

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,

and

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

CARL L. KENNEDY

Defendant

**DEFENDANT'S SECOND MOTION FOR CONTEMPT, TO COMPEL AND FOR
SANCTIONS, FOR OTHER RELATED RELIEF, DUE TO PLAINTIFF'S REPEATED
AND ONGOING FAILURE AND REFUSAL TO PROVIDE DISCOVERY**

Defendant, Carl L. Kennedy, II, by his undersigned counsel, hereby files his Second Motion For Contempt, To Compel And For Sanctions, For Other Related Relief, Due to Plaintiff's Repeated and Ongoing Failure and Refusal to Provide Discovery, and in support thereof states as follows:

1. On July 27, 2021, Mr. Kennedy filed a Motion for Contempt, to Compel and For Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order ("Motion for Contempt") due to Plaintiff's failure to provide good-faith proper, and complete, Answers to his Third Set of Interrogatories, Responses to his Third Request for Production of Documents, and documents he had properly requested as a shareholder of Plaintiff corporation, pursuant to an Agreed Order previously signed by the Court on June 25, 2021.

2. Mr. Kennedy's Motion for Contempt in connection with Plaintiff's failure to comply in good faith with the Agreed Order requiring proper and complete Answers to his Third Set of Interrogatories, Responses to his Third Request for Production of Documents, and

documents he had properly requested as a shareholder of Plaintiff corporation was GRANTED following a Hearing before Special Master Lynch on September 27, 2021.

3. Plaintiff was required to provide Mr. Kennedy, by October 14, 2021, all documents requested by Mr. Kennedy as a shareholder of Plaintiff corporation. *See* Report of Special Master on Discovery Issues dated September 29, 2021 at Exhibit A. The directive was without restriction or condition on the documents to be produced by Plaintiff in connection with Mr. Kennedy's shareholder record request dated April 30, 2021, Exhibit B.

4. Plaintiff is now in contempt of the Court's Order Granting his Motion for Contempt dated September 29, 2021.

5. As of the filing of this Motion, Plaintiff has again failed to provide the required discovery which two (2) Orders of this Court have directed them to provide.

6. On Monday, October 11, 2021, Plaintiff filed its written "Response to Defendant's Shareholder Record Request for Production" and provided Mr. Kennedy with 1,837 pages of documents. Almost the entirety of the 1,837 pages consists of "smoke and mirrors".

7. Plaintiff's document production in connection with Mr. Kennedy's Shareholder Request for Records dated April 30, 2021 is significantly deficient as to render it, and Plaintiff, non-compliant with its obligation to produce the required documents. *See* attached correspondence to counsel for Plaintiff dated October 13, 2021 at Exhibit C.

8. Although fully aware of the Order and having the ability to comply with it, Plaintiff is knowingly, willfully, intentionally and deliberately failing and refusing to comply with this Court's second Order directing Plaintiff's above discovery be produced to Mr. Kennedy by October 14, 2021.

9. Plaintiff is deliberately and intentionally interfering with Mr. Kennedy's ability to properly and adequately defend himself against Plaintiff's Complaint (and now Amended Complaint) in this matter by failing and refusing to provide the information and documentation he has properly requested several times during the past five (5) months.

10. Plaintiff should be found in contempt of this Court's Order dated September 29, 2021 and compelled to provide the required discovery responses Mr. Kennedy within five (5) calendar days upon penalty of dismissal of its Amended Complaint in this matter.

11. Mr. Kennedy further seeks a Protective Order prohibiting Plaintiff from pursuing or seeking further discovery from him, unless and until Plaintiff has purged itself of its contempt of this Court's Order, by fully complying with the Court's Order, dated September 29, 2021, by providing all documents requested by him pursuant to his shareholder record request dated April 30, 2021.

12. Mr. Kennedy has fully complied with his discovery obligations in this matter and has never once been found in contempt of the Court's Orders regarding discovery. Mr. Kennedy has already provided Plaintiff with all of the relief sought by Plaintiff in Counts I and II of Plaintiff's original Complaint in this matter. Plaintiff, on the other hand, has been playing "hide-the-ball" with disclosing information to Mr. Kennedy since its inception and throughout the course of discovery in this matter.

13. Contrary to its allegations that Mr. Kennedy has been the cause of delay in the discovery process, it is Plaintiff who has consistently failed and refuse to comply with its discovery obligations.

14. Plaintiff should not be permitted to pursue or seek any further or additional discovery from Mr. Kennedy, in any form, unless and until they have complied with their own

discovery obligations in this matter. Plaintiff's further non-compliance should result in the dismissal of their Amended Complaint.

15. Defendant has retained the undersigned attorney to represent him in this action and required to pay him a reasonable fee for his services and is entitled to recover same pursuant to Florida law.

WHEREFORE, Mr. Kennedy, Defendant, respectfully requests he be awarded all relief consistent with this Motion, including an Order finding Plaintiff in contempt for the second time for its failure to provide discovery responses as ordered, directing Plaintiff to provide complete responses to Mr. Kennedy's discovery requests within five (5) calendar days, in accordance with this Court's Order dated September 29, 2021 and the Rules of Civil Procedure, imposing sanctions and awarding him his reasonable attorney's fees, and for all other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of October 2021 a copy of the foregoing was e-filed and delivered to Edward F. Holodak, Esq., 7951 SW 6th St., Suite 210, Plantation, FL 33324, pleadings@holodakpa.com.

THE LAW OFFICES OF SCOTT J. KALISH, PLLC.

/s/ Scott J. Kalish

SCOTT J. KALISH, ESQUIRE

Florida Bar No.: 118292

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(954)-990-9307

Attorney for Defendant

IN THE CIRCUIT COURT OF
THE 17th JUDICIAL CIRCUIT IN
AND FOR ROWARD COUNTY
FLORIDA

POMPANO SENIOR SQUADRON
FLYING CLUB, INC., a Florida
corporation,

CASE NO.: CACE 20-005993 (08)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

REPORT OF SPECIAL MASTER ON DISCOVERY ISSUES

THIS CAUSE having come to be heard before the Special Magistrate on September 27, 2021, in connection with Defendant's Motion for Contempt, to Compel and for Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order and Defendant's Motion for Protective Order, and on Plaintiff's Motion to Compel Better Responses to Second Request to Produce and Sanction, the Special Magistrate, considering the arguments of Counsel, and being otherwise fully advised, it is:

ORDERED AND ADJUDGED:

1. Defendant's Motion for Contempt, to Compel and for Sanctions Due to Plaintiff's Bad Faith and Failure to Provide Discovery Responses Pursuant to Agreed Order and Defendant's Motion for Protective Order is **GRANTED in Part/DENIED in Part**. The Motion to Compel Plaintiff's answers to Defendant's Third Set of Interrogatories, Third Request for Production of Documents, and all documents responsive to Defendant's "shareholder record request" dated April 30, 2021 is **GRANTED**. Plaintiff shall have fifteen (15) days to answer Defendant's Third Set of the Interrogatories propounded on May 8, 2021 and to provide to Defendant all documents responsive to Defendant's shareholder records request dated April 30, 2021. Defendant's request for Sanctions is **DENIED**.

EXHIBIT A

2. Plaintiff Club's Motion to Compel Better Responses to Second Request to Produce and Sanction is **GRANTED in Part/DENIED in Part**. Defendant shall have fifteen (15) days to produce the electronic data solely related to Plaintiff. Plaintiff's request for Sanctions is **DENIED**. Defendant's Motion for Protective Order related to the electronic data, is **GRANTED in Part/DENIED in Part**. Defendant's Motion is **GRANTED** as to electronic data relating to any third-party. Defendant's Motion for Protective Order is **DENIED** as to production of the electronic data solely related to Plaintiff.

DONE AND ORDERED in Broward County, Florida on this 29 day of September 2021.

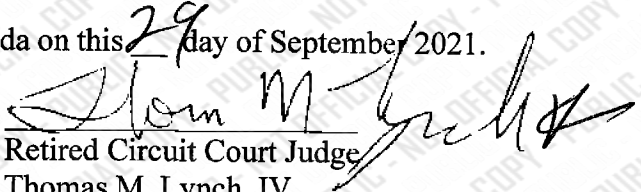

Retired Circuit Court Judge
Thomas M. Lynch, IV
Special Magistrate

EXHIBIT A

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CARL L. KENNEDY, II
2929 S. Ocean Blvd. Ste. 510 Boca Raton, FL 33432
Phone: (304) 552-0206 E-mail: CLKTax@aol.com

April 30, 2021

VIA USPS PRIORITY MAIL
Pompano Beach Flying Club
c/o Mr. Gregory Gilhooly
1421 S. Ocean Blvd.
Suite #102
Pompano Beach, FL 33062

RE: Shareholder/Member Records Request

Mr. Gilhooly:

In accordance with Florida law, this is my demand as a shareholder/member of the Flying Club to inspect the following records at 10:00 a.m. (more than five (5) business days from today), on Monday, May 07, 2021 at the above location, or other reasonable time and location designated by you:

1. All accounting records of the Club existing since February 13, 2020 and specifically to include P&L Statements for Feb (02-13-20 thru 02-29-20), March, 2020 – April, 2020 – May, 2020 – June, 2020 – July, 2020 – August, 2020 – September, 2020 - October, 2020 – November, 2020 – December, 2020 – January, 2021 – February, 2021 March, 2021 and April, 2021;
2. Bank statements for all Club accounts since February 12, 2020 and specifically to include the Chase-793 February, 2020 – Chase-793 March, 2020 – Chase-793 October, 2020 – Chase-793 November, 2020 – Chase-793 December, 2020 – Chase-793 January, 2021 – Chase-793 February, 2021 – Chase-793 March 2021 and Chase-793 April 2021;
3. General ledger detail for all Club accounts since February 12, 2020 and specifically to include activity for all accounts from February 13, 2020 to February 29, 2020 and October, 2020 and November, 2020 and December, 2020 and January, 2021 and February, 2021 and March, 2021 and April, 2021;
4. Documents reflecting the status of all recurring expenses of the Club as to whether current or delinquent, including but not limited to insurances, fuel, debt repayment or related interest expense to Bruce Ayala, Paul Sanchez, David Watkins or Carl Kennedy and hangar expenses for the period from February 13, 2020 up to and including April 30, 2021;
5. Alphabetized list, with names and e-mail addresses of all Club members as of the date of the day prior to the date of inspection of these records;

EXHIBIT B

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6. Copies of all documents (other than privileged communications) relating to any current lawsuit against the Club by any individual or entity. Specifically copies of all non-privileged litigation documents for Hill lawsuit and Borer lawsuit, including e-mail correspondence with Plaintiff Hill and Plaintiff Borer; all documents related to attorney's fees due to all litigation, including attorney billing statements/invoices from court reporter services and copies of checks payable to both.
7. Invoices/Billing statements for any accountant or forensic accounting firm retained by the Club since February 12, 2020;
8. Invoices/Billing statements for any lawyer or accounting firm retained by the Club since February 12, 2020.

The purpose(s) of this request is (are) to determine: 1) whether the Club is currently operating at a loss; 2) whether the membership has significantly increased or decreased since the new Board of Directors and slate of new Officers was elected on 2/12/20; 3) to ascertain the veracity of the Treasurer's stated liabilities of the Club as of August 12, 2020; 4) to verify that the monthly ongoing necessary expenses of the Club are still being paid timely; 5) to ascertain how many corporate dollars are being spent on legal fees; 6) to ascertain how many corporate dollars are being spent on accounting **and legal** fees; 7) to ascertain the contingent liabilities of the Club; and 8) to determine whether or not the club is operating effectively.

Thank you for your anticipated cooperation with this Records Request.

Respectfully,

Carl L Kennedy 99

EXHIBIT B

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Scott Kalish <scott@scottjkalishlaw.com>

Flying Club v. Kennedy

5 messages

Scott Kalish <scott@scottjkalishlaw.com>

Wed, Oct 13, 2021 at 12:13 PM

To: Edward Holodak <edward@holodakpa.com>

Cc: Carl Kennedy <clktax@aol.com>

Mr. Holodak:

A preliminary review of the Shareholder Record Request documents you provided on Monday reveals that Plaintiff's responses to Mr. Kennedy's April 30, 2021 shareholder record request is grossly deficient as to effectively constitute non-compliance with the Court's Order to provide the list of 8 items of requested documents as follows:

1. No documents were provided for 2021. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
2. No documents were provided for 2021. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
3. No documents were provided for 2021. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
4. No documents were provided for 2021. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
5. The member list you provided is redacted as to the to the requested contact information for all current members. The Order Granting Mr. Kennedy's Motion for Contempt did not contain any restrictions, exceptions or conditions on the documents to be produced by Plaintiff. The redaction and failure to produce this item is therefore non-compliant with the Court's Order.
6. No documents whatsoever were produced in connection with the lawsuits against PBFC by Sunwood, Inc. or Paul Sanchez. The Order Granting Mr. Kennedy's Motion for Contempt did not contain any restrictions, exceptions or conditions on the documents to be produced by Plaintiff. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
7. No documents whatsoever were produced. The Order Granting Mr. Kennedy's Motion for Contempt did not contain any restrictions, exceptions or conditions on the documents to be produced by Plaintiff. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.
8. No documents whatsoever were produced. The Order Granting Mr. Kennedy's Motion for Compel did not contain any restrictions, exceptions or conditions on the documents to be produced by Plaintiff. The failure to produce documents in response to this item constitutes non-compliance with the Court's Order.

Finally, the third page contained in your Response filed with the Court Monday. First the response is behind your signature page and is therefore not proper.

Moreover, it contains Plaintiff's three (3) responses to Mr. Kennedy's **2nd Request for Production** containing three (3) items, **not the 3rd Request for Production** containing five (5) items as the Court Order requires. Responses to Mr. Kenendy's Third Request for Production of Documents remains outstanding.

Thank you for your attention to this matter.

Scott

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EXHIBIT C

Scott J. Kalish
The Law Offices of Scott J. Kalish
scottjkalishlaw.com