

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

Case No. 12-34121 (07)
Complex Litigation Unit

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; 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,

v.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, et al.,

Defendants.

_____/

**DEFENDANT, JESSE GOSS'S ANSWER AND AFFIRMATIVE DEFENSES TO THIRD
AMENDED COMPLAINT**

Defendant, Jesse Goss, by and through his undersigned counsel, submits this Answer and
Affirmative Defenses to the Third Amended Complaint.

1. Admitted.
2. Admitted.
3. Admitted.
- 4-15. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore,

denied.

16. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

17-32. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

33. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached document speaks for itself.

34. Admitted.

35. Admitted.

36. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.

37. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

38. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

39-45. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.

46. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

47. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

48. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
49. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
50. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
51. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
52. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
53. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
54. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.
55. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.
56. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
57. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
58. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore,

denied.

59. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

60. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

61. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

62. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.

63. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.

64. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

65. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

66. Denied.

67. Denied.

68. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The attached document speaks for itself.

69. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

70. Denied.

71. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

72. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

COUNT I

73. Defendant Jesse Goss's averments in response to paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

74. Denied.

75. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

81. Denied.

COUNT II

82. Defendant Jesse Goss's averments in response to paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

83. Denied.

84. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

85. Denied.

86. Denied.

87. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

88. Denied.

COUNT III

89. Defendant Jesse Goss's averments in response to paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

90. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

COUNT IV

95. Defendant Jesse Goss's averments in response to paragraphs 1 through 34, 37 through 39, 41, 46, 48, 50, 51, 53, 54 through 64, and 67 through 72 are incorporated by reference as

if fully set forth herein.

96. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
97. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
98. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
99. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
100. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
101. Denied.

COUNT V

102. Defendant Jesse Goss's averments in response to paragraphs 1 through 34, 37 through 39, 41, 46, 48, 50, 51, 53, 54 through 64, and 67 through 72 are incorporated by reference as if fully set forth herein.
103. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
104. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
105. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore,

denied.

106. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

107. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

108. Denied.

COUNT VI

109. Defendant Jesse Goss's averments in response to paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

110. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.

111. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

112. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

113. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.

114. Denied.

COUNT VII

115. Defendant Jesse Goss's averments in response to paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

116. Denied.
117. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
118. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
119. Defendant Jesse Goss is without knowledge as to these allegations and they are, therefore, denied.
120. Denied.

AFFIRMATIVE DEFENSES

I. Statute of Limitations

Plaintiffs' claims are barred because the Statute of Limitations had expired on all claims asserted against Defendant Jesse Goss. As such, all claims are time barred. The last alleged distribution received by Jesse Goss, as noted on the records of the Partnerships, was in 2008.

Count I is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3)(p). As noted above, the last distribution was received by the Jesse Goss in 2008. Jesse Goss subsequently dissociated from the Partnership prior to both the "winding up" of the Partnerships and the Plaintiffs' October 2013 demand for contribution. Therefore, the claim for breach of statutory duty of Fla. Stat. § 620.8807 is barred.

Count II for Breach of Contract is barred by a five-year statute of limitations. *See* Fla. Stat. § 95.11(2)(b) (providing a five-year limitation period for a legal or equitable action on a contract, obligation, or liability founded on a written instrument). Therefore, the claim for breach of contract

was required to be filed within five years of the breach in order for this claim to be viable. As noted above, the last distribution was received by the Jesse Goss sometime in 2008. The Plaintiffs' records showing Jesse Goss's last distribution are lacking specific dates, making it impossible to determine exactly when the cause of action actually accrued. The alleged breach of contract occurred, and the Plaintiffs' cause of action accrued, no later than 2013. Regardless, Jesse Goss dissociated from the Partnership prior to the "winding up" of the Partnerships.

Plaintiffs' claim for Unjust Enrichment is barred by a four-year statute of limitations. The statute of limitations on Plaintiffs' claim for unjust enrichment is four years. *Swafford v. Schweitzer*, 906 So. 2d 1194, 1195 (Fla. 4th DCA 2005); *see also*, Fla. Stat. § 95.11(3)(k). An unjust enrichment claim accrues at the time the defendant receives the improper enrichment. Because Jesse Goss received the last of his allegedly improper distributions more than 5 years ago, in 2008, that is the latest that the Partnership could have conferred a benefit to the Congregation. Accordingly, Plaintiffs' claim for unjust enrichment was required to be filed no later than January 2012. The claim was filed after the expiration of the applicable statute of limitations period and, as a result, the claim for unjust enrichment is time-barred.

Plaintiffs' claim for Money Had and Received is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3). Because Jesse Goss received the last of his allegedly improper distributions more than 5 years ago, in 2008, that is the latest that the Partnership could have conferred a benefit to him. Accordingly, Plaintiffs' claim for money had and received was required to be filed no later than January 2012. The claim was filed after the expiration of the applicable statute of limitations period and, as a result, the claim for money had and received is time-barred.

Section 726.105(1)(a), Fla. Stat., states that a transfer made by a debtor is fraudulent if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor. The applicable limitations period for fraudulent transfer claims is contained in Fla. Stat. § 726.110(1). A cause of action with respect to a fraudulent transfer or obligation under Fla. Stat. § 726.105(1)(a) is extinguished unless action is brought within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. *See* Fla. Stat. § 726.110(1). Since the last of the allegedly fraudulent transfers to Jesse Goss occurred in 2008, any action with respect to this transfer must have been brought by 2012. Even with the one year savings clause the claim is time-barred. The one year savings clause provides that if suit is brought after the 4 year limitation period, it must still be within 1 year after the transfer or obligation was or could reasonably have been discovered. As described in the Third Amended Complaint, the Partnerships ultimately lost money due to the defalcation of Bernard Madoff and the fraud committed by Mr. Madoff and others. (Amended Compl. ¶ 39). This disclosure was made in December 2008. A meeting of the partners was subsequently held in early 2009. Thus, even under the 1 year savings clause, the claim to avoid a fraudulent transfer under Fla. Stat. § 726.105(1)(a), must have been brought by 2010 at the latest. This clearly did not occur.

Wherefore, Defendant Jesse Goss, demands judgment against Plaintiffs denying all recovery and awarding him his costs and attorneys fees.

DATED: June 27, 2014

Respectfully Submitted,

/s/ Jonathan T. Lieber
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email
this 27th day of June, 2014, to:

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