

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 RESPONSE TO DEFENDANT'S EMERGENCY MOTION

Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB, INC. (Plaintiff "Club"), by and through its undersigned counsel, files this Response to Defendant's Emergency Motion filed by Defendant Carl L. Kennedy, II (Defendant "Kennedy"), and says:

1. Defendant Kennedy filed a Motion regarding Plaintiff Club's corporate organizational actions related to Defendant's continued membership in the Club.
2. Somehow, Defendant Kennedy, despite Florida's definition of "Emergency" deems this issue an emergency. The issue is neither life threatening, nor will impose such damage that cannot be remedied, thus the Motion is *not* an emergency under Florida law.
3. That being said, Plaintiff Club will address the issues as raised in Defendant Kennedy's Motion.
4. Defendant Kennedy asserts, inter alia, that the Club is attempting to remove him as a member of the Club in retaliation for his shareholder's record request and that without such ability to do a shareholder record request, he is without any avenue to obtain such records.

5. First, Defendant Kennedy must have forgotten about the Florida Rules of Civil Procedure which allows him to submit a Request to Produce, pursuant to Rule 1.370, Fla.R.Civ.P. and obtain any such document through that means. Therefore, his claim that no longer being a member of the Club deprives him of his ability to defend himself here is completely false, and again, *not* an emergency.

6. Secondly, Defendant Kennedy asserts that he is protected by Florida Corporation law from expulsion and refusal of his record request. Both are false.

7. As cited by Defendant Kennedy, pursuant to § 607.1602(6), Fla. Stat. "The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws." Subsection (7) makes clear that, "[t]his section does not affect [...] [t]he right of a shareholder to inspect and copy records under s. 607.0720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant."

8. Defendant Kennedy misreads this law. It states explicitly that the corporation law does not affect the shareholder's rights "to the same extent as any other litigant." Meaning, that a shareholder still has full access to a Request to Produce under Florida Rules of Civil Procedure, thus as stated above, Defendant Kennedy's rights to obtain records are not being thwarted, whether he is a continuing member or not.

9. Defendant Kennedy then asserts in his "emergency" that the Club cannot expel him and that he needs an emergency injunction. Defendant Kennedy goes on to cite §617.0607(1), Fla. Stat., "(a) member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith."

10. The Club's By-Laws have an explicit procedure for expelling a member of itself. Such procedure is a ten (10) day notice to the member facing expulsion, then a meeting of members of the Club, at which 2/3 of those in attendance must vote in favor of expulsion. Plaintiff Club is following its By-Laws in its corporate more against Defendant Kennedy.

11. Such actions are clearly protected by Florida's business judgment rule, which holds for the proposition that a court will not substitute its judgment for that of a corporation's Board of Directors (or members) even if the court would reach a different conclusion than the corporation provided the corporation acted reasonably.

12. How can following the corporation's By-Laws be deemed anything but reasonable? Every member of the Club, by joining the Club, agreed to be bound by those very By-Laws. Thus, this Court has no basis to substitute its judgment for that of the Corporation, especially before the vote even occurs.

13. As to the reasonable basis for the Club wishing to expel Defendant Kennedy:

- a. Defendant Kennedy hired the Club's prior attorney to defend himself in this matter and caused the Club to spend thousands of dollars in fighting her representation, only to be supported not only by this Court but by the Florida Bar which has recently found probable cause against the prior attorney;
- b. Currently pending before the Honorable Thomas M. Lynch, IV acting as special magistrate herein, is a motion for Rule to Show Cause as to why he should not enter a Report striking Defendant Kennedy's pleadings and entering a default against him for having willfully disobeyed Four (4) discovery orders, That hearing is scheduled for

April 19, 2022;

- c. In a companion case in which the Club is being sued for allegedly not paying back a loan, Defendant Kennedy signed a sworn affidavit that he authorized such loan on behalf of the Club and that such loan was a secured loan – the issue being the plaintiff if that case has pled and answered discovery attesting to the fact that its loan was always an unsecured loan. Thus, in contradiction to the lenders pleadings, Defendant Kennedy has attempted to saddle the Club with a secured debt that was otherwise unsecured. A position tremendously disadvantageous to Plaintiff Club;
- d. Defendant Kennedy has signed four (4) liens, under oath, against the Club's aircraft in his *personal name* despite having never given the Club any personal proceeds for those liens;
- e. Defendant Kennedy, despite having been paid to file the Club's 2019 federal tax returns, never did, which recently resulted in the Club being denied a loan.

14. Based on the totality of the above, the Club certainly has justifiable reasons for no longer wanting Defendant Kennedy as a member. It is following its By-Laws as to the specified procedure to remove any member in light thereof.

15. There is no basis for an "emergency" temporary injunction with notice and certainly none whatsoever without notice (i.e. no bond proposed by Defendant Kennedy and this Court should deny the "emergency" motion.

16. Defendant Kennedy has withheld discovery from Plaintiff Club in violation of Court Orders, has wrongfully caused the Club to spend thousands of dollars because he was insistent (wrongfully) on retaining the Club's prior counsel, he has signed

fraudulent liens and after all of that runs to the Court asking for an emergency injunction to prevent his proper removal from the Club.

WHEREFORE, Plaintiff Club moves this Honorable Court for an Order denying Kennedy's motion, one as a non-emergency and secondly on its merits, award Plaintiff Club its attorney fees for having to defend this Motion and for any other relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 13th day of April 2022 to Scott Kalish, Esq., The Law Offices of Scott J. Kalish, 5255 N. Federal Highway, Suite 325, Boca Raton, FL 33487, scott@scottjkalishlaw.com, Thomas M. Lynch, IV Special Magistrate tomlynchmediation@gmail.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