

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and
TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E"

**DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO DISMISS
COUNTERCLAIM**

COMES NOW Pro-Se Defendant, Marc Moszkowski, and in response to the Plaintiffs' Motion to Dismiss Counterclaim entered on March 11th, 2025, states that Plaintiffs' Motion is due to be denied because Defendant's counterclaims comply with Rule 1.110, Florida Rules of Civil Procedure. Thus, this Honorable Court should decline to grant Plaintiffs such a drastic and disfavored remedy, particularly in the specific context here presented.

WHEREFORE, Plaintiffs' Motion to Dismiss Counterclaim is due to be denied, or in the alternative, this Honorable Court should grant the Defendant leave to further amend the pleadings, or Defendant should be granted whatever further or different relief which the Court deems appropriate. Memorandum in Support hereof has been contemporaneously

filed herewith.

Respectfully submitted this 24th day of March, 2025

Marc Moszkowski, Pro Se
Email: m.moszkowski@deepgulf.net
Phone: +1(850)316 8462
Le Verdos
83300 Châteaudouble, France

A handwritten signature in blue ink that reads "M. Moszkowski". The signature is written in a cursive, flowing style.

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of March, 2025, a copy of this motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

A handwritten signature in blue ink that reads "M. Moszkowski". The signature is written in a cursive, flowing style.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and
TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E

**MEMORANDUM IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIM**

Pro-Se Defendant, Marc Moszkowski, files this Memorandum in Support of Defendant's Opposition to Plaintiffs' Motion to Dismiss Counterclaim and would show as follows:

Florida Rule of Civil Procedure 1.140(f) provides that the "court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time."

However, "A motion to strike is a drastic remedy [,]"which is disfavored by the courts." *Thompson v. Kindred Nursing Ctrs. E., LLC*, 211 F. Supp. 2d 1345, 1348 (M.D. Fla. 2002) (quoting *Augustus v. Bd. of Pub. Instruction of Escambia Cnty., Fla.*, 306 F.2d 862, 868 (5th Cir. 1962)). Accordingly, motions to strike are usually "denied unless the allegations have no possible relation

to the controversy and may cause prejudice to one of the parties." *Id.* (internal quotation marks omitted); see also *In re Se. Banking Corp. Sec. & Loan Loss Reserves Litig.*, 147 F. Supp. 2d 1348, 1355 (S.D. Fla. 2001). An affirmative defense will only be stricken if it is insufficient as a matter of law. See *Anchor Hocking Corp. v. Jacksonville Elec. Auth.*, 419 F. Supp. 992, 1000 (M.D. Fla. 1976).

Adams v. Jumpstart Wireless Corp., 294 F.R.D. 668 (S.D.Fla. 2013).

I. As regards Count I ACCOUNTING:

Plaintiffs argue that the question of dismissal of Count I, raising the elements of an accounting, was addressed in *Zaki Kulaibee Establishment v. McFlicker*, 788 F.Supp. 2d 1363 (S.D. Fla. 2011), rev'd and remanded on other grounds, 771 F.3d 1301 (11th Cir. 2014). However, in that case the Eleventh Circuit reversed the District Court's Dismissal of the accounting. In its examination of Florida Law, it said:

("[E]quity will [provide an accounting] where the contract demands between litigants involve extensive or complicated accounts and it is not clear that the remedy at law is as full, adequate and expeditious as it is in equity." (quoting *F. A. Chastain Constr., Inc. v. Pratt*, 146 So. 2d 910, 913 (Fla. 3d Dist. Ct. App. 1962))). In the latter situation, an accounting is appropriate in every case. See *Armour & Co. v. Lambdin*, 154 Fla. 86, 16 So. 2d 805, 810 (Fla. 1944) ("[I]t may be said

generally that whenever there is a fiduciary relationship such as that of trustee, agent, executor, etc., the right to an accounting in equity is undoubted." (quotation marks omitted)). To obtain an accounting under Florida law, then, a party must show either (1) a sufficiently complicated transaction and an inadequate remedy at law or (2) the existence of a fiduciary relationship.

Generally speaking, however, a fiduciary relationship is one in which "one person is under a duty to act for the benefit of another on matters within the scope of the relationship." Black's Law Dictionary 1402 (9th ed. 2009).

Id. p. 1311.

Plaintiffs' also cite an erroneously transcribed quote ("**accounting is only a remedy attached to an independent cause of action**" [sic]), whereas the actual quote in *Zaki Kulaibee Establishment v. McFliker*, 771 F.3d 1301 (11th Cir. 2014), Decided Nov 18, 2014 is rather "... **an accounting is best understood as a remedy for a cause of action, not as a cause of action in its own right**. See *Becker v. Davis*, 491 F.3d 1292, 1305 (11th Cir.2007), abrogated on other grounds by *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896, 173 L.Ed.2d 832 (2009) ("**[A]n accounting is a remedy attached to a separate independent cause of action.**"). However, the *Becker* case addresses only the question whether an arbitration agreement applied to a claim for an accounting, not a dismissal under Rule 1.140 (b)(6), Florida Rules of Civil Procedure.

However, an accounting is a remedy attached to a separate independent cause of action. See *Johnson v. Pullman, Inc.*, 845 F.2d 911, 913 (11th Cir. 1988) ("Although plaintiff's complaint contained a count in which an accounting was sought, that relief would not be available here absent some independent cause of action.").

Accordingly, if the four substantive claims brought by the Trust against the defendants arise out of the agreements and are therefore subject to arbitration, as the parties agree, the Trust's claim for an accounting, which is merely a remedy for any liability, would also arise out of the agreements.

Id. p.1305.

Defendant directs the Court's attention to the fact that Plaintiffs also request an accounting in their Complaint, and it would be inequitable to dismiss the same claim on behalf of the Defendant, based on 1.140 (b)(6), Florida Rules of Civil Procedure, prior to further discovery.

II. As regards Count II: BREACH OF CONTRACT; Count III: WORK AND LABOR DONE; Count IV: BREACH OF CONTRACT; Count V: FRAUD BASED ON PROMISE TO PAY; and Count VI: FRAUDULENT MISREPRESENTATION:

As in all his former pleadings, Defendant reiterates that Plaintiff had an incontrovertible obligation mandated by the U.S. Government to pay Defendant the ongoing salary during all times his Plaintiff-sponsored visas

were extant, i.e. during the 12 years between 2005 and 2017. However, not only were salaries only paid between 2008 and 2012, while 7 years were left unpaid, but also Plaintiff conspired with one of the shareholders to substitute for salaries legally due an illegal personal loan at usurious interest rate. An amount of \$50,000 was wired by Rustin Howard himself, who had meanwhile personally masqueraded it as a loan, instead of a regular salary advance. The conspiracy was particularly egregious considering that, to add insult to injury, Defendant was at the time having all (100%) of his private emoluments from third party activities paid to Plaintiff, said emoluments largely exceeding the amount wired by Rustin Howard, while Plaintiff never used a cent of this revenue to pay Defendant's salaries. Furthermore, the shareholder, who had never paid a cent to Defendant, later sued Defendant in various French courts of law for the reimbursement of an amount he had never disbursed, thus inflicting considerable harm on the Defendant.

As evidence for the foregoing, Defendant directs the attention of the Court to his former pleadings which show unequivocally that:

- A.** Plaintiff had not only solemnly assured the Government of the United States that Plaintiff would pay all Defendant's salaries throughout the duration of his visas, but also

B. Plaintiff's Rustin Howard had given in writing his personal guarantee to the effect that *"In the event the company does not meet financial expectations, I will use personal assets, including the equity in my home, to guarantee payment of the prevailing wage"*, and

C. The Minutes of Board Meeting and the Executive Order which purportedly suggest some alleged but absurd agreement by Defendant to wave his salaries are obvious fabrications and even forgeries made after the fact, since one differs entirely for that matter from the copy made available by Plaintiff to Defendant, and the other is signed only by Plaintiff and was never communicated to Defendant until discovery: who ever heard of a valid contract which was signed by only one party and was never communicated to the other?

D. The illegal loan arranged by Plaintiff's Rustin Howard was an egregious scam devised not only to defraud Defendant of his due salaries, but also to illegally alter stock ownership.

The aforementioned pleadings are found as follows:

1. "Defendant's Response to Plaintiff's Statement of Undisputed Facts" and in particular Exhibit "C", filed on January 21st, 2025, which uncovers all the minutes of Board meetings modified by Plaintiff

after the fact, or altogether fabricated;

2. "Defendant's Response to Plaintiff's affidavit" and in particular Exhibit "M", filed on January 21st, 2025, which shows the irrevocable official commitment by Plaintiff to pay Defendant's salaries;
3. "Defendant's Second Affidavit Civil Conspiracy" and in particular Exhibit "A", filed on January 21st, 2025.

Plaintiff's Motion to Dismiss Counterclaim is thus due to be denied, or in the alternative, this Honorable Court should grant the Defendant leave to further amend the pleadings, or Defendant should be granted whatever further or different relief to which the Court deems appropriate.

Respectfully submitted this 24th day of March, 2025

Marc Moszkowski, Pro Se
Email: m.moszkowski@deepgulf.net
Phone: +1(850)316 8462
Le Verdos
83300 Châteaudouble, France



CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of March, 2025, a copy of this motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

M. Marzkowski