

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' ANSWER TO THE SECOND AMENDED COMPLAINT

Defendant Daniel Saks (“Saks”), by and through his undersigned attorneys, having been served with the Second Amended Complaint (“SAC”), hereby answers and responds as follows:

ANSWER

1. As to Paragraphs 1, 3-7, 9-10, 27, 30-31, 33, 35, 85, 350-352, 389-390, 393, 403-407, 409, 411, 521, 528, 552, 554, 556, 559, 848, 852-857, 859, and 863-868 of the SAC, Saks denies each and every allegation therein.
2. As to Paragraphs 46, 558, and 849-850 of the SAC, Saks denies the allegations therein, except he denies knowledge or information necessary to form a belief regarding the truth or falsity of the following specific allegations:
 - a. As to Paragraph 46, that Mark Nordlicht was an owner of Beechwood.
 - b. As to Paragraph 558, that Beechwood was not granted liens on PPVA’s oil and gas investments.
 - c. As to Paragraph 849, that Mark Nordlicht, David Levy, Murray Huberfeld, David Bodner, Mark Feuer, and Scott Taylor created and owned the Beechwood Entities. Saks admits that Mark Feuer, Scott Taylor, and David Levy managed and operated certain Beechwood Entities at certain times.
 - d. As to Paragraph 850, that Beechwood and Platinum “initially shared offices.” Saks admits that David Levy, at certain times, served as CIO of BAM.
3. As to Paragraphs 12(xii), 188-192, 338, 378, 387, 396, 523-525, 557, 567, 847, and 851 of the SAC, Saks denies the allegations therein, except he admits the following:
 - a. As to Paragraph 12(xii), Saks admits that he began working for Beechwood in 2014, and served as CIO and President of B Asset Manager, LP (“BAM I”) during 2015.

- b. As to Paragraph 188, Saks admits that he is a resident of Teaneck, New Jersey.
- c. As to Paragraph 189, Saks admits that during 2014, he began working at BAM I.
- d. As to Paragraph 190, Saks admits that he became CIO and President of BAM I sometime after Levy ended employment with BAM.
- e. As to Paragraph 191, Saks admits that he received third-party valuation reports sent to BAM and asked questions regarding their content.
- f. As to Paragraph 192, Saks admits that he acted as a signatory for certain Beechwood Entities in connection with certain transactions among Beechwood Entities and PPVA, and that he executed certain transaction documents on behalf of BAM in connection with the Montsant Transaction.
- g. As to Paragraph 338, Saks admits that he was copied on the referenced email. To the extent this Paragraph purports to incorporate the content of a document, Saks refers to the document itself for its content.
- h. As to Paragraph 378, Saks admits that BAM I managed and invested the assets obtained through reinsurance agreements with the Beechwood Reinsurance Companies.
- i. As to Paragraph 387, Saks admits that he served as BAM I's CIO after David Levy and through December 31, 2015.
- j. As to Paragraph 396, Saks admits that he served as CIO and President of BAM I after David Levy and through December 31, 2015.
- k. As to Paragraph 523, Saks admits that Montsant borrowed \$35.5 million at 12% interest from SHIP, a Beechwood client, via a loan administered by Beechwood.

- l. As to Paragraph 524, Saks admits that the 2015 Montsant Note was secured by a later pledge of collateral. To the extent this paragraph purports to incorporate the content of a document, Saks refers to the document itself for its content.
 - m. As to Paragraph 525, Saks admits that David Steinberg executed the transaction documents related to the 2015 Montsant Loan on behalf of Montsant.
 - n. As to Paragraph 557, Saks admits that Montsant was a party to a transaction whereby SHIP was granted liens on certain assets.
 - o. As to Paragraph 567, Saks admits that Montsant pledged a note issued by Implant Sciences Corporation as part of the collateral securing the 2015 Montsant Note.
 - p. As to Paragraph 847, Saks admits that Platinum Management (NY) LLC, in its capacity as the general partner of PPVA, owed fiduciary duties to PPVA.
 - q. As to Paragraph 851, Saks admits that he sent emails to and met with certain Platinum and Beechwood Defendants.
4. As to Paragraphs 2, 11, 13-18, 26, 32, 37-38, 211, 226-227, 229-237, 239-241, 250, 373-377, 379-385, 392, 400-402, 408, 410, 412, 424, 426-427, 429-439, 516-519, 527, 551, 553, and 561-566 of the SAC, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of each and every allegation therein.
5. As to Paragraph 242, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of each and every allegation therein, except that Saks denies that the offices of Platinum Management were located at 250 West 55th Street, 14th Floor, New York, NY 10019 during his employment there.

6. As to Paragraphs 8, 39, 47, 210, 217, 238, 386, 391, 399, and 526 of the SAC, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of the allegations therein, except he admits the following:
 - a. As to Paragraph 8, Saks admits that Beechwood is a business comprised of reinsurance companies, investment management entities, and investment trusts.
 - b. As to Paragraph 39, Saks admits that, during his employment at Platinum Management, Platinum Management had its principal place of business in New York, New York and was the general partner of PPVA.
 - c. As to Paragraph 47, Saks admits that Mark Nordlicht maintained an office within Beechwood's offices for some period of time prior to the end of 2014.
 - d. As to Paragraph 210, Saks admits that, during his employment at BAM I, BAM I had its principal place of business in New York, New York and that BAM I served as an investment advisor for Beechwood and its various investments.
 - e. As to Paragraph 217, Saks admits that, during his employment at BAM I, BAM Administrative had its principal place of business in New York, New York and acted as agent and signatory on behalf of the Beechwood Reinsurance Companies in connection with certain transactions.
 - f. As to Paragraph 238, Saks admits that PPCO and PPLO were other Platinum funds.
 - g. As to Paragraph 386, Saks admits that during his employment at BAM I, Mark Feuer was CEO and Scott Taylor was President for at least certain of the Beechwood Reinsurance Companies.

- h. As to Paragraph 391, Saks admits that, at certain times, David Levy served as CIO of certain Beechwood entities.
 - i. As to Paragraph 399, Saks admits that Mark Nordlicht maintained an office at Beechwood at certain times in 2014, and that Murray Huberfeld maintained the same office at certain times after Nordlicht vacated it.
 - j. As to Paragraph 526, Saks admits the existence of the Montsant Pledge Agreement. To the extent this Paragraph purports to incorporate the content of a document, Saks refers to the document itself for its content.
7. As to Paragraphs 243-249, 428, 520, 522, and 567 of the SAC, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of the allegations therein, except to the extent those Paragraphs purport to incorporate the content of a document, Saks refers to each referenced document itself for its content.
8. As to Paragraphs 12(i)-(xi) and (xiii), 19-25, 28-29, 40-45, 48-54, 56-84, 86-176, 179-187, 193-209, 212-216, 218-222, 251-258, 262-263, 265, 269-270, 272-298, 301-307, 313-323, 328-335, 337, 339, 342-349, 353, 357-358, 388, 394-395, 397-398, 413-414, 416-417, 419-420, 422-423, 440-444, 446-451, 453, 455-461, 468-474, 476-477, 479-486, 490-495, 497, 500, 503, 506-510, 512-515, 529, 531, 533-534, 537-538, 540-545, 547, 550, 568-569, 571-572, 576-591, 597-607, 609, 611-612, 614, 616-618, 620-627, 631-638, 640-644, 650-652, 654-656, 658-661, 667-677, 684-690, 693-695, 697-709, 713-714, 716-717, 721-745, 748-751, 753, 755, 757-762, 869-899, 911-937, 948-959, and 1001-1041 of the SAC, Saks states that those Paragraphs do not apply to the surviving claims against Saks, and therefore a response is not required. To the extent a

response is required, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of each and every allegation therein.

9. As to Paragraphs 177-178, 259-261, 264, 266-268, 299-300, 308-312, 324-327, 336, 340-341, 354-356, 359-372, 415, 418, 421, 445, 452, 454, 462-465, 467, 478, 487-489, 496, 499, 501-502, 504-505, 511, 530, 532, 535-536, 539, 546, 548-549, 570, 573-75, 592-596, 608, 610, 613, 615, 619, 628-630, 639, 645-649, 653, 657, 662-666, 678-683, 691-692, 696, 710-712, 715, 718-720, 746-747, 752, 754, and 756 of the SAC, Saks states that those Paragraphs do not apply to the surviving claims against Saks, and therefore a response is not required. To the extent a response is required, Saks denies knowledge or information necessary to form a belief regarding the truth or falsity of the allegations therein, except to the extent those Paragraphs purport to incorporate the content of a document, in which case Saks refers to each referenced document itself for its content.
10. As to Paragraphs 34, 466, 475, 498, 763-845, 938-947, and 986-1000 of the SAC, Saks states that those Paragraphs do not apply to the surviving claims against Saks, and therefore a response is not required. To the extent a response is required, Saks denies each and every allegation therein.
11. Paragraph 55 of the SAC does not apply to the surviving claims against Saks, and therefore a response is not required, except Saks admits that Uri Landesman died in September 2018. To the extent a response is required to any other allegation in Paragraph 55, Saks denies knowledge or information necessary to form a belief as to the truth or falsity of all such allegations.

12. As to Paragraphs 36, 271, 425, 555, 846 and 858 of the SAC, those Paragraphs contain only cumulative summaries or legal conclusions to which no response is required. To the extent a response is required, Saks denies each and every allegation therein.
13. Paragraph 560 of the SAC contains only a cumulative summary to which no response is required. To the extent a response is required, Saks refers to his response to Paragraph 557 of the SAC.
14. Paragraphs 223-225 of the SAC contain only legal conclusions to which no response is required. To the extent a response is required, Saks denies the allegations therein, except Saks admits that the Court has personal jurisdiction over him for the purposes of the above-captioned litigation and that venue is proper.
15. As to Paragraphs 900-910, and 960-985 of the SAC, the causes of action discussed in these Paragraphs have been dismissed in their entirety, and therefore no response is required. To the extent a response is required, Saks denies each and every allegation therein.
16. As to Paragraphs 860-862 of the SAC, Saks refers to his responses to Paragraphs 849-851 of the SAC, respectively, which are identical in all material respects.
17. As to Paragraph 228 of the SAC, Saks admits the allegations therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

18. Plaintiffs' claims are barred, in whole or in part, by the doctrine of *in pari delicto*.

Second Affirmative Defense

19. Plaintiffs' claims are barred, in whole or in part, by the *Wagoner* rule.

Third Affirmative Defense

20. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations and/or repose.

Fourth Affirmative Defense

21. The Court lacks subject matter jurisdiction over the claims remaining in this action.

Fifth Affirmative Defense

22. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate damages.

Sixth Affirmative Defense

23. Plaintiffs' claims are barred, in whole or in part, because PPVA consented to and/or ratified the conduct alleged to have been wrongful in the Complaint.

Seventh Affirmative Defense

24. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Eighth Affirmative Defense

25. The relief sought in the SAC is barred, in whole or in part, because any loss or damage sustained by PPVA was due to the acts, omissions, and/or conduct of persons and/or entities over whom Saks has no control.

Ninth Affirmative Defense

26. Plaintiffs' claims are barred, in whole or in part, because PPVA's alleged injuries were proximately caused by and/or were contributed to by PPVA's own conduct, actions or failures to act, and not by Saks' own conduct, actions or failures to act.

Tenth Affirmative Defense

27. Plaintiffs' claims are barred, in whole or in part, because PPVA's alleged injuries were proximately caused by and/or were contributed to by others' conduct, actions or failures to act, and not by Saks' own conduct, actions or failures to act.

Eleventh Affirmative Defense

28. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

Twelfth Affirmative Defense

29. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

Thirteenth Affirmative Defense

30. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Reservation of Rights

31. Saks expressly reserves his right to amend his answer to assert any such defenses that may become known or available during discovery in this action.

REQUEST FOR RELIEF

WHEREFORE, Saks denies that Plaintiffs are entitled to any relief and respectfully requests that the Court grant Saks the following relief:

- (i) A judgment denying all relief requested by Plaintiffs as against Saks;
- (ii) A judgment dismissing all of the remaining claims against Saks with prejudice;
- (iii) A judgment against Plaintiffs and in favor of Saks in all respects;
- (iv) An award to Saks for attorneys' fees, costs, and expenses incurred in defending this action; and

- (v) Such other relief as the Court may deem just, reasonable and proper under the circumstances.

Dated: July 12, 2019
New York, New York

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