

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PALM BEACH FINANCE
PARTNERS, L.P. and PALM BEACH
FINANCE II, L.P.,

Plaintiffs,

v.

PALM BEACH OFFSHORE, LTD,
PALM BEACH OFFSHORE II, LTD,
and GEOFFREY VARGA,

Defendants.

CIVIL NO. 08-6138 GNE/SKN

COMPLAINT FOR
DECLARATORY JUDGMENT
AND DAMAGES

Plaintiffs Palm Beach Finance Partners, L.P. ("PBFP") and Palm Beach Finance II, L.P. ("PBF II") ("PBF II" and "PBFP" hereinafter referred to as the "Funds"), for their Complaint against Defendants Palm Beach Offshore, Ltd ("Offshore I"), and Palm Beach Offshore II, Ltd, ("Offshore II") (Offshore I and Offshore II hereinafter referred to as the "Offshore Funds") and Geoffrey Varga ("Varga"), state and allege as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 in that this is an action for a declaratory judgment arising from a dispute between citizens of different states.

2. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

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3. Venue is proper in this district pursuant to 28 U.S.C. 1391.

Parties

4. PBFP is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at Palm Beach Gardens, Florida.

5. PBF II is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at Palm Beach Gardens, Florida.

6. Offshore I is a company organized under the laws of the Cayman Islands, with its principal place of business located at George Town, Grand Cayman, Cayman Islands.

7. Offshore II is a company organized under the laws of the Cayman Islands, with its principal place of business located at George Town, Grand Cayman, Cayman Islands.

8. Upon information and belief, Varga is a resident of the Cayman Islands and was appointed by the Grand Court of The Cayman Islands as liquidator for the Offshore Funds..

Facts

9. PBFP invested approximately \$200 million of funds contributed by its limited partners in the purchase of secured, short-term promissory notes issued by Palm Beach Finance Holdings, Inc. f/k/a Petters Capital Inc. ("Petters Capital").

10. PBF II invested approximately \$850 million of funds contributed by its limited partners and investors in the offshore funds in the purchase of secured, short-term promissory notes issued by Petters Capital. In the aggregate, the Funds invested over

\$1.0 billion in Petters Capital. The promissory notes held by the Funds are hereinafter referred to as the Petters Notes.

11. Each of the promissory notes issued by Petters Capital contain a provision that states “This Note is being delivered in, and shall be governed by the laws of, the State of Minnesota.”

12. Petters Capital was created as a special purpose vehicle to raise financing for the alleged acquisition of merchandise. Upon information and belief, Thomas Petters, through his various companies, was running a Ponzi scheme in which little or none of the merchandise to be bought and sold ever existed. The US attorney filed an action in this Court to place Thomas Petters and all his entities into receivership. This Court appointed Douglas Kelley as the Receiver for Thomas Petters and all his wholly-owned entities. The Receiver filed voluntary petitions for relief under Chapter 11 of the bankruptcy code. Petters Capital, along with other Petters entities, is now in bankruptcy in the United States Bankruptcy Court for the District of Minnesota, Case No. 08-45257 (“Petters’ Bankruptcy”).

13. Upon information and belief, the Funds are collectively the second largest creditor in the Petters’ Bankruptcy proceedings, as they holders of Petters promissory notes in the aggregate of approximately 1.1 billion dollars.

14. The Offshore Funds provided money to PBF II. Upon information and belief, the Offshore Funds do not own or directly hold any Petters Notes.

15. Following the commencement of the Petters’ Bankruptcy, the general partner of the Funds, Palm Beach Capital Management, L.P. (“PBCM”), and a majority of the

limited partners of the Funds, amended the Partnership Agreements for the Funds to allow for the establishment of a steering committee to conduct the day-to-day business of the Funds. This steering committee was delegated authority to, among other things, pursue claims of the Funds in the Petters' Bankruptcy matter.

16. The US Trustee asked the Funds to designate a representative to the Official Committee of Unsecured Creditors in the Petters Bankruptcy (the "Creditors' Committee), and the Funds designated Frank Goveia as their representative.

17. Mr. Goveia, through the Funds' attorneys, informed the US Trustee that he was duly authorized to represent the Funds in the Petters' Bankruptcy.

18. On information and belief, Mr. Goveia was going to be placed on the Creditors' Committee that the US Trustee was creating. With claims aggregating over \$1 billion, the Funds are the second largest of all creditors claiming against Petters' companies.

19. Subsequently, upon information and belief, Varga in his capacity as a liquidator for the Offshore Funds, made an unlawful request to the US Trustee asserting that he was authorized to represent the Funds in the Petters' Bankruptcy as a member of the Creditors' Committee.

20. Upon information and belief, the alleged foundation for Varga's unlawful request to the US Trustee is his assertion that the Offshore Funds have a debt claim against PBF II and a presumption that he has taken over PBF II on account of that debt claim. However, no actions have been taken which would allow Varga or the Offshore

Funds to control PBF II, and Varga does not have standing to assert a right to be on the Creditors' Committee.

21. Varga's request to the US Trustee is unlawful because the Offshore Funds, at most, have an alleged debt claim against PBF II, and no direct claim against Petters Capital. Further, any such alleged debt claim is subject to a bona fide dispute, to the effect that the debt claims are equity rights.

22. On November 21, 2008, the US Trustee created the Creditors' Committee in the Petters Bankruptcy and the Funds and Mr. Goveia were not placed on the Creditors' Committee.

23. Upon information and belief, Varga's unlawful assertions and requests to the US Trustee caused Mr. Goveia (or any person acting on behalf of the Funds) not to be placed on the Creditors' Committee. Varga's actions have seriously damaged the rights and interests of the Funds, to the extent they are not now represented on the Creditors' Committee and are unable to participate as a Creditor Committee member in the Petters Bankruptcy. In addition, Varga's actions have caused the Funds to incur unnecessary and burdensome cost and expense.

COUNT I

24. The Funds restate and reallege the allegations set forth in paragraphs 1 through 23 and incorporate them herein.

25. The Funds seek an order and judgment adjudicating and defining the rights and interests of the Defendants as to the Funds including, among other things, declaring

that the Offshore Funds do not hold any debt claim against PBF II, and do not control the actions of PBF II or PBFP.

COUNT II

26. The Funds restate and reallege the allegations set forth in paragraphs 1 through 25 and incorporates them herein.

27. The Defendants improperly and unjustifiably interfered with the rights of the Funds in the Petters' Bankruptcy.

28. The Funds seek damages from the Defendants in excess of \$75,000.00.

29. The Funds will attempt to mitigate their damages by taking appropriate actions in connection with the Petters' Bankruptcy matter to be appointed to the Creditors' Committee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. pray for entry of judgment against Defendants Palm Beach Offshore, Ltd, Palm Beach Offshore II, Ltd and Geoffrey Varga as follows:

- 1) Awarding damages to the Funds in excess of \$75,000.00;
- 2) Declaring that the Defendants have no rights or interests in any respect relating to PBFP;

- 3) Declaring that the Defendants have a disputed debt claim relating to PBF II and therefore have no right to represent PBF II on the Petters' Bankruptcy Creditors' Committee;
- 4) Awarding the Funds their costs and attorneys' fees incurred in this action as permitted by law; and
- 5) Such other and further relief as the Court may deem just and equitable.

Dated: November 25, 2008

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.



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November 25, 2008

VIA MESSENGER

Clerk of Court
U.S. District Court
202 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

RECEIVED
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CLERK
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

Re: *Palm Beach Finance Partners, L.P., et al. v. Palm Beach Offshore, Ltd., et al.*

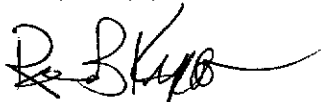
Dear Clerk of Court:

Enclosed for filing with the court, please find the following:

- 1) Civil Cover Sheet;
- 2) Complaint; and
- 3) Filing fee of \$350.

We have also enclosed a copy of the Complaint to be date stamped. In addition, we have enclosed a Summons. Please sign and seal the document and return to our office with the copy of the Complaint via the messenger. Thank you for your attention to this matter.

Very truly yours,



Ronn B. Kreps

RBK/sab
Enclosures