

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

Case No. 12-034121 (07)

P & S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited  
partnership, *et al.*,

Plaintiffs,

v.

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

Defendants.

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**PLAINTIFFS' RESPONSE AND MEMORANDA IN OPPOSITION TO  
DEFENDANT ETTOH, LTD'S MOTION TO  
FOR SUMMARY JUDGMENT**

Plaintiffs, P & S Associates, General Partnership ("P&S"), and S & P Associates, General Partnership ("S&P"), *et al.*, (collectively and individually referred to as, the "Partnerships" or "Plaintiffs"), by and through their undersigned attorneys, file this Response and Memoranda in Opposition to Defendant Ettoh Ltd's ("Defendant") Motion for Summary Judgment (the "Motion").

**I. STATEMENT OF FACTS**

This action names as defendants those particular partners of the Partnerships who received, on a net basis, more money than they invested; i.e., 'Net Winners.'

On or about March 19, 2014, Defendant filed the Motion seeking summary judgment. Based on the Motion, the following facts preclude entry of Summary Judgment between the parties:

- The Conservator could not have reasonably discovered the transfer of the improper distributions to Defendant prior to his appointment.
- A demand for the return of the amounts improperly received by Defendant could not have been made earlier than the appointment of Margaret Smith as Managing General Partner.
- The discovery of the Madoff fraud could not have reasonably led to the discovery of the claims against the Defendant by the Conservator.
- Defendant either did not withdraw from the Partnerships, or waived its right to withdraw. *See Exhibit 1.*

By the Motion, Defendant asserts that despite the improper circumstances under which it received its distributions it withdrew from the Partnerships and otherwise reincorporates by reference the arguments made by other Defendants' Motions for Summary Judgment.

### **LEGAL ARGUMENT**

For purposes of brevity, and because Defendant incorporates by reference of the arguments of the other Defendants, Plaintiffs reincorporate by reference their responses to those arguments of the other Defendants and the exhibits attached to those responses as evidence.

However, with respect to Counts I and II of the Complaint, Plaintiffs additionally submit that summary judgment should be denied because there is an issue of fact as to whether Defendant withdrew from the Partnerships.

On January 19, 2007, Defendant wrote a letter to Sullivan that stated that “[a]t this point in time I am planning on withdrawing my funds from my Ettoh Ltd account for a real estate endeavor.” Exhibit 1. Yet, the plain language of the letter further indicates that Defendant sought to withdraw those funds only on a temporary basis and not actually to withdraw as a Partner

because the letter goes on to state that “[i]t is my intention to reinvest these funds once they are no longer needed for this specific transaction.” *Id.*

Accordingly, there is a disputed issue of fact as to whether Defendant actually withdrew as a partner from the Partnership, and for the reasons set forth in Plaintiffs’ responses to the other Motions for Summary Judgment, and the reason set forth above, summary judgment is not properly granted in favor of Defendant.

WHEREFORE the Plaintiffs request that this Court enter an order denying Defendant Ettoh, Ltd’s Motion for Summary Judgment, together with such other and further relief as the Court may deem just and appropriate under the circumstances.

Dated: April 11, 2014

By: s/ Leonard K. Samuels  
Leonard K. Samuels  
Florida Bar No. 501610  
Etan Mark  
Florida Bar No. 720852  
*Attorneys for Plaintiffs*  
BERGER SINGERMAN LLP  
350 East Las Olas Boulevard, Suite 1000  
Fort Lauderdale, Florida 33301  
Telephone: (954) 525-9900  
Fax: (954) 523-2872  
lsamuels@bergersingerman.com  
emark@bergersingerman.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via  
Electronic Mail on this 11th day of April, 2014 upon the following:

| <b>Counsel</b>                | <b>E-mail Address:</b>   |
|-------------------------------|--|
| Ana Hesny, Esq.               | <a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a> ; <a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a>  |
| Eric N. Assouline, Esq.       | <a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a> ; <a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a>  |
| Annette M. Urena, Esq.        | <a href="mailto:aurena@dkdr.com">aurena@dkdr.com</a> ; <a href="mailto:cmackey@dkdr.com">cmackey@dkdr.com</a> ; <a href="mailto:service-amu@dkdr.com">service-amu@dkdr.com</a>   |
| Daniel W. Matlow, Esq.        | <a href="mailto:dmatlow@danmatlow.com">dmatlow@danmatlow.com</a> ; <a href="mailto:assistant@danmatlow.com">assistant@danmatlow.com</a>  |
| Debra D. Klingsberg, Esq.     | <a href="mailto:dklingsberg@huntgross.com">dklingsberg@huntgross.com</a>   |
| Joanne Wilcomes, Esq.         | <a href="mailto:jwtcomes@mccarter.com">jwtcomes@mccarter.com</a>   |
| Etan Mark, Esq.               | <a href="mailto:emark@bergersingerman.com">emark@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a> ; <a href="mailto:lyun@bergersingerman.com">lyun@bergersingerman.com</a>         |
| Ryon M. McCabe, Esq.          | <a href="mailto:rmccabe@mccaberabin.com">rmccabe@mccaberabin.com</a> ; <a href="mailto:e-filing@mccaberabin.com">e-filing@mccaberabin.com</a> ; <a href="mailto:beth@mccaberabin.com">beth@mccaberabin.com</a>                   |
| Evan H. Frederick, Esq.       | <a href="mailto:efrederick@mccaberabin.com">efrederick@mccaberabin.com</a> ; <a href="mailto:e-filing@mccaberabin.com">e-filing@mccaberabin.com</a>  |
| B. Lieberman, Esq.            | <a href="mailto:blieberman@messana-law.com">blieberman@messana-law.com</a>   |
| Jonathan Thomas Lieber, Esq.  | <a href="mailto:jlieber@dobinlaw.com">jlieber@dobinlaw.com</a>   |
| Mariaelena Gayo-Guitian, Esq. | <a href="mailto:mguitian@gjb-law.com">mguitian@gjb-law.com</a>   |
| Barry P. Gruher, Esq.         | <a href="mailto:bgruher@gjb-law.com">bgruher@gjb-law.com</a>   |
| William G. Salim, Jr., Esq.   | <a href="mailto:wsalim@mmsslaw.com">wsalim@mmsslaw.com</a>   |
| Domenica Frasca, Esq.         | <a href="mailto:dfrasca@mayersohnlaw.com">dfrasca@mayersohnlaw.com</a> ; <a href="mailto:service@mayersohnlaw.com">service@mayersohnlaw.com</a>  |
| Joseph P. Klapholz, Esq.      | <a href="mailto:jklap@klapholzpa.com">jklap@klapholzpa.com</a> ; <a href="mailto:dml@klapholzpa.com">dml@klapholzpa.com</a> ;  |
| Julian H. Kreeger, Esq.       | <a href="mailto:juliankreeger@gmail.com">juliankreeger@gmail.com</a>   |
| L Andrew S Riccio, Esq.       | <a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a> ; <a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a>  |
| Leonard K. Samuels, Esq.      | <a href="mailto:lsamuels@bergersingerman.com">lsamuels@bergersingerman.com</a> ; <a href="mailto:vleon@bergersingerman.com">vleon@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a> |
| Marc S Dobin, Esq.            | <a href="mailto:service@dobinlaw.com">service@dobinlaw.com</a> ; <a href="mailto:mdobin@dobinlaw.com">mdobin@dobinlaw.com</a> ;  |
| Michael C Foster, Esq.        | <a href="mailto:mfoster@dkdr.com">mfoster@dkdr.com</a> ; <a href="mailto:cmackey@dkdr.com">cmackey@dkdr.com</a> ; <a href="mailto:kdominguez@dkdr.com">kdominguez@dkdr.com</a>   |
| Richard T. Woulfe, Esq.       | <a href="mailto:pleadings.RTW@bunnellwoulfe.com">pleadings.RTW@bunnellwoulfe.com</a> ; <a href="mailto:kmc@bunnellwoulfe.com">kmc@bunnellwoulfe.com</a>  |
| Louis Reinstein, Esq.         | <a href="mailto:pleading@LJR@bunnellwoulfe.com">pleading@LJR@bunnellwoulfe.com</a>   |
| Michael R. Casey, Esq.        | <a href="mailto:mcasey666@gmail.com">mcasey666@gmail.com</a>   |

| <b>Counsel</b>          | <b>E-mail Address:</b>   |
|-------------------------|--|
| Peter Herman, Esq.      | <a href="mailto:PGH@trippscott.com">PGH@trippscott.com</a>   |
| Robert .J Hunt, Esq.    | <a href="mailto:bohunt@huntgross.com">bohunt@huntgross.com</a> ; <a href="mailto:sharon@huntgross.com">sharon@huntgross.com</a> ; <a href="mailto:eservice@huntgross.com">eservice@huntgross.com</a>                               |
| Steven D. Weber, Esq.   | <a href="mailto:sweber@bergersingerman.com">sweber@bergersingerman.com</a> ; <a href="mailto:lwebster@bergersingerman.com">lwebster@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a> |
| Thomas J. Goodwin, Esq. | <a href="mailto:tgoodwin@mccarter.com">tgoodwin@mccarter.com</a> ; <a href="mailto:nwendt@mccarter.com">nwendt@mccarter.com</a> ; <a href="mailto:jwilcomes@mccarter.com">jwilcomes@mccarter.com</a>                               |
| Thomas L. Abrams, Esq.  | <a href="mailto:tabrams@tabramslaw.com">tabrams@tabramslaw.com</a> ; <a href="mailto:fcolumbo@tabramslaw.com">fcolumbo@tabramslaw.com</a>  |
| Thomas M. Messina, Esq. | <a href="mailto:tmessana@messana-law.com">tmessana@messana-law.com</a> ; <a href="mailto:tmessana@bellsouth.net">tmessana@bellsouth.net</a> ; <a href="mailto:mwslawfirm@gmail.com">mwslawfirm@gmail.com</a>                       |
| Zachary P. Hyman, Esq.  | <a href="mailto:zhyman@bergersingerman.com">zhyman@bergersingerman.com</a> ; <a href="mailto:DRT@bergersingerman.com">DRT@bergersingerman.com</a> ; <a href="mailto:clamb@bergersingerman.com">clamb@bergersingerman.com</a>       |

By: s/Leonard K. Samuels  
Leonard K. Samuels

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# Ettoh Ltd.

January 19, 2007

**S & P Associates, General Partnership**  
Mr. Michael Sullivan  
6550 N Federal Hwy. #210  
Ft. Lauderdale, FL 33308  
954 492 0088  
Fax 954 938 0069

**Dear Mr. Sullivan,**

At this point in time I am planning on withdrawing all funds from my Ettoh Ltd. account for a future real estate endeavor. It is my intention to reinvest these funds once they are no longer needed for this specific transaction. Please update me with the account balance as well as any specific instructions needed to close the account. I also need to know a time frame as to when these funds will be available. Otherwise this letter shall serve as written notice needed to close this account. A check should be made payable to Ettoh Ltd and left for me at the office of Frazier Hotte & Associates.

Thank you. If you have any questions please do not hesitate to contact me.

Sincerely,



Daniel Hotte  
President  
Ettoh Ltd

8890 W Oakland Park Blvd Suite 201, Sunrise FL 33351

