

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
IN RE PLATINUM-BEECHWOOD LITIGATION	:	18-cv-06658 (JSR)
	:	
-----	X	
TROTT, et al.,	:	
	:	
Plaintiffs,	:	18-cv-10936 (JSR)
	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC, et al.,	:	
	:	
Defendants.	:	
-----	X	

**DECLARATION OF IRA S. LIPSIOUS IN SUPPORT OF THE BEECHWOOD PARTIES’  
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

I, Ira S. Lipsius, hereby declare and state as follows:

1. I am a partner with the law firm Lipsius Benhaim Law LLP, counsel for the “Beechwood Parties,” which are Beechwood Capital Group, LLC, B Asset Manager LP, B Asset Manager II LP, Beechwood Re Investments, LLC, Beechwood Re Holdings, Inc., Beechwood Re (in Official Liquidation) s/h/a Beechwood Re Ltd., Beechwood Bermuda International Ltd., BAM Administrative Services, LLC, Illumin Capital Management LP, BBLN-PEDCO Corp., and BHLN-PEDCO Corp. (collectively, the “Beechwood Entities”), and officers and former officers of those entities, Mark Feuer, Scott Taylor, and Dhruv Narain (collectively, the “Beechwood Individuals”).

2. I submit this declaration, together with the attached exhibits, in support of the Beechwood Parties’ motion to dismiss the Second 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).

3. Attached hereto as Exhibit 1 is a true and correct copy of the Notice of Entry (including its corresponding exhibits) of the decision of Justice Charles Edward Ramos of the Supreme Court of the State of New York, County of New York on the defendants' motion to dismiss in the matter *DMRJ Group LLC v. B Asset Manager and BAM Administrative Services, LLC*, No. 655181/2017 (Sup. Ct. N.Y. Cty. decided Dec. 11, 2018).

4. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the transcript from the hearing held before this Court on March 7, 2019 in the matter *Trott et al. v. Platinum Management (NY) LLC et al.*, No. 18-cv-10936 (S.D.N.Y.).

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2019, in Kew Gardens, New York.

/s/ Ira S. Lipsius  
IRA S. LIPSIUS

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DMRJ GROUP LLC,

Plaintiff,

v.

B ASSET MANAGER, LP, and BAM  
ADMINISTRATIVE SERVICES, LLC,

Defendants.

Index No. 655181/2017

Justice Charles Edward Ramos  
IAS Part 53

Motion Sequence No. 001

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE** that the within is a true copy of an Order of the Honorable Charles Edward Ramos, J.S.C., dated December 11, 2018, and duly entered in the Office of the Clerk for New York County on December 12, 2018, in which the Court granted that portion of Defendants' motion to dismiss the Second and Third Causes of Action in Plaintiff's Complaint, and denied that portion of Defendants' motion to dismiss the First Cause of Action in Plaintiff's Complaint, together with a copy of the transcript of proceedings of July 17, 2018 containing the Court's Decision.

Dated: New York, New York  
December 13, 2018

PROSKAUER ROSE LLP

By



Mark D. Harris  
Steven H. Holinstat  
11 Times Square  
New York, New York 10036  
(212) 969-3000  
*Attorneys for Defendants*

TO: Warren E. Gluck, Esq.  
Mitchell J. Geller, Esq.  
HOLLAND & KNIGHT LLP  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
*Attorneys for Plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DMRJ GROUP LLC,

Plaintiff,

v.

B ASSET MANAGER, LP, and BAM  
ADMINISTRATIVE SERVICES, LLC,

Defendants.

Index No. 655181/2017

Justice Charles Edward Ramos  
IAS Part 53

**STIPULATION ON  
DEFENDANTS'  
MOTION TO DISMISS**

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned attorneys for Plaintiff and Defendants, as follows:

1. This stipulation is submitted by the parties in accordance with the Court's August 22, 2018 Decision (NYSCEF Doc. No. 35).
2. Annexed hereto as **Exhibit A** is a true and correct copy of the July 17, 2018 transcript of the oral argument on Defendants' Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment, Motion Sequence No. 1 (the "Motion") in which the Court granted that portion of the Motion seeking the dismissal of the Second and Third Causes of Action in Plaintiff's Complaint, and denied that portion of the Motion seeking the dismissal of the First Cause of Action in Plaintiff's Complaint.
3. Annexed hereto as **Exhibit B** is a true and correct copy of an errata sheet containing proposed corrections to the transcript that have been agreed to by the parties.
4. The Parties respectfully request that the Court "So Order" the transcript, as corrected by the attached errata sheet.

Dated: New York, New York  
September 13 2018

HOLLAND & KNIGHT LLP LLP  
*Attorneys for Plaintiff*

By: *Mitchell J. Geller*  
Warren E. Gluck  
Mitchell J. Geller

31 West 52nd Street  
New York, New York 10019  
Phone: (212) 513-3200  
Warren.Gluck@hkllaw.com  
Mitchell.Geller@hkllaw.com

PROSKAUER ROSE LLP  
*Attorneys for Defendants*

By: *Mark D. Harris*  
Mark D. Harris  
Steven H. Holinstat

Eleven Times Square  
New York, New York 10036-8299  
Phone: (212) 969-3000  
mharris@proskauer.com  
sholinstat@proskauer.com

# Exhibit A

2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NEW YORK: CIVIL TERM : PART 53  
-----X

4 DMRJ GROUP LLC  
5  
6 Plaintiff

7 - against -

8 B ASSET MANAGER LP AND BAM ADMINISTRATIVE SERVICES LLC  
9  
10 Defendants

-----X  
11 Index No. 655181/2017 60 Centre Street  
12 New York, New York  
13 July 17, 2018

14 B E F O R E :

15 HONORABLE CHARLES E. RAMOS,  
16 Justice

17 A P P E A R A N C E S:

18 Attorney for the Plaintiff  
19 HOLLAND & KNIGHT LLP  
20 31 West 52nd Street  
21 New York, NY 10019  
22 By: WARREN E. GLUCK, ESQ.  
23 MITCHELL J. GELLER, ESQ.

24 Attorney for the Defendant  
25 PROSKAUER ROSE LLP  
26 ELEVEN TIMES SQUARE  
New York, NY 10036-8299  
By: STEVEN H. HOLINSTAT, ESQ.  
LINDSEY OLSON COLLINS, ESQ.

DEBRA SMITH,  
OFFICIAL COURT REPORTER

DS



1 Proceedings

2 THE COURT: Good morning, everyone. This is  
3 a motion to dismiss. Defendant, please use the  
4 lecturn.

5 MR. HOLINSTAT: Good morning, Your Honor. My  
6 name is Steve Holinstat from Proskauer Rose.

7 THE COURT: I am sorry, gentlemen?

8 MR. HOLINSTAT: Your Honor, my name is Steve  
9 Holinstat for the defendant B Asset Manager LP and BAM  
10 Administrative Services LLC collective with BAM.

11 We bring this motion to dismiss, Your Honor,  
12 to dismiss the complaint of plaintiff DMJR Group LLC,  
13 or DMJR, which complaint seeks to disavow DMJR's  
14 contractual obligations under a January 2016  
15 cross-collateralization pledge to use a portion of the  
16 55 million that DMRJ received from sale of Implant to  
17 satisfy monies that are due and owing to BAM by a DMRJ  
18 affiliate Golden Gate.

19 Your Honor, DMRJ claims that the January  
20 pledge is void for three reasons under three causes of  
21 action. First, they claim that Mr. Nordlicht who  
22 signed the pledge on DMRJ's behalf lacked authority to  
23 bind DMRJ. Second, they claim the pledge was  
24 superseded by March 2016 guarantee. Third, they claim  
25 that the January cross-collateralization pledge is void  
26 for lack of consideration.

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

Your Honor, the undisputed facts taken from the complaint, the documents referenced in the complaint, and the various public filings demonstrate that each of these grounds are meritless as a matter of law.

The facts of this case are relatively simple and undisputed. DMRJ is a wholly owned subsidiary of Platinum Partners Value Arbitrage Fund, or PPVA, whose sole purpose according to public filings is to sell and own assets for the benefit of PPVA. PPVA, in turn, is an investment fund that invests through various subsidiaries like DMRJ and various companies.

This case involves two PPVA investments relevant to the cross-collateralization pledge. The first is an investment in Golden Gate. PPVA formed Golden Gate as a PPVA affiliate and then had another PPVA subsidiary, Precious Capital, lend Golden Gate 25 million dollars under senior secured promissory notes.

THE COURT: So that's their money?

MR. HOLINSTAT: That's their money. In February 2014, the defendants BAM came in and took out PPVA's position. They bought the 25 million-dollar note from Precious and they became then the note holder under Golden Gate.

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

THE COURT: Just for the 25 million?

MR. HOLINSTAT: Just the 25 million. The second PPVA investment is in Implant itself. Here, PPVA through its wholly owned subsidiary DMRJ lent Implant about 30 million dollars in senior secured notes and provided another line of credit in, approximately, amount of 23 million.

Similar to the Golden Gate scenario in March of 2014, BAM lent 20 million dollars to Implant that was used to partially pay down Implant's obligation to DMRJ.

THE COURT: But that obligation was in-house, wasn't it?

MR. HOLINSTAT: So, DMRJ lent Implant, which is not a PPVA affiliate, 50 million dollars.

THE COURT: I thought they were affiliated.

MR. HOLINSTAT: BAM came in, lent 20 million, which was used to reduce DMRJ's debt. In connection with that transaction, BAM and DMRJ entered into an intercreditor agreement.

THE COURT: To give you priority?

MR. HOLINSTAT: Which gave us priority.

By December 2015, three critical events had occurred. First, Implant had engaged in investment banker to explore sale of Implant to a third party. At

DS

1 Proceedings

2 the same time, by the end of 2015, Implant was  
3 delinquent according to its public filings on the  
4 interest that was due and payable to BAM, on the BAM  
5 note, the BAM debt.

6 As of December 31, 2015 --

7 THE COURT: Was Implant the primary obligor  
8 there?

9 MR. HOLINSTAT: Yes. So, Implant owed about  
10 1.7 million in interest according to its public filings  
11 on the interest allocation and under the BAM notes, BAM  
12 was entitled to declare default and accelerate the  
13 entire 20 million in unpaid principal.

14 THE COURT: Which would have wiped out the  
15 plaintiff's interest?

16 MR. HOLINSTAT: Well, not necessarily. We  
17 think the value of Implant was greater than the  
18 20 million or the 22 million owed to BAM. However, in  
19 their opposition papers, DMRJ acknowledges that had BAM  
20 declared a default in December of 2015, it likely would  
21 have interfered with Implant's pending sale efforts.  
22 It could have, and as they claim, it could have reduced  
23 the sale significantly and it could have wiped out the  
24 sale entirely.

25 So, Your Honor, so, for instance, if the  
26 default -- if Implant were going to get a bid of

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

80 million dollars, the first 22 million would go to BAM, the next 56 million would go to DMRJ.

However, if that sale got reduced from 80 million to, let's say, 30 million, we still get our entire 22 million, their 56 million recovery gets reduced to a little under nine million. So, to avoid a BAM default against Implant, Mark Nordlicht executed the January cross-collateralization pledge in January 2016.

THE COURT: But the commitment on the part of BAM to accommodate the plaintiff is not memorialized in that letter.

MR. HOLINSTAT: That's true, Your Honor, it's not.

THE COURT: It makes it difficult for me to grant your motion just on the papers. This is a 3211 motion, correct?

MR. HOLINSTAT: It is, Your Honor.

Well, Your Honor, there are three causes of action here. The consideration is the third cause of action. There are two others. We do think that it's undisputed that there is consideration. In fact, the only suggestion is the naked assertion that there is not, and I can get into that. There is clearly --

THE COURT: My problem, and it's just a

DS

1 Proceedings

2 technical one, is that you're kind of -- you're getting  
3 motion creep. You are going from 3211 to 3212. You  
4 are really starting to make a motion now for summary  
5 judgment because you're assuming something that's not  
6 in the record and that is there is no allegation in the  
7 complaint that there was a quid pro quo.

8 MR. HOLINSTAT: Your Honor, the publicly  
9 filed documents and the documents in the complaint and  
10 those referenced in them lead to no other conclusion,  
11 but, Your Honor, we certainly believe that there is  
12 consideration, there is no dispute that there isn't,  
13 but there are two other causes of action which clearly  
14 are satisfied on a 3211 --

15 THE COURT: The authority note?

16 MR. HOLINSTAT: The first is Mr. Nordlicht's  
17 authorization to sign.

18 THE COURT: His authorization comes from the  
19 manager, right?

20 MR. HOLINSTAT: Yes.

21 THE COURT: The manager and then they cite to  
22 5.5 which says the manager has limited powers.

23 MR. HOLINSTAT: Let me take you through that.

24 THE COURT: Counselor, don't be bouncing up  
25 and down, okay? You had too much coffee this morning.

26 MR. HOLINSTAT: So, Your Honor, their first

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

argument is Mr. Nordlicht did not report to bind DMRJ.

THE COURT: They tried to anyway.

MR. HOLINSTAT: The agreement itself plainly says that Mr. Nordlicht says I do it on behalf of PPVA and all of its affiliates. The complaint alleges that DMRJ is a wholly owned subsidiary of PPVA and, therefore, by definition, is an affiliate, so that argument should go out the window.

They next say that Mr. Nordlicht didn't have authority. There is a December 31, 2014 authorization form in which he is the first individual listed as DMRJ's chief investment officer with authority to bind DMRJ, so clearly --

THE COURT: But the authority is signed off by the manager whose name I don't recall and there were two resolutions in that brand of authority. One is specific to a number of individuals to execute documents in furtherance of the manager's efforts or purposes.

Then there is a second resolution that is a little bit more general which I think is the one you are relying on but isn't the signer's authority limited by the manager's authority which is limited by 5.5?

MR. HOLINSTAT: But, Your Honor, the manager is PPVA. Mr. Nordlicht is the chief investment officer

DS

1 Proceedings

2 of PPVA.

3 THE COURT: Which exhibit is that?

4 MR. HOLINSTAT: The January pledge or the --

5 THE COURT: No, the authorization.

6 MR. HOLINSTAT: The written authorization,  
7 Your Honor, is Thomas Exhibit 2.

8 THE COURT: Now, start at the beginning.

9 "I, Uri Landesman, consents and ratifies the  
10 following resolutions." So, we have to look now at 5.5  
11 of the operating agreement.

12 MR. HOLINSTAT: That's Exhibit 2 of the  
13 Kennedy affidavit.

14 THE COURT: 5.5 says that notwithstanding the  
15 foregoing, the managers may not make any of the  
16 following decisions without two thirds of the members  
17 voting. H is a biggie: To obligate the company in any  
18 manner for liability in excess of \$10,000. We're  
19 talking here about millions of dollars.

20 MR. HOLINSTAT: That's true, Your Honor, but  
21 if you look at Page 16 --

22 THE COURT: Page 16 of the?

23 MR. HOLINSTAT: Of that document. It's  
24 signed by--

25 THE COURT: Platinum Partners.

26 MR. HOLINSTAT: Mr. Nordlicht as chairman of

DS



1 Proceedings

2 Platinum Management LLC, which is alleged in the DMRJ's  
3 complaint --

4 THE COURT: What you are saying would be kind  
5 of hard to claim that he didn't have authority. I  
6 understand your point and it's a very good one but you  
7 are asking for 3211 determination now.

8 MR. HOLINSTAT: I am, Your Honor, but there  
9 has to be some legitimate basis. First they come and  
10 they say there is no authorization. We provide the  
11 written authorization. They say, well, you need the  
12 manager's consent. Well, the manager is PPVA. Clearly,  
13 PPVA consented. PPVA is Mr. Nordlicht and  
14 Mr. Nordlicht is the cofounder of Platinum Partners,  
15 which is the umbrella organization for all the Platinum  
16 entities.

17 THE COURT: We don't know that because  
18 Platinum is in liquidation, isn't it?

19 MR. HOLINSTAT: It is but at this time it was  
20 not. As alleged in their own pleadings, Mr. Nordlicht  
21 is the chief investment officer of PPVA. He's the chief  
22 investment officer of Platinum Management LLC, which  
23 they allege in their complaint, the general partner, an  
24 investment manager of PPVA, and he is the chief  
25 investment officer of DMRJ.

26 Clearly, when Mr. Nordlicht -- I mean, they

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

don't dispute that he had the authority on behalf of PPVA to execute the January cross-collateralization pledge. He was giving his consent to bind DMRJ, which he certainly had the right under DMRJ's operating agreement and under the authorized signatory form.

THE COURT: I'm not disagreeing with the logic, I think you have a viable defense here, and it may be sustainable on summary judgment but I don't see how I can grant it on 3211.

MR. HOLINSTAT: Your Honor, what's the disputed issue of fact here? If the only person that could give the consent was PPVA, and it's undisputed that PPVA gave that consent when it executed the pledge--

THE COURT: But you have to take the document on its face, which states -- what exhibit was that, the letter we're relying on, the side letter? What exhibit is that?

MR. HOLINSTAT: The side letter itself?

THE COURT: Yes.

MR. HOLINSTAT: So, it is exhibit --

THE COURT: Exhibit 1 to the Kennedy affidavit?

MR. HOLINSTAT: Yes, Exhibit 1 to the Kennedy affidavit.

DS

1 Proceedings

2 THE COURT: He agrees on behalf of Platinum

3 Partners Value Arbitrage Fund to credit opportunity

4 master fund in and each affiliate. Plaintiff, this is

5 the chairman of the board, right, of Platinum partners?

6 MR. HOLINSTAT: Yes.

7 THE COURT: Plaintiff, how can you allege

8 that he doesn't have authority? Is there something

9 that we haven't seen yet that would limit his authority

10 as -- not the operating agreement because the operating

11 agreement, if I'm not mistaken -- let me make sure I am

12 looking at the right one.

13 MR. HOLINSTAT: Your Honor, do you want

14 plaintiff to come up and switch?

15 THE COURT: The operating agreement that you

16 are making reference to, or I am, is the DMRJ Group

17 LLC. He's doing this as the chairman of the board.

18 MR. HOLINSTAT: Yes, Your Honor. He's

19 Platinum.

20 THE COURT: What limits the chairman's

21 authority?

22 MR. GLUCK: May I? Warren Gluck representing

23 the plaintiff DMRJ Group LLC.

24 In answer to the Court's question right away

25 setting aside the consideration point --

26 THE COURT: The air conditioning is turned up

DS

1 Proceedings

2 so high, the fan, I can barely hear you. You have to  
3 speak very loudly.

4 MR. GLUCK: Setting aside the consideration  
5 superseding, the Court has asked a specific question  
6 regarding the limitation on the authority of Mark  
7 Nordlicht to his chief investment officer, or was chief  
8 investment officer, not chairman of any board of PPVA.

9 THE COURT: Not only that, apparently he's  
10 also chairman of the board of a parent company.

11 MR. GLUCK: PPVA is the master company. PPVA  
12 is the Cayman Islands Limited Partnership that, in  
13 turn, was managed by a New York entity called Platinum  
14 Management.

15 Now, the limitation on Mr. Nordlicht derives  
16 not from his status as an officer of PPVA, but from his  
17 status with respect to DMRJ. because the--

18 THE COURT: Why do you say that? He's  
19 signing on behalf of everybody.

20 MR. GLUCK: Yes, and this is --

21 THE COURT: And his authority, the authority  
22 he was granted in the limited liability company  
23 operating agreement does not remove authority he  
24 otherwise would have as chairman of the board.

25 MR. GLUCK: Absolutely right. What we are  
26 suggesting and arguing, and this is our position, is

DS

1 Proceedings

2 that in order for DMRJ to enter this contract, there

3 needed to be, according to the DMRJ article of

4 incorporation, which they have, there needed to be a

5 PPVA resolution. The dispute here --

6 THE COURT: Now, what requires the resolution

7 of Platinum Partners?

8 MR. GLUCK: It's in the operating agreement.

9 I believe it's clause 7.2.

10 THE COURT: We're going back now to the

11 operating agreement of the plaintiff.

12 MR. GLUCK: In the operating agreement for

13 DMRJ -- 5.5, excuse me.

14 THE COURT: Yes.

15 MR. GLUCK: 5.5, DMRJ operating agreement,

16 notwithstanding anything of the foregoing --

17 THE COURT: That deals with the operating

18 managers. He didn't sign as operating manager.

19 MR. GLUCK: Correct. My point here is that

20 the same document -- they're presenting an argument to

21 this Court that the very document pursuant to which

22 Mr. Nordlicht was purporting to bind DMRJ is also the

23 very consent that's required, and what our point is,

24 no, a separate consent is required, there is a

25 circularity here.

26 It cannot be that when Mr. Nordlicht signs a

DS

1 Proceedings

2 document, that it is also a resolution. That is their  
3 argument. Correct me if I am wrong, but they are  
4 saying that this side letter is the very resolution  
5 required by Article 5.5 and that's where we disagree.

6 THE COURT: There is no resolution required  
7 by 5.5.

8 MR. HOLINSTAT: Again, Your Honor, there is  
9 no written consent required and if there is, the reason  
10 that the cross-collateralization pledge provides the  
11 consent for both PPVA and DMRJ is because the agreement  
12 expressly says that. You don't need a second agreement  
13 and there is nothing in the operating agreement that  
14 requires two separate consents.

15 Mr. Nordlicht had the authority on behalf of  
16 PPVA to consent to the pledge. He did so in the pledge  
17 on behalf of PPVA. He also did so in the same document  
18 on behalf of DMRJ by consenting on behalf of all of the  
19 affiliates.

20 THE COURT: Your motion is granted to the  
21 extent of dismissing the authorization defense.

22 MR. HOLINSTAT: Thank you, Your Honor.

23 THE COURT: You still haven't satisfied on  
24 the consideration.

25 MR. HOLINSTAT: If I can, Your Honor, may I  
26 address the superseding? So, the second argument, Your

DS

1 Proceedings

2 Honor, that they have raised, the second cause of  
3 action is that the March guarantee superseded the  
4 January cross-collateralization pledge.

5 The law in New York, Courts consider three  
6 factors to determine whether or not one contract  
7 supersedes the second. The first, and most important,  
8 is there an integration or merger clause? Here, the  
9 defendant or the plaintiff concedes there is no such  
10 merger or integration clause in the --

11 THE COURT: Which exhibit is the March?

12 MR. HOLINSTAT: The March guarantee is  
13 Exhibit 9 of the complaint.

14 THE COURT: 9?

15 MR. HOLINSTAT: Exhibit 9.

16 THE COURT: To the Thomas affidavit?

17 MR. HOLINSTAT: In the Thomas affidavit, it's  
18 Exhibit one, tab 9.

19 THE COURT: It's annexed to the complaint?

20 MR. HOLINSTAT: Yes, it's Exhibit 9 of the  
21 complaint.

22 THE COURT: You didn't tab them.

23 MR. HOLINSTAT: I have a copy here, Your  
24 Honor.

25 THE COURT: That document is not in Kennedy's  
26 affidavit, declaration?

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

MR. HOLINSTAT: I will check, Your Honor. It is. It is Exhibit 6 to Mr. Kennedy's affidavit.

THE COURT: This is March 21st?

MR. HOLINSTAT: Correct.

Plaintiffs concede, Your Honor, there is no integration or merger clause anywhere in the March guarantee, at which point Your Honor stands in stark contrast to the intercreditor agreement between DMRJ and BAM which, in fact, does contain such a clause, section 8.20, which is Thomas Exhibit 5.

Also, Your Honor, nothing in the March guarantee purports to supersede, terminate, or otherwise modify any of DMRJ's obligations under the January pledge. So they failed to satisfy the first factor. The second factor, do the two agreements address the same rights?

THE COURT: Well, what about paragraph 2?

MR. HOLINSTAT: Paragraph 2 of the master guarantee, Your Honor?

THE COURT: Of the master guarantee agreement. Would that also relate to the January 13th side letter?

MR. HOLINSTAT: I don't believe so, Your Honor, but there is -- what is in particular is Paragraph 23.

DS



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

THE COURT: Page?

MR. HOLINSTAT: It is Page 10 of Exhibit 6, which is the March guarantee. Remedy is not exclusive. The remedies conferred upon the creditor parties in this guarantee are intended to be in addition to and not in limitation of any other remedy or remedies available to the creditor parties which include BAM.

Those remedies, Your Honor, are the very remedies under the January cross-collateralization pledge. And why? Because the January pledge allowed BAM to go directly against DMRJ to obtain the proceeds of the Implant sale, the 55 million they received, to satisfy Golden Gate's debt to BAM. PPVA did this. It has, you know, money in one hand, money in the other.

In the March guarantee, there is nothing in there that addresses DMRJ's obligation, it only addresses PPVA's obligation and limits PPVA's obligation capped at 20 million dollars, okay? So, these agreements can exist in tandem.

BAM could have gone after PPVA for 20 and the balance against DMRJ, it could have gone after DMRJ for all of it, it could have done any combination of that. That's what paragraph 23 allows and, in fact, contemplates.

THE COURT: Are these various agreements the

DS

1 Proceedings

2 subject of emails back and forth prior to the execution  
3 of the March 21st master guarantee agreement?

4 MR. HOLINSTAT: Your Honor, discovery hasn't  
5 been taken. However, Mr. Kennedy submitted an  
6 affidavit saying he's spoken to Mr. Nordlicht, he has  
7 spoken to the other Platinum people, he has access to  
8 any and all documents that he wants as PPVA's  
9 liquidator in charge of DMRJ, in charge of PPVA. If  
10 they had a document, they submitted a bunch of things  
11 that were not in the record in Mr. Kennedy's affidavit,  
12 they should have come forward with that.

13 The document on itself, even if there were  
14 emails, it doesn't matter, you have got a clear  
15 document.

16 THE COURT: Usually something like this would  
17 be somewhat confirmed in a writing or an email.

18 MR. HOLINSTAT: Your Honor, it might have but  
19 it might not have but the reality is they've got a  
20 document which on its face and as a matter of law does  
21 not purport in any way, shape or form to supersede the  
22 January guarantee.

23 THE COURT: Let me hear from plaintiff.

24 MR. GLUCK: Thank you, Your Honor.

25 What I would like to do because there's been  
26 quite a bit of colloquy so far is address the guarantee

DS

1 Proceedings

2 point, make one point on the authority argument which I  
3 realize this Court has ruled on but I did want to refer  
4 the Court to note 4, footnote 4, Page 14 of our brief:

5 Moreover, no amendment to the DMRJ operating  
6 agreement was permitted without the written consent of  
7 the profit interest members of DMRJ if such amendment  
8 would have an adverse effect on the profit interest  
9 members rights to distributions and allocations.

10 Now, clearly, a 30 million-dollar guarantee  
11 would have that right. I make that point for the record  
12 because in our view, Your Honor, point one is that the  
13 very same document cannot be circular, it cannot be  
14 that written authorization required and, secondly,  
15 there was a second limitation within that DMRJ  
16 operating agreement.

17 On the issue --

18 THE COURT: Now talk to me about the master  
19 guarantee agreement and why in your view that nullifies  
20 the January 13th side letter.

21 MR. GLUCK: Sure. We agree on the test. I  
22 would like to make a note to the Court as well on  
23 guarantee but in relation to the superseding argument,  
24 there is a three-factor test and there is no dispute  
25 here as to the first fact. There is no merger clause.  
26 As to the second and third factors, we have a very

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

significant dispute.

The Court asked whether there were emails and why those emails are not presently in the record. The managers of DMRJ are PPVA in liquidation. At the time these papers were filed, we did not have access to -- the clients did not have access to Platinum's own servers let alone have any discovery from Beachwood (phon) in connection with this matter.

The few emails, the reason that we have had emails in this dispute before that when we didn't have access is because there was a dispute in the Implant science's case where an Implant science's search term was run and so we got a lot of emails but not most and not emails surrounding the master guarantee.

THE COURT: The reason I was asking about the emails is that usually something like this would be confirmed in communications but the defendant makes a very good point, and that is that the emails, unless they constitute a novation do not nullify the existing agreements and they don't modify the existing agreements.

The March 21st guarantee that you are relying on does not reference the side letter and certainly leaves open its enforcement pursuant to Paragraph 23. It makes it very clear that the remedies are not

DS

1 Proceedings

2 exclusive.

3 MR. GLUCK: That was a boiler plate  
4 provision.

5 THE COURT: Excuse me, it's part of the  
6 contract.

7 MR. GLUCK: That's true but we have a Kennedy  
8 affidavit. We have the affidavit that for these  
9 purposes must be taken as true, that the very same  
10 officer who has been credited in this Court with having  
11 the ability to bind PPVA explain to him that the intent  
12 of that master guarantee, which is a much more formal  
13 document, on the same subject matter, which is part of  
14 the test, concerning the same rights was intended to  
15 supersede and to turn back to the standard here.

16 THE COURT: We're not going to modify the  
17 terms of the March 21st agreement. You basically want  
18 to nullify Paragraph 23. Not going to happen. Your  
19 motion is granted with regard to that but you still  
20 have a defense here. You still have a claim, rather.

21 MR. HOLINSTAT: If I may, Your Honor, I am  
22 happy to address the consideration point?

23 THE COURT: I think we have talked about it  
24 enough.

25 MR. GLUCK: Your Honor, may I refer the Court  
26 to First Department?

DS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

THE COURT: It's granted in part. Thank you  
very much, folks. Get your answer in. Thank you.

\* \* \* \*

It is hereby certified that the foregoing is  
a true and accurate transcript of the stenographic  
record.

DEBRA SMITH,  
Official Court Reporter

*S.O.  
CORRECTED  
JSC  
12/11/18*

**CHARLES E. RAMOS**

DS

# Exhibit B

**ERRATA SHEET**

**Caption:** *DMRJ Group LLC v. B Asset Manager, LP, et al.*  
Index No. 655181/2017

**Argument Date:** July 17, 2018

<b><u>PAGE</u></b>	<b><u>LINE</u></b>	<b><u>CORRECTION</u></b>	<b><u>REASON</u></b>
2	10	Change "collective with" to "collectively"	Transcription Error
2	16	Add "the" before "sale"	Transcription Error
2	24	Add "a" before "March 2016 guarantee"	Transcription Error
4	8	Add "the" before "amount"	Transcription Error
4	25	Change "in investment" to "an investment"	Transcription Error
4	26	Add "the" before sale	Transcription Error
5	11	Add a comma after "allocation"	Transcription Error
5	12	Add "a" before "default"	Transcription Error
5	25	Delete ", so," after "Your Honor"	Transcription Error
7	6	Delete the phrase "that is"	Transcription Error
7	15	Change "note" to "point"	Clarification
8	2	Change "report" to "purport"	Transcription Error
12	3	Change "to" to "and"	Transcription Error
12	4	Delete the word "in"	Transcription Error
13	5	Add "and" before "superseding"	Transcription Error
13	5	Add "arguments" after "superseding"	Transcription Error
13	7	Change "to his" to "who is"	Transcription Error
13	17	Change the period between "DMRJ" and "because" to a space	Transcription Error



<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>	<u>REASON</u>
14	3	Change "article" to "articles"	Transcription Error
14	24	Delete "no,"	Transcription Error
15	23	Add the word "me" after "satisfied"	Clarification
17	8	Delete the word "at"	Transcription Error

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 MARTIN TROTT, as Joint  
4 Official Liquidators and  
5 Foreign Representatives of  
6 Platinum Partners Value  
7 Arbitrage Fund L.P. (In  
8 Official Liquidation), ET AL.,

9 Plaintiffs,

10 v. 18 Civ. 10936 (JSR)

11 PLATINUM MANAGEMENT (NY) LLC,  
12 ET AL.,

13 Defendants.

14 -----x

15 New York, N.Y.  
16 March 7, 2019  
17 10:30 a.m.

18 Before:

19 HON. JED S. RAKOFF,

20 District Judge

21 APPEARANCES

22 HOLLAND & KNIGHT LLP  
Attorneys for Plaintiffs

23 BY: JOHN BROWNLEE  
24 BARBRA PARLIN  
25 WARREN GLUCK  
PETER R. JARVIS

CURTIS, MALLETT-PREVOST, COLT & MOSLE, LLP  
Attorneys for Defendant David Bodner

BY: ELIOT LAUER  
GABRIEL HERTZBERG

LANKLER SIFFERT & WOHL LLP  
Attorneys for Defendant Steinberg

BY: DAVID HODGES  
MATTHEW COOGAN

1 APPEARANCES (Continued)

2 KENNETH A. ZITTER  
Attorney for Defendants Black Elk

3  
4 PIERCE BAINBRIDGE  
Attorney for Defendant David Ottensoser  
BY: ERIC M. CREIZMAN

5  
6 BINDER & SCHWARTZ LLP  
Attorneys for Defendant Daniel Saks  
BY: WENDY SCHWARTZ  
7 GREGORY PRUDEN

8 THOMPSON & KNIGHT, LLP  
Attorneys for Defendant Katz  
9 BY: BRITTNEY M. EDWARDS

10  
11 MOSKOWITZ & BOOK, LLP  
Attorneys for Defendant Platinum FI Group/Grossman  
BY: CHRISTOPHER R. NEFF

12  
13 PERKINS COIE  
Attorneys for Defendant GRD  
BY: JOHN D. PENN

14  
15 MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO, P.C.  
Attorneys for Defendants Cassidy and Nordlicht  
BY: LISAMARIE F. COLLINS

16  
17 LAWRENCE R. GELBER  
Attorney for Defendants Cassidy and Nordlicht

18  
19 MORRISON COHEN LLP  
Attorneys for Defendant Huberfeld Family Foundation  
BY: DONALD H. CHASE  
DANIEL ISAACS

20  
21 JEFFREY C. DANIELS  
Attorneys for Defendant Murray Huberfeld

22  
23 REGOSIN, EDWARDS, STONE & FEDER  
Attorneys for Defendants Platinum Management (NY) LLC and  
Mark Nordlicht  
24 BY: SAUL FEDER

25

1 APPEARANCES (Continued)

2 JAKUBOWITZ & CHUANG LLP

Attorneys for Defendant Rockwell Fulton and Ditmars Park  
3 Capital L.P.

4 BY: TOVIA JAKUBOWITZ

5 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

Attorneys for Defendant Leon Meyers

6 BY: DANIEL TEPPER

7 NOVAK & JUHASE

Attorneys for Defendant Bernard Fuchs

8 BY: ALEXANDER NOVAK

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 happened. So the fact that they have poured good money after  
2 bad and afterwards it turned out that without their knowledge  
3 some allegedly engaged in at fraud and gave them the money  
4 back, they were net losers here, your Honor. They haven't made  
5 money on this. They made minimal money. They have not been  
6 enriched, let alone unjustly enriched. They barely got back  
7 their investment. I don't consider that to be -- they have  
8 nothing alleged in the complaint that they had nothing to do  
9 with the underlying fraud.

10 THE COURT: All right. Thank you so much. Let's move  
11 on to the next group.

12 MR. BROWNLEE: So, your Honor, I believe the next  
13 group, my notes are a little sketchers, what we believe as the  
14 Beechwood entities. And I believe what we have here are five  
15 of them have moved to dismiss. It's B Asset Manager, BAM II,  
16 BBLN, BBLN-Pedco, BHLN-Pedco, Beechwood Capital Group LLC, and  
17 the Beechwood Trusts 7 through 14.

18 So let me start with, these are entities that we have  
19 alleged that the Beechwood defendants used to further their  
20 fraud. I think the Court is aware of our position with regard  
21 to Beechwood in general, that it was inherently a corrupt  
22 entity, it was formed and used to facilitate the frauds going  
23 on at Platinum and later on its own and so, therefore, if these  
24 entities that were created to help facilitate the fraud, we  
25 believe, we certainly satisfy.

1 THE COURT: Let me see, because I do think we have to  
2 look at them perhaps, individually.

3 MR. BROWNLEE: Yes.

4 THE COURT: As near as I can make out, as was alluded  
5 to yesterday, the only specific allegation in the complaint  
6 about BBLN-PEDCO Corp. and BHLN-PEDCO Corp. is in paragraph 202  
7 to the effect that they are special-purpose vehicles that at  
8 all relevant times were managed by BAM administrative and  
9 administered in New York, New York. So I wonder if that's  
10 enough for any claim.

11 MR. BROWNLEE: Our view is that these entities were  
12 used as part of the PEDCO transaction, and that because of  
13 that, because their inherent relationship to Beechwood, that  
14 that satisfies it. We will concede to the Court that we've had  
15 stronger arguments today than we do on this one, but that's the  
16 nature of it this and that's one of the reasons as liquidators  
17 we do rely in part on some of the relaxed pleadings standards,  
18 we just haven't had access to those records of those entities  
19 as of yet. We know that they're certainly around that. We  
20 know that they are being used for transactions that we have  
21 alleged were fraudulent. So I think that's where we are on  
22 those two entities.

23 THE COURT: There was an argument made yesterday with  
24 respect to B Asset Manager II, BAM II, that it was only  
25 referenced individually once in the complaint, but my

1 understanding, correct me if I'm wrong, is that the complaint  
2 puts it together with BAM I.

3 MR. BROWNLEE: That's correct.

4 THE COURT: And it does collectively make other  
5 allegations with respect to it.

6 MR. BROWNLEE: That's correct. And I think that the  
7 clear shot on what we call BAM I, BAM II, is the Nordlicht side  
8 letter, 74.

9 So this is the Exhibit 74, your Honor.

10 THE COURT: Go ahead.

11 MR. BROWNLEE: This is what we referred to as the  
12 Nordlicht side letter. We are January of 16, things are really  
13 starting to crumble at this point. They've got this debt out  
14 there for Golden Gate. And so Mr. Nordlicht signs this letter,  
15 Mark Feuer signs it as well.

16 And basically what he says is all the sale of the  
17 Implant Sciences, which was an entity that was held by PPVA at  
18 that time, had some value, if that were to be sold, all of that  
19 is to go to BAM and to BAML P. And so here we are, this is in  
20 our view a clear dissipation of assets of PPVA, in favor of  
21 Golden Gate and he's directing that the funds be held by this  
22 very entity BAM.

23 Now, BAM I, BAM II, it's a little unclear, but we  
24 think that we've pled appropriately that we have kind of  
25 combine them in one pleading as well because of the confusion

1 but that Mr. Nordlicht and Mr. Feuer were directing that those  
2 resources go to that entity, and we think that's sufficient.

3 THE COURT: With respect to Beechwood Capital, your  
4 adversary says that the complaint largely just says things like  
5 it's a New York limited liability company and so forth, it  
6 doesn't make the necessary allegations to tie them into  
7 liability for any of the claims.

8 What about that?

9 MR. BROWNLEE: What we have there is that this is an  
10 entity that has the same address as Mark Feuer. Mark Feuer is  
11 the a signatory to the Nordlicht side letter. He was  
12 essentially the front man that we've alleged that Mr. Nordlicht  
13 installed Mr. Levy into Beechwood. There is some kind of an  
14 NDA where levy is participating for Beechwood Capital. So,  
15 again, we just think that there is sufficient evidence around  
16 this and the allegation with regard to who controls it, if he's  
17 at the same address, that's who would be control it and we know  
18 Mr. Feuer participated in the Nordlicht side letter. So,  
19 again, these are groups, these are entities that are created by  
20 Beechwood.

21 We also have pled an alter ego theory. And we think  
22 that these are satisfied the alter ego. I've read the Court's  
23 *Uzan* opinion from 2010 that laid out those requirements and we  
24 believe, with particularly the control of these entities, we've  
25 been able to pled under the alter ego theory, Beechwood Capital



1 would survive.

2 THE COURT: I was going to say, the last one I wanted  
3 to ask about was Beechwood Trust Nos. 4 through 14.

4 MR. BROWNLEE: This is owned and controlled by  
5 Nordlicht, Bodner, Mr. Huberfeld, Mr. Levy through their  
6 families. And it's our pleadings that the children of them  
7 were beneficiaries of this. There's some allegations of  
8 concealment, and again, we think, certainly under an alter ego  
9 when the Beechwood entities are -- and Beechwood defendants and  
10 Platinum defendants are creating these entities. We think that  
11 we've pled sufficiently to keep them in the case at this point,  
12 if not directly under the alter ego.

13 THE COURT: Let me hear from counsel for the Beechwood  
14 entities.

15 MR. LAUER: Your Honor, I think there's a fundamental  
16 distinction between counsel's characterizations, which is  
17 largely what we've heard today and in the complaint and facts.  
18 Everything in here in this case is a 9(b) count. There are no  
19 facts that in any way, identify anything culpable by any of  
20 these Beechwood entities 7 through 14, regardless of who may  
21 have owned them. There is absolutely no fact at all saying  
22 this entity was involved in this particular culpable  
23 transaction, this entity was used to secret assets, nothing.  
24 This is counsel coming in, credible counsel coming in and  
25 basically extrapolating and saying, we've identified X or Y and

1 therefore, but these are 9(b) counts.

2 Your Honor, if I may, just one, I would not be doing  
3 justice to my other client if I didn't say this, Exhibit 31 is  
4 not a substitute for 9(b) particularized facts. This case that  
5 they brought, whether it's Beechwood 7 through 14 or Bodner or  
6 anyone else, the case basically is false valuations that they  
7 say should have precipitated action or liquidation in 2013.

8 In order to hold anyone here, whether it's Beechwood 7  
9 through 14 or David Bodner or anyone else, the Federal Rules of  
10 Civil Procedure in these 9(b) counts require them to connect  
11 Bodner and the others with false valuations. They haven't done  
12 that and therefore this complaint is deficient and should be  
13 dismissed.

14 THE COURT: Was there anyone who wanted to be heard on  
15 the other Beechwood entities?

16 AUDIENCE MEMBER: (Inaudible) Mr. Lipsius who  
17 represented those Beechwood entities is in Chicago today.

18 THE COURT: Yes, that's right. With permission. I  
19 will pay that special attention to your brief or his brief.

20 Anyone else want to be heard on the Beechwood aspects?

21 Let's go back to plaintiffs' counsel.

22 MR. BROWNLEE: I believe next, your Honor, is Murray  
23 Huberfeld, am I correct?

24 THE COURT: Yes.

25 MR. BROWNLEE: So Mr. Huberfeld was a founder and