

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH 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; Philip 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, et al.,

Defendants.

_____/

**DEFENDANT, CONGREGATION OF THE HOLY GHOST, WESTERN PROVINCE'S
ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

Defendant, Congregation of the Holy Ghost, Western Province, by and through its
undersigned counsel, submits this Answer and Affirmative Defenses to the Amended Complaint.

1. Admitted.
2. Admitted.
3. Admitted.
- 4-29. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations

and they are, therefore, denied.

30. Defendant Congregation of the Holy Ghost, Western Province (improperly described as Congregation of the Holy Ghost - Western Providence) was located in Allegheny County, Pennsylvania at the time of its participation in the partnership or partnerships. The corporate entity no longer exists as it merged with Congregation of the Holy Spirit under the Protection of the Immaculate Heart of Mary, USA - East into Congregation of the Holy Spirit Province of the United States, a nonprofit corporation organized under the nonprofit law of the Commonwealth of Pennsylvania. The balance of the paragraph is admitted.

31. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

32. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

33. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

34. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached document speaks for itself.

35. Admitted.

36. Admitted.

37. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.

38. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
39. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
- 40-46. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.
47. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
48. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
49. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
50. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
51. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
52. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.
53. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
54. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations

and they are, therefore, denied.

55. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.

56. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.

57. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

58. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

59. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

60. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

61. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

62. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached documents speaks for itself.

63. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak

for themselves.

64. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Court documents referenced in this paragraph speak for themselves.

65. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

66. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

67. Denied.

68. Denied.

69. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The attached document speaks for itself.

70. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

71. Denied.

72. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

73. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

COUNT I

74. Defendant Congregation of the Holy Ghost's averments in response to paragraphs 1

through 73 are incorporated by reference as if fully set forth herein.

75. Denied.

76. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

82. Denied.

COUNT II

83. Defendant Congregation of the Holy Ghost's averments in response to paragraphs 1 through 73 are incorporated by reference as if fully set forth herein.

84. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

COUNT III

89. Defendant Congregation of the Holy Ghost's averments in response to paragraphs 1 through 35, 38 through 40, 42, 47, 49, 51, 52, 54, 55 through 65, and 68 through 73 are incorporated by reference as if fully set forth herein.
90. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
91. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
92. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
93. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
94. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
95. Denied.

COUNT IV

96. Defendant Congregation of the Holy Ghost's averments in response to paragraphs 1 through 35, 38 through 40, 42, 47, 49, 51, 52, 54, 55 through 65, and 68 through 73 are incorporated by reference as if fully set forth herein.
97. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.

98. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
99. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
100. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
101. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
102. Denied.

COUNT V

103. Defendant Congregation of the Holy Ghost's averments in response to paragraphs 1 through 73 are incorporated by reference as if fully set forth herein.
104. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied. The Partnership Agreements speak for themselves.
105. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
106. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
107. Defendant Congregation of the Holy Ghost is without knowledge as to these allegations and they are, therefore, denied.
108. Denied.

AFFIRMATIVE DEFENSES

I. Statute of Limitations

Plaintiffs' claims are barred because the Statute of Limitations had expired on all claims asserted against Defendant Congregation of the Holy Ghost. As such, all claims are time barred. The last distribution received by the Congregation of the Holy Ghost, as noted on the records of the Partnerships, was on January 31, 2003. On November 13, 2012, more than nine years after the last distribution was received, the Congregation of the Holy Ghost received a demand letter from the substituted Managing Partner of the Partnerships, Margaret Smith. The letter stated that the distributions that the Congregation of the Holy Ghost had received almost a decade ago were improper distributions.

Count I for breach of statutory duty is barred by a five-year statute of limitations. *See Fla. Stat. § 95.11(2)(b)* (providing a five-year limitation period for a legal or equitable action on a contract, obligation, or liability founded on a written instrument). Alternatively, Count I is barred by a four-year statute of limitations. *See Fla. Stat. § 95.11(3)(p)*. Regardless, the last distribution was received by the Congregation in January 2003. The Congregation subsequently dissociated from the Partnership prior to both the "winding up" of the Partnerships and the Plaintiffs' October 2013 demand for contribution. Therefore, the claim for breach of statutory duty of Fla. Stat. § 620.8807 is barred.

Count II for Breach of Contract is barred by a five-year statute of limitations. *See Fla. Stat. § 95.11(2)(b)* (providing a five-year limitation period for a legal or equitable action on a contract, obligation, or liability founded on a written instrument). Therefore, the claim for breach of contract

was required to be filed within five years of the breach in order for this claim to be viable. As noted above, the last distribution was received by the Congregation in January 2003. The alleged breach of contract occurred, and the Plaintiffs' cause of action accrued, no later than 2003. The deadline for filing a claim with the Court was, at the latest, January 2008.

Plaintiffs' claim for Unjust Enrichment is barred by a four-year statute of limitations. The statute of limitations on Plaintiffs' claim for unjust enrichment is four years. *Swafford v. Schweitzer*, 906 So. 2d 1194, 1195 (Fla. 4th DCA 2005); *see also*, Fla. Stat. § 95.11(3)(k). An unjust enrichment claim accrues at the time the defendant receives the improper enrichment. Because the Congregation received the last of its allegedly improper distributions more than 10 years ago, in 2003, that is the latest that the Partnership could have conferred a benefit to the Congregation. Accordingly, Plaintiffs' claim for unjust enrichment was required to be filed no later than January 2007. The claim was filed well after the expiration of the applicable statute of limitations period and, as a result, the claim for unjust enrichment is time-barred.

Plaintiffs' claim for Money Had and Received is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3). Because the Congregation received the last of its allegedly improper distributions more than 10 years ago, in 2003, that is the latest that the Partnership could have conferred a benefit to the Congregation. Accordingly, Plaintiffs' claim for money had and received was required to be filed no later than January 2007. The claim was filed well after the expiration of the applicable statute of limitations period and, as a result, the claim for money had and received is time-barred.

Section 726.105(1)(a), Fla. Stat., states that a transfer made by a debtor is fraudulent if the

debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor. The applicable limitations period for fraudulent transfer claims is contained in Fla. Stat. § 726.110(1). A cause of action with respect to a fraudulent transfer or obligation under Fla. Stat. § 726.105(1)(a) is extinguished unless action is brought within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. *See* Fla. Stat. § 726.110(1). Since the last of the allegedly fraudulent transfers to the Congregation occurred in 2003, any action with respect to this transfer must have been brought by 2007. Even with the one year savings clause the claim is time-barred. The one year savings clause provides that if suit is brought after the 4 year limitation period, it must still be within 1 year after the transfer or obligation was or could reasonably have been discovered. As described in the Amended Complaint, the Partnerships ultimately lost money due to the defalcation of Bernard Madoff and the fraud committed by Mr. Madoff and others. (Amended Compl. ¶ 39). This disclosure was made in December 2008. Thus, even under the 1 year savings clause, the claim to avoid a fraudulent transfer under Fla. Stat. § 726.105(1)(a), must have been brought by December 31, 2009. This clearly did not occur.

II. The Congregation of the Holy Ghost is a dissociated partner

Plaintiffs' claims are barred because the Congregation is a dissociated partner of the P&S Associates, General Partnership. As noted above, the Congregation has not contributed to the Partnership or received a distribution from the Partnership since January 2003. Composite Exhibit A to the Amended Complaint demonstrates that the Congregation withdrew and dissociated from the Partnership more than 10 years ago in accordance with Fla. Stat. § 620.8701. The Congregation

withdrew from the Partnership in 2003 when it received its last distribution. The distributions were received in good faith upon the Congregation's dissociation from the Partnership, which occurred roughly ten years prior to the commencement of this lawsuit.

Further, even if it can be argued that the Congregation did not effectively dissociate from the Partnership in 2003, the Congregation dissociated as a matter of law in 2009 when it merged with another entity. The entity known as the Congregation of the Holy Ghost, Western Province was a partner in the P&S Associates, General Partnership. The Congregation was a non-profit corporation. This corporate entity, however, no longer exists as it merged with the Congregation of the Holy Spirit under the Protection of the Immaculate Heart of Mary, USA - East. Following the merger, the resulting corporation became the Congregation of the Holy Spirit Province of the United States, a nonprofit corporation organized under the nonprofit law of the Commonwealth of Pennsylvania. (A true and correct copy of the Articles of Merger is attached as Exhibit "A").

In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because the partner willfully dissolved or terminated. Fla. Stat. § 620.8602 (2)(b)(4). The Congregation is not an individual, trust, or estate. Rather, the Congregation was a nonprofit corporation. When the Congregation merged with the Congregation of the Holy Spirit under the Protection of the Immaculate Heart of Mary, USA - East, it willfully dissolved. According to the articles of merger, the Congregation was not the surviving corporation. The surviving corporation was the Congregation of the Holy Spirit Province of the United States.

Under Florida law, when a merger becomes effective, every other corporate party to the merger merges into the surviving corporation and the separate existence of every corporation except

the surviving corporation ceases. Fla. Stat. § 617.1106(1). The corporate entity known as the Congregation of the Holy Ghost, Western Province was terminated when it willfully merged into another non-profit corporation. As such, the Congregation of the Holy Ghost was expelled or otherwise dissociated from the Partnership upon this merger. Therefore, the Congregation did not breach any duty under Fla. Stat. § 620.8807 because it was no longer a partner in the P&S Associates, General Partnership.

Further, the Congregation's dissociation was not wrongful because the Partnership was not a term partnership. A partner's dissociation is wrongful only if, in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking, the partner who is not an individual, trust, or estate, is expelled or otherwise dissociated because the partner willfully dissolved or terminated. Fla. Stat. § 620.8602(2)(b)(4). According to Article 3.1 of the Partnership Agreements, the Partnerships were organized for an indefinite period of time. Specifically, the Partnerships began on January 1, 1993, and were to continue until they dissolved as specifically provided for in the Partnership Agreements. Moreover, the Partnerships were created generally for the purpose of investing in different types of securities. They were not created for any one particular undertaking that could be completed. Thus, because the Partnerships were not organized for a definite term or a particular undertaking, the Congregation's termination pursuant to the merger does not render the dissociation wrongful under Fla. Stat. § 620.8602(2)(b)(4).

The Congregation is not currently a partner in the P&S Associates, General Partnership. As such, the Congregation is not obligated to contribute to the Partnership or reconcile any debt owed

to the Partnerships pursuant to Fla. Stat. § 620.8807. Plaintiffs' October 2013 demand letter attempts to avoid the statute of limitations by arguing that the causes of action have only just accrued upon the winding up of the Partnerships. However, a dissociated partner has no duty to contribute to the Partnerships. The October 2013 demand letter regarding the winding up of the Partnerships, therefore, is inconsequential because the Congregation was not a partner at the time of the demand.

In addition to Fla. Stat. § 620.8807, the Congregation did not breach the Partnership Agreements by failing to return the amount of distributions it received in excess of its actual contributions. The Congregation received the distributions in good faith pursuant to the terms of the Partnership Agreement. The Congregation subsequently dissociated from the partnership. This dissociation occurred, at the latest, in 2009. Thus, because the Congregation was no longer a partner in the P&S Partnership when it received the November 2012 and the October 2013 demand letters, it could not have breached any section of the Partnership Agreement when it failed to contribute to the Partnership.

Wherefore, Defendant Congregation of the Holy Ghost, Western Province, demands judgment against Plaintiffs denying all recovery and awarding Holy Ghost its costs and attorneys fees.

DATED: November 27, 2013

Respectfully Submitted,

/s/ Jonathan T. Lieber
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Western Province

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email
this 27th day of November, 2013, to:

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