

**IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA**
CASE NO.: 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, as individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendants.

**CONSERVATOR'S MOTION FOR CONTEMPT AND TO COMPEL
TURNOVER OF PARTNERSHIPS' BOOKS, RECORDS AND
ELECTRONICALLY STORED INFORMATION**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), hereby files this Motion for Contempt and to Compel Defendant, Michael Sullivan ("Defendant"), to Turnover the Partnerships' Books, Records and Electronically Stored Information pursuant to this Court's January 17, 2013 Order Appointing Conservator (the "Conservator Order") and Fla. R. Civ. P. 1.380(b), and in support thereof states as follows:

Summary of Argument

Notwithstanding the express commands of the Conservator Order and Conservator's every effort, Defendant refuses to turn over information relative to the Partnerships. Worse, Defendant's feigned negotiations with the Conservator to work out a disclosure agreement have delayed the Conservator's efforts and interfered with his administration of the Conservatorship Property.

Defendant's willful violation of the Conservator Order ought not be countenanced. This Court should find Defendant in contempt and compel Defendant to provide the Conservator access to all information, electronic or otherwise, of or related to the Partnerships in his possession or control.

Background & Argument

On August 24, 2012, the plaintiffs filed their Verified Complaint against Defendant. The Verified Complaint alleged, among other things, that Defendant diverted millions of dollars from the Partnerships, used the Partnerships' assets to pay additional "management fees" and "commissions" to co-conspirators, and that Defendant seeks to prevent the Partnerships from vindicating their rights by maintaining a choke-hold on the information, assets, books and records of the Partnerships.

On January 17, 2013, this Court appointed the Conservator by entering its Conservator Order. The Conservator is tasked with, among other things, taking possession of all property of the Partnerships (the "Conservatorship Property") including all books, records and computer data, and reviewing, prosecuting, and investigating claims the Partnerships have, had or may have.

To aid the Conservator in his efforts, the Conservator Order required, among others, Defendant to "grant the Conservator unfettered access to any accounts, records, documents, files, plans, engineering reports, permits (whether expired or not), and computer equipment owned by the Partnerships." (Conservator Order at 2). Further, the Conservator Order states, "all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator" (Conservator Order at 5).

On or about February 17, 2012, the Conservator met with Defendant. At such time, the Conservator requested turn over of all books, records and electronically stored information in Defendant's possession or control, including, among other things, information held or controlled by

Michael D. Sullivan Associates, Inc. and Sullivan & Powell a/k/a Solutions in Tax, Inc.¹ Defendant admitted to being in possession and control of certain information, but refused to turn over the electronically stored information on the purported account that it was comingled with unrelated and confidential information.

To allay Defendant's supposed concern, the Conservator dedicated resources to draft a form agreement that would allow the Conservator access to the necessary information and protect the alleged confidential information. From March 12, 2013, counsel for the Conservator and counsel for Defendant exchanged extensive correspondence and several draft versions of a proposed agreement.

However, on March 22, 2013, counsel for Defendant filed his motion to withdraw. Shortly thereafter, counsel for Defendant informed counsel for the Conservator that his client would not consent to the proposed agreement.

Defendant's pretended willingness to work in good faith with the Conservator to provide him vital information is a willful violation of this Court's Conservator Order.

Defendant ought to be held in contempt for violating the Conservator Order under Fla. R. Civ. P. 1.380(b) and compelled to provide the Conservator and his agents access to all electronically stored information of or related to, in any way, the Partnerships, including information held and controlled by Michael D. Sullivan Associates, Inc. and Sullivan & Powell aka Solutions in Tax, Inc, and authority to copy such information.

WHEREFORE, the Conservator respectfully requests the entry of an Order: (i) finding Defendant in contempt of court for willfully violating the Conservator Order; (ii) compelling Defendant to provide the Conservator and his agents access to all information, including all electronically stored information (including all electronic correspondence) in his possession and

¹ On March 15, 2012, the Conservator sent a formal letter to Defendant demanding turnover of, among other things, documents and electronically stored information of or relating to the Partnerships. A copy of the demand letter is attached hereto as Exhibit "A".

control or in the possession or under the control of Michael D. Sullivan Associates, Inc. and Sullivan & Powell aka Solutions in Tax, Inc. or any other entity over which Defendant exercises control, whether hard copy, stored on a hard drive, cloud, or otherwise, of or related to, in any way, the Partnerships; (iii) compelling Defendant to permit the Conservator and his agents to make copies of any and all hard drives or other storage devices (including cloud storage) upon which the Partnerships' information was or may have been stored and to cooperate in all respects with the Conservator and his agents such that all of the information is delivered, in their entirety, to the Conservator; and (iv) for such other and further relief as this Court deems reasonable and just.

Dated: April 10, 2013.

MESSANA, P.A.
Attorneys for Conservator
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Telephone: (954) 712-7400
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By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422
Brett D. Lieberman, Esq.
Florida Bar No. 69583

Exhibit A

March 15, 2013

Mr. Michael Sullivan
3696 North Federal Highway, Suite 301
Fort Lauderdale, Florida 33308

RE: S&P Associates, General Partnership and P&S Associates, General Partnership

Dear Mike,

I wanted to follow up from our meeting a few weeks ago. I realize the events of Bernard L. Madoff Investment Securities, LLC. and the subsequent effects they have had on you and the S& P Partnership / P&S Partnerships (S&P / P&S) were, and are, tragic. It is evident to me from our meeting that you are fatigued and wish, as many do, for a quick closure to the process.

I also, seek an efficient and timely resolution of the process. In doing so, I need to verify that all of the speculation and doubts that have been lodged lack validity. If the questions that have been raised to the court are not answered, I am afraid that disbursements will be further delayed.

Accordingly, to reiterate the requests I made during our meeting, please send me the following information in order for me to complete my duties:

- All books and records of Michael D. Sullivan Associates, Inc.
- All books and records of Sullivan & Powell a/k/a Solutions in Tax, Inc.
- All accounting records pertaining to any fees received and disbursed as a result of your engagement or relationship with S & P / P & S.
- Immediate access to all computers (Mac and PC's) used for S&P and P&S
- A current personal financial statement

I am requesting this information be either delivered to me or ready for pick up at your office by noon on Wednesday, March 27th.

Lastly, at the suggestion of Chad Pugatch, I am offering to have another meeting should you wish to further discuss the S&P / P&S Partnerships. I will gladly modify my schedule to accommodate yours.

Again, I am sensitive to your position. I, however, am acting under the direction of the court to move this case(s) as rapidly as possible in order to get a distribution out to the general partners. Accordingly, I thank you in advance for your cooperation and assistance.

Sincerely,



Phil von Kahle
Conservator
CC: T. Messana
C. Pugatch