

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

Case No. 12-034121 (07)

Complex Litigation Unit

P& S ASSOCIATES, General Partnership,
et al.,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE
TRUST, et al.,

Defendants.

ETTOH, LTD.'S MOTION FOR SUMMARY JUDGMENT

Defendant ETTOH, LTD., through the undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510, hereby moves for final summary judgment, stating as follows:

STATEMENT OF UNDISPUTED FACTS

1. Ettoh, Ltd. ("Ettoh") is a defendant in the captioned lawsuit named in Plaintiffs' Third Amended Complaint, which was deemed filed on February 21, 2013.

2. The Third Amended Complaint asserts claims against several dozen individuals and entities (including Ettoh) who passively invested in one or more Florida general partnerships years – in some cases, decades – ago: S&P Associates, General Partnership ("S&P") and P&S Associates, General Partnership ("P&S"). *See* Amended Complaint at ¶¶ 2, 4 – 33. S&P and P&S were created and governed by partnership agreements that are attached as Exhibits "B" and "C" to the Third Amended Complaint (the "Partnership Agreements"). *See* Amended Complaint at ¶ 40.

3. Plaintiffs assert that the Defendants (collectively) “invested significant funds into one of two investment vehicles, each of which was expected to yield stable, consistent returns: S&P and P&S.” *See* Third Amended Complaint at ¶ 37. Ettöh’s liability is premised on its receipt of distributions from S&P – made by the Managing General Partners of S&P – by which they are alleged to have profited, while other partners, evidently lost their investments. *Id.* at ¶ 49. Plaintiffs further allege that Ettöh (actually, the Defendants collectively) acted in violation of the S&P Partnership Agreement by failing to return distributions made to it at the time of its dissociation from the Partnership over seven years ago. *Id.* at Exhibit “A.” The demand to return “distributions” was made in a letter delivered to Ettöh in November 2013. *Id.* at ¶¶ 50 – 53; 68.

4. The Affidavit of Jean F. Hotte, Esq. in Support of Ettöh, Ltd.’s Motion for Summary Judgment (the “Hotte Affidavit”) (filed with the Court under separate cover), confirms that Ettöh withdrew all of its investment and dissociated from the Partnerships in February 2007. The Hotte Affidavit further establishes that Ettöh has received nothing from S&P and that Ettöh has invested nothing in S&P since February 2007. Indeed, the Hotte Affidavit establishes that Ettöh had no contact with anyone concerning its investment in S&P from February 2007 until on or about November 13, 2012 when Ettöh received a letter from Margaret J. Smith demanding the same funds that are at issue in the captioned lawsuit.

ADOPTION OF PREVIOUSLY FILED BRIEFS AND ARGUMENTS

5. All of the claims against Ettöh are barred by the applicable statutes of limitations for the reasons more fully set forth in: (1) Catherine Smith’s Motion for Summary Judgment; (2) [the] Molchan Defendants’ Motion for Summary Judgment with Incorporated Memorandum of Law; (3) Defendant, Congregation of the Holy Ghost – Western Province’s Motion for Summary

Judgment as to the Plaintiffs' Third Amended Complaint and Incorporated Memorandum of Law; (4) Defendant Ersica P. Gianna's Motion for Summary Judgment on the Third Amended Complaint; (5) 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['s] Motion for Summary Judgment as to the Third Amended Complaint and Incorporated Memorandum of Law; and (6) Defendant Robert A. Urchin Revocable Trust's Motion for Summary Judgment on the Third Amended Complaint (collectively the "Motions for Summary Judgment").

6. Ettoh hereby adopts and incorporates by reference the legal arguments raised in the Motions for Summary Judgment as if fully set forth herein.

WHEREFORE, Defendant, ETTOH, LTD., respectfully requests that this Court enter summary final judgment in its favor and against Plaintiffs on all claims asserted in the Third Amended Complaint, award the attorneys' fees and costs incurred in the defense of this lawsuit and grant such further relief as is deemed just and proper.

Dated this 19th day of March, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via email this 19th day of March, 2014 to all counsel on the attached Service List.

/s/ Michael C. Foster
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