

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/Counter-Defendant,

v

CARL KENNEDY, individually,

Defendant/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT'S MOTION TO DISMISS
DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIM**

Plaintiff/Counter-Defendant, POMPANO SENIOR SQUADRON FLYING CLUB, INC. ("Club"), by and through its undersigned counsel, files this Motion to Dismiss Defendant/Counter-Plaintiff CARL KENNEDY'S ("Kennedy") Counterclaim and says:

1. At the initiation of Kennedy's Counterclaim, Kennedy states that he is incorporating by reference the following:
 - a. His Motion to Dismiss the Complaint to which he has now filed an Answer and which Motion this Court has already denied;
 - b. His Answer to the Club's Complaint.
2. Clearly, these two Pleadings and responses cannot formulate a basis of a counterclaim and would leave the Club in a position of not being able to formulate a proper Answer to the Counterclaim. It is clearly impermissible to incorporate the contents of a motion, especially one that the Court has already denied, into a Complaint. Although acting in a pro se capacity, Kennedy is obligated to comply with Florida law as

well as the Florida Rules of Civil Procedure. See *Kohn v City of Miami Beach*, 611 So.2d 538 (Fla. 3rd DCA 1992).

3. In addition to the above, in Paragraph 11 of Kennedy's Counterclaim, Kennedy asserts that the Club has unclean hands and should not be permitted to proceed against him. Clearly, such a statement could form the basis of an affirmative defense but is not the basis for a Complaint. As this Court is fully aware, a complaint is to state short and plain statements of ultimate facts which give rise to a cause of action. The statement that a party has unclean hands is a legal conclusion and is not a short and plain statement of ultimate facts. As such, pursuant to Rule 1.140(f), Club moves to strike Paragraph 11 and dismiss Kennedy's Counterclaim. See *Barrett v City of Margate*, 743 So.2d 1160 (Fla. 4th DCA 1999) (holding dismissal is warranted where plaintiffs fail to set forth a short and plain statement of ultimate facts showing entitlement to relief.)

4. The above arguments also apply to Paragraphs 12, 13, 14, and 19.

5. As to Paragraphs 20 and 21, Kennedy is acting pro se and is not a member of the Florida Bar and accordingly is not entitled to attorney fees, even if he were to prevail in any litigation against the Club. 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).

6. Furthermore, Kennedy labels his Counterclaim as an alleged attempt at seeking an injunction. Kennedy, however, has completely failed to state the elements of a claim for an injunction. As such, Kennedy has failed to state a cause of action and this Court should dismiss the Counterclaim for failure to state a cause of action. See *McKeegan v Ernst*, 84 So.3d 1229 (Fla. 4th DCA 2012).

7. Additionally, in the Wherefore statement of his Counterclaim, Kennedy has comingled claims for damages as well as an injunction. Not only is the comingling of claims in a single count improper, as each cause of action must be set forth in a separate count, the mere fact that Kennedy seeks damages in the same breathe as an injunction (which a required element is that there is no adequate remedy at law), makes his pleading repugnant to itself and subject to a dismissal by this Court.

WHEREFORE, Club moves this Court for an Order dismissing Kennedy's Counterclaim for all of the above reasons, 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.

_____/s/Edward F. Holodak
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