

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

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

MARGARET J. SMITH as Managing
General Partner of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership, and S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; and S&P ASSOCIATES
GENERAL PARTNERSHIP, a Florida
limited partnership,

Plaintiffs,

vs.

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

Defendants.

**DEFENDANTS, HOLY GHOST FATHERS, COMPASSION FUND, HOLY GHOST
FATHERS HG-MOMBASA, HOLY GHOST FATHERS INTERNATIONAL FUND #1,
HOLY GHOST FATHERS INTERNATIONAL FUND #2, AND HOLY GHOST
FATHERS HG-IRELAND/KENEMA, MOTION FOR SUMMARY JUDGMENT AND
INCORPORATED MEMORANDUM OF LAW**

Defendants, Holy Ghost Fathers HG-Kenema, Holy Ghost Fathers International Fund #1,
Holy Ghost Fathers International Fund #2, Holy Ghost Fathers Compassion Fund, and Holy
Ghost Fathers HG-Mombasa (collectively, the “Holy Ghost Entities”), by and through
undersigned counsel, and pursuant to Fla. R. Civ. P. 1.5101, hereby moves this Court for an

order of summary judgment against the Plaintiffs and to grant an order dismissing the Plaintiffs' claims.¹ In support of this Motion, the Holy Ghost Entities state as follows:

PRELIMINARY STATEMENT

Each of the Holy Ghost Entities are separate religious congregations which invested in the plaintiff partnerships many years ago. On or about June 27, 2013, Plaintiffs filed a multi-count Complaint in this Court against multiple parties, including the Holy Ghost Entities, asserting, among other things, that the Holy Ghost Entities received improper distributions of what Plaintiffs allege were fictitious profits of the Partnerships. On November 5, 2013, this Court granted Plaintiffs' motion for leave to file an Amended Complaint. In the Amended Complaint, Plaintiffs allege that the Holy Ghost Entities "reaped profits" from their investments in the Partnerships in contravention of the plain terms of the Partnership Agreement. However, Plaintiffs claims are barred because the Plaintiffs failed to bring a lawsuit within the time required under the applicable statutes of limitations for each count. Moreover, Plaintiffs' claim for breach of contract, unjust enrichment, and money had and received claims fail as a matter of law because the Partnership Agreements only permit claims against Partners that are grounded in fraud. Similarly, Plaintiffs' breach of contract claim also fails as a matter of law because the Holy Ghost Entities simply accepted distributions and made no material breach of the Partnership Agreement. Finally, Plaintiffs' avoidance of fraudulent transfer claim fails because the requisite intent cannot be established.

¹ The Holy Ghost Entities reserve their right to seek to compel arbitration pursuant to the terms of the Partnership Agreement.

STATEMENT OF FACTS

The Amended Complaint contains five counts against the Holy Ghost Entities: Count I for Breach of Statutory Duty (Negligence), Count II for Breach of Contract, Count III for Unjust Enrichment, Count IV for Money Had and Received, and Count V for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes. Plaintiffs allege that P&S Associates, General Partnership and the S&P Associates, General Partnership (collectively the “Partnerships”) were formed for the purpose of engaging in the business of investing. (Am. Compl., ¶ 37). Each of the Partnerships is governed by a corresponding Partnership Agreement. (Am. Compl., ¶ 36). As partners, the Holy Ghost Entities are alleged to have invested money in one of the Partnerships. (Am. Compl., ¶¶ 22, 26-29). Specifically, the Holy Ghost Entities are alleged to have invested an aggregate of \$3,308,379.71 into the Partnerships. Id. It is further alleged that the Holy Ghost Entities received an aggregate of \$4,445,939.47 in Partnership distributions. Id.

Pursuant to the governing Partnership Agreements, the profits and losses attributable to the Partnerships were to be allocated in equal proportion among the Partners in accordance with each Partner’s capital contribution relative to the aggregate total capital contribution of all of the Partners. (Am. Compl., ¶ 41). Partnership distributions, if any, were to be made at least once per year. (Am. Compl., ¶ 42). The Partnerships’ investments were to be overseen by the Managing General Partners of the Partnerships, Michael D. Sullivan and Greg Powell, the “S” and “P” of the partnerships. (Am. Compl., ¶ 40).

On August 29, 2012, an Agreed Order was entered whereby Plaintiff, Margaret Smith, was named sole Managing General Partner. (Am. Compl., ¶ 47). Plaintiffs allege that the former Managing General Partners made improper distributions to the Holy Ghost Entities,

among others, that were made from the principal contributions of other Partners rather than from the Partnerships' profits. (Am. Compl., ¶ 48).

Plaintiffs further assert that, in an effort to wind up the Partnerships, under the "Net Investment Method," the Defendants have a negative capital account, owing a debt to the Partnerships in the amount they received in excess of what is permitted in the Partnership Agreements. (Am. Compl., ¶ 66). Plaintiffs further assert that Defendants have an excess of charges over credits in their capital accounts in a greater proportion than other Partners, certain distributions to Defendants were not authorized under the Partnership Agreements. (Am. Compl., ¶ 67). Plaintiffs assert that, as a result, Defendants, including the Holy Ghost Entities, are statutorily required to return the money they received in excess of their capital contributions, as a liability to be paid to the Partnerships. (Am. Compl., ¶ 68). Plaintiffs assert that, in an effort to recover the excess payments, the Conservator sent out demand letters to Defendants on October 18, 2013, asserting that if Defendants did not repay the money received in excess of their capital contributions, they would be subject to legal action. (Am. Compl., ¶ 69).

Plaintiffs' Amended Complaint persists in failing to indicate specific dates for when these improper distributions were received.² However, counsel for Plaintiffs has provided information which definitively demonstrates that the last distribution received by any of the Holy Ghost Entities, as noted on the records of the Partnerships, was on July 23, 2008. See Affidavit of Joanne M.F. Wilcomes, Esq. ("Wilcomes Aff."), attached hereto as Exhibit "A" at ¶ 5 and Ex. A. The initial Complaint was filed December 12, 2012.

On September 12, 2013, counsel for the Holy Ghost Entities received from counsel for Plaintiffs a spreadsheet showing receipts from the Holy Ghost Entities, as well as dates and

² Exhibit A to the Amended Complaint indicates only the year of the investment or distribution to each entity.

amounts of distributions from P&S to each of the Holy Ghost Entities. Id. at ¶ 4 and Ex. A.

According to Plaintiffs' own records, the last receipt and distribution for each of the Holy Ghost Entities were as follows:

Holy Ghost Fathers International Fund #1

<u>Date</u>	<u>Amount</u>
9/11/2002	\$50,000.00
2/11/2003	\$55,000.00
2/11/2003	\$409,542.43
4/7/2003	\$225,000.00
4/13/2003	\$153,185.00
4/5/2004	\$200,000.00
3/31/2005	\$57,000.00
11/17/2005	\$37,000.00
9/27/2007	\$119,393.88
1/31/2008	\$2,496.36
TOTAL DISTRIBUTED	\$1,308,617.67
LESS TOTAL INVESTED	\$1,181,331.35
TOTAL GAIN	\$127,286.32

Holy Ghost Fathers International Fund #2

<u>Date</u>	<u>Amount</u>
4/5/2004	\$80,000.00
3/31/2005	\$150,000.00

12/20/2006	\$1,661,956.72
1/24/2007	\$32,480.44
TOTAL DISTRIBUTED	\$1,924,437.16
LESS TOTAL INVESTED	\$1,451,812.89
TOTAL GAIN	\$472,624.27

Holy Ghost Fathers HG-Mombasa

<u>Date</u>	<u>Amount</u>
11/29/1993	\$40,000.00
1/2/1996	\$50,000.00
2/6/2001	\$83,000.00
12/1/2005	\$50,000.00
6/26/2007	\$10,000.00
6/23/2008	\$37,000.00
TOTAL DISTRIBUTED	\$270,000
LESS TOTAL INVESTED	\$153,000
TOTAL GAIN	\$117,000

Holy Ghost Fathers Compassion Fund

<u>Date</u>	<u>Amount</u>
12/27/2001	\$100,000.00
3/31/2005	\$100,000.00
9/21/2005	\$100,000.00
12/20/2006	\$200,000.00
3/31/2008	\$225,000.00
TOTAL DISTRIBUTED	\$725,000
LESS TOTAL INVESTED	\$461,235.46
TOTAL GAIN	\$263,764.54

Holy Ghost Fathers HG-Kenema

<u>Date</u>	<u>Amount</u>
8/26/2002	\$150,000.00
8/28/2006	\$66,623.01
1/24/2007	\$1,261.62
TOTAL DISTRIBUTED	\$217,884.63
LESS TOTAL INVESTED	\$60,000
TOTAL GAIN	\$157,884.63

Id. at ¶ 5 and Ex. A.

LEGAL STANDARD

Summary judgment is a mechanism used to expedite litigation and lower expense to the parties. Page v. Staley, 226 So. 2d 129, 130 (Fla. 4th DCA 1969). When the basic facts of the case are clear and undisputed, and there is only a question of law to be determined, the court shall grant a Motion for Summary Judgment. Duprey v. United States Automobile Association, 254 So. 2d 57, 58 (Fla. 1st DCA 1971). “Entry of summary judgment is proper ‘if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” Ginsberg v. Northwest Medical Center, Inc., 14 So. 3d 1250 (Fla. 4th DCA 2009) (quoting Fla. R. Civ. P. 1.510(c)). “The moving party has the burden to show the absence of any material issue of fact and the court must draw every inference in favor of the nonmoving party.” Hollywood Towers Condo. v. Hampton, 993 So. 2d 174, 176 (Fla. 4th DCA 2008).

Once the moving party has met its burden, the non-moving party must show evidence that would reveal a factual issue. Page, 226 So. 2d at 131. Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law. Shaffran v. Holness, 93 So. 2d 94 (Fla. 1957). Although the moving party faces a heavy burden, when determination of a lawsuit is dependent upon written instruments of the parties, the question at issue is generally one of law and can be determined by the entry of summary judgment by the Court. Kochan v. American Fire and Casualty Co., 200 So. 2d 213, 220 (Fla. 3d DCA 1967).

The Holy Ghost Entities now move for the entry of summary judgment on all of the claims relating to the alleged improper distributions received by the Holy Ghost Entities, pursuant to Fla. R. Civ. P. §1.510, as Plaintiffs’ claims are time-barred. As a result, there are no

genuine issues as to any material fact and the Holy Ghost Entities are entitled to a judgment as a matter of law. Based upon the Amended Complaint and the Affidavit attached hereto, the Holy Ghost Entities are entitled to the entry of Summary Judgment against the Plaintiffs.

LEGAL ARGUMENT

I. PLAINTIFFS' BREACH OF CONTRACT CLAIM FAILS AS THE HOLY GHOST ENTITIES NEVER TOOK ANY ACTION TO BREACH THE CONTRACT.

To prevail on a breach of contract claim, a claimant must prove: (1) the existence of an enforceable contract; (2) a material breach of that contract ; and (3) damages resulting directly from the material breach. Knowles v. C.I.T. Corp., 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977); Rollins, Inc. v. Butland, 951 So. 2d 860, 876 (Fla. 2d DCA 2006). To constitute a material breach, a party's "nonperformance of a contract must be such as to go to the essence of the contract; it must be the type of breach that would discharge the injured party from further contractual duty on his part but a [party's] failure to perform some minor part of his contractual duty cannot be classified as a material or vital breach." Atlanta Jet v. Liberty Aircraft Servs., LLC, 866 So. 2d 148, 150 (Fla. 1st DCA 2004) (citing Beefy Trail, Inc. v. Beefy King Intl., Inc., 267 So. 2d 853, 857 (Fla. 4th DCA 1972)).

Plaintiffs have asserted a breach of contract claim against the defendant partners, but in reality they have pled an equitable claim for unjust enrichment. The line from Shakespeare's Romeo and Juliet – "A rose by any other name would smell as sweet" – is particularly apposite. Simply stated, no matter how Plaintiffs try to label their claims, it is at most an unjust enrichment claim, not a breach of contract claim. Plaintiffs cannot sustain a claim for breach of contract because there simply was no breach by any of the Holy Ghost Entities. The Holy Ghost Entities merely accepted distributions in accordance with the Partnership Agreement. Instead, if there

was any breach, it was the former Managing General Partners who allegedly breached the contract, by distributing the principal contributions of other Partners instead of from the Partnerships' profits. (Compl. ¶ 46). The Holy Ghost Entities did not take any action – nor are they alleged in the Complaint to have taken any action – that can be construed as a “material breach” of the Partnership Agreement. Plaintiffs cannot resurrect an otherwise time-barred claim merely by giving the claim a different name. Accordingly, Plaintiffs' claim for breach of contract fails as a matter of law.

II. THE HOLY GHOST ENTITIES WERE NOT PARTNERS AT THE TIME PLAINTIFFS BEGAN WINDING UP THE PARTNERSHIP, AND, ACCORDINGLY, ARE NOT SUBJECT TO THE WINDING UP PROVISIONS OF FLORIDA'S REVISED UNIFORM PARTNERSHIP ACT.

Plaintiffs' claims under Florida's Revised Uniform Partnership Act, 620.81001 et seq. fail because they seek to apply statutory provisions and provisions of the Partnership Agreement that presupposes that they are existing partners in a partnership. As each of the Holy Ghost Entities dissociated from the partnership when their capital accounts were zeroed out by the Partnership, Plaintiffs' claims fail as a matter of law.

Plaintiffs sent out demand letters dated October 18, 2013, pursuant to Section 10.01 of the Partnership Agreement, requesting that Defendants return to the Conservator all distributions they received in excess of their contributions. See Am. Compl., ¶ 69. Plaintiffs now seek to characterize the Holy Ghost Entities' failure to make payment pursuant to the October 18, 2013 letter as an “Event of Default” pursuant to Section 10.02 of the Partnership Agreement. Id. at ¶¶44-46 and Ex. C. However, the Holy Ghost Entities ceased to be partners in P&S Associates at the time their capital accounts were bought out, most recently on June 23, 2008.

Pursuant to the Partnership Agreement, the sole purpose of the Partnership is to “invest, in cash or on margin in all types of marketplace securities...” See Am. Compl., Ex. C, at 2.02.

The Agreement further provides that “An individual capital account shall be maintained for each Partner.” Id. at Art. 4.05. By Plaintiffs’ own admissions, the capital accounts for the Holy Ghost Entities were zeroed out between 2007 and 2008, the latest on June 23, 2008. See Wilcomes Aff. at ¶ 5 and Ex. A. Accordingly, the Holy Ghost Entities’ partnership interests were terminated when the Partnership paid back their capital, as the Holy Ghost Entities no longer were contributing members of the Partnership, and were not deriving any benefit.³

Plaintiffs rely upon Section 620.8807, “Settlement of Accounts and Contributions Among Partners,” to assert that the Defendants are obliged to return money received in excess of their capital contributions. (Am. Compl., ¶ 68). However, this section is inapplicable. Pursuant to Section 620.8603(1):

If a partner’s dissociation results in a dissolution and winding up of the partnership business, ss. 620.8801-620.8807 apply; otherwise, ss. 620.8701-620.8705 apply.

The dissociation of the Holy Ghost Entities in 2007 and 2008 did not result in the dissolution and winding up of the Partnership. Accordingly, as the Holy Ghost Entities are no longer partners, pursuant to the plain language of the statute, Section 620.8807 does not apply.

Plaintiffs made a thinly-veiled, but ultimately futile, attempt to avoid their clear statute of limitations issues by sending a demand letter to former partners more than five years after the Holy Ghost Entities were bought out of their partnership. As set forth below, the statute of limitations on statutory claims is four years. Plaintiffs’ attempt to apply a statute that allows for the “winding up” of a partnership to partners who dissociated more than five years ago ultimately suggests that this Court allow a “winding up” of partnerships with former partners in

³ Pursuant to 620.8601(3), a partner may be dissociated from the partnership as a result of the partner’s expulsion pursuant to the partnership agreement.

perpetuity. In essence, Plaintiffs seek to have this Court hold that there is no statute of limitations for partnership claims against former partners. Plaintiffs' illogical argument cannot be permitted. The Holy Ghost Entities are entitled to summary judgment on Count I of the Amended Complaint.

III. PLAINTIFFS' REMAINING CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

The initial Complaint was initially filed on December 10, 2012. Although the Complaint does not provide the particular dates of the alleged improper distributions that formed the basis of this suit, it is admitted by the Plaintiffs that the final distribution to any Holy Ghost Entity was made on June 23, 2008. See Wilcomes Aff. at ¶ 5 and Ex. A. Because all of the alleged improper distributions received by the Holy Ghost entities occurred more than four years prior to the filing of the initial Complaint in this case, Plaintiffs' claims are time-barred as a matter of law.⁴

A. Plaintiffs' Claim Pursuant to Section 620.8807 of the Florida Statutes Is Barred by the Statute of Limitations.

Florida's Revised Uniform Partnership Act does not specify a statute of limitations. However, the statute of limitations for "[a]n action founded on a statutory liability" is four (4) years. See, Fla. Stat. § 95.11(3)(f). Count I of the Amended Complaint is a statutory claim, and, accordingly, it is subject to a four year statute of limitations.

⁴ As set forth above, Plaintiffs' breach of contract claim – the only claim with a five-year statute of limitations (Fla. Stat. § 95.11(2)(b)) – is merely a disguised unjust enrichment claim and cannot survive. However, even if Plaintiffs' breach of contract claim is not dismissed in its entirety, only three transactions are not explicitly barred by the five-year statute of limitations applicable to a breach of contract claim: (i) to Holy Ghost Fathers International Fund #1 on January 31, 2008 in the amount of \$2,496.36; (ii) to Holy Ghost Fathers Compassion Fund on March 31, 2008 in the amount of 225,000; and (iii) to Holy Ghost Fathers HG-Mombasa on June 23, 2008 in the amount of \$37,000. See Wilcomes Aff. at ¶ 5 and Ex. A.

By Plaintiffs' own admission, the final distribution to any of the Holy Ghost Entities was received on June 23, 2008.⁵ See Wilcomes Aff. at ¶ 5 and Ex. A. The initial Complaint was made on December 10, 2012. Therefore, Plaintiffs filed suit four and a half years after the last distribution about which they are complaining as to the Holy Ghost Entities. Plaintiffs cannot claim that they only recently discovered the claim, as the delayed discovery doctrine does not apply with respect to statutory claims. See, Davis v. Monahan, 832 So. 2d 708 (Fla. 2002). Accordingly, the Holy Ghost Entities are entitled to summary judgment as to Count I of the Amended Complaint.

B. Plaintiffs' Unjust Enrichment Claim is Barred by a Four-Year Statute of Limitations.

Count III is a claim for Unjust Enrichment, asserting that the Holy Ghost Entities voluntarily accepted these improper distributions and that it would be inequitable and unjust for the Holy Ghost Entities to retain them. Plaintiffs contend that the Partnerships conferred a benefit on the Holy Ghost Entities by making distributions from the capital contributions of other Partners. 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 latest any of the Holy Ghost Entities received an allegedly improper

⁵ Plaintiffs seem to suggest in the Amended Complaint that the statute of limitations accrued at the time they sent demand letters to Defendants, including the Holy Ghost Entities, on October 18, 2013, while in the process of winding up the partnership. (Am. Compl., ¶ 69). However, the Holy Ghost Entities are not and cannot be subject to the "winding up" process as described by Plaintiffs. In fact, the Holy Ghost Entities have not been partners since the time that they were bought out of the partnership, most recently on June 23, 2008. As the Holy Ghost Entities dissociated from the partnership in excess of four years before the suit was brought, as former partners, they are not subject to the "winding up" process described by Plaintiffs.

distributions was June 23, 2008, that is the latest any benefit could have conferred by the Partnership. Accordingly, Plaintiffs' claim for unjust enrichment was required to be filed no later than June, 2012. The Complaint 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.

C. The Four-Year Statute of Limitations On Claims for Money Had and Received Also Bars Plaintiffs' Claim.

Count IV is a claim for Money Had and Received. Plaintiffs allege that the Partnership conferred a benefit on the Holy Ghost Entities by making distributions from the capital contributions of other Partners rather than from the Partnerships' profits. Plaintiffs allege that the Holy Ghost Entities voluntarily accepted those distributions and that it would be inequitable and unjust to retain the improper distributions.

Plaintiffs' claim for Money Had and Received is barred by a four-year statute of limitations. See Fla. Stat. § 95.11(3). Because the latest any of the Holy Ghost Entities received an allegedly improper distributions was on June 23, 2008, that is the latest that the Partnership could have accepted a distribution. Accordingly, Plaintiffs' claim for money had and received was required to be filed no later than June 23, 2012. The Complaint 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.

D. Plaintiffs' Claim for Avoidance of Fraudulent Transfers Also Fails as It Is Subject to a Four-Year Statute of Limitations.

Count V is a claim for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes. Plaintiffs allege that the distributions received by the Holy Ghost Entities are transfers that could have been applicable to the payment of the distributions and obligations due to the Partners under the Partnership Agreements. It is alleged that the

Partnerships did not receive reasonably equivalent value in exchange for the distributions made to the Holy Ghost Entities. Plaintiffs contend that these transfers were made to the Holy Ghost Entities with the actual intent to hinder, delay or defraud certain of the Partners, who were creditors of the Partnership, and that the transfers may be avoided under Fla. Stat. § 726.105(1)(a).

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 any of the Holy Ghost Entities occurred on June 23, 2008, any action with respect to this transfer must have been brought by June 23, 2012. The one year savings clause does not save Plaintiffs. 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 Complaint itself, the partnership ultimately lost money due to the fraud committed by Bernard Madoff. (Complaint, ¶ 40). 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. As a result, Plaintiffs' claim for the avoidance of the fraudulent transfers is barred by the applicable limitations period.

IV. PLAINTIFFS' BREACH OF CONTRACT, UNJUST ENRICHMENT, AND MONEY HAD AND RECEIVED CLAIMS FAIL ON THE MERITS AS THEY VIOLATE THE PARTNERSHIP AGREEMENT.

Even if this Court determines that Plaintiffs' breach of contract, unjust enrichment, and money had and received claims are not subject to dismissal on statute of limitations grounds, the Holy Ghost Entities are still entitled to summary judgment as a matter of law. Plaintiffs attempt to foist liability upon the defendants under the Partnership Agreements attached to the Complaint as Exhibits B and C. However, Section 14.03 of each of the Partnership Agreements states that "The Partners shall be liable only for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty."

Plaintiffs purport to rely upon the Partnership Agreements in asserting how the profits were distributed. (Complaint, ¶ 43). However, Plaintiffs cannot "pick and choose" which provisions of the Partnership Agreements they seek to enforce. The Partnership Agreements clearly prohibit claims that are not grounded in intentional fraud or wrongdoing. No such allegations support Plaintiffs' claims for breach of contract, unjust enrichment, or money had and received. Counts II-IV of the Complaint fail on the merits, and, accordingly, the Holy Ghost Entities are entitled to summary judgment on these counts.

V. PLAINTIFFS' CLAIM FOR AVOIDANCE OF FRAUDULENT TRANSFERS FAILS ON THE MERITS BECAUSE IT DOES NOT ALLEGE THE REQUISITE INTENT.

Even if this Court determines that Plaintiffs' claim for avoidance of a fraudulent transfer is not barred by the statute of limitations, Plaintiffs' claim fails as a matter of law. Plaintiffs assert a claim for avoidance of fraudulent transfers pursuant to Florida Statute § 726.105(1)(a). This section provides for avoidance of a transfer in circumstances of actual fraud, which statutorily requires intent: a "transfer made or obligation incurred by a debtor is fraudulent as to a

creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor of the debtor."

Nowhere in the Complaint do Plaintiffs assert that the Holy Ghost Entities accepted the distributions with any sort of intent to defraud. There simply was no intent on the part of the Holy Ghost Entities – instead, they merely accepted the distributions from their investment, with no knowledge that the distributions were derived from principal contributions and not profits. Plaintiffs cannot sustain their claim for avoidance of a fraudulent transfer without a showing of intent. Accordingly, the Holy Ghost Entities are entitled to summary judgment on Count V of the Complaint.

WHEREFORE, the Holy Ghost Entities respectfully move this Court for an Order granting Summary Judgment dismissing Plaintiffs' Complaint as against the Holy Ghost Entities in its entirety and with prejudice and that the Court award the Holy Ghost Entities their costs and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 2013 a true and correct copy of the foregoing was SENT VIA E-MAIL to: LEONARD K. SAMUELS, Esq., ETAN MARK, Esq., and STEVEN D. WEBER, Esq., c/o Berger Singerman, Attorneys for Plaintiffs, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301:
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Pro Hac Vice No. 104414

EXHIBIT A

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

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

MARGARET J. SMITH as Managing
General Partner of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership, and S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; and S&P ASSOCIATES
GENERAL PARTNERSHIP, a Florida
limited partnership,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, DIANE M. DEN
BLEYKER, an individual, ETTOH LTD., a
Florida limited partnership, JOHN AND/OR
LOIS COMBS, an individual, ERSICA P.
GIANNA, Trustee, CATHERINE B. &
BERRY C. SMITH, individuals, EDNA A.
PROFE REV. LIV. TRUST, HERBERT
IRWIG REVOCABLE TRUST,
HAMPTON FINANCIAL GROUP, INC., a
Florida corporation, 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 05/19/94,
 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,
 CONGREGATION OF THE HOLY
 GHOST – WESTERN PROVIDENCE, a
 Tax-exempt Organization, ABRAHAM OR
 RITA NEWMAN, individuals, JOHN T.
 CROWLEY, AND/OR JONATHAN
 CROWLEY, individuals, ALEX E.
 MOLCHAN TRUST DTD 05/19/94, and
 ANN OR MICHAEL SULLIVAN,
 individuals,

Defendants.

AFFIDAVIT OF JOANNE M.F. WILCOMES, ESQ.

I, Joanne M.F. Wilcomes, under penalties of perjury, state as follows:

1. My name is Joanne M.F. Wilcomes. I am over the age of eighteen years and am competent to testify as to the matters set forth in this Affidavit. I have personal knowledge of the matters set forth in this Affidavit.

2. I am an attorney with the law firm of McCarter & English, LLP, counsel for defendants Holy Ghost Fathers HG-Ireland/Kenema, Holy Ghost Fathers International Fund #1, Holy Ghost Fathers International Fund #2, Holy Ghost Fathers Compassion Fund, and Holy Ghost Fathers HG-Mombasa (collectively, the “Holy Ghost Entities”).

3. I requested that Plaintiffs provide a list of the alleged improper distributions to the Holy Ghost Entities which are the subject of the Complaint in this action.

4. On September 12, 2013, I received from counsel for Plaintiffs a spreadsheet showing payments from each of the Holy Ghost entities, as well as dates and amounts of distributions to each of the Holy Ghost Entities. A copy of the spreadsheet received from plaintiff's counsel is attached hereto as Exhibit A.

5. Specifically, the spreadsheet shows the following distributions:

Holy Ghost Fathers International Fund #1

<u>Date</u>	<u>Amount</u>
9/11/2002	\$50,000.00
2/11/2003	\$55,000.00
2/11/2003	\$409,542.43
4/7/2003	\$225,000.00
4/13/2003	\$153,185.00
4/5/2004	\$200,000.00
3/31/2005	\$57,000.00
11/17/2005	\$37,000.00
9/27/2007	\$119,393.88
1/31/2008	\$2,496.36
TOTAL DISTRIBUTED	\$1,308,617.67
LESS TOTAL INVESTED	\$1,181,331.35
TOTAL GAIN	\$127,286.32

Holy Ghost Fathers International Fund #2

<u>Date</u>	<u>Amount</u>
4/5/2004	\$80,000.00
3/31/2005	\$150,000.00
12/20/2006	\$1,661,956.72
1/24/2007	\$32,480.44
TOTAL DISTRIBUTED	\$1,924,437.16
LESS TOTAL INVESTED	\$1,451,812.89
TOTAL GAIN	\$472,624.27

Holy Ghost Fathers HG-Mombasa

<u>Date</u>	<u>Amount</u>
11/29/1993	\$40,000.00
1/2/1996	\$50,000.00
2/6/2001	\$83,000.00
12/1/2005	\$50,000.00
6/26/2007	\$10,000.00
6/23/2008	\$37,000.00
TOTAL DISTRIBUTED	\$270,000
LESS TOTAL INVESTED	\$153,000
TOTAL GAIN	\$117,000

Holy Ghost Fathers Compassion Fund

<u>Date</u>	<u>Amount</u>
12/27/2001	\$100,000.00
3/31/2005	\$100,000.00
9/21/2005	\$100,000.00
12/20/2006	\$200,000.00
3/31/2008	\$225,000.00
TOTAL DISTRIBUTED	\$725,000
LESS TOTAL INVESTED	\$461,235.46
TOTAL GAIN	\$263,764.54

Holy Ghost Fathers HG-Kenema

<u>Date</u>	<u>Amount</u>
8/26/2002	\$150,000.00
8/28/2006	\$66,623.01
1/24/2007	\$1,261.62
TOTAL DISTRIBUTED	\$217,884.63
LESS TOTAL INVESTED	\$60,000
TOTAL GAIN	\$157,884.63

6. Under penalty of perjury, I state that the foregoing is true and correct. I am aware that if any statement made by me is false, I am subject to punishment.

Dated: November 27, 2013

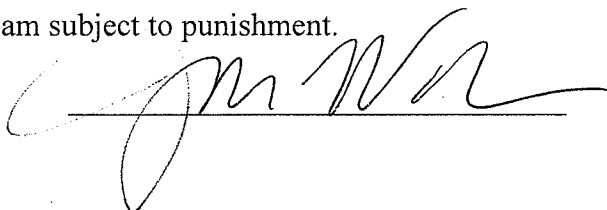


EXHIBIT A

Investments and Distributions

The Spiritan Foundation HGF International Fund #1

The Spiritan Foundation HGF International Fund #2

Holy Ghost Fathers - Mombasa formerly Holy Ghost Fathers Marian House Account

Holy Ghost Fathers Compassion Fund

formerly Holy Ghost Fathers Central Account and Holy Ghost Fathers - Brazil Mission

Holy Ghost Fathers HG-Kenema

International Fund #1

Investments

Check Date	Deposit Date	Check No.	Amount	Account Name
3/19/2001	4/19/2001	253	\$ 100.00	Holy Ghost Fathers Central
7/30/2001	8/1/2001	1031	\$ 50,000.00	The Spiritan Foundation Holy Ghost Fathers
11/1/2001	11/7/2001	300523	\$ 40,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
11/29/2001	12/7/2001	300552	\$ 10,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
1/25/2002	1/28/2002	300615	\$ 30,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
2/11/2002	2/14/2002	300632	\$ 40,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
3/22/2002	3/27/2002	300693	\$ 30,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
3/22/2002	3/27/2002	1061	\$ 30,000.00	World Compassion Link, Inc.
4/3/2002	4/9/2002	300719	\$ 30,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
4/11/2002	4/15/2002	300724	\$ 75,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
5/22/2002	5/24/2002	300786	\$ 30,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
5/22/2002	5/24/2002	1088	\$ 10,000.00	World Compassion Link, Inc.
6/28/2002	7/1/2002	1098	\$ 15,000.00	World Compassion Link, Inc.
6/28/2002	7/1/2002	300684	\$ 25,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
10/8/2002	10/15/2002	5130	\$ 150,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
10/8/2002	10/15/2002	5131	\$ 244,957.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
11/18/2002	11/20/2002	5202	\$ 111,274.35	The Spiritan Foundation Holy Ghost Fathers and Brothers
11/25/2002	12/9/2002	3022	\$ 40,000.00	World Compassion Link, Inc.
11/25/2002	12/9/2002	5208	\$ 15,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
11/25/2002	12/9/2002	5210	\$ 15,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
1/22/2003	1/27/2003	3033	\$ 25,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers

1/22/2003	1/27/2003	5323	\$	15,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
2/26/2003	3/3/2003	5405	\$	100,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
6/20/2003	6/23/2003	5639	\$	10,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
6/20/2003	6/23/2003	5641	\$	40,000.00	The Spiritan Foundation Holy Ghost Fathers and Brothers

Total Invested \$ 1,181,331.35
HGF International Fund #1

Distributions to and Transfers from International Fund #1 Account
by P&S Associates General Partnership

Check Date	Check Number	Amount	
9/11/2002	1875	\$	50,000.00
2/11/2003	1919	\$	55,000.00
2/11/2003	transfer	\$	409,542.43 transfer to HGF International Fund #2
4/7/2003	transfer	\$	225,000.00 transfer to HGF International Fund #2
4/13/2003	1939	\$	153,185.00
4/5/2004	2114	\$	200,000.00
3/31/2005	2213	\$	57,000.00
11/17/2005	2290	\$	37,000.00
9/27/2007	wire	\$	119,393.88
1/31/2008	2542	\$	2,496.36

Total Distributed \$ 1,308,617.67
HGF International Fund #1

HGF International Fund #1
Net Winner \$ 127,286.32

International Fund #2
Investments

Check Date	Deposit Date	Check No.	Amount	Account Name
8/20/2002	8/23/2002	5033	\$ 227,343.90	The Spiritan Foundation Holy Ghost Fathers and Brothers
2/11/2003			\$ 409,542.43	transfer from HGF International Fund #1
2/26/2003	3/3/2003	5403	\$ 500.00	The Spiritan Foundation Holy Ghost Fathers and Brothers
2/26/2003	3/3/2003	5404	\$ 5,000.00	The Spiritan Foundation

4/7/2003			\$	225,000.00	Holy Ghost Fathers and Brothers
4/21/2003	4/24/2003	5501	\$	28,648.58	transfer from HGF International Fund #1
					The Spiritan Foundation
4/21/2003	4/24/2003	5502	\$	203,522.60	Holy Ghost Fathers and Brothers
					The Spiritan Foundation
6/20/2003	6/23/2003	5640	\$	129,075.38	Holy Ghost Fathers and Brothers
					The Spiritan Foundation
12/16/2003	12/19/2003	5945	\$	86,200.00	Holy Ghost Fathers and Brothers
					The Spiritan Foundation
12/16/2003	12/19/2003	5946	\$	136,980.00	Holy Ghost Fathers and Brothers
					The Spiritan Foundation

Total Invested \$ 1,451,812.89
HGF International Fund #2

Distributions to and Transfers from International Fund #2 Account
by P&S Associates General Partnership

Check Date	Check Number	Amount
4/5/2004	2115	\$ 80,000.00
3/31/2005	2214	\$ 150,000.00
12/20/2006 wire		\$ 1,661,956.72
1/24/2007	2414	\$ 32,480.44

Total Distributed
HGF International Fund #2 \$ 1,924,437.16

HGF International Fund #2
Net Winner \$ 472,624.27

HGF - Mombasa
Investments

Check Date	Deposit Date	Check No.	Amount	Account Name
2/11/1993	2/16/1993	507	\$ 40,000.00	HGF Marian House Account
2/11/1993	2/16/1993	135	\$ 5,000.00	HGF Marian House Account
4/1/1993	4/7/1993	139	\$ 20,000.00	HGF Marian House Account
4/15/1993	4/21/1993	510	\$ 15,000.00	HGF Marian House Account
6/18/1993	6/22/1993	144	\$ 10,000.00	HGF Marian House Account
12/15/1993	12/22/1993	157	\$ 23,000.00	HGF Marian House Account
4/15/1996	4/17/1996	208	\$ 15,000.00	HGF - Mombasa
6/11/1996	6/20/1996	213	\$ 10,000.00	HGF - Mombasa

2/25/1997	3/4/1997	231	\$	5,000.00	HGF - Mombasa
7/4/1997	7/7/1997	241	\$	5,000.00	HGF - Mombasa
9/4/2007	9/8/1997	245	\$	5,000.00	HGF - Mombasa

Total Invested \$ 153,000.00
Holy Ghost Fathers - Mombasa

Distributions to HGF - Mombasa (formerly Marian House)
by P&S Associates General Partnership

Check Date	Check Number	Amount
11/29/1993	1043	\$ 40,000.00
1/2/1996	1366	\$ 50,000.00
2/6/2001	1753	\$ 83,000.00
12/1/2005	2292	\$ 50,000.00
6/26/2007	2448	\$ 10,000.00
6/23/2008	2593	\$ 37,000.00

Total Distributed \$ 270,000.00
Holy Ghost Fathers - Mombasa

Holy Ghost Fathers - Mombasa
Net Winner \$ 117,000.00

HGF Compassion Fund (formerly HGF Central Account) (formerly HGF - Brazil Mission)
Investments

Check Date	Deposit Date	Check No.	Amount	Account Name
12/28/1992	1/7/1993	107	\$ 50,000.00	Holy Ghost Fathers - Brazil Mission
5/1/1993	5/11/1993	108	\$ 50,000.00	Holy Ghost Fathers - Brazil Mission
7/22/1993	7/26/1993	116	\$ 50,000.00	Holy Ghost Fathers - Brazil Mission
10/28/1993	11/1/1993	121	\$ 70,000.00	Holy Ghost Fathers - Brazil Mission
1/1/1994	1/14/1994	unknown	\$ 1,000.00	Holy Ghost Fathers - Brazil Mission
1/1/1994	1/14/1994	304	\$ 24,000.00	Holy Ghost Fathers - Brazil Mission
1/1/1994	1/14/1994	310	\$ 13,000.00	Holy Ghost Fathers - Brazil Mission
1/1/1994	1/14/1994	2862	\$ 2,000.00	Holy Ghost Fathers - Brazil Mission
1/30/2004	2/3/2004	6020	\$ 21,235.46	Holy Ghost Fathers Compassion Fund
6/5/2007	6/11/2007	116	\$ 180,000.00	Holy Ghost Fathers Compassion Fund

Total Invested \$ 461,235.46
Holy Ghost Fathers Compassion Fund
(formerly HGF Central account and HGF Brazil Mission)

Distributions to HGF Compassion Fund
(formerly HGF Central account and HGF Brazil Mission
by P&S Associates General Partnership

Check Date	Check Number	Amount
12/27/2001	1820	\$ 100,000.00
3/31/2005	2215	\$ 100,000.00
9/21/2005	2273	\$ 100,000.00
12/20/2006	2393	\$ 200,000.00
3/31/2008	2576	\$ 225,000.00
Total Distributed		\$ 725,000.00

Holy Ghost Fathers Compassion Fund
(formerly HGF Central account and HGF Brazil Mission

Holy Ghost Fathers Compassion Fund
Net Winner \$ 263,764.54

Holy Ghost Fathers of Ireland
Diocese of Kenema
Investments

Check Date	Deposit Date	Check No.	Amount	Account Name
4/22/1993	4/27/1993	162	\$ 60,000.00	Diocese of Kenema
Total Invested			\$ 60,000.00	

Holy Ghost Fathers of Ireland - Diocese of Kenema

Distributions to Holy Ghost Fathers of Ireland -
Diocese of Kenema by P&S Associates General Partnership

Check Date	Check Number	Amount
8/26/2002	1873	\$ 150,000.00
8/28/2006	2365	\$ 66,623.01
1/24/2007	2413	\$ 1,261.62
Total Distributed		\$ 217,884.63

Diocese of Kenema by P&S Associates General Partnership

Diocese of Kenema by P&S Associates General Partnership
Net Winner \$ (157,884.63)