

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

CASE NO.: 12-034121 (07)

P &S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, *et al.*,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' SECOND MOTION FOR A PROTECTIVE ORDER AS TO DISCOVERY
PROPOUNDED BY DEFENDANTS JAMES AND VALERIE JUDD AND RESPONSE
TO SUPPLEMENTAL MOTION TO COMPEL**

Plaintiffs, P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) (S&P and P&S are collectively referred to as the “Partnerships”), and Philip Von Kahle as Conservator on behalf of P&S and S&P (the “Conservator” and collectively with the Partnerships, “Plaintiffs”), by and through the undersigned counsel, hereby file this second motion requesting entry of a Protective Order relieving Plaintiffs of their obligation to responding to certain discovery propounded on Plaintiffs by Defendants James and Valerie Judd (collectively, “Defendants”) after the close of discovery in this action or engage in further discovery with Defendants; and respond to Defendants’ Supplemental Motion to Compel and in support thereof state:

1. Defendants first received a copy of the Complaint in this action on or about June 27, 2013.¹

2. On or about September 26, 2013, Defendants filed a Motion to Dismiss which, *inter alia*, sought to quash service.

3. Despite seeking to quash service in this action, Defendants appeared before this Court numerous times at certain monthly Status Conferences since at least August of 2013.

4. Additionally, Defendants were identified as parties in and received draft copies of the Case Management Order for this action, which was entered by the Court on December 20, 2013. That Case Management Order provided, *inter alia*, that the parties were to conduct and conclude fact discovery by March 28, 2014.

5. Under that Case Management Order, Plaintiffs served discovery requests on Defendants and Defendants were able to serve discovery requests on Plaintiffs.

6. Then, months after filing their motion to dismiss, after appearing before this Court numerous times, after the entry of the Case Management Order, and after receiving discovery requests from Plaintiffs, Defendants' motion was not addressed by the Court until March 7, 2014. That motion was resolved by Agreed Order Granting Defendants' Motion to Quash Service, Motion to Quash Purported Service, whereby Defendants were deemed served on March 7, 2014.

7. Although discovery in this action was to conclude by March 28, 2014, all parties to this action (including Defendants), agreed to extend the deadline to conduct fact discovery up

¹ Defendants never alleged that they did not receive a copy of the Complaint, but instead claimed that because a copy of the Complaint was left at their door step, service was improper.

to and until May 16, 2014. And, on March 26, 2014, Defendants served discovery requests on Plaintiffs and filed a Counter-claim against Plaintiffs.²

8. Plaintiffs responded to Defendants discovery on April 30, 2014. And, as discovery was supposed to end on May 16, 2014, Defendants had more than two weeks before the completion of discovery to serve supplemental discovery onto Plaintiffs.

9. Instead, it was not until May 23, 2014, and on May 29, 2014 that Defendants propounded additional discovery on Plaintiffs. Specifically, Defendants served Plaintiffs with (i) Defendants James and Valerie Judd's Second Request for Admissions; (ii) Defendants James and Valerie Judd's Second Set of Interrogatories to Plaintiffs; and (iii) Defendants James and Valerie Judd's Second Request for Production. Among those requests, Defendants issued 22 requests for admissions coupled with interrogatories which request that Plaintiffs explain the basis for their denial of Defendants' requests for admissions. Defendants have also demanded that Plaintiffs produce *all* tax returns filed by S&P during the past 10 years.

10. Because of Defendants' delay in seeking any discovery, and the potential prejudice that would result if Plaintiffs were forced to continue to engage in discovery, on June 30, 2014, Plaintiffs filed a Motion for a Protective Order, which was premised on the concept that Defendants should not be permitted to conduct discovery after expiration of the discovery deadline. That Motion for a Protective Order relieved Plaintiffs of their obligation to respond to Defendants' discovery requests.

11. After Plaintiffs filed the June 30 Motion for a Protective Order, Defendants have not sought to enlarge the time for parties to conduct discovery.

² Defendants Counter-claim was dismissed without prejudice on June 20, 2014.

12. However, on July 11, 2014, Defendants filed and served onto Plaintiffs a Third Request for Production and Third Set of Interrogatories. Although Defendants claim that they served a Third Request for Admissions onto Plaintiffs, Plaintiffs have not received them and there is no record concerning the service of those Requests for Admissions.

13. The July 11, 2014 discovery requests sought the production of substantially all of the Partnerships' books and records, in addition to the disclosure of: (i) how much money was distributed and "re-invested" to S&P Partners; (ii) the amounts invested and received from Bernard L. Madoff Investment Securities, LLC; (iii) the identity and partners who received distributions from the capital contributions of other partners and the dates and amounts of those distributions; (iv) whether the Partnerships were operated as a Ponzi scheme, and facts which support such claims; (v) the names, addresses, and all documents sent to net losers; and (vi) the status of Plaintiffs actions against third parties.

14. Responding to the aforementioned discovery would result in a significant expenditure of the Conservator's time and money, which would result in the depletion of the Conservatorship Estate's assets.

15. Even though Plaintiffs had until August 18, 2014 to respond to Defendants' Third Requests for Production and Third Set of Interrogatories, Defendants filed a Motion to Compel against Plaintiffs on August 16, 2014.

16. Because the deadline for the parties to conduct discovery has expired and Defendants have not sought to extend that deadline, Defendants should be precluded from issuing any further discovery and Plaintiffs should be relieved from the obligation to respond to Defendants' outstanding discovery requests. Moreover, without entry of a Protective Order,

Defendants will continue to issue overly broad discovery requests, and pursue meritless motions to compel, such as the one filed on August 16, 2014.

17. During the 8 months between when Defendants received the Complaint and obtained a ruling on their motion to dismiss, they substantially participated in litigation in this matter and had ample time to conduct discovery. Moreover Defendants never sought to stay discovery.³ Accordingly, while Defendants contend that they are entitled to continued discovery because of their delay in resolving their motion to dismiss, such an argument is meritless.

18. At all times prior to and after their motion to dismiss was heard (which did not prevent discovery in this matter) Defendants knew or should have known of the discovery deadlines in this matter -- and even after Defendants were deemed served on March 7, 2014, Defendants had over two months to propound additional discovery onto Plaintiffs.

19. Permitting Defendants to engage in protracted discovery after the close of discovery in this action will prejudice Plaintiffs. The parties are currently preparing for trial, and Defendants' will only seek to delay trial by injecting new issues of fact and law, which were properly the subject of discovery months ago. Additionally, Plaintiffs will be required to respond to additional discovery requests and motions while preparing for trial that are overly broad and unduly burdensome.

20. That fact is demonstrated by Defendants' premature filing of a motion to compel on August 16, 2014.

21. Accordingly, Plaintiffs should not be subjected to the additional expense of having to continue to engage in discovery with Defendants, who, as previously discussed, failed

³ Defendants requested that the Court prohibit Plaintiffs from seeking discovery from them, but were not prohibited from seeking discovery from Plaintiffs. Even though Defendants did not propound discovery onto Plaintiffs until March 26, 2014, Plaintiffs voluntarily produced documents to Defendants.

to timely propound discovery. *See Binger v. King Pest Control*, 401 So. 2d 1310, 1312-15 (Fla. 1981) (holding that Courts have broad discretion in deciding to exclude evidence or prohibit discovery which was not in compliance with a pretrial order).

WHEREFORE Plaintiffs respectfully request that the Court enter an Order, which (i) relieves them of any obligation to respond to (a) Defendants James and Valerie Judd's Third Set of Interrogatories to Plaintiffs; (b) Defendants James and Valerie Judd's Third Request for Production (ii) prohibits Defendants from issuing any additional discovery in this action; (c) awards Plaintiffs such other and further relief as the Court deems just and proper; or, alternatively, provide Plaintiffs with a two week extension of time to respond to Defendants' discovery if the Court denies Plaintiffs' Motions for Protective Orders

Respectfully submitted,

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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 counsel identified below registered to receive electronic notifications this 18th day of August, 2014 upon the following:

Notice has been electronically mailed to:

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