

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

CASE NUMBER: 12-34121 (07)
COMPLEX LITIGATION UNIT

MARGARET SMITH, et al.,

Plaintiffs,

v.

JANET A HOOKER CHARITABLE
TRUST, et al.,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES TO THIRD AMENDED COMPLAINT

Catharine Smith (“Defendant” or “Smith”), through undersigned counsel, hereby files her Answer and Affirmative Defenses to Plaintiffs’ Third Amended Complaint, and states as follows:

Answer

Parties, Jurisdiction, and Venue

1. Admitted that Plaintiffs alleged claims for breach of statutory duty, breach of contract, unjust enrichment, money had and received, and fraudulent transfer, but denied as to the validity of said claims. All remaining allegations are denied.
2. Admitted that P&S Associates, General Partnership (“P&S”), and S&P Associates, General Partnership (“S&P”), are general partnerships, but without knowledge as to the remaining allegations and, therefore, denied.
3. Without knowledge and, therefore, denied.
4. Without knowledge and, therefore, denied.
5. Without knowledge and, therefore, denied.

6. Without knowledge and, therefore, denied.
7. Without knowledge and, therefore, denied.
8. Without knowledge and, therefore, denied.
9. Without knowledge and, therefore, denied.
10. Without knowledge and, therefore, denied.
11. Without knowledge and, therefore, denied.
12. Without knowledge and, therefore, denied.
13. Without knowledge and, therefore, denied.
14. Without knowledge and, therefore, denied.
15. Without knowledge and, therefore, denied.
16. Without knowledge and, therefore, denied.
17. Without knowledge and, therefore, denied.
18. Without knowledge and, therefore, denied.
19. Without knowledge and, therefore, denied.
20. Without knowledge and, therefore, denied.
21. Without knowledge and, therefore, denied.
22. Without knowledge and, therefore, denied.
23. Without knowledge and, therefore, denied.
24. Without knowledge and, therefore, denied.
25. Without knowledge and, therefore, denied.
26. Without knowledge and, therefore, denied.
27. Without knowledge and, therefore, denied.

28. Without knowledge and, therefore, denied.
29. Without knowledge and, therefore, denied.
30. Without knowledge and, therefore, denied.
31. Without knowledge and, therefore, denied.
32. Without knowledge and, therefore, denied.
33. Without knowledge and, therefore, denied.
34. Admitted for jurisdictional purposes only.

General Allegations

35. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

36. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

37. Without knowledge and, therefore, denied.

38. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

39. Without knowledge and, therefore, denied.

40. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

41. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

42. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

43. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

44. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

45. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

The Defendants Received Improper Distributions From the Partnerships

46. The terms of Exhibit D speak for themselves. All remaining allegations are denied.

47. Denied.

48. Without knowledge and, therefore, denied.

49. Denied.

50. The terms of Exhibit E speak for themselves. All remaining allegations are denied.

51. The terms of Exhibit E speak for themselves. All remaining allegations are denied.

52. Denied.

53. Without knowledge and, therefore, denied.

The Winding Up of the Partnerships

54. Without knowledge and, therefore, denied.

55. Without knowledge and, therefore, denied.

56. Without knowledge and, therefore, denied.

57. Without knowledge and, therefore, denied.

58. Without knowledge and, therefore, denied.

59. Without knowledge and, therefore, denied.

60. Without knowledge and, therefore, denied.
61. Without knowledge and, therefore, denied.
62. Without knowledge and, therefore, denied.
63. Without knowledge and, therefore, denied.
64. Without knowledge and, therefore, denied.
65. Without knowledge and, therefore, denied.
66. Without knowledge and, therefore, denied.
67. Denied.
68. The terms of Exhibit G speak for themselves. All remaining allegations are denied.
69. Without knowledge and, therefore, denied.
70. Denied.
71. Denied.
72. Without knowledge and, therefore, denied.

Count I - Breach of Statutory Duty (Negligence)

73. Defendant re-alleges and incorporates herein her answers to paragraphs 1-72.
74. Denied.
75. Without knowledge and, therefore, denied.
76. Denied.
77. Denied.
78. Denied.
79. Denied.
80. Denied.

81. Denied.

Count II - Breach of Fla. Stat. § 620.8807

82. Defendant re-alleges and incorporates herein her answers to paragraphs 1-72.

83. Denied.

84. Without knowledge and, therefore, denied.

85. Denied.

86. Denied.

87. Denied.

89. Denied.

Count III - Breach of Contract

89. Defendant re-alleges and incorporates herein her answers to paragraphs 1-72.

90. Admitted that Defendant executed the S&P Partnership Agreement in September 1995, but denied as to the remaining allegations.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

Count IV - Unjust Enrichment

95. Defendant re-alleges and incorporates herein her answers to paragraphs 1-34, 37-39, 41, 46, 48, 50-51, 53-64 and 67-72.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

Count V - Money Had and Received

102. Defendant re-alleges and incorporates herein her answers to paragraphs 1-34, 37-39, 41, 46, 48, 50-51, 53-64 and 67-72.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

Count VI - Avoidance of Fraudulent Transfers Pursuant to Fla. Stat. § 726.105(1)(a)

109. Defendant re-alleges and incorporates herein her answers to paragraphs 1-72.

110. The terms of the Partnership Agreements for S&P and P&S speak for themselves.

All remaining allegations are denied.

111. Denied.

112. Without knowledge and, therefore, denied.

113. Without knowledge and, therefore, denied.

114. Denied.

Count VII - Breach of Fiduciary Duty

- 115. Defendant re-alleges and incorporates herein her answers to paragraphs 1-72.
- 116. Denied.
- 117. Denied.
- 118. Denied.
- 119. Denied.
- 120. Denied.

AFFIRMATIVE DEFENSES

1. Statute of Limitations. Plaintiffs' claims are barred by the applicable statute of limitations for each count, as more fully set forth in Defendant's Motion for Summary Judgment.

2. Limitation of Liability. Plaintiffs' claims are barred because the P&S and S&P Partnership Agreements limit claims against Defendant to the following:

The Partners shall have no liability to the partnership or to any other partner for any mistakes or errors in judgment, nor for any act or omissions believed in good faith to be within the scope of authority conferred by this agreement. **The Partners shall be liable only for acts and/or omissions involving the intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty.**

See P&S and S&P Partnership Agreements §§ 14.03 (emphasis added). Plaintiffs do not allege, nor could they allege, any intentional wrongdoing, fraud, or breach of the duty of care/loyalty on the part of Defendant in connection with her receipt of the funds that are the subject of the litigation while a partner in S&P. As such, Plaintiffs' claims fail as a matter of law.

3. Express Contract. Plaintiffs' equitable claims for unjust enrichment (Count 4) and money had and received (Count 5) fail as a matter of law because there is an express contract governing the rights and obligations of the Partnerships and Defendant.

4. Good Faith Transferee. Defendant received the payments in question with actual good faith and lack of knowledge regarding the activities of the Managing General Partners of S&P and/or P&S and Bernie Madoff. As such, Plaintiffs' claim for avoidance of fraudulent transfer (Count 6) fails as a matter of law.

5. In Pari Delicto. To the extent that this Court finds that the Defendant committed any of the purported wrongdoings alleged by Plaintiffs - and she did not - Plaintiffs are not entitled to any recovery because Plaintiffs were *in pari delicto*. Plaintiffs knew of, actively participated in, and benefitted from the purported wrongdoings as alleged by the Plaintiff.

6. Unclean Hands. Plaintiffs' equitable claims for unjust enrichment (Count 4) and money had and received (Count 5) are barred as a matter of law because the Plaintiff has unclean hands by its own inequitable conduct in the course of performing its obligations under the P&S and S&P Partnership Agreements.

7. Equitable Estoppel. Plaintiffs are not entitled to any recovery and is equitably estopped from asserting its claims due to its engagement in inequitable (and/or bad faith) conduct in the course performing its obligations under the P&S and S&P Partnership Agreements.

8. No Claim by P&S. Plaintiffs' Exhibit A to the Third Amended Complaint makes clear that Defendant never invested in P&S, nor received any disbursements from P&S. As such, any claims by P&S against Defendant fail as a matter of law.

9. No Cause of Action Under Fla. Stat. § 620.8807. Count 2 fails as a matter of law because the plain language of section 620.8807 does not create an independent statutory cause of action for an alleged violation.

10. Defendant Withdrew and Dissociated from S&P. Defendant dissociated from S&P

pursuant to Ch. 620 and the S&P Partnership Agreement in March 2004. Defendant's obligations as a partner in S&P, including those arising under Ch. 620 and the S&P Partnership Agreement, ceased upon her withdrawal and dissociation from S&P. Because Plaintiffs' claims are predicated on Defendant remaining a partner in S&P as of 2012 and 2013, the claims must fail as a matter of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed and served through the court's e-filing portal to Gary J. Rotella (rotellagar@aol.com), Rotella Law, PA, 150 N. Federal Highway, Ste. 250, Fort Lauderdale, FL 33304; Joseph P. Klapholz, Esq., Joseph P. Klapholz, P.A., 2500 Hollywood Blvd., Suite 212, Hollywood, FL 33020, (jklap@klapholzpa.com; dml@klapholzpa.com), Peter G. Herman, Esq., Tripp Scott, 110 SE Sixth Street, Suite 1500, Fort Lauderdale, FL 33301, (PGH@trippscott.com); Michael R. Casey, Esq., 1831 NE 38th St., # 707, Oakland Park, FL 33308, (mcasey666@gmail.com); Michael C. Foster, Esq., Annette M. Urena, Esq., Daniels Kashtan, 4000 Ponce de Leon Blvd., Suite 800, Coral Gables, FL 33146, (Mfoster@dkdr.com; aurena@dkdr.com); Marc S. Dobin, Esq., Dobin Law Group, PA, 500 University Boulevard, Suite 205, Jupiter, FL 33458, (service@DobinLaw.com); Julian H. Kreeger, Esq., 2665 South Bayshore Drive, Suite 2220-14, Miami, FL 33133 (Juliankreeger@gmail.com); Thomas M. Messana, Esq., Brett Lieberman, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Fort Lauderdale, FL 33301, (tmessana@messana-law.com; bliberman@messana-law.com); Daniel W. Matlow, Esq., Daniel W. Matlow, P.A., Emerald Lake Corporate Park, 3109 Stirling Road, Suite 101, Fort Lauderdale, FL 33312, (dmatlow@danmatlow.com; assistant@danmatlow.com); Richard T. Woulfe, Esq., Bunnell & Woulfe P.A., One Financial Plaza, Suite 1000, 100 SE Third Avenue, Fort Lauderdale, FL 33394, (Pleadings.RTW@bunnellwoulfe.com); Joanne Wilcomes, Esq., McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102, (jwilcomes@mccarter.com); Thomas L. Abrams, Esq., 1776 N. Pine Island Road, Suite 309, Plantation, FL 33322, (tabrams@tabramslaw.com); Zach Hyman (zhyman@bergersingerman.com) Berger Singerman, 350 E. Las Olas Blvd., Ste. 1000, Ft. Lauderdale, Florida, 33301-4215, this 13th day of March, 2014.

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