

**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; and S&P
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, and PHILIP VON
KAHLE as Conservator on behalf of P&S
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, and S&P
ASSOCIATES, GENERAL PARTNERSHIP

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION TO DISMISS DEFENDANTS
JUDDS' COUNTERCLAIM AND, ALTERNATIVELY,
MOTION FOR MORE DEFINITE STATEMENT**

Plaintiffs, P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) and Philip Von Kahle as Conservator on behalf of P&S and S&P (“Conservator”) (P&S and S&P are collectively referred to as the “Partnerships” and with the Conservator as the “Plaintiffs”), by and through their undersigned attorneys, file this Motion to Dismiss Defendants James and Valerie Judds’ (collectively, “Judds”) Counterclaim.

The Judds’ Counterclaim should be dismissed because it does not identify which cause of action (or causes of action) they are asserting. Instead, their Counterclaim makes a vague and conclusory allegation that they were “defrauded” – which is not sufficient to state a claim in and

of itself. *Myers v. Myers*, 652 So. 2d 1214 (Fla. 5th DCA 1995); *Loving v. Viecelli*, 164 So. 2d 560, 561 (Fla. 3d DCA 1964) (“legal conclusions are not sufficient unless substantiated by allegations of ultimate fact. Every fact essential to the cause of action must be stated distinctively, definitely and clearly”).

To the extent that the Judds’ are asserting a claim for fraud, they are required to plead their claim with the requisite particularity required by Florida Rule of Civil Procedure 1.120(b). *Eagletech Commc'ns, Inc. v. Bryn Mawr Inv. Grp., Inc.*, 79 So. 3d 855, 861-62 (Fla. 4th DCA 2012) (“[i]n order for a claim of fraud in the inducement to withstand a motion to dismiss, it must allege fraud with the requisite particularity required by Florida Rule of Civil Procedure 1.120(b), including who made the false statement, the substance of the false statement, the time frame in which it was made and the context in which the statement was made.”). The Judds have not done so.

Additionally -- assuming the Judds’ are asserting a claim for fraud -- the Counterclaim, as plead, fails to state a cause of action because it does not allege all the required elements of the claim. Specifically, the underlying gravamen of the Counterclaim appears to be that “S&P Associates falsely represented there was a ‘realized gain’ on the investment of Defendants Judd.” However, the Judds have failed to allege (1) that they reasonably and/or justifiably relied on any statements from S&P or (2) the nature of their relationship to S&P, which would give rise to any such reliance, which is a necessary element for the causes of action that they may or may not be asserting against S&P (and Plaintiffs are unaware what those claims are). *See Lance v. Wade*, 457 So. 2d 1008, 1011 (Fla. 1984) (“The elements for actionable fraud are . . . reliance on the representation to the injury of the other party”). Further, the Judds have failed to make any

showing, reasonable or otherwise, which would support a claim for punitive damages. *See Fla. Stat. 768.72.*

Alternatively, Defendant should be required to give a more definite statement of the facts allegedly supporting their claim or claims. Presently, it is entirely unclear what claims the Judds intend to assert by their insufficiently plead Counterclaim.

Conclusion

Based upon the foregoing, Plaintiffs respectfully requests entry of an order dismissing the Counterclaim filed by Defendant James and Valerie Judd, with prejudice and awarding Plaintiff such other and additional relief that the Court deems just and proper.

Dated: April 14, 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 14th day of April, 2014 upon the following:

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

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

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

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