

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

CASE NO: 12-34121(07)

Complex Litigation Unit

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

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, *et al*,

Defendants.

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**DEFENDANTS JUDD'S MOTION TO COMPEL AND RENEWED MOTION FOR  
SUMMARY JUDGMENT**

**Preliminary Statement**

Trial is presently set for Tuesday, September 9, 2014. Service was not properly effected on Defendants Judd until March 7, 2014, when counsel agreed to accept service.

The case is not at issue and Discovery is not complete because Plaintiffs have not answered or responded to Defendants Judds' Third Interrogatories (propounded on July 11, 2014), inter alia.

Defendants-Counter-Plaintiffs Judd have not moved to postpone the trial because the Court has indicated that it wants to complete the trial before the end of this calendar year and Defendants-Counter-Plaintiffs James Judd's professional commitments require him to be out of Florida for virtually the entire next several months, with the exception of one or two days until December and he may have to leave as early as this weekend. Moreover, Plaintiffs-Counter-Defendants have indicated that they will oppose a request for a continuance or postponement.

## **MOTION TO COMPEL**

Throughout the course of this litigation, Plaintiffs have consistently resisted and attempted to frustrate discovery. In Plaintiffs' Response and Objections to Defendants Judds' First Request for Production, served on April 30, 2014, Plaintiffs stated:

“General Objection 2: Plaintiffs will not organize or select documents for Defendants and Plaintiffs will not attempt to indicate in any way which documents (if any) respond to any particular inquiry, but shall produce all documents in the manner in which they are and have been maintained in the ordinary course of Plaintiff's' business and/or in the manner such documents have been stored in the ordinary course of business.”

With the trial set for Tuesday, September 09, 2014, Plaintiffs have served no response whatsoever to Defendants-Counter-Plaintiffs Third Interrogatories, which were served on July 11, 2014, despite the Court's denial of Plaintiffs' Motion for Protective Order.

Counsel for Defendants-Counter-Plaintiffs Judd was told he had to go to the office of the Conservation in Hollywood to see the documents requested, on Thursday afternoon August 28, 2014. Counsel went with an accountant from, Cherry Bekaert, LLC and was taken to a conference room that had three large file boxes with files from the early 1990's to 2009. After two and a half hours, Counsel told a staff person that there did not appear to be a single audit report or tax return in the boxes. The staff person replied: “you didn't ask for them.”

After he was persuaded that the tax returns had indeed been requested, at about 4:00 PM we were taken to a large store room where approximately six or eight more large boxes were on shelves and shown that one large box, about three feet wide, had expansion files with tax returns. No audit reports were produced and we have not been told what accounting audit reports and tax returns were

produced for S&P Associates by Ahearn Jasco & Associates and/or Michael J. Kuzy, CPA or other accountants for the year 2000 through 2008.

The conclusory assertion to Defendants–Counter-Plaintiffs’ Third Request for Production: gives no indication whatsoever what audit reports exist, what Plaintiffs consider to be privileged (or why) and what has not been produced. It was filed and served by Plaintiffs’ counsel as Defendants–Counter-Plaintiffs’ counsel was being taken into the storeroom to see where the boxes could even be seen.

Wherefore, Defendants–Counter-Plaintiffs pray for an order

- a) Compelling Plaintiffs’- Counter Defendants to give full and complete answers and responses to Defendants – Counter-Plaintiffs’ Third Interrogatories, and produce all audit reports requested in Defendants – Counter-Plaintiffs’ Second and Third Request for Production along with the requested documents not specifically identified in Plaintiffs’ responses forthwith;
- b) Imposing appropriate sanctions, costs and attorney’s fees.

### **Renewed Motion for Summary Judgment**

The only communications, agreement and correspondence to or from Defendants–Counter-Plaintiffs’ produced by Plaintiffs have been:

- a) The one page agreement dated 7/14/2000 signed by Valerie Judd.
- b) Checks No. 141 and 2264 signed by Valerie Judd.
- c) Unsigned letter from S&P Associates dated 7/2/2000 and 10/17/2000.
- d) 9 letters signed by Valerie Judd in the years 2003, 2007 and 2008 requesting withdrawal of monies from their account.
- e) The cancelled checks and corresponding stubs relating to those withdrawals;

f) The K-1's sent by S&P Associates to Defendants–Counter-Plaintiffs.

Plaintiffs have not produced a single piece of paper signed by Defendant James Judd.

Plaintiffs have not produced a single piece of paper showing that the 14 page Amended and Restated Partnership Agreement dated December 21, 1994 (of S&P Associates) was ever given or sent to Defendants–Counter-Plaintiffs.

Plaintiffs have not produced a single piece of evidence to controvert the sworn affidavit of Valerie Judd.

Wherefore Defendants–Counter-Plaintiffs Judds renew their Motion for Summary Judgment.

Dated this 2<sup>nd</sup> day of September, 2014

/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 BergerSingerman and counsel identified below registered to receive electronic notifications and regular U.S. mail upon Pro Se parties this 2<sup>nd</sup> day of September, 2014 upon the following:

**Notice has been electronically mailed to:**

**Counsel E-mail Address:**

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