

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

CASE NO: 12-34121(07)

PHILIP J. VON KAHLE, as Conservator of
P&S ASSOCIATES, GENERAL
PARTNERSHIP, and S&P ASSOCIATES,
GENERAL PARTNERSHIP,

Complex Litigation Unit

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE
TRUST, et al,

Defendants.

**DEFENDANTS JAMES AND VALERIE JUDD'S REPLY TO
PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

Defendants James and Valerie Judd reply to Plaintiff's Response to their Motion for Summary Judgment as follows:

THE UNCONTROVERTED FACTS

1. Defendant James Judd did not sign the S&P Partnership Agreement or either of the checks to S&P.
2. The affidavit of Valerie Judd attached to Defendants Judds' Motion for Summary Judgment states that the signature on the single page dated 7/14/2000 (Ex. 1 to her affidavit) and the signatures on the two checks to S&P Associates (Ex. 2 to her affidavit) were her signatures and not those of James Judd.
3. The one page signed Agreement dated 7/14/2000 makes no reference to the 14 page Amended and Restated Partnership dated December 21, 1994.

4. Defendants Judd did not receive “quarterly distributions” or other periodic distributions from S&P. Pursuant to the one page signed agreement, all payments due to Valerie Judd became reinvestments in capital. This can also be seen from the K-1 attached to the Judds’ Motion for Summary Judgment as Exhibit 3. The only payments made by S&P Associates were withdrawals of capital requested by Valerie Judd when she requested a portion of the funds for living expenses (see Valerie Judd’s Answers to Plaintiff’s Interrogatories No. 2 and 4). At the time of her last request she was told by the S&P Associates secretary or receptionist that the Judds were no longer qualified to be investors (see Valerie Judd’s Answer to Plaintiffs’ Interrogatory No. 4).
5. The relationship of the Judds with S&P Associates was therefore terminated by S&P Associates in 2008 when Valerie Judd called to ask to withdraw funds and was told that they were no longer qualified investors. Defendants Judd intend to file a supplement to their Motion for Summary Judgment to show that this occurred no later than December 3, 2008, the date S&P issued and sent its check for this withdrawal. A copy of the check will be attached.
6. There is absolutely no indication that Defendants Judd were ever aware of, or participated in, any wrongful conduct at any time.

Accordingly:

James Judd, not having signed any Partnership Agreement, was not a partner in S&P Associates and is not subject to any claim by Plaintiffs against Partners of S&P Associates, is not subject to any provision of the Amended and Restated Partnership Agreement dated December 21, 1994 or any provision of the Florida Statutes relating to obligations of partners (or former partners).

The single page dated 7/14/2000 signed by Valerie Judd, (attached as Exhibit 1 to her affidavit) is the only S&P Associates agreement she was given. It makes no reference to, and does not incorporate, the 14 page Amended and Restated Partnership Agreement of S&P Associates, dated December 21, 1994, which Plaintiffs have attached to the Third Amended Complaint. Furthermore, since neither Valerie Judd (nor James Judd) ever received (or were given) the 14 page Amended Partnership Agreement, they are not bound by any of its provisions.

The one page agreement dated 7/14/2000 provides that all quarterly distributions would be “reinvested in the Partnership.” As such they become capital contributions as can be seen on the K-1s issued by S&P Associates that were filed by S&P Associates with the Internal Revenue Service along with the Form 1065 filed by S&P Associates (see e.g. the K-1 for 2007 attached as Ex. 3 to Defendants Judds’ Motion for Summary Judgment.)

Because S&P Associates advised Valerie Judd that the Judds were no longer qualified to be investors with S&P Associates, any ongoing relationship with either Valerie or James Judd as Partners in S&P Associates was effectively terminated and they are no longer subject to any wind down provisions of the Florida Statutes.

Counsel for Defendants Judd is presently attempting to resolve various pending discovery issues with Plaintiffs’ counsel pursuant to this Court’s Order, which denied Defendants Judds’ Motion to Strike Plaintiffs’ Pleadings without prejudice and anticipates that a Motion to Compel may become necessary. There is also additional pending discovery that counsel for Defendants Judd believes will be relevant. Counsel for Defendants Judd anticipates that this will be incorporated in a supplement to this reply.

It should also be noted that the unsigned one page letter dated July 24, 2000, which Plaintiffs attached to their Response, makes no reference whatsoever to the 14 page Amended and Supplemental Partnership Agreement of December 21, 1994.

This will be further addressed in a Supplemental Motion to more fully present the facts and argument that since James was never a partner and Valerie did not sign or receive the 14 page Amended and Supplemental Agreement, they are not subject to any of its provisions. Significantly, the unsigned letter attached to Plaintiff's Response make no reference to the 14 page Partnership Agreement dated December 21, 1994.

In addition, Defendants Judd will further argue that:

- A. Plaintiffs are estopped to ignore and contradict the K-1's and Partnership Returns Form 1065 filed by the original partners of S&P Associates showing that:
 - i. the funds held were capital investments by Defendants Judd;
 - ii. Investment income was received by S&P Associates from its investments; and
 - iii. all payments to Defendants Judd were withdrawals of capital; and
- B. Plaintiffs, as Successor General Partners, have an equal fiduciary duty to all partners and not to act in favor of certain partners to the detriment of other Partners or former Partners, akin to a corporation not having a right to choose to sue certain shareholders for the benefit of other shareholders.

Dated this 13th day of June, 2014

Respectfully submitted,

s/ Julian H. Kreeger
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon Leonard Samuels, Esq. of Berger Singerman and counsel identified below registered to receive electronic notifications, and regular U.S. mail upon Pro Se parties on this 13th day of June, 2014 upon the following:

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