

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.

**DEFENDANT FRANK AVELLINO'S EXPEDITED¹ MOTION TO COMPEL
PLAINTIFFS TO ANSWER FIFTH SET OF INTERROGATORIES**

Defendant, Frank Avellino, by and through his undersigned counsel, and files this Motion to Compel Plaintiffs to Answer the Fifth Set of Interrogatories and as grounds therefore states as follows:

1. On January 19, 2015, Defendant filed an Amended Motion for Leave to Serve Additional Interrogatories pursuant to Fla.R.Civ.P. 1.340(a) because the earlier interrogatories served by Defendant were addressed to earlier versions of Plaintiffs' Complaint, and Plaintiffs had recently served their Fifth Amended Complaint on January 9, 2015.²

2. On May 4, 2015, this Court entered an Order granting Defendant's Amended Motion and permitting Defendant to serve an additional twenty interrogatories. A copy of the Order is attached as Exhibit "A".³

¹ Defendant requests that the Court consider this motion on an expedited basis to allow Defendant time to receive evidence prior to the upcoming trial in this action.

² A previous Motion for Leave to Serve Additional Interrogatories was served on November 19, 2014 but was not heard.

³ At the time of the Court's Order Defendant had issued 28 interrogatories, so he still had 2 interrogatories in addition to the additional 20 granted by the court.

3. Pursuant to this Court's Order, Defendant served his Fourth Set of Interrogatories on July 31, 2015, which included 16 interrogatories, which meant Defendant had six remaining interrogatories to propound. A copy of the Fourth Set of Interrogatories is attached hereto as Exhibit "B".

4. On October 21, 2015, Defendant propounded four interrogatories in his Fifth Set of Interrogatories. A copy of the Fifth Set of Interrogatories is attached hereto as Exhibit "C".

5. Predictably, Plaintiffs waited until the last day to respond, which was not an answer, but rather, an objection alleging the interrogatories exceeded the number allowed by the Florida Rules of Civil Procedure and this Court's Order. According to Plaintiffs, Defendant's Fourth Set of Interrogatories contained 24 interrogatories, which was more than allowed by the Court's Order, and thus, Defendant cannot serve the Fifth Set of Interrogatories.⁴

6. An interrogatory, with subparts, is considered one interrogatory, if the subparts seek to elicit details concerning a common theme and are logically or factually subsumed within and necessarily related to the primary question. *Ingole v. Certain Underwriters at Lloyd's of London*, 2009 WL 1211359 (M.D. Fla. 2009).

7. In the instant case, the subparts to the 16 interrogatories propounded in the Fourth Set of Interrogatories are logically and factually subsumed within the primary questions, and concern a common theme, and thus, contrary to Plaintiffs' argument do not exceed the 20 interrogatories allowed by this Court. Defendant had six interrogatories left to propound; the Fifth Set of Interrogatories contains but two interrogatories.

8. Not only did Defendant conform to the proper amount of interrogatories allowed by the Court, but the interrogatories propounded in the Fifth Set of Interrogatories seek the

⁴ Inexplicably Plaintiffs did not raise this objection to the Fourth Set of Interrogatories; but, rather, answered the Interrogatories.

information related to Plaintiffs' claim of damages, which is clearly an important issue in this matter. There is no compelling reason why Plaintiffs, so close to a trial date, should not be compelled to provide relevant information regarding damages they are seeking, which they have failed to do and throughout this action.

9. Assuming *arguendo* this Court agrees with Plaintiffs that the Fifth Set of Interrogatories exceeds the number of interrogatories allowed by the Court, Defendant would respectfully request this Court to deem this Motion to Compel, a request to exceed the allotted interrogatories. Plaintiffs should be compelled to provide answers, not objections, within ten days. Plaintiffs have failed throughout this action to articulate the damages sought; they should be required to do so.

WHEREFORE Defendant Frank Avellino respectfully requests this Court to enter an Order compelling Plaintiffs to serve answers to the Fifth Set of Interrogatories within ten days.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant

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By: /s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
Florida Bar No. 563102
Susan Yoffee, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2015, 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, Esq.
Florida Bar No. 563102

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

CASE NO.: 12-034123 (07)

COMPLEX LITIGATION UNIT

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**ORDER GRANTING DEFENDANT FRANK AVELLINO'S MOTION FOR LEAVE TO
FILE ADDITIONAL INTERROGATORIES**

THIS CAUSE came before the Court on April 23, 2015 on Defendant's Frank Avellino's Motion for Leave to File Additional Interrogatories, and the Court, having heard the argument of counsel and being otherwise advised in the premises, it is hereby

ORDERED and **ADJUDGED** as follows:

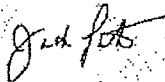
1. The Motion is **GRANTED**.
2. Defendant Frank Avellino may serve an additional twenty (20) interrogatories to Plaintiffs.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida this

_____ day of _____, 2015.

The Honorable Jack Tuter
CIRCUIT JUDGE

Conformed copies to:
Attorneys of Record



Electronically signed by Judge Tuter, Jack on 2015/04/30 15:33:45 EST.

A

IN THE CIRCUIT COURT OF THE 17TH
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,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT FRANK AVELLINO'S NOTICE OF SERVING FOURTH SET OF
INTERROGATORIES TO PLAINTIFF**

Defendant, Frank Avellino, by and through his undersigned counsel, hereby gives notice of serving his Fourth Set of Interrogatories upon Plaintiff, Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, to be answered under oath and in writing, within thirty (30) days of service herein, in accordance with the Florida Rules of Civil Procedure 1.340.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2015, the foregoing document is being served on all counsel of record on the attached service list by email, and by email and facsimile to Thomas M. Messina, Esq., Messina, P.A., Suite 1400, 401 E Las Olas Blvd., Ft. Lauderdale, FL 33301 and Leonard K. Samuels, Esq., Ethan Mark, Esq., and Steven D. Weber, Esq., Berger Signerman, 350 E Las Olas Blvd., Ft. Lauderdale, FL 33301.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant Frank Avellino

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Attorneys for Michael Bienes

DEFINITIONS

1. "Partnerships" shall mean P& S Associates, General Partnership and S &P Associates, General Partnership, their general and limited partners, members and representatives and agents.
2. "You" or "your" shall mean Plaintiffs and their partners, associates, members and representatives and agents.
3. "Avellino" shall mean Frank Avellino.
4. "Sullivan" shall mean Michael D. Sullivan.
5. To "identify" a person means to provide the following information: (a) the person's full name; (b) the person's present or last known residence address and telephone number; (c) the person's present or last known business affiliation and job title; and (d) the person's present or last known employment address and telephone number.

INSTRUCTIONS

1. Plaintiff shall quote each interrogatory in full immediately preceding the statement of any answer, response, or objection thereto.
2. Each interrogatory is to be answered separately and in full in writing under oath, unless all portions of an interrogatory are in good faith objected to, in which event the reasons for all of Plaintiff's objections shall be stated in detail. If an objection pertains to only a portion of an interrogatory, or to a word, phrase, or clause contained within such interrogatory, Plaintiff shall state their objection to that portion, and shall answer the interrogatory to the extent it is not objectionable.
3. Plaintiff is requested to furnish all information available to him, his attorneys, accountants, investigators, representatives, agents or any other person acting on Plaintiff's behalf and not merely such information as is known by Plaintiff's own personal knowledge. If Plaintiff cannot answer or respond in full after exercising due diligence to secure the information, he should answer or respond, to the extent possible, specifying the reason or reasons for the inability to answer or respond to the remainder.
4. Any recipient of these interrogatories who withholds any requested information by reason of a claim of privilege or attorney work product, or who objects to any part of these interrogatories, shall state the nature of the privilege or objection and provide sufficient

information to permit a full determination of whether the claim or objection is proper. For any documents that are withheld, provide a list identifying each such document for which the claim of privilege is made or to which the objection relates, together with the following information: (i) the type of document, *e.g.*, letter or memorandum, and any attachments; (ii) the subject matter of the document; (iii) the date of the document; (iv) the author(s) of the document, (v) the recipient(s) of document; (vi) number of pages; (v) the number of the interrogatory to which the document relates; (vi) the reason(s) for each objection or claim of privilege; and (vii) the identity of each person having knowledge of the actual basis, if any, on which the privilege or other ground for objection is based.

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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.

ANSWER:

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

ANSWER:

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.

ANSWER:

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

ANSWER:

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.

ANSWER:

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

ANSWER:

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.

ANSWER:

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

ANSWER:

P&S ASSOCIATES, GENERAL PARTNERSHIP

By: _____
PHILIP J. VON KAHLE, as Conservator

STATE OF FLORIDA
COUNTY OF _____

Sworn to or affirmed and signed before me this ____ day of _____, 2015
by Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership, to me known to
be the person and/or who provided identification consisting of _____,
and who executed the foregoing instrument this ____ day of _____, 2015.

NOTARY PUBLIC
My Commission Expires: _____

(SEAL)

S&P ASSOCIATES, GENERAL PARTNERSHIP

By: _____
PHILIP J. VON KAHLE, as Conservator

STATE OF FLORIDA
COUNTY OF _____

Sworn to or affirmed and signed before me this ____ day of _____, 2015
by Philip J. Von Kahle, as Conservator of S&P Associates, General Partnership, to me known to
be the person and/or who provided identification consisting of _____,
and who executed the foregoing instrument this ____ day of _____, 2015.

NOTARY PUBLIC
My Commission Expires: _____

(SEAL)

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CASE NO. 12-034123 (07)

Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of
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Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT FRANK AVELLINO'S NOTICE OF SERVING FIFTH SET OF
INTERROGATORIES TO PLAINTIFF**

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I HEREBY CERTIFY that on this 21st day of October, 2015, the foregoing document and Fifth Set of Interrogatories are being served on all counsel of record on the attached service list by email and by facsimile to Counsel for Plaintiff, 7401 and Leonard K. Samuels, Esq., and Steven D. Weber, Esq. at 954 712-5138.

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By: /s/ Gary A. Woodfield

Gary A. Woodfield, Esq.

Florida Bar No. 563102

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Attorneys for Michael Bienes

DEFINITIONS

1. “You” or “your” shall mean Plaintiffs and their partners, associates, members and representatives and agents.

INSTRUCTIONS

1. Plaintiff shall quote each interrogatory in full immediately preceding the statement of any answer, response, or objection thereto.

2. Each interrogatory is to be answered separately and in full in writing under oath, unless all portions of an interrogatory are in good faith objected to, in which event the reasons for all of Plaintiff’s objections shall be stated in detail. If an objection pertains to only a portion of an interrogatory, or to a word, phrase, or clause contained within such interrogatory, Plaintiff shall state their objection to that portion, and shall answer the interrogatory to the extent it is not objectionable.

3. Plaintiff is requested to furnish all information available to him, his attorneys, accountants, investigators, representatives, agents or any other person acting on Plaintiff’s behalf and not merely such information as is known by Plaintiff’s own personal knowledge. If Plaintiff cannot answer or respond in full after exercising due diligence to secure the information, he should answer or respond, to the extent possible, specifying the reason or reasons for the inability to answer or respond to the remainder.

4. Any recipient of these interrogatories who withholds any requested information by reason of a claim of privilege or attorney work product, or who objects to any part of these interrogatories, shall state the nature of the privilege or objection and provide sufficient information to permit a full determination of whether the claim or objection is proper. For any documents that are withheld, provide a list identifying each such document for which the claim of privilege is made or to which the objection relates, together with the following information: (i) the type of document, *e.g.*, letter or memorandum, and any attachments; (ii) the subject

matter of the document; (iii) the date of the document; (iv) the author(s) of the document, (v) the recipient(s) of document; (vi) number of pages; (v) the number of the interrogatory to which the document relates; (vi) the reason(s) for each objection or claim of privilege; and (vii) the identity of each person having knowledge of the actual basis, if any, on which the privilege or other ground for objection is based.

INTERROGATORIES

1. Please specifically delineate the amount of damages as to each defendant you are seeking for each cause of action (Counts I through VII) in the Fifth Amended Complaint, including the specific components of the damages for each cause of action (Count I through VII), and specifically how each damage delineated was calculated.

2. Please identify all persons who have answered and/or contributed to the answers to Interrogatory Number 1, and specify what portions each answered and/or contributed to.