ORDERED in the Southern District of Florida on September 30, 2013.

Paul G. Hyman, Chief Judge
United States Bankruptcy Court

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

IN RE: **CASE NO.: 09-36379-BKC-PGH**

Palm Beach Finance Partners, L.P. **CHAPTER 11**
and Palm Beach Finance II, L.P.,
Debtors. /

Barry Mukamal, **ADV. NO.: 11-02952-BKC-PGH-A**
Plaintiff,

v.

Sunny Day Security Systems, Inc.
***fdba* Kandi Kourts, Inc.,**
Defendant. /

ORDER GRANTING MOTION TO DISMISS (ECF NO. 13)

THIS MATTER came before the Court upon the *Motion to Dismiss* (ECF No. 13) filed by Peter Taunton ("Taunton") in his capacity as a former officer, director, and shareholder of Sunny Day Security Systems, Inc. *fdba* Kandi Kourts, Inc. (the "Defendant"). The Motion to Dismiss seeks dismissal of the *Amended Complaint*

(ECF No. 2) (the "Complaint") filed by Barry E. Mukamal (the "Plaintiff") in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust. For the reasons discussed below, the Court grants Taunton's Motion to Dismiss.

BACKGROUND

On November 23, 2011, the Plaintiff instituted this adversary proceeding against the Defendant. In the Complaint, the Plaintiff alleges that based upon misrepresentations made by Frank Vennes ("Vennes") and Metro Gem, Inc. ("MGI"), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (the "Palm Beach Funds") invested money in what turned out to be a Ponzi scheme run by Thomas Petters ("Petters"). According to the Plaintiff, as a result of these tortious acts, the Palm Beach Funds were creditors of Vennes and MGI at all times relevant to the allegations in the Complaint. The Plaintiff further alleges that in conjunction with an investment made by the Defendant in MGI, the Defendant received transfers from MGI during the time that Vennes and MGI were committing tortious acts against the Palm Beach Funds. Based upon these allegations and the provisions of 11 U.S.C. § 541(a), the Plaintiff asserts three causes of action against the Defendant: (1) Avoidance and recovery of fraudulent transfers pursuant to Minnesota Statute §§ 513.44 and 513.48; (2) Avoidance and recovery of fraudulent transfers pursuant to Minnesota Statute §§ 513.45 and 513.48; and (3) Unjust enrichment.

Taunton filed[1] the Motion to Dismiss now before the Court and supporting *Memorandum of Law* ("Defendant's Memorandum") (ECF No. 15), seeking dismissal of the Complaint for failure to state a claim upon which relief can be granted. The Defendant contends that dismissal is appropriate on the basis that the Defendant, which was a Minnesota corporation, was dissolved in accordance with Minnesota law on September 16, 2009.

Pursuant to the Court's *Order Directing Parties to Submit Additional Documentation* (ECF No. 59), the Defendant filed the *Affidavit of Susan E. Carlson in Support of Dissolution Documents* ("Carlson Affidavit") (ECF No. 61).[2] Attached to the Carlson Affidavit are the Defendant's Notice of Intent to Dissolve by Action of Shareholders ("Notice of Intent to Dissolve"), attached as Exhibit A, and the Certificate of Dissolution and the Articles of Dissolution of the Defendant ("Certificate and Articles of Dissolution"), attached as Exhibit B. The Carlson Affidavit states that both the attached Notice of Intent to Dissolve and the Certificate and Articles of Dissolution were certified by the State of Minnesota on June 13, 2013, as true and complete copies of the documents filed of record with the State of Minnesota. Carlson Aff., ¶¶ 3 – 4. The certified copy of the Notice of Intent to Dissolve reflects that it was filed on September 16, 2009, with the Secretary of State of Minnesota. Carlson Aff., Ex. A. The certified copy of the Certificate of

---

[1] Pursuant to Minnesota Statute 302A.783, "[a]fter a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation." Accordingly, Taunton has authority to defend this action against the Defendant.

[2] According to the Carlson Affidavit, Susan E. Carlson is a paralegal with the law firm of Faegre Baker Daniels LLP, in Minneapolis, Minnesota 55402.

Dissolution reflects that the Articles of Dissolution for the Defendant were filed with the Secretary of State of Minnesota on September 16, 2009, and states that the Defendant "is hereby dissolved and its corporate existence is terminated as of this date [September 16, 2009.]" Carlson Aff., Ex. B. The Articles of Dissolution state that "[t]he Notice to Creditors and Claimants of Intent to Dissolve was provided and published, the last date of publication being July 2, 2009." *Id.*

CONCLUSIONS OF LAW

I. Motion to dismiss standard

In order to state a claim for relief under Federal Rule of Civil Procedure 8(a)[3] and thus survive a Rule 12(b)(6) motion to dismiss, the factual allegations of the Plaintiff's Amended Complaint must "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L. Ed. 2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S.Ct. 1937, 173 L. Ed. 2d 868 (2009). In determining facial plausibility, a court should not assume the veracity of mere legal conclusions or threadbare recitals of the elements of a cause of action. *Id.* at 679. However, when "there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 664. If a plaintiff's allegations

[3] Rule 8(a), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7008, requires that a pleading "contain 'a short and plain statement of the claim showing that the pleader is entitled to relief' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1288, 1290 (11th Cir. 2010) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957)).

do "not nudge[] their claims across the line from conceivable to plausible, [the] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

In considering a motion to dismiss, the Court is generally limited to the four corners of the Complaint. However, the Court may "take judicial notice of certain facts," including public records, "without converting a motion to dismiss into a motion for summary judgment." *Universal Express, Inc. v. S.E.C.*, 177 Fed.Appx. 52, 53 (11th Cir. 2006) (*citing Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999)); Fed. R. Evid. 210(b) ("The court may judicially notice a fact that is not subject to reasonable dispute because it: . . . (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."). Documents filed with a state's department of corporations or secretary of state fall into the category of public documents of which the Court may take judicial notice. *Madura v. BAC Home Loans Servicing L.P.*, No. 8:11–cv–2511–T–33TBM, 2013 WL 3777094, at *6 (M.D. Fla. July 17, 2013); *Allstate Ins. Co. v. Estate of Robert M. Levesque*, No. 8:08–cv–2253–T–33EAJ, 2010 WL 2978037, at *1 (M.D. Fla. July 19, 2010). Here, the Court will take judicial notice of the Notice of Intent to Dissolve and the Certificate and Articles of Dissolution as they are public documents filed with the Secretary of State of Minnesota and the copies filed with the Court are certified as true and complete copies of the documents filed of record with the State of Minnesota.

II. The Plaintiff fails to state a claim upon which relief can be granted as the Defendant, a dissolved corporation, is not liable for the conduct alleged

A. Statutory framework

The Articles of Dissolution recite that the Defendant proceeded under Minnesota Statute § 302A.727. Section 302A.727 governs the procedures for dissolution of corporations that give notice to creditors and claimants and provides in relevant part:

> **Subdivision 1. When permitted; how given.** When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to section 302A.011, subdivision 17.
>
> * * *
>
> **Subd. 3. Claims against corporations that give notice.**
>
> * * *
>
> (c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 302A.781.

Subdivisions 4 and 5 of § 302A.727 govern the articles of dissolution and specify when they must be filed and what they must contain. Minnesota Statute § 302A.734 provides that "[w]hen the articles of dissolution have been filed with the secretary of state, . . . the corporation is dissolved . . . [and] [t]he secretary of state shall issue to the corporation or its legal representative a certificate of dissolution[.]"

Most importantly, Minnesota Statute § 302A.781 provides the circumstances under which claims against a dissolved corporation are barred and the circumstances under which barred claims may be reopened. To begin with, Subdivision 1 of § 302A.781 states that "a creditor or claimant whose claims are barred under section 302A.727 . . . includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant." Subdivision 2 then states:

> **Claims reopened**. At any time within one year after articles of dissolution have been filed with the secretary of state pursuant to section 302A.727 or 302A.7291, subdivision 1, clause (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
>
> (a) against the corporation to the extent of undistributed assets; or
>
> (b) if the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

As previously noted, Minnesota Statute § 302A.783 allows any of a dissolved corporation's former officers, directors, or shareholders to defend, in the name of the corporation, any claim by or against the dissolved corporation.

B. The public documents filed with the court establish that the Defendant was officially dissolved under the laws of the state of Minnesota

Based upon the Notice of Intent to Dissolve and the Certificate and Articles of Dissolution, the Court determines that the Defendant was officially dissolved on

September 16, 2009, upon the filing of the Articles of Dissolution and the issuance of the Certificate of Dissolution. Once a corporation is dissolved, "the corporation does not exist, cannot be sued, and cannot be served" outside the provisions of § 302A.727 and § 302A.781. *See* Minn. Stat. 302A.783 cmt., ¶ 1. Indeed, the Supreme Court of the United States has held:

> It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution cannot be distinguished from the death of a natural person in its effect. . . . [C]orporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation.

Okla. Natural Gas Co. v. Okla., 273 U.S. 257, 259-60, 47 S.Ct. 391, 71 L.Ed. 634 (1927) (citations omitted).

At the very most, the Plaintiff had one year beyond the filing of the articles of dissolution to apply to a Minnesota state court to have the claim allowed. *See* § 302A.781, Subd. 2. As will be discussed in the following section, this one-year period, often termed a "corporate-survival statute," was not tolled by the filing of the Palm Beach Funds' bankruptcy petition pursuant to 11 U.S.C. § 108(a). Furthermore, even if it was, the Plaintiff would be required to apply to a Minnesota state court and show good cause for failure to previously assert the claim in order to assert the claims now asserted in this Court.

Federal Rule of Civil Procedure 17(b)[4] governs an entity's capacity to sue or be sued in federal court and provides that "[t]he capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." Pursuant to Minnesota Statute § 302A.734, once the Articles of Dissolution are filed and a Certificate of Dissolution has been issued, the corporation is dissolved and cannot be sued or served outside the provisions of § 302A.727 and § 302A.781. Accordingly, the Court finds that the Plaintiff fails to state a claim upon which relief can be granted as the Defendant is not liable for the conduct alleged.

III. Corporate-survival statute is not tolled by 11 U.S.C. § 108

The Plaintiff asserts that 11 U.S.C. § 108(a) tolls the time period within which a creditor may institute a claim against a dissolved corporation.[5] 11 U.S.C. §108(a) provides:

> (a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—
>
> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) two years after the order for relief.

---

[4] Rule 17 is made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7017.

[5] The Plaintiff argues that even if the Defendant proceeded under Minnesota Statute § 302A.7291, the provision which governs dissolution without giving notice to creditors, 11 U.S.C. § 108(a) would toll the two-year statute of limitations provided for in § 302A.7291. However, the Court found in the preceding section that the Defendant was legally dissolved pursuant to Minnesota Statute § 302A.727 as reflected by the public documents filed by the Defendant and judicially noticed by the Court. Therefore, the Court will only consider whether 11 U.S.C. § 108(a) tolls the one-year period for filing claims after dissolution of a corporation allowed in Minnesota Statute § 302A.781.

Section 108(a) applies primarily to statutes of limitations fixed by nonbankruptcy law. Courts, however, consider statutes which extend the "life" of a corporation for a period of time in order to allow for creditors to file claims to be "corporate-survival statutes" rather than statutes of limitations. *M.S. v. Dinkytown Day Care Ctr., Inc.*, 485 N.W.2d 587, 589 (S.D. 1992) (stating that "[s]tatutes . . . which continue the existence of dissolved corporations for a fixed time for purposes of defending and prosecuting suits are . . . viewed as survival statutes and not statutes of limitation"); *Camacho v. Todd and Leiser Homes, Inc.*, No. A04-599, 2004 WL 2940812, at *4 (Minn. Ct. App. Dec. 21, 2004). Furthermore, the general rule is that corporate-survival statutes are not subject to equitable or statutory tolling. *OXY USA Inc. v. Quintana Prod. Co.*, 79 So.3d 366, 382-83 (La. Ct. App. 2011) ("After its dissolution, a corporation cannot be revived by a statute of limitations tolling provision, no matter how sweeping its reach."); *Swindle v. Big River Broad. Corp.*, 905 S.W.2d 565, 568 (Tenn. Ct. App. 1995) (stating that "courts have uniformly held that corporate survival statutes begin to run at the date of dissolution and have dismissed claims initiated outside of the prescribed period"); *Deere & Co. v. JPS Dev., Inc.*, 592 S.E.2d 672, 673 (Ga. Ct. App. 2003) (same); *Dinkytown Day Care*, 485 N.W.2d at 588-89 (holding that a minority tolling statute did not apply to extend time provided under corporate-survival statute).

Courts following this general rule emphasize the difference between a survival statute and a statute of limitations, explaining that:

> [A] statute of limitations affects the time that a stale claim may be brought while a survival statute gives life for a limited time to a right

> or claim that would have been destroyed entirely but for the statute. These survival statutes arbitrarily extend the life of the corporation to allow remedies connected with the corporation's existence to be asserted.

Dinkytown Day Care, 485 N.W.2d at 589 (*quoting Davis v. St. Paul Fire & Marine Ins. Co.*, 727 F.Supp. 549, 551 (D. S.D. 1989)). Stated differently, "[w]hen a plaintiff fails to sue within the limitations period, the claim still exists, but, unless the statute of limitations affirmative defense is waived, it can no longer be brought against a defendant. By contrast, if a party fails to sue within the time limits of the survival statute, there is no longer an entity which can be sued." OXY USA, Inc., 79 So.3d at 383.

"The fact a survival statute essentially creates a right or claim that would not exist but for the statute" is the key to whether a tolling provisions applies to extend the time for bringing an action under a corporate dissolution statute. *Dinkytown Day Care*, 485 N.W.2d at 589. "[W]here the legislature creates a right, [i]t has the power to impose any restrictions it sees fit, and the conditions imposed qualify the right and are an integral part thereof; *they are conditions precedent* which must be fully complied with, or the right does not exist." *Id.* at 590 (emphasis added, internal quotation marks and citations omitted). Indeed, the Minnesota Court of Appeals has stated that "[b]ecause a corporation exists by virtue of statutory authority, its existence and capacity to sue or be sued is also determined by statutory authority. Courts do not have the prerogative to extend corporate liability beyond the express time limits provided by statute." *Camacho*, 2004 WL 2940812, at *4 (internal citations omitted). For example, in one case in which a court found

that a corporate-survival statute was not extended by a minority tolling statute, the court explained that because the claimant failed to file her claim within the applicable time period provided by the statute, her "right to a refund never arose. The right was subject to a condition, i.e., filing an application for a refund *within three years*. She did not do so." *Matter of Estate of Erdmann*, 447 N.W.2d 356, 359 (S.D. 1989).

Although the Court is not aware of any case law specifically addressing whether 11 U.S.C. §108(a) applies to extend a time period provided in a corporate-survival statute, the Court is persuaded by the reasoning discussed above. Accordingly, the Court holds that because Minnesota Statute § 302A.781 is a corporate-survival statute rather than a statute of limitations, it is not subject to the tolling provisions of 11 U.S.C. § 108(a). However, even if Minnesota's corporate-survival statute was subject to the tolling provisions of 11 U.S.C. § 108(a), the Plaintiff would still be statutorily required to apply to the Minnesota state court in order to be permitted to bring these claims against the Defendant.

IV. Abstention

Finally, the Plaintiff asserts that the Defendant did not properly publish notice of its dissolution in a newspaper, did not otherwise provide the Palm Beach Funds with notice of its dissolution, and thus, did not comply with the requirements of Minnesota's dissolution statutes. The general rule is that "the failure to comply with all of the provisions of the relevant corporate dissolution statute voids the dissolution as to creditors whose rights have been prejudiced thereby." *Soo Line*

R.R. Co. v. B.J. Carney & Co., 797 F.Supp. 1472, 1478 (D. Minn. 1992) (*citing Licht v. Ass'n Servs., Inc.*, 236 Neb. 616, 463 N.W.2d 566, 569-70 (1990); *Alpine Prop. Owners Ass'n., Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 365 S.E.2d 57, 64 (1987)). However, for the reasons that follow, the Court will abstain from determining whether the Defendant properly complied with Minnesota's corporate dissolution statutes.

28 U.S.C. § 1334(c)(1) provides: "Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." This is known as "permissive abstention." In order to determine whether to exercise permissive abstention, courts look to the following factors:

> (1) the effect, or lack of effect, on the efficient administration of the bankruptcy estate if discretionary abstention is exercised,
>
> (2) the extent to which state law issues predominate over bankruptcy issues,
>
> (3) the difficulty or unsettled nature of the applicable state law,
>
> (4) the presence of related proceedings commenced in state court or other non-bankruptcy courts,
>
> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
>
> (6) the degree of relatedness or remoteness of the proceedings to the main bankruptcy case,
>
> (7) the substance rather than the form of an asserted "core" proceeding,

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

(9) the burden on the bankruptcy court's docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to jury trial,

(12) the presence in the proceeding of non-debtor parties,

(13) comity, and

(14) the possibility of prejudice to other parties in the action.

Welt v. EfloorTrade, LLC (In re Phoenix Diversified Inv. Corp.), 439 B.R. 231, 245-46 (Bankr. S.D. Fla. 2010) (*citing E.S. Bankest v. United Beverage Florida (In re United Container LLC)*, 284 B.R. 162, 176 (Bankr. S.D. Fla. 2002)). No single factor is determinative. Instead, the Court must weigh all factors.

Here, the question before the Court is whether the Defendant failed to comply with Minnesota's corporate dissolution statutes so that the Plaintiff may maintain this action against the Defendant. To begin with, state law issues wholly predominate over bankruptcy issues. If the Court were to determine whether the Defendant was properly dissolved, the Court would have to construe Minnesota statutory and case law. Bankruptcy law plays no role in the determination of this issue. Additionally, Subdivision 2 of Minnesota Statute § 302A.781 states that in order to file a claim against a corporation which has been dissolved, a creditor or claimant must seek allowance of the claim by applying to a court in the state of Minnesota. Although there is very little guidance from Minnesota courts as to

whether failure to strictly comply with the requirements of the corporate dissolution statutes voids the dissolution as to certain creditors, subdivision 2 of Minnesota Statute § 302A.781 indicates that the Minnesota legislature believed that Minnesota state courts were the appropriate venue for determining issues related to the dissolution of Minnesota corporations. Principles of comity also support the Court's determination that abstention is appropriate. State courts have a strong interest in determining issues related to the incorporation and dissolution of entities organized under the laws of their respective states. Minnesota state courts are familiar with Minnesota corporate governance law and allowing the Minnesota court to resolve these issues will lessen the possibility of inconsistent results. *In re Gen-Air Pumbing & Remodeling, Inc.*, 208 B.R. 426, 432 (Bankr. N.D. Ill. 1997); *In re Elegant Concepts, Ltd.*, 61 B.R. 723, 728 (Bankr. E.D. N.Y. 1986).

In addition to the factors referenced above, the following factors also support the exercise of permissive abstention: (1) the effect, or lack of effect, on the efficient administration of the bankruptcy estate if discretionary abstention is exercised; (2) the feasibility of severing state law issues from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (3) the presence in the proceeding of non-debtor parties. Although the absence of a pending proceeding in the Minnesota state court and several other factors weigh against permissive abstention, on balance, Minnesota's corporate statutory framework, the complete predominance of questions of state law, the absence of guidance from Minnesota courts as to the issue before the Court, and principles of

comity require the Court to permissively abstain from determining whether the Defendant complied with Minnesota's corporate dissolution statutes so that the Plaintiff may maintain this action against the Defendant.

V. Conclusion

When considering a Motion to Dismiss for failure to state a claim, the Court must determine whether the claim has facial plausibility based on whether the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Assuming the veracity of the Complaint's well-pleaded factual allegations, considering the judicially noticed public documents filed by the Defendant, and for the reasons articulated in the preceding sections, the Court finds that the Plaintiff does not state a claim for relief which is plausible on its face as the Defendant was legally dissolved on September 16, 2009, more than two years before the filing of the Complaint. Once a corporation is dissolved, the corporation cannot be sued and cannot be served, except in compliance with the state's corporate dissolution statutes.

Accordingly, the Court grants Taunton's Motion to Dismiss as it is clear from the face of the Complaint and the public documents judicially noticed by the Court that the Defendant is legally dissolved and is not liable for the conduct alleged. The dismissal, however, shall be without prejudice to the Plaintiff filing a second amended complaint should the Plaintiff apply to the Minnesota state court and

receive a determination that the Defendant's dissolution is void for failure to comply with the requirements of Minnesota's corporate dissolution statutes.

ORDER

The Court, being fully advised in the premises and for the reasons discussed above, hereby **ORDERS AND ADJUDGES** that:

1. Taunton's Motion to Dismiss (ECF No. 13) is **GRANTED**.
2. The Plaintiff's Amended Complaint (ECF No. 2) is **DISMISSED WITHOUT PREJUDICE** to the Plaintiff filing a second amended complaint in the event the Plaintiff applies to the Minnesota state court and receives a determination that the Defendant's dissolution is void as to the Palm Beach Funds.
3. The Court **ABSTAINS** from determining whether the Defendant complied with Minnesota's corporate dissolution requirements and whether the Defendant's dissolution is void as to the Palm Beach Funds.
4. The Clerk shall close the adversary proceeding upon resolution of any pending motions.
5. Should the Plaintiff seek to file a second amended complaint pursuant to paragraph 2 above, the Plaintiff shall file a motion to reopen the adversary proceeding.

###

Copies furnished to:

Michael S Budwick, Esq.

Michael B Fisco, Esq.

Keith T Appleby, Esq.