

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

POMPANO SENIOR SQUADRON FLYING CLUB, INC.
(aka POMPANO BEACH FLYING CLUB)

Plaintiff,

v.

Case No.: CACE 20-005993

Division (8)

CARL L. KENNEDY

Defendant

_____/

DEFENDANT'S MOTION FOR ATTORNEY'S FEES
PURSUANT TO FLORIDA STATUTE § 57.105

COMES NOW, Defendant, CARL L. KENNEDY, ("Mr. Kennedy") by and through the undersigned counsel, and moves this Court for an Order awarding Mr. Kennedy his reasonable attorney's fees pursuant to § 57.105, Fla. Stat. against Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. ("Flying Club"), in connection with the claims set forth in its Third Amended Verified Complaint, and as grounds thereof states as follows:

1. On December 21, 2021 the Court entered its Order On Plaintiff's Motion to Amend, which deemed Plaintiff's Third Amended Verified Complaint filed.

2. Plaintiff asserts a total of three (3) causes of action against Mr. Kennedy, including (i) Accounting; (ii) Violation of § 817.535, Fla. Stat.; and (iii) Breach of Fiduciary Duty. A copy of the Third Amended Complaint is **attached hereto as Exhibit "A"**.

3. As described in more detail below, Plaintiff's factual and legal assertions contained in its Third Amended Complaint are without merit and have been filed in bad faith. Pursuant to the criteria in § 57.105(1)(a) and (b), Fla. Stat., the elements required for awarding sanctions are clearly satisfied and existing, including but not limited to, the fact that Plaintiff's factual and legal

assertions contained in its Third Amended Complaint are not supported by application of existing and controlling law or the material facts. Mr. Kennedy demands that the Flying Club voluntarily withdraw the relevant factual assertions and claims contained in its Third Amended Complaint within the time described by § 57.105(1)(a) and (b), Fla. Stat or sanctions should be imposed pursuant to and in accordance with said Statute.

4. § 57.105, Fla. Stat., states in pertinent part:

(1) Upon the Court's initiative or motion of any party, the court shall award a reasonable attorneys fee to be paid to the prevailing party in equal amount by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing parties attorney knew or should have known that a claim or defense when initially presented to the court or any time before trial:

(a) was not supported by the material facts necessary to establish the claim or defense; or

(b) would not be supported by the application of then existing law to those material facts.

5. As observed in *Mullins v. Kennelly*, 847 So.2d 1151 (Fla. 5th DCA 2003), the "central purpose of § 57.105 is and always has been, to deter meritless findings and thus streamline the administration and procedure of the courts." In *Visoly v. Security Pacific Credit Corp.*, 768 So.2d 482 (Fla. 3d DCA 2000), it was stated that the "general policy behind awarding attorney's fees for bringing a frivolous action is to discourage baseless claims, stonewall defenses, and sham appeals by sanctioning those responsible for unnecessary litigation costs."

6. In *Magee v. American Southern Home Insurance Company*, 982 So.2d 125 (Fla. 1st DCA 2008), the First DCA imposed §57.105, Fla. Stat., attorney's fees against the proponent of a motion because the proponent knew or should have known that its position was not supported by the necessary material facts for the motion.

7. Plaintiff's Third Amended Complaint, for the reasons set forth below is wholly without merit and filed contrary to §57.105, Fla. Stat.

8. Count I of Plaintiff Flying Club's Third Amended Complaint asserts a cause of action against Mr. Kennedy for an "Accounting". Under Florida law, a "complaint for an accounting must show that the plaintiff is entitled to the relief sought at the time the suit is instituted." *Bernardele v. Bonorino*, 608 F. Supp.2d 1313, 1329 (S.D. Fla. 2009). For a claim for an accounting "a complaint fails to state a cause of action where no fraud is effectively alleged and where the payments in question are as much within the plaintiff's knowledge as they are within the defendant's knowledge. *Id.*

9. Here, the Third Amended Complaint fails to plead ultimate facts establishing that Plaintiff is entitled to an accounting. More specifically, the Third Amended Complaint fails to allege that Mr. Kennedy engaged in any fraud. In fact, Plaintiff admits in the First Amended Complaint that the alleged at issue expenses may be valid expenses of Plaintiff, Flying Club. *See Ex. "A" at ¶ 22.* Plaintiff simply alleges that "Plaintiff, Flying Club cannot reasonably ascertain whether they were valid expenses of Plaintiff Flying Club." *Id.* There are no allegations of ultimate fact alleging that Defendant committed fraud. The failure to include such ultimate facts renders Plaintiff's allegations nothing more than legal conclusions, and thus insufficient to state a cause of action. *See Greenwald v. Triple D Properties, Inc.*, 424 So.2d 185 (Fla. 4th DCA 1983).

10. Similarly, Plaintiff is not entitled to an accounting because at the time it filed its Third Amended Complaint it had all its corporate records that were ever in Mr. Kennedy's care, custody or control. Specifically, on June 10, 2021, Mr. Kennedy's prior counsel delivered each and every document related to Plaintiff Flying Club in Mr. Kennedy's possession, custody and control to Plaintiff's counsel of record in the instant matter. Flying Club's counsel of record even

confirmed receipt of the aforementioned document in e-mail correspondence dated June 28, 2021, **a copy of which is attached hereto as Exhibit “B”**.

11. Subsequently, on or about October 18, 2021 Mr. Kennedy provided Plaintiff, via a PDF format, with all corporate records which had been kept in an electronic format. Mr. Kennedy then, on December 8, 2021, provided Plaintiff with a complete and detailed Excel spreadsheet reflecting all expenditures which Plaintiff questioned. Lastly, on or about December 22, 2021, Mr. Kennedy provided Plaintiff with a data file which provided the identical records, but in a QuickBooks (QBB) format.

12. As such, the alleged payments in question “are as much within plaintiff’s knowledge as they are within defendant’s knowledge”. Plaintiff therefore has failed to state a cause of action for an accounting and will be unable to demonstrate that it is entitled to an accounting.

13. Next, Plaintiff’s cause of action pursuant to § 817.535, Fla. Stat., is entirely without merit. Here, § 817.535(2)(a), Fla. Stat., is criminal in nature and provides that:

[a] person who files or directs to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner’s interest in the property described in the instrument commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s.775.084.

14. Paragraph (8)(a), however provides, “any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has **a civil cause of action** under this section without regard to whether criminal charges are pursued under subsection (2).” (emphasis added).

15. First, Plaintiff has failed to state a cause of action pursuant to § 817.535(8)(a), because it fails to allege how it “**has been adversely affected**.” For example, in *Dragash v. Federal National Mortgage Association*, 700 Fed Appx. 939, 945 (11th Cir. 2017), the Court held

that Plaintiff failed to state a claim “under § 817.535(8)(a) or for slander of title” [because] [...] [Plaintiff did not] **explain how** he had been harmed by the recordation of the mortgage or the failure to record the assignment.” Similarly, Plaintiff has failed to state with any particularity how it has been harmed.

16. Further, Plaintiff will be unable to show that it has been adversely affected **or** that the instruments are materially false, fictitious, or fraudulent because Plaintiff’s board of directors consented to a lien associated by Mr. Kennedy on its aircraft, which is evidenced by correspondence dated May 5, 2020 from Plaintiff’s President, Gregory Gilhooly, **a copy of which is attached hereto as Exhibit “C”**. As such, Plaintiff’s claim that Mr. Kennedy somehow slandered its title or that he violated § 817.535, is wholly without merit and made in bad faith.

17. Additionally, Plaintiff as a corporate entity organized under the laws of the State of Florida does not have a civil cause of action under § 817.535, Fla. Stat., because it is not a “person”. Again, § 817.535(8)(a), Fla. Stat., provides a civil cause of action to “any **person** adversely affected by an instrument filed in the official record”. (Emphasis added). Chapter 817 does not define the word “person”, however § 817.011, Fla. Stat., which is located within the same chapter does define the term “business entity”, which the Plaintiff falls under.

18. The legislature clearly did not include the term “business entity” within § 817.535(8)(a), and thereby did not provide “business entit[ies]” with a civil cause of action for a violation of that section. Blacks Law Dictionary 9th Ed. defines the term “person” as “a human being”. It is undisputed that Plaintiff is not “a human being”. Instead, Plaintiff meets the definition of a “business entity” pursuant to § 817.011, Fla. Stat.

19. “When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and

construction; the statute must be given its plain and obvious meaning.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984)(quotes omitted). Additionally, Florida courts “are without power to construe an unambiguous statute in a way which would **extend**, modify or limit its express terms”. *Id.* (emphasis added). “It is a general canon of statutory construction that, when the legislature includes particular language in one section of a statute but not in another section of the same statute the omitted language is presumed to have been excluded intentionally.” *L.K. v. Dept. of Juvenile Justice*, 917 So.2d 919, 920 (Fla. 1st DCA 2005).

20. Here, § 817.535(8)(a), Fla. Stat., clearly and unambiguously provides a civil cause of action only to individuals and not business entities. As such Count II is without merit and made in bad faith and Mr. Kennedy should be awarded his reasonable attorney’s fees he incurred pursuant to § 57.105, Fla. Stat.

21. Finally, Count III is made in bad faith and is without merit. Plaintiff’s Complaint alleging a breach of fiduciary duty similarly fails to state a cause of action and is substantively without merit. To state a claim for a breach of fiduciary duty the complaint must allege the existence of a fiduciary duty, and the breach of that duty such that it is the proximate cause of the plaintiff’s damages. *Taubenfeld v. Lasko*, 2021 WL 3556893, 5 (Fla. 4th DCA 2021).

22. Plaintiff Flying Club in its First Amended Complaint alleges as a basis for its claim for breach of fiduciary duty that Mr. Kennedy allegedly used the Flying Club’s financial accounts to pay his personal American Express bills. *See* Ex. “A” ¶ 48. Plaintiff however in the same *verified* pleading admits that it cannot “reasonably ascertain as to whether [the payments] were valid expenses of Plaintiff Flying Club.” Ex “A” ¶ 22. Plaintiff’s claim should be dismissed because it is inconsistent to the extent that it fails to categorically allege that Mr. Kennedy breached a fiduciary duty by using the Flying Club’s funds to pay his personal expenses. *See Affordable*

Homes, Inc. v. Devil's Run, Ltd., 408 So.2d 679, 680 (Fla. 1st DCA 1982)(explaining that when there is an inconsistency between allegations contained in a complaint and an exhibit they have the effect of neutralizing each other).

23. Further, Plaintiff's claim that Mr. Kennedy somehow breached his fiduciary duty to Plaintiff by securing loans for the benefit of Plaintiff, which the board of directors ultimately accepted (*See* Ex. C) is nonsensical, made in bad faith and is wholly without merit. Plaintiff will certainly be unable to demonstrate how Mr. Kennedy breached his fiduciary duty by procuring funds, of which Plaintiff approved of and ultimately used, and continues to use, for its benefit.

24. Plaintiff's Third Amended Complaint is entirely without basis in law or in fact. Plaintiff's Third Amended Complaint is simply another attempt to maliciously and without good faith, harass Mr. Kennedy and keep him engaged by pursuing limitless litigation.

WHEREFORE, Defendant, CARL L. KENNEDY, II, respectfully requests that this Honorable Court grant the instant Motion, award him attorney's fees and pre-judgment interest pursuant to § 57.105, Fla. Stat., from the Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC., and/or his counsel, together with any such other relief that this Court deems just and proper.

CERTIFICATE OF COMPLIANCE WITH §57.105, FLA. STAT.

I hereby certify that on the of March 2, 2022 I sent a copy of this Motion directly to Edward F. Holodak, Esquire at Edward@ holodakpa.com AND pleadings@holodakpa.com, but have not filed it in accordance with the safe harbor provision of Fla. Stat. §57.105, Fla. Stat.

KALISH & JAGGARS, PLLC.

/s/ Scott J. Kalish

SCOTT J. KALISH, ESQUIRE

2161 Palm Beach Lakes Blvd.

Suite 309

West Palm Beach, FL 33409

(954)-990-9307

Fla. Bar No.: 118292

scott@scottjkalishlaw.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of March 2022 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.

KALISH & JAGGARS, PLLC.

/s/ Scott J. Kalish

SCOTT J. KALISH, ESQUIRE

Florida Bar No.: 118292

scott@scottjkalishlaw.com

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(954)-990-9307

Attorney for Defendant

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 (08)

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

_____ /

PLAINTIFF'S MOTION TO AMEND

Plaintiff, Pompano senior squadron flying club, Inc. (Plaintiff "Club"), by and through its undersigned counsel, files this motion to amend, and says:

1. Defendant KENNEDY and Plaintiff Club have reached an agreement on issues regarding the Second Amended Complaint and thus Plaintiff has agreed to amend and Defendant Kennedy has agreed to Answer.
2. This motion is not made for the purpose of delay or harassment but to the contrary is made to expedite the proceedings herein.
3. Copy of said Third Amended Complaint attached hereto as Plaintiff Club's **Exhibit "1"**.

WHEREFORE, Plaintiff Club moves this Honorable Court for an Order granting a Motion to Amend, deeming the Third Amended Complaint hereto as filed and requiring Defendant KENNEDY to file an Answer thereto.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 16th day of December 2021 to Scott Kalish, Esq., The Law Offices of Scott J. Kalish, 5255 N. Federal Highway, Suite 325, Boca Raton, FL 33487, scott@scottjkalishlaw.com.

/s/Edward F. Holodak
EDWARD F. HOLODAK, ESQ.
Attorney for Plaintiff
Fla. Bar No.: 059234
Edward F. Holodak, P.A.
7951 SW 6th Street, Ste. 210
Plantation, FL 33324
Tel.: 954-927-3436
pleadings@holodakpa.com

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.:

Plaintiff,

v

CARL KENNEDY, individually,

Defendant.

THIRD AMENDED VERIFIED COMPLAINT

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC.. a Florida corporation (Plaintiff “Flying Club”), by and through its undersigned counsel, sues Defendant, CARL L. KENNEDY, II individually (Defendant “Kennedy”) and says:

GENERAL ALLEGATIONS

1. Plaintiff Flying Club is a Florida corporation doing business in Broward County, Florida, and is otherwise *sui juris*.

2. Defendant Kennedy is over the age of 18, is a resident of Broward County, Florida is a prior director of Plaintiff Flying Club and is otherwise *sui juris*.

3. Defendant Kennedy was an officer and director of Plaintiff Flying Club from May 22, 2014, until the beginning of 2020.

4. At all times relevant to the issues herein, Defendant Kennedy served as the treasurer of Plaintiff Flying Club.

5. During his term as treasurer, Defendant Kennedy made multiple payments from Plaintiff Flying Club’s corporate bank account to pay Defendant

Kennedy's American Express credit charges.

6. Just prior to the date Defendant Kennedy was replaced as treasurer of Plaintiff Flying Club, Defendant Kennedy issued checks on Plaintiff Flying Club's corporate checking account to Defendant Kennedy, Wendy Hausmann, Esq., and others.

7. There are no corporate records, resolutions, minutes of meetings, or any other corporate document evidencing authorization for these payments made by Defendant Kennedy to himself, Attorney Hausmann and others.

8. On or about March 19, 2020, Plaintiff Flying Club made demand upon Defendant Kennedy for Defendant Kennedy to produce, to the corporation, all corporate records and documentation belonging to the corporation. Copy of demand letter was attached as Plaintiff Flying Club's Exhibit #1 to its prior complaints and is incorporated herein by reference. (the "Record Demand").

9. Despite the Record Demand, Defendant Kennedy has failed or refused to turn over the corporate records to Plaintiff Flying Club.

10. Defendant Kennedy ceased being Treasurer of Plaintiff Club on or about February 12, 2020.

11. On or about February 12, 2020, Defendant Kennedy signed and recorded liens against aircraft owned by Plaintiff Club (the "Liens").

12. The Liens listed Defendant Kennedy as the lienor thereunder. Copy of liens were attached as Exhibit #2 to its prior complaints and is incorporated herein by reference.

13. Defendant Kennedy asserts that the Liens were for services, parts and fuel supplied to Plaintiff Club's aircrafts.

14. Defendant Kennedy, in his professional capacity, is an accountant.

15. Defendant Kennedy at all times while he was treasurer of Plaintiff Club, managed Plaintiff Club's accounting and prepared its tax returns.

16. All conditions precedent to bringing this action have been satisfied or waived.

17. Plaintiff Flying Club retained the services of Edward F. Holodak, P.A., and agreed to pay it a reasonable fee for services rendered herein.

COUNT I
ACCOUNTING

18. Plaintiff Flying Club realleges the General Allegations and incorporates them herein by reference as if pled herein specifically.

19. This Court has jurisdiction over the parties and the subject matter herein.

20. As a prior director and officer of Plaintiff Flying Club, Defendant Kennedy, especially as treasurer, was in a fiduciary relationship to Plaintiff Flying Club.

21. Due to the scarcity of records left behind by Defendant Kennedy and the remaining members of the Board of Directors of Plaintiff Flying Club, Plaintiff Flying Club cannot accurately reconstruct its financial status and records.

22. Defendant Kennedy authorized various payments as treasurer of Plaintiff Flying Club, which such payments Plaintiff Flying Club cannot reasonably ascertain as to whether they were valid expenses of Plaintiff Flying Club or Defendant Kennedy's own personal expenses.

23. Plaintiff Flying Club has no adequate remedy at law as to obtaining the information such an accounting will provide.

24. Defendant Kennedy breached his duty to Plaintiff Flying Club by:
- a. failing to keep proper records;
 - b. failing to deliver the Plaintiff Flying Club's financial records to it at the end of his term as treasurer;
 - c. appropriating funds for non-properly authorized expenses;
 - d. using Plaintiff Flying Club's money to make payments on Defendant Kennedy's personal American Express card.

WHEREFORE, Plaintiff Flying Club demands an accounting from Defendant Kennedy, an award of court costs and any other relief that this Court deems just and equitable.

COUNT II
VIOLATION OF §817.535 Fla. Stat.

25. Plaintiff Flying Club realleges the General Allegations and incorporates them herein by reference as if pled herein specifically.
26. This Court has jurisdiction over the parties and the subject matter herein.
27. Defendant Kennedy despite filing the Liens listed himself as lienor, never personally provided the funding for such Liens.
28. By filing the Liens in his personal name without having provided Plaintiff Club the money associated with such Liens, Defendant Kennedy filed false records against the personal property of Plaintiff Club.
29. Such actions by Defendant Kennedy are in violation of §817.535 Fla. Stat.
30. At the time Defendant Kennedy filed the Liens, Defendant Kennedy knew that he had not personally provided the funding to Plaintiff Club associated with the claim of liens.

31. At the time Defendant Kennedy filed the claim of liens, Defendant Kennedy knew that he did not have a security agreement between himself and Plaintiff Club.

32. At the time Defendant Kennedy filed the claim of liens, Defendant Kennedy knew that he had no legitimate security interest in the aircraft owned by Plaintiff Club that he was liening.

33. With his superior knowledge as an accountant, Defendant Kennedy knew his actions were improper.

34. Defendant Kennedy by filing the claim of liens against Plaintiff Club's aircraft sought to obtain a personal benefit to Defendant Kennedy.

35. Defendant Kennedy by filing a false lien against the personal property of Plaintiff Club's slandered the title of Plaintiff Club's personal property.

36. Plaintiff Club suffered damages as a direct and proximate result of Defendant Kennedy's Actions.

WHEREFORE Plaintiff Club demands judgment against Defendant Kennedy for damages, punitive damages as provided for in §817.535 Fla. Stat., court costs, attorney fees, and any other relief that this court deems just and equitable including an Order purging or sealing the public records of the Liens and imposition of a civil penalty of \$2,500.00 per lien against Defendant Kennedy as provided for in §817.535(8)(b), et. seq.

COUNT III
BREACH OF FIDUCIARY DUTY

37. Plaintiff Flying Club realleges the General Allegations and incorporates them herein by reference as if pled herein specifically.

38. This Court has jurisdiction over the parties and the subject matter herein.

39. Defendant Kennedy, as the prior treasurer and director of Plaintiff Flying Club, had control of certain financial records and documents which belong to Plaintiff Flying Club.

40. Defendant Kennedy despite filing liens against the personal property of Plaintiff Club, never provided the funding for such liens personally.

41. By filing the claim of liens in his personal name without having provided Plaintiff Club the money associated with such lien, filed false records against the personal property of Plaintiff Club.

42. Such actions by Defendant Kennedy are in violation of §817.535 Fla. Stat.

43. At the time Defendant Kennedy filed the claim of liens, Defendant Kennedy knew that he had not personally provided the funding to Plaintiff Club associated with the claim of liens.

44. At the time Defendant Kennedy filed the claim of liens, Defendant Kennedy knew that he did not have a security agreement between himself and Plaintiff Club.

45. At the time Defendant Kennedy filed the claim of liens, Defendant Kennedy knew that he had no legitimate security interest in the aircraft owned by Plaintiff Club that he was liening.

46. With his superior knowledge as an accountant, Defendant Kennedy knew his actions were improper.

47. Defendant Kennedy by filing the claim of liens against Plaintiff Club's aircraft sought to obtain a personal benefit to Defendant Kennedy.

48. During his tenure as treasurer of Plaintiff Club, Defendant Kennedy used

Plaintiff Club's financial accounts to pay his personal American Express bills.

49. Defendant Kennedy did not provide any documentation or backup material to substantiate the propriety of Plaintiff Club paying Defendant Kennedy's personal American Express bills.

50. During his tenure as treasurer of Plaintiff Club, Defendant Kennedy solicited loans allegedly for the benefit of Plaintiff Club without any vote of the members of Plaintiff Club or recorded votes of the Board of Directors of Plaintiff Club.

51. The Bylaws of Plaintiff Club require any transaction valued at over \$80,000 to be approved by a vote of the membership of Plaintiff Club. Copy of liens were attached as Exhibit #3 to its prior complaints and is incorporated herein by reference.

52. Defendant Kennedy procured two (2) loans allegedly for the benefit of Plaintiff Club with values of One Hundred Thousand Dollars (\$100,000) each.

53. At the time of the alleged loans, there were no promissory notes or other documentation obtained by Defendant Kennedy evidencing such loans.

54. Defendant Kennedy, only after he was no longer Treasurer of Plaintiff Club, signed promissory notes evidencing the above two (2) alleged loans allegedly in his capacity as treasurer and a director of Plaintiff Club.

55. Defendant Kennedy allegedly obtained a loan from Wendy Hausman, Esq. for Ten Thousand Dollars (\$10,000) with No promissory note or any written documentation evidencing the loan or the terms thereof.

56. Defendant Kennedy in his capacity as treasurer of Plaintiff Club thereafter paid a check to Wendy Hausman, Esq. for alleged repayment of the loan which

included money more than the Ten Thousand Dollars (\$10,000) loaned.

57. Defendant Kennedy as treasurer and director of Plaintiff Club owed Plaintiff Club a fiduciary duty.

58. Defendant Kennedy's actions as outlined above were a breach of that fiduciary duty.

59. Defendant Kennedy's actions were not taken in good faith and were not for the benefit of Plaintiff Club.

60. Defendant Kennedy's actions outlined above were to derive a personal benefit to Defendant Kennedy.

61. Plaintiff Club suffered damages as a direct and proximate result of Defendant Kennedy's breach of his fiduciary duty.

WHEREFORE Plaintiff Club demands judgment against Defendant Kennedy for damages, court costs, attorney fees, and any other relief that this Court deems just and equitable including an injunction requiring Defendant Kennedy to record a release of liens for each lien he improperly filed against the personal property of Plaintiff Club, and any further relief that this Court deems just and equitable.

Second Amended Complaint
CACE 20-005993 (08)

Pursuant to Section 92.525 Florida Statute:

**Under penalties of perjury, I declare that I have read the foregoing
[document] and that the facts stated in it are true**

POMPANO SENIOR SQUADRON FLYING CLUB, INC., A
FLORIDA CORPORATION

By: _____

Greg Gilhooly, Pres.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent
via

portal this 20th day of December 2021 to Scott Kalish,

Esq., scott@scottjkalishlaw.com

/s/ Edward F. Holodak
Edward F. Holodak, Esq.
Attorney for Plaintiffs
Fla. Bar No. 059234
EDWARD F. HOLODAK, P.A.
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Plantation, Florida 33324
Telephone: (954) 927-3436
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From: edward@holodakpa.com,

To: hausmannw@aol.com,

Cc: clktax@aol.com,

Subject: RE: PBFC v Kennedy - PBFC Accountings for 4/1/14 - 2/12/2020

Date: Mon, Jun 28, 2021 10:54 am

Attachments:

Wendy

I acknowledge receipt of the documentation but do not agree with your assertion regarding a full accounting.
Thank you

Very truly yours,

Edward F. Holodak, Esq., B.C.S
Admitted in Florida & Washington, D.C.

Edward F. Holodak, P.A.
7580 NW 5th Street
Suite 15125
Plantation, Florida 33317
(954) 927-3436





May 5, 2020

Former Member,

It has been brought to the Board's attention that you have terminated your membership in the Pompano Beach Flying Club and have not received your "Buy in Money." On February 12, 2020, the entire Board was replaced by a new board. My name is Gregory Gilhooly, I have been elected to the Board of Directors and serve as the current President.

The new Board inherited a bank account with a \$700.00 balance, within days three checks were presented for payment totaling \$11,700.00. Thus, the Club was overdrawn \$11,000. On the final meeting of the prior Board, the then Treasurer, Carl Kennedy, made a motion to secure \$200,000 of his alleged personal loans to the Club with a lien on our aircrafts. The motion was approved unanimously. A F.A.A. search showed that there were an additional \$200,000 in liens on our four aircrafts. Thus, the Club currently has on record liens in the amount of \$400,000. A preliminary evaluation of the Pompano Beach Flying Club's assets including our four planes and miscellaneous hanger equipment equal approximately \$250,000.

The financial condition of the Club did not happen overnight. The prior Board, as well as members, allowed this to get carried away. It is the opinion of the current Board that the prior Board did not act in the best interest of the Club. We have been obstructed in obtaining past records from the prior Board. The action of the prior Board left us no alternative but to hire legal counsel to assist in determining our exact financial condition. Our attorney has filed the necessary filings to allow us to access to the financials. However, based on the previous Treasurer, Carl Kennedy's last Balance Sheet, our liabilities outweigh our assets. Although the numbers are in question by the current Board it is obvious that the amount owed is greater than assets owned.

As members, we are all governed by the 2010 By Laws, especially Section 6:

WITHDRAWAL FROM MEMBERSHIP In the event a member wishes to withdraw from the Corporation he shall notify the Corporation in writing, Within thirty (30) days from receipt of such notification, provided that the member is in standing in all respects, *The Corporation shall pay to the withdrawing member a sum as predetermined by the Board set annually as of January 1 of such stock.* If the member is in arrears in the payment of any payment or charge or otherwise is indebted to the Corporation, such arrearages or indebtedness shall be deducted from the book value payment.

PBFC P.O. BOX 10241 Pompano Beach FL 33061



It is my unfortunate duty to advise you that the Pompano Beach Flying Club appears to be currently insolvent. Based upon same, the Board has determined, pursuant to the above Section, the value to be paid to withdrawing members is One Dollar(\$1.00). As stated above we have retained legal counsel to guide us through these troubling times. I am sure this may come as a shock; however, the Board was shocked to inherit the Club in the condition it did from the prior Board.

Rest assured, the current Board is pursuing all avenues open to it to recoup what it can, restore the financial viability of the Club, and in the interim keep us all operating to the best of our abilities. Thank you for your attention, please let us know if you have any questions.

Sincerely,

Gregory Gilhooly

President, Pompano Beach Flying Club

PBFC P.O. BOX 10241 Pompano Beach FL 33061