

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

**CASE NO. 12-028324 (07)
COMPLEX LITIGATION UNIT**

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

Plaintiffs,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES BY DEFENDANT, FESTUS & HELEN
STACY FOUNDATION, INC. TO THE THIRD AMENDED COMPLAINT FOR
INTERPLEADER AND DECLARATORY RELIEF**

The Defendant, Festus & Helen Stacy Foundation, Inc. (the “Defendant” or “Stacy Foundation”), by and through counsel, files this Answer and Affirmative Defenses By Defendant, Festus & Helen Stacy Foundation, Inc. to the Third Amended Complaint For Interpleader and Declaratory Relief (the “Answer”) in corresponding numbered paragraphs to the Third Amended Complaint For Interpleader and Declaratory Relief (the “Complaint”) filed by Plaintiffs, Philip J. Von Kahle, as Conservator for P & S Associates, General Partnership (“P&S) and S & P Associates, General Partnership (“S&P”)(together “Plaintiffs”, “Conservator” or “Partnerships”) and states, as follows:

JURISDICTION

1. The Stacy Foundation admits the allegations contained in paragraph (1) of the Complaint for jurisdictional purposes only.

VENUE

2. The Stacy Foundation admits the allegations contained in paragraph (2) of the Complaint for venue purposes only.

3. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (3) through (59) of the Complaint and, therefore, denies same.

4. The Stacy Foundation admits the allegations contained in paragraph (60) of the Complaint. Further, the Stacy Foundation asserts in an interest in any and all partnership assets distributed in this action to the extent of its interest in such assets as provided by applicable Florida statutes and as otherwise provided by law.

5. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (61) through (348) of the Complaint and, therefore, denies same.

6. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (349-350) of the Complaint and, therefore, denies same.

7. The Stacy Foundation admits only that the Amended and Restated Partnership Agreement of S&P (the "S&P Agreement") attached to the Complaint as Exhibit "A" speaks for itself, but is without knowledge and denies the remaining allegations contained in paragraph (351) of the Complaint.

8. The Stacy Foundation admits only that the Amended and Restated Partnership Agreement of P&S (the "P&S Agreement") attached to the Complaint as Exhibit "B" speaks for itself, but is without knowledge and denies the remaining allegations contained in paragraph (352) of the Complaint.

9. The Stacy Foundation neither admits nor denies the statement set forth in paragraph (353) of the Complaint.

10. The Stacy Foundation admits that the Partnership Agreements speak for themselves with respect to the allegations contained in paragraph (354) of the Complaint..

11. The Stacy Foundation admits, in part, and denies, in part, the allegations contained in paragraph (355) of the Complaint.

12. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (356) through (357) of the Complaint and, therefore, denies same.

13. The Stacy Foundation admits the allegations contained in paragraphs (358) through (365) of the Complaint.

14. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (366) of the Complaint and,

therefore, denies same.

15. The Stacy Foundation admits only that the S&P Settlement Agreement and P&S Settlement Agreement attached to the Complaint as Exhibits “C” and “D”, respectively, speak for themselves, but is without knowledge and denies the remaining allegations contained in paragraph (367) and (368) of the Complaint.

16. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (369) through (373) of the Complaint and, therefore, denies same.

17. The Stacy Foundation admits in part, and denied, in part, the allegations contained in paragraph (374) of the Complaint.

THE CONTROVERSY

18. The Stacy Foundation the allegations contained in paragraph (375) of the Complaint.

19. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (376) through (382) of the Complaint and, therefore, denies same.

COUNT I DECLARATORY RELIEF

20. The Stacy Foundation incorporates herein by reference the responses to paragraphs (1) through (382) above as if fully set forth herein.

21. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (384) through (386) of the Complaint and, therefore, denies same.

COUNT II INTERPLEADER

22. The Stacy Foundation incorporates herein by reference the responses to paragraphs (1) through (382) above as if fully set forth herein.

23. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (383) through (391) of the Complaint and, therefore, denies same.

COUNT III INJUNCTION

24. The Stacy Foundation incorporates herein by reference the responses to

paragraphs (1) through (382) above as if fully set forth herein.

25. The Stacy Foundation admits, in part, and denies, in part, the allegations contained in paragraph (393) through (394) of the Complaint.

26. The Stacy Foundation is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs (395) through (402) of the Complaint and, therefore, denies same.

27. The Stacy Foundation denies the allegations contained in paragraphs (403) and (404) of the Complaint.

PRAYER FOR RELIEF

28. The Stacy Foundation denies the relief requested by the Plaintiffs.

FIRST AFFIRMATIVE DEFENSE **(As to Count I - Declaratory Relief)**

29. The Plaintiffs are barred, in whole or in part, from seeking a determination by the Court with respect to the equitable and/or legal relations of the parties to the Partnership Agreements pursuant to the Florida Declaratory Judgments Act, Chapter 86, *Fla. Stats.*, to the extent that the relief sought by the Partnerships as set forth in Count I of the Complaint materially varies from the rights, duties and obligations of Plaintiffs under the distribution scheme provided in the Partnership Agreements, orders of the Court and/or other applicable partnership Florida law, which may prejudice and are otherwise inconsistent with the rights of the Stacy Foundation in the Funds that are subject of this action.

SECOND AFFIRMATIVE DEFENSE **(As to Count II - Interpleader)**

30. The relief sought by Plaintiffs under Count II of the Complaint for Interpleader must be governed in accordance with the fiduciary duties and obligations imposed by the Court upon the Conservator to maintain possession, custody and control over the Funds at issue in this proceeding consistent with the rights and interests of the Stacy Foundation as a partner in the Partnership Agreements. Accordingly, the Conservator must exercise due care to protect, preserve and distribute the Funds for the benefit and interest of the Stacy Foundation in accordance with the Partnership Agreements, orders of the Court and/or other applicable partnership Florida law.

THIRD AFFIRMATIVE DEFENSE
(As to Count III- Injunction)

31. The Plaintiffs are barred and precluded, in whole or in part, from enjoining the Stay Foundation, as a purported member of the “Broward County Litigants” as stated in Count III of the Complaint, from participating as a party litigant in and proceeding with the Conservator Suit in order to protect its rights and interest in the Funds under the Partnership Agreements, applicable Florida partnership law, and to the extent not inconsistent with the rulings of the Court in this case. Significantly, the Plaintiffs have failed to (i) plead legally sufficient facts; (ii) post an injunction bond in favor of the Stacy Defendants in the event of a wrongful injunction or shown good cause for the waiver of such a bond; and (iii) demonstrate any public policy reason for the issuance of an injunction against the Stacy Foundation based upon the claims asserted in the Complaint. Moreover, the Plaintiffs have an adequate remedy at law within to redress any injuries that may be caused by the alleged acts or conduct of the Stacy Foundation such that an injunction is unwarranted. Accordingly, Count III of the Complaint should be dismissed.

WHEREFORE, Defendant, Festus & Helen Stacy Foundation, Inc., respectfully request the Court (i) deny the relief requested by the Plaintiffs, P & S Associates, General Partnership and S & P Associates, General Partnership, in the Complaint; (ii) grant the Defendant its’ attorney’s fees and costs for having to defend this action as provided by the Agreement; and (iii) for such other and further relief as this Court deems just and proper.

Dated this 17th day of October, 2013.

GENOVESE JOBLOVE & BATTISTA, P.A.
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By: /s/ Barry P. Gruher

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing has been served by electronic mail to all parties listed on the attached Master Service List on this 17th day of October, 2013.

By: /s/ Barry P. Gruher
Barry P. Gruher, Esq.

MASTER SERVICE LIST

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