

U27/13-203

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

CASE NO: 12-34121 (07)

Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of
P&S ASSOCIATES, GENERAL PARTNERSHIP,
and S&P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants. /

**DEFENDANT ROBERT A. UCHIN REVOCABLE TRUST'S
MOTION FOR LEAVE TO AMEND ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, ROBERT A. UCHIN REVOCABLE TRUST ("UCHIN TRUST"), by and through its undersigned counsel, and respectfully seeks an Order granting UCHIN TRUST leave to amend its Answer and Affirmative Defenses, and in support states:

1. UCHIN TRUST seeks leave to add additional affirmative defenses.
2. There is no prejudice to Plaintiff by the request as all of the proposed affirmative defenses have also been raised by other Defendants in this matter.
3. Undersigned counsel for UCHIN TRUST has conferred with Mr. Leonard Samuels, attorney for Plaintiffs, on December 26, 2013, who has no objection to the relief requested herein.
4. The proposed Amended Answer & Affirmative Defenses is attached as **Exhibit "A."**
5. A proposed Order granting the requested relief is attached as **Exhibit "B."**

WHEREFORE, Defendant ROBERT A. UCHIN REVOCABLE TRUST respectfully seeks an Order granting UCHIN TRUST leave to amend its Answer and Affirmative Defenses and such

other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 31, 2013, I electronically filed the foregoing document with the Clerk of the Court and I also certify that the foregoing document is being served this day on all counsel of record in the manner specified, either via the Florida Courts E-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic filings.

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EXHIBIT "A"

U27/13-203

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Complex Litigation Unit

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

Plaintiffs,

vs.

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

_____ /
Defendants.

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT ROBERT A.
UCHIN REVOCABLE TRUST TO PLAINTIFFS' AMENDED COMPLAINT**

COMES NOW, Defendant, ROBERT A. UCHIN REVOCABLE TRUST ("UCHIN TRUST"), by and through its undersigned counsel, files its Answer and Affirmative Defenses to the Amended Complaint of Plaintiffs, and states:

1. UCHIN TRUST denies each and every allegation of the Amended Complaint not admitted in this Answer and demands strict proof thereof.
2. UCHIN TRUST is without information as to the investments and/or disbursements made from and/or to other Defendants and as those allegations are not directed at UCHIN TRUST, UCHIN TRUST is not required to respond.
3. As to the allegations in Paragraph 25, UCHIN TRUST admits.

4. As to the allegations in Paragraph 35, UCHIN TRUST admits for jurisdictional purposes only.

5. All allegations referring to Orders entered by the Court or documents filed with the Court speak for themselves.

6. As a first Affirmative Defense, UCHIN TRUST will show the Statute of Limitations had expired on all Counts asserted against it and are time barred.

7. As a second Affirmative Defense, UCHIN TRUST will show that once the disbursements which are barred by the applicable Statute of Limitations are discounted, UCHIN TRUST is no longer an alleged Net Winner.

8. As a third Affirmative Defense, UCHIN TRUST asserts that all disbursements received by it were accepted in actual good faith and with lack of knowledge of any wrongdoing or unlawful activities by then Managing General Partner Sullivan, as alleged, and/or by Bernie Madoff.

9. As a fourth Affirmative Defense, UCHIN TRUST asserts Plaintiffs' claims are barred pursuant to § 14.03 of the Partnership Agreement such that "Partners shall be liable only for acts and/or omissions involving the intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty." There are no such allegations or record evidence which support or will support that UCHIN TRUST acted or failed to act with "intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty."

10. As a fifth Affirmative Defense, UCHIN TRUST asserts Plaintiffs' equitable claims for Unjust Enrichment (Count III) and Money Had and Received (Count IV) fail as a matter of law because Plaintiffs have plead the existence of an express contract and incorporated said contract into the Amended Complaint and Counts III and IV are not plead in the alternative.

11. As a fifth Affirmative Defense, if this Court finds any wrongdoing on the part of UCHIN TRUST (which UCHIN TRUST denies any and all wrongdoing or liability), UCHIN TRUST asserts the equitable doctrine of “*in pari delicto*” (“*in pari delicto potior est conditio defendentis*,” which means “in a case of equal or mutual fault...the position of the defending party...is the better one.”). Because the Conservator stands in the shoes of the Managing General Partner and it is the then Managing General Partner Plaintiff who participated in wrongdoing, the Plaintiffs may not recover from the wrongdoing.

12. As a fifth Affirmative Defense, UCHIN TRUST asserts the equitable doctrine of unclean hands and equitable estoppel which bars Plaintiffs’ claims in equity because of and due to Plaintiffs’ own inequitable and unclean conduct in the course of performing obligations under the Partnership Agreement.

13. UCHIN TRUST adopts all other affirmative defenses by co-Defendants which apply to UCHIN TRUST and serve as a bar to Plaintiffs proceeding against UCHIN TRUST.

WE HEREBY CERTIFY that a true and correct copy has been E-served on all counsel of record on the attached Certificate of Service List on this 31 day of December, 2013.

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and S&P ASSOCIATES, GENERAL
PARTNERSHIP,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST,
a charitable trust, DIANE M. DEN BLEYKER,
an individual, et al.

Defendants. _____/

**ORDER GRANTING DEFENDANT ROBERT A. UCHIN REVOCABLE TRUST'S
MOTION FOR LEAVE TO AMEND ANSWER AND AFFIRMATIVE DEFENSES**

THIS CAUSE, having come before the Court on the Defendant ROBERT A. UCHIN
REVOCABLE TRUST'S Motion for Leave to Amend Answer and Affirmative Defenses, and the
Court having heard argument of counsel and being duly advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion is GRANTED.

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

____ day of _____, 2014.

CIRCUIT COURT JUDGE

Copies furnished:
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