

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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

Debtors.

\_\_\_\_\_  
BARRY E. MUKAMAL, IN HIS  
CAPACITY AS LIQUIDATING TRUSTEE  
OF THE PALM BEACH FINANCE  
PARTNERS LIQUIDATING TRUST AND  
PALM BEACH FINANCE II  
LIQUIDATING TRUST;

ADV. CASE NO.

Plaintiff,

v.

BMO HARRIS BANK N.A. AS SUCCESSOR  
BY MERGER TO M&I MARSHALL & ILSLEY  
BANK AND CHRISTOPHER FLYNN;

Defendants.  
\_\_\_\_\_

**COMPLAINT TO AVOID TRANSFERS AND FOR TORT DAMAGES**

Barry E. Mukamal, in his capacity as liquidating trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “*Palm Beach Liquidating Trusts*”), sues BMO Harris Bank N.A. as Successor by Merger to M&I Marshall & Ilsley Bank (“*M&I*”) and Christopher Flynn (“*Flynn*”; and together with M&I, the “*Defendants*”).

1. The Complaint itself is the subject matter of a pending motion to file under seal.
2. The Complaint contains the following counts:

**Count 1 – Fraudulent Transfer Pursuant to 11 U.S.C. § 541 and  
Fla. Stat. 726.105 or Other Applicable Law**  
(M&I)

**Count 2 – Fraudulent Transfer Pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550**  
(M&I)

**Count 3 – 11 U.S.C. § 544, Fla. Stat. §§ 726.105(1)(b) and 726.108 or other applicable law**  
(M&I)

**Count 4 – 11 U.S.C. § 544 and Fla. Stat. §§ 726.106(1) and 726.108 or other applicable law**  
(M&I)

**Count 5 - Aiding and Abetting Fraud**  
(M&I and Flynn)

**Count 6 – Fraudulent Inducement**  
(M&I and Flynn)

**Count 7 – Fraudulent Misrepresentation**  
(M&I and Flynn)

**Count 8 - Civil Conspiracy to Commit Fraud**  
(M&I and Flynn)

**Count 9 – Negligent Misrepresentation**  
(M&I and Flynn)

**Count 10 – Gross Negligence**  
(M&I)

**Count 11 – Breach of Fiduciary Duty**  
(M&I)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Count 12 – Unjust Enrichment**  
**(M&I)**

Dated: November 28, 2011.

s/ Michael S. Budwick  
Michael S. Budwick, Esquire  
Florida Bar No. 938777  
[mbudwick@melandrussin.com](mailto:mbudwick@melandrussin.com)  
MELAND RUSSIN & BUDWICK, P.A.  
3000 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Telecopy: (305) 358-1221

Attorneys for Plaintiff