

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

SUNWOOD, INC.,

Plaintiff,

vs.

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.,

Defendant.

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.

Third-Party Plaintiff,

Vs.

CARL L. KENNEDY, II

Third-Party Defendant.

**THIRD-PARTY PLAINTIFF'S RESPONSE TO KENNEDY'S MOTION TO
DISMISS**

Third Party Plaintiff, POMPANO SENIOR SQUADRON FLYING CLUB D/B/A POMPANO BEACH FLYING CLUB ("Club"), by and through its undersigned counsel, pursuant to Rule 1.140, Fla.R.Civ.P., files this response to Third-Party Defendant Kennedy's ("Kennedy") Motion to Dismiss, and says:

1. Club filed a third-party complaint against Kennedy alleging indemnification both common law and contractual and fraudulent lien. Exhibit 1. In response thereto, Kennedy filed a Motion to Dismiss with simply conclusionary statements as the Club's causes of action. Exhibit 2.

2. Kennedy argues that Club has no basis to claim attorney fees in its indemnification claims. Contrary to Kennedy's action is Florida law. See *Mims Crane Service, Inc., v. Insley Manufacturing Corp.*, 226 So.2d 836, 839 (Fla. 2nd DCA 1969) (holding that attorney fees and costs are proper element of a claim for indemnification). As such, this Court should deny Kennedy's Motion to Dismiss on that ground.

3. Next Kennedy misreads either intentionally or otherwise Club's Third-Party Complaint and alleges that it is directed towards a corporation. Club makes no such claims, all claims are against Kennedy and not a corporation. Kennedy, as prior treasurer of Club owes indemnification to the Club for his actions, and it was Kennedy who filed the fraudulent liens in his personal name against Club's aircrafts. Kennedy's claims that the Club therefore needs to name *all* prior directors of Club is wrong, not an accurate representation of the law and is a misrepresentation of Club's claims against him. Therefore, this Court should deny Kennedy's Motion to Dismiss on this ground.

4. Kennedy's claim that because he is a member of the Club, the Club cannot sue him is a ludicrous assertion and has no basis in law or fact is not worthy of further comment by Club, except to say that this Court should deny the Motion to Dismiss based upon this argument.

5. Lastly Kennedy lays out the elements of a claim for indemnification and asserts that Club failed to plead those elements. As to the element of the Club being without fault, see paragraph 14 of the Third-Party Complaint, clearly it is pled.

6. As to the requirement that Club plead Kennedy is at fault, see paragraphs 8 – 16, clearly Club alleges Kennedy's faults and misdeeds.

7. As for the element of claiming that Club would only be liable to Sunwood because of Kennedy's wrongful deeds, see paragraphs 16, 21 and 25.

8. Club has pled every element of its claims against Kennedy, Kennedy's Motion to Dismiss is not well taken, was filed for the purposes of delay and harassment and this Court should deny same, award Club its attorney fees and costs for having to respond and require Kennedy to file an Answer within ten (10) days.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via eportal this 4th day of January 2022 to Dane Stanish, Esq., stanishd@gmail.com and Carl Kennedy, clktax@aol.com.

/s/ Edward F. Holodak, Esq.,
EDWARD F. HOLODAK, ESQ.
Attorney for Defendant
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EXHIBIT 1

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

SUNWOOD, INC.,

Plaintiff,

vs.

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.,

Defendant.

Case No.: CACE 21 – 003202 (12)

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.,

THIRD-PARTY PLAINTIFF,

v.

CARL L. KENNEDY, II,

THIRD-PARTY DEFENDANT,

THIRD-PARTY COMPLAINT

Third-Party Plaintiff Senior Squadron Flying Club, Inc., the Florida Corporation, not for profit, by and through its undersigned counsel, files this 3rd-party complaint against Third-Party Defendant Carl L Kennedy, II (“Kennedy”) and says:

GENERAL ALLEGATIONS

1. Third-Party Plaintiff Senior Squadron Flying Club, Inc. (“Club”) is a Florida corporation doing business in Broward County, Florida and as otherwise sui juris.

2. Third-Party Defendant Carl L. Kennedy, II (“Kennedy”) is a resident of Broward County, Florida, is over the age of 18, and as otherwise sui juris.

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

4. Club owns certain aircraft and allows the members of the Club to rent the aircraft after paying a membership fee to join Club and thereafter paying rental fees and expenses for the operation of the aircraft.

5. At all times relevant to the issues herein, Kennedy, was treasurer of the Club, a member of the Board of Directors of Club, and a member thereof.

6. The Club at all times relevant issues herein, operates pursuant to its By-laws. A copy of the By-Laws is attached hereto as Club’s Exhibit #1 (the “Bylaws”).

7. Pursuant to the Bylaws, all members including Kennedy, are parties to the By-laws and a Membership Application. A copy of the membership application is attached hereto as Club’s Exhibit #3. (“Membership Application”).

8. Pursuant to the Membership Application, all members indemnify Club for damages sustained by Club as a result of the member’s actions or inactions.

9. Pursuant to the Bylaws, if Club was to participate in any transaction with an associated value of more than Eighty Thousand Dollars (\$80,000), the Board of Directors of Club had to obtain the approval of at least two thirds (2/3) of the members present at a duly called meeting at which at least a majority of the members were present.

10. Plaintiff Sunwood in its original Complaint against Club alleges that during Kennedy’s tenure as treasurer of Club it loaned Club One Hundred Thousand Dollars (\$100,000) which such loan Club has not repaid (the “Loan”).

11. Kennedy, as treasurer of Club, would have been obligated to obtain authorization from the Board of Directors and members of Club before soliciting or accepting any loan from Sunwood.

12. The members of Club never authorized any loan from Sunwood.

13. Kennedy, as treasurer of Club, was obligated to ensure that any alleged loan from Sunwood was evidenced by a written promissory note, security agreement, or other documentation.

14. Club is without fault as to any alleged default or failure to pay Sunwood, as Club was unaware of the Loan, or that Club was obligated to pay Sunwood.

15. No promissory note, security agreement or other documentation exists evidencing the Loan from Sunwood to Club.

16. Any loan received from Sunwood by or through the actions of Kennedy was ultra vires.

17. Club retained the services of Edward F Holodak, P. A., and has agreed to pay a reasonable fee for services rendered in the lawsuit brought by Sunwood against Club as well as in this action.

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

COUNT I
COMMON LAW INDEMNIFICATION

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

20. This is a claim for damages greater than \$30,000 within the jurisdiction of this Court.

21. If Club is held liable for damages to Sunwood, Kennedy owes indemnification to Club for violation of his duties owed to Club as treasurer of Club.

22. Club, as a direct and proximate result of Kennedy's breach of his duties to Club, suffered damages.

WHEREFORE, Club demands judgment for damages for indemnification against Kennedy, including court costs and attorney fees for this action as well as for defending Club against Sunwood, interest, court costs, and any of to the relief this Court deems just and equitable.

COUNT II **CONTRACTUAL INDEMNIFICATION**

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

24. This is a claim for damages greater than \$30,000 within the jurisdiction of this Court.

25. If Club is held liable for damages to Sunwood, Kennedy owes contractual indemnification, pursuant to the By-Laws and Membership Application, to Club for violation of his duties owed to Club as treasurer of Club.

26. Club, as a direct and proximate result of Kennedy's breach of his duties to Club, suffered damages.

WHEREFORE, Club demands judgment for damages for indemnification against Kennedy, including court costs and attorney fees for this action as well as for defending Club against Sunwood, interest, court costs, and any of to the relief this Court deems just and equitable.

COUNT III
FRAUDULENT LIEN

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

28. This is a claim for damages greater than \$30,000 within the jurisdictional limit of this Court.

29. On his last day as treasurer of Club, Kennedy executed two claim of liens in his personal name as lienor for One Hundred Thousand Dollars (\$100,000.00) each against aircraft owned by Club. Copy of claim of liens attached as Club's Exhibit #2 ("Claim of Lien").

30. Kennedy did not give the \$100,000 from his own money to Club.

31. The \$100,000 that forms the basis of Kennedy's alleged lien, under information and belief, is the \$100,000 allegedly loaned by Sunwood to Club in the Loan.

32. There was no security agreement or chattel mortgage in favor of Sunwood to Club in consideration of the Loan.

33. There is no valid

34. security agreement or chattel mortgage in favor of Kennedy for One Hundred Thousand Dollars (\$100,000.00).

35. By acquiring a secured interest in Club's aircraft in the amount of One Hundred Thousand Dollars (\$100,000.00) in his own name, Kennedy turned and unsecured debt into a secured debt for Club.

36. There is no basis in law for Kennedy's claim of lien against Club's aircrafts.

37. Club does not owe Kennedy and did not owe Kennedy One Hundred Thousand Dollars.

38. As Club did not owe Kennedy \$100,000, Kennedy willfully exaggerated the amount of money Club allegedly owed Kennedy on the Claim of Lien.

39. As Club did not owe Kennedy \$100,000, Kennedy willfully included amounts on the Claim of Lien for work or products not supplied by Kennedy to Club.

40. Pursuant to § 713.31 Fla. Stat., Kennedy owes Club treble damages.

WHEREFORE Club demands judgment against Kennedy for damages, court costs, interest, attorney fees, treble damages, an Order declaring the Claim of Lien invalid or unenforceable, and any other relief that this Court deems just and equitable.

_____/s/ Edward F. Holodak, Esq.,

EDWARD F. HOLODAK, ESQ.

Attorney for Defendant

Fla. Bar No.: 059234

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**Pompano Senior Squadron Flying Club
DBA – Pompano Beach Flying Club**

BY LAWS

**ARTICLE I
MEETING OF STOCKHOLDERS**

Sec. 1. ANNUAL MEETINGS. The annual Meeting of the Stockholders shall be held at the principal office of the Corporation, on a day designated each year. If the day so designated falls upon a Sunday or a legal holiday, then the meeting shall be held upon the first secular day thereafter. The Secretary shall serve personally, or send to each stockholder at his last known post office or e-mail address, and publish notice thereof as required by law; but at any meeting at which all stockholders shall be present, or of which all stockholders not present have waived notice in writing, the giving of notice as above required may be dispensed with.

Sec. 2. QUORUM. At all meetings of stockholders, except where it is otherwise provided by law, it shall be necessary that stockholders, representing in person or by proxy, consisting of a majority of the stockholders shall constitute a quorum.

Sec. 3. SPECIAL MEETINGS. Special Meetings of Stockholders other than those regulated by statute may be called at any time by a majority of the Directors, upon ten days notice to each stockholder of record, such notice to contain a statement of the business to be transacted at such meeting, and to be served personally or sent to each such stockholders of record at his last known post office or e-mail address; but at any meeting at which all stockholders shall be present or of which stockholders not present have waived such notice in writing, the giving of notice as above described may be dispensed with. The Board of Directors shall also in like manner, call a special meeting of stockholders whenever so requested in writing by stockholders representing not less than one-half (1/2) of the capital stock of the company. No business other than that specified in the call for the meeting, shall be transacted at any special meeting of the stockholders.

Sec. 4. VOTING. At all meetings of the Stockholders all questions, the manner of deciding which is not specifically regulated by statute, shall be determined by a majority voted of the Stockholders present in person or by proxy; provided, however, that any qualified voter may demand a stock vote, in which case each Stockholder present, in person or by proxy, shall be entitled to cast one vote for each share of stock. All voting shall be via voice, except that a stock voted shall be by ballot, each of which shall state the name of the Stockholder voting, and in addition, if such ballot be cast by proxy, each proxy shall be in writing, signed and mailed in or given to another member to be surrendered for count at the meeting. The casting of all votes at special meetings of stockholders shall be governed by the provisions of the Corporation Laws of this state.

Sec. 5. ORDER OF BUSINESS. The order of business of all meetings of the stockholders shall be as follows:

1. Roll Call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of Officers.
5. Reports of Committees.
6. Election of Inspectors of Election.
7. Election of Directors.
8. Unfinished Business
9. New Business.

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**ARTICLE II
DIRECTORS**

Sec. 1. NUMBER. The affairs and business of this Corporation shall be managed by a Board of five (5) Directors, who shall be stockholders of record, and at least one of such Directors shall be a resident of the State of Florida and a citizen of the United States.

Sec. 2. HOW ELECTED. At the Annual Meeting of Stockholders, the five (5) persons receiving a plurality of the votes cast shall be Directors and shall constitute the Board of Directors for the ensuing year.

Sec. 3. TERM OF OFFICE. The term of office of each of the Directors shall be one year, and thereafter until his successor has been elected.

Sec. 4. DUTIES OF DIRECTORS. The Board of Directors shall have the control and general management of the affairs and business of the Corporation. Such Directors shall in all cases act as a Board, regularly convened, by a majority and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation, as they may deem proper, not inconsistent with these By-Laws and the Laws of the State of Florida.

Sec. 5. DIRECTORS' MEETINGS. Regular meetings of the Board of Directors shall be held immediately following the Annual Meeting of the Stockholders, and at such other times as the Board of Directors may determine. Special meetings of the Board of Directors may be called by the President at any time, and shall be called by the President or the Secretary upon the written request of two directors.

Sec. 6. NOTICE OF MEETINGS. Notice of meetings, other than the regular annual meeting shall be given by service upon each Director in person, or by mailing to him at his last known post office or e-mail address, at least five days before the date therein designated for such meeting including the day of mailing, or a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting and no business other than that specified in such notice shall be transacted at any special meetings. At any meeting at which every member of the Board of Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

Sec. 7. QUORUM. At any meeting of the Board of Directors, a majority of the Board shall constitute a quorum for the transaction of business, but in the event of a quorum not being present, a less number may adjourn the meeting to some event of a quorum not being present, a less number any adjourn the meeting to some future time, not more than ten days later.

Sec. 8. VOTING. At all meetings of the Board of Directors, each Director is to have one vote.

Sec. 9. VACANCIES. Whenever any vacancy shall occur in the Board of Directors by death, resignation, removal or otherwise, the same shall be filled without undue delay by a majority vote by ballot of the remaining members of the Board at a Special meeting which shall be called for that purpose. Such election shall be held within sixty days after the occurrence of such vacancy. The person so chosen shall hold office until the next annual meeting or until his successor shall have been chosen at a special meeting of the Stockholders.

Sec. 10. REMOVAL OF DIRECTORS. Any one or more of the Directors may be removed either with or without cause, at any time by a vote of a majority of the Stockholders, at any special meeting called for the purpose, or at the annual meeting.

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**ARTICLE III
OFFICERS**

Sec. 1 NUMBER. The officers of this Corporation shall be:

1. President
2. Vice-President
3. Secretary
4. Treasurer

Sec. 2 ELECTION. All officers of the Corporation shall be elected annually by the Board of Directors at its meeting held immediately after the meeting of stockholders, and shall hold office for the term of one year or until their successors are duly elected.

Sec. 3. DUTIES OF OFFICERS. The duties and powers of the officers of the Corporation shall be as follows:

PRESIDENT:

The President shall preside at all meetings of the Board of Directors and stockholders.

He shall present at each annual meeting of the Stockholders and Directors a report of the condition of the business of the Corporation.

He shall cause to be called regular and special meetings of the Stockholders and Directors in accordance with these By-Laws.

He shall appoint and remove, employ and discharge, and fix the compensation of all servants, agents, employees and clerks of the Corporation other than the duly appointed officers, subject to the approval of the Board of Directors.

He shall sign and make all contracts and agreements in the name of the Corporation, and see that they are properly carried out.

He shall see that the books, reports, statements and certificates required by the statutes are properly kept, made and filed according to law.

He shall enforce these By-Laws and perform all the duties incident to the position and office, and which are required by law.

VICE-PRESIDENT

During the absence and inability of the President to render and perform his duties or exercise his powers, as set forth in these By-Laws or in the acts under which this Corporation is organized, the same shall be performed and exercised by the Vice-President; and when so acting, he shall have all the powers and be subject to all responsibilities hereby given to or imposed upon such President.

SECRETARY

The Secretary shall keep the minutes of the meetings of the Board of Directors and of the Stockholders in appropriate books.

He shall give and serve all notices of the Corporation.

He shall be custodian of the records and of the seal, and affix the latter when required.

He shall present to the Board of Directors at their stated meetings all communications addressed to him officially by the President or any officer or shareholder of the Corporation.

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He shall attend to all correspondence and perform all the duties incident to the office of Secretary.

TREASURER

The Treasurer shall have the care and custody of and be responsible for all the funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such bank or banks, trust company or trust companies or safe deposit vaults as the Board of Directors may designate.

He shall sign, make, and endorse in the name of the Corporation, all checks, drafts, warrants and orders for the payment of money and pay out and dispose of same and receipt therefore, under the direction of the President or the Board of Directors.

He shall exhibit at all reasonable times his books and accounts to any director or stockholder of the Corporation upon application at the office of the Corporation during business hours.

He shall render a statement of the condition of the finances of the Corporation at each regular meeting of the Board of Directors, and at such other times as shall be required of him, and a full financial report, at the annual meeting of the stockholders.

He shall keep at the office of the Corporation, correct books of account of all its business and transactions and such other books of account as the Board of Directors may require.

He shall do and perform all duties appertaining to the office of Treasurer.

Sec. 4 BOND. The Treasurer shall, if required by the Board of Directors, give to the Corporation such security for the faithful discharge of his duties as the Board may direct.

Sec. 5 VACANCIES, HOW FILLED. All vacancies in any office shall be filled by the Board of Directors without undue delay, at its regular meeting, or at a meeting specially called for that purpose.

Sec. 6. COMPENSATION OF OFFICERS. The officers shall receive such salary or compensation as may be determined by the Board of Directors.

Sec. 7. REMOVAL OF OFFICERS. The Board of Directors may remove any officer, by a majority vote, at all time, with or without cause.

**ARTICLE IV
SEAL**

Sec.1. SEAL. The seal of the Corporation shall be in a form as required by Florida law..

**ARTICLE V
CERTIFICATES OF STOCK**

Sec.1 STOCK OWNERSHIP. Each member in the Club shall be deemed to own one share of Stock. No Stock Certificates will be issued. When a Club member resigns and his membership fee is returned, the share of Stock will be deemed to have been returned to the Corporation.

**ARTICLE VI
MEMBERSHIP**

Sec.1 This Corporation has been incorporated as a stock corporation under the laws of the State of Florida, but it is a non-profit company and will be operated as such. The net savings or surplus remaining after all operating costs and other expenses have been paid shall remain in the Club's treasury for the purchase of new equipment,

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for contingencies, or for the purpose of reducing the hourly rates for flying as shall be determined by the Board of Directors. In any event, under no circumstances shall any net savings be distributable to the members in a form of dividend or otherwise for their individual use, nor will the ownership of stock entitle any member of the declaration of any dividend or other financial benefit, besides membership in the Corporation and the benefits of membership specified herein and in the Operations Rules. Upon liquidation of the Corporation, each Club member (Shareholder) will be paid a maximum amount set as the membership value by the Board of Directors, as funds are available. If funds are insufficient to pay this amount members will be paid a prorata share of funds available. Available funds will be determined after all bills, expenses and contingency expenses have been provided and approved by the Board of Directors. In the event that there are excess funds after paying all members and providing for all bills, expenses, and contingencies, those excess funds will be donated to AOPA's Air Safety Foundation, a charitable organization.

Sec. 2. NEW MEMBERS. New members may be admitted to the Corporation only after being approved by the Board of Directors. Membership shall be limited by current insurance regulations.

Sec. 3. PAYMENTS. A person elected to membership in the Corporation shall become a member upon payment of an initial fee to be determined by the Board. Each member in addition to this initial payment shall pay a monthly payment set by the Board. In addition, each member shall pay a specified hourly rate as required in the Operational Rules for each hour indicated by the tachometer on the aircraft flown by the member.

Sec. 4. STOCK CERTIFICATES. Upon receipt of the initiation fee and acceptance into membership, each new member shall be deemed to own a certificate for one (1) share of stock of the Corporation.

Sec. 5. INDEMNIFICATION AND PERFORMANCE CONTRACT. Simultaneously with his application into membership of the Corporation, each member shall execute a MEMBERSHIP AGREEMENT (the "Contract") and shall be held by the Board of Directors in the office of the Corporation, which Contract relates to the indemnification by all the Corporation members of certain officers who obligated themselves in connection with the financing of purchased aircraft, as well as relating to the prompt payment of equity and maintenance payments, flying time, assessments, etc. This Contract will become effective upon acceptance into the Club membership. Failure or refusal of a member to execute this Contract with application to the Club shall be a bar to membership.

Sec. 6. WITHDRAWAL FROM MEMBERSHIP. In the event a member wishes to withdraw from the Corporation, he shall notify the Corporation of such desire in writing. Within thirty (30) days from the receipt of such notification, provided the member is in good 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 charges, or otherwise is indebted to the Corporation, such arrearages or indebtedness shall be deducted from the book value payment.

Sec. 7. EXPULSION. Any member who has failed to pay any monthly payments, flying time or assessments when due, shall be subject to penalties contained in the above mentioned Contract. Any member who has violated his Contract including failure to pay any sums due the Corporation is subject to expulsion. Failure to pay any sums due the Corporation shall be considered as an indication that the member intends to withdraw from membership, and he/she thereupon automatically shall be suspended from flying aircraft of the Corporation. In addition, a member may be expelled from membership by a vote of two-thirds of the members voting at any regular meeting of the membership, or any special meeting called to consider the matter. If expulsion is contemplated by a vote of the membership, the member affected shall be provided with ten (10) days written

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notice in advance of such regular or special meeting, and he shall have the right to be heard at the meeting, either in person or by counsel.

**ARTICLE VII
AIRCRAFT MAINTENANCE COORDINATOR**

Sec. 1. The Aircraft Maintenance Coordinator (“Maintenance Coordinator”) shall be responsible for coordinating any repairs to the aircraft by an appropriate entity or individual that are identified by his observation or brought to his attention by any Club member. The Maintenance Coordinator shall ensure that a certified Airframe and Powerplant Mechanic (“A&P”) is used for any repairs and that all proper log book documentation are prepared and entries are made to the Aircraft Log Books. The Maintenance Coordinator shall coordinate with the A&P to review all compliance with inspections, major overhauls which are required and for complying with all service bulletins applicable to the aircraft.

**ARTICLE VIII
CHIEF PILOT**

Sec. 1 The Chief Pilot shall be appointed by the Board of Directors and Officers, and his appointment shall be reviewed annually or as deemed necessary by the Board of Directors and Officers. The Chief Pilot will be responsible for the initial check-out of all new members in each of the Corporation aircraft. In the absence of the Chief Pilot, any Officer of the Corporation may assign initial check-out responsibility to one/more other Corporation Designated Flight Instructors. The Chief Pilot will instruct other Flight Instructors on the Corporation By-Laws and Operating Rules, safe operations of the Corporation aircraft and local procedures for community sensitive operations, and recommend their approval or disapproval, as Corporation Designated Flight Instructors, to the Board of Directors and Officers.

**ARTICLE IX
SAFETY BOARD AND HEARINGS**

Sec. 1 A safety board may be appointed by the Board of Directors of the Corporation on the occasion of any accident or incident involving either aircraft of the Corporation or a member of the Corporation, or equipment of the Corporation. Such safety board shall consist of three (3) members of the Corporation, in good standing, none of whom were involved in the particular incident to be investigated. The safety board promptly shall take all steps necessary to ascertain the facts, conditions and circumstances surrounding the accident or incident in order to arrive at findings and conclusions regarding the probable cause and the responsibility for the said accident, and shall make known its findings and conclusions in writing to the Board of Directors of the Corporation and to all parties involved in the accident.

Sec.2 Upon receipt of the findings and conclusions of the safety board concerning an accident or incident involving either corporate aircraft or a corporation member or corporation equipment as heretofore provided, the Board of Directors shall offer to all parties involved in the accident the opportunity of a hearing. After the hearing or if such hearing is waived by all parties involved in the accident, the Board of Directors shall decide the question of financial responsibility of the member. Such decision of the Board of Directors shall be final.

Sec. 3. The Board of Directors shall not impose financial responsibility on any one member in excess of the amount deductible under the insurance policy covering the particular damage concerned, but if the damage results from a violation which relieves the corporate insurance carrier of liability, then the responsible party shall be

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liable for the full amount of the damage sustained. In such case, the Board shall make recommendations to be approved by the Corporation membership.

Sec.4 Any financial obligation imposed upon any member as a result of the decision of the Board of Directors hereunder shall be satisfied within thirty (30) days, failing which the member shall be liable to expulsion in accordance with other provision of these By-Laws.

**ARTICLE X
MAJOR EXPENSES**

Sec.1 Should the Board of Directors decide to incur an expense in excess of \$80,000 and if the members of the Board are unanimous in such desire, a special meeting of the membership shall be called upon at least 24 hours notice and any such expenditure may be authorized at such meeting by a vote of at least two-thirds of the members present in favor thereof, provided that such two-thirds constitute a majority of the membership.

**ARTICLE XI
OPERATIONS RULES**

Sec.1 The Board of Directors, with the acquiescence of the Corporation membership, shall provide and maintain a set of rules for operation of the corporate aircraft. Any member who violates an operations rule so adopted shall be liable to expulsion under these By-Laws.

**ARTICLE XII
PROXY**

Sec.1 A proxy duly signed and dated by a member may be presented at any meeting of the Corporation by any person to whom it has been presented by the member and may be voted by that person in accordance with the instructions of the member, or, if no instructions have been given, freely in accordance with the decision of the holder of the proxy.

**ARTICLE XIII
AMENDMENTS**

Sec. 1 **HOW AMENDED.** These By-Laws may be altered, amended, repealed, or added to by an affirmative vote of the stockholders representing a majority of voting stockholders, at an annual meeting or at a special meeting called for that purpose, provided that a written notice shall have been sent to each stockholder of record at his last known post office or e-mail address, at least ten days before the date of such annual or special meeting, which notice shall state the alterations, amendment or changes which are proposed to be made in such By-Laws. Only such changes as have been specified in the notice shall be made. If, however, a majority of the stockholders shall be present at any regular or special meeting, these By-Laws may be amended by a unanimous vote without any previous notice.

POMPANO BEACH FLYING CLUB

Revision 05-21-14

APPLICATION FOR MEMBERSHIP

All portions of this application must be completed for it to be considered for approval. The application should be typed or printed. Questions may be referred to Carl Kennedy, 304-552-0206. The application and other required documents should be mailed to the following address:

Pompano Beach Flying Club
C/O Carl Kennedy, Treasurer
2929 S. Ocean Blvd. Ste. 510
Boca Raton, FL 33432

The following items must be submitted with the application:

- 1 A copy of your pilot's certificate
- 2 A copy of your current FAA Medical Certificate
- 3 A copy of your drivers license
- 4 A copy of your log book pages showing total logged flight time of at least 300 hours, or an Instrument Rating
- 5 A copy of your log book page showing the last Flight Review
- 6 A check for membership in the amount of \$1700 made out to Pompano Beach Flying Club.

This check will be held by the Treasurer pending an opening in the club and review of the application. When the application is approved, the applicant will be notified of acceptance and a request to deposit the membership amount. If the applicant approves the deposit, the funds will be sent to the bank and the applicant will be notified regarding the procedure to obtain plane checkouts.

Note: Applicants, as well as members, are encouraged to attend the Club meetings held at American Flyers at KPMP the second Wednesday of each month, starting at 1800 and lasting approximately 1 1/2 hours.

Applicant Personal Experience:

Date Submitted _

Name _

Address _

If less than 5 years
Previous Address _

Employed by: _

If less than 5 years
Previous Employer _

Contact information

| Home Phone # | Work Phone # | Cellular Phone # | E-mail Address |
|--------------|--------------|------------------|----------------|
|--------------|--------------|------------------|----------------|

Spouse First Name N/A

POMPANO BEACH FLYING CLUB

Revision 05-21-14

APPLICATION FOR MEMBERSHIP

Applicant Experience and History:

Logged Flight Hours:

Total Logged Flight Time- 0

Total Logged Flight Time in Aircraft having greater than 210 HP- _____

Total logged PA-32 Flight Time (Cherokee 6, Saratoga) - _____

Certificates (circle)
Ratings (circle)

Private/ Commercial/ ATP
CFI/ CFII/ Instrument/ Other

Pilot Certificate # _____

Any Accidents _____

(Attach Details)

Suspensions _____

(Attach Details)

Any Incidents _____

(Attach Details)

Pilot/Driver's License: Have you, within the past 12 months, had your pilot or driver's license surrendered, suspended or revoked; or been arrested for or charged with operating an aircraft or motor vehicle under the influence of drugs or alcohol.

Yes _____

(Attach Details)

No _____

I hereby make application for membership in Pompano Beach Flying Club. I affirm that this application is complete and accurate. I agree to abide by the By-Laws and Operational Rules of the Club as published and as properly modified in the future.

Signature _____

Date _____

Referred by _____

(Name of person referring, if applicable)



50 Years
1969 — 2019

EXHIBIT "2"

Aircraft Title Search

Issued To:

Attn: Tor Holm
Pompano Beach Flying Club
2351 Southwest 26th Avenue
Fort Lauderdale, FL 33312

Account: 36211

Dated this 3rd day of May, 2021, as of 7:29 AM Central Time.

1. Aircraft:

FAA Registration: N8633E
MFR: PIPER

Serial Number: 28-7625145
Model: PA-28-140

Registered Owner: Pompano Senior Squadron Flying Club, Inc.
P.O. Box 10241
Pompano Beach, FL 33061

Date of Purchase: 04/07/17
Type of Registration: CORPORATION

Previous Owner: Jon P. Pounds
1692 Deerhaven Drive
Crystal Lake, IL 60014

2. Liens or Encumbrances:

Type: Security Agreement
Dated: 02/12/20 Recorded: 04/28/20 Amount: \$100,000.00 Conveyance: DP023084

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured Party: Carl L. Kennedy
2929 South Ocean Boulevard, Suite 510, Boca Raton, FL 33432

Type: Security Agreement

Dated: 02/12/20 Recorded: 06/11/20 Amount: \$100,000.00 Conveyance: SD019705

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured
Party: Carl L. Kennedy

3. Other Information or Remarks:

In file unrecorded appears a Claim of Lien, dated 12/09/19/, filed 12/11/19, for amount of \$75,400.00, against N8633E and Pompano Senior Squadron Flying Club, Inc., in favor of Paul K. Sanchez, 10643 Shore Drive, Boca Raton, FL 33428.

FAA asks for the document filed to be notarized per Florida Statutes.

Aero-Space Reports, Inc.

Neal Snowden

SL/AM / JK

This report contains information acquired through examination of the records maintained by the FAA, including the indices of in-process documents. Because our examination is limited to records maintained by the FAA, this report does not cover any liens, claims, encumbrances or judgments that have not been filed with the FAA, or have not been indexed by the FAA under the description shown on this report.



50 Years
1969 — 2019

Aircraft Title Search

Issued To:

Attn: Tor Holm
Pompano Beach Flying Club
2351 Southwest 26th Avenue
Fort Lauderdale, FL 33312

Account: 36211

Dated this 3rd day of May, 2021, as of 7:29 AM Central Time.

1. Aircraft:

FAA Registration: N47LH
MFR: PIPER

Serial Number: 28-7990480
Model: PA-28-181

Registered Owner: Pompano Senior Squadron Flying Club, Inc.
P.O. Box 10241
Pompano Beach, FL 33061

Date of Purchase: 10/13/07
Type of Registration: CORPORATION

Previous Owner: Scott G. Ainsbury
303 Mercer Street, Apartment A503
New York, NY 10003

2. Liens or Encumbrances:

Type: Security Agreement
Dated: 12/14/09 Recorded: 06/30/10 Amount: \$5,000.00 Conveyance: KT004142

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured Party: David Watkins and Debra Fairall
3240 Lakeshore Drive, Deerfield Beach, FL 33442

Type: Security Agreement

Dated: 02/12/20 Recorded: 04/28/20 Amount: \$100,000.00 Conveyance: DP023084

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured
Party: Carl L. Kennedy

Type: Security Agreement

Dated: 02/12/20 Recorded: 06/11/20 Amount: \$100,000.00 Conveyance: SD019705

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured
Party: Carl L. Kennedy

3. Other Information or Remarks:

In file unrecorded appears a Notice of Lien, dated 12/09/19, filed 12/11/19 as document ID 0581, for amount of \$5,858.00, against Pompano Senior Squadron Flying Club, Inc. (N47LH), in favor of Paul Kanoa Sanchez, 10643 Shore Drive, Boca Raton, FL 33428.

FAA requests the Claim be notarized.

You may wish to obtain a Disclaimer of Interest/Release of Lien to Notice of Lien, dated 12/09/19, filed 12/11/19 as document ID 0581.

Aero-Space Reports, Inc.

Neal Snowden

JH / AM / JK

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50 Years
1969 — 2019

Aircraft Title Search

Issued To:

Attn: Tor Holm
Pompano Beach Flying Club
2351 Southwest 26th Avenue
Fort Lauderdale, FL 33312

Account: 36211

Dated this 3rd day of May, 2021, as of 7:29 AM Central Time.

1. Aircraft:

FAA Registration: N7696F
MFR: PIPER

Serial Number: 28-7715244
Model: PA-28-151

Registered Owner: Pompano Senior Squadron Flying Club, Inc.
P.O. Box 10241
Pompano Beach, FL 33061

Date of Purchase: 04/29/16
Type of Registration: CORPORATION

Previous Owner: Michael Conduris
2151 Northeast 42nd Court, Apartment 224
Lighthouse Point, FL 33064

2. Liens or Encumbrances:

Type: Security Agreement
Dated: 02/12/20 Recorded: 04/28/20 Amount: \$100,000.00 Conveyance: DP023084

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured Party: Carl L. Kennedy
2929 South Ocean Boulevard, Suite 510, Boca Raton, FL 33432

Type: Security Agreement

Dated: 02/12/20 Recorded: 06/11/20 Amount: \$100,000.00 Conveyance: SD019705

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured
Party: Carl L. Kennedy

3. Other Information or Remarks:

In file appears a notice from the FAA to Paul K. Sanchez, 10643 Shore Drive, Boca Raton, FL 33428, stating the Claim of Lien filed 12/11/19 as document number 0561, is returned as not recordable. The FAA is advised by Aeronautical Center Counsel that the lien does not meet the recording statutes of the claimant's state. As such, the FAA has no authority to record this lien.

You may wish to obtain a Disclaimer of Interest describing the returned Claim of Lien by filing date 12/11/19 and document number 0561, signed by Paul K. Sanchez.

Aero-Space Reports, Inc.

Neal Snowden

SL/AM / JK

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50 Years
1969 — 2019

Aircraft Title Search

Issued To:

Attn: Tor Holm
Pompano Beach Flying Club
2351 Southwest 26th Avenue
Fort Lauderdale, FL 33312

Account: 36211

Dated this 3rd day of May, 2021, as of 7:29 AM Central Time.

1. Aircraft:

FAA Registration: N30877
MFR: PIPER

Serial Number: 28-7890457
Model: PA-28-181

Registered Owner: Pompano Senior Squadron Flying Club, Inc.
P.O. Box 10241
Pompano Beach, FL 33061

Date of Purchase: 08/18/14
Type of Registration: CORPORATION

Previous Owner: Gainesville Aircraft Sales, Inc.
620 Northwest 23rd Street
Gainesville, FL 32607

2. Liens or Encumbrances:

Type: Security Agreement
Dated: 02/12/20 Recorded: 04/28/20 Amount: \$100,000.00 Conveyance: DP023084

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured Party: Carl L. Kennedy
2929 South Ocean Boulevard, Suite 510, Boca Raton, FL 33432

Type: Security Agreement

Dated: 02/12/20

Recorded: 06/11/20

Amount: \$100,000.00

Conveyance: SD019705

Debtor: Pompano Senior Squadron Flying Club, Inc.

Secured

Party:

Carl L. Kennedy

Aero-Space Reports, Inc.

Neal Snowden

SL / AM / JK

This report contains information acquired through examination of the records maintained by the FAA, including the indices of in-process documents. Because our examination is limited to records maintained by the FAA, this report does not cover any liens, claims, encumbrances or judgments that have not been filed with the FAA, or have not been indexed by the FAA under the description shown on this report.

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

EXHIBIT 2

SUNWOOD, INC.,

Plaintiff,

vs.

Case No.: CACE 21-003202 (12)

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.

Defendant

POMPANO SENIOR SQUADRON
FLYING CLUB, INC.,

Third-Party Plaintiff,

CARL L. KENNEDY, II

Third-Party Defendant.

MOTION TO DISMISS AND/OR STRIKE THIRD-PARTY COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

I, Carl L. Kennedy, II, in response to Third-Party Plaintiff's Third-Party Complaint, hereby respectfully represent as follows:

1. On October 12, 2021, Third-Party Plaintiff served me with a Third-Party Complaint in this matter, suing me individually, but strictly in connection with my capacity as the former Treasurer of Third-Party Plaintiff's social flying club.
2. Third-Party Plaintiff's Third-Party Complaint is directed to a "corporation". See Florida Statutes. I, as an individual, do not comprise and am not the "corporation", and therefore the Third-Party Plaintiff should have included all of the former Officers and members of the

former Board of Directors in this lawsuit. The Third-Party Plaintiff's Third-Party Complaint itself establishes the former Officers and Directors as being necessary parties and clearly implies their interests in this matter. See Third-Party Plaintiff's Third-Party Complaint. The Third-Party Plaintiff has acknowledged the former Board of Directors had unanimously approved the loan made by Sunwood to Third-Party Plaintiff. See Exhibit A. Moreover, Third-Party Plaintiff's corporate documents delegate responsibility for maintaining records for the corporation among more than one Officer. The Third-Party Plaintiff's Third-Party Complaint should be dismissed due to the failure to join all former Officers/Directors as indispensable parties.

3. Third-Party Plaintiff's claim for attorney's fees should be stricken or dismissed due to the failure to provide a proper request for same.

4. Third-Party Plaintiff's Contractual Indemnification Claim fails to state a cause of action, since the Third-Party Plaintiff's By-Laws don't specifically cover this situation.

5. Third-Party Plaintiff has failed to allege the elements necessary to state a claim for indemnification.

6. In order to properly plead a cause of action for common law indemnity, the party seeking indemnity must allege in his complaint that: 1) he is wholly without fault; 2) that the party he is seeking indemnity from is at fault; and 3) that he is liable to the injured party only because he is vicariously, constructively, derivatively, or technically liable for the wrongful acts of the party he is seeking indemnity from.

7. Third-Party Plaintiff's Fraudulent Lien Claim fails to specifically plead fraud, which is required to state a claim for the requested relief.

8. I am still a dues-paying member/shareholder of Third-Party Plaintiff's Flying Club, and in this lawsuit I am therefore, in essence, suing myself and using my own money to do so, which poses a significant conflict.

9. This Court should review the allegations of the Third-Party Plaintiff's Third-Party Complaint in the light most favorable to me. Counsel for Third-Party Plaintiff is being investigated by The Florida Bar in connection with several complaints filed against him due to his lack of candor with the Court. See Exhibits B and C, respectively.

WHEREFORE I, Carl L. Kennedy, II, Third-Party Defendant, respectfully request that I be granted all relief consistent with this Motion that the Court deems just and proper, including that the Court Dismiss and/or Strike Third-Party Plaintiff's Third-Party Complaint.

I hereby certify that on the 3rd day of January, 2022 I sent a copy of this document via the Florida e-portal to Edward Holodak, Esquire at pleadings@holodakpa.com.

Respectfully submitted,

/s/ Carl L. Kennedy, II
Carl L. Kennedy, II
2929 S. Ocean Blvd., #510
Boca Raton, FL 33432
304-552-0206
E-Mail Address: clktx@aol.com

I, Carl L. Kennedy, II, Third-Party Defendant, hereby certify that I have received the assistance of the following attorney in the preparation of this document:

Attorney Name: Scott J. Kalish, Esquire
2161 Palm Beach Lakes Blvd.
Suite 309
West Palm Beach, FL 33409
561-208-1859
E-mail Address(es): scott@scottjkalishlaw.com
Florida Bar Number: 118292



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.

EXHIBIT A

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

EXHIBIT A