

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

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

CARL L. KENNEDY, II

Defendant/Counter-Plaintiff.

MOTION TO STRIKE PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES

Defendant/Counter-Plaintiff, Carl L. Kennedy, II, by his undersigned counsel,
hereby respectfully represents as follows:

1. Plaintiff in this matter has filed a Complaint seeking an accounting (Count I and injunctive relief (Count II) from Defendant.
2. Plaintiff's prayer for relief in both Counts seeks the award of attorney's fees.
3. A claim seeking an accounting is an equitable claim. *Dahlawi v Ramlawi*, 644 So.2d 523 (Fla. 3d DCA 1994).
4. A claim for injunctive relief is an equitable claim. See *Olesh v. Greenberg*, 138 So.3d 561 (Fla. 5th DCA 2014).
5. Attorney's fees cannot be awarded as a matter of equity. *Attorney's Title Ins. Fund, Inc. v. Landa-Posada*, 984 So.2d 641, 643 (Fla. 3d DCA 2008).
6. It is well settled that the prevailing party in litigation is not entitled to recover attorney's fees unless there is a statutory or contractual basis for the award. *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004); See also *State Farm Fire & Gas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993) ("This Court has followed the 'American Rule' that attorney's fees may be awarded by a court only when authorized by statute or by agreement of the parties.").

7. The Complaint does not allege an entitlement to an award of fees either pursuant to a statute or an agreement of the parties.

8. There is neither any Statute nor contract between the parties to support an award of attorney's fees to Plaintiff in connection with either Count I or Count II of its Complaint.

9. Plaintiff's claim for attorney's fees in this matter must be stricken as a matter of law.

WHEREFORE, Defendant/Counter-Plaintiff, Carl L. Kennedy, II, hereby respectfully requests that Plaintiff's claim for attorney's fees sought in its Complaint in this matter be stricken, and that he be awarded all other relief consistent with this Motion 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 was served via the e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com, on the _____ day of June, 2021.

Respectfully submitted,

/s/ Wendy A. Hausmann
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