

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

SUNWOOD, INC.,

Plaintiff,

Case No.: CACE 21 – 003202 (12)

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.

**OPPOSITION TO PLAINTIFF SUNWOOD'S**  
**MOTION FOR SUMMARY FINAL**  
**JUDGMENT**

Defendant/Third-Party Plaintiff POMPANO SENIOR SQUADRON FLYING CLUB, INC., ("Club") by and through its undersigned attorney, pursuant to Rule 1.510, Fla.R.Civ.P., hereby files this opposition to Plaintiff SUNWOOD, INC.'s ("Sunwood") Motion for Final Judgment and says:

**FACTUAL BACKGROUND**

This Court granted Plaintiff Sunwood's Motion for Summary Judgment on the equitable claim of unjust enrichment only. It denied the Summary Judgment on the balance of Plaintiff Sunwood's Motion.

During the hearing on the matter, the parties did not argue and the Court did not address the issue of pre-judgment interest; yet now, Plaintiff Sunwood seeks to obtain pre-judgment interest from the date it gave the money to Defendant Pompano. Plaintiff Sunwood cites to the cases of *Ossi and Fidelity Warranty Services, Inc.* Interestingly, so does Defendant Pompano for the

proposition that pre-judgment interest is only due from the time Plaintiff Sunwood obtained its entitlement (summary judgment) or demanded repayment of its money, not from the day it gave the money.

Defendant Club is a Florida corporation which owns airplanes and allows the members of Defendant Club to rent the aircraft. Defendant Club's members pay a monthly fee to belong to the club and pay additional usage fees for their use of the aircraft.

Defendant Club admitted that a \$100,000 check drawn on the account of Plaintiff Sunwood was deposited into Defendant Club's bank account, but denied that a valid loan ever existed between Plaintiff Sunwood and Defendant Club, this Court denied summary judgment on any contract theory claims.

### Legal Argument

1. As Plaintiff Sunwood's summary judgment is based solely on unjust enrichment, Defendant Club was only "unjustly enriched" from the time Sunwood obtained its entitlement stating so – the date of the summary judgment. Prior to such time, Defendant Club may have been "enriched," but *not* unjustly – the basis of the summary judgment.
2. As the appellate court in *Case name* stated, the trial court has equitable power to determine pre-judgment interest is only due from the date of demand. That equity should be used to start the interest clock at the date of entitlement – especially in light of Defendant Club's testimony that only the prior treasurer, Third-Party Defendant Carl Kennedy, who by the way was the accountant for both Plaintiff Sunwood and Defendant Club at the time the money was exchanged, knew of the source of the money.
3. Given that undisputed testimony, the only "unjust" enrichment is equitably from the time the Court granted summary judgment. See *Fidelity Warranty Services, Inc. v. Firststate Ins. Holdings, Inc.*, 98 So. 3<sup>d</sup> 672, 673 (Fla. 4<sup>th</sup> DCA 2012)(stating "We find no error in the trial court's ruling that interest is to run from the date of entitlement.") Here the date of entitlement is the date of summary judgment.

4. At worse, the date should be the Plaintiff Sunwood demanded its money – which was at a time when Carl Kennedy now longer controlled Defendant Club. To start the interest clock from the date the money was transferred, infers a promissory note or contract, a legal theory already rejected by this Court. See *Leila Corp. of St. Pete v. Ossi*, 230 So.3d 488 (Fla. 2<sup>nd</sup> DCA 2017). In *Ossi* the court held that:

[T]he general rule concerning the payment of prejudgment interest [is]:  
“[O]nce damages are liquidated, prejudgment interest is considered an element of those damages as a matter of law, and the plaintiff is to be made whole from the date of the loss.” **This general rule is not absolute.... “[I]nterest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.” We did not recede from this principle in Argonaut Insurance or Kissimmee Utility Authority [v. Better Plastics, Inc., 526 So.2d 46 (Fla. 1988) ]. Further, in Ball v. Public Health Trust, 491 So.2d 608 (Fla. 3d DCA 1986), the Third District Court of Appeal allowed prejudgment interest but restricted the date it commenced to the date of demand or the commencement of the lawsuit, whichever occurred first. The district court did so on equitable grounds, relying on our decision in First State Bank v. Singletary, 124 Fla. 770, 169 So. 407 (1936). **As noted by these decisions, the law is not absolute and may depend on equitable considerations.**  
Broward County v. Finlayson, 555 So.2d 1211, 1213 (Fla. 1990) (third alteration in original) (emphases added) (citation omitted) (first quoting, in part, Kissimmee Util. Auth., 526 So.2d at 47; and then quoting, in**

part, Flack v. Graham, 461 So.2d 82, 84 (Fla. 1984)). The First District Court of Appeal most recently recognized this exception in Arizona Chemical Co. v. Mohawk Industries, Inc., 197 So.3d 99 (Fla. 1st DCA 2016):

As an exception to the general rule set forth in Argonaut, courts sometimes calculate prejudgment interest from a date later than the date of the plaintiff's actual loss, where unique facts and considerations of fairness militate against calculating prejudgment interest from the date of actual loss. The trial court in this case did not address the question of whether equitable considerations might justify moving the prejudgment interest date forward. Therefore, we cannot tell whether the court determined that the equities were not in Arizona's favor or whether the court declined to recognize an equitable exception to the general prejudgment interest rule. Id. at 105 (citations omitted); see also Volkswagen of Am., Inc. v. Smith, 690 So.2d 1328, 1331 (Fla. 1st DCA 1997) (“The Argonaut decision did not establish an inflexible rule that requires trial judges to assess prejudgment interest in every case regardless of the circumstances. Depending on the equities of a given case, an award of prejudgment interest may be a windfall to the plaintiff and an unfair burden on the defendant.”).

WHEREFORE, Defendant Club moves this Court for a judgment that grants prejudgment interest only from the date of demand, and any other relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via eportal this 19<sup>th</sup> day of May 2022 to Dane Stanish, Esq., [stanishd@gmail.com](mailto:stanishd@gmail.com) and Carl Kennedy, [clktax@aol.com](mailto:clktax@aol.com).

\_/s/ Edward F. Holodak, Esq.,  
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