

**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' REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

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BAM Administrative 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 reply memorandum of law in further support of their motion for an order granting them summary judgment and dismissing the complaint.

ARGUMENT

I. A SEPARATE AND REDUNDANT 56.1 STATEMENT IS NOT REQUIRED

The thrust of the Receiver’s opposition is based on the fact that the Beechwood Entities did not supply a Statement of Undisputed Facts, as required by Local Rule 56.1. Beechwood’s joinder motion, by and large incorporates the legal arguments put forth by SHIP and as a joinder motion, does not present a separate 56.1 statement. Courts in this District have recognized that for the purposes of judicial economy a separate 56.1 statement is not required on a joinder motion. See, *Ferring B.V. v. Allergan, Inc.*, 253 F. Supp. 3d 708, 721, 2015 U.S. Dist. LEXIS 130970, *31-32 (“Consistent with above analysis, the non-Allergan Defendants' joinder motion is also granted. *Ferring's* principle argument in opposition to the joinder motion is Allergan's 56.1 statement does not adequately establish the non-Allergan Defendants' right to equitable relief... Under these facts, however” the motion is granted without a 56.1 statement.”)

Other District Courts have done the same. *Sebastian Int'l, Inc. v. Russolillo*, 2005 U.S. Dist. LEXIS 45828, *41, 2005 WL 1323127 (“Plaintiff opposes the joinder on the ground that it is procedurally improper, as even if Quality King's Motion were granted, it does not seek relief on behalf of the retailer Defendants, so it will not benefit them. This argument is specious, as the retailer Defendants' papers request independently that the retailer Defendants be granted partial summary judgment and simply incorporate by reference the arguments in Quality King's papers. This is permissible, and Plaintiff cites no rule or authority prohibiting it. Plaintiff further argues

that the Notice of Joinder is procedurally improper because it does not include a "Statement of Uncontroverted Facts and Conclusions of Law" as required by Local Rule 56.1.] However, given the Court's power to grant summary judgment sua sponte, this is not a bar to the Court granting partial summary judgment in favor of the retailer Defendants.”). See, also, *Contessa Food Prods. v. Lockpur Fish Processing Co.*, 2001 U.S. Dist. LEXIS 25994, *7.

The Second Circuit permits District Courts to overlook the lack of 56.1 when appropriate. "A district court has broad discretion to determine whether to overlook a party's failure to comply with local court rules." *Holtz v. Rockefeller & Co.*, 258 F.3d 62, 73 (2d Cir. 2001) (citing *Wight v. Bankamerica Corp.*, 219 F.3d 79, 85 (2d Cir. 2000)). When appropriate, District Courts have exercised such discretion. *Chaohui Tang v. Wing Keung Enters.*, 210 F. Supp. 3d 376, 408, (E.D.N.Y. 2016) (“Defendants' failure to file a statement pursuant to Rule 56.1 is not fatal to their summary judgment motion.”); *Harrison v. Cty. of Nassau*, 2018 U.S. Dist. LEXIS 164599, *4 (E.D.N.Y.) (“The Court, however, in its discretion, will proceed with its review of Plaintiff's motion on the merits. See *Wight v. Bankamerica Corp.*, 219 F.3d 79, 85 [2d Cir. 2000]”); *Boise v. New York Univ.*, 2005 U.S. Dist. LEXIS 26378, *1, 2005 WL 2899853 (S.D.N.Y.) (“failure to submit a Local Civil Rule 56.1 Statement is not fatal.”)

As Beechwood’s motion for summary judgment is a joinder motion, a 56.1 statement is not necessary.

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

For the reasons set forth in the Beechwood Entities’ moving papers, summary judgment should be granted on the two nearly identical aiding and abetting claims asserted by the Receiver, one for aiding and abetting breach of fiduciary duty and one for aiding and abetting fraud. (FAC ¶¶ 322-333, 334-40.)

Moreover, for the reasons set forth in Section I, I(A)(1-3), I(B)(2), I(B)(2)(a-b), I(C), I(C)(1-3), and I(D), of the Reply Memorandum of Law filed in further support of the Senior Health

Insurance Company of Pennsylvania's motion for summary judgment, which the Beechwood Entities 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.

Accordingly, summary judgment should be granted in connection with any aiding and abetting claims.

III. BAM ADMIN IS ENTITLED TO SUMMARY JUDGMENT ON THE RECEIVER'S FRAUDULENT CONVEYENCE CLAIMS

For the reasons set forth in Section I, I(A)(1-3), I(B)(2), I(B)(2)(a-b), I(C), I(C)(1-3), and I(D), of the Reply Memorandum of Law filed in further support of the Senior Health Insurance Company of Pennsylvania's motion for summary judgment, which the Beechwood Entities expressly incorporate herein, BAM Admin is entitled to summary judgment dismissing the Receiver's fraudulent conveyance claims.

IV. 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 Reply Memorandum of Law filed in support of the Senior Health Insurance Company of Pennsylvania's motion for summary judgment, which the Beechwood Entities 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 Entities respectfully request that the Court grant their motion for summary judgment and dismiss the Receiver's complaint with prejudice.

Dated: Kew Gardens, New York
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