

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION	:	18-cv-06658 (JSR)
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TROTT, et al.,	:	
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Plaintiffs,	:	18-cv-10936 (JSR)
	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC, et al.,	:	
	:	
Defendants.	:	
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BEECHWOOD MOVANTS’ REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS ON GROUP PLEADING GROUNDS

The Beechwood Movants,¹ by and through their undersigned counsel, respectfully submit this reply brief in further support of their motion to dismiss the First Amended Complaint by 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), for failure to state a claim for which relief can be granted.

ARGUMENT

I. The FAC Relies Entirely on Impermissible Group Pleading

As set forth in their opening brief, the claims against the Beechwood Movants should be dismissed because Plaintiffs rely solely on impermissible group pleading. “Although Fed. R. Civ. P. 8 does not demand that a complaint be a model of clarity or exhaustively present the facts

¹ Terms not defined herein have the meaning stated in Movants’ moving brief.

alleged, it requires, at a minimum, that a complaint give each defendant ‘fair notice of what the plaintiff’s claim is and the ground upon which it rests.’” *Atuahene v. City of Hartford*, 10 F. App’x. 33, 34 (2d Cir. 2001) (quoting *Ferro v. Ry. Express Agency, Inc.*, 296 F.2d 847, 851 (2d Cir. 1961)). A complaint fails to give fair notice when it “lump[s] all the defendants together in each claim and provid[es] no factual basis to distinguish their conduct....” *Id.*

Although their FAC runs more than 1,000 paragraphs, “lumping” defendants together is precisely what Plaintiffs have done here.² Plaintiffs have pleaded this case with all the care and discernment of a shotgun. The Beechwood Movants are identified among a 43-member group of “Beechwood Entities.” (FAC ¶ 206.) The sprawling nature of this group, and lack of specific allegations regarding the Beechwood Movants, make clear that Plaintiffs have chosen to sue any party with a Beechwood-linked name. Plaintiffs’ opposition brief only confirms this.

Indeed, Plaintiffs’ opposition brief is, almost impossibly, even more conclusory and vague than the FAC itself. Plaintiffs make virtually no effort to address to any of the deficiencies raised in the Beechwood Movants’ opening brief or to differentiate the Beechwood Movants from any of the 40-odd “Beechwood Defendants” named in the FAC.³ Instead, and almost as if to prove the Beechwood Movants’ point, Plaintiffs respond that “[t]he Moving Beechwood Entity Defendants . . . were Beechwood Entities created by the Platinum Defendants to carry out the fraudulent acts of the First and Second Schemes” and “were involved directly in the transactions comprising the First and Second Scheme.” (Opp. at 14.) Statements such as

² The prohibition on group pleading is set out in Point I of the Memorandum of Law in Support of David Bodner’s Motion to Dismiss (Doc. No. 183), which the Beechwood Movants incorporate herein as to statements of law.

³ Indeed, by failing to respond to *any* of the Beechwood Movants’ arguments concerning Beechwood Capital, Plaintiffs appear to concede that its allegations as to that entity fall short of the requirements of either Rule 8 or Rule 9(b) and cannot survive a motion to dismiss.

these are mere conclusion, not fact, and are wholly insufficient to give the Beechwood Movants “fair notice of what the plaintiff’s claim is and the ground upon which it rests.” *Atuahene*, 10 Fed. Appx. at 34.

Plaintiffs’ conclusory assertion that the “Beechwood Entities were created as the alter ego of Platinum Management” is also illustrative of the problem with Plaintiffs’ group pleading. (Opp. at 14.) Plaintiffs broadly contend that, as between the Beechwood Entities and Platinum, there was “common ownership among Nordlicht, Huberfeld, Bodner and Levy, the sharing of common offices, and a revolving door of employees being shared and used for a common fraudulent purpose.” (*Id.* at 14-15.) But the FAC contains no allegations concerning the ownership of Beechwood Capital Group, BBLN-PEDCO, or BHLN-PEDCO; and it contains no allegations concerning the operations of *any* of the Beechwood Movants.

Plaintiffs’ other attempts to marshal facts to support their claims against the Beechwood Movants fall equally flat. With respect to BBLN-PEDCO Corp. and BHLN-PEDCO Corp., Plaintiffs assert that the entities were “involved directly [with] the PEDEVCO transactions.” (Opp. at 14.) But that conclusory allegation is not included in the FAC, and even if it had been, there is nothing about it that is actionable. With respect to B Asset Manager II (“BAM II”), Plaintiffs maintain that “BAM was the investment advisor that carried out all investment activity for the Beechwood Entities.” (*Id.*) But B Asset Manager (“BAM”) and BAM II are different entities, and Plaintiffs again make no attempt to link BAM II to *any* investment activity related to Platinum—let alone any purported efforts to falsely inflate the net value ascribed to PPVA’s assets or to prioritize the interests of the Beechwood Entities over the interests of PPVA. Accordingly, Plaintiffs’ claims against the Beechwood Movants must be dismissed.

II. Plaintiffs Are Not Entitled to a Relaxed Pleading Standard

Plaintiffs ask this Court to excuse their pleading deficiencies because “this matter is in its infancy” and they have “only recently gained access to PPVA’s documents.” (Opp. at 34, 36-37.) Both of those claims are specious. The funds were placed into liquidation 2½ years ago. Since then, Plaintiffs have had ample opportunity to investigate the events that led to Platinum’s failure. According to Plaintiffs, during the course of those investigations, they retrieved more than 13 million potentially-relevant documents from Platinum’s email servers, (ECF No. 21 at ¶¶ 11, 13), and they appear to have had access to those documents for the better part of a year.

In sum, Plaintiffs have had access to far more discovery than a typical plaintiff would ever have, even after years of litigation. Despite this access, the only allegations Plaintiffs have mustered against the Beechwood Movants are ones that are either wholly conclusory or completely disconnected from the alleged misconduct underlying the FAC. In view of that, this Court should dismiss the FAC as to the Beechwood Movants, and it should do so with prejudice.

CONCLUSION

For all the foregoing reasons, Beechwood Movants respectfully request that this Court dismiss the FAC as to Beechwood Capital Group, BAM II, BBLN-PEDCO Corp., and BHLN-PEDCO Corp. with prejudice.

Dated: February 15, 2019
Kew Gardens, New York

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