

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

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

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

Debtors.

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.

The Walchek Family Revocable Trust dated
November 19, 1988, Scott Walchek and
Kelli Walchek,

Defendants.

COMPLAINT TO AVOID TRANSFERS

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 The Walchek Family Revocable Trust dated November 19, 1988 ("***Walchek Trust***"), Scott Walchek and Kelli Walchek, both in their individual capacities, and as trustees for the Walchek Trust (the Walchek Trust and Scott Walchek and Kelli Walchek are collectively referred to as the "***Defendants***") 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. The Walchek Trust is, upon information and belief, a trust formed under the laws of the state of California.

8. Scott Walchek and Kelli Walchek are husband and wife and, upon information and belief, residents of the state of California. Upon information and belief, Scott and/or Kelli Walchek act as trustees for the Walchek Trust.

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

10. 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

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

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

13. 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.”

14. 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.

15. 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.

16. 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*”).

17. 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’s Investment in Petters

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

19. 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.

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

II. The Fraud

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

22. 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.

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

24. 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.

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

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

27. 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

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

29. 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*”).

30. 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.

31. 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.

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

33. As set forth on Schedule 1, the Palm Beach Managing Entities transferred their property to the Defendants (“*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 law¹

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

35. Pursuant to Fla Stat. Section 726.102, the Palm Beach Funds are creditors of Palm Beach Managing Entities.

36. The Palm Beach Managing Entities made the Transfers to or for the benefit of the Defendants within four years of the Petition Date.

37. The Palm Beach Managing Entities did not receive reasonably equivalent value in exchange for the Transfers made to or for the benefit of the Defendants.

¹ 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.

38. The Palm Beach Managing Entities were insolvent at the time of the Transfers.

39. The net assets of the Palm Beach Managing Entities were unreasonably small in relation to the Transfers.

40. At the time the Transfers were made to or for the benefit of the Defendants, the Palm Beach Managing Entities were insolvent and would not be able to satisfy their liabilities as they came due.

41. At the time the Transfers were made to or for the benefit of the Defendants, the Palm Beach Managing Entities were engaged in, or were about to engage in, a business or a transaction for which the remaining assets were unreasonably small in relation to the business or transaction.

42. At the time of the Transfers, the Palm Beach Managing Entities intended to incur or believed that they would incur, debts that were beyond their 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

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

44. Pursuant to *Fla. Stat.* Section 726.102, the Palm Beach Funds are creditors of the Palm Beach Managing Entities.

45. The Palm Beach Managing Entities made the Transfers to or for the benefit of the Defendants within four years of the Petition Date.

46. The Palm Beach Managing Entities did not receive reasonably equivalent value in exchange for the Transfers to or for the benefit of the Defendants.

47. The Palm Beach Managing Entities were insolvent at the time of the Transfers.

Count 3 – Unjust Enrichment

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

49. The Defendants received a benefit by virtue of the Transfers made to them.

50. The Defendants have knowledge of the benefit conferred upon them.

51. The Defendants voluntarily accepted and retained the benefit conferred upon them by the Palm Beach Managing Entities.

52. The Defendants's receipt of the benefit of the Transfers made to them unjustly enriched them to the detriment of the Palm Beach Managing Entities and their creditors.

53. Under the circumstances set forth herein, it would be inequitable for the Defendants to retain the benefit conferred upon them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) With respect to Counts 1 and 2, enter judgment against the Defendants in the total amount of the Transfers received by them or made for their benefit, along with all other transfers made to them or for their 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 Defendants in the total amount of the Transfers based on a finding that they were 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.

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Entity	Date	Amount
PBLP	1/23/2006	\$125,000.00
PBLP	4/26/2006	150,000.00
PBLP	8/10/2006	200,000.00
PBLP	10/25/2006	200,000.00
PBLP	2/16/2007	250,000.00
PBLP	4/18/2007	250,000.00
PBLP	5/3/2007	100,000.00
PBLP	7/25/2007	350,000.00
PBLP	10/11/2007	500,000.00
PBLP	1/9/2008	300,000.00
PBLP	4/2/2008	300,000.00
PBLP	4/4/2008	150,000.00
PBLP	7/14/2008	250,000.00
PBLLC	1/23/2006	175,000.00
PBLLC	4/26/2006	150,000.00
PBLLC	8/10/2006	200,000.00
PBLLC	10/25/2006	200,000.00
PBLLC	12/31/2006	55,882.36
PBLLC	2/15/2007	250,000.00
PBLLC	4/18/2007	250,000.00
PBLLC	5/3/2007	100,000.00
PBLLC	7/25/2007	350,000.00
PBLLC	7/31/2007	200,000.00
PBLLC	10/11/2007	500,000.00
PBLLC	12/3/2007	254,705.88
PBLLC	1/9/2008	300,000.00
PBLLC	4/2/2008	200,000.00
PBLLC	4/4/2008	150,000.00
PBLLC	7/14/2008	250,000.00
PBLLC	9/12/2008	100,000.00
		<u>\$6,810,588.24</u>