

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

Defendant/Counter-Plaintiff.

Case No.: CACE 20-005993
Division (8)

AMENDED ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT

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

ANSWER TO PLAINTIFF'S COMPLAINT

1. I admit paragraphs 1 through 4 of the Complaint, except that I am a resident of Palm Beach County and I was an Officer and member of the Board of Directors starting April 1, 2014.
2. I admit I made payments from Plaintiff's corporate bank account to pay for Plaintiff's expenses (and other financial obligations) which were charged to my American Express credit card as alleged by Plaintiff in paragraph 5 of the Complaint.
3. Paragraphs 6 and 7 of the Complaint are denied and I demand strict proof thereof.
4. I admit I received the letter from Plaintiff attached to Plaintiff's Complaint on or about March 23, 2020, which letter speaks for itself. Otherwise, paragraph 8 of the Complaint is denied.
5. I deny paragraphs 9 through 11 of the Complaint and demand strict proof.
6. In response to paragraph 12 of the Complaint, I reallege and incorporate by reference herein as if fully restated, paragraphs 1 through 5 above in my Answer to Plaintiff's Complaint.
7. I admit paragraph 13 of the Complaint.
8. I deny paragraphs 14 through 18 of the Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSES

A. **Failure to State a Cause of Action or Claim for Which Relief Can Be Granted:**

Plaintiff's Complaint fails to plead or specify a time period for which it requests an accounting. Plaintiff should be required to provide a more definite statement as to the parameters, including time parameters and specific articulation, of the accounting it seeks. To the extent Plaintiff's Complaint makes any claim which falls outside the Statute of Limitations, Plaintiff's claim must be barred. Plaintiff's Complaint also fails to adequately plead any damages or specific harm in connection with the allegations made in its Complaint as required.

B. **Statute of Limitations:** To the extent Plaintiff's Complaint makes any claim which is outside the Statute of Limitations, Plaintiff's claim must be barred.

C. **Unjust Enrichment:** Plaintiff corporation directly benefitted from the actions taken or not taken by me as its former Treasurer. Plaintiff's bills would not have been paid and its airplanes would not have been able to fly. In addition, Plaintiff corporation's expenses after the new Board of Directors took over and I was no longer Treasurer, were continued to be paid and Plaintiff refuses to provide reimbursement. Plaintiff corporation should not continue to retain the benefits of its expenses being paid on its behalf without actually paying for its expenses. Plaintiff's income and assets significantly increased as a direct result of my tenure as Club Treasurer. Plaintiff corporation and its shareholders continue to enjoy the benefits of the results of my actions/inactions about which Plaintiff corporation, through its new Board of Directors, now complains.

D. **Waiver:** Plaintiff has waived any claim regarding my conduct as its former Treasurer because at no time did Plaintiff's Board of Directors complain or voice any concerns about such actions taken or not taken by me as described in Plaintiff's Complaint.

E. **Frustration of Purpose:** Plaintiff corporation has failed and refused to provide me with the necessary information I have repeatedly requested in order to complete the accounting which they seek in their Complaint.

F. **Equitable Estoppel:** Plaintiff should be estopped from making claims regarding my conduct as its former Treasurer because such claims are directly contradictory to its previous behavior. Plaintiff not only benefitted from my conduct, but Plaintiff also approved of my actions or inactions. I relied upon Plaintiff's previous approval, and as such, Plaintiff must be

barred from changing its position after I justifiably relied on Plaintiff's previous position regarding my conduct as its former Treasurer.

G. **Ratification:** At all times relevant to Plaintiff's Complaint, all actions taken or not taken by me as the former Treasurer, were impliedly approved, consented to and ratified by the Board of Directors which was in office during my tenure as Treasurer of Plaintiff corporation. All conduct and actions not taken by me as Plaintiff's former Treasurer were, with their full knowledge of my actions or inactions, impliedly approved, justified, ratified and consented to by the Board of Directors holding office during my tenure as Plaintiff's former Treasurer, and upon which I justifiably relied. Plaintiff's claims must be barred from its attempt to renege on the consent and ratification by the prior Board of Directors of my actions or inactions in my capacity as Treasurer of its corporation.

H. **Failure to Mitigate Damages:** Plaintiff Flying Club was satisfied with my actions or failure to act during my tenure as Treasurer. Plaintiff corporation had an affirmative obligation to mitigate any damages it perceived to be existing when the entire new slate of Board of Directors was elected to office in February, 2020. Plaintiff failed to mitigate or take reasonable steps to avoid or reduce any of its perceived damages or harm as required. Plaintiff corporation continued to engage in conduct it complains of in Plaintiff's Complaint which permitted some of its expenses to be paid, and accumulating interest charges, for which I have not been reimbursed.

I. **Unclean Hands:** Since February 13, 2020, Plaintiff has engaged and continues to engage in improper actions, or failure to act, consisting of corporate waste, mismanagement of shareholder funds, violations of the corporation's Bylaws and other of Plaintiff's corporate documents, and violations of Florida Statutory laws, which conduct and violations require the Court's application of the doctrine of "unclean hands" in this matter.

J. **Business Judgment Rule:** All of my actions or failure to act, at all times relevant to Plaintiff's Complaint, are protected by the Business Judgment Rule. All of my actions or inactions were taken or not taken by me in good faith, in the best interests of Plaintiff Flying Club and in accordance with the corporation's Bylaws (Article III, Sec. 3), which state that the Treasurer "shall do and perform all duties appertaining to the office of Treasurer."

WHEREFORE, I, Carl L. Kennedy, II, respectfully request that all relief requested by

Plaintiff in its Complaint be dismissed or denied, that I be awarded my fees and costs incurred in this matter, and for such other and further relief that this Court deems just and proper under the facts and circumstances of this matter.

I hereby certify that I sent a copy of the foregoing via the e-portal to Edward F. Holodak, Esquire, on the 7th day of December, 2020.

Respectfully submitted,

/s/ Carl L. Kennedy
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