

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.,

Case No. 09-36379-BKC-PGH

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.

Plaintiff,

v.

Dean Vlahos,

Defendant.

_____ /

COMPLAINT TO RECOVER TRANSFERS

Barry E. Mukamal (“*Plaintiff*”), in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “*Liquidating Trusts*”), sues Dean Vlahos (“*Defendant*”) 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 and PBF II was formed in 2004.

3. Historically, the principals who directed the activities of the Palm Beach Funds were David Harrold (“*Harrold*”) and Bruce Prevost (“*Prevost*”). However, in October 2008, after the Palm Beach Funds discovered the Petters *ponzi* scheme, they replaced this management structure with new, independent management.

4. On November 30, 2009 (“*Petition Date*”), the Palm Beach Funds filed Chapter 11 voluntary petitions. Mr. Mukamal was subsequently appointed Chapter 11 trustee. Thereafter, pursuant to a confirmed joint plan of liquidation, Mr. Mukamal was appointed Liquidating Trustee for the Liquidating Trusts. Pursuant to the confirmed plan, all claims and causes of action held by the Palm Beach Funds are reserved, preserved and retained by the Liquidating Trusts.

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

6. 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

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

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

9. 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” deals.

10. Under Petters' 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.

11. The main Petters entity that arranged these purchase order financing transactions was Petters Company, Inc. ("*PCI*"). Single purpose entities affiliated with PCI were formed by Petters and his associates to handle loans for particular lenders that financed the transactions.

12. 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*").

13. To evidence the purchase order 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.

B. The Palm Beach Funds' Investment in Petters

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

15. In 2002, Prevost and Harrold were introduced to Frank Vennes ("*Vennes*") through Prevost's church activities. Vennes was a business associate of Petters and since 1998 was a primary fundraiser of monies from third parties to invest in Petters purchase order financing transactions.

16. Vennes, through his entity Metro Gem, Inc. (“*MGI*”),¹ a Minnesota corporation, facilitated the creation of the Palm Beach Funds and the funds’ entry into Petters purchase order financing transactions. At that time, MGI had invested in Petters purchase order financing transactions for several years.

17. Relying on the representations of MGI as Petters’ servicing agent and communications liaison (as set forth below in *Section IV*) to the Palm Beach Funds, the Palm Beach Funds raised monies by selling limited partnership stakes to investors. PBF II, aside from selling limited partnership stakes, also borrowed hundreds of millions of dollars from two offshore lenders.

18. 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 order financing transactions.

II. The Petters Fraud

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

20. Notwithstanding MGI’s claims regarding the due diligence it conducted with respect to the Petters purchase order financing transactions, 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.

21. In almost every instance that monies were sent to Nationwide or Enchanted by the Palm Beach Funds or other lenders to finance the purchase of merchandise, Nationwide and Enchanted deducted a small “vig” for their benefit and then remitted the remaining funds ultimately to PCI.

¹ Vennes and MGI are at times referred to collectively as the “*Vennes Parties*.”

Thereafter, such funds were used to repay earlier investors / lenders and fund the lavish lifestyle of Petters and that of his associates.

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

23. In September 2008, agents for the Federal Bureau of Investigation raided PCI's offices. On October 3, 2008, Petters was arrested by federal agents 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 Petters purchase financing transactions.

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

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

26. On April 8, 2010, Petters was sentenced 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 Petters *ponzi* scheme.

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

29. On February 1, 2013, Vennes pled guilty to aiding and abetting securities fraud and money laundering related to his role in the Petters *ponzi* scheme.

30. On October 22, 2013, Vennes was sentenced to 15 years in prison for his crimes.

III. The Vennes Parties Asset Distribution Plan

31. While the Receivership was pending, the Vennes Parties, along with the court appointed receiver for the Vennes Parties, sought court approval of a plan to distribute the assets of the Vennes Parties and their affiliates [ECF No. 1652 in Case No. 08-05348-ADM] (“*Asset Distribution Plan*”).

32. Pursuant to the Asset Distribution Plan, investors that were “net losers” in MGI were allotted a distribution of the remaining assets of the Vennes Parties. Conversely, investors in MGI that were “net winners” were entitled to no distribution of the Vennes Parties’ assets.

33. As set forth in the exhibits to the Asset Distribution Plan, the Defendant was not listed as a “net loser” in MGI.

IV. The Palm Beach Funds’ Claims against MGI and the Transfers MGI Made to the Defendant

34. Beginning in September 2002 and continuing through September 2008, MGI represented to the Palm Beach Funds and their principals that MGI acted as Petters’ servicing agent to arrange financing for Petters purchase order financing transactions. In such capacity, MGI represented that it (a) conducted significant due diligence in connection with the underlying transactions and (b) possessed “intimate knowledge” of PCI’s finances, including particularized access to PCI’s confidential internal financial data and financial statements.

35. MGI’s role in the creation of the Palm Beach Funds and its representations to the funds in its capacity as Petters’ servicing agent and communications liaison created a duty of care owed by MGI to the Palm Beach Funds.

36. MGI breached its duty of care to the Palm Beach Funds by failing to fully (1) conduct the due diligence of Petters it represented it completed or (2) assess the underlying information of PCI it claimed it possessed. If MGI performed these acts, it would have learned that Petters was engaging in a massive fraud.

37. The negligence and other tortious acts committed by MGI caused the Palm Beach Funds to suffer significant nine figure losses in connection with the funds investing in Petters purchase order financing transactions.

38. Consequently, at all times relevant to the allegations set forth in this Complaint, including on the dates for each of the Transfers (defined below), the Palm Beach Funds² were creditors of MGI.

39. As set forth on Schedule 1 attached as Exhibit 1, during the time period that MGI was committing tortious acts, including negligence, against the Palm Beach Funds and also receiving transfers from the funds, MGI made transfers of its property to the Defendant (“**Transfers**”). The Palm Beach Funds reserve the right to amend this Schedule based on additional information obtained during discovery in this adversary proceeding.

40. Upon information and belief, the Defendant received the Transfers in conjunction with an investment made by the Defendant in MGI to fund Petters purchase order financing transactions.

41. The Defendant was not listed as a “net loser” of MGI as part of the Asset Distribution Plan. As such, and as set forth on Schedule 1, the net transfers made to Defendant by MGI (*i.e.* total disbursements less total contributions) represent fictitious profits paid to the Defendant (“**Fraudulent Transfer Amount**”).

² With respect to any of the Transfers that occurred prior to June 22, 2004, only PBF I was a creditor of MGI at the time of such Transfers.

COUNTS

Count 1 – Fraudulent Transfer Pursuant to 11 U.S.C. § 541 and Minn. Stat. §§ 513.44 and 513.48

42. The Plaintiff reasserts the allegations set forth in paragraphs 1 through 41 as if fully set forth herein.

43. Pursuant to *Minn. Stat.* § 513.41, the Palm Beach Funds are creditors of MGI (and were creditors at the time of each of the Transfers) by virtue of the funds' negligence and other tort claims against MGI.

44. MGI did not receive reasonably equivalent value in exchange for the Transfers made to or for the benefit of the Defendant in the Fraudulent Transfer Amount.

45. At the time MGI made the Transfers, 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 primary assets consisted of worthless investments in the Petters *ponzi* scheme.

46. At the time MGI made the Transfers, MGI intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due. Such debts included (a) the negligence and other tort claims the Palm Beach Funds held against MGI; (b) the negligence and other tort claims other defrauded investors held against MGI; (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and "vigs" that MGI received for its PCI investments; and (d) MGI's worthless investments in the Petters *ponzi* scheme.

47. This claim is brought timely and within six years of the public disclosure, and discovery by the Palm Beach Funds, of the Petters *ponzi* scheme.

**Count 2 – Fraudulent Transfer Pursuant to
11 U.S.C. § 541 and Minn. Stat. §§ 513.45 and 513.48**

48. The Plaintiff reasserts the allegations set forth in paragraphs 1 through 41 as if fully set forth herein.

49. Pursuant to *Minn. Stat.* § 513.41, the Palm Beach Funds are creditors of MGI (and were creditors at the time of each of the Transfers) by virtue of the funds’ negligence and other tort claims against MGI.

50. MGI did not receive reasonably equivalent value in exchange for the Transfers made to or for the benefit of the Defendant in the Fraudulent Transfer Amount.

51. At the time MGI made the Transfers, MGI was insolvent or became insolvent as a result of the Transfers based on one or more of the following reasons: (a) the negligence and other tort claims the Palm Beach Funds held against MGI; (b) the negligence and other tort claims other defrauded investors held against MGI; (c) the unjust enrichment claims that PCI or other affiliated entities held against MGI for fictitious profits and “vigs” that MGI received for its PCI investments; and (d) MGI’s worthless investments in the Petters *ponzi* scheme.

52. This claim is brought timely and within six years of the public disclosure, and discovery by the Palm Beach Funds, of the Petters *ponzi* scheme.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

- (a) With respect to all Counts, enter judgment in favor of the Liquidating Trustee, on behalf of the Liquidating Trusts, and against the Defendant avoiding and recovering the Fraudulent Transfer Amount, or the value of the Fraudulent Transfer Amount, received by the Defendant along with all other transfers, or the value of all other transfers, made to the Defendant or for the Defendant's benefit that are avoidable under all Counts and that are later discovered, and all other relief provided for under *Minn. Stat.* § 513.48;³
- (b) With respect to all Counts, award the 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.

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³ As to Count 2, to the extent that any of the Transfers were made before June 22, 2004, any judgment relating thereto is sought in favor of Barry E. Mukamal, solely in his capacity solely as Liquidating Trustee of the Palm Beach Finance Partners Liquidating Trust.

Schedule 1

Transaction Date	Check No	Payee	Deposit Amount (Contribution)	Disbursement Amount (Withdrawal)
09/28/2000		Vlahos, Dean	2,000,000.00	
10/01/2000	13012	Vlahos, Dean		4,416.00
10/17/2000		Vlahos, Dean	2,000,000.00	
10/24/2000		Vlahos, Dean	1,000,000.00	
11/01/2000	13180	Vlahos, Dean		70,877.00
11/13/2000		Vlahos, Dean	4,000,000.00	
11/15/2000	13250	Vlahos, Dean		23,300.00
12/01/2000	13350	Vlahos, Dean		92,430.00
12/06/2000		Vlahos, Dean	1,000,000.00	
12/11/2000	13409	Vlahos, Dean		1,000,000.00
12/11/2000	13410	Vlahos, Dean		25,000.00
12/15/2000	13425	Vlahos, Dean		23,300.00
01/01/2001	13575	Vlahos, Dean		92,430.00
01/12/2001	13624	Vlahos, Dean		400,000.00
01/15/2001	13633	Vlahos, Dean		29,967.00
01/17/2001		Vlahos, Dean	1,800,000.00	
01/24/2001	13702	Vlahos, Dean		
01/24/2001	13704	Vlahos, Dean		
02/01/2001	13735	Vlahos, Dean		
02/08/2001	12009	Vlahos, Dean		92,430.00
02/09/2001	12031	Vlahos, Dean		600.00
02/15/2001	12059	Vlahos, Dean		123,300.00
03/01/2001	12135	Vlahos, Dean		86,215.00
03/15/2001	12189	Vlahos, Dean		500,000.00
03/16/2001	12199	Vlahos, Dean		1,333.00
04/01/2001	12269	Vlahos, Dean		225,000.00
04/09/2001	12294	Vlahos, Dean		2,500,000.00
04/11/2001	12302	Vlahos, Dean		4,000.00
05/01/2001	12386	Vlahos, Dean		133,334.00
06/01/2001	12539	Vlahos, Dean		140,000.00
07/01/2001	12656	Vlahos, Dean		110,000.00
08/01/2001	12792	Vlahos, Dean		121,667.00
09/01/2001	12917	Vlahos, Dean		121,667.00
09/25/2001	13017	Vlahos, Dean		5,000.00
09/25/2001	13020	Vlahos, Dean		17,328.00
09/25/2001	13020	Vlahos, Dean		1,000,000.00
09/28/2001	13038	Vlahos, Dean		3,500,000.00
09/28/2001	13039	Vlahos, Dean		63,000.00
09/28/2001	13040	Vlahos, Dean		2,500,000.00
09/28/2001	13041	Vlahos, Dean		45,000.00
12/31/2001		Vlahos, Dean		800,000.00
		Vlahos, Dean Total	\$ 11,800,000.00	\$ 13,851,594.00
		Net Winner / (Loser)	\$ 2,051,594.00	