

IN THE COUNTY COURT IN
AND FOR BROWARD COUNTY,
FLORIDA

LLOYD DAVID HILL and
GRAHAM DAVID HILL,

CASE NO.: CONO 20 010538 (71)

Plaintiffs

v.

POMPANO SENIOR SQUADRON FLYING
CLUB D/B/A POMPANO BEACH FLYING
CLUB, A Florida corporation,

Defendant.

**RESPONSE TO MOTION RESCIND AND UNSEAL SETTLEMENT
AGREEMENT**

Defendant, POMPANO SENIOR SQUADRON FLYING CLUB D/B/A POMPANO
BEACH FLYING CLUB (Defendant "Club"), by and through its undersigned counsel,
files this Response to Hills' Motion to Rescind and Unseal Settlement Agreement
("Motion"), and says:

1. Defendant Club files this response to Plaintiff Hill's Motion objecting to the relief sought by Plaintiff Hill.
2. Initially Defendant Club asserts that pursuant to Paragraph 3 of the Settlement Agreement, this Court lacks jurisdiction to hear this matter.
3. At issue in the Motion is the alleged improper disclosure of the parties' confidential settlement agreement ("Settlement Agreement") in this matter. Defendant Club will submit the Settlement Agreement to this Court under seal and not include same as part of its response so as not to make the Settlement Agreement part of the public record herein.

4. Plaintiff Hill asserts that the conveyance of a copy of the settlement agreement to Carl Kennedy pursuant to a Request to Produce issued by Carl Kennedy to Plaintiff Club in Circuit Court Case Number CACE 20 – 005993 (“Kennedy Case”) Was a violation of the Settlement Agreement.

5. A reading of the Settlement Agreement reveals otherwise. Additionally, the court in the Kennedy Case issued an Order compelling production of the Settlement Agreement among other documents. Copy of Kennedy's Request to Produce, Motion to Compel, and subsequent Order, are attached hereto as Defendant's Composite Exhibit #1.

6. Defendant Kennedy in the Kennedy Case requested all documents (nonprivileged) related to this litigation ("Hill Litigation"). The only non-privilege pleading document not otherwise available to Defendant Kennedy in the Kennedy Case regarding the Hill Litigation was the Settlement Agreement. Under Florida law, the Settlement Agreement although confidential was not "privileged." See *State v. Castellano*, 460 So.2d 480 (Fla. 2nd DCA 1984) (holding that privilege is statutorily defined and created and there is no such statutory privilege for confidentiality). Thus, the Settlement Agreement was subject to the Request to Produce and Order in the Kennedy Case.

7. Secondly, the terms of the Settlement Agreement provides that the Settlement Agreement "shall not be made public." Disclosure of the Settlement Agreement to Defendant Kennedy in the Kennedy Case did not make the settlement agreement Public.

8. This is because (as a shareholder of Plaintiff Club, the disclosure of the Settlement Agreement to Defendant Kennedy, not only pursuant to Court Order, but otherwise is not disclosure to the public, but is maintained "in house") Defendant Kennedy is a shareholder and member of Defendant Club and therefore not "public." Defendant Kennedy has certain rights to the records of Defendant Club pursuant to Chapter 607 Fla.

Stat. See *Davidson v. Ecological Science Corp.*, 266 So.2d 71 (Fla. 3rd DCA 1972) (holding that even a shareholder in litigation maintains rights to the corporation's records).

9. There is a plethora of precedent that holds that documents that may have enjoyed certain protection during the pendency of litigation are no longer protected from disclosure to shareholders once that litigation is concluded. See for example *Barfield v. School Board of Manatee County*, 135 So.3d 560 (Fla. 2nd DCA 2014) (holding once litigation is ended work product and other privileges no long apply); *Nassif v. Continental Towers, Inc.*, 1998 WL 34311870 (Fla. DBPR Arb.) (holding that shareholders of corporation have right to production of settlement agreements and other litigation documents once the litigation is concluded) and *The Florida Atty. Gen.'s Opinion, Mr. Raul Gastesi, Jr.* 2015 W1 522 7498 (2015) (holding that settlement agreements are subject to record disclosure after litigation is concluded). At the time of the production of the Settlement Agreement between Plaintiff Hill and Defendant Club, to Defendant Kennedy in the Kennedy Case, the Hill Litigation was completed and closed.

10. Accordingly, not only was production of the Settlement Agreement to Defendant Kennedy in the Kennedy Case subject to the Courts Order, production was subject to the above-cited case law pursuant to Defendant Kennedy's shareholder request for documents.

11. As the Settlement Agreement has not been produced to anyone besides Defendant Kennedy in the Kennedy Case, there has been no violation of the terms of the Settlement Agreement or confidentiality thereof and thus no basis for Plaintiff Hill's Motion.

12. As there has been no violation of the Settlement Agreement, there is no basis for this Court to enter the Order proposed by Plaintiff Hill.

WHEREFORE, Defendant Club moves this Honorable Court for an Order denying Plaintiff Hill's Motion and any further relief that this Court deems just and equitable.

I HERBY CERTIFY that a true and correct copy of the foregoing has been sent U.S. Mail this 19th day of November 2021 to Lloyd David Hill and Graham David Hill, 2728 NE 12 St., Pompano Beach, FL 33062.

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

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