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

CASE No: 12-34121 (07)
Complex Litigation Unit

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,

vs.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, et al,

Defendants.
_____/

DEFENDANTS, HOLY GHOST FATHERS, COMPASSION FUND, HOLY GHOST FATHERS HG-MOMBASA, HOLY GHOST FATHERS INTERNATIONAL FUND #1, HOLY GHOST FATHERS INTERNATIONAL FUND #2, AND HOLY GHOST FATHERS HG-IRELAND/KENEMA, MOTION FOR SUMMARY JUDGMENT AS TO THIRD AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Defendants, Holy Ghost Fathers HG-Kenema, Holy Ghost Fathers International Fund #1, Holy Ghost Fathers International Fund #2, Holy Ghost Fathers Compassion Fund, and Holy Ghost Fathers HG-Mombasa (collectively, the "Holy Ghost Entities"), by and through undersigned counsel, and pursuant to Fla. R. Civ. P. 1.5101, hereby moves this Court for an order of summary judgment against the Plaintiffs and to grant an order dismissing the Plaintiffs' claims. In support of this Motion, the Holy Ghost Entities state as follows:

PRELIMINARY STATEMENT

Each of the Holy Ghost Entities are separate religious congregations which invested in the plaintiff partnerships many years ago. On or about December 10, 2012, Plaintiffs filed a multi-count Complaint in this Court against multiple parties, including the Holy Ghost Entities, asserting, among other things, that the Holy Ghost Entities received improper distributions of what Plaintiffs allege were fictitious profits of the Partnerships. On February 21, 2014, this Court granted Plaintiffs' motion for leave to file a Third Amended Complaint. In the Third Amended Complaint, Plaintiffs allege that the Holy Ghost Entities "reaped profits" from their investments in the Partnerships in contravention of the plain terms of the Partnership Agreement. However, Plaintiffs claims are barred because the Plaintiffs failed to bring a lawsuit within the time required under the applicable statutes of limitations for each count. Moreover, Plaintiffs' claim for breach of contract, unjust enrichment, and money had and received claims fail as a matter of law because the Partnership Agreements only permit claims against Partners that are grounded in fraud and the Third Amended Complaint does not allege that any of the Holy Ghost Entities (or indeed any other partner, including the Managing General Partners) engaged in fraud. Similarly, Plaintiffs' breach of contract claim also fails as a matter of law because the Holy Ghost Entities simply accepted distributions and took no action in material breach of the Partnership Agreement. Finally, Plaintiffs' avoidance of fraudulent transfer claim fails because the requisite intent cannot be established.

STATEMENT OF FACTS

The Third Amended Complaint contains seven counts against the Holy Ghost Entities: Count I for Breach of Statutory Duty (Negligence), Count II for Breach of Florida Statute Section 620.8807, Count III for Breach of Contract, Count IV for Unjust Enrichment, Count V for Money Had and Received, and Count VI for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes, and Count VII for Breach of Fiduciary Duty. Plaintiffs allege that P&S Associates, General Partnership and the S&P Associates, General Partnership (collectively the "Partnerships") were formed for the purpose of engaging in the business of investing. (3d Am. Compl., ¶ 36). Each of the Partnerships is governed by a corresponding Partnership Agreement. (3d Am. Compl., ¶ 35). As partners, the Holy Ghost Entities are alleged to have invested money in one of the Partnerships. (3d Am. Compl., ¶¶ 21, 25-28). Specifically, the Holy Ghost Entities are alleged to have invested an aggregate of $3,308,379.71 into the Partnerships over a period of approximately fifteen years. (3d Am. Compl., ¶¶ 21, 25-28 and Ex. A). It is further alleged that the Holy Ghost Entities received an aggregate of $4,445,939.47 in Partnership distributions over that same period. Id.

Pursuant to the governing Partnership Agreements, the profits and losses attributable to the Partnerships were to be allocated in equal proportion among the Partners in accordance with each Partner's capital contribution relative to the aggregate total capital contribution of all of the Partners. (3d Am. Compl., ¶ 41). Partnership distributions, if any, were to be made at least once per year. Id. The Partnerships' investments were to be overseen by the Managing General Partners of the Partnerships, Michael D. Sullivan and Greg Powell, the "S" and "P" of the partnerships. (3d Am. Compl., ¶ 39). On August 29, 2012, an Agreed Order was entered

whereby Plaintiff, Margaret Smith, was named sole Managing General Partner. (3d Am. Compl., ¶ 46).

Plaintiffs allege that the former Managing General Partners made improper distributions to the Holy Ghost Entities, among others, that were made from the principal contributions of other Partners rather than from the Partnerships' profits. (3d Am. Compl., ¶ 47).

Plaintiffs further assert that, in an effort to wind up the Partnerships, under the "Net Investment Method," the Defendants have a negative capital account, owing a debt to the Partnerships in the amount they received in excess of what is permitted in the Partnership Agreements. (3d Am. Compl., ¶ 65). Plaintiffs further assert that Defendants have an excess of charges over credits in their capital accounts in a greater proportion than other Partners, certain distributions to Defendants were not authorized under the Partnership Agreements. (3d Am. Compl., ¶ 66). Plaintiffs assert that, as a result, Defendants, including the Holy Ghost Entities, are statutorily required to return the money they received in excess of their capital contributions, as a liability to be paid to the Partnerships. (3d Am. Compl., ¶ 67). Plaintiffs assert that, in an effort to recover the excess payments, the Conservator sent out demand letters to Defendants on October 18, 2013, asserting that if Defendants did not repay the money received in excess of their capital contributions, they would be subject to legal action. (3d Am. Compl., ¶ 68).

Plaintiffs' Third Amended Complaint persists in failing to indicate specific dates for when these improper distributions were received.[1] However, counsel for Plaintiffs has provided information which definitively demonstrates that the last distribution received by any of the Holy Ghost Entities, as noted on the records of the Partnerships, was on July 23, 2008. See Affidavit

[1] Exhibit A to the Third Amended Complaint indicates only the year of the investment or distribution to each entity.

of Joanne M.F. Wilcomes, Esq. ("Wilcomes Aff."), attached hereto as Exhibit "A," at ¶ 5 and Ex. A. The initial Complaint was filed December 12, 2012.

On September 12, 2013, counsel for the Holy Ghost Entities received from counsel for Plaintiffs a spreadsheet showing receipts from the Holy Ghost Entities, as well as dates and amounts of distributions from P&S to each of the Holy Ghost Entities. Id. at ¶ 4 and Ex. A. According to Plaintiffs' own records, the distributions for each of the Holy Ghost Entities were as follows:

Holy Ghost Fathers International Fund #1

Date	**Amount**
9/11/2002	$50,000.00
2/11/2003	$55,000.00
2/11/2003	$409,542.43
4/7/2003	$225,000.00
4/13/2003	$153,185.00
4/5/2004	$200,000.00
3/31/2005	$57,000.00
11/17/2005	$37,000.00
9/27/2007	$119,393.88
1/31/2008	$2,496.36
TOTAL DISTRIBUTED	$1,308,617.67
LESS TOTAL INVESTED	$1,181,331.35
TOTAL GAIN	$127,286.32

Holy Ghost Fathers International Fund #2

Date	Amount
4/5/2004	$80,000.00
3/31/2005	$150,000.00
12/20/2006	$1,661,956.72
1/24/2007	$32,480.44
TOTAL DISTRIBUTED	$1,924,437.16
LESS TOTAL INVESTED	$1,451,812.89
TOTAL GAIN	$472,624.27

Holy Ghost Fathers HG-Mombasa

Date	Amount
11/29/1993	$40,000.00
1/2/1996	$50,000.00
2/6/2001	$83,000.00
12/1/2005	$50,000.00
6/26/2007	$10,000.00
6/23/2008	$37,000.00
TOTAL DISTRIBUTED	$270,000
LESS TOTAL INVESTED	$153,000
TOTAL GAIN	$117,000

Holy Ghost Fathers Compassion Fund

Date	Amount
12/27/2001	$100,000.00
3/31/2005	$100,000.00
9/21/2005	$100,000.00
12/20/2006	$200,000.00
3/31/2008	$225,000.00
TOTAL DISTRIBUTED	$725,000
LESS TOTAL INVESTED	$461,235.46
TOTAL GAIN	$263,764.54

Holy Ghost Fathers HG-Kenema

Date	Amount
8/26/2002	$150,000.00
8/28/2006	$66,623.01
1/24/2007	$1,261.62
TOTAL DISTRIBUTED	$217,884.63
LESS TOTAL INVESTED	$60,000
TOTAL GAIN	$157,884.63

Id. at ¶ 5 and Ex. A.

Plaintiffs have produced documents showing that HG-Kenema withdrew from P&S Associates by letter dated August 21, 2006, that International Fund No. 1 withdrew by letter

dated September 11, 2007, and that International Fund No. 2 withdrew by letter dated November 14, 2006. See Wilcomes Aff., ¶ 6 and Ex. B.

Plaintiffs should not be heard that they could not have commenced this action sooner. On or before January 16, 2009, the law firm of Rice Pugatch Robinson & Schiller, P.A. was retained by the Partnerships due to the fraud which was revealed following the arrest of Bernard L. Madoff. See Affidavit of Chad Pugatch and transcript, which has been filed with the Court and is incorporated herein by reference as Exhibit "C." On January 30, 2009, a meeting of the Partnerships took place to discuss the effect of the Bernard Madoff Ponzi scheme on the Partnerships and to advise the partners that the partnership was no longer conducting business but was in a "wind-down mode" and "wind down" was on the agenda for the meeting. Id. During this meeting, the partners were advised that some partners may be "net winners" and some may be "net losers," and a clawback action may have to be commenced. Instead, the Partnerships delayed by another three years before it filed suit. Id., Tr. of Jan. 30, 2009 Mtg. at 46:22-47:24 and 62:4-64:7.

LEGAL STANDARD

Summary judgment is a mechanism used to expedite litigation and lower expense to the parties. Page v. Staley, 226 So. 2d 129, 130 (Fla. 4th DCA 1969). When the basic facts of the case are clear and undisputed, and there is only a question of law to be determined, the court shall grant a Motion for Summary Judgment. Duprey v. United States Automobile Association, 254 So. 2d 57, 58 (Fla. 1st DCA 1971). "Entry of summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Ginsberg v. Northwest Medical

Center, Inc., 14 So. 3d 1250 (Fla. 4th DCA 2009) (quoting Fla. R. Civ. P. 1.510(c)). "The moving party has the burden to show the absence of any material issue of fact and the court must draw every inference in favor of the nonmoving party." Hollywood Towers Condo. v. Hampton, 993 So. 2d 174, 176 (Fla. 4th DCA 2008).

Once the moving party has met is burden, the non-moving party must show evidence that would reveal a factual issue. Page, 226 So. 2d at 131. Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law. Shaffran v. Holness, 93 So. 2d 94 (Fla. 1957). Although the moving party faces a heavy burden, when determination of a lawsuit is dependent upon written instruments of the parties, the question at issue is generally one of law and can be determined by the entry of summary judgment by the Court. Kochan v. American Fire and Casualty Co., 200 So. 2d 213, 220 (Fla. 3d DCA 1967).

The Holy Ghost Entities now move for the entry of summary judgment on all of the claims relating to the alleged improper distributions received by the Holy Ghost Entities, pursuant to Fla. R. Civ. P. §1.510, as Plaintiffs' claims are time-barred. As a result, there are no genuine issues as to any material fact and the Holy Ghost Entities are entitled to a judgment as a matter of law. Based upon the Third Amended Complaint and the Affidavit attached hereto, the Holy Ghost Entities are entitled to the entry of Summary Judgment against the Plaintiffs.

LEGAL ARGUMENT

I. PLAINTIFFS' BREACH OF CONTRACT CLAIM ASSERTED IN COUNT III FAILS AS THE HOLY GHOST ENTITIES NEVER TOOK ANY ACTION TO BREACH THE CONTRACT.

To prevail on a breach of contract claim, a claimant must prove: (1) the existence of an enforceable contract; (2) a material breach of that contract ; and (3) damages resulting directly from the material breach. Knowles v. C.I.T. Corp., 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977);

Rollins, Inc. v. Butland, 951 So. 2d 860, 876 (Fla. 2d DCA 2006). To constitute a material breach, a party's "nonperformance of a contract must be such as to go to the essence of the contract; it must be the type of breach that would discharge the injured party from further contractual duty on his part but a [party's] failure to perform some minor part of his contractual duty cannot be classified as a material or vital breach." Atlanta Jet v. Liberty Aircraft Servs., LLC, 866 So. 2d 148, 150 (Fla. 1st DCA 2004) (citing Beefy Trail, Inc. v. Beefy King Intl., Inc., 267 So. 2d 853, 857 (Fla. 4th DCA 1972)).

Plaintiffs have asserted a breach of contract claim against the defendant partners, but in reality they have pled an equitable claim for unjust enrichment. The line from Shakespeare's Romeo and Juliet – "A rose by any other name would smell as sweet" – is particularly apposite. Simply stated, no matter how Plaintiffs try to label their breach of contract claim, it is at most an unjust enrichment claim, not a breach of contract claim. Plaintiffs cannot sustain a claim for breach of contract because there simply was no breach by any of the Holy Ghost Entities. Three of the Holy Ghost Entities, Kenema, International Fund No. 1, and International Fund No. 2, affirmatively withdrew from the Partnership in 2006 and 2007. See Wilcomes Aff., ¶ 6 and Ex. B. The remaining two, Mombasa and Compassion Fund, implicitly dissociated when the Madoff fraud was discovered. Accordingly, the Holy Ghost Entities cannot have breached the contract by failing to act pursuant to a Partnership Agreement to which they were no longer bound.

Moreover, the Holy Ghost Entities merely received distributions under the Partnership Agreement. Instead, if there was any breach, it was the former Managing General Partners who allegedly breached the contract, by distributing the principal contributions of other Partners instead of from the Partnerships' profits. (3d Am. Compl. ¶ 48). The Holy Ghost Entities did

not take any action – nor are they alleged in the Complaint to have taken any action – that can be construed as a "material breach" of the Partnership Agreement. Plaintiffs cannot resurrect an otherwise time-barred claim merely by giving the claim a different name. Accordingly, Plaintiffs' claim for breach of contract fails as a matter of law.

II. PLAINTIFFS' REMAINING CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

The initial Complaint was initially filed on December 10, 2012. Although the Complaint does not provide the particular dates of the alleged improper distributions that formed the basis of this suit, it is admitted by the Plaintiffs that the final distribution to any Holy Ghost Entity was made on June 23, 2008. See Wilcomes Aff. at ¶ 5 and Ex. A. Because all of the alleged improper distributions received by the Holy Ghost entities occurred more than four years prior to the filing of the initial Complaint in this case, Plaintiffs' claims are time-barred as a matter of law.[2]

A. Plaintiffs' Claims in Count I and Count II Pursuant to Section 620.8807 of the Florida Statutes Are Barred by a Four Year Statute of Limitations.

Florida's Revised Uniform Partnership Act does not specify a statute of limitations. However, the statute of limitations for "[a]n action founded on a statutory liability" is four (4) years. See, Fla. Stat. § 95.11(3)(f). Count I of the Amended Complaint is a statutory claim, and, accordingly, it is subject to a four year statute of limitations.

[2] As set forth above, Plaintiffs' breach of contract claim – the only claim with a five-year statute of limitations (Fla. Stat. § 95.11(2)(b)) – is merely a disguised unjust enrichment claim and cannot survive. However, even if Plaintiffs' breach of contract claim is not dismissed in its entirety, only three transactions are not explicitly barred by the five-year statute of limitations applicable to a breach of contract claim: (i) to Holy Ghost Fathers International Fund #1 on January 31, 2008 in the amount of $2,496.36; (ii) to Holy Ghost Fathers Compassion Fund on March 31, 2008 in the amount of 225,000; and (iii) to Holy Ghost Fathers HG-Mombasa on June 23, 2008 in the amount of $37,000. See Wilcomes Aff. at ¶ 5 and Ex. A.

By Plaintiffs' own admission, the final distribution to any of the Holy Ghost Entities was received on June 23, 2008. See Wilcomes Aff. at ¶ 5 and Ex. A. The initial Complaint was filed on December 10, 2012. Therefore, Plaintiffs filed suit four and a half years after the last distribution about which they are complaining as to the Holy Ghost Entities. Plaintiffs cannot claim that they only recently discovered the claim, as the delayed discovery doctrine does not apply with respect to statutory claims. See, Davis v. Monahan, 832 So. 2d 708 (Fla. 2002). Accordingly, the Holy Ghost Entities are entitled to summary judgment as to Count I of the Amended Complaint.

B. Plaintiffs' Unjust Enrichment Claim is Barred by a Four-Year Statute of Limitations.

Count IV is a claim for Unjust Enrichment, asserting that the Holy Ghost Entities voluntarily accepted these improper distributions and that it would be inequitable and unjust for the Holy Ghost Entities to retain them. Plaintiffs contend that the Partnerships conferred a benefit on the Holy Ghost Entities by making distributions from the capital contributions of other Partners. The statute of limitations on Plaintiffs' claim for unjust enrichment is four years. Swafford v. Schweitzer, 906 So. 2d 1194, 1195 (Fla. 4th DCA 2005); see also, Fla. Stat. § 95.11(3)(k). An unjust enrichment claim accrues at the time the defendant receives the improper enrichment. Because the latest any of the Holy Ghost Entities received an allegedly improper distributions was June 23, 2008, that is the latest any benefit could have conferred by the Partnership. Accordingly, Plaintiffs' claim for unjust enrichment was required to be filed no later than June, 2012. The Complaint was filed well after the expiration of the applicable statute of limitations period and, as a result, the claim for unjust enrichment is time-barred.

C. The Four-Year Statute of Limitations On Claims for Money Had and Received Also Bars Plaintiffs' Claim.

Count V is a claim for Money Had and Received. Plaintiffs allege that the Partnership conferred a benefit on the Holy Ghost Entities by making distributions from the capital contributions of other Partners rather than from the Partnerships' profits. Plaintiffs allege that the Holy Ghost Entities voluntarily accepted those distributions and that it would be inequitable and unjust to retain the improper distributions.

Plaintiffs' claim for Money Had and Received is barred by a four-year statute of limitations. See Fla. Stat. § 95.11(3). Because the latest any of the Holy Ghost Entities received an allegedly improper distributions was on June 23, 2008, that is the latest that the Partnership could have accepted a distribution. Accordingly, Plaintiffs' claim for money had and received was required to be filed no later than June 23, 2012. The Complaint was filed well after the expiration of the applicable statute of limitations period and, as a result, the claim for money had and received is time-barred.

D. Plaintiffs' Claim in for Avoidance of Fraudulent Transfers Also Fails as It Is Subject to a Four-Year Statute of Limitations.

Count VI is a claim for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes. Plaintiffs allege that the distributions received by the Holy Ghost Entities are transfers that could have been applicable to the payment of the distributions and obligations due to the Partners under the Partnership Agreements. It is alleged that the Partnerships did not receive reasonably equivalent value in exchange for the distributions made to the Holy Ghost Entities. Plaintiffs contend that these transfers were made to the Holy Ghost Entities with the actual intent to hinder, delay or defraud certain of the Partners, who were

creditors of the Partnership, and that the transfers may be avoided under Fla. Stat. § 726.105(1)(a).

Section 726.105(1)(a), Fla. Stat., states that a transfer made by a debtor is fraudulent if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor. The applicable limitations period for fraudulent transfer claims is contained in Fla. Stat. § 726.110(1). A cause of action with respect to a fraudulent transfer or obligation under Fla. Stat. § 726.105(1)(a) is extinguished unless action is brought within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. See Fla. Stat. § 726.110(1).

Since the last of the allegedly fraudulent transfers to any of the Holy Ghost Entities occurred on June 23, 2008, any action with respect to this transfer must have been brought by June 23, 2012. The one year savings clause does not save Plaintiffs. The one year savings clause provides that if suit is brought after the 4 year limitation period, it must still be within 1 year after the transfer or obligation was or could reasonably have been discovered. As described in the Complaint itself, the partnership ultimately lost money due to the fraud committed by Bernard Madoff. (Complaint, ¶ 40). This disclosure was made in December 2008. Thus, even under the 1 year savings clause, the claim to avoid a fraudulent transfer under Fla. Stat. § 726.105(1)(a), must have been brought by December 31, 2009. This clearly did not occur.

Moreover, it is clear that P&S Associates had actual knowledge on or before January 16, 2009, when the law firm of Rice Pugatch Robinson & Schiller, P.A. was retained by the Partnerships due to the fraud which was revealed following the arrest of Bernard L. Madoff. See Ex. C. On January 30, 2009, a meeting of the Partnerships took place to discuss the effect of the Bernard Madoff Ponzi scheme on the Partnerships and to advise the partners that the partnership

was no longer conducting business but was in a "wind-down mode" and "wind down" was on the agenda for the meeting. Id. During this meeting, the partners were advised that some partners may be "net winners" and some may be "net losers," and a clawback may take place. Id., Tr. of Jan. 30, 2009 Mtg. at 46:22-47:24 and 62:4-64:7. Thus, the one year savings clause, if applicable, would only extend the statute of limitations to, at most, January, 2010.

As a result, Plaintiffs' claim for the avoidance of the fraudulent transfers is barred by the applicable limitations period.

III. THE HOLY GHOST ENTITIES WERE NOT PARTNERS AT THE TIME PLAINTIFFS BEGAN WINDING UP THE PARTNERSHIP, AND, ACCORDINGLY, ARE NOT SUBJECT TO THE WINDING UP PROVISIONS OF FLORIDA'S REVISED UNIFORM PARTNERSHIP ACT.

Plaintiffs' claims under Florida's Revised Uniform Partnership Act, 620.81001 et seq. fail because they seek to apply statutory provisions and provisions of the Partnership Agreement that presupposes that they are existing partners in a partnership. As three of the Holy Ghost Entities affirmatively dissociated from the partnership, and the remaining two implicitly dissociated when the Madoff fraud was discovered and the Partnerships ceased operations as going concerns, Plaintiffs' claims fail as a matter of law.

Plaintiffs sent out demand letters dated October 18, 2013, ostensibly pursuant to Section 10.01 of the Partnership Agreement, requesting that Defendants return to the Conservator all distributions they received in excess of their contributions. See 3d Am. Compl., ¶ 68. Plaintiffs now seek to characterize the Holy Ghost Entities' failure to make payment pursuant to the October 18, 2013 letters (sent long after the expiration of the statute of limitations) as an "Event of Default" pursuant to Section 10.01 of the Partnership Agreement. Id. at ¶¶44-46 and Ex. C. However, HG-Kenema withdrew from P&S Associates by letter dated August 21, 2006, that International Fund No. 1 withdrew by letter dated September 11, 2007, and that International

Fund No. 2 withdrew by letter dated November 14, 2006. See Wilcomes Aff., ¶ 6 and Ex. B. Moreover, Mombasa has not received a distribution since June 23, 2008, and Compassion Fund has not received a distribution since March 31, 2008, just prior to the discovery of the Madoff fraud in December, 2008. See Wilcomes Aff., Ex. A.

The Partnership Agreement provides that the sole purpose of the Partnership is to "invest, in cash or on margin in all types of marketplace securities…" See 3d Am. Compl., Ex. C, at 2.02. The Agreement further provides that "An individual capital account shall be maintained for each Partner." Id. at Art. 4.05. There can be no dispute that HG-Kenema, International Fund No. 1, and International Fund No. 2 dissociated in 2006 and 2007. See Wilcomes Aff., ¶ 6 and Ex. B. Moreover, Compassion Fund and Mombasa took no additional distributions after March and June, 2008, respectively. Accordingly, the Holy Ghost Entities' partnership interests were terminated, as the Holy Ghost Entities no longer were contributing members of the Partnership, and were not deriving any benefit.

Plaintiffs rely upon Section 620.8807, "Settlement of Accounts and Contributions Among Partners," to assert that the Defendants are obliged to return money received in excess of their capital contributions. (3d Am. Compl., ¶ 67). However, this section is inapplicable. Pursuant to Section 620.8603(1):

> If a partner's dissociation results in a dissolution and winding up of the partnership business, ss. 620.8801-620.8807 apply; otherwise, ss. 620.8701-620.8705 apply.

Any dissociation of the Holy Ghost Entities did not result in the dissolution and winding up of the Partnership, nor do plaintiffs even make such an allegation. Accordingly, pursuant to the plain language of the statute, Section 620.8807 does not apply.

Plaintiffs made a thinly-veiled, but ultimately futile, attempt to avoid their clear statute of limitations issues by sending a demand letter to former partners more than five years after the last distribution was made to the Holy Ghost Entities and well after the expiration of the statute of limitations. As set forth above, the statute of limitations on statutory claims is four years. Plaintiffs' attempt to revive a time-barred claim by circulating a demand letter that starts the clock anew is illogical and ultimately suggests that this Court must allow a "winding up" of partnerships with former partners in perpetuity. In essence, Plaintiffs seek to have this Court hold that there is no statute of limitations for partnership claims, and that the partnership can sit idly without taking action for an indefinite period. Plaintiffs should not be permitted to gut the statute of limitations for partnership claims and create a special class of exemption to the statute of limitations not expressly sanctioned by the legislature. Plaintiffs' tortured illogical argument cannot be permitted. The Holy Ghost Entities are entitled to summary judgment on Counts I and II of the Third Amended Complaint.

IV. PLAINTIFFS' BREACH OF CONTRACT, UNJUST ENRICHMENT, AND MONEY HAD AND RECEIVED CLAIMS FAIL ON THE MERITS AS THEY VIOLATE THE PARTNERSHIP AGREEMENT.

Even if this Court determines that Plaintiffs' breach of contract, unjust enrichment, and money had and received claims are not subject to dismissal on statute of limitations grounds, the Holy Ghost Entities are still entitled to summary judgment as a matter of law. Plaintiffs attempt to foist liability upon the defendants under the Partnership Agreements attached to the Complaint as Exhibits B and C. However, Section 14.03 of each of the Partnership Agreements unambiguously states that "The Partners shall be liable only for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty."

Plaintiffs purport to rely upon the Partnership Agreements as the basis for asserting claims against the Holy Ghost Entities in asserting how the profits were distributed. (3d Am. Compl., ¶ 42). However, Plaintiffs cannot "pick and choose" which provisions of the Partnership Agreements they seek to enforce. The Partnership Agreements clearly prohibit claims that are not grounded in intentional fraud or wrongdoing. No such allegations support Plaintiffs' claims for breach of contract, unjust enrichment, or money had and received. Counts III-V of the Third Amended Complaint fail on the merits, and, accordingly, the Holy Ghost Entities are entitled to summary judgment on these counts.

V. PLAINTIFFS' CLAIM FOR AVOIDANCE OF FRAUDULENT TRANSFERS FAILS ON THE MERITS BECAUSE IT DOES NOT ALLEGE THE REQUISITE INTENT.

Even if this Court determines that Plaintiffs' claim for avoidance of a fraudulent transfer is not barred by the statute of limitations, Plaintiffs' claim fails as a matter of law. Plaintiffs assert a claim for avoidance of fraudulent transfers pursuant to Florida Statute § 726.105(1)(a). This section provides for avoidance of a transfer in circumstances of actual fraud, which statutorily requires intent: a "transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor." (Emphasis added).

Plaintiffs allege that the Partnership did not receive reasonably equivalent value in exchange for the distributions made to the Holy Ghost Entities. The Plaintiffs contend that these transfers were made by the Partnership as "debtor" to the Holy Ghost Entities, charitable religious institutions, with the actual intent to hinder, delay or defraud certain of the Partners, who were creditors of the Partnership, and that the transfers may be avoided under Fla. Stat. §

726.105(1)(a). The Third Amended Complaint contains no allegations of fraud on the part of the Holy Ghost Entities or indeed even on the part of the Managing General Partner. The relevant fraud was committed by Bernard Madoff, not the Partnership. Rather, the Plaintiffs are attempting to hold the Holy Ghost Entities liable for the intentional wrongdoings of the Partnerships' former Managing General Partners. Plaintiffs cannot sustain their claim for avoidance of a fraudulent transfer without a showing of fraudulent intent by the Partnership. That simply is non-existent. Accordingly, the Holy Ghost Entities are entitled to summary judgment on Count VI of the Complaint.

WHEREFORE, the Holy Ghost Entities respectfully move this Court for an Order granting Summary Judgment dismissing Plaintiffs' Complaint as against the Holy Ghost Entities in its entirety and with prejudice and that the Court award the Holy Ghost Entities their costs and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2014 a true and correct copy of the foregoing was SENT VIA E-MAIL to: LEONARD K. SAMUELS, Esq., ETAN MARK, Esq., and STEVEN D. WEBER, Esq., c/o Berger Singerman, Attorneys for Plaintiffs, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301: lsamuels@bergersingerman.com; emark@bergersingerman.com; sweber@bergersingerman.com; DRT@bergersingerman.com; VLeon@bergersingerman.com; ERIC N. ASSOULINE, Esq., c/o Assouline & Berlowe, P.A., Attorneys for Ersica P. Gianna, 213 E. Sheridan Street, Suite 3, Dania Beach, Florida 33004: ena@assoulineberlowe.com; and ah@assoulineberlowe.com; JULIAN H. KREEGER, Esq., Attorneys for James Bruce Judd and Valeria Judd, 2665 S. Bayshore Drive, Suite 220-14, Miami, Florida 33133-5402: juliankreeger@gmail.com; JOSEPH P. KLAPHOLZ, Esq.,

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