

**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, et al.,
Plaintiffs,

v.
MICHAEL D. SULLIVAN, individually,
Defendants.

**CONSERVATOR'S SUPPLEMENT TO 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 Supplement to Motion For Contempt and to Compel Defendant, Michael Sullivan ("Defendant"), to Turnover the Partnerships' Books, Records and Electronically Stored Information ("Supplement to Contempt Motion") 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

Despite the Conservator's every effort, this Court's orders, and the Defendant's several oral agreements, the Defendant and his affiliates continue not to provide the Conservator access to all electronically stored information relative to the Partnerships.

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 or under the control of affiliated and related entities.

Background & Argument

1. On April 10, 2013, the Conservator filed *Conservator's Motion for Contempt and to Compel Turnover of Partnerships' Books, Records and Electronically Stored Information* (the "Contempt Motion").

2. On April 18, 2013, this Court held a hearing where it considered, among others, the Contempt Motion (the "Contempt Hearing"). At the Contempt Hearing, the Defendant (again) and his affiliate, Steven Jacob ("Jacob"), stated that they would take all necessary steps to provide the Conservator access to all electronically stored information of or in any way related to the Partnerships located at 3696 Federal Highway, Suite 301, Ft. Lauderdale, FL 33308; the business office of Fresh Start Tax, LLC ("Fresh Start").¹ This agreement included providing the Conservator access to electronically stored information related to or controlled by, among others, Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc.

3. Relying on the representations of the Defendant and Jacob, the Conservator understood that the Contempt Motion was resolved and that the information would be promptly made available.

4. Prompt delivery was particularly important as the electronically stored information is at risk of being overwritten and lost through the computers' normal operations. The risk of losing such information creates, or exacerbates, a spoliation issue that is of great concern.

5. On April 19, 2013, Dick Haslam ("Haslam"), Lumar Motta, and Bill Straka of Moecker ("Moecker Employees") visited the business offices of Fresh Start. The Moecker Employees were met by, among others, the Defendant and Jacob of Fresh Start, and Matt Elias who was introduced as Fresh Start's IT vendor.

¹ Jacob is, among other things, the registered agent and manager of Fresh Start and Defendant is an employee of Fresh Start who purports to store his 'personal computer' on the business premises.

6. The Defendant and Jacob refused to provide the Moecker Employees access to certain electronically stored information including, among other things: 1) fourteen (14) Windows desktop computers; 2) the Apple 'iCloud'; 3) one (1) Apple Desktop (referred to as Defendant's 'personal' computer); and 4) all smart phones.

7. Additionally, the Defendant and Jacob failed to provide: 1) a list of and access to all e-mail correspondence; and 2) a list of and access to all former and current laptop computers.

8. Haslam's Affidavit in Support of Motion for Contempt is attached hereto as **Exhibit "A"** (the "Affidavit").

9. For the reasons described in the Contempt Motion, this Supplement to Contempt Motion, and the Affidavit supporting same, the 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 and authority to backup and/or clone all electronically stored information of or related to, in any way, the Partnerships, including all information held and controlled by Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc.

10. 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 control or in the possession or under the control of Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc., or any other entity over which Defendant or his affiliates exercise 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, or information relative to the Partnerships, 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 24, 2013

MESSANA, P.A.
Attorneys for Conservator
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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"

**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.

_____ /

AFFIDAVIT OF DICK HASLAM
IN SUPPORT OF MOTION FOR CONTEMPT

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

Before me, this date, personally appeared Dick Haslam, who being first duly sworn, deposes and says:

1. I am over the age of 18 and competent to testify.
2. I am an employee of Michael Moecker & Associates, Inc. ("Moecker"), working at the direction of Philip von Kahle, the court-appointed Conservator of S&P Associates, General Partnership and P&S Associates, General Partnership in the above captioned case (the "Conservator").
3. Prior to April 19, 2013, the Conservator tasked me with cloning and backing-up all of the electronically stored information located at the Fresh Start Tax, LLC ("Fresh Start")

business premises with an address of 3696 Federal Highway, Suite 301, Ft. Lauderdale, FL 33308.

4. Upon information and belief, the electronically stored information is stored on, among other things:

- a. Two (2) Apple Desktops;
- b. Fifteen (15) Windows desktop PCs;
- c. The Fresh Start 'server';
- d. Apple 'iCloud' storage;
- e. Certain smart phones; and
- f. E-mail software storage systems.

5. On April 19, 2013, Lumar Motta and Bill Straka of Moecker, accompanied me to the business offices of Fresh Start to back-up and/or clone the devices upon which such information is stored.

6. We were met by, among others, Michael Sullivan and Steve Jacob of Fresh Start, and Matt Elias, their purported IT vendor.

7. Steve Jacob and Michael Sullivan refused to allow me access to certain of the computers and other electronically stored information.

8. As of the date of this Affidavit, my team was only permitted: 1) to backup and clone one Apple desktop, 2) to backup and clone one windows desktop; and 3) to backup the Fresh Start 'server'.

9. Sullivan and Jacob refused to provide me access to, among other things: 1) fourteen (14) windows desktop computers; 2) access to the Apple 'iCloud'; 3) one (1) Apple Desktop (referred to as Sullivan's 'personal' computer); and 4) all smartphones.

10. Further, Sullivan and Jacob failed to provide me: 1) a list of and access to all e-

mail correspondence; and a list of and access to all former and current laptop computers.

FURTHER AFFIANT SAYETH NAUGHT.




Dick Haslam

SWORN TO AND SUBSCRIBED before me this 23rd day of April, 2013, by Dick Haslam who is personally known to me or produced identification drivers license and who did take an oath.



NOTARY PUBLIC, STATE OF FLORIDA



(Print, Type or Stamp Commissioned Name of Notary Public)

