

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

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.

W. David Rogers, Jr., Jennifer Peed Rogers,
Duncan B. Dowling, III and Sally A. Lueck
Dowling,

Defendants.

_____ /

COMPLAINT TO RECOVER TRANSFERS

Barry E. Mukamal (the "*Plaintiff*"), in his capacity as Liquidating Trustee for the Palm Beach Finance Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), sues W. David Rogers, Jr., Jennifer Peed Rogers, Duncan B. Dowling, III and Sally A. Lueck Dowling (collectively, 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. PBF I was formed in 2002 while PBF II was formed in 2004.

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 (the “*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 Defendants are, upon information and belief, individuals currently residing in Florida.

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 that 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 purchase 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

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

18. The Palm Beach Funds’ entrance into Petters was facilitated by Frank Vennes (“*Vennes*”).

19. In particular, in 2002, the principals of the Palm Beach Managing Entities – Bruce Prevost and David Harrold – were introduced to Vennes. At that time, Vennes and his entity, Metro Gem, Inc. (“*MGI*”; and together with Vennes, the “*Vennes Parties*”), a Minnesota corporation, had invested in Petters purchase financing transactions for several years.

20. Beginning in September 2002 and continuing through September 2008, the Vennes Parties represented to the Palm Beach Funds and their principals that they (a) conducted significant due diligence in connection with the underlying Petters purchase financing transactions and (b) held “intimate knowledge” of PCI’s finances, including particularized access to PCI’s confidential internal financial data and financial statements.

21. From the inception of each of the Palm Beach Funds, the Vennes Parties also positioned themselves as the gatekeeper for any communications between the Palm Beach Funds and Petters. The Vennes Parties justified their role on the basis of their purported intimate knowledge of PCI’s finances and their due diligence of the Petters purchase financing

transactions. Because of these representations, the Palm Beach Funds placed trust and repose in the Vennes Parties, and the Vennes Parties accepted such confidence. Thus, the Vennes Parties owed a fiduciary duty to the Palm Beach Funds and such duty included providing the Palm Beach Funds with truthful and accurate information regarding PCI and Petters.

22. Based on the representations made by the Vennes Parties and the trust and repose placed in them, the Palm Beach Funds raised monies by 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.

23. Altogether, the Palm Beach Funds raised hundreds of millions of dollars from investors from late 2002 through September 2008. Nearly all of these monies were then used to invest in Petters purchase financing transactions.

II. The Petters Fraud

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

25. 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 Petters and that of his associates.

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

27. 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.

28. Immediately after the FBI raid, the Vennes Parties, along with PCI, Petters and others, were placed into a federal receivership ("***Receivership***").

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

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

31. 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.

32. On April 20, 2011, Vennes was indicted for alleged criminal acts committed by him in connection with the Petters *ponzi* scheme.

III. The Vennes Parties Action and Transfers to the Defendants

33. In conjunction with the filing of this adversary, Plaintiff, on behalf of the Palm Beach Funds, has filed an action in the Bankruptcy Court for the Southern District of Florida against the Vennes Parties ("***Vennes Action***").

34. The Vennes Action seeks to avoid transfers made by the Palm Beach Funds to the Vennes Parties.

35. Additionally, the Vennes Action seeks an award of monetary damages in tort relating to the significant misrepresentations, omissions and breach of fiduciary duties committed by the Vennes Parties during the period of September 2002 through September 2008 in an amount equal to all the losses sustained by the Palm Beach Funds in connection with the Petters fraud. Namely, the Vennes Parties knew that the representations they made relating to (a) the purported due diligence they conducted with respect to Petters purchase financing transactions and (b) the knowledge they held with respect to PCI's finances were false since inception of each of the Palm Beach Funds. If the Vennes Parties conducted the diligence they represented was done or accessed the underlying financial information for PCI, it would have been immediately clear that Petters was engaging in a massive fraud.

36. The tortious acts committed by the Vennes Parties caused the Palm Beach Funds to suffer significant nine figure losses in connection with the funds' investing in Petters purchase financing transactions.

37. As such, at all times relevant to the allegations set forth in this Complaint, including on the dates for each of Transfers (defined below), the Palm Beach Funds were creditors of the Vennes Parties.

38. During the time period that the Vennes Parties were committing tortious acts against the Palm Beach Funds and also receiving transfers from the funds, MGI made transfers of its property to the Defendants. Specifically, on August 14, 2006, MGI transferred \$3,000,000 to the Defendants on account of a property transaction between the Defendants and Metro Duncan, LLC (the "*Transfers*"). The Palm Beach Funds reserve the right to amend this complaint based on additional information obtained during discovery in this adversary proceeding.

**Count 1 – Fraudulent Transfer Pursuant to M.S.A. §§ 513.44 and 513.48 or other
applicable law**

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

40. Pursuant to M.S.A. § 513.41, at all times during the period of September 2002 through the present, the Palm Beach Funds are and have been creditors of the Vennes Parties by virtue of the funds' fraud, misrepresentation, negligence and breach of fiduciary duty claims against the Vennes Parties.

41. MGI made the Transfers to or for the benefit of the Defendants within six years of the Petition Date.

42. MGI did not receive reasonably equivalent value in exchange for the Transfers made to or for the benefit of the Defendants.

43. MGI was insolvent at the time of the Transfers based on one or more of the following reasons: (a) the fraud, misrepresentation, negligence and breach of fiduciary duty claims the Palm Beach Funds held against MGI; (b) the fraud, misrepresentation, negligence or breach of fiduciary duty claims MGI investors held against MGI in connection with the PCI investments; (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and commissions that MGI received for its PCI investments and (d) MGI's worthless investments in the Petters *ponzi* scheme.

44. The net assets of MGI were unreasonably small in relation to the Transfers because MGI's primary assets consisted of worthless investments in the Petters *ponzi* scheme.

45. At the time the Transfers were made to or for the benefit of the Defendants, MGI was insolvent and would not be able to satisfy its liabilities as they came due. Such liabilities

included (a) the fraud, misrepresentation, negligence and breach of fiduciary duty claims the Palm Beach Funds held against MGI; (b) the fraud, misrepresentation, negligence or breach of fiduciary duty claims MGI investors held against MGI in connection with the PCI investments and (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and commissions that MGI received for its PCI investments.

46. At the time the Transfers were made to or for the benefit of the Defendants, MGI 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 because MGI's remaining assets primarily consisted of worthless investments in the Petters *ponzi* scheme.

47. At the time of the Transfers, MGI intended to incur or believed that it would incur, debts that were beyond its ability to pay as such debts matured. Such debts included (a) the fraud, misrepresentation, negligence and breach of fiduciary duty claims the Palm Beach Funds held against MGI; (b) the fraud, misrepresentation, negligence or breach of fiduciary duty claims other investors held against MGI in connection with the PCI investments and (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and commissions that MGI received for its PCI investments.

Count 2 – Fraudulent Transfer Pursuant to M.S.A. §§ 513.45 and 513.48 or other

applicable law

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

49. Pursuant to M.S.A. § 513.41, at all times during the period of September 2002 through the present, the Palm Beach Funds are and have been creditors of the Vennes Parties by

virtue of the funds' fraud, misrepresentation, negligence and breach of fiduciary duty claims against the Vennes Parties.

50. MGI made the Transfers to or for the benefit of the Defendants within six years of the Petition Date.

51. MGI did not receive reasonably equivalent value in exchange for the Transfers to or for the benefit of the Defendants.

52. MGI was insolvent at the time of the Transfers based on one or more of the following reasons: (a) the fraud, misrepresentation, negligence and breach of fiduciary duty claims the Palm Beach Funds held against MGI; (b) the fraud, misrepresentation, negligence or breach of fiduciary duty claims MGI investors held against MGI in connection with the PCI investments; (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and commissions that MGI received for its PCI investments and (d) MGI's worthless investments in the Petters *ponzi* scheme.

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 the Defendants or made for the Defendants's benefit, along with all other transfers made to the Defendants or for the Defendants's benefit which are avoidable under Counts 1 and 2 that are later discovered, and all other relief provided for under § 513.48 (or other applicable law);
- (b) With respect to all Counts, award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute;

- (c) With respect to all Counts, award prejudgment interest to the extent allowed under applicable law or statute; and
- (d) 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.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for Plaintiff