

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.

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, MATERIAL FACTUAL STATEMENT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON AMENDED COMPLAINT

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 submits this Material Factual Statement in support of its motion for summary judgment against the Plaintiffs. In support thereof, the Holy Ghost Entities state as follows:

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.¹ 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.

¹ Exhibit A to the Amended Complaint indicates only the year of the investment or distribution to each entity.

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 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

Id. at ¶ 5 and Ex. A.

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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