

**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, and PHILIP VON
KAHLE as Conservator on behalf of P&S
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, and S&P
ASSOCIATES, GENERAL PARTNERSHIP

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION TO DISMISS DEFENDANTS
JUDDS' AMENDED COUNTERCLAIM AND, ALTERNATIVELY,
MOTION FOR MORE DEFINITE STATEMENT**

Plaintiffs, P&S Associates, General Partnership ("P&S"), S&P Associates, General Partnership ("S&P") and Philip Von Kahle as Conservator on behalf of P&S and S&P ("Conservator") (P&S and S&P are collectively referred to as the "Partnerships" and with the Conservator as the "Plaintiffs"), by and through their undersigned attorneys, file this Motion to Dismiss Defendants James and Valerie Judds' (collectively, "Judds") Amended Counterclaim and in support thereof state:

The Judds' Amended Counterclaim should be dismissed with prejudice because the Judds have not cured the fatal defects that existed in their original or amended Counterclaim.

To the extent that the Judds are asserting a claim for fraud, their claim should be dismissed for a failure to plead that they suffered any damages as a result of the fraudulent statements at issue. *See Lance v. Wade*, 457 So. 2d 1008 (Fla. 1984) (“The elements for actionable fraud are (1) a false statement concerning a material fact; (2) knowledge by the person making the statement that the representation is false; (3) the intent by the person making the statement that the representation will induce another to act on it; and (4) reliance on the representation to *the injury* of the other party.”) (emphasis added). As the Judds received \$260,000 in exchange for their investment of \$180,000, which constitutes an \$80,000 benefit, they cannot as a matter of law state a claim for fraud against S&P since they have not suffered any damages.

To confuse issues in an attempt to state a claim where none existed, the Judds now claim that they suffered \$27,000 in damages as a result of the taxes they were paid on their net winnings. Notwithstanding the fact that the payment of taxes based on distributions received is not causally connected to the Judds’ underlying fraud claim as they actually received the money for which they paid taxes, the Judds’ own pleading still demonstrates that they made \$53,000 in excess of their investment, inclusive of taxes. Accordingly, the Judds have failed to demonstrate that they have suffered any damages and cannot establish an actionable claim for fraud.

In any case, because the Judds cannot cure any of the aforementioned fatal defects – even after obtaining leave to amend their Counterclaim a second time – their Second Amended Counterclaim should be dismissed with prejudice. *See Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 567 (Fla. 2005) (stating that “a trial court may deny leave to amend where the complaint is clearly not amendable”) (citing cases).

Alternatively, the Judds should be required to give a more definite statement of the facts allegedly supporting their claim or claims.

Conclusion

Based upon the foregoing, Plaintiffs respectfully requests entry of an order dismissing the Amended Counterclaim filed by Defendant James and Valerie Judd, with prejudice and awarding Plaintiff such other and additional relief that the Court deems just and proper.

Dated: September 16, 2014

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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 16th day of September, 2014 upon the following:

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