

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

CASE NO.: 12-034123 (07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP, etc., et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANTS' AMENDED OPPOSITION TO PLAINTIFFS' MOTION TO REOPEN
DISCOVERY AND TO DEPOSE NON-PARTY, ANNETTE BONGIORNO**

Defendants, Frank Avellino and Michael Bienes (“Defendants”), by and through their undersigned counsel, file this amended opposition to Plaintiffs’ motion to reopen discovery and conduct the deposition of Annette Bongiorno. Plaintiffs’ motion is devoid of facts but rather is based upon pure and erroneous speculation and lacks sufficient grounds for the relief requested.

1. After six complaints, years of relentless discovery, including conducting the depositions of Bernard Madoff in North Carolina prison and ex-Madoff employee, Eric Lipkin in New Jersey, both of whom refuted any claim by Plaintiffs that Defendants had knowledge of Madoff’s Ponzi scheme before it became public, Plaintiffs now seek to reopen discovery to conduct the deposition of yet another ex-Madoff employee desperately hoping to discover evidence of Defendants’ involvement with the Plaintiff Partnerships that has failed to materialize because it doesn’t exist. A parsing of Plaintiffs’ motion reveals it is based on utter and inaccurate speculation, not facts and should be denied.

2. In their usual “shoot first, ask questions later” approach Plaintiffs seek to conduct Ms. Bongiorno’s deposition “because recent events give rise to a need to testify Bongiorno.” (sic) and “has indicated a willingness to cooperate with third parties...”. Motion, ¶5. Plaintiffs fail to identify the “need” they refer to nor provide support for the claim that Ms. Bongiorno is willing to cooperate with them. Ms. Bongiorno recently entered into an agreement with the Madoff Trustee in which she agreed to cooperate with the Trustee. There is no indication or agreement that she will cooperate with third parties and Plaintiffs offer no support for such contention.

3. More significantly, Plaintiffs’ motion makes illogical leap that because there may have been correspondence between the Plaintiff Partnerships and BLMIS that was directed to Ms. Bongiorno she therefore, “has knowledge that is directly relevant to Plaintiffs’ claims that Defendants had a fiduciary relationship with the Partnerships, that Defendants took control of the Partnerships, and that Defendants’ caused the transfer of improper kickbacks to themselves and others.” Motion, ¶7.

4. Not only is there no support for Plaintiffs’ contention that Ms. Bongiorno has knowledge of Defendants’ involvement with the Partnerships, it is patently untrue. Had Plaintiffs’ counsel made any effort to attempt to verify this allegation before filing their motion they would have learned that their contention is baseless.

5. Attached is an email from Roland Riopelle, Esq., dated September 23, 2016. He is Ms. Bongiorno’s attorney who has represented her for a number of years including representing her in the six month criminal trial with other Madoff employees in New York. Based upon his communication with his client, he confirms that Ms. Bongiorno has no recollection of Plaintiffs, P&S or S&P, Michael Sullivan, Greg Powell or knowledge of any

involvement that Defendants may have had with the Partnerships or with Madoff on behalf of the Partnerships.

6. Based upon the foregoing, conducting the deposition of Ms. Bongiorno would be a needless and costly exercise that would provide no relevant evidence in this case. Accordingly, Plaintiffs' motion should be denied.

WHEREFORE, Defendants request that this Court enter an order denying Plaintiffs' motion in its entirety.

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By: /s/ Gary A. Woodfield

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 2016, 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.

/s/ Gary A. Woodfield

Gary A. Woodfield

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Gary Woodfield

From: Roland Riopelle <RRiopelle@sercarzandriopelle.com>
Sent: Friday, September 23, 2016 12:57 PM
To: Gary Woodfield
Subject: Motion to Depose Annette Bongiorno

Dear Mr. Woodfield:

I am an attorney admitted to the New York bar. For the past six years, I have represented Annette Bongiorno in connection with her employment at Bernard L. Madoff Investment Securities ("BLMIS"). During that time, I have represented Mrs. Bongiorno and her husband in connection with a variety of civil lawsuits brought against them. I have represented Mrs. Bongiorno and her husband in connection with the claims brought against them by the BLMIS Bankruptcy Trustee, Irving Picard. And I represented Mrs. Bongiorno in connection with the criminal charges brought against her in the United States District Court for the Southern District of New York. As I am sure you know, my representation of Mrs. Bongiorno in the criminal case culminated in a trial that lasted nearly six months, at which testimony from scores of witnesses and thousands of documents were admitted in evidence. I have continued to represent Mrs. Bongiorno in a variety of contexts after her conviction and sentence in the criminal case, and I remain in touch with Mrs. Bongiorno by phone and email regularly.

During my representation of Mrs. Bongiorno, I spent hundreds of hours with her, discussing matters relevant to her defense. Most of those discussions related directly to the work Mrs. Bongiorno did at BLMIS for certain persons who were investors at BLMIS. During my representation of Mrs. Bongiorno, I also examined thousands of pages of documentation related to the work Mrs. Bongiorno did for the investors at BLMIS for whom she acted as a kind of customer representative.

You have advised me that attorneys representing P&S and S&P Florida partnerships are seeking an order in an action pending in Florida to conduct the deposition of Ms. Bongiorno, because she may have information about these partnerships and Frank Avellino and Michael Bienes' involvement with the partnerships and their dealing with BLMIS on behalf of those partnerships.

I have communicated with Ms. Bongiorno regarding her knowledge of these matters. She has advised me that she has no recollection of ever having dealt with P&S and S&P, or their accounts or their managing partners, Greg Powell and Michael Sullivan. Further, she advised me that she has no knowledge of any involvement Frank Avellino or Michael Bienes had with these partnerships or any dealings they may have had with BLMIS on behalf of these partnerships. Mrs. Bongiorno's recollection is consistent with my recollection of the evidence I reviewed. I do not recall the names "S&P," "P&S," "Greg Powell," or "Michael Sullivan" ever coming up in any of the documentation I reviewed that related Mrs. Bongiorno's employment at BLMIS. Nor do I recall Mrs. Bongiorno ever mentioning to me any of these names during the many hours I spoke to her about her work at BLMIS. And I do not recall any evidence at trial which demonstrated any connection between Mrs. Bongiorno and the names you have given me.

I have also discussed this with attorneys from Baker & Hostetler, who represent Mr. Picard. They have informed me that they are not aware of any connection between Mrs. Bongiorno and S&P, P&S, Greg Powell, or Michael Sullivan.

Ms. Bongiorno is willing to provide a declaration confirming what she has told me on this matter. However, obtaining such a declaration would take some time, since she is incarcerated in a prison that is located in Florida, and I am located in New York. I understand that a hearing on the request to take her deposition is being set for hearing next week, and obtaining a declaration from Mrs. Bongiorno attesting to these facts will take approximately three weeks or possibly more.

Regards,

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This email is sent by an attorney and may contain privileged and/or confidential information. If you have received it in error, please delete it and contact Mr. Riopelle at the telephone number indicated above.