

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

CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.

Defendants.

**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' MATERIAL FACTUAL
STATEMENT IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants, Frank Avellino and Michael Bienes (collectively the “Defendants”), by and through their undersigned counsel, and pursuant to Section 5 of the Complex Litigation Procedures, provide the following Material Factual Statement in Support of Defendants’ Motion for Summary Judgment dismissing the Fifth Amended Complaint:

1. Plaintiffs filed their initial Complaint on December 10, 2012. [Docket Sheet].
2. The causes of action asserted against Defendants in the latest complaint (Fifth Amended Complaint) are Count I (breach of fiduciary duty), Counts III and V (unjust enrichment), Count IV (avoidance of fraudulent transfers), Count VI (money had and received) and Count VII (civil conspiracy). Fifth Amended Complaint (“5AC”). The 5AC was filed on January 9, 2015. [Docket Sheet].
3. The factual basis for the causes of action against Defendants is the alleged “kickbacks” paid to Defendant. 5AC, ¶¶ 46, 57, 75, 79, 95, 101 and 108.

4. The alleged “kickbacks” paid to Avellino, or an entity alleged to be controlled or directed by Avellino, were paid commencing in 2000, with the last payment made on or about October 1, 2008. [Defendants’ Notice of Filing Plaintiffs’ Third Supplemental Responses to Avellino’s First Set of Interrogatories (interrogatory 2); Plaintiffs’ Third Supplemental Responses to Avellino’s First Set of Interrogatories (interrogatory 4) and documents identified therein; and Plaintiffs’ Responses to Avellino’s Second Set of Interrogatories (interrogatory 5)].

5. The alleged “kickbacks” paid to Bienes, were paid commencing in 2000 with the last payment made in 2007. [Defendants’ Notice of Filing Plaintiff’s Supplemental Response to Bienes’ First Set of Interrogatories (interrogatories 7 and 8)].

6. On December 11, 2008, the Madoff Ponzi scheme became public. [Defendants’ Request for Judicial Notice].

7. Plaintiffs, P&S and S&P, and their counsel, had corporate records of P&S and S&P and had actual knowledge of the “kickbacks” paid to Avellino and Bienes, which they seek to recover in this action prior to August 24, 2012. [Defendants Request for Judicial Notice, Verified Compliant filed in *Matthew Carone, ET AL. V. Michael D. Sullivan*, Circuit Court, Broward County, Case No. 12-24051-07, ¶¶ 22, 25 and 30, filed August 24, 2012].

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April, 2015, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-

Filing Portal in compliance with Fla. Admin Order No. 13-49.

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