

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.

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**THIRD-PARTY PLAINTIFF POMPANO SENIOR SQUADRON FLYING  
CLUB, INC.'S MOTION FOR SUMMARY FINAL  
JUDGMENT  
AGAINST THIRD-PARTY DEFENDANT CARL L. KENNEDY, II**

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 Motion for Summary Judgment against Third-Party Defendant Carl L. Kennedy, II (“Kennedy”) and says:

**STANDARD**

The Florida Supreme Court amended Fla. R. Civ. P. 1.510, effective May 1, 2021. See *In re Amendments to Fla. Rule of Civ. Procedure 1.510.*, 309 So. 3d 192 (Fla. 2020). In addition to amending the standard for ruling on a motion to the federal standard, the Court also amended the procedural requirements which must be met to comply with the amended rule. Key changes flowing from the court’s adoption of the federal standard and amendment of rule

the standard for summary judgment now mirrors the standard for directed verdict i e whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one- sided that one party must prevail as a matter of law);

there is no requirement that the moving party negate the opponent's claims (it is sufficient that the moving party discharge their burden pointing out to the court that there is an absence of evidence to support the opponent's case;

a genuine issue of material fact is such that a reasonable jury could return a verdict for the non-moving party (meaning, a party opposing summary judgment must do more than simply show there is some metaphysical doubt as to the material facts);

the timing for summary judgment motions and the filing of counter- evidence has been augmented (fully supported motions must be filed 40 days prior to a hearing - up from 20 under the pre-amendment rule - and countervailing evidence must be filed 20 days prior to a hearing - up from 2 days in the pre-amendment rule); and the court shall state on the record the reason for granting or denying a summary judgment motion (the court must state the reasons for its decision with enough specificity to provide useful guidance and allow for appellate review).

The Florida Supreme Court stated, as to the new standard, that:

By contrast, the [U.S.] Supreme Court has described the federal test as whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (citations omitted). A party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts."

*Matsushita*, 475 U.S. at 586. More recently, the Supreme Court explained that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Factual Background

1. Plaintiff Club is an organization that rents airplanes to members of the Club.
2. At all times relevant to the issues herein, Defendant Kennedy was the treasurer and performed accounting and tax services for Plaintiff Club.
3. Simultaneously, Defendant Kennedy was also the accountant for Plaintiff Sunwood.
4. Based upon the affidavit in support hereof, at no time relevant to the issues herein did Kennedy disclose to the Club that Kennedy was the accountant for Sunwood.
5. Based upon the affidavit from Sunwood in support hereof, at no time prior to giving the Club \$100,000, did Kennedy disclose to Sunwood that he was the treasurer and providing accounting services for the Club.
6. The By-Laws of Plaintiff Club requires its Board of Directors, in any financial transaction greater than eighty-thousand dollars (\$80,000), to obtain a vote of the membership of the Club to approve such transaction. Copy of By-Laws in Court file and incorporated herein by reference.
7. The By-Laws of Club provide for indemnification by its directors for damage the director causes to the Club.
8. This Court entered a summary judgment against Club in favor of Plaintiff Sunwood on its claim of unjust enrichment for a principal balance of one hundred thousand dollars (\$100,000) finding that at the time Defendant Kennedy was treasurer/director of Club, Club obtained \$100,000 from Sunwood.
9. Based upon documentation, there was no loan agreement (Promissory Note or otherwise), no contemporaneously executed security agreement or chattel mortgage executed between Sunwood and the Club.

10. No records existed at the Club as to this money, except for bank records showing a deposit with no associated documents, until such time as Sunwood sued Club for return of its money.

11. In response to Request for Admissions and interrogatories, Sunwood admitted the money given was *not* a secured loan.

12. On his last day as treasurer/director of Club, Kennedy caused to be recorded with the Federal Aviation Administration a claim of lien for \$100,000 showing himself as the lienor.

13. Defendant Kennedy, on his last day as treasurer/director of Club, signed a promissory note and security agreement in favor Sunwood, and allegedly did so in his capacity as treasurer/director of Club.

14. Defendant Kennedy has admitted that the money relating to said lien was the \$100,000 from Sunwood.

15. Despite filing the lien in his own name, and despite Sunwood admitting the \$100,000 was given unsecured to Club, Defendant Kennedy filed an affidavit herein in support of Sunwood's Motion for Summary Judgment, attesting that the \$100,000 was a secured loan in favor of *Sunwood*.

16. Defendant Kennedy did not personally provide Club \$100,000.

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

Legal Argument

18. Club is entitled to summary judgment against Defendant Kennedy for its claim as to fraudulent lien.

19. Based upon of record evidence, the money obtained by the Club from Sunwood, was an unsecured lien. See *Answers to Request to Produce, Request for Admissions and Interrogatories filed by Sunwood all incorporated herein by reference.*

20. Club, in its affidavit in support hereof, attests as follows:

- a. There was no contemporaneous promissory note executed by any authorized director of Club in favor of Sunwood at the time Sunwood gave the \$100,000.00;
- b. There was no document, lien, security agreement, chattel mortgage, executed by an authorized director of Club in favor of Sunwood granting any security interest in its assets to Sunwood for the \$100,000;
- c. Defendant Kennedy never personally gave \$100,000 to Club;
- d. Defendant Kennedy, on his last day as treasurer, executed a lien with the FAA securing in his own personal name, a \$100,000 security interest (lien) against Club's plane;
- e. The money from Sunwood to Club was unsecured;
- f. Defendant Kennedy in fact recorded four (4) such liens against four (4) different aircraft owned by Club; See *Exhibit #2 to Motion*;
- g. There are no minutes of any Board of Directors' meeting at which the Board of Directors approved the Club or Defendant Kennedy in taking a \$100,000 payment from Sunwood;
- h. The Club's bank records reflect only one (1) \$100,000 deposit on or about

the time of Sunwood's check deposit;

- i. There are no minutes of any shareholder or member vote at which the members voted to approve the Board in taking \$100,000 (or any other amount) from Sunwood;
- j. The By-Laws of Club require both a Board vote and a member vote to approve any financial transaction over \$80,000;
- k. If such meetings occurred, the minutes of each meeting would exist in the official records of Club;
- l. No member of the Board of Directors of Club (at the relevant time) has provided sworn testimony that the Board approved any loan or other money from Sunwood;
- m. Club attempted to obtain a loan, the proceeds of which it would have paid the judgment against it by Sunwood, only to be rejected due to the liens against its aircraft filed by Defendant Kennedy;
- n. Kennedy did not perform any work on Club's aircrafts totaling \$100,000; he did not provide \$100,000 worth of parts to Club's aircrafts.

21. The Liens, filed by Defendant Kennedy against Club's aircrafts state that the liens he recorded were signed on February 12, 2020 the last day that Defendant Kennedy served as a director and treasurer of Club. The liens allege that all were given by the Club in exchange for a promissory note which memorialized an alleged loan given by Defendant Kennedy to the Club on September 24, 2018. (the "Promissory Note").

22. Prior to February 12, 2020 the Promissory Note did not exist. See *Affidavit*.

23. Plaintiff Sunwood obtained its Final Judgment against Defendant Club for unjust enrichment (not for breach of contract) for a \$100,000 payment given by it to Club on September

24, 2018 – the same day of Defendant Kennedy’s Promissory Note.

24. The bank records of Club establish that only *one \$100,000* deposit was made into any bank account owned by Club on September 24, 2018. See *Affidavit in Support*.

25. Defendant Kennedy’s sworn affidavit in support of Sunwood’s summary judgment herein, asserts that Sunwood made a secured loan to Club on September 24, 2018. This despite the fact that Sunwood asserted at all times it gave the money unsecured to Club.

26. Defendant Kennedy being the treasurer and director of Club at the time of the Liens and Promissory Note, knew (or should have known) that he did not provide \$100,000 to the Club, that the \$100,000 deposit made into the Club’s bank account on September 24, 2018 was from Sunwood and that his Liens were improper, and the amount stated on the Liens was exaggerated in the amount of \$100,000.00.

27. Pursuant to §329.51 Fla. Stat., a lien asserted against personal property (Club’s aircrafts) are also subject to Chap. 713 Fla. Stat.

28. Pursuant to §817.535 Fla. Stat.:

(2)(a) A person who files or directs a filer 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.

29. Finally, pursuant to §713.31 Fla. Stat., the remedy against a lienor who files a fraudulent lien:

If the lienor who files a fraudulent lien is not the prevailing party, the lienor shall be liable to the owner or the defrauded party who prevails in an action under this

subsection in damages, which shall include court costs, clerk's fees, a reasonable attorney's fee and costs for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

Willful exaggeration is defined as:

(2)(a) Any lien asserted under this part in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he or she seeks to impress such lien or in which the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien. See §713.31(2)(a) Fla. Stat.

30. Defendant Kennedy *knew* he did not give Club \$100,000 of his own money; he did not perform any work on Club's aircrafts totaling \$100,000; he did not provide \$100,000 worth of parts to Club's aircrafts. Thus, Defendant Kennedy willfully exaggerated his lien, as he had *no* personal basis for a lien against Club's aircrafts in any amount. Defendant Kennedy filed not one (1) but four (4) such fraudulent liens.

31. Defendant Kennedy, in his long-standing position of treasurer and director Club, knew that the By-Laws require an financial transaction involving more than \$80,000 must be approved by the membership. See *By-Laws*.

32. Despite this knowledge and obligation to obtain such a note, Defendant Kennedy secured no such vote of the member in 2018 when he gave his alleged loan to the Club, or

in 2021 when he recorded his liens against the Club's aircrafts.

33. Defendant Kennedy entered into an agreement with Sunwood without the necessary authorization from the membership, Defendant Kennedy filed four (4) fraudulent liens against the Club's aircrafts, Defendant Kennedy filed an affidavit against Club in favor of Sunwood that even contradicted Sunwood's own claims and assertions in this case.

34. As a direct and proximate result thereof, Sunwood obtained a final judgment against Club for \$100,000 plus accumulated interest for a receipt of money, Club was unaware of any such alleged loan due to Defendant Kennedy's actions and self-dealing interests. Additionally, Club was required to spend attorney fees and court costs in defending itself against Sunwood. See *Mims Crane Service, Inc. v. Insley Mfg. Corp.*, 226 So.2d 836, 839 (Fla. 2<sup>nd</sup> DCA 1969).

35. As the Fourth District Court of Appeals has stated: common law indemnity is a claim that "shifts the entire loss from one who, although without active negligence or fault, has been obligated to pay, because of some vicarious, constructive, derivative, or technical liability, to another who should bear the costs because it was the latter's wrongdoing for which the former is held liable." *Id.* at 493. "Indemnity rests upon the fault of another which has been imputed to or constructively fastened upon the one seeking indemnity, and there can be no indemnity between joint tortfeasors." *Id.* See *Diplomat Properties, LTD Partnership v. Technoglass, LLC.*, 114 So.3d 357, 359-360 (Fla. 4<sup>th</sup> DCA 2013).

36. Here, Defendant Kennedy without the consent of Club's members, took money from Sunwood, failed to have any documentation of same by which Club would be aware of the money due Sunwood, did not inform Club of such transaction even after Sunwood demanded repayment of the money. See *Deposition of Greg Gilhooly*.

37. Defendant Kennedy further deceived Club but filing his Liens and executing a promissory note in favor of himself, thus leading Club to believe that it was indebted to Kennedy not Sunwood for the \$100,000 and thus not repaying Sunwood and defending itself against Sunwood's claims.

WHEREFORE, Club moves this Court for entry of a summary judgment against Third-Party Defendant Kennedy for damages which includes its court costs and attorney fees, and any other relief that his Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via eportal this 20<sup>TH</sup> day of June 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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