

**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, et
al.,

Plaintiff,

v.
BEECHWOOD RE LTD., et al.,

Defendants.

Case No. 1:18-cv-12018-
JSR

**THE BEECHWOOD ENTITIES' MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

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Services LLC*

PRELIMINARY STATEMENT

Defendants Beechwood Bermuda International, Ltd. (“BBIL”), Beechwood Bermuda, Ltd. (“BBL”) and BAM Administrative Services LLC (“BAM Admin”) (collectively, the “Beechwood Entities”) respectfully submit this memorandum of law in support of their motion for an order granting them summary judgment and dismissing the complaint.¹

The Court has already dismissed all of the Receiver’s claims against B Asset Manager LP, B Asset Manager II LP, Beechwood Re Holdings, Inc., Beechwood Re Investments LLC, Mark Feuer and Scott Taylor. Thus, only the following claims remain against the Beechwood Parties:

- Aiding and abetting breach of fiduciary duty (BAM Admin, BRE, BBIL, and BBL);
- Aiding and abetting fraud (BAM Admin, BRE, BBIL, and BBL);
- Actual and constructive fraudulent conveyance (BAM Admin); and
- A declaratory judgment claim seeking to invalidate an all-asset lien on the assets of the PPCO Master fund and its subsidiaries or related entities (BAM Admin).

Now, following discovery, the Beechwood Entities move for summary judgment on the Receiver’s remaining claims.

I. THE BEECHWOOD ENTITIES ARE ENTITLED TO SUMMARY JUDGMENT ON WHAT IS LEFT OF THE RECEIVER’S AIDING AND ABETTING CLAIMS

The Receiver asserts two nearly identical aiding and abetting claims, one for aiding and abetting breach of fiduciary duty, and one for aiding and abetting fraud. (FAC ¶¶ 322-333, 334-40.) The conduct underlying these aiding and abetting claims is the same—the Receiver alleges

¹ The Liquidators’ claims are equally deficient as to Beechwood Re (“BRE”). However, on July 23, 2019, the Bankruptcy Court for the Southern District of New York issued an Order, staying all proceedings involving that entity. Order Pursuant to 11 U.S.C. 1504, 1517 and 1520 Recognizing Foreign Representative and Foreign Main Proceeding, *In re Beechwood Re*, No. 19-11560 (S.D.N.Y. July 23, 2019), ECF No. 48. For that reason, BRE does not join this motion.

that Nordlicht and the PPCO Portfolio Manager (1) misrepresented and overvalued the PPCO Funds' net asset value, (2) caused the PPCO Master Fund to enter into certain fraudulent conveyance transactions, and (3) caused the PPCO Master Fund to make a temporary purchase of an interest in Black Elk for the "sole benefit of the PPVA Funds." (FAC ¶¶ 324, 335.) For the reasons set forth below, summary judgment should be granted on both aiding and claims:

First, as this Court has already held, the *Wagoner* rule and the doctrine of *in pari delicto* bar the Receiver's claims relating to the alleged overvaluation of PPCO's net asset value, "which helped maintain the façade of financial viability in the eyes of their creditors and investors and thereby attracted additional capital from investors" *In re Platinum-Beechwood Litig.*, No. 18-CV-12018 (JSR), 2019 WL 4934967, at *27 (S.D.N.Y. Oct. 7, 2019) ("Oct 7, 2019 Opinion"). Because the adverse interest and insider exceptions to those doctrines are inapplicable, those portions of the aiding and abetting claims have already been dismissed. *Id.*

Second, New York courts appear to have rejected the notion that an aiding and abetting fraudulent conveyance claim is viable in analogous circumstances. *See Geo-Grp. Commc'ns, Inc. v. Chopra*, No. 15 CIV. 1756 (KPF), 2018 WL 3632498, at *8 (S.D.N.Y. July 30, 2018). Moreover, for the reasons set forth in Sections I(A), I(B)(2), I(C), I(D), II, and III of the memorandum of law filed in support of the Senior Health Insurance Company of Pennsylvania's motion for summary judgment, which the Beechwood Parties expressly incorporate herein, there was no fraudulent conveyance. Therefore, any aiding and abetting claims related to the purported fraudulent conveyance transactions against the Beechwood Entities must be dismissed. And, even if there were a cause of action for aiding and abetting a fraudulent conveyance, and a fraudulent conveyance could be established, there is no evidence that BBL, which is simply a holding

company, participated in the transactions, let alone proximately caused any loss to PPCO. So the claims against that entity must be dismissed in any case.

Third, the Beechwood Entities were not involved in the purchase or sale of Black Elk bonds from the PPCO Master Fund, and they certainly were not the proximate cause of any injury suffered by the PPCO Master Fund in connection with assets it purchased from the Platinum Partners Value Arbitrage Fund L.P. (“PPVA”). It is clear from the evidence adduced during discovery that BBIL and various trusts, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, Bre BCLIC Sub, and BBIL ULICO 2014, were involved with the purchase and/or sale of Black Elk bonds. But those bonds were purchased from or sold to PPVA, not PPCO. No evidence adduced during discovery suggests these entities transacted with PPCO in connection with Black Elk. And no evidence adduced during discovery suggests that BAM Admin or BBL were involved in these Black Elk transactions at all.

Accordingly, summary judgment should be granted in connection with any adding and abetting claims related to Black Elk as well.

II. BAM ADMIN IS ENTITLED TO SUMMARY JUDGMENT ON THE RECEIVER’S FRAUDULENT CONVEYENCE CLAIMS

For the reasons set forth in Section I(A), I(B)(2), I(C), I(D), of the memorandum of law filed in support of the Senior Health Insurance Company of Pennsylvania’s motion for summary judgment, which the Beechwood Parties expressly incorporate herein, BAM Admin is entitled to summary judgment dismissing the Receiver’s fraudulent conveyance claims.

III. BAM ADMIN IS ENTITLED TO SUMMARY JUDGMENT ON THE RECEIVER’S DECLARATORY JUDGMENT CLAIM

Moreover, for the reasons set forth in Section III of the memorandum of law filed in support of the Senior Health Insurance Company of Pennsylvania’s motion for summary

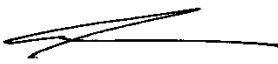
judgment, which the Beechwood Parties expressly incorporate herein, BAM Admin is entitled to summary judgment dismissing the Receiver's declaratory judgment claim.

CONCLUSION

For all of the above-mentioned reasons, the Beechwood Parties respectfully request that the Court grant their motion for summary judgment and dismiss the Receiver's complaint.

Dated: Kew Gardens, New York
February 14, 2020

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