

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

MARGARET SMITH, et al.,

Case No. 12-34121(07)

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, et al.,

Defendants.

CONSERVATOR'S CASE MANAGEMENT CONFERENCE RESPONSE

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), pursuant to this Court's Third Order Resetting Deadlines and Case Management Conference, files Conservator's Case Management Conference Responses (the "Response"), and states as follows:

- A. A brief factual statement of the action, which includes claims and defenses.** The above styled action by the Partnerships seeks recovery from their partners for money improperly received above their capital contribution.
- B. A brief statement on the theory of damages by any party seeking affirmative relief.** All monies flowing into the Partnerships purporting to be earning were in fact paid by a fraudulent scheme. Therefore, any money flowing to the partners in excess of their contributions are necessarily the assets of the Partnerships who, by law and agreement preclude payments to parties of monies to which they are not entitled. These Defendants are liable for damages on account of: breach of contract based on Partnership Agreement, Unjust Enrichment, fraudulent transfer under Fla. Stat. §726.
- C. The likelihood of settlement.** The Conservator was recently issued e-summons to serve on the parties. Accordingly, it is too early in the proceeding to determine whether settlement is likely, although we anticipate that at least some of the defendants would offer to settle their claims rather than litigate.
- D. The likelihood of appearance in the action of additional parties and identification of any non-parties to whom any of the parties will seek to allocate fault.** Unknown given the early status of the proceeding, but it is possible that other defendants will be added as more records are provided pursuant to prior orders of this Court.

- E. The proposed limits on the time: (i) to join other parties and to amend the pleadings, (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any nonparties whose identity is not known, (iv) to disclose expert witnesses, and (v) to complete discovery.** Conservator would agree to any reasonable time limits so long as the Conservator and his counsel are given the opportunity to review and prepare for this case.
- F. Name the attorneys responsible for handling the action.** Leonard Samuels and Etan Mark of Berger Singerman were Plaintiff's Counsel at commencement. However, since the appointment of the Conservator, Thomas Messana, Messana PA, has been engaged as general counsel to the Conservator. The Conservator has filed a motion to retain Berger Singerman as special counsel to advance this matter. Such motion was preliminarily approved by this Court subject to an in camera review of the engagement agreement.
- G. The necessity of a protective order to facilitate discovery.** Too early to determine; however, given the sensitivity of financial records one may be sought.
- H. Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment.** Conservator will make every effort to simplify the issues, once defendants are served and appearances are made..
- I. The possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence.** Conservator will make every effort to obtain admissions and stipulations once defendants are served and appearances are made.
- J. Suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation.** Unknown given the early status of the proceeding, although Conservator would be amenable to an early mediation once defendants are served and appearances are made.
- K. A preliminary estimate of the time required for trial.** . 5- 7 days if the case is not otherwise resolved at the summary judgment stage.
- L. Requested date or dates for conferences before trial, a final pretrial conference, and trial.** Conservator believes that this case should be ready for trial by the second quarter on 2014, but given the fact that many defendants have not been served, Conservator is unable to obtain any agreement for a proposed trial date. Conservator would agree to any reasonable date so long as the Conservator and his counsel are given the opportunity to review and prepare for this case.
- M. A description of pertinent documents and a list of fact witnesses the parties believe to be relevant.** Unknown as documents are still be produced pursuant to prior orders of this court. Conservator certainly expects to use the Partnership

Agreements and documents setting forth money invested, and distributions made, to the various partners.

- N. Number of experts and fields of expertise.** Unknown.
- O. Any other information that might be helpful to the court in setting further conferences and the trial date.** The Conservator filed a motion for extension of time to serve parties in this matter with a summons and complaint.
- P. Number of parties, number of peremptory challenges.** 6 per side would be acceptable to Conservator. Conservator is uncertain as to how the Court will handle this issue given the multiple defendants in this case. .
- Q. A statement of any concerns or procedures for the jury selection process.**
None
- R. A statement of any need for special equipment necessary for the trial of the case, including a description of the equipment.** Unknown given the early status of the proceeding.
- S. A statement of the need for any special courtroom facilities, interpreters, etc.**
None known at this time.
- T. A statement of any efforts to date and to resolve the case, including mediation or arbitration. Be prepared to discuss names of mediators or arbitrators who counsel can agree to in the event the court orders mediation or arbitration. A list of at least five (5) certified mediators who are acceptable for mediation.** A few defendants indicated a desire to pursue settlement. But those discussions were never advanced given the disputes concerning the appointment of Ms Smith, the inability of Ms Smith to receive partnership funds, the fight over whether a conservator should be appointment, and the fight over the retention of Berger Singerman, as well as fights initiated by the former managing general partner and his surrogates at every turn. Five acceptable mediators to Conservator are:.
- U. Any special matters that the parties would like to bring to the attention of the court.** Payment of legal fees to Berger Singerman, which the Conservator recommends be paid at a substantial discount of the amount billed, noting that the amount billed was at a substantially discounted rate.

Dated: July 1, 2013

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