

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Palm Beach Finance Partners, L.P. and  
Palm Beach Finance II, L.P.,

Case No. 09-36379-BKC-PGH  
Chapter 11

Debtor(s).

\_\_\_\_\_  
Barry E. Mukamal, in his capacity as  
Liquidating Trustee for the Palm Beach  
Finance Partners Liquidating Trust and the  
Palm Beach Finance II Liquidating Trust,

Adv. Case No.

Plaintiff,

v.

Glen A. Fradenburg,

Defendant.  
\_\_\_\_\_

**COMPLAINT**

Barry E. Mukamal (“*Plaintiff*”), in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust (collectively, the “*Liquidating Trusts*”) sues Glen A. Fradenburg (“*Defendant*”) and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance II, L.P. (“*PBF II*”) (PBF I and PBF II are referred to each as a “*Palm Beach Fund*” or collectively, the “*Palm Beach Funds*”) were Delaware limited partnerships whose principal place of business was located in Palm Beach County, Florida.

2. The Palm Beach Funds were formed to make the investments described in *Section I.A* below.

3. The general partner for the Palm Beach Funds was Palm Beach Finance Capital Management, L.P. (“*PBLP*”). The investment manager for the Palm Beach Funds was Palm Beach Capital Management, LLC (“*PBLLC*”); and together with PBLP, the “*Palm Beach Managing Entities*”).

4. On November 30, 2009 (“*Petition Date*”), the Palm Beach Funds filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. Orders for relief were entered and Mr. Mukamal was subsequently appointed Chapter 11 trustee for the Palm Beach Funds.

5. Thereafter, pursuant to a confirmed joint plan of liquidation, Mr. Mukamal was appointed Liquidating Trustee for the Liquidating Trusts.

6. Pursuant to the confirmed joint plan of liquidation, all claims and causes of action held by the Palm Beach Funds are reserved, preserved and retained by the Liquidating Trusts.

7. Defendant is an individual who, upon information and belief, currently resides in Florida and/or Mississippi.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(b) and may enter any order or final judgment.

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H) and (O).

## ALLEGATIONS

### *I. The Petters Investment*

#### **A. General Description of the Investment**

10. Beginning in approximately 1995, Thomas Petters (“*Petters*”) began raising money by offering and selling promissory notes to members of the public.

11. Petters offered and sold the notes to various feeder fund lenders, which in turn, raised their capital from private investors.

12. In offering and selling the notes, Petters represented to lenders that the proceeds from the sale of the notes would be used to finance so-called “purchase order financing.”

13. Under Petters’s version of purchase order financing, he arranged for the sale and delivery of overstock consumer electronics from manufacturers or suppliers to certain “big box” retailers such as Costco, Sam’s Club and B.J.’s Wholesale Club. The financing provided by the lenders was necessary to bridge the period between when the suppliers demanded payment and when the retailers paid for the merchandise.

14. The main Petters entity which arranged these purchase and financing transactions was Petters Company, Inc. (“*PCI*”). Single purpose entities (“*SPE*”) affiliated with PCI were formed by Petters and his associates to handle loans for particular lenders that financed the transactions.

15. The main suppliers that were allegedly selling the merchandise that formed the basis of the purchase order financing transactions were Nationwide International Resources, Inc. (“*Nationwide*”) and Enchanted Family Buying Company (“*Enchanted*”).

16. To evidence the purchasing financing transactions, Petters or persons working on his behalf, typically provided a series of documents to the lenders including executed note documents, purported purchase orders from a retailer, purported bills of sale from the vendors, collateral and credit insurance and documents assigning a security interest in the underlying merchandise to the financing lender (collectively, the “*Loan Documents*”).

**B. The Palm Beach Funds' Investment in Petters**

17. The Palm Beach Funds were formed to invest in Petters purchase financing transactions.

18. In particular, the Palm Beach Funds raised monies from selling limited partnership stakes to investors and in the case of PBF II, by borrowing hundreds of millions of dollars from an offshore lender, Palm Beach Offshore Ltd.

19. Nearly all of the monies raised by the Palm Beach Funds were then used to invest in Petters purchase financing transactions.

**II. The Fraud**

20. The Petters purchase financing transactions were in actuality an elaborate *ponzi* scheme.

21. Namely, there was never any (i) merchandise or (ii) contracts to purchase or sell such merchandise with a particular big box retailer. Instead, Petters, conspiring with others, operated a multi-billion dollar *ponzi* scheme. In likely every instance that monies were sent to Nationwide or Enchanted by the Palm Beach Funds and other lenders to finance the purchase of merchandise, Nationwide and Enchanted deducted a small commission for their benefit and then remitted the remaining funds to PCI. Thereafter, such funds were used to repay earlier investors and fund the lavish lifestyle of Mr. Petters and that of his associates.

22. The direct effect of Petters' fraudulent activities was that the Palm Beach Funds' investments in Petters purchase financing transactions were worthless.

23. In September of 2008, agents for the Federal Bureau of Investigation raided PCI's offices. Thereafter, Petters was arrested by federal agents on October 3, 2008 and then indicted on charges of mail and wire fraud, conspiracy to commit mail and wire fraud, conspiracy to

commit money laundering and money laundering, all in connection with the PCI purchase financing transactions.

24. On December 2, 2009, a jury in the United States District Court of the District of Minnesota found Petters guilty of all counts charged.

25. On April 8, 2010, District Court Judge Richard H. Kyle sentenced Petters to 50 years in prison for his crimes.

26. On September 29, 2010, PCI and Petters Group Worldwide, LLC pled guilty to wire fraud, conspiracy to commit wire fraud, and conspiracy to commit money laundering relating to their roles in the *ponzi* scheme.

### ***III. The Palm Beach Management Action and Transfers to the Defendants***

27. During the course of the Palm Beach Funds' investment activities in Petters purchase financing transactions, millions of dollars were transferred from the Palm Beach Funds to the Palm Beach Managing Entities.

28. On March 21, 2011, Plaintiff, on behalf of the Palm Beach Funds filed an action in the Bankruptcy Court for the Southern District of Florida against the Palm Beach Managing Entities, Adversary Case No. 11-1820 ("***Palm Beach Management Action***").

29. The Palm Beach Management Action sought to avoid all transfers made by the Palm Beach Funds to the Palm Beach Managing Entities within four years of the Petition Date.

30. On June 28, 2011, judgments were entered in favor of Plaintiff, on behalf of the Palm Beach Funds, and against the Palm Beach Managing Entities (the "***Judgments***"). Copies of the Judgments are attached as Exhibit 1.

31. As of the filing of this Complaint, the Judgments remain outstanding.

32. As set forth on Schedule 1, PBLLC transferred its property to the Defendant (“*Transfers*”). The Palm Beach Funds reserve the right to amend this schedule based on additional information obtained during discovery in this adversary proceeding.

**Count 1 – Fraudulent Transfer Pursuant to *Fla. Stat.* §§ 726.105(1)(b) and 726.108 or other applicable law<sup>1</sup>**

33. Plaintiff reasserts the allegations set forth in paragraphs 1 through 32 as if fully set forth herein.

34. Pursuant to *Fla Stat.* Section 726.102, the Palm Beach Funds are creditors of PBLLC.

35. PBLLC made the *Transfers* to or for the benefit of the Defendant within four years of the Petition Date.

36. PBLLC did not receive reasonably equivalent value in exchange for the *Transfers* made to or for the benefit of the Defendant.

37. PBLLC was insolvent at the time of the *Transfers*.

38. The net assets of PBLLC were unreasonably small in relation to the *Transfers*.

39. At the time the *Transfers* were made to or for the benefit of the Defendant, PBLLC was insolvent and would not be able to satisfy its liabilities as they came due.

40. At the time the *Transfers* were made to or for the benefit of the Defendant, PBLLC was engaged in, or was about to engage in, a business or a transaction for which the remaining assets were unreasonably small in relation to the business or transaction.

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<sup>1</sup> To the extent the Court determines that another state’s law applies to this cause of action and such state’s law provides for a greater look back period than is provided for under Florida law, the Liquidating Trustee gives notice that he will amend this Complaint to avoid and recover all Fraudulent *Transfers* made during this greater look back period. See, e.g., Minn Stat. § 541.05. The Plaintiff expressly reserves the right to seek such a determination.

41. At the time of the Transfers, PBLLC intended to incur or believed that it would incur, debts that were beyond its ability to pay as such debts matured.

**Count 2 – Fraudulent Transfer Pursuant to *Fla. Stat.* §§ 726.106(1) and 726.108 or other applicable law**

42. Plaintiff reasserts the allegations set forth in paragraphs 1 through 32 as if fully set forth herein.

43. Pursuant to *Fla. Stat.* Section 726.102, the Palm Beach Funds are creditors of PBLLC.

44. PBLLC made the Transfers to or for the benefit of the Defendant within four years of the Petition Date.

45. PBLLC did not receive reasonably equivalent value in exchange for the Transfers to or for the benefit of the Defendant.

46. PBLLC was insolvent at the time of the Transfers.

**Count 3 – Unjust Enrichment**

47. Plaintiff reasserts the allegations set forth in paragraphs 1 through 32 as if fully set forth herein.

48. The Defendant received a benefit by virtue of the Transfers made to it.

49. The Defendant has knowledge of the benefit conferred upon it.

50. The Defendant voluntarily accepted and retained the benefit conferred upon it by PBLLC.

51. The Defendant's receipt of the benefit of the Transfers made to it unjustly enriched it to the detriment of PBLLC and its creditors.

52. Under the circumstances set forth herein, it would be inequitable for the Defendant to retain the benefit conferred upon it.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) With respect to Counts 1 and 2, enter judgment against the Defendant in the total amount of the Transfers received by it or made for its benefit, along with all other transfers made to it or for its benefit which are avoidable under Counts 1 and 2 that are later discovered, and all other relief provided for under § 726.108 (or other applicable law);
- (b) With respect to Count 3, enter judgment against the Defendant in the total amount of the Transfers based on a finding that it was unjustly enriched by such transfers;
- (c) With respect to all Counts, award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute;
- (d) With respect to all Counts, award prejudgment interest to the extent allowed under applicable law or statute; and
- (e) Grant such further relief this Court deems just and proper.

s/ Michael S. Budwick  
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Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
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Jonathan S. Feldman, Esquire  
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MELAND RUSSIN & BUDWICK, P.A.  
3000 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Telecopy: (305) 358-1221

Attorneys for Plaintiff





**ORDERED in the Southern District of Florida on June 28, 2011.**

**Paul G. Hyman Jr., Chief Judge  
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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Palm Beach Finance II, L.P.,

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Barry E. Mukamal, in his capacity as  
Liquidating Trustee for Palm Beach  
Finance Partners, L.P. and Palm Beach  
Finance II, L.P.,

Plaintiff,

v.

Palm Beach Capital Management, L.P. and  
Palm Beach Capital Management LLC,

Defendant.

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Chapter 11

Case No. 09-36379-BKC-PGH

Adv. No. 11-1820-BKC-PGH

**FINAL JUDGMENT AGAINST DEFENDANT, PALM BEACH CAPITAL  
MANAGEMENT LLC, AFTER CLERK'S DEFAULT**

THIS CAUSE came before the Court on June 21, 2011 upon Plaintiff's Motion for Final Judgment After Clerk's Default (the "*Motion*").<sup>1</sup> Plaintiff seeks a final judgment against Defendant, Palm Beach Capital Management LLC (the "*Defendant*"), pursuant to Fed.R.Civ.P. 55, as made applicable by Fed.R.Bankr.P. 7055, following the entry of a Clerk's Default against Defendant [ECF No. 9] in this adversary proceeding. The Court, having reviewed the Motion and the Court file, and having entered a separate Order granting the Motion--

**ORDERS** as follows:

1. Final Judgment is entered in favor of Plaintiff, on behalf of Palm Beach Finance Partners, L.P., and against the Defendant, Palm Beach Capital Management LLC, for the total sum of \$5,223,791.45, which amount shall bear interest from this date forward at the prevailing legal rate of interest, for which let execution issue forthwith.
2. Final Judgment is entered in favor of Plaintiff, on behalf of Palm Beach Finance II, L.P., and against the Defendant, Palm Beach Capital Management LLC, for the total sum of \$3,385,476.57, which amount shall bear interest from this date forward at the prevailing legal rate of interest, for which let execution issue forthwith.
3. The Court reserves jurisdiction to enter any further orders or take any other actions that may be necessary in connection with this matter, including but not limited to, the issuance of writs of execution or writs of garnishment.
4. The last known address of Defendant is as follows: Palm Beach Capital Management LLC by and through its officer, David W. Harrold, 963 Evergreen Dr., Delray Beach, FL 33483.

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<sup>1</sup> All capitalized terms not defined in this Final Judgment shall have the same meaning as ascribed to such term as set forth in the Motion.

5. The Plaintiff's address is: Barry E. Mukamal c/o Michael S. Budwick, Esquire, Meland Russin & Budwick, P.A., 200 S. Biscayne Blvd., Suite 3000, Miami, FL 33131.

6. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

###

**Submitted By:**

Jonathan S. Feldman, Esquire  
Fla. Bar No: 012682  
[jfeldman@melandrussin.com](mailto:jfeldman@melandrussin.com)  
MELAND RUSSIN & BUDWICK, P.A.  
Attorneys for Plaintiff  
3000 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Telefax: (305) 358-1221

**Copies Furnished To:**

Attorney Jonathan S. Feldman is directed to serve copies of this Order on all interested parties and to file a Certificate of Service.



**ORDERED in the Southern District of Florida on June 28, 2011.**

**Paul G. Hyman Jr., Chief Judge  
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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**ORDERS** as follows:

1. Final Judgment is entered in favor of Plaintiff, on behalf of Palm Beach Finance Partners, L.P., and against the Defendant, Palm Beach Capital Management, L.P., for the total sum of \$5,892,357.60, which amount shall bear interest from this date forward at the prevailing legal rate of interest, for which let execution issue forthwith.

2. Final Judgment is entered in favor of Plaintiff, on behalf of Palm Beach Finance II L.P., and against the Defendant, Palm Beach Capital Management, L.P., for the total sum of \$6,675,236.40, which amount shall bear interest from this date forward at the prevailing legal rate of interest, for which let execution issue forthwith.

3. The Court reserves jurisdiction to enter any further orders or take any other actions that may be necessary in connection with this matter, including but not limited to, the issuance of writs of execution or writs of garnishment.

---

<sup>1</sup> All capitalized terms not defined in this Final Judgment shall have the same meaning as ascribed to such term as set forth in the Motion.

4. The last known address of Defendant is as follows: Palm Beach Capital Management, L.P., by and through its officer, David W. Harrold, 963 Evergreen Dr., Delray Beach, FL 33483.

5. The Plaintiff's address is: Barry E. Mukamal c/o Michael S. Budwick, Esquire, Meland Russin & Budwick, P.A., 200 S. Biscayne Blvd., Suite 3000, Miami, FL 33131.

6. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

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**Submitted By:**

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Telephone: (305) 358-6363  
Telefax: (305) 358-1221

**Copies Furnished To:**

Attorney Jonathan S. Feldman is directed to serve copies of this Order on all interested parties and to file a Certificate of Service.

**SCHEDULE 1**

<b>Date</b>	<b>Check No</b>	<b>Amount</b>
01/24/05	549	\$ (6,200.00)
02/18/05	590	(6,200.00)
03/16/05	628	(6,200.00)
04/19/05	688	(6,200.00)
05/18/05	741	(6,200.00)
06/17/05	811	(6,200.00)
07/19/05	853	(6,200.00)
08/16/05	913	(6,200.00)
09/23/05	954	(6,200.00)
10/19/05	1001	(6,200.00)
11/21/05	1064	(6,200.00)
12/20/05	1100	(6,200.00)
		<u>\$ (74,400.00)</u>