

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

**Case No: 12-034123(07)
Complex Litigation Unit**

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

vs.
MICHAEL D. SULLIVAN,
et al.,
Defendants.

**PLAINTIFFS' MOTION FOR AN EXTENSION OF TIME TO RESPOND TO
DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through their undersigned counsel, hereby move for an extension of time to file a memorandum in opposition to Defendants Frank Avellino and Michael Bienes' ("Defendants") Joint Motion for Summary Judgment ("Defendants' Motion for Summary Judgment"), and in support thereof state:

1. Plaintiffs' opposition to the Defendants' Motion for Summary Judgment is currently due on May 19, 2015.
2. On April 23, 2015, during the hearing on Defendants' motions to dismiss (which were denied on April 27), the Court learned of Defendants' Motion for Summary Judgment and stated that "I'm certainly not going to hear your summary judgment" until, at a minimum, after Defendants' depositions:

MR. SAMUELS: Your Honor, there is one pending scheduling matter that I would like to deal with, and that is they've moved for summary judgment in this case. We have not yet had the opportunity to

take Mr. Avellino and Mr. Bienes' deposition. It's been set about four times each, and they've been cancelled about four times each. Admittedly, I cancelled it once, so they've been moved around. But you have to take the depositions at least before --

THE COURT: When was the last time you all did a case management order?

MR. WOODFIELD: Last July.

THE COURT: I want you to do an updated case management order to get these things on the schedule to get completed because I'm certainly not going to hear your summary judgment until you depose them.

MR. WOODFIELD: Well, a lot of it is there's a lot of discovery that needs to be conducted.

See Exhibit A, Tr. 19:14-20:8

3. Defendants' depositions have not yet been taken and Plaintiffs are entitled to file their opposition to Defendants' Motion for Summary Judgment after they have deposed Defendants and conducted discovery as to any genuine issues of material fact that might arise after those depositions. *Osorto v. Deutsche Bank Nat. Trust Co.*, 88 So. 3d 261, 263 (Fla. 4th DCA 2012), reh'g denied (June 5, 2012) ("Therefore, the trial court erred in its entry of its order because summary judgment is considered premature until all discovery which may yield genuine issues of material fact is complete"); *Payne v. Cudjoe Gardens Prop. Owners Ass'n, Inc.*, 837 So. 2d 458, 461 (Fla. 3d DCA 2002) ("Where discovery is not complete, the facts are not sufficiently developed to enable the trial court to determine whether genuine issues of material facts exist. Thus, where discovery is still pending, the entry of Summary Judgment is premature") (internal citations omitted).

4. Per the Court's direction at the April 23 hearing, Plaintiffs circulated to the parties a proposed Case Management Order which, *inter alia*, extends the deadline to conduct expert

discovery until January 15, 2016. That proposed Case Management Order was submitted to the Court with the approval of all parties except defendants Steven Jacob and Steven F. Jacob CPA & Associates, Inc. – who did not respond to Plaintiffs’ inquiries regarding approval.

5. Plaintiffs respectfully request that the Court enter an order extending the deadline for Plaintiffs to respond to Defendants’ Motion for Summary Judgment up to and until February 15, 2016, so that Plaintiffs may have 30 days from the close of expert discovery to respond to Defendants’ Motion for Summary Judgment.

6. Plaintiffs contacted Defendants to obtain consent for this requested extension of time, but Defendants refused to consent to the relief sought herein. Defendants stated that Plaintiffs’ “response might prompt further discovery. We need time to conduct if required.”

WHEREFORE Plaintiffs request this Court enter an order (i) granting Plaintiffs’ an extension of time, up to and until February 15, 2016, to respond to Defendants’ Motion for Summary Judgment and (ii) for such other and further relief as this Court deems just and proper.

May 19, 2015

Respectfully submitted,

By: s/ Leonard K. Samuels

Leonard K. Samuels
Florida Bar No. 501610
Etan Mark
Florida Bar No. 720852
Steven D. Weber
Florida Bar No. 47543
Attorney 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
sweber@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail this 19th day of May, 2015, upon the following:

Peter G. Herman, Esq.
Tripp Scott
110 SE 6th Street
15th Floor
Fort Lauderdale, FL 33301
Tel.: 954-525-7500
Fax.: 954-761-8475
pgh@trippscott.com
*Attorneys for Steven Jacob; Steven F. Jacob
CPA & Associates, Inc.*

Thomas M. Messina, Esq.
Messana, P.A.
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Tel.: 954-712-7400
Fax: 954-712-7401
tmessana@messana-law.com
Attorneys for Plaintiff

Gary A. Woodfield, Esq.
Haile, Shaw & Pfaffenberger, P.A.
660 U.S. Highway One, Third Floor
North Palm Beach, FL 33408
Tel.: 561-627-8100
Fax.: 561-622-7603
gwoodfiled@haileshaw.com
bpetroni@haileshaw.com
eservices@haileshaw.com
Attorneys for Frank Avellino

Mark F. Raymond, Esq.
mraymond@broadandcassel.com
Jonathan Etra, Esq.
jetra@broadandcassel.com
Christopher Cavallo, Esq.
ccavallo@broadandcassel.com
Broad and Cassel
One Biscayne Boulevard, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Tel.: 305-373-9400
Fax.: 305-373-9443
Attorneys for Michael Bienes

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

EXHIBIT A

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17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA
Case No: 12-034123(07)
Complex Litigation Unit

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

vs.

STEVEN JACOB, an individual, STEVEN F. JACOB,
CPA & ASSOCIATES, INC., a Florida corporation,
FRANK AVELLINO, an individual, and MICHAEL
BIENES, an individual,

Defendants.

_____ /

TRANSCRIPT OF HEARING

DATE TAKEN: Thursday, April 23, 2015
TIME: 10:20 a.m. - 11:15 a.m.
PLACE: Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida
BEFORE: The Honorable Jack Tutor

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were reported by:

Cynthia S. Fleegle, RPR
Empire Legal Support, Inc.
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, Florida 33301
(954) 241-1010

1 going.

2 THE COURT: It's not at issue, so I'm not
3 setting the case for trial right now until I get
4 the pleadings finished.

5 MR. SAMUELS: Okay.

6 THE COURT: In this division when I close a
7 case and I say it's ready to go, you get a trial
8 next month. This isn't where you wait six months
9 or eight months. That's why these case management
10 orders are important because I won't give you a
11 trial date until you're 80 or 90 percent done with
12 your discovery. When you're done with discovery,
13 you're going to go to trial in a couple months.

14 MR. SAMUELS: Your Honor, there is one pending
15 scheduling matter that I would like to deal with,
16 and that is they've moved for summary judgment in
17 this case. We have not yet had the opportunity to
18 take Mr. Avellino and Mr. Bienes' deposition. It's
19 been set about four times each, and they've been
20 cancelled about four times each. Admittedly, I
21 cancelled it once, so they've been moved around.
22 But you have to take the depositions at least
23 before --

24 THE COURT: When was the last time you all did
25 a case management order?

1 MR. WOODFIELD: Last July.

2 THE COURT: I want you to do an updated case
3 management order to get these things on the
4 schedule to get completed because I'm certainly not
5 going to hear your summary judgment until you
6 depose them.

7 MR. WOODFIELD: Well, a lot of it is there's a
8 lot of discovery that needs to be conducted.

9 One of our motions that we have pending that we
10 scheduled for today was to seek additional
11 interrogatories. We've issued so far in this case,
12 I think two or three times we've issued
13 interrogatories from a portfolio of 27. I went
14 back through those, and all but four, only four of
15 those interrogatories that we previously sent
16 related to the kickback allegations.

17 THE COURT: What's your response, sir?

18 MR. WEBER: Your Honor, they've had multiple
19 opportunities to serve interrogatories. The same
20 interrogatories they want to sever now have already
21 been addressed. The complaint has not been changed
22 materially from the last complaint.

23 THE COURT: It will be easy to answer. Won't
24 they?

25 MR. WEBER: Your Honor, what you're forcing the