

**IN THE UNITED STATES DISTRICT COURT
FOR THE UNITED STATES VIRGIN ISLANDS**

JEEPERS, INC.,

Plaintiff,

- against -

**D.B. ZWIRN PARTNERS, LLC and
DANIEL ZWIRN,**

Defendants.

Case No.:

COMPLAINT

Plaintiff Jeepers, Inc., for its Complaint against Defendants D.B. Zwirn Partners, LLC and Daniel Zwirn, alleges on personal knowledge with respect to itself and its own acts and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. Jeepers, Inc. ("Jeepers"),¹ a limited partner in the D. B. Zwirn Special Opportunities Fund, L.P. (the "Fund"), brings this action to recover damages resulting from the fraudulent scheme perpetrated by the Fund's General Partner, D.B. Zwirn Partners, LLC ("D.B. Zwirn"). Over the course of nearly five years, Jeepers invested \$80 million in the Fund, all of which D.B. Zwirn eagerly accepted. But when Jeepers sought to withdraw its money from the Fund D.B. Zwirn resorted to fraud and breach of fiduciary duty to prevent this withdrawal.

2. These misrepresentations and breaches of fiduciary duty were all part of Defendants' illicit scheme to conceal a massive accounting fraud at the Fund through which Defendants enriched themselves at the expense of Jeepers and the other limited partners. D.B. Zwirn falsely and repeatedly told Jeepers that there was "nothing wrong" at the Fund when, in

¹ Jeepers, Inc. is the assignee of all rights held by the Financial Trust Company, Inc. ("FTC") with respect to the Fund.

fact, the Fund was misappropriating millions of dollars in investor funds to pay for Mr. Zwirn's lavish lifestyle. Moreover, the Fund and its General Partner blatantly and intentionally misrepresented Jeepers's withdrawal rights, all in furtherance of Defendants' fraudulent scheme.

3. In 2007, D.B. Zwirn announced that the Fund was under investigation by the S.E.C. for improper money transfers and overcharging of clients. A few months later, D.B. Zwirn informed investors that it would dissolve the Fund, a process that could take four years or more. During the dissolution, D.B. Zwirn has refused to honor any requests for withdrawals from the limited partners, including those made by Jeepers. But D.B. Zwirn has continued to charge its management fee of 2% on all assets under management. Thus, D.B. Zwirn continues to enrich itself at Jeepers's expense, all the while depriving Jeepers of the use of its funds. Accordingly, Jeepers brings this action to recover the damages that it has incurred -- and continues to incur -- as a result of D.B. Zwirn's and Mr. Zwirn's unlawful conduct. Jeepers also seeks an award of punitive damages as a result of Defendants' malicious, wanton, and oppressive conduct.

THE PARTIES

4. Plaintiff Jeepers is a U.S. Virgin Islands corporation. Jeepers's principal place of business is 6100 Red Hook Quarter, Suite B-3, St. Thomas, USVI 00802.

5. Defendant D.B. Zwirn is a Delaware limited liability company. D.B. Zwirn's principal place of business is 745 Fifth Avenue, 18th Floor, New York, New York 10151.

6. Upon information and belief, Defendant Daniel Zwirn is a resident of New York and the Managing Principal of D.B. Zwirn

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

8. This Court has jurisdiction over the parties in this action because, among other things, Defendants D.B. Zwirn and Daniel Zwirn have transacted business in this territory,

contracted to supply services in this territory, and have committed tortious acts having an effect in this territory.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because, among other things, a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

FACTUAL ALLEGATIONS

The Initial Investments

10. Over the course of 2002, Jeepers's predecessor in interest, Financial Trust Company, Inc. ("FTC"), invested a total of \$50 million in the Fund. FTC's 2002 investments were made in three separate tranches, as follows:

- April 29, 2002: \$10 million
- September 1, 2002: \$10 million
- December 1, 2002: \$30 million

11. Under the Fund's Amended and Restated Agreement of Limited Partnership, dated May 1, 2003 (the "LP Agreement"), investments in the Fund were subject to a two-year "lock-up" period. As set forth in Sections 9.1 and 9.2 of the LP Agreement, limited partners could withdraw some of their investment (a partial withdrawal) or all of their investment (a complete withdrawal) on the last business day of the calendar quarter ending at least two years after the investment date for each individual tranche and on each second anniversary of that date. To exercise their partial or complete withdrawal rights, limited partners were required to give D.B. Zwirn at least 120 days written notice.

12. On June 1, 2003, FTC made a fourth investment of \$10 million in the Fund.

13. In late 2004, D.B. Zwirn informed investors that the two year lock-up period in the LP Agreement would be changed to a three year lock-up period for all future investments in the Fund.

The January 2005 Investment and The Letter Agreement

14. On January 1, 2005, FTC made its fifth and final investment in the Fund of \$20 million, bringing FTC's total investment to \$80 million. When FTC made its final investment in the Fund, FTC and D.B. Zwirn negotiated a letter agreement, dated January 11, 2005 (the "Letter Agreement"), that FTC believed gave it certain withdrawal rights separate and apart from those set forth in the LP Agreement.

15. The Letter Agreement states, in pertinent part:

In accordance with Section 9.1 of the Amended and Restated Limited Partnership Agreement, dated as of May 1, 2003 (as amended to the date hereof, the "Agreement") of the Fund, the General Partner hereby agrees that Financial Trust Company, Inc. (the "Company") shall be permitted to withdraw its Capital Account as of the last Business Day of the calendar quarter ending at least two years after the Company initially purchases this Interest and as of the second anniversary of that date thereafter upon not less than 120 days' prior written Notice to the General Partner.

16. FTC believed that the Letter Agreement would ensure that the January 1, 2005 investment tranche would be subject to the traditional two year lock-up rather than the newly implemented three year lock-up. FTC further believed that the Letter Agreement would synchronize the two year rolling lock-up periods for all five of its investment tranches, such that FTC could withdraw some or all of its investment on one single date, as opposed to five different dates. In FTC's view, March 31, 2007 would be the first available date on which FTC could withdraw some or all of its investment in the Fund.

Defendants' Scheme To Conceal The Accounting Fraud At The Fund

17. In the summer of 2006, Jeffrey Epstein, the principal of FTC, received a strange phone call from Daniel Zwirn, the Managing Principal of D.B. Zwirn. Mr. Zwirn informed Mr. Epstein that D.B. Zwirn was terminating the Fund's chief financial officer, Perry Gruss, but stated that there was "nothing wrong" at the Fund. When Mr. Epstein asked for a more detailed explanation, Mr. Zwirn indicated that the CFO had made various accounting errors, but that the amounts were "not material." Mr. Zwirn knew full well that these statements were misleading

and false. Dissatisfied with what appeared to be a disingenuous explanation, Mr. Epstein immediately demanded the withdrawal of all of FTC's investments from the Fund.

18. At the same time, Mr. Epstein continued to press for more details. Mr. Epstein contacted his long-time friend and associate Glenn Dubin, a former partner of Daniel Zwirn who introduced Mr. Zwirn to Mr. Epstein, and asked Mr. Dubin to help Mr. Epstein find out the truth about what was going on at the Fund. A few days after the initial phone conversation, Mr. Zwirn called Mr. Epstein a second time with Mr. Dubin on the telephone call. Despite persistent questioning by both Messrs. Epstein and Dubin, Mr. Zwirn refused to provide further details concerning why the Fund's long-time CFO was being terminated and continued to claim that there was nothing wrong at the Fund. Once again, Mr. Epstein informed Mr. Zwirn that he wanted to withdraw all of FTC's money from the Fund.

19. In October 2006, D.B. Zwirn officially announced the resignation of Mr. Gruss as CFO of the Fund. D.B. Zwirn, however, continued to conceal the reasons for Mr. Gruss's departure. In its 2006 Third Quarter Investor Commentary, D.B. Zwirn stated only that: "As of early October, Perry Gruss is no longer with the Firm."

20. On or about the time that Mr. Gruss left the Fund, D.B. Zwirn notified investors that it was conducting an internal investigation into the Fund's accounting practices, including the Fund's calculation of client fees and transfers between D.B. Zwirn's various funds. D.B. Zwirn also informed investors that it had taken the additional step of notifying the S.E.C. of the potential accounting irregularities at the Fund. D.B. Zwirn, however, refused to provide investors with any details about the nature or extent of those irregularities.

21. The public announcement of Mr. Gruss's resignation and the Fund's internal investigation made clear that, contrary to Mr. Zwirn's representation, there in fact was something wrong at the Fund. Messrs. Epstein and Dubin again spoke with Mr. Zwirn and confronted Mr. Zwirn with the lies that Mr. Zwirn told Mr. Epstein. In response, Mr. Zwirn admitted that he lied to Mr. Epstein, but claimed he did so "on advice of counsel." Outraged that the general partner would lie in response to direct questions by a limited partner, Mr. Epstein demanded FTC's

complete withdrawal from the Fund for a third time and asked Mr. Zwirn to have the Fund's outside counsel, Harry Davis, call Mr. Epstein.

22. That same day, Harry Davis, a partner with Schulte Roth and Zabel LLP ("Schulte Roth"), called Mr. Epstein and apologized for the misrepresentations that Mr. Zwirn made to Mr. Epstein. When Mr. Epstein advised Mr. Davis of Mr. Zwirn's claim that he lied to Mr. Epstein on advice of counsel, Mr. Davis acknowledged that Mr. Zwirn did so, explaining that Mr. Zwirn was attempting to stave off a "run on the bank." Pointing out to Mr. Davis that a general partner's lying in response to direct questions from limited partner is a violation of the general partner's fiduciary obligations to the limited partner, Mr. Epstein demanded FTC's complete withdrawal from the Fund for a fourth time.

23. Subsequently, Mr. Zwirn spoke with Mr. Dubin and asked Mr. Dubin to persuade Mr. Epstein to withdraw less than all of FTC's money from the Fund. A complete withdrawal, Mr. Zwirn claimed, would precipitate a "run on the bank" and close down the Fund. At Mr. Zwirn's request, Mr. Dubin asked Mr. Epstein to reduce the amount of FTC's withdrawal demand to the amount of FTC's actual principal investment. Mr. Epstein, not yet aware of the nature or extent of the accounting fraud at the Fund, acceded to Mr. Zwirn's request.

FTC's November 2006 Withdrawal Request

24. In accordance with Mr. Zwirn's request, on November 13, 2006, FTC issued a written notice to D.B. Zwirn seeking to withdraw only FTC's invested principal -- \$80 million -- from the Fund. This written notice was provided well over 120 days in advance of March 31, 2007, which FTC believed was the first available date on which it could withdraw some or all of its investment in the Fund. Indeed, under the terms of the January 5, 2005 Letter Agreement, FTC believed that it had until November 30, 2006, to give notice to D.B. Zwirn of its intent to effectuate a withdrawal on March 31, 2007.

25. Had the Fund timely responded to FTC's withdrawal notice regarding any supposed deficiencies in the notice, FTC would have had seventeen days to correct such

deficiencies and perfect its withdrawal rights under the terms of the Letter Agreement. The Fund did respond, but not by informing FTC of any asserted deficiencies in the withdrawal notice that could have been corrected. Rather, it falsely informed FTC that FTC had absolutely no rights to withdraw any money whatsoever from the Fund on the March 31, 2007 withdrawal date.

26. After FTC submitted its notice of withdrawal, and well before the November 30, 2006 cutoff date, Harry Beller, an FTC representative, spoke with David Lee, D.B. Zwirn's new CFO. During that conversation, Mr. Lee informed Mr. Beller that D.B. Zwirn would not honor the notice of withdrawal because, according to Mr. Lee, FTC had no withdrawal rights at that time. Mr. Lee informed Mr. Beller that withdrawals were permitted only on specific dates in 2008 and 2009 and that no withdrawal of any amount was permissible at any time prior to those dates because FTC had missed the notice deadlines for any earlier withdrawals.

27. As the Fund's outside counsel would later concede, Mr. Lee's statements to Mr. Beller that FTC had no withdrawal rights in November 2006 were blatantly false. In truth, when FTC submitted its notice of withdrawal, it had the right to withdraw all of its money from the Fund, a fact that D.B. Zwirn knowingly concealed from FTC.

28. So it came to pass that, in the face of Mr. Epstein's demand for FTC's complete withdrawal from the Fund, D.B. Zwirn fraudulently concealed the nature and extent of the accounting fraud at the Fund and thereby induced FTC to issue a withdrawal notice for less than the full value of FTC's investment in the Fund. D.B. Zwirn then lied to FTC about its withdrawal rights and thereby prevented FTC's legitimate exercise of its rights to withdraw all of FTC's money from the Fund. All of this was done, in the words of the Fund's legal counsel, to avert a "run on the bank" and to enable D.B. Zwirn to continue accruing fees at FTC's expense.

The Truth Comes Out

29. At the beginning of 2007, FTC transferred its investments in the Fund to FTC's wholly-owned subsidiary, Jeepers.

30. On February 14, 2007, Jeepers's general counsel sent a notice to D.B. Zwirn once again demanding that its entire investment in the Fund, roughly \$144 million in principal and interest, be withdrawn at the earliest possible date. The Fund did not respond.

31. On March 26, 2007, D.B. Zwirn sent a memorandum to the limited partners setting forth some of the details concerning the massive accounting fraud that took place during the tenure of the former CFO. Other important details of the accounting fraud still have not been disclosed. As discussed in that memorandum, the Fund had improperly transferred the limited partners' money between D.B. Zwirn's offshore fund and its domestic fund, all with the intent of artificially inflating the Fund's performance and thereby unjustly enriching D.B. Zwirn. And directly contrary to Mr. Zwirn's misrepresentations, the amounts were in fact quite "material." Indeed, the improper fund transfers were *in excess of \$100 million*.

32. The March 26, 2007 memorandum also disclosed that the Fund had surreptitiously and unlawfully charged the Fund's expenses to the limited partners. Again, the amounts were most certainly material, as the limited partners were overcharged at least ***\$12.2 million*** in expenses. In one instance, Mr. Zwirn went so far as to use investor funds to purchase his own individual Gulf Stream G4 private jet, an obvious violation of Mr. Zwirn's fiduciary duties to the Fund's limited partners.

33. The March 26, 2007 memorandum stated that no "current members of senior management were aware of these issues." This was yet another one of Defendants' false and misleading representations.

34. The very next day, on March 27, 2007, Schulte Roth sent a letter responding to Jeepers's November 13, 2006 withdrawal notice. In that letter, Schulte Roth expressly acknowledged that, under the January 5, 2005 Letter Agreement, Jeepers had the right to withdraw *all* of its money upon written notice submitted prior to November 30, 2006. This acknowledgement put the lie to Mr. Lee's statement in November 2006 that FTC (now Jeepers) had no withdrawal rights at that time.

35. Nevertheless, in its letter of March 27, 2007, Schulte Roth stated that Jeepers's November 13, 2006 withdrawal notice was allegedly defective because, according to Schulte Roth, the January 5, 2005 Letter Agreement applied only to complete withdrawals, but not partial withdrawals. Thus, under Schulte Roth's position, the Letter Agreement allowed Jeepers to take out *all* of its money in November 2006, but it did not allow Jeepers to take out *some* of its money. Schulte Roth's March 27 letter went on to state that because FTC limited the amount of the demanded withdrawal, which was done at the specific request of D.B. Zwirn and Daniel Zwirn, FTC's withdrawal notice was invalid and the Fund would not honor any withdrawal pursuant to that notice.

36. The timing and content of Schulte Roth's letter make clear that the misrepresentations of D.B. Zwirn and its representatives were part of an illicit scheme to thwart Jeepers's withdrawal request and, as a result, unjustly enrich D.B. Zwirn. As noted above, Jeepers sent its withdrawal notice on November 13, 2006, a full 17 days before the November 30, 2006 deadline for a withdrawal in the first quarter of 2007. At any time during that 17-day period, Jeepers could have amended its withdrawal notice to cure any supposed deficiencies. Yet, at no time during that 17-day period did D.B. Zwirn or its counsel ever inform Jeepers that it had the right to withdraw all of its money (as Mr. Epstein originally demanded), but not some of its money (as Mr. Zwirn urged FTC to demand). Instead, D.B. Zwirn's CFO specifically informed Jeepers that the November 13, 2006 withdrawal notice was invalid because Jeepers had no withdrawal rights whatsoever at that time. It was not until March 27, 2007, over *four months* after Jeepers submitted its withdrawal notice and well after the November 30, 2006 deadline, that D.B. Zwirn and its counsel first informed Jeepers that, although a full withdrawal of all of Jeepers's money from the Fund would then have been permissible, the withdrawal notice was supposedly invalid because it only sought to withdraw some of Jeepers's money.

The Defendants Artificially Inflate The Value Of The Fund's Holdings

37. Defendants not only misrepresented Jeepers's withdrawal rights, they also misrepresented the net asset value of the Fund.

38. The Fund invests in a variety of assets, many of which are not publicly traded. Where there are no readily available market quotations for the Fund's assets, D.B. Zwirn is required to value such assets based on their fair value. D.B. Zwirn's determination as to the fair value of the Fund's assets must reflect what the Fund would receive for those assets on a current sale.

39. Throughout much of the Fund's existence, D.B. Zwirn failed to determine in good faith the fair value of certain of the Fund's assets, including, but not limited to, Sheridan Square Entertainment, TVT Records, Dorado Beckville, and JHT Holdings Inc. Overvaluing these and other assets had the effect of materially and artificially inflating the Fund's net asset value, which, in turn, had the effect of materially and artificially inflating the management fee charged to Jeepers. The Fund's artificially inflated net asset value was reported in the investor reports and statements of changes in net asset value that were sent to Jeepers each quarter. These reports and statements of changes in net asset value were materially false and misleading in that they misrepresented the truth about the Fund's net asset value and its performance.

40. Had Jeepers known that D.B. Zwirn had repeatedly misrepresented the Fund's net asset value, Jeepers would have sought to withdraw all of its investment from the Fund at the earliest possible date.

The Aftermath

41. On February 13, 2008, Jeepers reiterated its request that its entire investment be withdrawn at the earliest possible opportunity. Reserving all rights and claims, Jeepers also gave notice to withdraw all proceeds in respect of its April 1, 2002 investment in the Fund effective on June 30, 2008.

42. Less than a month after receiving this request, on March 7, 2008, D.B. Zwirn notified the limited partners that it would dissolve the Fund as of March 27, 2008 and commence

the winding-down of the Fund. The March 7, 2008 memorandum was followed by an email on March 10, 2008 informing investors that only those investors who submitted timely withdrawal notices and whose withdrawal rights vested as of December 31, 2007, would be allowed to redeem. All other investors would have to await a pro rata distribution of proceeds from the dissolution, a process that could take upwards of four years. Thus, until the Fund's lengthy dissolution is complete, Jeepers is unable to withdraw any of its money from the Fund.

43. As a result of D.B. Zwirn's and Mr. Zwirn's breach of fiduciary duty, manipulation of and outright fraud against Jeepers, Defendants have unlawfully seized control of over \$144 million that should have been returned to Jeepers long ago. Adding insult to injury, Defendants have collected -- and continue to collect -- a 2% management fee on Jeepers's money.

FIRST CAUSE OF ACTION

Fraud

44. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-43 above.

45. As alleged above, Defendants D.B. Zwirn, Daniel Zwirn, and their representatives intentionally, recklessly and/or negligently made at least the following false representations to Plaintiff, knowing each of them to be false at the time: (i) that there was "nothing wrong" at the Fund and that the accounting errors were "not material;" (ii) that Jeepers had no withdrawal rights of any kind in November 2006; and (iii) that no current members of senior management were aware of the widespread accounting fraud at the Fund.

46. In addition, Defendants D.B. Zwirn, Daniel Zwirn, and their representatives intentionally, recklessly and/or negligently misrepresented the Fund's net asset value and its performance in the investor reports and statements of changes in net asset value that were sent to FTC and Jeepers each quarter.

47. The misrepresentations made to FTC and Jeepers were made with the intent that Jeepers justifiably rely upon them. Jeepers did in fact justifiably rely upon Defendants' misrepresentations and has suffered injury as a direct and proximate result therefrom.

48. The conduct of Defendants toward Plaintiff was malicious, wanton, and oppressive.

49. As a direct and proximate result of Defendants' misrepresentations, Plaintiff has been injured.

SECOND CAUSE OF ACTION

Breach of Fiduciary Duty

50. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-43 above.

51. D.B. Zwirn, as the Fund's General Partner, and Daniel Zwirn as the General Partner's Managing Principal, each owe Jeepers as a limited partner in the Fund certain fiduciary duties. As such, they had, and continue to have, the obligations of candor due care, loyalty and diligence to further the interests of Jeepers. By reason of this fiduciary relationship, Defendants were prohibited from using their positions of trust and authority to benefit themselves at the expense of Jeepers.

52. As described in detail above, Defendants violated these fiduciary duties to Plaintiff Jeepers by, among other things, making false statements in order to conceal the massive accounting fraud perpetrated at the Fund, thereby enabling Defendants to continue enriching themselves at Jeepers's expense.

53. Defendants further violated these fiduciary duties by materially and artificially inflating the Fund's net asset value and its performance, the in order to conceal the massive accounting fraud perpetrated at the Fun, thereby reby materially and artificially inflating the management fee charged to Jeepers.

54. The conduct of Defendants toward Plaintiff was malicious, wanton and oppressive.

55. As a direct and proximate result of Defendants' breaches, Plaintiff has been injured.

THIRD CAUSE OF ACTION

Unjust Enrichment

56. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-43 above.

57. Defendants have been -- and continue to be -- unjustly enriched at Jeepers's expense by refusing to return the money that Jeepers invested in the Fund.

58. It would be inequitable to allow Defendants to retain benefits obtained at Jeepers's expense as a result of Defendants' improper conduct. Jeepers, therefore, is entitled to recover any value or benefits which Defendants realized as a result of their unlawful conduct.

DEMAND FOR JURY TRIAL

Jeepers hereby demands a trial by jury for any and all claims for which trial by jury is available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jeepers respectfully prays for judgment as follows:

- a. On the first, second and third causes of action, a judgment for compensatory damages in an amount to be determined at trial;
- b. On the first and second causes of action, a judgment for punitive damages;
- c. Costs and reasonable attorneys' fees as provided by law;
- d. Such other and further relief as the Court may deem just and proper.

Dated: July 31, 2008

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