

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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**PLAINTIFF/COUNTER-DEFENDANT'S RESPONSE TO DEFENDANT/COUNTER-  
PLAINTIFF'S SECOND MOTION FOR DEFAULT**

Plaintiff/Counter-Defendant, POMPANO SENIOR SQUADRON FLYING CLUB, INC. a Florida Corporation, by and through its undersigned counsel (Plaintiff "Club"), files this Response to Defendant/Counter-Plaintiff CARL KENNEDY'S (Defendant "Kennedy") Second Motion for Default and says:

1. Plaintiff Club filed suit against Defendant Kennedy for an accounting on or about April 7, 2020.
2. Defendant Kennedy filed his initial Answer on or about October 5, 2020. Thereafter, Defendant Kennedy filed, in response to the Court granting a Motion to Dismiss and Motion to Strike Answer, an Amended Answer and Affirmative Defenses on or about December 7, 2020.
3. In contradiction to Rule 1.170, Fla.R.Civ.P. and caselaw, Defendant Kennedy also filed a separate pleading labeled Amended Counter-complaint. Defendant Kennedy did not file the Amended Counterclaim as part of his Amended Answer and Affirmative Defenses, as required by Rule 1.010, Fla.R.Civ.P. Additionally, an amended pleading supersedes all prior pleadings. Accordingly, when Defendant Kennedy filed his Amended Answer and Affirmative Defenses (without a Counterclaim contained therein), Defendant Kennedy abandoned the

previous Counterclaim he filed with this Court. See generally *Rice v. Clement*, 184 So.2d 678, 679 (Fla. 4th DCA 1966); *E.P. v. Hogreve*, 259 So. 3d 1007, 1010 (Fla. 5th DCA 2018) (holding an original pleading is superseded by an amended pleading that does not indicate intention to preserve the original pleading).

4. Florida caselaw and Rules are clear that a counterclaim is not an independent pleading and must be filed as part of an Answer. It is clear from Defendant Kennedy's Amended Answer and Affirmative Defenses that no counterclaim was filed therein, and accordingly, Defendant Kennedy abandoned his counterclaim. See *Storchwerke GMBH v. Mr. Thiessen Wallpapering Supplies, Inc.*, 538 So.2d 1382; See Rule 1.170, Fla.R.Civ.P. (stating that counterclaims must be part of a pleading; pleadings are defined as Complaint and Answer). See also *Hightower v. Bigoney*, 156 So.2d 501 (Fla. 1963).

5. Although Defendant Kennedy is acting pro se, Defendant Kennedy is still required to comply with Florida law, as well as the Florida Rules of Civil Procedure. As Defendant Kennedy has not properly filed a counterclaim against Plaintiff Club, Plaintiff Club cannot be defaulted for failure to answer an invalid counterclaim.

WHEREFORE, Plaintiff Club moves this Court for an Order denying Defendant Kennedy's Motion for Default 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 7th day of December 2020, to Carl L. Kennedy, II, [clktax@aol.com](mailto:clktax@aol.com).

/s/Edward F. Holodak  
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