

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

P & S ASSOCIATES, GENERAL  
PARTNERSHIP and S & P ASSOCIATES,  
GENERAL PARTNERSHIP,

CASE NO. 12-028324 (07)  
Complex Litigation Unit

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

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**NOTICE OF FILING:**

**EXCERPT OF THE TRANSCRIPT FROM THE NOVEMBER 19, 2013 TRIAL**

Philip J. Von Kahle, as Conservator for P&S, General Partnership and S&P, General Partnership, by and through counsel, hereby gives notice of filing the attached excerpt of the transcript from the November 19, 2013.

Respectfully submitted this December 5, 2013.

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By: /s/ Thomas M. Messana  
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Florida Bar No. 991422

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

4 Case No.: 12-028324 (07)

5 P & S ASSOCIATES, GENERAL  
6 PARTNERSHIP and S & P  
7 ASSOCIATES, GENERAL  
8 PARTNERSHIP,

9 Plaintiffs,

10 vs.

11 ROBERT P. ALVES, et al.,

12 Defendants.  
13 \_\_\_\_\_/

14  
15  
16 Broward County Courthouse  
17 201 Southeast 6th Street  
18 Fort Lauderdale, Florida  
19 Tuesday, November, 19, 2013  
20 10:15 a.m. - 12:00 p.m.

21 EXCERPT

22 The above-styled cause came on for hearing held  
23 before the Honorable Jeffrey E. Streitfeld, Presiding  
24 Judge, at the Broward County Courthouse, on the 19th  
25 day of November, 2013, at 10:15 a.m.

1 APPEARANCES:

2 MESSANA, P.A., by  
3 THOMAS M. MESSANA, ESQ.,  
4 BRETT DREW LIEBERMAN, ESQ.,  
5 THOMAS ZEICHMAN, ESQ.,  
6 on behalf of the Plaintiff

7 GENOVESE JOBLOVE & BATTISTA, by  
8 BARRY P. GRUHER, ESQ.  
9 on behalf of Festus and Helen Stacy Foundation,  
10 James Jordan

11 TRIPP SCOTT, by  
12 PETER G. HERMAN, ESQ.,  
13 on behalf of Guardian Angel, SPJ and Steven Jacob

14 DOBIN LAW GROUP, P.A, by  
15 MARC S. DOBIN, ESQ.,  
16 on behalf of Congregation of Holy Ghosts

17 ALSO PRESENT:

18 PHIL VON KAHLE  
19 JAMES JORDAN  
20 BRETT STAPLETON  
21 STEVEN JACOB  
22 BARRY MUKAMAL  
23 FREDERICK KLEIN  
24  
25

1 THE COURT: My voice is still somewhere over  
2 the Atlantic Ocean, so bear with me on the throat.

3 If you'd announce your appearances for me,  
4 please.

5 MR. MESSANA: Good morning, Your Honor.  
6 Thomas Messana on behalf of the plaintiff. With me are  
7 my colleagues, Brett Lieberman and Thomas Zeichman, as  
8 well as Phil Von Kahle. Mr. Von Kahle is the  
9 conservator.

10 If I may have another moment, Your Honor, I'd  
11 like to introduce to you Frederick Klein. Mr. Klein is  
12 a senior at David Posnack Jewish Day School. He serves  
13 as the president of the student body, and he has an  
14 interest in pursuing the law. We invited him to  
15 observe today.

16 THE COURT: Top that one.

17 MR. DOBIN: Marc Dobin on behalf of the  
18 Congregation of Holy Ghosts, Your Honor.

19 THE COURT: You did it.

20 MR. DOBIN: I thought I might. Good morning.

21 THE COURT: Good morning.

22 MR. GRUHER: Good morning, Your Honor. Barry  
23 Gruher of Genovese Joblove & Battista, on behalf of  
24 three defendants in this action, the Festus and Helen  
25 Stacy Foundation, and also present in the courtroom is

1 Brett Stapleton, who is the trustee and vice-president  
2 of operations for the Foundation.

3 THE COURT: And that would be which of those  
4 gentlemen?

5 MR. GRUHER: Right there (indicating).

6 In addition, Your Honor, I'm also  
7 representing Dr. James Jordan, individually.  
8 Dr. Jordan is also before the Court. And James Jordan  
9 as Trustee of the James Jordan Living Trust.

10 THE COURT: Okay.

11 MR. HERMAN: Your Honor, Peter Herman on  
12 behalf of Guardian Angel, SPJ and Steve Jacob.

13 THE COURT: Thank you, sir.

14 All right. That podium looks like it's sort  
15 of jammed in there, but that's okay. If you need to  
16 move it forward some, that might make sense.

17 Mr. Messana, what's going on?

18 MR. MESSANA: Your Honor, I was prepared to  
19 tell you this morning that we had resolved 90 percent  
20 of the issues before you by stipulations which have  
21 been placed on file, but we've got an additional  
22 stipulation. So I think the answer is, we have  
23 97 percent of the issues resolved before you.

24 I'd like to read into the record a proposed  
25 stipulation, and have Mr. Herman acknowledge it for the

1 record.

2 THE COURT: I'm looking forward to receiving  
3 that. I can't tell you how much. If you'll first  
4 allow me to make sure that when you say, "other  
5 stipulations of record," I want to say sure that the  
6 record here is adequately made.

7 I have received late yesterday afternoon, but  
8 again reviewed this morning, a binder that includes  
9 stipulations between the conservator and Michael  
10 Sullivan, the Moss parties, the Rosen parties, Scott  
11 Holloway and the Kelly parties.

12 Are you referring to those?

13 MR. GAMBERG: Yes, I am.

14 THE COURT: Are there any others, other than  
15 the ones that you're about to talk to me about?

16 MR. MESSANA: No, Your Honor.

17 THE COURT: Very good. Go ahead.

18 I should go away more often, shouldn't I?

19 MR. MESSANA: No, Your Honor, but we are  
20 happy to have you back.

21 This will be a stipulation between the  
22 conservator and Steven Jacob, establishing the  
23 distribution procedure for SPJ Investments, Ltd. and  
24 Guardian Angel Trust.

25 So the conservator and Jacob, in his capacity

1 as the managing general partner of SPJ, and the  
2 managing member of Guardian Angel --

3 THE COURT: You can take your time while  
4 you're telling me this, by the way. We've got all day.

5 MR. MESSANA: -- have agreed to resolve the  
6 holdback issue by agreeing to comply with the protocol  
7 detailed herein.

8 First, for the purpose of the initial  
9 distribution, Jacob stipulates that the conservator's  
10 calculation in SPJ and Guardian Angel's net investment  
11 claim amounts, as reflected in Exhibit A attached to  
12 the September 30, 2013 reply in favor of motion for  
13 summary judgment, is the minimum amount. The  
14 stipulation is without prejudice to SPJ or Guardian  
15 Angel's ability to provide new information to support a  
16 different claim amount for future distributions by the  
17 conservator.

18 THE COURT: So it can only go up, it cannot  
19 go down?

20 MR. MESSANA: Correct.

21 THE COURT: Okay. Go ahead.

22 MR. MESSANA: Jacob individually, and on  
23 behalf of Guardian Angel, agrees to the entry of a  
24 final judgment in this lawsuit -- and that is the  
25 lawsuit P & S Associates and S & P Associates versus

1 Robert Alves, Case Number 12-028324 (07) -- and that  
2 the conservator has the authority to distribute funds  
3 directly to the Guardian Angel investors who  
4 contributed more capital than they received in their  
5 distribution -- and we defined that term to be the  
6 Guardian Angel distribution recipients -- by an  
7 appropriate method. And the appropriate method is pro  
8 rata between and among them.

9 Any disputes with the calculation of the  
10 capital accounts for any of the Guardian Angel  
11 distribution recipients will be determined by the Court  
12 with jurisdiction over this matter; you, Your Honor.

13 Now, with respect to SPJ, Jacob individually,  
14 and on behalf of SPJ, agrees to the entry of a final  
15 judgment, determining that the conservator has  
16 authority to distribute directly to the SPJ investors  
17 who contributed more capital than they received in  
18 distribution, the SPJ distribution recipients, by an  
19 appropriate method. Again, that appropriate method is  
20 pro rata within SPJ.

21 Any dispute on the calculation of the capital  
22 account for any SPJ distribution recipient shall be  
23 determined by a Court with jurisdiction over this  
24 matter, and again, that would be you, Your Honor.

25 THE COURT: The provisions are the same as to

1 each of the two?

2 MR. MESSANA: Yes.

3 THE COURT: Okay.

4 MR. MESSANA: The conservator's  
5 recommendation is to join the partners of SPJ and the  
6 members of Guardian Angel as parties in the instant  
7 interpleader action. Jacob agrees to assist the  
8 conservator with this recommendation, as doing so  
9 allows the parties to receive their distribution in the  
10 most expeditious manner, including locating the  
11 partners of SPJ and the members of Guardian Angel.

12 Jacob further agrees that the conservator is  
13 permitted to contact partners of SPJ and members of  
14 Guardian Angel to effectuate this stipulation, and will  
15 cooperate with the conservator to help effectuate such  
16 communications.

17 Within 30 business days of the execution of  
18 this stipulation, Jacob and the partners of SPJ or the  
19 members of Guardian Angel, who are related to Jacob by  
20 consanguinity or affinity within the third degree, will  
21 provide sworn affidavits which will provide that the  
22 funds invested in SPJ or the Guardian Angel were not  
23 derived from Jacob or the partnerships.

24 Obviously, they're going to provide honest  
25 affidavits, and we've been told that's what the

1 affidavits were going to say.

2           Once the parties referenced in Paragraph 10  
3 deliver the completed affidavits to the conservator,  
4 the conservator will distribute to same in accordance  
5 with the methods outlined in this stipulation.

6           Mr. Jacob agrees to forgo a fee or other  
7 compensation, performing actions necessary to  
8 effectuate the requirements of this stipulation, and  
9 both parties agree that counsel shall make application  
10 to the Court for fees associated with their services,  
11 and the Court will award counsel a reasonable fee.

12           I believe that is the sum and substance of  
13 the stipulation, and I would ask Mr. Herman to  
14 acknowledge it for the record on behalf of his clients.

15           MR. HERMAN: If I could have one minute.  
16 This is fresh out of the oven. I need to just double  
17 check things here.

18           (Discussion off the record.)

19           MR. HERMAN: Okay, Your Honor. My clients,  
20 SPJ, Guardian Angel and Steve Jacob, agree with the  
21 stipulation as recited.

22           THE COURT: Mr. Jacob is here. I want the  
23 record to reflect that.

24           MR. HERMAN: He is. I just conferred with  
25 him. He heard the stipulation read, also.

1           The only thing I want to make clear, and I  
2 think it was to you, but today we do intend to put on  
3 evidence with regard to that difference between the  
4 minimum --

5           THE COURT: That's the 3 percent.

6           MR. HERMAN: Not necessarily.

7           THE COURT: I think you might attribute a  
8 higher percentage to it than he does, but that's the  
9 issue remaining to be presented and discussed and  
10 resolved today, correct?

11          MR. HERMAN: Yes.

12          THE COURT: I do have some questions.

13          Mr. Messina, if you would please join  
14 Mr. Herman at the podium.

15                 Just so the record is set on these issues,  
16 Mr. Von Kahle, you are technically the plaintiff in  
17 this case. Mr. Messina's statements to me as your  
18 counsel, you understand the provisions of these  
19 agreements?

20          MR. VON KAHLE: Yes, I do.

21          THE COURT: You find them fair and reasonable  
22 under the circumstances?

23          MR. VON KAHLE: Yes, I do.

24          THE COURT: You agree to be bound by them?

25          MR. VON KAHLE: Yes, I do.

1 THE COURT: Mr. Jacobs, come forward, please.

2 How are you doing? Are you okay?

3 MR. JACOB: Yes, sir. How are you?

4 THE COURT: Good. It's good to be back.

5 It's really wonderful when you do work that you  
6 actually look forward to going back to when you get  
7 back from vacation. After 23 years I can still say  
8 that. I didn't always say that when I was lawyering.

9 I'm confident that you have, but still I want  
10 to make it clear, you heard all the terms that have  
11 been recited to me?

12 MR. JACOB: Yes, sir.

13 THE COURT: You've had an opportunity to  
14 consider those with Mr. Herman?

15 MR. JACOB: Yes, sir.

16 THE COURT: Pretty good lawyer. He did good.  
17 Everybody has. The amount of work that's been done in  
18 these matters, and the degree of professionalism and  
19 cooperation is admirable, and I'm very grateful for it,  
20 as everyone in this courtroom should be.

21 Do you agree to be bound by these terms?

22 MR. JACOB: Yes, sir.

23 THE COURT: Thank you very much.

24 \* \* \* \* \*

25

CERTIFICATION

STATE OF FLORIDA:

COUNTY OF DADE:

I, HELAYNE F. WILLS, Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the foregoing proceedings were taken before me at the date and place as stated in the caption hereto on Page 1; that the foregoing computer-aided transcription is a true record of an excerpt of my stenographic notes taken at said proceedings.

WITNESS my hand this 25th day of November, 2013.

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HELAYNE F. WILLS  
Court Reporter and Notary Public  
In and For the State of Florida at Large  
Commission No: FF034198 Expires: 8/2/17