

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

MARGARET J. SMITH as Managing
General Partner of P&S ASSOCIATES,
GENERAL

PARTNERSHIP, a Florida limited
partnership, and S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; and S&P
ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership,

Plaintiffs,

v.

Case No. 12-34121 (07)
Complex Litigation Unit

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, DIANE M. DEN
BLEYKER, an individual, ETTOH LTD., a
Florida limited partnership, JOHN
AND/OR LOIS COMBS, an
individual, ERSICA P. GIANNA, Trustee,
CATHERINE B. & BERRY C. SMITH,
individuals, EDNA A. PROFE REV. LIV.
TRUST, HERBERT IRWIG
REVOCABLE TRUST, HAMPTON
FINANCIAL GROUP, INC ., a Florida
corporation, EDITH ROSEN, an
individual, RICHARD F. AND BETTE
WEST, individuals, GREGG WALLICK,
an individual, JAMES AND VALERIA
BRUCE JUDD, individuals, JULIANNE
M. JONES, an individual, JESSE A. AND
LOIS GOSS, Trustees, LISA RYAN, an
individual, GERTRUDE GORDON, an
individual, SAM ROSEN, an individual,
PARAGON VENTURES, LTD., an
Austrian limited partnership
HOLY GHOST FATHERS
INTERNATIONAL FUND #2, a Tax-
exempt Organization, SUSAN E.

MOLCHAN OR THOMAS A.
WHITEMAN, individuals, JANET B.
MOLCHAN TRUST DTD 05/19194,
ROBERT A. UCHIN REV TRUST, HOLY
GHOST FATHERS, COMPASSION
FUND, a Tax-exempt Organization, HOLY
GHOST FATHERS HG-MOMBASA, a
Tax-exempt Organization, HOLY GHOST
FATHERS INTERNATIONAL FUND #1,
a Tax-exempt Organization, HOLY
GHOST FATHERS HG-
IRELAND/KENEMA, a Tax-exempt
Organization, CONGREGATION OF THE
HOLY GHOST - WESTERN
PROVIDENCE, a Tax-exempt
Organization, ABRAHAM OR RITA
NEWMAN, individuals, JOHN J.
CROWLEY, and/or JONATHAN
CROWLEY, individuals, ALEX E.
MOLCHAN TRUST DTD 05/19/94, and
ANN OR MICHAEL SULLIVAN,
individuals,

Defendants.

**DEFENDANT, CONGREGATION OF THE HOLY GHOST - WESTERN PROVINCE'S
RESPONSE TO PLAINTIFF'S MOTION TO FILE THIRD AMENDED COMPLAINT**

Defendant, Congregation of the Holy Ghost - Western Province, by and through its undersigned counsel, submits this Response to Plaintiff's Motion to file Third Amended Complaint, and states:

1. As the Court will recall, a very specific inquiry was made of Plaintiff's counsel at the status conference on Friday, February 7, 2014, concerning any need to amend the pleadings after the court granted leave to file the Second Amended Complaint. Counsel's response was that the Second Amended Complaint was the last.
2. Five days later, at 3:17 pm, Plaintiff's counsel emailed a proposed Third Amended Complaint and gave the collective defendants 24 hours to advise whether or not it would be opposed. Exhibit "A".

3. Email exchanges ensued. Counsel for Plaintiff wrote the following email:

The judge will likely let us amend to avoid reversible error. We will give you more time to file summary judgements if you want. Alternatively someone objects we file a motion we set a hearing and we risk the schedule. The ball is in your collective courts. [emphasis added] (Exhibit “B”)

4. Further emails ensued. A group of the defendants, through undersigned counsel, proposed the following solution:

We will stipulate to the filing of the Third Amended Complaint with the following conditions.

1. You stipulate that you will not file another Amended Complaint. Enough is enough;
2. The filing deadline for Motions To Dismiss and Motion For Judgment on the Pleadings is moved to 2/28 with a response date on 3/7, reply on 3/14 with a request to the judge to move the hearing on these motions to 3/21.
3. All deadlines on Motions for Summary Judgment on Statute of Limitations are pushed back one more week, to 2/28, so all dates are adjusted two weeks from the original scheduling order. We either keep the 4/7 hearing or ask for a special set hearing or change in the status conference date to accommodate these changed dates. (Exhibit “C”)

5. In an effort to avoid involving the court, the Defendants proposed a reasonable solution, since the Plaintiff was changing the pleading again, despite both a scheduling order and a representation to this Court. Plaintiff’s response was this:

We are trying to move things quickly. That is why we sent around the amended complaint on Wednesday [February 12, 2014]. We are entitled to amend as the judge will not want to create reversible error. You are now slowing things down. The best way to keep everything on track is to agree to our amendment, and not ask the judge to do something that will get him reversed on appeal.

We will be filing our motion, and are very disappointed that you are trying to slow things down. [emphasis added] (Exhibit “D”)

6. Within 24 hours, Plaintiff accused the Defendants of trying to slow things down by first objecting to the Amendment and then by proposing a reasonable cooperative solution. The irony, of course, is that it is the Plaintiff who is now seeking to amend to include a count for a statutory claim which already was the basis for Count 1, a common law tort claim. The

Plaintiff feigns concern that its own actions, and the reactions to those actions, will cause delay. Defendants want nothing more than to proceed, but the Plaintiff has engaged in a strategy of amendment in the face of his counsel's own agreement to the scheduling order and the status quo.

7. This defendant, and we submit that the others that were involved in the discussion would concur, still have no objection to the Third Amended Complaint, provided that the defendants are given sufficient time to prepare their responsive and moving pleadings. However, the defendants have been desperately trying to be heard on their respective motions and the Plaintiff continues to find new ways to reset the pleading clock. At some point this has to stop.
8. Plaintiff's counsel was given the opportunity on February 7 to state that the pleadings needed to be amended for a third time. They did not do so. The defendants have not caused these delays so the Plaintiff should bear the burden. To the extent this Court is inclined to grant the Motion to Amend, the Plaintiff should be given shortened response times to any of the anticipated motions so that the original motion argument dates are kept.

I certify that the foregoing pleading was served using the e-file facility on February 13, 2014.

Dobin Law Group, PA
500 University Boulevard
Suite 205
Jupiter, Florida 33458
561-575-5880; 561-246-3003 - Facsimile
Attorneys for Congregation of the Holy Ghost -
Western Province

/s/ Marc S. Dobin

Marc S. Dobin
Florida Bar No. 997803
Jonathan T. Lieber
Florida Bar No. 92837
service@DobinLaw.com

Smith, et al. v. Hooker Charitable Trust, et al., Case No. 12-34121 (07)

Steven D. Weber <SWeber@bergersingerman.com>

Wed 2/12/2014 3:17 PM

To: Leonard K. Samuels <LSamuels@bergersingerman.com>; Etan Mark <EMark@bergersingerman.com>; Veronica Leon <VLeon@bergersingerman.com>; ena@assoulineberlowe.com <ena@assoulineberlowe.com>; ah@assoulineberlowe.com <ah@assoulineberlowe.com>; mcasey666@gmail.com <mcasey666@gmail.com>; Pleadings <Service@dobinlaw.com>;

Cc: jwilcomes@mccarter.com <jwilcomes@mccarter.com>; tgoodwin@mccarter.com <tgoodwin@mccarter.com>; Pleadings.rtw@bunnellwoulfe.com <Pleadings.rtw@bunnellwoulfe.com>; aurena@dkdr.com <aurena@dkdr.com>; mfooster@dkdr.com <mfooster@dkdr.com>; dmatlow@danmatlow.com <dmalow@danmatlow.com>; assistant@danmatlow.com <assistant@danmatlow.com>;

1 attachment

Netwinner Complaint - Third Amended Complaint.pdf;

Counsel,

Attached is our proposed Third Amended Complaint for this action (the exhibits referenced therein will be the same exhibits referenced in the Second Amended Complaint). We would like it filed immediately so that it will be considered as part of any motions that you plan to file. For your ease of reference, the changes from the Second Amended Complaint are indicated in Track Changes.

Please tell us no later than tomorrow at 3 p.m. if you will oppose the filing of this Third Amended Complaint so that we may immediately bring this matter before Judge Streitfeld.

[www.bergersingerman.com]  **BERGER SINGERMAN**

Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

SWeber@bergersingerman.com

Exhibit "A"



Please consider the environment before printing this email.

This transmission is intended to be delivered only to the named addressee(s) and may contain information that is confidential, proprietary, attorney work-product or attorney-client privileged. If this information is received by anyone other than the named and intended addressee(s), the recipient should immediately notify the sender by E-MAIL and by telephone at the phone number of the sender listed on the email and obtain instructions as to the disposal of the transmitted material. In no event shall this material be read, used, copied, reproduced, stored or retained by anyone other than the named addressee(s), except with the express consent of the sender or the named addressee(s). Thank you.

CIRCULAR 230 DISCLAIMER: This communication does not constitute a "covered opinion" as such term is defined within Circular 230, and does not comply with the requirements for a "covered opinion." We have not conducted, nor have we been asked to conduct, that type of analysis in this communication. To ensure compliance with requirements imposed by the IRS, we must inform you that any U.S. federal tax advice contained in this communication (including any documents or items appended herein) is not intended or written to be used, and cannot be used,

Re: Smith, et al. v. Hooker Charitable Trust, et al., Case No. 12-34121 (07)

Leonard K. Samuels <LSamuels@bergersingerman.com>

Wed 2/12/2014 3:46 PM

To: Michael Casey <mcasey666@gmail.com>;

Cc: Steven D. Weber <SWeber@bergersingerman.com>; Etan Mark <EMark@bergersingerman.com>; Veronica Leon <VLeon@bergersingerman.com>; ena@assoulineberlowe.com <ena@assoulineberlowe.com>; ah@assoulineberlowe.com <ah@assoulineberlowe.com>; Pleadings <Service@dobinlaw.com>; tabrams@tabramslaw.com <tabrams@tabramslaw.com>;

We want everything cleaned up to not go thru this again. We got this out quickly. The judge will likely let us amend to avoid reversible error. We will give you more time to file summary judgements if you want. Alternatively someone objects we file a motion we set a hearing and we risk the schedule. The ball is in your collective courts.

Sent from my iPhone

On Feb 12, 2014, at 3:37 PM, "Michael Casey" <mcasey666@gmail.com> wrote:

Steven,

What happened to Mr. Samuels' statement to the Judge that "We are willing to stand by the Second Amended Complaint"? The deadline set forth in the Case Management Order to amend pleadings is long past. Moreover, your new Count II seems to merely repeat Count I, but with a new title. Why not simply change the title on Count I?

Mike Casey

On Wed, Feb 12, 2014 at 3:17 PM, Steven D. Weber <SWeber@bergersingerman.com> wrote:

Counsel,

Attached is our proposed Third Amended Complaint for this action (the exhibits referenced therein will be the same exhibits referenced in the Second Amended Complaint). We would like it filed immediately so that it will be considered as part of any motions that you plan to file. For your ease of reference, the changes from the Second Amended Complaint are indicated in Track Changes.

Please tell us no later than tomorrow at 3 p.m. if you will oppose the filing of this Third Amended Complaint so that we may immediately bring this matter before Judge Streitfeld.

<image001.png>

Steven D. Weber

Exhibit "B"

RE: Smith, et al. v. Hooker Charitable Trust, et al., Case No. 12-34121 (07)

Marc S. Dobin <mdobin@dobinlaw.com>

Thu 2/13/2014 10:25 AM

To: Leonard K. Samuels <LSamuels@bergersingerman.com>;

Cc: Eric N. Assouline <ENA@AssoulineBerlowe.com>; Steven D. Weber <SWeber@bergersingerman.com>; Etan Mark <EMark@bergersingerman.com>; Veronica Leon <VLeon@bergersingerman.com>; Ana Hesny <AH@AssoulineBerlowe.com>; mcasey666@gmail.com <mcasey666@gmail.com>; Pleadings <Service@dobinlaw.com>;

Len -

Either through silence or affirmation, the main voices you have been dealing with make the following proposal.

We will stipulate to the filing of the Third Amended Complaint with the following conditions.

1. You stipulate that you will not file another Amended Complaint. Enough is enough;
2. The filing deadline for Motions To Dismiss and Motion For Judgment on the Pleadings is moved to 2/28 with a response date on 3/7, reply on 3/14 with a request to the judge to move the hearing on these motions to 3/21.
3. All deadlines on Motions for Summary Judgment on Statute of Limitations are pushed back one more week, to 2/28, so all dates are adjusted two weeks from the original scheduling order. We either keep the 4/7 hearing or ask for a special set hearing or change in the status conference date to accommodate these changed dates.

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561.246.3003 - fax
MDobin@Dobinlaw.com

sip:marc_dobin@dobinlaw.onsip.com

www.linkedin.com/in/marcdobin

OUR BLOGS ---> www.Lawyersfromjupiter.com

sfmwc

Exhibit "C"

From: Leonard K. Samuels <LSamuels@bergersingerman.com>

RE: Smith, et al. v. Hooker Charitable Trust, et al., Case No. 12-34121 (07)

Leonard K. Samuels <LSamuels@bergersingerman.com>

Thu 2/13/2014 10:46 AM

To: Marc S. Dobin <mdobin@dobinlaw.com>;

Cc: Eric N. Assouline <ENA@AssoulineBerlowe.com>; Steven D. Weber <SWeber@bergersingerman.com>; Etan Mark <EMark@bergersingerman.com>; Veronica Leon <VLeon@bergersingerman.com>; Ana Hesny <AH@AssoulineBerlowe.com>; mcasey666@gmail.com <mcasey666@gmail.com>; Pleadings <Service@dobinlaw.com>;

The judge said he wants everything heard in April. We want that as well. We cannot agree never to amend again, as we may learn things in the future that will cause us to amend. At this time, we do not anticipate another amendment.

We are trying to move things quickly. That is why we sent around the amended complaint on Wednesday. We are entitled to amend as the judge will not want to create reversible error. You are now slowing things down. The best way to keep everything on track is to agree to our amendment, and not ask the judge to do something that will get him reversed on appeal.

We will be filing our motion, and are very disappointed that you are trying to slow things down.

-----Original Message-----

From: Marc S. Dobin [<mailto:mdobin@dobinlaw.com>]

Sent: Thursday, February 13, 2014 10:25 AM

To: Leonard K. Samuels

Cc: Eric N. Assouline; Steven D. Weber; Etan Mark; Veronica Leon; Ana Hesny; mcasey666@gmail.com; Pleadings; tabrams@tabramslaw.com; fcolumbo@tabramslaw.com; jklap@klapholzpa.com; dml@klapholzpa.com; Zachary P. Hyman; jwilcomes@mccarter.com; tgoodwin@mccarter.com; Pleadings.rtw@bunnellwoulfe.com; aurena@dkdr.com; mfooster@dkdr.com; dmatlow@danmatlow.com; assistant@danmatlow.com; JulianKreeger@gmail.com; e-filing@mccaberabin.com; rmccabe@mccaberabin.com; Efrederick@mccaberabin.com; bobhunt@huntgross.com; dklingsberg@huntgross.com; eservice@huntgross.com; Louis Reinstein (LJR@bunnellwoulfe.com); Michelle L. Albrecht
Subject: RE: Smith, et al. v. Hooker Charitable Trust, et al., Case No. 12-34121 (07)

Len -

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3. All deadlines on Motions for Summary Judgment on Statute of Limitations are pushed back one more week, to 2/28, so all dates are adjusted two weeks from the original scheduling order. We either keep the 4/7 hearing or ask for a special set hearing or change in the status conference date to accommodate these changed dates.

Exhibit "D"