UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION
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In re:

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

Debtors.
_____/

Case No. 09-36379-BKC-PGH

Barry E. Mukamal, in his capacity as Liquidating Trustee of the Palm Beach Finance II Liquidating Trust,

Plaintiff,

v.

Nucleus Fund Ltd.,

Defendant.
_____/

Adv. Case No.

COMPLAINT

Barry E. Mukamal, in his capacity as liquidating trustee ("***Plaintiff***") of the Palm Beach Finance II Liquidating Trust ("***Liquidating Trust***"), sues Nucleus Fund Ltd. ("***Defendant***") and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Palm Beach Finance II, L.P. ("***PBF II***") was a Delaware limited partnership whose principal place of business was located in Palm Beach County, Florida. PBF II was formed in 2004 to make the investments described in *Section I* below.

2. The general partner for PBF II was Palm Beach Capital Management, L.P. ("***PBCMLP***"). PBCMLP's general partner was Palm Beach Capital Corp. The investment

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manager for PBF II was Palm Beach Capital Management, LLC. These entities are collectively referred to as the "***Palm Beach Managing Entities***."

3. Historically, the principals who directed the activities of PBF II and the Palm Beach Managing Entities were David Harrold and Bruce Prevost (respectively, "***Harrold***" and "***Prevost***"). However, beginning in October 2008, following the discovery of the Petters fraud (as described in *Section II* below), this management structure was replaced with independent management. In particular:

a) On or about October 29, 2008, agreements were entered into among PBF II, Palm Beach Finance Partners, L.P. (together with PBF II, the "***Palm Beach Funds***"), Harrold, Prevost, the Palm Beach Management Entities and certain limited partners of the Palm Beach Funds that delegated day-to-day control to appointees of the limited partners. Pursuant to these agreements, "steering committees" for each of the Palm Beach Funds were created and authorized to act on behalf of the Palm Beach Funds;

b) In December 2008, each steering committee retained the law firm of Thomas, Alexander & Forrester, LLP ("***TAF***") to investigate and pursue claims against third parties arising from losses resulting from the Petters fraud. In March 2009, each steering committee retained the law firm of Berger Singerman ("***BS***"), to serve as special bankruptcy counsel and co-counsel with TAF.

c) In June 2009, the steering committees authorized the retention of Lewis B. Freeman to serve as the Chief Restructuring Officer ("***CRO***") for each of the Palm Beach Funds. The CRO was authorized to (1) manage the Palm Beach Funds day-to-day affairs; (2) make payments and disbursements as appropriate; (3) retain counsel and professionals to pursue and resolve any claims belonging to the Palm Beach Funds; (4)

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file voluntary bankruptcy petitions on behalf of the Palm Beach Funds and (5) report the material developments regarding the Palm Beach Funds to the steering committees.

d) In October 2009, Kenneth Welt ("***Welt***") and Trustee Asset Recovery, Inc. replaced Mr. Freeman as CRO, with substantially similar reporting requirements and powers.

4. On November 30, 2009 ("***Petition Date***"), Welt authorized the filing of voluntary petitions under Chapter 11 of the United States Bankruptcy Code for the Palm Beach Funds. Orders for relief were entered and Plaintiff was subsequently appointed Chapter 11 trustee for the Palm Beach Funds.

5. Thereafter, pursuant to a confirmed joint plan of liquidation, Plaintiff was appointed Liquidating Trustee for the Liquidating Trust.

6. Pursuant to the confirmed joint plan of liquidation, all claims and causes of action held by PBF II are reserved, preserved and retained by the Liquidating Trust.

7. Defendant is, upon information and belief, a company organized under the laws of the Cayman Islands.

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

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

10. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

11. The Transfers (as defined below) that are the subject of this Complaint were all effectuated using bank accounts located in the United States of America.

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ALLEGATIONS

I. The Petters Investment

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

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

14. 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."

15. 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.

16. The main Petters entity which arranged these purchase and financing transactions was Petters Company, Inc. ("***PCI***").

17. 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***") (Enchanted and Nationwide are sometimes referred to as a "***Petters Supplier***").

18. Generally, the investment strategy was supposed to work in the following, sequential manner:

a) Petters or PCI would allegedly broker the sale of merchandise between one of the Petters Suppliers and a big box retailer;

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b) Once a deal was brokered, a lender (*e.g.*, PBF II) would wire the funds necessary to purchase the merchandise from the Petters Supplier directly to such supplier's bank account;

c) The Petters Supplier would ship the merchandise to the big box retailer;

d) Upon receiving the merchandise, the big box retailer would directly send funds to the lender; and

e) The funds remitted by the big box retailer would then be used to pay (i) first, the lender and (ii) second, a commission to Petters or entities controlled by him.

19. To evidence the steps outlined above, 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.

20. Upon being repaid, lenders to PCI would typically advance their monies into new PCI purchase financing transactions.

21. PBF II was an investment vehicle specifically formed to invest in the Petters purchase financing transactions described above.

22. PBF II raised monies by selling limited partnership equity interests to investors and by borrowing hundreds of millions of dollars from two offshore lenders, Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd. ("***Offshore Lenders***"). These investor funds – both debt and equity – were then used by PBF II to enter into Petters purchase financing transactions.

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23. Pursuant to the private placement memorandum and attendant subscription agreement, limited partners in PBF II understood and agreed that their investment in the fund was subordinated to Palm Beach Offshore Ltd.

24. Pursuant to PBF II's limited partnership agreement, limited partners in PBF II understood and agreed that they were not entitled to any distribution unless PBF II had sufficient assets to pay its liabilities.

II. The Petters Fraud

25. For nearly four years, PBF II invested nearly all of its funds in PCI purchase financing transactions.

26. The reality though was that PCI was a *ponzi* scheme.

27. 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 fraud. In likely every instance that monies were sent to Nationwide or Enchanted by PBF II 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, these funds were used to repay lenders on earlier PCI purchase financing transactions or fund the lavish lifestyle of Mr. Petters and that of his criminal co-conspirators.

28. Because PCI was a *ponzi* scheme, the fictitious purchase financing transactions entered into between it (or its affiliates) and PBF II were at all times worthless.

29. In September 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

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

30. A receiver was appointed for PCI and other affiliated entities, along with Mr. Petters and his criminal co-conspirators. Thereafter, PCI and other Petters related companies filed voluntary bankruptcy petitions.

31. On December 2, 2009, a jury in the United States District Court of the District of Minnesota found Petters guilty of all counts charged. On April 8, 2010, District Court Judge Richard H. Kyle sentenced Petters to 50 years in prison for his crimes. Petters' co-conspirators were also sentenced to varying prison sentences.

32. 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.

33. As a result of the collapse of PCI, PBF II suffered hundreds of millions of dollars in losses.

III. Transfers Made to the Defendant

34. Schedule 1 sets forth transfers made by PBF II to or for the benefit of the Defendant ("***Transfers***").

35. The Transfers were made to the Defendant in connection with a limited partnership investment in PBF II.

36. As set forth on Schedule 1, a portion of the Transfers represents fictitious profits paid to or for the benefit of the Defendant ("***Fraudulent Transfers***").

37. PBF II was insolvent at relevant times to the claims asserted in this complaint against the Defendant by virtue of its significant, outstanding loan obligations to the Offshore

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Lenders and worthless investments in PCI. As a result, PBF II did not receive reasonably equivalent value from the Defendant in exchange for the Fraudulent Transfers made to or for the benefit of the Defendant.

38. Because PBF II was insolvent at the time it made the Fraudulent Transfers to the Defendant, the transfers were unlawful and violated the terms of PBF II's partnership agreement.

Count 1 –11 U.S.C. § 544, Fla. Stat. §§ 726.105(1)(b) and 726.108 or other applicable law

39. Plaintiff reasserts the allegations set forth in paragraphs 1 through 38 as if fully set forth herein.

40. As set forth on Schedule 1, some of the Fraudulent Transfers made to or for the benefit of the Defendant were made within four years of the Petition Date ("***Four Year Fraudulent Transfers***").

41. PBF II made the Four Year Fraudulent Transfers to or for the benefit of the Defendant without receiving reasonably equivalent value in exchange for such transfers.

42. At the time PBF II made each of the Four Year Fraudulent Transfers, it was insolvent.

43. The net assets of PBF II were unreasonably small in relation to the Four Year Fraudulent Transfers by virtue of its worthless investments in Petters' *ponzi* scheme.

44. At the time each of the Four Year Fraudulent Transfers were made, PBF II was insolvent and would not be able to satisfy its liabilities as they came due.

45. At the time each of the Four Year Fraudulent Transfers were made, PBF II 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 its business or transaction.

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Count 2 – 11 U.S.C. § 544 and Fla. Stat. §§ 726.106(1) and 726.108 or other applicable law

46. Plaintiff reasserts the allegations set forth in paragraphs 1 through 38 as if fully set forth herein.

47. PBF II made the Four Year Fraudulent Transfers to or for the benefit of the Defendant.

48. PBF II did not receive reasonably equivalent value in exchange for the Four Year Fraudulent Transfers.

49. At the time PBF II made each of the Four Year Fraudulent Transfers, it was insolvent.

Count 3 - Unjust Enrichment

50. Plaintiff reasserts the allegations set forth in paragraphs 1 through 38 as if fully set forth herein.

51. The Defendant received a benefit by virtue of the Four Year Fraudulent Transfers made to it.

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

53. The Defendant voluntarily accepted and retained the benefit conferred upon it by PBF II.

54. The Defendant's receipt of the benefit of the Four Year Fraudulent Transfers made to it unjustly enriched it to the detriment of PBF II.

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

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3000 SOUTHEAST FINANCIAL CENTER, 200 SOUTH BISCAYNE BOULEVARD, MIAMI, FLORIDA 33131 • TELEPHONE (305) 358-6363

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 Four Year Fraudulent 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 Four Year Fraudulent 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

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LAW OFFICES OF MELAND RUSSIN & BUDWICK, P.A.
3000 SOUTHEAST FINANCIAL CENTER, 200 SOUTH BISCAYNE BOULEVARD, MIAMI, FLORIDA 33131 • TELEPHONE (305) 358-6363

(e) Grant such further relief this Court deems just and proper.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
Jessica L. Wasserstrom, Esquire
Florida Bar No. 985820
jwasserstrom@melandrussin.com
Jonathan S. Feldman, Esquire
Florida Bar No. 12682
jfeldman@melandrussin.com
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

SCHEDULE 1

Date	Contributions	Withdrawals
06/01/05	4,500,000.00	-
08/11/05	14,018.98	-
05/01/06	-	(4,860,570.22)
05/02/07	-	(255,772.46)
	$4,514,018.98	**($5,116,342.68)**