

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

CASE NO.: CACE 21-006666 (09)

PAUL K. SANCHEZ,

Plaintiff,

vs.

POMPANO SENIOR SQUADRON
FLYING CLUB, INC., a/k/a POMPANO
BEACH FLYING CLUB,

Defendant,

POMPANO SENIOR SQUADRON FLYING
CLUB, INC., d/b/a POMPANO BEACH FLYING
CLUB, a Florida corporation,

Third Party Plaintiff,

vs.

CARL L. KENNEDY, II,

Third Party Defendant.

**PLAINTIFF'S ANSWER AND AFFIRMATIVE DEFENSES TO
COUNTER-CLAIM**

COMES NOW the Plaintiff, **PAUL SANCHEZ**, (“**SANCHEZ**”) by and through his undersigned counsel and hereby files his Answer and Affirmative Defenses to Defendant **POMPANO SENIOR SQUADRON FLYING CLUB, INC., d/b/a POMPANO BEACH FLYING CLUB'S**, (“**THE CLUB**”) Counter-Claim and in support thereof would state as follows:

1. That Plaintiff **SANCHEZ** admits Paragraphs 2, 3, 4 only that **SANCHEZ** was a current paid Member of **THE CLUB**, 12 only that **SANCHEZ** communicated with **Carl Kennedy**, as well as other Members of the Board of Directors prior to lending \$69,800.00 to **THE CLUB**.

2. That Plaintiff **SANCHEZ** is Without Knowledge as to Paragraphs 1, 7, 8 as alleged, 16, 20 and 22.

3. That Plaintiff **SANCHEZ** denies Paragraphs 5, 6, 9-11 that the Board of Directors of **THE CLUB** never voted to approve all of the Loans made by **SANCHEZ** to **THE CLUB**, 13, 14 that **SANCHEZ** was a Member of the Board of Directors for **THE CLUB** for calendar years 2017 through 2019, 15, 19 that **SANCHEZ** was a Member of the Board of Directors of **THE CLUB** for calendar years 2017 through 2019, 21, 23, 24 that there was no documentation executed by **THE CLUB** evidencing loans made by **SANCHEZ** to **THE CLUB**, 25 that **SANCHEZ** was a Director of **THE CLUB** for calendar years 2017 through 2019, 26, 27 that **SANCHEZ** was a Director of **THE CLUB** for calendar years 2017 through 2019, 26, 28–30, 32–34, and 36–39.

4. That Plaintiff **SANCHEZ** further denies any and all allegations not specifically addressed herein and further denies all Affirmative Defenses alleged by **THE CLUB** and demands strict proof thereof.

In further Answer to Defendant's Counter-Claim and by way of Affirmative Defense thereto, Plaintiff would state as follows:

I

5. As to Plaintiff's First Affirmative Defense he would state that Count I of the Counter-Claim fails to state a cause of action for Breach of Fiduciary Duty. More

specifically to properly state a cause of action for the Breach of Fiduciary Duty **THE CLUB** was required to allege that **SANCHEZ** and **THE CLUB** shared a special relationship whereby, 1) **THE CLUB** reposes Trust and Confidence in **SANCHEZ**, and; 2) That **SANCHEZ** undertakes such Trust and assumes a duty to advise, counsel and/or protect **THE CLUB**. **THE CLUB** is further required to allege that **SANCHEZ** breached his duties to **THE CLUB** and as a result, **THE CLUB** suffered damages. **THE CLUB** never alleged that it reposed Trust and Confidence in **SANCHEZ**, nor did it allege that **SANCHEZ** undertook and accepted such Trust and thereby assumed a duty to advise, counsel and/or protect **THE CLUB**. **THE CLUB**, however, does falsely allege that **SANCHEZ** was a Member of the Board of Directors during calendar years 2017, 2018 and 2019. Apparently, by falsely alleging that **SANCHEZ** was a Member of the Board of Directors, that it would create an illusion that **SANCHEZ** naturally owed a greater duty to **THE CLUB** and its Members as a Director for **THE CLUB**. Attached hereto are the Annual Reports for **THE CLUB** for calendar years 2017, 2018 and 2019. Nowhere in any of the said Annual Reports does it state that **SANCHEZ** was either an Officer or Director of **THE CLUB**. In truth, **SANCHEZ** was merely a Member of **THE CLUB**, conducted business in an arm's length capacity, followed accepted protocol as a mere Member and as a result never owed a duty to protect and/or advise **THE CLUB**. As a matter of law, Count I fails to state a cause of action and must be dismissed.

II

6. That as to Plaintiff **SANCHEZ'S** Second Affirmative Defense he would state that even assuming that **THE CLUB'S** false allegations are true and correct for Count I, it is still prohibited from bringing this cause of action against **SANCHEZ**. More

specifically, the Limitations Period for bringing a cause of action for Breach of Fiduciary Duty is four (4) years. See **Florida Statute § 95.11 (3)(c)**. **THE CLUB** filed its cause of action against **SANCHEZ** on December 21, 2021. Therefore, any and all false allegation as to a Breach of Fiduciary Duty beyond December 20, 2017 are barred as a matter of law.

III

7. That as to Plaintiff **SANCHEZ'S** Third Affirmative Defense he would state, that **THE CLUB'S** cause of action for Common Law Indemnity fails to state a cause of action for which relief can be Granted. More specifically, in order to 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 from whom he is seeking indemnity 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 act of the party from whom he is seeking indemnity. See *Farm Bureau Gen. Ins. Co. v. Ins. Company of North America*, 763 So.2d 429 (Fla. 5th DCA 2000). **THE CLUB** has failed to allege any of the required elements necessary to plead a cause of action for Common Law Indemnity and as a result, this Count must be dismissed. Moreover, Indemnity requires three (3) players to be a viable claim. The first player is the one sued by the injured third party; the second player is the person who caused the injury to the injured third party and the last player is the injured third party himself. The absurdity of pleading this cause of action in this Case is readily apparent. **THE CLUB** erroneously believes that because **SANCHEZ** loaned **THE CLUB** \$69,800.00, **SANCHEZ** must indemnify **THE CLUB** by paying himself what **THE CLUB** owes him.

IV

8. As to Plaintiff **SANCHEZ'S** Fourth Affirmative Defense he would state, that **THE CLUB'S** third cause of action is similarly defective as is its cause of action for Common Law Indemnity and as a result fails to state a cause of action for which relief can be Granted. To plead a cause of action for Contractual Indemnity the party seeking Indemnity must allege that; 1) Plaintiff discharged a duty owed to another party as a result of some vicarious, constructive, derivative or technical liability; 2) The Defendant should have discharged the duty satisfied by the Plaintiff; 3) The Plaintiff is without any fault; and, 4) the Plaintiff suffered damages by discharging the liability that should be borne by the Defendant. *Zeiger Crane Rentals, Inc. v. Double A Industries, Inc.* 16 So.3d 907 (Fla. 4th DCA 2009). **THE CLUB** has once again failed to allege any of the elements of Contractual Indemnity and, as a result, this Count must fail.

Moreover, in cases involving Contractual Indemnity, the terms of the agreement will determine whether the indemnitor is obligated to reimburse the indemnitee for a particular claim. *Allstate Ins. Company v. Metro Dade County*, 436 So.2d 976 (Fla. 3rd DCA 1983); *Houdaille Industries, Inc. v. Edwards*, 374 So.2d 490 (Fla. 1979). A review of **THE CLUB'S** attached Exhibit #1 at Page 5, Sec 5, "Indemnification", clearly contradicts the allegations for Indemnification against **SANCHEZ**. As a result, this cause of action must fail. See also, *C.B. Contractors, LLC v. Allens Steel products, Inc.*, 261 So.3d 711 (Fla. 5th DCA 2018) for the proposition that an indemnity claim cannot be brought in the absence of a special relationship. **THE CLUB** has failed to allege any special relationship between it and **SANCHEZ**. Therefore, this cause of action should fail.

V

9. That as to Plaintiff **SANCHEZ'S** Fifth Affirmative Defense he would state, that **THE CLUB** is not entitled to plead an Entitlement to Attorney's Fees and as a result, that request should be stricken or considered as a nullity. In particular, to plead or claim an award of Attorney's Fees, such pleading must demonstrate: 1) The contractual or statutory basis for an award; 2) Why the opposing party should be obligated to pay the award; and, 3) The obligation of the moving party to pay his or her attorney's fees.

Carman v. Gilbert, 615 So.2d 701 (Fla. 2d DCA 1992).

WHEREFORE, Plaintiff **SANCHEZ** having fully answered **THE CLUB'S** Counter-Claim prays that same be dismissed with prejudice with all costs and fees to be borne by **THE CLUB** and any additional relief the Court may deem just and reasonable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2022, a true and correct copy of the foregoing was served on all counsel of record and pro se parties identified on the attached Service List in the manner specified.

Respectfully submitted,

By: /s/ Robert J. Puzio _____
ROBERT J. PUZIO
Florida Bar No.: 622516

THE LITIGATION DEFENSE GROUP, LLC
Attorney for Plaintiff
1040 Bayview Drive
Suite 520
Fort Lauderdale, Florida 33304
Telephone: (954) 489-7766
Facsimile: (954) 489-7664
Primary E-Mail: puziolaw@bellsouth.net

SERVICE LIST

Edward F. Holodak, Esquire
7580 NW 5th Street, Suite 15125
Plantation, Florida 33317
Attorney for Defendant/Third Party Plaintiff
pleadings@holodakpa.com
(via: Electronic Mail)

NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY
NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY
NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY

2017 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 365975

Entity Name: POMPANO SENIOR SQUADRON FLYING CLUB, INC.

Current Principal Place of Business:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432

Current Mailing Address:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432 US

FEI Number: 59-1416663

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

MELLGREN, LAURENCE
4509 KING PALM DRIVE
TAMARAC, FL 33319 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Officer/Director Detail :

Title P,D
Name MELLGREN, LAURENCE
Address 4509 KING PALM DRIVE
City-State-Zip: TAMARAC FL 33319

Title V, D, S
Name WATKINS, DAVID
Address 3240 LAKESHORE DR
City-State-Zip: DEERFIELD BEACH FL 33442

Title D
Name ZILLER, RON
Address 969 SE 6TH TERRACE
City-State-Zip: POMPANO BEACH FL 33060

Title D
Name HANNAN, ROBERT
Address 2620 N.E. 10TH TERRACE
City-State-Zip: POMPANO BEACH FL 33064

Title T, D
Name KENNEDY, CARL L
Address 2929 S. OCEAN BLVD. SUITE 510
City-State-Zip: BOCA RATON FL 33432

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: CARL KENNEDY

TREASURER

04/28/2017

Electronic Signature of Signing Officer/Director Detail

_____ Date

2018 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 365975

Entity Name: POMPANO SENIOR SQUADRON FLYING CLUB, INC.

Current Principal Place of Business:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432

Current Mailing Address:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432 US

FEI Number: 59-1416663

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KENNEDY, CARL
2929 S. OCEAN BLVD
SUITE 510
BOCA RATON, FL 33432 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: CARL KENNEDY

02/28/2018

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title P,D
Name MELLGREN, LAURENCE
Address 4509 KING PALM DRIVE
City-State-Zip: TAMARAC FL 33319

Title V, D, S
Name WATKINS, DAVID
Address 3240 LAKESHORE DR
City-State-Zip: DEERFIELD BEACH FL 33442

Title D
Name ZILLER, RON
Address 969 SE 6TH TERRACE
City-State-Zip: POMPANO BEACH FL 33060

Title D
Name HANNAN, ROBERT
Address 2620 N.E. 10TH TERRACE
City-State-Zip: POMPANO BEACH FL 33064

Title T, D
Name KENNEDY, CARL L
Address 2929 S. OCEAN BLVD. SUITE 510
City-State-Zip: BOCA RATON FL 33432

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: CARL KENNEDY

TREASURER

02/28/2018

Electronic Signature of Signing Officer/Director Detail

Date

2019 FLORIDA PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 365975

Entity Name: POMPANO SENIOR SQUADRON FLYING CLUB, INC.

Current Principal Place of Business:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432

Current Mailing Address:

2929 S. OCEAN BLVD.
SUITE 510
BOCA RATON, FL 33432 US

FEI Number: 59-1416663

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

KENNEDY, CARL
2929 S. OCEAN BLVD
SUITE 510
BOCA RATON, FL 33432 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: CARL KENNEDY

04/26/2019

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title P,D
Name MELLGREN, LAURENCE
Address 4509 KING PALM DRIVE
City-State-Zip: TAMARAC FL 33319

Title V, D, S
Name MCNEIL, DON
Address 2720 NE 6TH STREET
City-State-Zip: POMPANO BEACH FL 33062

Title D
Name ZILLER, RON
Address 969 SE 6TH TERRACE
City-State-Zip: POMPANO BEACH FL 33060

Title D
Name HANNAN, ROBERT
Address 2620 N.E. 10TH TERRACE
City-State-Zip: POMPANO BEACH FL 33064

Title T, D
Name KENNEDY, CARL L
Address 2929 S. OCEAN BLVD. SUITE 510
City-State-Zip: BOCA RATON FL 33432

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath: that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: CARL L KENNEDY

T, D

04/26/2019

Electronic Signature of Signing Officer/Director Detail

Date