

IN THE CIRCUIT COURT OF  
THE 17<sup>TH</sup> 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

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**REPLY TO DEFENDANT'S SECOND AMENDED AFFIRMATIVE DEFENSES**

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff "Club"), by and through their undersigned counsel, pursuant to Rule 1.140, Fla. R. Civ. P., files this Reply to Defendant, CARL KENNEDY (Defendant "Kennedy")'s Second Amended Answer and Affirmative Defenses, and says:

1. Plaintiff Club denies each and every affirmative defense raised by Defendant Kennedy and demands strict proof in support thereof from Defendant Kennedy. To the extent necessary, Plaintiff Club further avoids each and every affirmative defense as they are legally and factually insufficient.

2. An affirmative defense is one that admits the cause of action asserted by the preceding pleading, but avoids liability, wholly or partly, by allegations of excuse, justification or other matter negating liability. *Storchwerke v. Mr. Thiessen's Wallpapering Supplies*, 538 So.2d 1382 (Fla. 5th DCA 1989); *St. Paul Mercury Ins. Co. v. Couch*, 837 So. 2d (Fla. 5th DCA 2002); *Jones v Florida Guar. Ass'ii*, 908 So. 2d 435, 452 (Fla. 2005). An affirmative defense that merely denies the allegations of the complaint is not sufficient. *Zito v. Washington Federal Savings & Loan Assoc.*

of *Miami Beach*, 318 So.2d 175 (Fla. 3<sup>rd</sup> DCA 1975). It is not permissible for a litigant to submit a disorganized assortment of allegations and arguments in hope that a legal premise will materialize on its own. *Barrett v City of Margate*, 743 So. 2d 1160 (Fla. 4<sup>th</sup> DCA 1999). Defendant's affirmative defenses are "conclusory in their content and lacking any real allegations of ultimate fact demonstrating a good defense to the complaint". *Cady v. Chevy Chase Savings and Loan, Inc.*, 528 So.2d. 136 (Fla. 4<sup>th</sup> DCA 1988). In *Reflex v. Umet Trust*, 336 So.2d 473 (Fla. 3<sup>rd</sup> DCA 1976), the Court held that where affirmative defenses raise pure paper issues without setting forth any factual support, such affirmative defenses are legally deficient.

3. Defendant Kennedy's affirmative defenses fail to allege any sufficient, ultimate facts in support of the defense, and are merely denials of Defendant's allegations. These types of bare bones allegations fail to comply with the requirements of Fla. R. Civ. P. 1.110(c), which requires Defendant to set forth a short and plain statement of the defenses, and fail to comply with Fla. R. Civ. P. 1.130 for failing to attach documents which support the alleged defenses.

4. As to Defendant Kennedy's third affirmative defense of Unjust Enrichment, this is a claim for an accounting for which Plaintiff Club is entitled, given the fact that Defendant Kennedy was the Club's treasurer, and has not provided financial documents that provide to the Plaintiff Club, and to give the Plaintiff Club the wherewithal to verify certain payments and debts made by or agreed to by Defendant Kennedy. As Plaintiff Club is not seeking monetary relief from Defendant Kennedy at this time, an affirmative defense of Unjust Enrichment is inapplicable.

5. As to Defendant Kennedy's fourth affirmative defense of Waiver, Defendant Kennedy asserts that the Club did not raise any objections to his actions when he was

Plaintiff Club's treasurer; however, Defendant Kennedy acted independent of the Board relative to the issues in this matter. Additionally, once the Board that consisted of Carl Kennedy was replaced, Plaintiff Club immediately objected to his prior actions and filed this lawsuit.

6. As to Defendant Kennedy's fifth affirmative defense of Frustration of Purpose, Plaintiff Club is seeking an accounting from Defendant Kennedy, and yet Defendant Kennedy's affirmative defense states he cannot give Plaintiff Club an accounting unless Plaintiff Club first gives all of the documents to Defendant Kennedy. Obviously, if Plaintiff Club had all of the documents necessary for an accounting, it would not need to sue Defendant Kennedy for same. Accordingly, his affirmative defense is antithesis to the claims herein.

7. As to Defendant Kennedy's sixth affirmative defense of Equitable Estoppel, Plaintiff Club is seeking an accounting from Defendant Kennedy, and yet Defendant Kennedy's affirmative defense states he cannot give Plaintiff Club an accounting unless Plaintiff Club first gives all of the documents to Defendant Kennedy. Obviously, if Plaintiff Club had all of the documents necessary for an accounting, it would not need to sue Defendant Kennedy for same. Accordingly, his affirmative defense is antithesis to the claims herein.

8. As to Defendant Kennedy's seventh affirmative defense of Ratification, Defendant Kennedy asserts that the Club did not raise any objections to his actions when he was Plaintiff Club's treasurer; however, Defendant Kennedy acted independent of the Board relative to the issues in this matter. Additionally, once the Board that consisted of Carl Kennedy was replaced, Plaintiff Club immediately objected to his prior actions and filed this lawsuit.



9. As to Defendant Kennedy's tenth affirmative defense of Business Judgment Rule, Defendant Kennedy's actions were ultra vires, and accordingly are not protected by the Business Judgment Rule.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 14th day of December 2020, to Carl L. Kennedy, II, [clktax@aol.com](mailto:clktax@aol.com).

By: /s/ Edward F. Holodak

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