 16, Defendant Kennedy says that because his membership dues are being utilized by the Plaintiff to sue him he seeks reimbursement of his attorney fees and costs in this matter. As Defendant Kennedy is acting pro se, and is not a member of the Florida Bar, there is no basis to award him attorney fees.

Accordingly, Plaintiff Club moves for an Order striking Paragraph 16 pursuant to Rule 1.140(f). See *Carter v Broward County Sheriff's Office*, 965 So.2d 1238 (Fla. 4th DCA 2007); *Creamer v BAC Home Loans Servicing, LP*, 195 So.3d 168 (Fla. 2nd DCA 2015).

11. As to Paragraph 17 of Defendant Kennedy's Answer, such issues raised by Defendant Kennedy are more appropriate as a response to specific discovery requests and not as an affirmative defense to a Complaint. See *Rule 1.110(d)*. Accordingly, Plaintiff Club moves this Court for an Order striking Paragraph 17 of Defendant Kennedy's Answer.

12. As Plaintiff Kennedy has completely failed to properly respond to the allegations of the Complaint, or state any valid defenses pursuant to the Florida Rules of Civil Procedure, Plaintiff Club moves this Court for judgment on the pleadings, or in the alternative, entry of a judicial default against Defendant Kennedy.

WHEREFORE, Plaintiff Club moves this Court for the following:

Entry of a Default as to Count II of Plaintiff Club's Complaint as Defendant Kennedy has failed to answer same in its entirety;

An Order striking Paragraphs 15, 16, and 17 of Defendant Kennedy's Answer as same are improper and in violation of Rules 1.110 and 1.140;

In the alternative to a default as to Count II, entry for judgment on the pleadings as to Count II as all allegations in Count II are unrefuted;

An award of Court costs and attorney fees and any further 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 27th day of October 2020, to Carl L. Kennedy, II, clktax@aol.com.

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