

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re PLATINUM-BEECHWOOD
LITIGATION

Case No. 18 Civ. 6658 (JSR)

MARTIN TROTT and CHRISTOPHER
SMITH, as Joint Official Liquidators and
Foreign Representatives of PLATINUM
PARTNERS VALUE ARBITRAGE FUND
L.P. (in OFFICIAL LIQUIDATION), and
PLATINUM PARTNERS VALUE
ARBITRAGE FUND L.P. (in OFFICIAL
LIQUIDATION),

Case No. 18 Civ. 10936 (JSR)

Plaintiffs,

v.

PLATINUM MANAGEMENT (NY) LLC,
et al.,

Defendants.

**DEFENDANT DANIEL SAKS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

Defendant Daniel Saks (“Saks”) respectfully submits this memorandum of law in support of his Motion to Dismiss the First Amended Complaint (Dkt. No. 159) (“FAC”) filed by Plaintiffs Martin Trott and Christopher Smith, in their capacity as Joint Official Liquidators (“Plaintiffs”).

PRELIMINARY STATEMENT

The FAC fails to make even one particularized allegation of Saks’ involvement in the allegedly fraudulent schemes on which this action is based. Nevertheless, the FAC seeks to hold Saks individually liable for alleged fraud by his employer simply by virtue of his employment there. As this collective pleading approach does not satisfy Rule 8 or Rule 9(b), the FAC should be dismissed as to Saks for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

ARGUMENT

Pursuant to the Court’s direction at the scheduling conference convened by the Court on January 23, 2019 (the “January 23 Conference”), and the Order, dated January 24, 2019 (Dkt. No. 158), Saks joins the motion to dismiss filed by Defendant David Bodner (the “Lead Movant”) and adopts the legal arguments advanced therein, as well as the legal arguments advanced by the other movants filing today to dismiss the FAC. Saks reserves his right to move to dismiss on more particularized grounds at a later date, in accordance with the Court’s direction at the January 23 Conference.

Saks agrees with the Lead Movant and other movants that the FAC fails to satisfy the pleading requirements of the Federal Rules of Civil Procedure, and, notwithstanding the fact that Plaintiffs have broad access to Platinum emails and other documents, they have failed to cure the collective pleading approach they adopted in their original Complaint. Saks further agrees with

the Lead Movant and other movants that Plaintiffs do not enjoy a relaxed pleading standard in their role as court-appointed fiduciaries. Moreover, even if they did, they cannot meet even that relaxed standard as to Saks.

The FAC asserts twenty-one causes of action—each of which sounds in fraud and thus must be pled with particularity, *see* Fed. R. Civ. P. 9(b) (pleading must “state with particularity the circumstances constituting fraud or mistake”)—against 96 named defendants and 100 unnamed defendants. The causes of action pled collectively against Saks as one of the alleged “Beechwood Defendants” are aiding and abetting breach of fiduciary duty (Count VII), aiding and abetting fraud (Count VIII), unjust enrichment (Count XIV), civil conspiracy (Count XVI), and civil RICO (Count XVII).¹ As demonstrated by the legal arguments of the Lead Movant and other movants, the FAC’s allegations against Saks, made on the basis of group pleading alone with no specific wrongful conduct attributed to Saks, fail to satisfy the requirements of Rules 8 and 9(b) of the Federal Rules of Civil Procedure and should be dismissed on that basis alone.

Notably, only 13 of the FAC’s 1,012 paragraphs specifically mention Saks. Of those 13 paragraphs, 10 of those paragraphs simply establish that Saks was an employee of a Platinum entity and then was an employee of a Beechwood entity and oversaw investments as part of his employment responsibility (¶¶ 7, 12, 46, 173-75, 336, 374, 383, 974).² The remaining 3

¹ The FAC also asserts numerous additional causes of action against defendants other than Saks and the Beechwood Defendants.

² The alleged timeframe of employment and alleged positions held by Saks with each entity appear to be incorrect, but the pleading is so vague that it is difficult to ascertain the exact timeframe and positions that are alleged.

paragraphs make allegations that are either conclusory or irrelevant to the causes of action asserted against Saks:

- paragraph 176, in the section titled “Parties Relevant to the JOLs’ Claims,” alleges generally that Saks “received and was involved in commenting on . . . third party valuation reports,” including unidentified valuations that Plaintiffs allege were “inflated;”
- paragraph 177, part of the same section, makes the conclusory allegation that Saks was “instrumental to Beechwood’s involvement in the First Scheme and Second Scheme.” The paragraph alleges that Saks “executed” certain documents and concludes without elaboration that Saks “orchestrated” a January 2015 Montsant transaction and was “involved in negotiating” unspecified amendments to “Golden Gate Oil transaction documents;” and
- paragraph 324 lists Saks among the recipients of an email regarding Golden Gate Oil and attaches the underlying email as an exhibit. In that exhibit, Saks is merely copied on the top email of the chain.

None of these vague allegations identifies any wrongdoing by Saks and none identifies any knowledge by Saks of alleged wrongdoing by others. The allegations regarding Saks fail to refer to even one instance of specific wrongful conduct or specific knowledge of wrongful conduct by others. The allegation that Saks oversaw investments does not identify any action or knowledge by Saks of wrongful conduct. The allegation that Saks signed a transaction document in his capacity as an employee does not identify what actions or knowledge, if any, Saks did or had in connection with that transaction. The allegation that Saks was copied on an email that discussed an alleged value of an investment at a certain moment in time provides no information connecting Saks to any ongoing knowledge or responsibility regarding that transaction, let alone any knowledge or responsibility regarding anything allegedly wrongful about that transaction. Plaintiffs offer at most a general accusation that Saks was "instrumental" to the various schemes described in the Complaint; Plaintiffs do not allege with any particularity what his supposed roles in the schemes were.

In sum, none of the allegations advanced in the FAC provides any notice as to Saks' role in the putative schemes or the acts allegedly performed in furtherance of those schemes. As shown by the legal arguments advanced by the Lead Movant and other movants, the failure to specifically identify any conduct or knowledge by a particular defendant allegedly implicated in a supposed fraud, including a breach of fiduciary duty based on fraud, is fatal to each claim alleged against Saks.

Saks cannot be expected to defend against a Complaint where he is not on notice of the facts giving rise to his alleged liability. For the reasons advanced above and in the motions to dismiss today filed by the Lead Movant and other movants, Saks respectfully requests that this Court dismiss the counts in the FAC asserted against Saks, on the ground that they fail to state a claim against Saks upon which relief can be granted under Rule 12(b)(6), Rule 8 and Rule 9(b) of the Federal Rules of Civil Procedure.

Dated: February 4, 2019
New York, NY

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