

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.

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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. 11-3025-PGH

Plaintiff,

v.

KBC Financial Products (Cayman Islands)  
Ltd. and Karasel II, L.P.,

Defendants.

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**SECOND AMENDED 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 KBC Financial Products (Cayman Islands) Ltd. (“*KBC*”) and Karasel II, L.P. (“*Karasel*”; and together with KBC, 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. KBC is a company organized under the laws of the Cayman Islands.

8. Karasel is a Delaware limited partnership.

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).

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.

## ALLEGATIONS

### *I. The Petters Investment*

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

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

13. Petters offered and sold the notes to various feeder fund lenders, which in turn, 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*”). Single purpose entities (“*SPE*”) affiliated with PCI were formed by Petters and his associates to handle loans for particular lenders that financed the transactions.

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*”).

18. 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**

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

20. 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.

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

**II. The Fraud**

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

23. 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.

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

25. 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.

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

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

28. 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 PBDI Action and Transfers to the Defendants***

29. Palm Beach Diversified Income, L.P. ("**PBDI**") was a fund of funds that invested in other hedge funds. PBDI raised monies for these investing activities through the sale of limited partnership interests and third party borrowings.

30. The Defendants invested in PBDI through the purchase of an equity interest via a limited partnership stake.

31. 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 or for the benefit of its limited partner, PBDI.

32. PBDI thereafter, made transfers of its funds to its limited partners, including the Defendants. Upon information and belief, the contributions made for this investment were made by Karasel.

33. On November 17 and 21, 2011, Plaintiff, on behalf of the Palm Beach Funds, filed actions, as subsequently amended, in the Bankruptcy Court for the Southern District of Florida against PBDI ("*PBDI Actions*"), Adv. Case Nos. 11-2824 and 11-2867.

34. The PBDI Actions seek to avoid all transfers made by the Palm Beach Funds to PBDI within four years of the Petition Date.

35. As set forth on Schedule 1, PBDI transferred its property to KBC for the benefit of Karasel ("*Transfers*"). The Palm Beach Funds reserve the right to amend this schedule based on additional information obtained during discovery in this adversary proceeding.

36. At all times material to the allegations set forth in this Complaint, the Palm Beach Funds were creditors of PBDI by virtue of PBDI being unjustly enriched by transfers made to it by the Palm Beach Funds during the period of January 2006 through March 2008.

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

37. Plaintiff reasserts the allegations set forth in paragraphs 1 through 36 as if fully set forth herein.

38. Pursuant to *Fla Stat.* Section 726.102, the Palm Beach Funds are creditors of PBDI and were at the time of each of the Transfers

39. PBDI made the Transfers to KBC for the benefit of Karasel within four years of the Petition Date.

40. PBDI did not receive reasonably equivalent value in exchange for the Transfers.

41. At the time of the Transfers, PBDI 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 by virtue of the collapse in value of its investments, its outstanding obligations to KBC and the amount of its unpaid redemptions owed to redeeming limited partners.

42. At the time of the Transfers, PBDI intended to incur or believed that it would incur, debts that were beyond its ability to pay as such debts matured by virtue of the collapse in value and illiquidity of its investments, its outstanding obligations to KBC and the amount of its unpaid redemptions owed to redeeming limited partners.

**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 36 as if fully set forth herein.

44. Pursuant to *Fla. Stat.* Section 726.102, the Palm Beach Funds are creditors of PBDI and were at the time of each of the Transfers.

45. PBDI made the Transfers to KBC for the benefit of Karasel within four years of the Petition Date.

46. PBDI did not receive reasonably equivalent value in exchange for the Transfers.

47. PBDI was insolvent at the time of the Transfers by virtue of the collapse in value and illiquidity of its investments, its outstanding obligations to KBC and the amount of its unpaid redemptions owed to redeeming limited partners. Therefore, the sum of PBDI's debt was greater than all of PBDI's assets at a fair valuation at the time of the Transfers. In addition, the value of PBDI's general partners' nonpartnership assets did not exceed such general partner's partnership's debts at the time of the Transfers.

48. Moreover, PBDI was insolvent at the time of the Transfers because at such time it was generally not paying its debts as they became due. PBDI was not timely paying redemptions to redeeming limited partners due to the illiquidity and collapse in value of its investment portfolio.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) With respect to Counts 1 and 2, enter judgment against the Defendants avoiding and recovering all 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 all Counts, award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute;

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- (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.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on October 30, 2012, via the Court's Notice of Electronic Filing upon the Registered Users set forth on the attached as Exhibit A and via U.S. Mail upon Bryan Krakauer, Esq., Sidley Austin LLP, One South Dearborn, Chicago, IL 60603.

Dated: October 30, 2012.

s/ Michael S. Budwick  
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Attorneys for Plaintiff

Schedule 1		
Date	Contributions	Withdrawal
11/30/04	\$ 1,700,000.00	\$ -
02/01/06	2,141,071.00	-
02/02/06	4,958,634.07	-
03/15/06	-	(6,449.88)
03/20/06	-	(6,449.88)
03/01/07	1,000,000.00	-
12/18/07	-	(3,000,000.00)
12/31/07	-	(3,000,000.00)
01/31/08	-	(3,000,000.00)
03/31/08	-	(4,800,000.00)
<b>Total:</b>	<b>\$ 9,799,705.07</b>	<b>\$ (13,812,899.76)</b>

## Mailing Information for Case 11-03025-PGH

### Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com;miaecfbky@gtlaw.com
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EXHIBIT A