

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

COMPLEX LITIGATION UNIT

CASE NO.: 12-034123 (07)

PHILIP J. VON KAHLE, as Conservator of  
P&S Associates, General Partnership and  
S&P Associates, General Partnership

Plaintiffs,

v.

Steven Jacob, et al.,

Defendants.

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**PLAINTIFFS' MOTION TO STRIKE NOTICE OF  
TAKING DEPOSITION AND FOR PROTECTIVE ORDER**

Plaintiffs, by and through the undersigned counsel, hereby file this motion to strike non-party Michael D. Sullivan's ("Sullivan") Notice of Taking Deposition and requesting entry of a Protective Order relieving "Philip Von Kahle, as Conservator of P&S, et al" (the "Conservator") of any obligation to appear at a deposition unilaterally noticed by Sullivan. In support thereof, Plaintiffs state:

1. Sullivan is not a party to this action.
2. On March 11, 2015, this Court entered a Final Judgment against Sullivan (the "Judgment"). The Judgment is final and non-appealable. Additionally, Plaintiffs' Fifth Amended Complaint does not include Sullivan as a party.
3. Nevertheless, and without consulting with Plaintiffs as to their availability, Sullivan served a *Notice of Taking Deposition* (the "Notice of Deposition") in this action on July

9, 2015, seeking to depose Plaintiff “Philip Von Kahle, as Conservator of P&S, et al” on Wednesday, July 22, 2015.<sup>1</sup> *See Exhibit A.*

4. Sullivan is not a party to this action and is therefore not entitled to obtain discovery in this action by deposition or otherwise. *See* Fla. R. Civ. P. 1.280(b)(1) (“**Parties** may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions...”) (emphasis added).

5. Accordingly, Sullivan’s Notice of Deposition should be stricken.

6. For good cause the Court may enter an order to protect a party “from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had...” Fla. R. Civ. P. 1.280(c). Further, “[a] trial court has authority to prevent discovery which it believes is a mere fishing expedition calculated for harassment.” *Sugarmill Woods Civic Ass’n, Inc. v. S. States Utilities*, 687 So. 2d 1346, 1351 (Fla. 1st DCA 1997).

7. Plaintiffs will be prejudiced by allowing non-party Sullivan to conduct depositions in this action because it will tax Plaintiffs’ limited resources and expose them to discovery that Sullivan is not entitled to obtain.

8. Accordingly, Plaintiffs request that the Court enter a protective order preventing Sullivan from conducting depositions or seeking discovery in this action.

WHEREFORE Plaintiffs respectfully request that the Court enter an order (i) striking the Notice; (ii) entering a protective order preventing Sullivan from conducting discovery and seeking discovery in this action; and (iii) granting any further relief that the Court deems just and proper.

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<sup>1</sup> The Conservator is not available on this date.

Dated: July 14, 2015.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this July 14, 2015, a true and correct copy of the foregoing document was served on the following:

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By: s/Thomas M. Messana  
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**Exhibit “A”**

**IN THE CIRCUIT COURT FOR THE 17<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY FLORIDA**

PHILIP J. VON KAHLE, et al,	)
	) CASE NO. 12-034123 (07)
Plaintiffs,	) COMPLEX LITIGATION UNIT
v.	)
	)
MICHAEL D. SULLIVAN,	)
Defendant.	)

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**NOTICE OF TAKING DEPOSITION**

TO: Thomas M. Messana, Esq.

PLEASE TAKE NOTICE that pursuant to Rule 1.310, Fla.R.Civ.P., the undersigned attorney for Defendant will take the deposition of:

<u>NAME</u>	<u>DATE AND TIME</u>	<u>PLACE</u>
PHILIP J. VON KAHLE, as Conservator of P&S, etal	10:00 am, Wednesday July 22, 2015	Esquire Deposition Solutions 515 East Las Olas Boulevard Suite1300 Ft. Lauderdale, Florida 33301 (954) 331-4400

Upon oral examination before Esquire Deposition Services, or any other notary public or officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. The deposition is being taken for purposes of discovery, for use at trial, or for such other purposes as are permitted under the rules of the Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above was filed with this Court's E-Filing System and all registered parties were selected for E-Service this July 9, 2015.

\_\_\_\_\_  
/s/ Harry Winderman  
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