

**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; S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida limited
partnership; Philip von Kahle as Conservator of P&S
ASSOCIATES, GENERAL PARTNERSHIP, a Florida
limited partnership; and S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

v.

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

Defendants.

NOTICE OF FILING TRANSCRIPT OF HEARING

Plaintiffs, P & S Associates, General Partnership (“P&S”), and S & P Associates, General Partnership (“S&P”) (collectively and individually referred to as, the “Partnerships”) and Phillip Von Kahle, as Conservator of P&S and S&P (collectively with the Partnerships, the “Plaintiffs”), by and through their undersigned counsel, hereby file the Transcript of Hearing on

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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 6th day of October, 2014, upon the following:

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SEPTEMBER 17, 2014 HEARING TRANSCRIPT

1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
2 IN AND FOR BROWARD COUNTY, FLORIDA
3 PHILIP J. VON KAHLE,) CASE NO.: CA012034121
4 Plaintiff,)
5 v.)
6 ETTOH LTD., et al.,)
7 Defendants.)

9 TRANSCRIPT OF HEARING ON RENEWED MOTION FOR SUMMARY

10 JUDGMENT

11 The above-styled motion came on for hearing
12 before the Honorable Jeffrey E. Streitfeld, Judge of said
13 Court, in Room 920A, at the Broward County Courthouse,
14 201 S.E. 6th Street, Ft. Lauderdale, Florida 33301, on
15 Wednesday, September 17, 2014, at 10:05 a.m., pursuant to
16 Notice.

17 APPEARANCES

18 Zachary P. Hyman, Esq.
19 BERGER SINGERMAN, LLP
20 Attorneys for Plaintiff
21 Philip J. Von Kahle
22 350 East Las Olas Boulevard, Suite 1000
23 Fort Lauderdale, Florida 33301
24 Julian H. Kreeger, Esq.
25 Attorney for Defendants James Bruce Judd and
Valerie Judd
26 2665 South Bayshore Drive, Suite 220-14
27 Miami, Florida 33133
28 Robert C. Sheres, Esq.
29 DuBOSAR NAVON, PLLC
30 Attorneys for Defendant Gregg Wallick
31 1800 North Military Trail, Suite 470
32 Boca Raton, Florida 33431-6396

1 still a reasonable return on our time; but, when you
2 have this number of people involved in litigation,
3 there's going to be an occasional problem with
4 service.

5 MR. HYMAN: Correct.

6 THE COURT: This guy has been a problem ever
7 since the problem, service of those, and continues to
8 be as we sit here this morning. But he's such a nice
9 fellow, you just got to tolerate it.

10 MR. KREEGER: Can you, please, type that
11 portion of it for my wife.

12 THE COURT: Patient woman, Judy.

13 Okay.

14 MR. HYMAN: After we received the motion, we
15 discussed at least postponing proceeding on the
16 default for the time being so that my client can
17 further address how he'd like to deal with the issues
18 involving Mr. Wallick. We had offered to via email
19 inform the Court of the facts that we're going to
20 postpone it last night so as to eliminate the need
21 for them to come down; however, they decided that
22 spending time with Your Honor was a worthwhile
23 endeavor.

24 THE COURT: Okay. If ever there were
25 circumstances that truly demonstrated to those who

1 THE COURT: Okay. I have Mr. Hyman for the
2 Plaintiff.

3 I have Mr. Kreeger for the Judds.

4 And you, sir, are?

5 MR. SHERES: I'm Robert Sheres on behalf of
6 Gregg Wallick, who is one of the Defendants, as well.

7 THE COURT: Let's talk about that first. I've
8 looked at all this.

9 Have you all discussed how you want to resolve
10 that issue?

11 MR. HYMAN: For the time being, we've agreed
12 that there is at a minimum a need to have an
13 evidentiary hearing. At a minimum. Last night the
14 motion was filed.

15 THE COURT: The first thing you do when you
16 get that is you go back to your process server.

17 MR. HYMAN: We did.

18 THE COURT: And what does the guy say?
19 Because a good, a really experienced process server
20 will write in hand a description of the person that
21 he serves. This doesn't happen.

22 MR. HYMAN: I realize that.

23 THE COURT: So, you know, I'm getting into the
24 same situation I have on a couple, but given all the
25 number of parties we had in all these cases, it's

1 review our work down here how the rules must be
2 applied to achieve the aimed goal, which is as
3 effectively, efficiently and within the grounds of
4 due process resolve complex disputes. That's why we
5 have this new rule. It's not so new anymore. It
6 gives me a lot of latitude.

7 So let's think this through. If we don't
8 resolve this service issue and allow this guy to
9 defend himself on the merits along with one or -- we
10 only have one left now.

11 MR. HYMAN: Correct, Your Honor.

12 THE COURT: Because Mr. Herman resolved his
13 issues on behalf of his clients.

14 MR. HYMAN: Yes, sir.

15 THE COURT: So we are down to one right now,
16 the Judds, and we're going to talk about that motion
17 in time.

18 But let's say I don't vacate, I don't quash
19 the service and vacate -- quash the service, that's
20 the first step. The next step would be to vacate the
21 clerk's default, and I'd have to have a hearing on
22 that. So the idea is I've only got a little time
23 left. That's the problem. And I'm not going to let
24 anybody schedule, absent the most extraordinary
25 emergent circumstances, which the Judds' schedule

1 does not, in my view --- it's going to have to work
 2 around this Court's schedule. The amount of
 3 resources that this Division and this Court has put
 4 into these disputes involving these Madoff issues has
 5 been extraordinary, and I will not allow the rules to
 6 be twisted to burden the Court and the remaining
 7 litigants unfairly because of someone's schedule.
 8 We're going to get to the bottom of the issues with
 9 Mr. and Mrs. Judd and get this date set today. And
 10 which is something, by the way, that you and Mr.
 11 DuBosar must be aware of that I am not going to wait
 12 three or four months. I can't wait four months. I'm
 13 not going to wait three months because that puts us
 14 near the end of December, and I'm done. So right now
 15 we're still going to do this in October. I might
 16 even be willing to move off to November. I'll work
 17 with the schedules within limits, but I may end up
 18 hearing arguments and deciding issues that will have
 19 a direct bearing on your client's position, so you
 20 may, if you're still in the case, even though you may
 21 decide we're not ready to try this issue, there are
 22 certain legal decisions that will be made that will
 23 guide your case most likely.

24 MR. SHERES: Certainly, Your Honor.

25 THE COURT: I don't know, have you learned

1 what's going on here over the last God knows how
 2 long?
 3 MR. SHERES: I haven't, Your Honor. Our
 4 client only found out about this case a week or two
 5 ago or whenever he received a copy, the first
 6 document he ever received was --
 7 THE COURT: You were retained when?
 8 MR. SHERES: I think -- I'll have to check.
 9 THE COURT: Because the papers just came in
 10 yesterday.
 11 MR. SHERES: Right, exactly. I think in
 12 September.
 13 THE COURT: Alright, here's the point.
 14 MR. SHERES: I don't know the exact date
 15 because Mr. DuBosar --
 16 THE COURT: You need to educate yourself, too.
 17 A lot has transpired. And part of that is not your
 18 default. First of all, they waited a year to move
 19 for the clerk's default. A year. And I've always
 20 had a problem with our procedure, which is a clerk's
 21 default is not sent to the defaulted defendant. Hey,
 22 just so you know, because you didn't answer a default
 23 was entered. The only way you find out is if you
 24 actually try to file something. The clerk is
 25 supposed to, but doesn't always, because it's human,

1 supposed to send it back. And I don't even know what
 2 the portal issue is. I don't know what, I don't know
 3 how effectively that's being handled at all. That's
 4 even taken, I think it's taken out of the hands of
 5 people and put into the machine like they had in the
 6 "Terminator" movie. Was is Skynet? Is that what it
 7 was called, Skynet? That's what we have in our
 8 courts now, we have Skynet.

9 MR. SHERES: Scary times.

10 THE COURT: Scary times.

11 I mean, if you can hack into Home Depot, if
 12 you can hack into Target, how could you not easily
 13 hack into the court system? You got to be kidding
 14 me. The door must be wide open. You just got to
 15 find the door.

16 MR. KREEGER: Your Honor, you know that in
 17 Bush versus Gore, the Florida Supreme Court computer
 18 was compromised.

19 THE COURT: I don't even want to think about
 20 that.

21 MR. KREEGER: I withdraw that comment.

22 THE COURT: Alright, here's the thing. What
 23 I'm asking you to do is to file an alternative motion
 24 to set aside the clerk's default with whatever
 25 grounds -- I mean, if Wallick is saying under oath

1 the first he heard about this is when this notice
 2 came from Berger Singerman that they're moving for
 3 final judgment, that's the first he's heard of it,
 4 so, I mean, one of the issues is going to be was
 5 there somebody else at the house that day there
 6 besides him that could have accepted service, and is
 7 it a faulty return of service. Anyway, that
 8 evidentiary hearing has got to get done pretty quick.
 9 MR. SHERES: And, Your Honor, we already filed
 10 our motions to quash service and vacate default.
 11 THE COURT: I know. I've seen it.
 12 MR. SHERES: With supporting affidavits.
 13 THE COURT: I saw it. I read it. That's why
 14 we're talking about it.
 15 MR. SHERES: Okay, but we filed a response, as
 16 well.
 17 THE COURT: Right. From what I saw, an
 18 evidentiary hearing is required. So, if you can't
 19 resolve the issue in some other fashion, before you
 20 leave I'm going to give you dates; that's when we're
 21 going to do it; and I'll want you to check with your
 22 clients; and this is an issue. And so we'll leave it
 23 at that.
 24 Right now your motion is you're withdrawing
 25 it for now to be reset.

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1 Yours will be set for an evidentiary hearing,
 2 and I'll give you dates.
 3 MR. SHERES: Okay.
 4 THE COURT: Now you. Look, let's talk about
 5 your discovery problem first. At this point, what do
 6 you need that you've requested that you don't have?
 7 MR. KREEGER: May I —
 8 THE COURT: I read what you wrote. I'm asking
 9 you a direct question.
 10 MR. KREEGER: I'm not avoiding the question.
 11 THE COURT: This is not a good start then.
 12 MR. KREEGER: Okay. Because there's a
 13 different matter that I think the Court, if I can
 14 talk about it —
 15 THE COURT: What is that?
 16 MR. KREEGER: I'd like to be aware of.
 17 THE COURT: Have you discussed this with
 18 opposing counsel?
 19 MR. KREEGER: Well, opposing counsel is aware
 20 of it.
 21 THE COURT: Did you tell him -- is this in a
 22 motion that's set for this morning?
 23 MR. KREEGER: No, no, no, no.
 24 THE COURT: Did you talk to -- because he's
 25 still learning; of course, so are you, and so am I,

1 but he's really still learning. So the way it's
 2 supposed to work is, if there's something not in a
 3 motion that you wish to address at all, much less
 4 right off the bat, you talk to him, "Do you have a
 5 problem with that?" And if he does, then we put it
 6 off to the side until I hear whatever it is that must
 7 be compelling.
 8 So I think what I'll do is this -- thank you
 9 for this opportunity -- I'm going to go get dates for
 10 the Wallick motion to quash service, and that will
 11 give you an opportunity, because I'm going to step
 12 out, that will give you a chance to talk to Mr. Hyman
 13 about what you want to tell me, if you really want to
 14 do that.
 15 MR. KREEGER: Well, I would like to because I
 16 think the Court would like to know, if I can discuss
 17 it.
 18 THE COURT: Well, if you settled the case,
 19 the answer is yes. Other than that, you need to talk
 20 to Mr. Hyman first.
 21 MR. KREEGER: Let me talk to him first.
 22 THE COURT: Good.
 23 (OFF THE RECORD FROM 10:17 A.M. TO 10:22 A.M.)
 24 THE COURT: I have a lot of time both in the
 25 week of October 6th and October 13th. I'll give you

1 until Monday to make a decision as to whether you
 2 need a hearing or not. If by Monday, you have not
 3 said, "We don't need one," that means you are setting
 4 one. You'll need to reserve time no later than the
 5 week of the 13th of October.
 6 MR. SHERES: Okay.
 7 THE COURT: So that's it right now.
 8 MR. KREEGER: May I?
 9 THE COURT: And then I'll turn to the two of
 10 you.
 11 You're excused unless you want to remain.
 12 It's up to you. Do you want to hear what's going on?
 13 MR. SHERES: You know what, as much as I don't
 14 know if I want to leave. If it's going impact my
 15 case, I'm going to get some insight into the case, I
 16 might.
 17 THE COURT: Well, I doubt it, but okay.
 18 MR. HYMAN: The one thing I can tell you is
 19 that all of the relevant pleadings in this matter are
 20 on the Conservator's website at
 21 www.floridaconservator.com, which will give you
 22 enough to educate yourself about the case.
 23 THE COURT: Also, there are some people that
 24 were very involved. There were a number of
 25 defendants, several different groups of the Holy

1 Ghost Churches, the Uchins, who Bob Uchin is the head
 2 of the Dental Department at Nova Southeastern; Rick
 3 Woulfe and Joel Reinstein's son, Louis, represented
 4 them. So the issues, the fundamental issues have
 5 been vetted by some really good lawyers. Mr. Kreeger
 6 also has spent a lot of time with those, and right
 7 now he's the lone man standing. The rest have
 8 resolved them, which is fine.
 9 There are significant issues that I've entered
 10 a summary judgment order on, where I laid out what I
 11 thought the factual issues were. That order would be
 12 really essential reading. So mostly what has
 13 occurred is in each instance somebody has made an
 14 economic decision, a risk/reward analysis, which is
 15 what we're talking about, strictly money.
 16 So, fundamentally, with your case --
 17 MR. SHERES: I apologize. I am going to
 18 leave because I don't want to charge my client if
 19 it's just discovery issues between the two.
 20 THE COURT: Okay. Thank you. Have a good
 21 day.
 22 MR. SHERES: Thank you.
 23 MR. HYMAN: And, please, we're always
 24 available.
 25 MR. SHERES: Absolutely. We'll see what

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1 happens. Have a wonderful day.
2 THE COURT: Thank you. My best to Mr.
3 DuBosar.
4 MR. SHERES: Absolutely.
5 THE COURT: So this counterclaim that you've
6 raised, now you've amend it. Technically, the motion
7 to dismiss isn't set for today, but I'm looking at
8 this realistically. If your client lost money, then
9 your client would be damaged by whatever wrongdoing
10 might be alleged against the former controlling
11 person of the Plaintiff. But my understanding of the
12 undisputed facts are that, regardless of this issue
13 of whether James Judd is or is not on the account,
14 and regardless of the issue of what partnership
15 agreements, if any, control this particular claim,
16 those are open issues, which, by the way, completely
17 defeat summary judgment. You keep renewing it. It's
18 a waste of time. Honestly, I really like you, and
19 you're smart, but it wastes your time and mine and
20 theirs when you do that because there are material
21 factual issues in dispute with regard to these claims
22 and defenses. It's not ripe for summary judgment.
23 But, if the facts really are undisputed that whoever
24 is the account holder, this account was a net winner,
25 that is it received back more than it invested, than

13

1 it deposited, it really wasn't invested, they
2 received more back than they gave, then the only
3 issues are all those that we've detailed. There are
4 statute of limitations issues. There are issues with
5 regard to what are the partnership agreements. There
6 are many issues but not an issue of monetary damage
7 to your client. You're saying you want the return of
8 your investment. That's the relief that you seek in
9 your counterclaim, but I think the undisputed facts
10 are your client not only received back their
11 investment but a positive return on their investment.
12 So I don't understand what we're doing. But, if
13 there's discovery you need to defend on what the
14 issues are, that is: whose account is it; were you
15 really in it; how much did you really net win; where
16 were the winnings coming from; how far back can you
17 reach? I don't understand because it's extremely
18 wasteful of time what we're doing with these claims
19 given all these circumstances. I mean I want to work
20 with your client on his schedule; I want to make sure
21 you have the documents you need; but I don't know
22 what else we're doing really.

23 MR. KREEGER: I would like to address that,
24 but, okay, if I can talk to the Court without
25 disclosing certain matters that were discussed during

14

1 the mediation but things that came afterwards, I
2 think there's a possibility that the case can be
3 resolved, and we don't need to bother the Court any
4 further. The question is --

5 THE COURT: Do you have an objection to my
6 listening to what he's saying?

7 MR. HYMAN: I don't have any objection so long
8 as I can respond.

9 THE COURT: Alright. Okay, we're going to do
10 this nice and easy. Right?

11 MR. SHERES: Absolutely Your Honor.

12 THE COURT: Right?

13 MR. KREEGER: Fine.

14 THE COURT: I'm listening.

15 MR. KREEGER: Without getting into numbers --
16 THE COURT: Alright.

17 MR. KREEGER -- because the numbers were
18 discussed during mediation --

19 THE COURT: Right.

20 MR. KREEGER: And I'm not asking to do it,
21 okay?

22 The mediation was adjourned for us to give a
23 financial statement, and the ground rules were we
24 would send the financial statement signed by both
25 husband and wife.

15

1 THE COURT: I think this was mentioned to you
2 and Herman's clients, as well, and Herman ended up
3 settling.

4 MR. KREEGER: Well, I don't know the details.

5 THE COURT: I have no idea what the numbers
6 are. I don't know what the numbers are in any of the
7 recent settlements actually.

8 MR. KREEGER: I'm not asking the Court to
9 focus on the numbers.

10 THE COURT: Thanks, appreciate that.

11 I'm listening, go ahead.

12 MR. KREEGER: So, at any rate, they emailed us
13 a financial statement that they wanted, a very long
14 financial statement. To my recollection, it's
15 probably over 30 pages. We not only sent them that,
16 plus tax returns, okay? And then they were to
17 evaluate it to see that that represented what we had
18 told them at mediation.

19 THE COURT: Okay.

20 MR. KREEGER: The response I got was that Mr.
21 Weber -- and, by the way, Mr. Hyman sent me an email
22 before they got it saying that he understood that
23 there was a tentative settlement.

24 THE COURT: Alright, just one second. Just
25 one second. I'm not comfortable.

16

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1 MR. KREEGER: Okay, then let me --
2 THE COURT: I'll tell you what, but I could
3 become comfortable. It sounds like you want me to
4 help take over mediating your settlement. You're not
5 telling me, you're not asking me to enforce
6 something; and I don't know what they received and
7 what their response was. If you're telling me you
8 want me to help you settle the case, that puts me in
9 a really tough spot because I'm --
10 MR. KREEGER: I'm not asking you --
11 THE COURT: Alright, then I'll try to keep an
12 open mind as we move forward. I'm working real hard
13 at it.
14 MR. KREEGER: Alright. Let me see if I can
15 deal with --
16 THE COURT: You understand why I'd be
17 concerned about the direction in which you're heading
18 with the statements you made, right?
19 MR. KREEGER: I'm not sure, but I'll try to
20 avoid what I think you're talking about.
21 THE COURT: Okay, fine.
22 You wanted them to see your financial picture,
23 which is what they requested, and they didn't respond
24 the way you liked.
25 MR. KREEGER: No, no, no. Not for that

1 reason, though.
2 THE COURT: Alright, continue.
3 MR. KREEGER: Now Mr. Weber does not believe
4 that James Judd's signature was James Judd's
5 signature.
6 THE COURT: Oh, okay.
7 MR. KREEGER: And so what I did to try to deal
8 with that is James Judd is presently in Israel, and I
9 had him go before the General Director of the Israel
10 Symphony yesterday, and he resigned the two signature
11 pages; and he faxed them to me. In Israel, they are
12 seven hours ahead of us.
13 THE COURT: Yes. I've been.
14 MR. KREEGER: And so I've given Mr. Hyman the
15 faxed, I mean emailed re-signed, witnessed by the
16 General Director --
17 THE COURT: When did you do that?
18 MR. KREEGER: This morning because I just got
19 this.
20 THE COURT: Okay. Well, that's great. So
21 maybe you'll call me later today or tomorrow and tell
22 me you've worked it out. Why are you telling me
23 this?
24 MR. KREEGER: Because he was telling me just
25 now that he doesn't accept that because the General

1 Director of the Israel Symphony is not a U.S. notary.
2 And when you walked in, and I was saying to him, "Are
3 you telling me that you want him to fly to the U.S.
4 and become a notary --
5 THE COURT: Stop.
6 What's going on, Mr. Hyman?
7 MR. HYMAN: It's not my decision as to whether
8 or not the symphony conductor witnessing --
9 THE COURT: No, that's not the point. First
10 of all, they're not required to do this at all.
11 MR. HYMAN: No.
12 THE COURT: No, no. I'm troubled by this
13 because this is taking up a lot of my time; and, you
14 know, I appoint Von Kahle, and then I say, "Okay,
15 this law firm is appointed because I want," and for
16 the most part, he worked out a lot of stuff, but
17 right now, if the only question is whether you can
18 rely upon that financial affidavit in deciding how
19 and under what terms to settle the case, and refusing
20 to do that because you don't like the form of his
21 signature makes no sense to me at all. Zero.
22 MR. HYMAN: Your Honor, the facts are slightly
23 different.
24 THE COURT: How are they?
25 MR. HYMAN: Originally, they sent us on

1 September 5th, a copy of this form without Mr. Judd's
2 signature appearing here. We asked for Mr. Judd to
3 send us one. They sent us the same form, notarized
4 the same day with the same notary signature by Mr.
5 Judd and expected us to accept that. We asked him to
6 re-execute it. This morning we just received this.
7 I'll go back to Mr. Von Kahle, see if it's
8 sufficient, and I'll let Mr. Von Kahle, who's the
9 client, decide what he would like to do. It's not my
10 place to decide what he deems deficient without
11 discussing it with him.
12 THE COURT: Fine.
13 MR. HYMAN: And in the interim, we assumed
14 that we would have to proceed as though we were going
15 to trial.
16 THE COURT: Well, if you just received that
17 this morning, unfortunately, those two are going to
18 have to go forward, but I would ask that, if the only
19 issue is whether or not that's a fair statement of
20 their financial picture to help you decide how, if at
21 all -- I'm not telling you you have to settle
22 anything, but I just want to get this done.
23 MR. HYMAN: Your Honor, we've settled with 36
24 defendants.
25 THE COURT: I know that.

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1 MR. HYMAN: We've had no discovery issues with
2 35 of the defendants, or with those 36 defendants.
3 It's only Mr. Kreeger.

4 THE COURT: Thank you. So you've brought this
5 to my attention. Mr. Hyman is going to take this
6 back to Von Kahle today, and I wish you luck in your
7 settlement endeavors.

8 Now, look, this counterclaim, if you're
9 sitting here and telling me that you can in good
10 faith allege that your client has suffered a monetary
11 loss with regard to the funds deposited in the
12 subject account, and that there's been actual
13 damages, as opposed to matters you raised being in
14 the nature of a defense, I cannot allow these
15 pleading tactics to continue because my understanding
16 is that, and this is after a forensic effort on the
17 part of the Conservator and the experts they've
18 retained, they spent a lot of time and money on this,
19 analyzing a lot of accounts over a long period of
20 time. They have concluded that your client, whether
21 it's Mr. and Mrs. Judd or just Mrs. Judd, received
22 back more than they deposited. Is that a disputed
23 fact?

24 MR. KREEGER: Well, it's disputed if their
25 position, which is that we have to give back

21

1 everything we got --

2 THE COURT: Everything you got.

3 MR. KREEGER: The \$80,000 that we were told --

4 THE COURT: Alright, just one second. I will
5 never allow that claim to stand. If you're saying
6 that a net winner paying back their winnings so that
7 everybody zeroes out, and a Ponzi scheme results in
8 now everyone having a claim against everybody else
9 because nobody earned any money on their money, that
10 claim doesn't exist. That's the logical extension of
11 your position. Your position is that everybody can
12 sue everybody because nobody made any money on their
13 deposits.

14 MR. KREEGER: That's not --

15 THE COURT: Yes. I'm sorry, Mr. Kreeger, I
16 don't see it. What I do see it is, respectfully, I
17 don't know on what retainer basis you are with the
18 Judds, whether you're doing this as a friendship,
19 whether it's pro bono, but I can tell you that it's
20 utilizing extraordinary resources. The cost
21 involved, the time involved doesn't make sense
22 because a net winner cannot, has no affirmative claim
23 for damages because they've suffered no loss.

24 MR. KREEGER: The Plaintiffs in this case were
25 described as the successor managing partners of this

22

1 partnership. My clients were given, under penalty of
2 perjury, K-1s. They paid taxes based upon the K-1s
3 that they were given.

4 THE COURT: Yes, but they're tax implications
5 for everybody. Tax implications for everybody.

6 MR. KREEGER: I don't know what the others are
7 because they won't tell me.

8 THE COURT: Well, first of all, these are --
9 whether or not these are actual losses suffered,
10 they're also potential defenses. The question is,
11 fundamentally, because this is not the first time
12 courts have looked at Ponzi schemes and how to
13 resolve the various issues among people who blindly
14 not knowing, and that's right now, I'd assume,
15 undisputed fact, that nobody knew, none of the net
16 winners or net losers actually knew that this wasn't,
17 that the Madoff, ultimately, what these, that these
18 partnerships we're investing in would appear to be
19 one of the most safest, securest investment, Madoff,
20 the former head of a major investment house.

21 In any event, I do not see any precedent for
22 the notion that a net winner in a case involving how
23 to resolve internal partnership claims, net winners
24 versus net losers, that net winners have an
25 affirmative damage claim. I've never seen it.

23

1 MR. KREEGER: Well, I can't tell you what
2 you've seen or not seen.

3 THE COURT: Well, you have to show me one.

4 MR. KREEGER: And I can tell you that, when
5 I've propounded discovery, they've been very evasive;
6 that as late as 6:08 p.m. last night, they first sent
7 me a response to the Second Request For Admissions
8 and Second Interrogatories that were served on May
9 23rd, three and a half months ago; and they gave me
10 at 6:08 p.m. last night the First Response to the
11 Third Request for Production that was served over two
12 months ago. They haven't produced all the documents
13 that I've asked.

14 THE COURT: That was my first question to you.
15 What do you need that you don't have that you would
16 like to have?

17 MR. KREEGER: I haven't had a chance to look
18 at what they sent me yesterday at 6:00 o'clock.

19 THE COURT: Response to that.

20 MR. HYMAN: Your Honor, we've given him a full
21 day to inspect the partnership's books and records.
22 We've given him the tax returns.

23 THE COURT: No, my question is why did you
24 wait until last night to fax him additional
25 documents?

24

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1 MR. HYMAN: Because we had previously -- what
2 we had provided was Responses to Interrogatories and
3 Requests for Admissions. Previously, as part of the
4 settlement discussions, we had agreed that, if we
5 weren't going to settle, that he would give us a
6 reasonable time to respond once we made the decision
7 as to whether or not we would settle. Given the
8 facts that we weren't sure whether or not we were
9 going to settle or not, we propounded responses to
10 the interrogatories and discovery.
11 MR. KREEGER: May I respond to that? The
12 reason I'd like to respond to that --
13 THE COURT: No.
14 One of the reasons that I've been so grateful
15 that I was able to move into this, in my view, higher
16 level of work than civil is because, if I had
17 continued to serve in a General or Civil Division, I
18 don't know that I would have still be sitting here
19 because what's happened right now happens routinely
20 among the typical tort or smaller commercial dispute,
21 which is last minute responses to discovery, the
22 other side not getting a chance to look at it, which
23 results in a waste of everybody's time, because I
24 really don't want to sit here for the next hour
25 sifting through what, you don't know whether, what

1 you've put.
2 I need to know from you what you need that you
3 don't have; and I understand now you can't tell me
4 that. I think you have good reason to say that. So,
5 why the delay, I'm not going to get into that.
6 So what I'd ask that you do is, just as I said
7 to counsel for Mr. Wallick, if by Monday you've not
8 resolved your discovery problems with the Plaintiff,
9 and there's still things you need that you don't
10 have, then you contact my office, and I have lots of
11 hearing time available right away, which is a pain
12 because you, unlike them, they're downtown here, you
13 schlep from Miami, but some of that is your own doing
14 because it's been a heavily, a lot of motions, a lot
15 of amendments, pleadings. It's a bit much. In any
16 event, right now I'm going to reset your motion to
17 compel, but we're going to set dates for this trial.
18 Now, tell me when your client is available
19 for trial in November.
20 MR. KREEGER: Well, I think that Valerie Judd
21 will be available virtually anytime the court sets in
22 November.
23 I would ask from a personal standpoint that it
24 not be on November --
25 THE COURT: No. Mr. Judd is a party. Are you

1 telling me he's not going to be appearing at trial?
2 MR. KREEGER: I don't think he will be, Your
3 Honor. I'll think he'll be in Europe or Asia.
4 THE COURT: Has he been deposed yet?
5 MR. KREEGER: No.
6 THE COURT: Well, that's a problem. That's a
7 problem. Because part of, one of the critical
8 factual issues that you've chosen to raise is that
9 he's not a part of the account, even though his name
10 is on the account, and there are some documents with
11 his signature on it, one in the year 2000 that I've
12 seen.
13 MR. KREEGER: I beg your pardon, you have not
14 seen anything with his signature.
15 THE COURT: It looked like it to me.
16 MR. KREEGER: I'm sorry, but that's --
17 THE COURT: I'm not going to let that happen.
18 I'm not going to let that happen, Mr. Kreeger. He
19 needs to be here for the trial. I've rescheduled
20 hearings; I've rescheduled mediations for him; I've
21 rescheduled for him. Don't get me started with that.
22 MR. KREEGER: Your Honor, I'm not trying to --
23 THE COURT: He's not the President of the
24 United States.
25 You tell me. Because I could set this in

1 October.
2 MR. KREEGER: If you want to set it in
3 October, he will not be here, but we'll go to trial
4 without him if you set it.
5 THE COURT: I can tell you I'm going to have a
6 hard time with some of his defenses if he can't find
7 it within his schedule for three months to be present
8 to testify on material issues.
9 Is he available to be deposed here?
10 MR. KREEGER: I'll find out when the one day,
11 he may be here one day, but I also then, I noticed
12 Mr. Von Kahle for the 29th of September. They tell
13 me he is not available. I'd like to depose him
14 first.
15 MR. HYMAN: If I may. We don't understand why
16 there is a need to depose Mr. Von Kahle.
17 Would you mind explaining?
18 THE COURT: No. That's --
19 MR. HYMAN: Sorry, sorry.
20 THE COURT: That's, you know, I don't --
21 MR. HYMAN: We believe, Your Honor, and we'll
22 be filing a motion for protective order as to that
23 issue, if necessary.
24 THE COURT: I got to tell you, Zack, I'm not
25 really happy the way you're litigating this either.

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1 Off the record.
2 (OFF THE RECORD.)
3 THE COURT: Back on the record.
4 MR. KREEGER: Your Honor --
5 THE COURT: I can tell you something else.
6 I'm reaching a tolerance level that is dangerous on
7 this issue because it's going to get expensive for
8 somebody if some sanity doesn't take place. Your
9 client, celebrity or not -- I mean, I've had a lot of
10 celebrities over the years; and there are some judges
11 that don't have a problem with pulling a football
12 player away from his team, at all.
13 So, I might be satisfied with a video
14 deposition for trial purposes. If you can show me by
15 affidavit that this man is not going to be in Broward
16 County, Florida at all during this trial period,
17 because this was supposed to be done in September,
18 but I moved it to October, November, December. At no
19 time did I get anything from you saying, "My client,
20 James Judd, who denies being on this account, that
21 "It's not my account," "It's my wife's account," is
22 not available to be deposed or testify for basically
23 four months.
24 MR. KREEGER: Your Honor, may I respond?
25 THE COURT: You know what, I don't know.

29

1 MR. KREEGER: There are a couple of things I'd
2 like to say. I'm not asking you to rule on it. I'd
3 just like to comment.
4 There was one thing that I filed that said
5 that we were not asking the court to continue the
6 trial. This was when you were --
7 THE COURT: That's because your man doesn't
8 intend to appear, again, nor is he available to be
9 deposed.
10 MR. KREEGER: No. I said I was not asking the
11 Court to move the case back from when you had set it
12 because he wasn't going to be able to be here, so I
13 wasn't asking for a continuance, number one.
14 Number two is, more importantly, I went to the
15 office of the Conservator the day before mediation.
16 I brought with me a Philip Schechter, of Sherry
17 Bekaert, LLC.
18 THE COURT: I read that. And I will say this,
19 so we have some guidance here, is there anything he
20 still doesn't have? I'm hoping that, unless your
21 client is prepared to sign an affidavit saying this
22 is cost prohibitive, it would take us X number of
23 hours to locate these documents; and we'll make them
24 available again in the office for him, and we'll show
25 him where the files are; they're in there. But my

30

1 recollection is the primary thing he was looking for
2 in these papers was audits. That's what you were
3 looking for, audits. So, I don't know what you're
4 looking for. I'm just saying is, if there is
5 something that he still doesn't have that reasonably
6 would be discoverable under the rule, that you,
7 instead of having him come back up here, unless it
8 takes too much time and too much money, just get the
9 documents to him. If there's a legitimate beef,
10 you'll let me know on Monday, and I'll hear it as
11 soon as you can have it ready because I've got plenty
12 of hearing time.
13 MR. KREEGER: May I give you a list on Monday,
14 if they don't decree that they're accepting Mr.
15 Judd's signature?
16 THE COURT: I may do it by phone. If you can,
17 because sometimes, you know, it's a little wordy what
18 you write sometimes on this stuff.
19 MR. KREEGER: Your Honor, may I? You're
20 accusing me of being wordy when their Third Amended
21 Complaint with exhibits is over 300 pages, and I
22 don't think I filed anything over seven pages in this
23 case?
24 THE COURT: I'm talking about your discovery.
25 It's usually a history lesson. Every time I get a

31

1 discovery motion, you renew it.
2 Both sides, by the way, are wordy, both sides,
3 not just you.
4 Here's the point. If you can't resolve the
5 problem, and you have a very distinct list of things,
6 we might be able to do it over the phone.
7 MR. KREEGER: I'll send you that.
8 THE COURT: Alright. The goal is that won't
9 be necessary. That's the goal. That's the goal.
10 Anything else?
11 MR. KREEGER: I've also bought a new car so it
12 wouldn't break down between Miami and here.
13 THE COURT: I'm sure you'll enjoy that.
14 MR. KREEGER: And I will tell the Court that I
15 brought an accountant at my expense to look at
16 documents. Maybe they will look at what we've given
17 them and realize that we've done what we said we
18 would do, and the case will get resolved.
19 THE COURT: Alright, so I'm going to give you
20 different dates, and you're going to need to get back
21 to me by Monday on these dates, on Monday, or I'm
22 going to set it. Because Suzie reached out to you
23 and didn't get anything back.
24 October 20 through 23 is open.
25 MR. KREEGER: October 23rd is a date I can do.

32

1 THE COURT: I'm just giving you these dates
 2 right now. You have to confer with your clients; and
 3 there's also the issue of readiness.
 4 October 30 and 31.
 5 Are you going to write these dates down?
 6 MR. HYMAN: Yes, I am
 7 MR. KREEGER: That's not a good date for me.
 8 THE COURT: I'm not asking you that, so I'm
 9 not listening to you when you tell me that.
 10 November 5 through 7. This is what happens
 11 when other people settle.
 12 And November 12 through 14.
 13 So, I got to tell you, if this issue ever got
 14 looked at by some higher court about, as far as
 15 whether a court abuses discretion or not, I don't
 16 know too many circuit court judges who get to do what
 17 I do to give you all those options over all the
 18 period of time we've been working and says, "I can't
 19 be there. I can't be there."
 20 So I've given you marching orders.
 21 MR. KREEGER: I'll give you the dates that I
 22 can do.
 23 THE COURT: Because it's not going to be ready
 24 any earlier. You're still seeking discovery. You
 25 still have pleadings.

1 I'm returning now to -- your Renewed Motion
 2 for Summary Judgment is facially deficient.
 3 MR. KREEGER: I'm not arguing that now.
 4 THE COURT: No, no. Don't set it for hearing
 5 because I'm going to deny it. It's denied. It's
 6 facially deficient. On its face, it reflects there
 7 are disputed issues of fact. You challenge in your
 8 motion the weight of their evidence. You take a look
 9 at, well, these are the only documents they have so
 10 they can't prove it. But, I'm sorry, even on the
 11 face of the documents, they raise questions of fact
 12 with regard to in whose name the accounts are on. So
 13 I have to try the case. I'm not going to grant a
 14 summary judgment on this case because it's been fully
 15 briefed already, nothing new.
 16 And on this counterclaim issue, because you
 17 need to have the pleadings closed so you know what
 18 you're trying. I'm giving you dates, but the
 19 pleadings are still open. I have flexibility under
 20 the rules, but let's not be absurd. I'm repeating
 21 himself. I'm asking you this question, because your
 22 answer was, well, if you take a look at the fact that
 23 we did not make a return on our investment, or we may
 24 have to amend out tax returns for certain years, or
 25 there may be some, that's true of everybody. That's

1 not a situation unique to your client. In fact,
 2 there may be taxes owed on the funds that are
 3 received by the people who get distributions. Tax
 4 consequences are not damages in these cases. I've
 5 never seen one. They're not.
 6 But some of the issues you raise in your
 7 counterclaim may be defensive in nature. So, how can
 8 you ultimately plead a cause of action, any action --
 9 of course, the Conservator here is now standing in
 10 the shoes of the partnership strictly to try to
 11 balance out the accounts of all those who unwittingly
 12 participated in what we now know is a Ponzi scheme.
 13 If the issue is that the Conservator's right to
 14 recover funds also subjects the Conservator to an
 15 affirmative damage claim because someone had adverse
 16 tax consequences because now they have, then there
 17 will never be any ability by any conservator or any
 18 receiver or any court to ultimately do equity; that
 19 is, appropriately balance out accounts of persons who
 20 unknowingly invested in a Ponzi scheme. I don't see
 21 this happening. So it's dismissed with prejudice.
 22 With prejudice.
 23 MR. KREEGER: Is that your ruling today?
 24 THE COURT: Yes, yes. Because I've had enough
 25 hearings on motions. I've had enough hearings on

1 pleadings. I think it's an abuse of the amendment
 2 privilege. That's my finding.
 3 MR. KREEGER: Your Honor, may I ask you a
 4 hypothetical question?
 5 THE COURT: I don't know. We'll see.
 6 MR. KREEGER: What if -- I apologize.
 7 THE COURT: That's alright.
 8 MR. KREEGER: It's supposed to be off.
 9 THE COURT: If it was a new 6 Plus, you'd be
 10 in trouble. But it's not.
 11 I have one just like it so you're okay.
 12 It's unbelievable this new technology. It's
 13 just unbelievable.
 14 Go ahead. Go ahead.
 15 MR. KREEGER: What if it turned out, for the
 16 sake of the argument, that the first indication and
 17 the first time there was a Ponzi scheme was in 2007.
 18 Wouldn't that affect monies that were received prior
 19 to 2007?
 20 THE COURT: Those are issues that are
 21 squarely, squarely in the pleadings as framed without
 22 an affirmative counterclaim. Talking about a statute
 23 of limitations issue?
 24 MR. KREEGER: You're saying it's a statute of
 25 limitations issue. I'm suggesting, I'm asking

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1 whether it's also a damage issue. I've asked when
 2 they first knew about it. They've refused to give me
 3 that information.
 4 THE COURT: Who is they?
 5 MR. KREEGER: (Indicating).
 6 THE COURT: Excuse me, they represent the
 7 Conservator. They don't represent Jacobs. They
 8 don't represent Sullivan. They don't represent
 9 Margaret Smith. If you are somehow seeking to raise
 10 an affirmative claim against -- but, you see, that
 11 claim was made, which I think you're missing, and I
 12 think your client, I don't know, may be missing the
 13 boat, as well, there is a separate lawsuit on behalf
 14 of the partnerships, including your clients, for the
 15 losses suffered in the Ponzi scheme. I'm spending a
 16 lot of time on that. The case against Jacob, of
 17 Bienes and of --
 18 MR. HYMAN: Avellino.
 19 THE COURT: Avellino.
 20 MR. HYMAN: And Sullivan.
 21 THE COURT: And Sullivan. Although, they
 22 resolved with Sullivan. Sullivan they settled with.
 23 That is on behalf of all those who invested,
 24 including your clients, to recover the money for any
 25 fraud committed by the partnerships. You see, you're

1 going nowhere with that because whatever losses have
 2 been suffered by the partnerships as a result of
 3 those who preceded the Conservator, this is the
 4 Conservator's claim on behalf of the partnerships
 5 which inures to the benefit of your client, even
 6 though your client now is a net winner, is still
 7 being targeted to recover those funds, he has
 8 multiple defenses, but no affirmative claims because
 9 affirmative claims are being proceeded in another
 10 lawsuit brought by the same person you're litigating
 11 with now. In fact, one could say that you're taking
 12 so much time for him with this that he can't do that.
 13 MR. KREEGER: I think he had a duty to do that
 14 first. That's my personal view.
 15 THE COURT: Do what? They're doing both.
 16 They've been running simultaneous. As a matter of
 17 fact, originally, this was set for trial this year,
 18 but they've expanded the case now. They're now --
 19 originally, they were only seeking money against
 20 Avellino and Bienes with regard to solicitations with
 21 Barbara Kelley and his work here locally, but now
 22 they've expanded the case, which now pushed it to
 23 another trial docket, to say that, well, actually,
 24 you were at the very heart with Madoff and the scheme
 25 in New York. And they're borrowing from Picard's

1 work in New York to prosecute the case here. That's
 2 to your client's benefit.
 3 MR. KREEGER: And it also should reduce the
 4 amount of the claim against my client.
 5 THE COURT: No, sir. It's separate. No. I
 6 disagree.
 7 MR. KREEGER: I understand that.
 8 THE COURT: Okay.
 9 MR. KREEGER: But, also --
 10 THE COURT: No. We're done, Mr. Kreeger.
 11 We're done. You're Renewed Motion for Summary
 12 Judgment is denied with prejudice. The Motion to
 13 Dismiss the Second Amended Counterclaim --
 14 MR. HYMAN: Yes, Your Honor.
 15 THE COURT: -- is granted with prejudice.
 16 Excuse me. Don't do that. Because I'm really
 17 done.
 18 I've given you dates. I'm going to go over
 19 them; and if I don't hear from you by Monday with a
 20 date, I'm going to set it. October 20 to 23.
 21 October 30 and 31. November 5 through 7. November
 22 12 through 14.
 23 If you have not resolved your discovery
 24 dispute by Monday, you'll let me know on Monday or
 25 approximately as well what discovery you still need,

1 and I will attempt to conduct a phone hearing on
 2 that.
 3 Anything further from you?
 4 MR. HYMAN: We would prefer that the trial be
 5 on October 30th.
 6 THE COURT: I told you I'm not going to do
 7 that today.
 8 THE HYMAN: And the Conservator's deposition,
 9 any --
 10 THE COURT: No, sir. Those depositions need
 11 to be taken with regard to availability and not with
 12 who goes first because it really does -- this is not
 13 like two parties in a automobile accident, and I want
 14 to hear what you say happened before I tell you what
 15 I remember happening.
 16 MR. HYMAN: I was trying to make the argument
 17 of who goes first. I apologize if I wasn't clear.
 18 THE COURT: Well, let's put it this way, just
 19 so we have an understanding, I want to make sure your
 20 client understands this, whatever funds are recovered
 21 by the Conservator to be disbursed to partners,
 22 including your client, is reduced by what it costs
 23 the Conservator to do that. So, if you need to take
 24 his deposition, I assume it's going to be narrowed,
 25 because I understand typically every party has a

1 right to depose the opposing party, but I'm assuming
2 that in good faith you have specific questions and
3 you want to know his position is prior to trial, and
4 I think that's reasonable. So you can't prevent him
5 from taking the deposition. I would ask, I'm urging
6 both of you in the spirit of just being professional
7 and cooperative, for your own benefit, because you're
8 making, otherwise, you're making each other's lives
9 much more difficult than it needs to be, because
10 that's usually the way it works out, and mine, to try
11 to work together as best you can on these remaining
12 discovery issues.

13 Okay. Anything further?

14 MR. HYMAN: No, Your Honor.

15 THE COURT: Anything further?

16 MR. KREEGER: Yes.

17 THE COURT: What.

18 MR. KREEGER: I'd like them to agree that
19 they're going to let me know within the next day
20 whether we have a settlement.

21 THE COURT: I think they should be given more
22 than a day.

23 MR. KREEGER: They've had the financial
24 statements since --

25 THE COURT: I'm not going to do that. I would

1 never do that. I would ask them to respond as soon
2 as they reasonably can.

3 I don't know what Mr. Von Kahle is doing
4 today, Mr. Kreeger. This is not his only matter.

5 MR. KREEGER: He has had this --

6 THE COURT: Mr. Kreeger, that's unreasonable.
7 That request is refused. Respectfully, refused. I
8 am asking they do the best they can to respond to you
9 as quickly as they can. That's as much as I will do.

10 MR. KREEGER: The reason I ask was the only
11 real issue --

12 THE COURT: Now, you can tell him that
13 outside. That's not for me.

14 MR. KREEGER: All right. Okay.

15 THE COURT: Professionals will be able to
16 communicate like that with each other. And I'll tell
17 you, you do not want me to refer you to the Bar on
18 this behavior. You don't want me to do that. Please
19 don't urge me to do that.

20 Have a nice day.

21 (THEREUPON, THE HEARING WAS CONCLUDED AT 11:09 A.M.)

22 * * * * *

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25

1 COURT CERTIFICATE
2
3 STATE OF FLORIDA:
4 COUNTY OF BROWARD: SS.

5 I, GEOFFREY L. COLLIFLOWER, a Shorthand
6 Reporter and Notary Public in and for the State of
7 Florida at Large, do hereby certify that I was
8 authorized to and did stenographically report the
9 foregoing proceedings and that the transcript is a
10 true and complete record of my stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties, nor
13 am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.

16
17 Witness my and official seal this 19th day of
18 September, 2014.

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