

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

CASE NO.: 12-034123(07)

P & S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
Partnership, *et al*,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES
MOTION TO COMPEL PLAINTIFFS TO RESPOND TO DEFENDANTS'
JOINT MOTION FOR SUMMARY JUDGMENT

Defendants, Frank Avellino and Michael Bienes, by and through their undersigned counsel, file their Motion to Compel Plaintiffs to Respond to Defendants' Joint Motion for Summary Judgment and as grounds therefore state as follows:

1. On April 14, 2015 Defendants filed a Motion for Summary Judgment ("Motion") which addresses the issue of whether Plaintiffs' claims are time barred pursuant to the Statute of Limitations.
2. On May 19, 2015, Plaintiffs filed a Motion for Extension of Time to respond to the Motion alleging that they had not yet taken Defendants' depositions, and genuine issues of material fact might arise after those depositions. During a hearing, the Court stated that Plaintiffs did not have to respond to the Motion until after they had taken the depositions of Defendants Frank Avellino and Michael Bienes.

3. The depositions of Frank Avellino and Michael Bienes have been taken. During the depositions there was no inquiries by the Plaintiffs as to any actions either Avellino or Bienes took to prevent Plaintiffs from discovering the causes of action, i.e. facts relating to the doctrine of delayed discovery or equitable estoppel.

4. Plaintiffs continue to engage in stall and delay tactics, not only in responding to discovery but also in responding to Defendants' Motion.

5. As an example, based on pleadings filed in this litigation, Defendants anticipated that Plaintiffs will raise the doctrines of delayed discovery and equitable estoppel as defenses to the statute of limitations argument of the Motion, and thus, Defendant Avellino served a Fourth Set of Interrogatories ("Fourth Interrogatories") to Plaintiff, directed, in part, to flush out the facts supporting such defenses.

6. On September 3, 2015, the last day the answers by Plaintiffs were due to the Fourth Interrogatories (after providing Plaintiffs additional time to respond), Plaintiffs filed Answers and Objections, a copy of which is attached hereto as Exhibit "A". No answers were provided; no facts were provided by Plaintiffs relating to the doctrines, nor did Plaintiffs identify any witnesses who would have knowledge relating to the doctrines. In spite of their previous argument that they had to take the depositions of Defendants in order to respond to the Motion, Plaintiffs did not even raise as an objection to the Fourth Interrogatories that they needed to take the depositions of Defendants to provide facts. Instead, Plaintiffs objected on the basis that the interrogatories seeking facts and witnesses related to the doctrines seeks work product and/or attorney-client privilege, because it would require Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines.

7. Clearly if the factual basis for Plaintiffs' reliance on the doctrines of delayed discovery and equitable estoppel in response to the Motion is based only on their attorney's impressions and opinions of legal doctrines as inferred by their objections raised, then it was disingenuous for the Plaintiffs to argue they could not respond to the Motion until after taking the Defendants' depositions.

8. In addition, Plaintiffs' objections to the Fourth Interrogatories were also only another delay tactic, because after having the required meet and confer with undersigned counsel, Plaintiffs agreed that they are required to respond with facts or documents which are discoverable and relevant to the interrogatories served even if the facts or documents are in the possession of their counsel. Accordingly they have agreed to provide Amended Answers in ten (10) days which should have already been provided. It is unknown whether the responses will be substantive or again raise frivolous objections, essentially delaying necessary discovery for Defendants.

9. Plaintiffs should be required to respond to the Motion, so that if any further discovery needs to be conducted by Defendants relating to Plaintiffs' response it can be completed.

WHEREFORE Defendants respectfully request this Court to enter an Order compelling Plaintiffs to respond to Defendants' Motion for Summary Judgment within ten (10) days.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 14th day of September, 2015.

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

Case No. 12-034123 (07)

COMPLEX LITIGATION UNIT

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

**NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS AND OBJECTIONS TO
DEFENDANT AVELLINO'S FOURTH SET OF INTERROGATORIES TO PLAINTIFF**

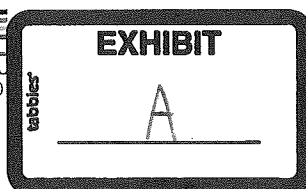
Plaintiff, Philip J. Von Kahle as Conservator ("Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships", with the Conservator, the "Plaintiffs"), by and through his undersigned counsel, hereby gives notice of service of his Answers and Objections to Defendant Frank Avellino's Fourth Set of Interrogatories to Plaintiff.

Dated: September 3, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2015, a true and correct copy of the foregoing document was served on the following parties:

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

Case No. 12-034123 (07)
Complex Litigation Unit

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.
_____ /

**PLAINTIFFS' ANSWERS AND OBJECTIONS
TO DEFENDANT FRANK AVELLINO'S
FOURTH SET OF INTERROGATORIES TO PLAINTIFF**

Plaintiff, Philip J. Von Kahle as Conservator ("Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P", together with P&S, the "Partnerships", with the Conservator, the "Plaintiffs"), answers and responds to Defendant Avellino's Fourth Set of Interrogatories to Plaintiff as follows:

OBJECTIONS TO DEFINITIONS

Objection to Definition Number 1: Plaintiffs object to the definition of "Partnerships" as vague, ambiguous, and overly broad with respect to scope because the word "agents" may include Plaintiffs' attorneys and such documents are protected by the attorney-client and/or work product privilege. Plaintiffs do not waive their right to assert the attorney client and/or attorney work product privilege.

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Objection to Definition Number 2: Plaintiffs object to the definition of “You” or “Your” as vague, ambiguous, and overly broad with respect to scope because the word “agents” may include Plaintiffs’ attorneys and such documents are protected by the attorney-client and/or work product privilege. Plaintiffs do not waive their right to assert the attorney client and/or attorney work product privilege.

OBJECTIONS TO INSTRUCTIONS

Objection to Instruction Number 2: Plaintiffs object to Instruction Number 2 because an objection to a part of an interrogatory, coupled with a response could constitute a waiver of Plaintiffs’ right to object to such an interrogatory. Plaintiffs will not take any actions which would otherwise jeopardize their right to respond.

Objection to Instruction Number 3: Plaintiffs object to Instruction Number 3 because it requires them to disclose information which would otherwise be protected by the attorney-client, attorney-work product, or applicable privilege. Plaintiffs will not waive their right to assert those applicable privileges. Plaintiffs also object to Instruction Number 3 because it is requires Plaintiffs to disclose their mental impressions or investigatory processes, which would require the disclosure of the attorney work-product privilege.

Objection to Instruction Number 4: Plaintiffs object to Instruction Number 4 because they will not produce a privilege log until after resolution of their other objections to these interrogatories. Once resolved, Plaintiffs reserve the right to produce a privilege log.

INTERROGATORIES

1. Please identify all persons who have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint. For each person identified, please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

2. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino received assets of the Partnerships and/or commissions as alleged in paragraph 37 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the

subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

3. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino was a co-conspirator with Sullivan and others, and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

4. Please identify all persons who have knowledge of Plaintiffs' allegations that Avellino knew that distributions were being improperly made to Partners and other third parties, but did nothing to prevent it and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the

subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

5. Please identify all persons who have knowledge of Plaintiffs' allegations in paragraphs 32 through 36 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

6. Please identify all persons who have knowledge of Plaintiffs' allegations in paragraphs 42 and 43 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have

knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

7. Please identify all persons who have knowledge of the alleged "kickbacks" in paragraph 46 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

8. Please identify all persons who have knowledge of the allegations in paragraph 50 of the Fifth Amended Complaint and for each person identified please set forth the substance of their knowledge.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it is vague and ambiguous and seeks information not reasonably calculated to lead to the discovery of admissible evidence because, as Defendant Frank Avellino ("Avellino") is aware, the pleadings in this matter are posted on a public website <http://www.floridaconservator.com/> (the "Public Website") and this action has been the subject of media stories such that an unidentifiable amount of people may have

knowledge of the allegations contained in Plaintiffs' Fifth Amended Complaint.

9. Please set forth all facts which support your contention that the doctrine of delayed discovery is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

10. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 9.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

11. Please set forth all facts which support your contention that the doctrine of equitable estoppel is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint, including without limitation, all actions or conduct by Avellino which prevented and/or delayed you from filing a lawsuit.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

12. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 11.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

13. Please set forth all facts which support your contention that continuing torts is applicable to extend the applicable statute of limitations to the causes of action raised in the Fifth Amended Complaint, including without limitation, all tortious acts committed by Avellino after 2008 which cause damages to you.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

14. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 13.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

15. Please set forth all facts which support your contention that the causes of action raised in the Fifth Amended Complaint are not barred by the applicable statute of limitations.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).

16. Please identify all persons who have knowledge of the facts set forth in your answer to Question Number 15.

OBJECTIONS:

Plaintiffs object to this Interrogatory on the grounds that it seeks work product and/or attorney-client privilege information because it requires Plaintiffs to respond based on their attorney's impressions and opinions of legal doctrines. *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970).