

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

CASE NO.: 12-034121 (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, DIANE M. DEN BLEYKER, an
Individual, ETTOH LTD., a Florida limited
Partnership, et al.
Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES TO THIRD
AMENDED COMPLAINT OF DEFENDANTS
ABRAHAM NEWMAN, RITA NEWMAN
AND GERTRUDE GORDON**

COME NOW, the Defendants, ABRAHAM NEWMAN, RITA NEWMAN
and GERTRUDE GORDON, (“Defendants”), by and through the undersigned
counsel, and files this their Answer & Affirmative Defenses to Plaintiffs’ Third
Amended Complaint and would state further as follows:

ANSWER

1. Paragraph 1 is denied and strict proof is demanded thereof.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Defendants are without knowledge as to paragraphs 4 through 17 and therefore same are denied and strict proof is demanded thereof.
5. Paragraph 18 is admitted.
6. Paragraph 19 is admitted.
7. Defendants are without knowledge as to paragraphs 20 through 35 and accordingly strict proof is demanded thereof.
8. As to paragraph 36, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.
9. Defendants are without knowledge as to paragraph 37 and therefore same is denied and strict proof is demanded thereof.
10. Paragraph 38 is admitted.
11. As to paragraph 39, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

12. As to paragraph 40, Defendants would state that the Partnership Agreements speaks for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

13. As to paragraph 41, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

14. As to paragraph 42, Defendants would state that the Partnership Agreements speaks for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

15. As to paragraph 43, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

16. As to paragraph 44, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

17. As to paragraph 45, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

18. As to paragraph 46, Defendants would state that the Order speaks for itself; otherwise Defendants are without knowledge and therefore are denying same and demanding strict proof thereof.

19. Paragraphs 47, 48, 49 and 50 are denied and strict proof is demanded thereof.

20. Paragraph 51 is admitted.

21. Paragraph 52 is denied and strict proof is demanded thereof.

22. Defendants are without knowledge as to paragraphs 53, 54 and 55 and therefore are denying same and demanding strict proof thereof.

23. Paragraph 56 is denied and strict proof is demanded thereof.

24. Paragraphs 57, 58, 59 and 60 are admitted.

25. Defendants are without knowledge as to paragraphs 61, 62 and 63 and therefore are denying same and demanding strict proof thereof.

26. Paragraphs 64, 65, 66, 67 and 68 are denied and strict proof is demanded thereof.

27. Defendants are without knowledge as to paragraph 69 and therefore are denying same and demanding strict proof thereof.

28. Paragraphs 70, 71 and 72 are denied and strict proof is demanded thereof.

COUNT I
BREACH OF STATUTORY DUTY (NEGLIGENCE)

29. As to paragraph 73, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

30. Paragraph 74 is denied and strict proof is demanded thereof.

31. Paragraph 75 is denied and strict proof is demanded thereof.

32. Paragraph 76 is denied and strict proof is demanded thereof. In this regard, the Defendants state affirmatively that all distributions received by them from the Partnership were taken in good faith, for a reasonably equivalent value, based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.

33. Paragraphs 77, 78, 79, 80 and 81 are denied and strict proof is demanded thereof.

COUNT II
BREACH OF FLA. STAT. § 620.8807

34. As to paragraph 82, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

35. Paragraphs 83 and 84 are denied and strict proof is demanded thereof.

36. As to paragraph 85 it is denied and strict proof is demanded thereof. In this regard, the Defendants state affirmatively that all distributions received by them from the Partnership were taken in good faith, for a reasonably equivalent value, based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.

37. Paragraphs 86, 87 and 88 are denied and strict proof is demanded thereof.

COUNT III
BREACH OF CONTRACT

38. As to paragraph 89, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

39. Paragraph 90 is denied and strict proof is demanded thereof.

40. As to paragraph 91 and 92, same are denied and strict proof is demanded thereof. In this regard, the Defendants state affirmatively that all distributions received by them from the Partnership were taken in good faith, for a reasonably equivalent value, based upon a decision of the Partnership and their Managing General Partners, which value consisted of the antecedent debt to them reflected on the books and/or financial records of the Partnership in accordance with the procedures set forth in the Partnership Agreements.

41. Paragraphs 93 and 94 are denied and strict proof is demanded thereof.

COUNT IV
UNJUST ENRICHMENT

42. As to paragraphs 95, 96, 97, 98 and 99, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

43. Paragraphs 100 and 101 are denied and strict proof is demanded thereof.

COUNT V
MONEY HAD AND RECEIVED

44. As to paragraphs 102, 103, 104, 105 and 106, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

45. Paragraphs 107 and 108 are denied and strict proof is demanded thereof.

COUNT VI
AVOIDANCE OF FRAUDULENT TRANSFERS
PURSUANT TO § 726.105(1)(a) OF THE FLORIDA STATUTES

46. As to paragraph 109, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

47. As to paragraph 110, Defendants would state that the Partnership Agreements speak for themselves; otherwise Defendants are without knowledge and therefore deny same and demand strict proof thereof.

48. Paragraphs 111 and 112 are denied and strict proof is demanded thereof. It is also denied that the Plaintiffs have standing to assert claims on behalf of any individual partners.

49. Paragraph 113 and 114 are denied and strict proof is demanded thereof.

COUNT VII
BREACH OF FIDUCIARY DUTY

50. As to paragraph 115, the Defendants would restate their answers to paragraphs 1 through 72 and incorporate those answers herein.

51. Paragraph 116 is denied and strict proof is demanded thereof.

52. As to paragraph 117, Defendants would state that Fla. Stat. §620.8404(2)(a) speaks for itself; otherwise denied and strict proof is demanded thereof.

53. Paragraphs 118, 119 and 120 are denied and strict proof is demanded thereof.

54. The Defendants, Abraham Newman, Rita Newman and Gertrude Gordon are denying all allegations of the Third Amended Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. As and for their First Affirmative Defense, the Defendants, Abraham Newman, Rita Newman and Gertrude Gordon, will show the Statute of Limitations

had expired on all Counts asserted against them and all causes of action are time barred.

2. As and for their Second Affirmative Defense, the Defendants assert that all disbursements received under the terms of the Partnership Agreements were accepted in good faith, without knowledge of any alleged wrong-doing or unlawful activities raised in the Third Amended Complaint.

3. As and for their Third Affirmative Defense, the Defendants would state that the Plaintiffs' claims are barred pursuant to § 14.03 of the Partnership Agreement.

4. As and for their Fourth Affirmative Defense, Defendants would state that the Plaintiffs' equitable claims fail as a matter of law because Plaintiffs have plead the existence of an express contract.

5. As and for their Fifth Affirmative Defense, Defendants assert the defense of unclean hands and equitable estoppel attributable to the Plaintiffs' conduct in the course of performing their duties under the Partnership Agreements.

6. As and for their Sixth Affirmative Defense, Defendants would state that Plaintiffs have failed to state a cause of action in Count II for breach of Fla. Stat. §620.8807 as there is no independent cause of action created by this statute recognized by the State of Florida.

7. As and for their Seventh Affirmative Defense, Defendants would state that Count VI of the Third Amended Complaint fails to state a cause of action under Chapter 726 of the Florida Statutes, Florida's Uniform Fraudulent Transfer Act. Plaintiffs are not creditors under the Act.

8. As and for their Eighth Affirmative Defense, the Defendants would state that the Complaint fails to state a cause of action in that § 14.03 of the Partnership Agreement limits the liability of the Defendants.

9. As and for their Ninth Affirmative Defense, the Defendants would state that all counts of the Third Amended Complaint are barred by the indemnification provisions of Fla. Stat. § 620.8701.

10. Defendants, Abraham Newman, Rita Newman and Gertrude Gordon, adopt all other affirmative defenses by co-defendants which apply to Defendants, Abraham Newman, Rita Newman and Gertrude Gordon.

WHEREFORE, Defendants, Abraham Newman, Rita Newman and Gertrude Gordon, respectfully demand dismissal of the claims against them set forth in the Third Amended Complaint with prejudice and request Court costs together with such other and further relief as this Honorable Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the e-filing portal on all registered parties this 12 day of March, 2014.

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