

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

P & S ASSOCIATES, GENERAL
PARTNERSHIP and S & P ASSOCIATES,
GENERAL PARTNERSHIP,

CASE NO. 12-028324 (07)
Complex Litigation Unit

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

**CONSERVATOR'S MOTION TO STRIKE
CERTAIN PARTIES AFFIRMATIVE DEFENSES**

Philip J. von Kahle (the “**Conservator**”), as Conservator for P&S Associates, General Partnership (“**P&S**”) and S&P Associates, General Partnership (“**S&P**”) (together, the “**Partnerships**”), by and through undersigned counsel, hereby files this motion to strike pursuant to Florida Rule of Civil Procedure 1.140(b) certain affirmative defenses asserted by Carmelo and Bertha Santamaria (the “**Santamaria Defendants**”), and states as follows:

Argument

1. To resolve the dispute between various partners as to an appropriate distribution method, in July of 2012, the Partnerships filed the instant interpleader action (the “**Interpleader Action**”).
2. On January 17, 2013, this Court appointed Philip Von Kahle as Conservator of the Partnerships in a parallel proceeding¹ by entering the *Order Appointing Conservator* (the “**Conservator Order**”).
3. The Conservator Order directed the Conservator to, among other things, advance the Interpleader Action.
4. On May 31, 2013, the Conservator filed his: *Motion for Summary Judgment to (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedures* (the “**Distribution Motion**”).

¹ *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the “**Conservator Suit**”).

5. On July 17, 2013, the Conservator filed the Third Amended Complaint in the Interpleader Action. The Third Amended Complaint added certain parties (among others, previously omitted Partners of the Partnerships), to furnish same with notice of the pendency of the Interpleader Action. It did not make substantive changes. The Third Amended Complaint seeks a determination of the distribution method.

6. Consistent with the Conservator Order, the Conservator has served a majority of the parties in the Interpleader Action. Certain parties have filed responses which assert non-meritorious or frivolous defenses which ought to be struck without dedicating significant resources of the Court, the Partners, and the Partnerships' estate.

7. On October 7, 2013, this Court granted the Conservator's Distribution Motion, adopted the recommendations of the Conservator to apply the 'Net Investment' method for distributions, and set for trial other outstanding issues.

8. On November 19, 2013 the Court conducted a trial on the remaining issues.

9. On December 20, 2013, the Court entered its Findings of Fact, Conclusions of Law, and Final Order of Distribution (the "Distribution Order")

10. On January 17, 2014, the Santamaria Defendants filed their answers and affirmative defenses (the "**Santamaria Answer**").

11. The Santamaria Answers states, among other things, as an affirmative defense "unclean hands" (the "Affirmative Defense").

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

13. The Affirmative Defense ought to be stricken as it is impertinent to the resolution of the Interpleader Action which seeks a determination as to the appropriate method of distribution to the Partners. The Affirmative Defense makes little sense in light of the relief sought through the Complaint. The presence of the Affirmative Defense, while meritless, is unnecessary to the Court's determination of the appropriate distribution methodology.

14. The Santamaria Defendants acknowledge that they "have not asserted a claim against the funds on deposit and does not intend to assert a claim against such funds unless this court rules in a companion case that it must return investment funds that it received in years far beyond any statutory limitations period." (Santamaria Answer at 8).

15. Accordingly, the Santamaria Defendants are aware that, at present, they are not entitled to any funds under any method of distribution discussed in the Complaint or as ordered in the Distribution Order.

16. Accordingly, the Court ought to strike the Affirmative Defense to avoid a waste of judicial resources.

WHEREFORE the Conservator request that this Court enter an Order striking Santamaria Defendants' Affirmative Defense, and for such other relief as the Court deems just and proper.

Respectfully submitted this January 31, 2014.

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