

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION	:	18-cv-6658 (JSR)
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MELANIE L. CYGANOWSKI, as Equity Receiver for PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, <i>et al.</i> ,	:	18-cv-12018 (JSR)
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BEECHWOOD RE LTD., <i>et al.</i> ,	:	
	:	
Defendants.	:	

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	:	
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA,	:	
	:	
Third-Party Plaintiff,	:	
	:	
v.	:	
	:	
PB INVESTMENT HOLDINGS LTD., <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION BY
THIRD-PARTY DEFENDANTS BEECHWOOD TRUST NOS. 7-14,
MONSEY EQUITIES, LLC, AND BEECHWOOD RE INVESTMENTS,
LLC SERIES C TO DISMISS THIRD-PARTY COMPLAINT**

Third-party defendants Beechwood Trust Nos. 7-14, Monsey Equities, LLC, and Beechwood Re Investments, LLC Series C (the “Moving Defendants”) respectfully move to dismiss the Third-Party Complaint (ECF No. 195)¹ (the “TPC”) of third-party plaintiff Senior Health Insurance Company of Pennsylvania (“SHIP”) pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

SHIP asserts claims against the Moving Defendants for aiding and abetting fraud (Count Three), aiding and abetting breach of fiduciary duty (Count Four), civil conspiracy (Count Five), and unjust enrichment (Count Seven). All of SHIP’s claims are group pleaded, conclusory, and lacking the particularity required by Federal Rule of Civil Procedure 9(b). The TPC should be dismissed as to the Moving Defendants.

The overall thrust of SHIP’s allegations against the Movant Defendants is that they were instrumentalities or alter egos of David Bodner. These allegations are entirely conclusory and supported only by SHIP’s claim that Bodner’s children (who have not been accused of any wrongdoing) are the named beneficiaries of Beechwood Trust Nos. 7-14 and Bodner’s wife (who has not been accused of any wrongdoing) owns and controls Monsey Equities, LLC, which in turn owns and controls Beechwood Re Investments, LLC Series C. (TPC ¶ 24). There is not a single particularized allegation, as required by Rule 9(b), even suggesting that the Movant Defendants aided and abetted, conspired, or were unjustly enriched. There is not a single distribution to any Moving Defendant alleged in the TPC that is connected even generally to any wrongdoing by Bodner, or by anyone allegedly assisted by Bodner.

SHIP also relies on impermissible group pleading. Throughout the TPC, SHIP lumps each Moving Defendant into a group with other entities: Beechwood Trust Nos. 7-14 are

¹ ECF citations refer to the *Cyganowski* docket, 18-cv-12018 (JSR). Capitalized terms not defined herein shall have the meanings ascribed to them in the TPC.

part of the “Beechwood Owner Trusts” group (TPC ¶ 28 n. 15); Beechwood Re Investments, LLC Series C is one of the “BRILLC Series Entities” (TPC ¶ 30); and Monsey Equities, LLC is one of the “BRILLC Series Members” (TPC ¶ 31). There is no written statement attributed to the Moving Defendants that could even conceivably justify application of the group pleading doctrine. See *In re Alstom SA*, 406 F. Supp. 2d 433, 450 (S.D.N.Y. 2005).

In its charging counts, SHIP further obscures each Moving Defendant’s ability to take “fair notice of what the plaintiff’s claim is and the ground upon which it rests,” *Atahuene v. City of Hartford*, 10 F. App’x 33, 34 (2d Cir. 2001), by lumping together the Beechwood Owner Trusts, the BRILLC Series Entities, and the BRILLC Series Members (collectively, the “Entity Groups”). The TPC alleges that the Entity Groups collectively: aided and abetted fraud and breaches of fiduciary duty because they were “alter egos of the Co-Conspirators, originally formed for the purpose of concealing Beechwood’s true ownership structure” and “entered into [August 2016] transactions with knowledge and in furtherance of the fraudulent Platinum-Beechwood Scheme” (TPC ¶¶ 436, 442); “knowingly and willingly participated in the fraudulent conspiracy by way of their involvement in the August 2016 transactions” (TPC ¶ 450); and were unjustly enriched to the extent they “obtained the proceeds of any Performance Fees, dividends, or distributions” (TPC ¶ 462). The TPC does not explain in non-conclusory terms what any Moving Defendant specifically did to incur liability, nor does it distinguish among the members of the Entity Groups in any way. For this reason, this Court dismissed Beechwood Trust Nos. 7-14 from the *Trott* case. *In re Platinum-Beechwood Litig.*, Nos. 18-cv-6658 (JSR), 18-cv-10936 (JSR), 2019 U.S. Dist. LEXIS 62745, at *46-47, *49 (S.D.N.Y. April 11, 2019). The Court should dismiss the Moving Defendants here for the same reason.

For these reasons and for the reasons set forth in the Memorandum of Law filed by Bodner, the TPC fails to state a claim against the Moving Defendants for which relief can be granted.

Dated: June 14, 2019
New York, New York

Respectfully submitted,

CURTIS, MALLET-PREVOST,
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