

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

CASE NO: 12-34121(07)

Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of  
P&S ASSOCIATES, GENERAL PARTNERSHIP,  
and S&P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, *et al*,

Defendants.

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**AMENDED MOTION TO QUASH SERVICE, MOTION TO QUASH PURPORTED  
SERVICE, MOTION TO DISMISS DEFENDANTS JUDD  
MOTION FOR SANCTIONS  
Preliminary Statement**

At the outset, it would appear that Plaintiffs as successor general partners of S & P Associates have a fiduciary duty to all of the Partners and not have a right to pick and choose to act to benefit certain Partners to the exclusion and detriment of other partners, especially when they stand to seek personal gain from these actions. Moreover, their counsel has a duty of candor to both the court and other parties to this action.

**Not only was the purported service improper, but the so-called  
“Verified Return of Service” was false.**

Defendants Judd’s pending Motion to Dismiss, presently pending before this court, asserted that the purported service was improper. Moreover, the so-called “Verified Return of Service” is false.

Plaintiff's counsel Weber and Hyman have repeatedly represented to counsel for Defendants Judd that they had and would produce an affidavit from their process server in which he specifically stated that he recognized Valerie Judd (whose name, parenthetically is spelled incorrectly in the so-called "Verified Return of Service") when he claimed to have seen her in her backyard and left the summons with the original complaint on her doorstep. Despite their repeated representations, no such affidavit has been produced. Moreover, the false assertion is repeated to this Court in the second paragraph on page 5 of Plaintiff's Response (*see* Ex. 1 hereto). The Affidavit of Valerie Judd and statement from the Marriott Hotel (*see* Ex. 2 hereto) establishes that the so-called "Verified Return of Service" and representations to this Court are blatantly false, as Valerie Judd was not even in Fort Lauderdale at that time.

Attorney Weber and attorney Hyman also repeatedly told counsel for Defendants Judd that the Amended Complaint, which Plaintiffs would be filing, would resolve any issues raised by counsel for Defendants Judd. This Amended Motion to Dismiss is filed because counsel believes that the Amended Complaint, now the Third Amended Complaint, have failed to resolve the issues raised that relate to Defendants Judd (and have also not resolved issues raised by other Defendants that related to Defendants Judd that Defendants Judd hereby readopt and incorporate herein by reference so as not to be unduly repetitive).

**The Third Amended Complaint fails to state a cause of action against Defendants Judd**

- a) In addition to the false "Verified Return of Service," there is no allegation in the Third Amended Complaint that Defendant James Judd signed any Exhibit to the Partnership Agreement, or that any signature on any page attached to the Third Amended Complaint is the signature of Defendant James Judd or is alleged to be his signature;

- b) The Amended Partnership Agreement dated Dec. 21, 1994, in Exhibit B to the Third Amended Complaint, specifically states that the names and signatures of the parties appear on “Ex. A” annexed thereto. No “Ex. A” is attached and the names and signatures of either James Judd or Valerie Judd do not appear.
- c) The complaint fails to allege that both James Judd and Valerie Judd signed any Partnership Agreement in 1994.
- d) There is no allegation that a copy of the Partnership Agreement was ever given to either James or Valerie Judd before any money was given to Sullivan and Powell.
- e) The page dated July 14, 2000 attached to the Third Amended Complaint (Exhibit 3 hereto), that has the names of James Judd and Valerie Judd makes no reference to the Amended and restated Partnership Agreement dated December 21, 1994 [*see* Ex. B to the Third Amended Complaint] and, unlike the signature pages attached that were signed for the Janet A. Hooker Charitable Trust and/or certain other partners, it does not contain any representation or language that either of the Judds were “accredited investors;” There is no allegation that either James Judd or Valerie Judd were certified investors, or that they were told what a certified investor or “accredited investor” was.
- f) Significantly, the page dated July 14, 2000 (Exhibit 3 hereto), more than five years after the Amended and Notated Partnership Agreement of 1994, clearly shows that “Exhibit A” in the heading “#1, #2 and Exhibit A” relates only to “EXHIBIT A (Title of Your Account)” which is at the middle of the page. Moreover, the page (Exhibit 3 hereto) contains only a single signature. Plaintiffs have failed to allege this is the signature of either James Judd or Valerie Judd.

- g) There is no allegation that either James or Valerie Judd was ever advised that they could not withdraw any money that either had invested if such money was needed or wanted.
- h) There is no allegation that either James Judd or Valerie Judd knew or were even aware of any impropriety on the part of Sullivan & Powell Associates or why James Judd and Valerie Judd should be responsible for the misconduct of S &P or the accountants that the partnership agreement states were to audit the partnership annually.
- i) There is no allegation of any wrongdoing or knowledge of wrongdoing by Defendant James Judd and Valerie Judd or any awareness of wrongdoing.

Wherefore Defendants Judd move

- a) To Quash service and/or to quash the purported service;
- b) To dismiss the Third Amended Complaint;
- c) and for imposition of appropriate sanctions as set forth in Fla. Stat. § 48.021(4) for the filing of false “Verified Return of Service” and misrepresentation to this Court.

Dated this 4<sup>th</sup> day of March, 2014

/s/Julian H. Kreeger  
JULIAN H. KREEGER, P.A.  
Florida Bar No. 098595  
Attorneys Ad Litem for the minor  
Offices at Grand Bay Plaza  
2665 Bayshore Drive  
Suite 220-14  
Miami, Florida 33133  
Telephone: 305-373-3101  
Facsimile: 305-381-8734

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon Leonard Samuels, Esq. of BergerSingerman and counsel identified below registered to receive electronic notifications and regular U.S. mail upon Pro Se parties this 4<sup>th</sup> day of March, 2014 upon the following:

**Notice has been electronically mailed to:**

**Counsel E-mail Address:**

Ana Hesny, Esq. ah@assoulineberlowe.com; ena@assoulineberlowe.com  
Eric N. Assouline, Esq. ena@assoulineberlowe.com; ah@assoulineberlowe.com  
Annette M. Urena, Esq. aurenadkdr.com; cmackey@dkdr.com; service-amu@dkdr.com  
Daniel W Matlow, Esq. dmatlow@danmatlow.com; assistant@danmatlow.com  
Debra D. Klingsberg, Esq. dklingsberg@huntgross.com  
Robert J. Hunt, Esq. bobhunt@huntgross.com  
Joanne Wilcomes, Esq. jwilcomes@mccarter.com  
Evan Frederick, Esq. efrederick@mccaberabin.com  
Etan Mark, Esq. emark@bergersingerman.com; drt@bergersingerman.com; lyun@bergersingerman.com  
Evan H Frederick, Esq. efrederick@mccaberabin.com; janet@mccaberabin.com; beth@mccaberabin.com  
B. Lieberman, Esq. blieberman@messana-law.com  
Jonathan Thomas Lieber, Esq. jlieber@dobinlaw.com  
Mariaelena Gayo-Guitian, Esq. mguitian@gjb-law.com  
Barry P. Gruher, Esq. bgruher@gjb-law.com  
William G. Salim, Jr., Esq. wsalim@mmslaw.com  
Domenica Frasca, Esq. dfrasca@mayersohnlaw.com; service@mayersohnlaw.com  
Joseph P Klapholz, Esq. jklap@klapholzpa.com; dml@klapholzpa.com  
Joseph P. Klapholz, Esq. jklap@klapholzpa.com; dml@klapholzpa.com;  
Julian H Kreeger, Esq. juliankreeger@gmail.com  
L Andrew S Riccio, Esq. ena@assoulineberlowe.com; ah@assoulineberlowe.com  
Leonard K. Samuels, Esq. lsamuels@bergersingerman.com; yleon@bergersingerman.com;  
drt@bergersingerman.com.  
Marc S Dobin, Esq. service@dobinlaw.com; mdobin@dobinlaw.com;  
Michael C Foster, Esq. mfoster@dkdr.com; cmackey@dkdr.com; kdominguez@dkdr.com  
Michael Casey, Esq. mcasey666@gmail.com  
Richard T. Woulfe, Esq. pleadings.RTW@bunnellwoulfe.com  
Michael R. Casey, Esq. mcasey666@gmail.com  
Brett Lieberman, Esq. blieberman@messana-law.com  
Marc Dobin, Esq. service@dobinlaw.com  
Peter Herman, Esq. PGH@trippscott.com  
Robert J Hunt, Esq. bobhunt@huntgross.com; sharon@huntgross.com; eservice@huntgross.com  
Ryon M McCabe, Esq. rmccabe@mccaberabin.com; janet@mccaberabin.com; beth@mccaberabin.com  
Steven D. Weber, Esq. sweber@bergersingerman.com; lwebster@bergersingerman.com;  
drt@bergersingerman.com  
Thomas J. Goodwin, Esq. tgoodwin@mccarter.com; nwendt@mccarter.com; jwilcomes@mccarter.com  
Thomas L Abrams, Esq. tabrams@tabramslaw.com; fcolumbo@tabramslaw.com

Thomas M. Messana, Esq. tmessana@messana-law.com; tmessana@bellsouth.net;  
mwslawfirm@gmail.com  
Zachary P Hyman, Esq. zhyman@bergersingerman.com; DRT@bergersingerman.com;  
clamb@bergersingerman.com.

By: /s/Julian H. Kreeger  
JULIAN H. KREEGER  
F.B.N.: 098595

Uncorroborated statements that Service of Process was not proper, is insufficient to quash such service. *Slomowitz v. Walker*, 429 So. 2d at 799 (“[A] mere denial by a defendant, unsupported by corroborative evidence or circumstances, is not enough to impeach the return of the official process server.”) (quoting *Ashe v. Spears*, 284 A.2d 207, 210 (Md. 1971)). Further, and since Defendants have refused to provide any responses to Plaintiffs discovery requests, which also seek information concerning the alleged defects in service of process about which they complain, they should not be permitted to introduce evidence on that issue.

Despite Defendants’ contentions, the return of service, demonstrates that service was properly effectuated. (**Exhibit A**). The return of service provides in relevant part that the process server tried to effectuate service upon Valeria Judd who was at her residence, but that Valerie Judd refused to open the door. (Exhibit A at 1). Further, the person effectuating service announced his purpose, and saw Valerie Judd in the back yard. Based on the circumstances presented, the service provided was sufficient. Additionally, the Service Processor knew Valerie Judd because he served her with summons and the complaint in the Interpleader Action (a separate action pending before this Court). A true and correct copy of the return of service in that matter is attached hereto as **Exhibit B**.

“Under Florida law, a person has a legal obligation to accept service of process when service is attempted reasonably.” *Coffin v. Brandau*, 642 F.3d 999, 1007 (11th Cir. 2011) (citing *Haney v. Olin Corp.*, 245 So. 2d 671, 673 (Fla. 4th DCA 1971)). Accordingly, “[a]n officer’s reasonable attempt to effectuate service of process upon a person in his own home, when the person reasonably should know the officer’s identity and purpose, cannot be frustrated by the expedient of the person closing the front door in the officer’s face and willfully refusing to accept service of process.” *Haney*, 245 So. 2d at 673.

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Plaintiffs,

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Defendants.

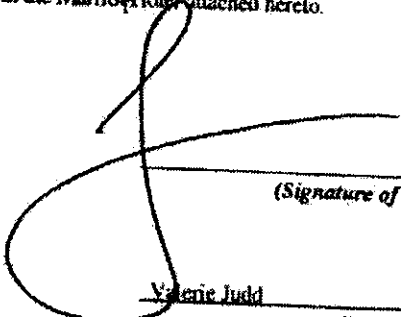
**AFFIDAVIT OF VALERIE JUDD**

State of Florida  
County of Broward

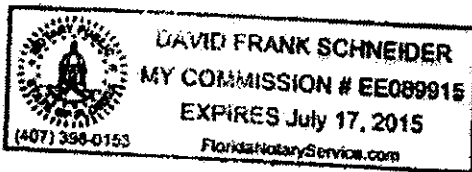
Before me the undersigned authority appeared Valerie Judd, who upon being sworn, deposes and says:

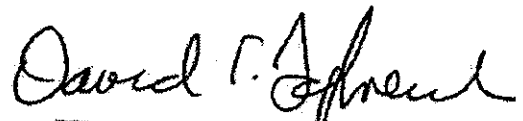
- I am the party named as a Defendant in this case.
- On June 27, 2013 at 6:06 P.M., I was not at 2421 Barcelona Drive, Fort Lauderdale, FL 33301.
- On June 27, 2013 at 6:06 P.M. I was not in Fort Lauderdale, FL.
- On June 27, 2013 I was at the Marriott Hotel in Marco Island, FL as shown on the bill from the Marriott Hotel attached hereto.

FURTHER AFFIANT SAYETH NAUGHT

  
 \_\_\_\_\_  
 (Signature of Affiant)  
 Valerie Judd  
 \_\_\_\_\_  
 (Printed Name)

SWORN to and subscribed before me, this the 28 day of Feb, 2014, and who is personally known to me or has produced FL DRIVERS (type of identification) as identification.



  
 \_\_\_\_\_  
 NOTARY PUBLIC

My Commission Expires:

EXHIBIT 2



Room **305** Name **JUDD/VALERIE**

Rate **258.00** Depart **06/28/13** Time **11:00** **6742**

Type **NIVK BRUCEJUDD INC**

64 Arr **06/27/13** Till **14:24**

ACCT#

143

Room Clerk	Address	Payment	RWD#:
DATE	REFERENCE	CHARGES	CREDITS

06/27	ROOM	305, 1	258.00
06/27	RM.TX	305, 1	25.80
06/28	VS CARD		
			\$283.80

TO BE SETTLED TO: **VISA** CURRENT BALANCE **.00**

**THANK YOU FOR CHOOSING MARRIOTT! TO EXPEDITE YOUR CHECK-OUT, PLEASE CALL EXT. 5757 AND FOLLOW THE INSTRUCTIONS, OR PRESS "MENU" ON YOUR TV REMOTE TO ACCESS VIDEO CHECK-OUT.**

**AS REQUESTED, A FINAL COPY OF YOUR BILL WILL BE EMAILED TO:  
VALBJ@COMCAST.NET  
SEE "INTERNET PRIVACY STATEMENT" ON MARRIOTT.COM**

This statement is your only receipt. You have agreed to pay in cash or by approved personal check or to authorize us to charge your credit card for all amounts charged to you. The amount shown in the credits column opposite any credit card entry in the reference column above will be charged to the credit card number set forth above. (The credit card company will bill in the usual manner) If for any reason the credit card company does not make payment on this account, you will owe us such amount. If you are billed, in the event payment is not made within 25 days after checkout, you will owe us interest from the checkout date on any unpaid amount at the rate of 1.5% per month (ANNUAL RATE 18%), or the maximum allowed by law, plus the reasonable cost of collection, including attorney fees.

Signature X

**Complete #1, #2, and Exhibit A and mail this page only with check made payable to "S&P Associates, G/P" to:**

**S & P ASSOCIATES, General Partnership  
c/o SULLIVAN & POWELL  
6550 N. Federal Hwy., Suite 210  
Ft. Lauderdale, FL 33308-1404**

1) The parties hereto have executed this Agreement by the signature and date set forth below.  
(sign and date)

\_\_\_\_\_  
*James Judd*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Date: 7/14/2000  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_

2) **Please check one of the following:**

I elect to receive my distributions on a quarterly basis (payable at 12%).

I elect to have my quarterly distribution reinvested in the Partnership.

*mail  
7/24/00*

**EXHIBIT A (Title of Your Account)**

Name, Address Telephone # and Fax #	Soc. Sec. # or Federal ID#	Capital Contribution
<u>James Judd + Valerie</u> <u>Bruce Judd</u> <u>2421 Barcelona Drive</u> <u>Ft Lauderdale FL</u> <u>33301</u>	<u>944-28-4582</u>	<u>100 K</u>
<u>tel 954 467 2721</u> <u>954 462-2334</u>	<u>123-62-3565</u>	
_____	_____	_____
_____	_____	_____