

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

CASE NO: 12-34121 (07)
Complex Litigation Unit

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; Phil von Kahle as
Conservator of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; and S&P
ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust; DIANE M.
DEN BLEYKER, an individual; ETTOH
LTD., a Florida limited partnership;
ERSICA P. GIANNA, an individual and
as Trustee; CATHERINE B. AND BERRY C.
SMITH, individuals; EDNA A. PROFE
REV. LIV. TRUST; HERBERT IRWIG
REVOCABLE TRUST; EDITH ROSEN,
an individual; RICHARD F. AND BETTE
WEST, individuals; GREGG WALLICK,
an individual; JAMES AND VALERIA
BRUCE JUDD, individuals; JULIANNE
M. JONES, an individual; JESSE A. AND
LOIS GOSS, Trustees; LISA RYAN, an
individual; GERTRUDE GORDON, an
individual; SAM ROSEN, an individual;
PARAGON VENTURES, LTD., an
Austrian limited partnership; HOLY
GHOST FATHERS INTERNATIONAL
FUND #2, a Tax-exempt Organization;
SUSAN E. MOLCHAN OR THOMAS A.
WHITEMAN, individuals; JANET B.

MOLCHAN TRUST DTD 5/19/94;
ROBERT A. UCHIN REV TRUST;
HOLY GHOST FATHERS,
COMPASSION FUND, a Tax-exempt
Organization; HOLY GHOST FATHERS
HG-MOMBASA, a Tax-exempt
Organization; HOLY GHOST FATHERS
INTERNATIONAL FUND #1, a Tax-
exempt Organization; HOLY GHOST
FATHERS HG-IRELAND/KENEMA, a
Tax-exempt Organization;
CONGRAGATION OF THE HOLY
GHOST-WESTERN PROVIDENCE, a
Tax-exempt Organization; ABRAHAM
OR RITA NEWMAN, individual; JOHN
J. CROWLEY, and/or JONATHAN
CROWLEY, individuals; and ALEX E.
MOLCHAN TRUST DTD 5/19/94;

Defendants.

DEFENDANT, JULIANNE MATARAGAS',
MOTION TO VACATE CLERK'S DEFAULT

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, and pursuant to Rule 1.500, Fla. R. Civ. P., hereby files this Motion to Vacate the Default entered against her and as grounds therefore would state as follows:

1. On or about December 10, 2012, Plaintiffs filed its Complaint against Defendant, JULIANNE M. JONES (properly known as JULIANNE MATARAGAS) (hereafter "Defendant").
2. Pursuant to the Court docket, on February 5, 2014, a Default was entered against Defendant JULIANNE M. JONES.

3. On June 3, 2014, Defendant filed a Motion to Quash Service of Process and Vacate Clerk's Default with her attached Affidavit (see motion and affidavit attached hereto as **Exhibit "A"**).

4. At the hearing on said Motion to Quash, the Court found that Defendant was properly served with the Plaintiff's Complaint.

5. Based on the Court's finding, Defendant is filing her Answer and Affirmative Defenses to Plaintiffs' Complaint, before any default judgment being requested or entered.

6. Defendant's Answer and Affirmative Defenses is attached hereto as **Exhibit "B"**.

7. The Court has broad discretion in determining whether the facts constitute excusable neglect to justify vacating a default. Anish v. Topiwala, 430 So.2d 990, 991 (Fla. 3d DCA 1983).

8. When ruling on a motion to vacate a default, the Court must consider whether the moving party (1) has shown excusable neglect; (2) has a meritorious defense to the opposing party's claims; and (3) has exercised due diligence in obtaining relief after learning of the default. Szucs v. Qualico Development, Inc., 893 So.2d 708, 710 (Fla. 2d DCA 2005).

9. The Florida Courts have a long-standing policy of liberality toward the vacating of defaults where the defendant demonstrates excusable neglect, because the Courts favor the resolution of disputes on the merits rather than by default. Ellis v. Ellis, 404 So.2d 774, 776 (Fla. 2d DCA 1981).

10. Furthermore, if there be any reasonable doubt in the matter of vacating a default, it should be resolved in favor of granting the application and allowing a trial upon the merits of the case.

11. In the instant case, any delay and/or failure to respond to Plaintiff's Complaint by the Defendant was simply the result of excusable neglect on Defendant's part in that she was under the impression that service of process was not achieved upon her.

12. "A meritorious defense, as required to vacate a default, is established where a proposed answer is attached to its motion to vacate, which answer sets out in detail a number of affirmative defenses." Elliott v. Aurora Loan Services, LLC, 31 So.3d 304 (2010).

13. Accordingly, it is appropriate for this Court to grant this Motion to Vacate the Default because Defendant shows excusable neglect, because Defendant has meritorious defenses to the opposing party's claims, and because Defendant has acted with all due haste to remedy the situation.

WHEREFORE, Defendant, JULIANNE MATARAGAS, respectfully requests this Court grant relief from, and otherwise vacate the default entered in this action, permit the filing of Defendant's Answer and Affirmative Defenses which is attached hereto as **Exhibit "B"**, and for any further relief this Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, this 11th day of July, 2014.

TRIPP SCOTT, P.A.
Counsel for Defendant
JULIANNE M. JONES
110 SE 6th, St, 15th Fl.
Fort Lauderdale, FL 33301
Phone 954 525 7500
Fax 954 761 8475

By: s/Peter G. Herman
Peter G. Herman
Fla. Bar No. 353991

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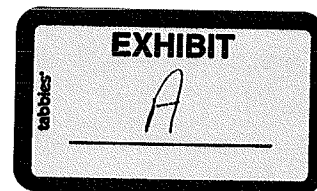
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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 12-24121 (07)
Complex Litigation Unit

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

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST,
et al,

Defendants

MOTION TO QUASH SERVICE OF PROCESS
AND VACATE CLERK'S DEFAULT

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, files this Motion to Quash Service of Process and Vacate Clerk's Default for failure to comply with Florida Statute §48.031, and states:

1. Defendant was never properly served with a Summons in this case and therefore the Clerk's Default should not have been entered (see Affidavit attached hereto).
2. Accordingly, the Defendant was not required to respond to the Complaint.
3. The Court lacks jurisdiction over this Defendant.

WHEREFORE, Defendant requests an order quashing the service of process and vacating the Clerk's Default which was entered against her, and for all further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, this 3rd day of June, 2014.

TRIPP SCOTT, P.A.
Counsel for Defendant
JULIANNE M. JONES
110 SE 6th, St, 15th Fl.
Fort Lauderdale, FL 33301
Phone 954 525 7500
Fax 954 761 8475

By: s/Peter G. Herman
Peter G. Herman
Fla. Bar No. 353991
Primary: pgh@trippscott.com
Secondary: ele@trippscott.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
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Defendants

AFFIDAVIT OF JULIANNE MATARAGAS

STATE OF NEW YORK
COUNTY OF Suffolk

I, JULIANNE MATARAGAS, being first duly sworn on oath, deposes and states:

1. My name is Julianne Mataragas and I make this affidavit on personal knowledge of the matters herein.
2. I have never been personally served with a summons concerning this case.
3. According to the Alias Summons filed as an exhibit to the Motion for Final Default Judgment, it indicates under paragraph #3, the description of the person being served or spoken to on behalf of defendant was a white male with brown hair, age 56, weight 161-200 lbs, height 5' 4"-5' 8". The description in #3 is not the description of my husband and I have personal knowledge that he was not served with the summons.
4. Also, the Alias Summons filed as an exhibit to the Motion for Final Default Judgment is addressed to Julianne M. Jones at 1817 S.E. Deming Avenue, Port St. Lucie, Florida,

which was my mother's address; however, it is not my address. My mother's name is Theresa Mataragas and she died in 2004.

5. I ultimately received a copy of the complaint via mail.

FURTHER AFFIANT SAYETH NAUGHT

Julianne Mataragas
JULIANNE MATARAGAS

2014. SWORN TO and subscribed before me this 3rd day of June

[Signature]
Notary Public

NOTARY STAMP.

KATHLEEN M. MCGOFF
Notary Public, State of New York
No. 01MC6165102
Qualified in Suffolk County
Commission Expires June 30, 2015
Suffolk, NY

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CROWLEY, individuals; and ALEX E.
MOLCHAN TRUST DTD 5/19/94;

Defendants.

DEFENDANT, JULIANNE MATARAGAS',
ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT

Defendant, JULIANNE MATARAGAS, by and through undersigned counsel, files her
Answer to Plaintiffs' Third Amended Complaint, in like-numbered paragraphs, as follows:

1. Denied.
2. Admitted.
3. Admitted.
4. Without knowledge and therefore denied.
5. Without knowledge and therefore denied.
6. Without knowledge and therefore denied.
7. Without knowledge and therefore denied.
8. Without knowledge and therefore denied.

9. Without knowledge and therefore denied.
10. Without knowledge and therefore denied.
11. Without knowledge and therefore denied.
12. Without knowledge and therefore denied.
13. Without knowledge and therefore denied.
14. Without knowledge and therefore denied.
15. Denied.
16. Without knowledge and therefore denied.
17. Without knowledge and therefore denied.
18. Without knowledge and therefore denied.
19. Without knowledge and therefore denied.
20. Without knowledge and therefore denied.
21. Without knowledge and therefore denied.
22. Without knowledge and therefore denied.
23. Without knowledge and therefore denied.
24. Without knowledge and therefore denied.
25. Without knowledge and therefore denied.
26. Without knowledge and therefore denied.
27. Without knowledge and therefore denied.
28. Without knowledge and therefore denied.
29. Without knowledge and therefore denied.
30. Without knowledge and therefore denied.
31. Without knowledge and therefore denied.

32. Without knowledge and therefore denied.
33. Without knowledge and therefore denied.
34. Without knowledge and therefore denied.
35. Admitted.
36. Without knowledge and therefore denied.
37. Without knowledge and therefore denied.
38. Without knowledge and therefore denied.
39. Without knowledge and therefore denied.
40. Without knowledge and therefore denied.
41. Without knowledge and therefore denied.
42. Without knowledge and therefore denied.
43. Without knowledge and therefore denied.
44. Admitted.
45. Without knowledge and therefore denied.
46. Without knowledge and therefore denied.
47. Without knowledge and therefore denied.
48. Without knowledge and therefore denied.
49. Without knowledge and therefore denied.
50. Without knowledge and therefore denied.
51. Without knowledge and therefore denied.
52. Without knowledge and therefore denied.
53. Without knowledge and therefore denied.
54. Without knowledge and therefore denied.

55. Without knowledge and therefore denied.
56. Without knowledge and therefore denied.
57. Admitted.
58. Admitted.
59. Admitted.
60. Without knowledge and therefore denied.
61. Without knowledge and therefore denied.
62. Without knowledge and therefore denied.
63. Without knowledge and therefore denied.
64. Without knowledge and therefore denied.
65. Without knowledge and therefore denied.
66. Without knowledge and therefore denied.
67. Without knowledge and therefore denied.
68. Without knowledge and therefore denied.
69. Without knowledge and therefore denied.
70. Denied.
71. Denied.
72. Denied.
73. Denied.
74. Without knowledge and therefore denied.
75. Without knowledge and therefore denied.
76. Without knowledge and therefore denied.
77. Without knowledge and therefore denied.

78. Denied.
79. Denied.
80. Denied.
81. Denied.
82. Denied.
83. Without knowledge and therefore denied.
84. Without knowledge and therefore denied.
85. Without knowledge and therefore denied.
86. Denied.
87. Denied.
88. Denied.
89. Denied.
90. Denied.
91. Denied.
92. Denied.
93. Denied.
94. Denied.
95. Denied.
96. Denied.
97. Denied.
98. Denied.
99. Denied.
100. Denied.

101. Denied.
102. Denied.
103. Denied.
104. Denied.
105. Denied.
106. Denied.
107. Denied.
108. Denied.
109. Denied.
110. Denied.
111. Denied.
112. Denied.
113. Denied.
114. Denied.
115. Denied.
116. Denied.
117. Denied.
118. Denied.
119. Denied.
120. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Each and every cause of action set forth in the Third Amended Complaint is barred by the limitation on liability contained in ¶ 14.03, of the controlling Partnership Agreements.

Second Affirmative Defense

Each and every cause of action set forth in the Third Amended Complaint is time barred; the controlling statutes of limitations have expired.

Third Affirmative Defense

Each and every cause of action set forth in the Third Amended Complaint is barred by the equitable doctrine of laches.

Fourth Affirmative Defense

Counts IV and V of the Third Amended Complaint rely on quasi-contractual theories that are barred by the existence of an express contract concerning the identical subject matter; Counts IV and V thus fail to state a cause of action upon which relief can be granted.

Fifth Affirmative Defense

Each and every cause of action in the Third Amended Complaint is barred by the doctrine of *in pari delicto*, where the Plaintiff stands in the shoes of the Managing General Partner(s) of the Partnerships and Plaintiff alleges that such Managing General Partner(s) engaged in fraud in making the transfers at issue.

Sixth Affirmative Defense

Each and every cause of action set forth in the Third Amended Complaint is barred by the equitable doctrine of unclean hands, for the reasons set forth in the Fifth Affirmative Defense.

Seventh Affirmative Defense

Defendant adopts and incorporates by reference such affirmative defenses as are asserted by the other Defendants in this lawsuit.

RESERVATION OF RIGHTS AND GENERAL DENIAL

Defendant denies each and every allegation contained in the Third Amended Complaint that is not specifically admitted, and demands strict proof thereof. Ettoh reserves its right to supplement or amend this Answer and Affirmative Defenses as discovery progresses.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., at Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301, lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, this 11th day of July, 2014.

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