

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

CASE NO.: 12-034121 (07)
Complex Litigation Unit

MARGARET J. SMITH as Managing General
Partner of P&S Associates, GENERAL
PARTNERSHIP, a Florida limited partnership,
And S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership;
P&S ASSOCIATES, GENERAL PARTNERSHIP,
A Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP,
A Florida limited partnership,
Plaintiffs,

Vs

JANET A. HOOKER CHARITABLE TRUST, a
Charitable trust, DIANE M. DEN BLEYKER, an
Individual, ETTOH LTD., a Florida limited
Partnership, et al.
Defendants.

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO
MOTION FOR SUMMARY JUDGMENT AND INCORPORATED
MEMORANDUM OF LAW BY GERTRUDE GORDON,
ABRAHAM NEMWAN AND RITA NEWMAN

COME NOW, Defendants, GERTRUDE GORDON, ABRAHAM
NEWMAN and RITA NEWMAN, by and through the undersigned counsel, file
this their Reply to Plaintiffs' Response to Motion for Summary Judgment and
Incorporated Memorandum of Law and would state further as follows:

1. Plaintiffs' base their Response to Defendants' Motion for Summary Judgment upon a position that the Statute of Limitations does not begin to run under Fl. Stat. § 620.8807 until a wind-down of the General Partnership begins. Plaintiffs' position negates any requirements under the written contract and simply states that the Statute of Limitations are tolled until such time as the Partnership begins its wind-down process. Effectively, no Statute of Limitations would therefore be applicable to the claims of the Plaintiffs as the Plaintiffs could, in actuality, have waited an indefinite period of time within which to commence any wind-down process. The argument that the temporal limitation otherwise lacking from the Statute gives rise to an unlimited Statute of Limitations to seek recoveries from General Partners under the Partnership Act assumes no duty on the part of the Plaintiffs to act timely or reasonably leaving all the partners to the whim of the Plaintiffs on an indefinite basis.

2. The Plaintiffs argue that they could not have discovered the Defendants' receipt of improper distributions in December of 2008 when Madoff was revealed as a fraud. This is patently incorrect in that the Pugatch disclosure to partners was made in January of 2009 alerting all of the parties to the actual potential of a Net Winners lawsuit. Notice of this potential claim is therefore the trigger date for the Statute of Limitations where the Plaintiffs are on inquiry notice of the factual

disclosure of a potential claim following a partnership meeting. City of Miami v. Brooks, 70 So.2d 306 (Fla. 1954).

3. There is no need to consider any further potential notices of additional claims if the underlying claim itself is now known to all of the parties to this litigation. The Brooks decision, supra, provides that where injury, although slight, is sustained in consequence of a wrongful act of another, and the law affords a remedy therefore, the Statute of Limitations attaches at once.

4. The Plaintiffs maintain that the Defendants' unauthorized receipt of distributions represented a material breach of the Partnership Agreement because the receipt and retention of the distribution from the Partnership by the Partners was the essence of a tort as well as a breach of contract. In summary, the Plaintiffs maintain that receiving and depositing a distribution check was somehow a tortious act and the retention of monies distributed became actionable. It is worthy to note that no allegations are made that the distributions were triggered or caused by any acts of the Defendants or that the Defendants played any part in the decision to make the distribution.

5. The contractual agreement specifically limits the required contribution of capital to that provided for in Section 4.01 and Section 4.02 of the Partnership Agreement or as approved by all of the Partners. This has not occurred.

6. The Plaintiffs are attempting to create a paper issue with respect to language that is intended to limit causes of action against the General Partners and protect the General Partners from lawsuits such as the one at bar (Section 14.03 of The Partnership Agreement).

7. The Plaintiffs further maintain that the receipt of distributions by the Plaintiffs to the Defendants constitute a continuing tort presumptively because the distributions were not returned.

8. The doctrine of a continuing tort is established by a continual tortious act not by continual harmful effects from an original completed act. *Black Diamond Properties v. Haines*, 69 So.3rd 1090 (Fla. 5DCA 2011), citing *Horvath v. Delida*, 540 N.W. 2d 760 (Mich. APP. 1995). Accordingly, the continuing tort doctrine is inapplicable to the facts in this case.

9. The Defendants, GERTRUDE GORDON, ABRAHAM NEWMAN and RITA NEWMAN, renew and further rely on their arguments made in their Motion for Summary Judgment and adopt and join co-Defendants' Motions for Summary Judgment and Replies which argue in opposition to the same.

WHEREFORE, the Defendants, GERTRUDE GORDON, ABRAHAM NEWMAN and RITA NEWMAN, respectfully renew their request for an Order granting Summary Judgment as to all claims against them and enter a Final Judgment in their favor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the e-filing portal on all registered parties this 21ST day of April, 2014.

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