UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PELICAN EQUITY, LLC,

Plaintiff,

09 Civ. 5927 (NRB)

-against-

ROBERT V. BRAZELL, STEPHEN L. NORRIS, TALOS PARTNERS, LLC, RAMA RAMACHANDRAN, DARL McBRIDE, and BRYAN CAVE LLP,

Defendants.

PLAINTIFF'S REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS JUNE 10, 2010 SUBMISSION CONCERNING SUBJECT MATTER JURISDICTION

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INTRODUCTION

Plaintiff Pelican Equity, LLC ("Pelican") submits this reply memorandum in further support of its June 10, 2010 submission addressing the matters raised by the Court sua sponte on May 26, 2010 concerning subject matter jurisdiction based on its concern that the Assignment Agreement pursuant to which Pelican secured the rights to bring this action "would be properly classified as a voidable preference." (Transcript of June 10, 2010 Proceedings at p. 2) This memorandum is supported by the July 28, 2010 declaration of Steven Altman and the exhibits to it.

Pelican showed in its June 10, 2010 submission that the Court has subject matter jurisdiction over the claims asserted in the First Amended Complaint (Docket #24); that all or most of the named defendants lack standing to assert the "preference" issue raised by the Court;

that the Assignment Agreement was not a voidable preference; and that even if one or more of the defendants had properly pled the matter as a defense or asserted it as a basis in a motion to dismiss (none have), such matters involve factual determinations that may not properly be resolved on motion, certainly not without any discovery taken.

Pelican below briefly addresses the separate responses filed by defendants Robert Brazell, Stephen Norris, Rama Ramachandran, and Talos Partners, LLC (collectively, the "Talos Defendants"), defendant Darl McBride ("McBride") and the Bryan Cave law firm ("Bryan Cave").

Defendant McBride's Response

Defendant McBride's response is perhaps the easiest to address as he did not and does not dispute any of the arguments made by the plaintiff. Mr. McBride does not take issue with the fact, as acknowledged to the AIP Trustee at the July 2, 2009 AIP Chapter 11 Meeting of Creditors, (a) he was not listed in the AIP bankruptcy filing as a creditor of AIP, (b) at the time of that hearing he had not filed a proof of claim, and (c) Mr. McBride himself described his purported financial claims to the Trustee as follows:

MR. MCBRIDE: My name is Darl McBride.

MR. MORGAN (the Trustee): Darwin?

MR. MCBRIDE: Darl, D-a-r-l.

MR. MORGAN: McBride?

MR. MCBRIDE: Yes.

MR. MORGAN: Thank you.

MR. MCBRIDE: I was not listed in their filing as a creditor, but between Mr.

> and Mrs. Robbins, they both owe me several hundred thousand dollars. I'm still trying to sort out how much. I believe a portion of that should be part of this filing, another portion would be personal, and another portion would be his wife. I have a judgment for check fraud against his wife that was issued last week for $109,000.
>
> MR. MORGAN: That's against Mrs. Robbins?
>
> MR. MCBRIDE: Yes, Allison Robbins as 51 percent owner of Seven Investments. And then I've loaned several hundred thousand dollars to Mark Robbins that I am sill trying to collect.

(Document #54: Bonderoff Declaration, Exhibit G: 7/2/09 Transcript p. 21, line 12 through page 22, line 5)

Plaintiff was mistaken when it stated in its June 10, 2010 submission that Mr. McBride did not – after he gave this testimony – file a proof of claim in the AIP bankruptcy.[1] As the Talos Defendants point out, Mr. McBride did apparently file a proof of claim on September 21, 2009, asserting that he is owed $236, 827.74 by AIP for "money loaned" to "AIP-Norris" (presumably referring to Talos Defendant Stephen Norris) and "AIP-Robbins" and various interest and legal fees and collection expenses. (Document 56-11: Ringer Declaration, Exhibit R) No loan documents are annexed to defendant McBride's proof of claim, presumably because there are none or if such documents exist they are consistent with defendant McBride's testimony at the July 2, 2009 hearing that his claims, if he has any, are against Mr. and Mrs. Robbins personally; not AIP.

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[1] Defendant McBride's proof of claim is not identified on or apparent from the Docket Report available on PACER for the AIP bankruptcy proceeding. (See Altman Dec. Exh. A: AIP Bankruptcy Docket Report)

Defendant Bryan Cave's Response

It is and cannot be disputed that Bryan Cave is not a creditor of AIP. Indeed, Brayn Cave does not contend it is a creditor of AIP. Bryan Cave also takes no issue – because it cannot – with the overwhelming legal authority plaintiff presented in its June 10, 2010 submission that it therefore has no standing to object in any way based on any claim or contention that the Assignment Agreement is or may be a fraudulent conveyance. That should end the inquiry completely as to Bryan Cave.[2]

No doubt recognizing its losing position, Bryan Cave makes two new arguments in its response – (i) that the Assignment Agreement is void as a matter of law because it purportedly violates a judgment secured by a party that is an actual creditor of AIP (Fairstar Resources Ltd.) though indisputably not a party to this action, and (ii) that the Assignment Agreement was a champertous sale under New York law (though with no explanation as to why New York and not Utah or California law would or should be applied). Neither of those arguments were raised in any pleading or motion it previously filed. Bryan Cave did not ask for nor were they given permission to move to dismiss on either of those grounds.

Plaintiff will not pretend to respond fully to these newly raised arguments as it understands the Court has not authorized any motion to dismiss based on them. For now, plaintiff will restrain its comments to state that those arguments will likely fair no better for Bryan Cave. As to its claim of allegedly improper champerty, as Justice Breyer observed in

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[2] The only contention by Bryan Cave concerning the issue of its (lack of) standing to object on the grounds of an alleged fraudulent conveyance is to try to give the impression that has been less than candid. To be clear, counsel for plaintiff did not ask Mr. Benson to testify in the AIP bankruptcy and was not Mr. Robbins' (or AIP's) counsel in it. (Altman Dec. ¶ 4)

Sprint Communications Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 128 S.Ct. 2531, 2541-2542, 171 L.Ed.2d 424, 437-438 (2008):

> The history and precedents that we have summarized make clear that courts have long found ways to allow assignees to bring suit; that where assignment is at issue, courts--both before and after the founding-- have always permitted the party with legal title alone to bring suit; and that there is a strong tradition specifically of suits by assignees for collection. We find this history and precedent "well nigh conclusive" in respect to the issue before us: Lawsuits by assignees, including assignees for collection only, are "cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process." Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 777-778, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000) (internal quotation marks omitted).

The Supreme Court's holding in Sprint v. APCC was that the plaintiff/assignee – who held legal title to an injured party's (the assignor's) claim – had constitutional standing to pursue that claim, even where the assignee has agreed to remit all proceeds from the litigation to the assignor, a fact clearly not present in this case.

As to Bryan Cave's claim that the Assignment Agreement violates a Utah Court order, was an alleged contempt of court and allegedly "violated an injunction," plaintiff respectfully submits that such arguments can and should be left for another day when Bryan Cave actually seeks and secures the Court's permission to move to dismiss on those alleged grounds.

The Talos Defendants' Response

The Talos Defendants too do not dispute the fundamental premise of plaintiff's June 10, 2010 submission: that any argument based on a claim that the Assignment Agreement is a fraudulent conveyance may only be made by a bona fide creditor of AIP. Counsel for the Talos Defendants concede – because they must – that none of the clients the represent in this action,

other than defendant Ramachandran, are creditors of AIP. Argument as to the Talos Defendants too should end there other than as to Ramachandran, but it does not. The Talos Defendants make the same arguments made by Bryan Cave concerning champerty and alleged violations of a Utah Court order though they, like Bryan Cave, did not seek nor get permission from the Court to move to dismiss on any of those grounds.

The Talos Defendants devote most of their response to what they call an "attempt to fill in the void from information they have been able to gather ***primarily*** from publicly available records." (Docket # 55 at p. 1) (emphasis added) And they do so in a sarcastic invective laced manner by, among other negatively fraught assertions, describing plaintiff's conduct as among other things "shady, if not outright fraudulent" and sardonically asking "What is that smell?" (Id.) Plaintiff will resist the temptation to respond in kind those comments. Suffice to say for now that plaintiff believes that its July 26, 2010 letter to the Court seeking permission to move to disqualify the Meister Seelig law firm as counsel for the Talos Defendants in this action and Exhibit A attached to it speak volumes for themselves.

The only slim reed then remaining for all of the defendants at the bottom of all of their collective papers is defendant Ramachandran, as he is the only person who could even conceivably properly assert an argument based on the claim that the Assignment Agreement was an alleged fraudulent conveyance. The Meister Seelig law firm – Mr. Robbins' former counsel – though certainly ought not be the lawyers advancing any such argument, and they should be disqualified and ordered to strictly maintain all confidences and secrets of their former client, particularly bearing on the very matter in which they represented him – the pursuit of claims against defendants Brazell and Norris and others, like defendant Ramachandran, who acted with

them to steal AIP's proprietary stock loan business.

CONCLUSION

For the foregoing reasons, and those set forth in Pelican's June 10, 2010 submission, Pelican should be permitted to continue its prosecution of all of the claims alleged in the First Amended Complaint.

New York, New York
July 29, 2010

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