

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 (o8)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff, Pompano Senior Squadron Flying Club, Inc. (Plaintiff "Club"), by and through its undersigned counsel, files this Response to Defendant Kennedy's Motion for Judgment on the Pleadings, and says:

1. Plaintiff Club asserts again its objection to having to respond to any motions filed by Wendy Hausman, Plaintiff Club's previous attorney.
2. Notwithstanding that objection, Plaintiff Club files this Response to Defendant Kennedy's Motion for Judgment on the Pleadings. The Court is limited to a review of the pleadings themselves.
3. Florida courts are clear in that the purpose or entitlement to a motion for judgment on the pleadings is only if the pleadings, as a matter of law, establish that the moving party is entitled to a judgment based upon the pleadings. See *McKenzie v. Hollywood*, 421 So.2d 606 (Fla. 4<sup>th</sup> DCA 1982).
4. Here, Defendant Kennedy argues that Plaintiff Club has failed to state a cause of action because it did not specify what time frame for which it is seeking the accounting, or for what accounts Plaintiff Club seeks the accounting.
5. Neither of these issues are an element of an accounting, rather, the elements of

- a cause of action for an accounting are:
- a. Did or does the defendant stand in a fiduciary relationship to the plaintiff. See *Ashemimry v. Ba Nafa*, 778 So.2d 495 (Fla. 5<sup>th</sup> DCA 2001).
  6. Here, Plaintiff Club pled that Defendant Kennedy was a prior member of the board of directors and held the office of treasurer during his reign as a director. Plaintiff Club has specifically pled that such relationship placed Defendant Kennedy in a fiduciary relationship with Plaintiff Club.
  7. Plaintiff Club has specified that there are missing financial records from Plaintiff Club that were in Defendant Kennedy's control and possession when he was treasurer.
  8. Plaintiff Club has pled that Defendant Kennedy entered into various financial dealings:
    - a. An alleged loan from his attorney, Wendy Hausmann with no documentation to support such loan;
    - b. Liens on property of Plaintiff Club with no security agreements to support such liens;
    - c. Payments to Defendant Kennedy and to pay his personal American Express Credit Card bill with no documentation to support such payments  
which violate the By-Laws of Plaintiff Club as well as his fiduciary duty to Plaintiff Club.
  9. In *Ashemimry* the court ruled that after the trial court determines the amounts in the accounting, the burden shifts to the defendant to prove the expenditures were appropriate, and if not it awards damages to the plaintiff. *Id.*
  10. Certainly, the pleadings herein establish that Plaintiff Club has stated a cause of action, and *do not* establish that Defendant Kennedy is entitled as a matter of

law, to a judgment.

11. Moreover, the Court must next determine the amount of potential unauthorized expenditures, the burden then shifts to Defendant Kennedy to prove the expenditures were authorized and appropriate and if not, to award Plaintiff Club damages against Defendant Kennedy.

**WHEREFORE**, Plaintiff Club moves this Court for an order denying Defendant Kennedy's Motion for Judgment on the Pleadings, and any further relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 7<sup>th</sup> day of July 2021, to Wendy Hausmann, Esq., [hausmannw@aol.com](mailto:hausmannw@aol.com).

/s/ Edward F. Holodak  
Edward F. Holodak, Esq.  
Attorney for Plaintiffs  
Fla. Bar No. 059234  
EDWARD F. HOLODAK, P.A.  
7951 SW 6<sup>th</sup> Street, Suite 210  
Plantation, Florida 33324  
Telephone: (954) 927-3436  
[pleadings@holodakpa.com](mailto:pleadings@holodakpa.com)