

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

Master Docket No. 1:18-cv-06658-JSR

MELANIE L. CYGANOWSKI, as Equity
Receiver for PLATINUM PARTNERS
CREDIT OPPORTUNITIES MASTER
FUND LP, PLATINUM PARTNERS
CREDIT OPPORTUNITIES FUND (TE)
LLC, PLATINUM PARTNERS CREDIT
OPPORTUNITIES FUND LLC,
PLATINUM PARTNERS CREDIT
OPPORTUNITIES FUND
INTERNATIONAL LTD., PLATINUM
PARTNERS CREDIT OPPORTUNITIES
FUND INTERNATIONAL (A) LTD., and
PLATINUM PARTNERS CREDIT
OPPORTUNITIES FUND (BL) LLC,
Plaintiffs,

18-cv-12018-JSR

v.

BEECHWOOD RE LTD., *et al.*,
Defendants.

**THIRD-PARTY DEFENDANT MURRAY HUBERFELD'S
REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HIS
MOTION TO DISMISS THE THIRD-PARTY COMPLAINT OF
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA**

Third-Party Defendant Murray Huberfeld (“Huberfeld”) respectfully submits this reply memorandum of law in further support of his motion to dismiss the third-party complaint (“TPC”) of Senior Health Insurance Company of Pennsylvania (“SHIP”) pursuant to Federal Rules of Civil Procedure Rule 12(b)(6) for failure to state a claim upon which relief may be granted. Huberfeld, both individually and by joinder with the motion of Third-Party Defendant David Bodner, has moved to dismiss all of SHIP’s third-party claims against him.

The Opposition¹ confirms that SHIP's aiding-and-abetting fraud and breach of fiduciary duty claims against Huberfeld (Counts 1 and 2) are legally deficient because they do not sufficiently allege the element of substantial assistance. Critically, apart from conclusory allegations, the Opposition points only to allegations that Huberfeld is a "founder of Platinum Management," was supposedly "responsible for the solicitation of initial funds that seeded Beechwood," "maintained an office, phone line, and computer at Beechwood's offices and was provided a full-time secretary," and [REDACTED] [REDACTED] (See Opp. at 6-7.) These allegations do not come close to satisfying SHIP's burden to sufficiently allege with particularity the 'who, what, when, and how' necessary to support SHIP's claims that Huberfeld substantially assisted Beechwood's supposed scheme to misappropriate SHIP's assets or to overinflate the value of SHIP's investments; or otherwise substantially assisted Beechwood's conduct underlying SHIP's predicate fraud and breach-of-fiduciary claims. See *Lee v. City of New York*, No. 04 Civ. 2740(RCC)(KNF), 2005 U.S. Dist. LEXIS 42238, at *7 (S.D.N.Y. Sept. 22, 2005). SHIP's remaining allegations directed to Huberfeld are conclusory – namely, the baseless averment that Huberfeld "beneficially owned and control several corporate entities and trusts that . . . allow[ed] him to exert control over Beechwood and further the Platinum-Beechwood Scheme." (See Opp. 6-8.) As such allegations are devoid of any particularized factual underpinning, these allegations should be disregarded. See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) ("the allegations are conclusory and not entitled to be assumed true").

¹ References to the "Opposition" or "Opp." are to the Omnibus Memorandum of Law in Opposition to Motions to Dismiss Crossclaims and Third-Party Complaint of Senior Health Insurance Company of Pennsylvania (Doc. No. 522.)

In sum, SHIP does not – because it cannot – point to any allegations in the TPC pleading affirmative acts (or other conduct that can, as a matter of law, amount to substantial assistance) in which Huberfeld engaged, let alone any that causally connects him to the sprawling scheme purportedly carried out by any of the “Co-Conspirators,” “Beechwood Insiders,” “Platinum Insiders,” or “Nordlicht Group.” (Opp. at 40-45.) The facts alleged are simply not sufficient to sustain the aiding-and-abetting claims against Huberfeld.²

As for SHIP’s civil conspiracy claim (Count 5), for brevity and to avoid repetition, Huberfeld respectfully joins in the reply memorandum of law of Bodner and other similarly situated moving defendants demonstrating that it is not available under the law, and cannot be sustained for the same factual deficiencies fatal to the aiding-and-abetting claims. (*See* Opp. at 48-49.)

Finally, SHIP’s unjust enrichment claim (Count 7) fails because the relationship between Huberfeld and SHIP is too attenuated as a matter of law. *See Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011); *Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, No. 15-CV-3538 (VSB), 2018 U.S. Dist. LEXIS 215143, at *74 (S.D.N.Y. Dec. 21, 2018) (dismissing unjust enrichment claim: “[a]lthough the nature of the relationship required to establish an unjust enrichment claim has not been clearly defined, the relationship is ‘too attenuated’ if the parties [are] not connected in a manner that ‘could have caused reliance or inducement,’ or if they ‘simply had no dealings with each other.’”) (citations omitted). In the Opposition, SHIP argues only that the “TPC references Huberfeld by name over 100 times” and

² Contrary to SHIP’s gloating, Huberfeld did not, and does not, concede that he had “actual knowledge of the fraud and breaches of fiduciary duty” or that SHIP sufficiently alleged as much. (*See* Opp. at 35.) Rather, Huberfeld has merely elected to move to dismiss the TPC on only his strongest legal bases, here SHIP’s glaring and obvious failure to allege non-conclusory facts with particularity that are sufficient to demonstrate Huberfeld’s substantial assistance to any predicate fraud or breach of fiduciary duty.

refers to its conclusory allegations that Huberfeld “own[ed], control[ed], and fund[ed]” Beechwood Re. (Opp. at 53.) These allegations alone do not satisfy SHIP’s requirement that it plead with particularity that Huberfeld had a relationship with SHIP at all, let alone one that is not so attenuated as to support a claim for unjust enrichment. Similarly, to the extent that SHIP’s claims could alternatively be construed to assert alter-ego liability against Huberfeld based on his alleged control of any business entities that owned Beechwood Re, the TPC is devoid of any particularized facts to support such a drastic veil piercing theory. *See, e.g., American Fuel Corp. v. Utah Energy Dev. Co.*, 122 F.3d 130, 134 (2d Cir. 1997). SHIP does not meaningfully dispute these pleading flaws in its Opposition. (*See* Opp. at 53.)

In any event, these allegations are also conclusory and without any factual underpinning, hence they do not comply with Rule 9(b)’s requirement that the fraud underlying the unjust enrichment claim be pleaded with particularity. *See, e.g., Welch v. TD Ameritrade Holding Corp.*, No. 07 Civ. 6904 (RJS), 2009 U.S. Dist. LEXIS 65584, at *32-33 (S.D.N.Y. July 27, 2009) (holding that Rule 9(b) applied to unjust enrichment claim premised on alleged fraudulent actions). For the same reasons, SHIP’s unjust enrichment also fails because the TPC does not allege that SHIP bestowed any benefit upon Huberfeld, or that Huberfeld actually received any enrichment at all. *See M+J Savitt, Inc. v. Savitt*, No. 08 Civ. 8535 (DLC), 2009 U.S. Dist. LEXIS 21321, at *30 (S.D.N.Y. Mar. 17, 2009).

CONCLUSION

For all of the reasons set forth herein and in Huberfeld's opening brief, as well as in the memoranda and reply memoranda of law filed by Bodner and other similarly situated moving third-party defendants, the TPC should be dismissed with prejudice against Huberfeld.

Date: July 12, 2019

Respectfully submitted,

/s/ Jeffrey C. Daniels

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