

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

Case No 12-34121(07)

MARGARET SMITH, et al.

Complex Litigation Unit

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE  
TRUST, et al.,

Defendants,

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**DEFENDANTS JAMES AND VALERIE JUDD'S MOTION  
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants James Judd and Valerie Judd move to dismiss Plaintiff's Complaint on the following grounds:

1. The copy of Plaintiff's Complaint "served" on Defendants Judd was simply left on their doorstep and/or possibly given to a maid who does not reside at their address when neither James Judd nor Valerie Judd were home. (James Judd was not in the United States at that time and it is believed that Valerie Judd was not in Florida at that time.)
2. Neither "Amended and Restated Partnership Agreement" attached to the copy of the Plaintiff's Complaint which Defendants Judd ultimately received contained an "Exhibit A" with the names and signatures of the parties to the Agreement or their addresses.
3. The Complaint contains no allegation that either James Judd or Valerie Judd signed either partnership agreement.
4. The Complaint fails to allege in which Partnership, if either or both Defendants James Judd and/or Valerie Judd are alleged to be partners.

5. Moreover, there is no allegation as to which Partnership (S&P or P&S or both) each of the other Defendants are alleged to be partners, when they are alleged to have become partners or when they made their alleged investments, or when they are alleged to have received income payments.
6. §14.03 of each Agreement specifically provides that:

"Limitations on Liability"

"14.03 The partners shall have no liability to the partnership or to any other partner for any mistakes or errors in judgment, nor for any act or omissions believed in good faith to be within the scope of authority conferred by this agreement. The partners shall be liable only for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty . . ."

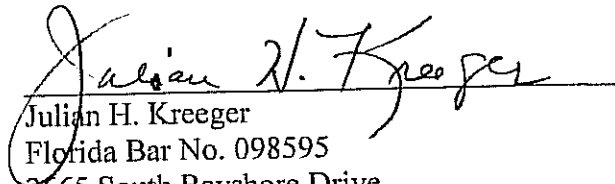
The Fourth District has held that 'Parties can contract to limit their liability.' See Voiceteam Wireless v. U.S. Communications, 912 So.2d 34,38 (Fla 4th DCA 2005). The Fourth District has also held that a party claiming a fraudulent transfer under Fla.Stat. §726.105(1)(a) must demonstrate that the debtor intended fraud. See Nationsbank, N.A. v. Coastal Utilities, 814 So.2d 1227 (Fla. 4th DCA 2002).

7. The Complaint contains no allegation, or even a hint, that either of Defendants Judd intended or had acted in bad faith or knowingly participated in any wrongdoing or fraud.
8. Even assuming arguendo that either Defendant James Judd or Defendant Valerie Judd, or both, had signed one of the Agreements, Section 5.02 of each Agreement provides that if a Distribution is not made "at least once per year" and such distributions remain in the Partnership, they are deemed to increase the Partner's capital contribution. Plaintiff's Complaint contains no indication (a) when the original contribution(s) were made by Defendants Judd, (b) what distributions they were subsequently entitled to receive, (c) when subsequent distributions were due for each year, (d) when unpaid distributions were

deemed to increase their capital contributions. Accordingly, it cannot be determined from the face of the Complaint whether any applicable Statute of Limitations has expired.

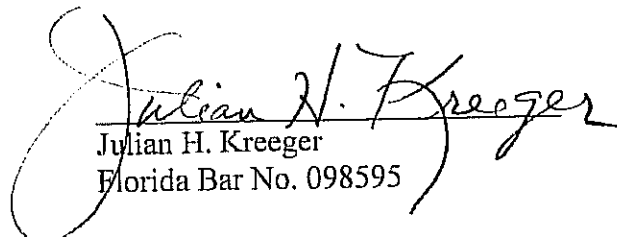
9. So as not to unduly burden the Court, Defendants Judd adopt and incorporate herein by reference the arguments and authorities pending before this Court in the pending Motions to Dismiss filed by the other Defendants in this case, including the Reply served by Defendant Ettoh Ltd. to Plaintiff's Response and the Reply of Defendant Irwig to Plaintiff's Response.

WHEREFORE, Defendants Judd move to dismiss Plaintiff's Complaint.

  
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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail on this <sup>26<sup>th</sup></sup> ~~24~~th day of September, 2013 to all parties on the attached service list.

  
Julian H. Kreeger  
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