

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 (o8)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE CLAIM
FOR ATTORNEY FEES**

Plaintiff, Pompano Senior Squadron Flying Club, Inc. (Plaintiff "Club"), by and through its undersigned counsel, files this Response to Defendant Carl L. Kennedy, II's ("Kennedy") Motion to Strike Claim for Attorney Fees, and says:

1. Plaintiff Club filed a claim for an accounting against Defendant Kennedy, its former treasurer, seeking Club's financial records that were not turned over by Kennedy when he left his position, for explanation as to over Two Hundred Thousand Dollars (\$200,000) of unexplained and unverified expenditures, including payment of his personal American Express Card and payments to Wendy Hausman, Esq., who Kennedy claims was his personal attorney, and undocumented loans and liens against the Club's property.

2. Kennedy has filed a motion to strike the Club's claim for attorney fees in its pleading, asserting that because an accounting is a cause in equity, there is no basis for an award of attorney fees.

3. Directly contradicting Kennedy's assertion is a plethora of case law, including *Merrill Lynch, Pierce, Fenner and Smith, Inc. v. Ritchey*, 394 So.2d 1075 (Fla. 2nd DCA 1981) in which the appellate court held that attorney fees may be allowed in a

claim for an accounting an dissolution. In *Larmoyeux v. Montgomery*, 963 So.2d 813 (Fla. 4th DCA 2007) the Fourth District Court of Appeal held that a partnership accounting triggers an equitable award of attorney fees. In the *First Baptist Church of Cape Coral Florida, Inc. v. Montgomery*, 115 So.3d 978 (Fla. 2013) the Florida supreme court found the award of attorney fees in an equitable claim for common law indemnification was appropriate. All three (3) cases directly contradict Kennedy's assertion that common law or equitable claims cannot have the right to recover attorney fees.

4. Florida law is replete with cases in which attorney fees are recoverable in equitable claims such as above and partition actions, probate and partnership dissolution actions. All are based upon the right to recover when funds are brought into the res of an estate or the court. In this case, while the Plaintiff is a corporation and not a partnership, the legal theory and basis of recovery of fees is the same.

5. As this Court has already commented, once the accounting is obtained, the Plaintiff will be seeking recovery of any misappropriate or misaccounted for funds from Kennedy, thus the claim for attorney fees is just, right, equitable and proper and there is no basis for striking the claim.

WHEREFORE, Plaintiff Club moves this Court for an order denying Kenndy's motion to strike its claim for attorney fees, an award of costs and attorney fees and any other 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 24th day of June 2021, to Wendy Hausmann, Esq., hausmannw@aol.com.

/s/ Edward F. Holodak
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