UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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PELICAN EQUITY, LLC,

Plaintiff,

- against -

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

Defendants.
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MEMORANDUM AND ORDER

09 Civ. 5927(NRB)

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

We write to address an issue of standing raised by this Court, sua sponte.[1] For the reasons set forth below, we find that the assignment agreement on which plaintiff Pelican Equity ("Pelican" or "plaintiff") bases its purported right to sue was void. It follows that plaintiff lacks standing, this Court lacks subject matter jurisdiction, and the case must be dismissed. In order to understand the standing issue presently before the Court, some factual and procedural background is instructive.

[1] "Federal courts have an independent obligation to examine their own jurisdiction, and standing is as important as any jurisdictional doctrine." 15 James Wm. Moore, et al., MOORE'S FEDERAL PRACTICE § 101.30[2] (Matthew Bender 3d ed.) (hereinafter "MOORE'S") (citing cases).

The Court raised this issue with the parties during oral argument held on May 20, 2010. In light of our holding here, the motions set to be heard on that date, which we thereafter dismissed without prejudice, are mooted.

BACKGROUND[2]

Pelican purports to own, pursuant to a written assignment agreement dated April 6, 2009 (the "Assignment"), all intellectual property and other confidential information pertaining to the stock lending business of non-party American Institutional Partners, LLC ("AIP") and all rights and claims against defendants Talos Partners, LLC ("Talos"), its principals, and the law firm Bryan Cave LLC ("Bryan Cave") (the "Talos Claims" or, together with the other property, "Assigned Property"). (See Am. Compl. ¶ 7; Roberts Aff., Ex. A (Assignment).) Asserting standing based on the assignment of the Talos Claims, Pelican brought this action against defendants Robert Brazell, Stephen Norris, Rama Ramachandran, and Talos (collectively, the "Talos Defendants"), Darl McBride (together with Brazell, Norris, and Ramachandran, the "Individual Defendants"), and Bryan Cave.[3]

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[2] The following facts, which are undisputed unless otherwise noted, are derived from the pleadings and submissions in this case: namely, Plaintiff's Amended Complaint ("Am. Compl."), Plaintiff's June 10, 2010 Submission Concerning Subject Matter Jurisdiction ("6/10/10 Pelican Br."), the Talos Defendants' July 1, 2010 Memorandum in Response ("Talos Br."), Defendant Bryan Cave's July 1, 2010 Memorandum in Response ("Bryan Cave Br."), Plaintiff's July 29, 2010 Reply Memorandum in Further Support of Its June 10, 2010 Submission ("7/29/10 Pelican Br."), and Plaintiff's August 4, 2010 Reply Memorandum in Opposition to Defendants' Claim of Champerty and Alleged Violation of a Utah Court Order ("8/4/10 Pelican Br.") -- and the declarations, affidavits, and exhibits annexed to these submissions. Many of those exhibits are publicly available records, of which the Court takes judicial notice. See, e.g., Niagra Mohawk Power Corp. v. Chevron U.S.A., Inc., 596 F.3d 112, 124 n.12 (2d Cir. 2010) (noting court's inherent power to take judicial notice of public records).

[3] Only a brief overview of plaintiff's allegations are warranted here. According to Pelican, AIP developed a proprietary stock loan program, which

Faced with Pelican's complaint, as amended, McBride moved to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. Following a pre-motion conference in which Bryan Cave first raised the issue of standing, the law firm, apparently satisfied by the Assignment at least for pleading purposes, elected to move to dismiss for failure to state a claim pursuant to Rule 12(b)(6).[4]

The Talos Defendants answered and asserted a counterclaim of fraud against Pelican. The Talos Defendants' affirmative defenses included that (i) Pelican is not the real party in interest and that any rights to sue belong to AIP and are subject to AIP bankruptcy proceedings filed in May 2009; and (ii) Pelican's claims are barred by its own willful misconduct and unclean hands. (Am. Answer and Counterclaim ("Talos Counterclaim") ¶¶ 90-95.) Pelican thereafter moved to dismiss the Talos Counterclaim pursuant to Rule 12(b)(6).

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was essentially an insurance transaction to enable holders of marketable securities to pledge the securities as collateral for loans valued as a substantial percentage of the securities' market value. The stock loan transactions allegedly allowed AIP's borrowers to obtain liquidity in amounts they could not have obtained through traditional loans. (Am. Compl. ¶ 17.) Pelican claims that the Individual Defendants and Talos, with the knowing and/or negligent assistance of Bryan Cave, conspired to and did steal AIP's Confidential Business Information and used that information to, inter alia, engage in violations of the Computer Fraud & Abuse Act, unfair competition, fraud and deceit -- allegedly destroying AIP and Robbins and waging an internet smear campaign in furtherance of their unfair competition with AIP. (See id. at ¶¶ 1-6.)

[4] While we recognize that certain defendants, as a strategic decision grounded in perceptions of efficiency, elected to focus on Rule 12(b)(2) and 12(b)(6) issues rather than standing issues, the Court must nonetheless refuse to "hypothesize subject-matter jurisdiction for the purpose of deciding the merits." See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999).

The Court held oral argument on the parties' respective motions to dismiss on May 20, 2010. At that argument, we raised our own concerns as to whether Pelican had standing to assert claims that were purportedly assigned to it by AIP. Specifically, we asked Pelican's counsel whether, in light of the unattractive historic facts in the record already before the Court, the Assignment was a voidable preference or was otherwise invalid. We emphasized that if this assignment is void as a matter of law then Pelican would have no standing here. (5/20/10 Tr. at 7.) Pelican's counsel requested an opportunity to brief the issue, noting that preliminary discovery might be needed. (Id. at 17; see id. at 24, 44.) The Court thereafter denied the pending motions without prejudice to their renewal, if necessary, following resolution of the threshold issue of standing.

Having since reviewed plaintiff's supplemental standing submission, the respective opposition briefs and voluminous supporting exhibits submitted by the Talos Defendants and Bryan Cave,[5] as well as Pelican's two replies -- which were accompanied by declarations or affidavits with supporting exhibits -- the Court concludes that no further discovery is necessary to resolve the standing issue before us because the following facts

[5] Relying on his pending motion to dismiss for lack of personal jurisdiction grounds, defendant McBride elected not to brief the standing issue. (See 7/1/10 McBride Ltr.)

have not been contested by plaintiff except as otherwise noted. As discussed below, the contested facts are immaterial.

The Fairstar Proceedings and Court Orders in Utah

On November 24, 2008, Fairstar Resources Ltd. ("Fairstar") obtained a $2.3 million judgment (the "Fairstar Judgment") against AIP, AIP Lending, LLC ("AIP Lending" -- an affiliate AIP entity), and their principal, Mark Robbins (collectively referred to as "AIP"), in a Utah state court action (the "Fairstar Proceeding") before Judge Sandra N. Peuler of the Utah District Court for Salt Lake County, Third Judicial District. (Bonderoff Decl., Ex. A.)

On February 17, 2009, Fairstar obtained a Supplemental Order[6] from the court, requiring AIP to appear on March 3, 2009 "to answer concerning their property and provide documentation as requested" by the Fairstar plaintiffs and providing that if AIP failed to appear as ordered they may be held in contempt -- which could result in an arrest warrant and appropriate sanctions. (Bonderoff Decl., Ex. B.) The Supplemental Order further provided that "Defendants [i.e., AIP, AIP Lending, and Robbins] may not dispose of any non-exempt property owned by

[6] That same day, seeking to enforce its judgment, Fairstar also obtained an order from Judge Peuler providing that, inter alia, "[n]either Defendants nor any persons acting in conjunction with them or on their behalf shall transfer, dispose of, or interfere with any of the properties described on the post-judgment writs or orders served by Plaintiffs on Defendants in this case." (Ringer Decl., Ex. J.)

them pending this [March 3, 2009] examination." (Id. (emphasis added).)[7]

On February 19, 2009, Judge Peuler issued a Charging Order against AIP, providing that "Defendants' interest in [AIP] shall be foreclosed upon and sold at auction to satisfy the [Fairstar Judgment," authorizing "the constable or sheriff [to] . . . sell the Defendants' interest in [AIP]," and further ordering that "[a]ll distributions of monies or other compensation or payment that are due or may be issued to Defendants and Judgment Debtors shall be paid instead to Plaintiffs." (Ringer Decl., Ex. K.)

Notwithstanding the court orders described above, AIP and Robbins failed to appear for the ordered examination[8] -- causing a bench warrant for Robbins' arrest to issue on March 11, 2009, returnable the next day. (See Bonderoff Decl., Ex. C at 16.) That warrant was continued until April 13, 2009. (See id.)

The Assignment and AIP's Bankruptcy

With a bench warrant still outstanding for Robbins' arrest, Fairstar scheduled constables' sales of particular assets of Robbins, AIP, and AIP Lending for April 6, 2009 and April 8, 2009 (the "Scheduled Fairstar Sales"). (See Roberts Aff., Ex. A.)

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[7] Utah's execution statute makes clear that none of the property transferred pursuant to the Assignment qualifies as "exempt property" -- i.e., property exempt from execution. See generally U.C.A. 1953 § 78B-5-505.

[8] In fact, Fairstar was unable to conduct the ordered examination until Robbins agreed to come to Utah for a deposition over a year later, on April 30, 2010. (See Bonderoff Decl., Ex. D.)

On April 6, 2009, Robbins, AIP, and various other entities managed by Robbins entered into the Assignment with Pelican, by its Manager Doug Roberts. (Id.) The purported purpose of the Assignment was to provide funding for AIP to forestall the Scheduled Fairstar Sales and continue negotiations with Fairstar during their standstill agreement and, secondarily, according to Pelican, to permit Pelican to pursue the "Stock Lending Business" in which AIP and the other assignors had been engaged. In addition, Pelican was assigned all related "rights and/or claims against [the Talos Defendants and Bryan Cave] . . . (the 'Talos Claims')." (Id.; see 8/4/10 Pelican Br. at 2.) Notably, nothing in the record suggests that Judge Peuler's Supplemental Order prohibiting AIP, AIP Lending, or Robbins from transferring any non-exempt property had been vacated or modified prior to the Assignment.

On May 27, 2009, just three weeks after the standstill agreement with Fairstar expired pursuant to the terms of the Assignment, AIP filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Utah. See In re American Institutional Partners, LLC, Case No. 09-25375 (Bankr. D. Utah 2009).

The Close Relationship between Pelican and AIP

At oral argument and in its submissions, plaintiff described the Assignment as an "arms-length transaction" and

asserted that "Pelican . . . [has] no involvement with AIP" and that Doug Roberts, who signed the agreement as "Manager" for Pelican, is unrelated to Mark Robbins or AIP. (5/20/10 Tr. at 4, 18; 6/10/10 Pelican Br. at 2, 6.) Those assertions are belied by the record presented, which shows that Robbins and Roberts -- and the entities they represent -- are connected both personally and professionally.

While Pelican's "Manager" may have been Doug Roberts, Mark Robbins himself also acted, as early as March 24, 2009, as an "Authorized Person" on behalf of "Pelican Equity, LLC, a Delaware limited liability company," which, in Robbins' words, would be "a holding company established by Mark Robbins for the purpose of conducting various . . . business endeavors, including . . . stock-based lending." (See Exhibit to 8/2/10 Ringer Ltr. (emphasis added).)[9]

Indeed, AIP's Statement of Financial Affairs in the bankruptcy proceeding, dated June 30, 2009 and signed by Robbins, describes Pelican Equity, LLC, as having "Limited common ownership/management" with AIP. (Bonderoff Decl., Ex. E at 4.) Robbins has also declared that he essentially "was AIP." (Id., Ex. D at 54.)

[9] Robbins sent a draft letter containing the above-quoted description on March 24, 2009, the same day that Pelican's Certificate of Formation was executed, just over a week before the Assignment at issue here was executed, and just over a month since Judge Peuler's orders enjoining any non-exempt transfers by Robbins and AIP were entered and served. (See id.)

Doug Roberts is Mark Robbins' "friend." (See Bonderoff Decl., Ex. D at 96.) In addition to being Pelican's manager, Roberts was also the Principal of DPR Management, LLC ("DPR"), which "ma[de] a $375,000 loan, to be guaranteed by (among others) Robbins, AIP, and AIP Lending, the net proceeds of which [$350,000] would be paid to Fairstar on behalf of Robbins, AIP and AIP Lending" to obtain the 30-day standstill on the Scheduled Fairstar Sales and other efforts to collect the Fairstar Judgment. (Roberts Aff., Ex. A at 1; see id. ¶ 5.)[10]

In sum, the following historic facts are clear: (i) Fairstar obtained a $2.3 million judgment against AIP on November 24, 2008; (ii) Fairstar obtained the Supplemental Order, restraining AIP from "dispos[ing] of any non-exempt property," on February 17, 2009; (iii) Pelican was formed on or about March 27, 2009; (iv) the Assignment occurred on April 6,

[10] Notably, the AIP bankruptcy's Summary of Schedules, dated June 30, 2009, lists plaintiff's counsel in this action, Mr. Altman, as representing Mark Robbins -- AIP's principal and co-debtor and Pelican's founder and officer -- and his wife, Alison. (Id., Ex. F at 17.) That listing may be erroneous. Plaintiff's counsel denies ever representing Alison Robbins and denies representing AIP and Mark Robbins "in connection with that matter," meaning the AIP bankruptcy. (Compare 6/10/10 Pelican Br. at 6 n.2 ("[T]his firm did not represent Alison Robbins in the AIP bankruptcy or at any time.") and id., Ex. C ("We do not represent Ms. Robbins in the above referenced matter, nor any other . . ."), with 7/29/10 Pelican Br. at 4 n.2 ("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.") (citing Altman Decl. ¶ 4 ("[N]or was I Mr. Robbins' lawyer in connection with that matter.") and 8/4/10 Pelican Br. at 10 ("[D]efendants' accusations and unseemly innuendo aside, it cannot be disputed that counsel for Pelican is not and never has been counsel for AIP and never represented Mark Robbins or his wife, Allison [sic] Robbins, in the AIP bankruptcy.") Given defendants' broad assertions that plaintiff's counsel represented Mark Robbins, Mr. Altman's narrowly tailored responses as to Mark Robbins are rather curious.

2009; and (v) AIP filed for bankruptcy on May 27, 2009. The facts presented since the May 20 argument clearly show that Pelican and AIP have common ownership and management and that, notwithstanding this interconnectedness, AIP transferred to Pelican certain non-exempt property during a time when a binding court order expressly enjoined any transfers by AIP, AIP Lending, or Robbins.

DISCUSSION

The party invoking federal jurisdiction bears the burden to establish its standing to sue. See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 190 (2000); Lujan v. Defenders of Wildlife, 504 U.S. 555, 561-62 (1992). To satisfy that burden, a litigant must clearly and specifically set forth facts sufficient to satisfy Article III standing requirements for each claim and form of relief sought. Baur v. Veneman, 352 F.3d 625, 641-42 n.15 (2d Cir. 2003). Moreover, the litigant's burden is ultimately more than a requirement of pleading -- it is an "indispensible part of the case" which must be supported with evidence in the same manner as any other on which that party bears the burden of proof. See Sharkey v. Quarantillo, 541 F.3d 75, 83 (2d Cir. 2008); see also MOORE'S, supra, § 101.31 n.5 (citing cases).

Pelican asserts the Assignment as its sole basis for standing. While an assignee of claims may have standing in

certain circumstances, see Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 128 S. Ct. 2531, 2542, 554 U.S. 269 (2008); Connecticut v. Physicians Health Servs. of Conn., Inc., 287 F.3d 110, 117 (2d Cir. 2002) (citing Vt. Agency of Natural Res. v. United States ex. rel. Stevens, 529 U.S. 765, 773 (2000)), a void assignment cannot confer standing on the purported assignee. See, e.g., Bernstein v. Greater N.Y. Mut. Ins. Co., 706 F. Supp. 287, 290 (S.D.N.Y. 1989); McCormack v. Bloomfield Steamship Co., 399 F. Supp. 488, 491 (S.D.N.Y. 1974).

As discussed below, the parties' submissions have sharpened the unattractive circumstances of the Assignment and magnified the Court's initial concerns regarding its legality. Indeed, despite three opportunities to do so, plaintiff has not even begun to assuage our concerns, much less satisfy its burden to establish standing. Accordingly, the case is dismissed.

I. Defendants' Standing to Challenge Plaintiff's Standing

At the outset, we reject Pelican's argument that the Talos Defendants and Bryan Cave "have no standing to seek to set aside the Assignment . . . based on any would-be fraudulent conveyance claim" because these defendants are not creditors of AIP. (6/10/10 Pelican Br. at 2.) Pelican's focus on defendants' purported lack of standing -- rather than its own -- is unavailing in this case.

The argument is a non-starter insofar as defendants Ramachandran and McBride are AIP creditors, who each filed a proof of claim in the AIP bankruptcy, and thus indisputably have standing to challenge the Assignment as a fraudulent conveyance or voidable preference. Indeed, Pelican conceded as much by advancing the rather unsavory argument that, if Ramachandran could show he is a creditor of AIP (which both he and McBride have done), "Pelican could of course dismiss him and end the [fraudulent conveyance] inquiry entirely." (6/10/10 Pelican Br. at 4.)[11] Second, beyond the fraudulent conveyance issue (which only the Talos Defendants raise and which, as noted in Part II, infra, forms no part of our holding here), all defendants in this action have standing to challenge the legality of the "making and delivery of the assignment" itself. See Sardanis v. Sumitomo Corp., 282 A.D.2d 322, 323, 723 N.Y.S.2d 466 (1st Dep't 2001). Put another way, defendants plainly have standing to challenge plaintiff's standing.

Most fundamentally, this Court is obligated to raise questions regarding its subject matter jurisdiction. See, e.g., MOORE'S, supra, at § 101.30[2]. Indeed, as we made clear at oral argument and in soliciting (more substantive) reply papers from plaintiff, this Court intends to address threshold questions at

[11] In light of our decision here, Pelican's anticipated tactic will prove unnecessary.

the threshold. Having carefully considered the parties' arguments and the voluminous supporting submissions, we note that each aspect of the defendants' collective three-pronged attack on the Assignment could ultimately prove persuasive. However, since the first ground -- namely, that the Assignment violated the orders of the Utah court -- is dispositive, we need not discuss the additional issues of fraudulent conveyance and champerty.

II. The Assignment's Violation of Binding Court Orders

The facts outlined above clearly demonstrate that the Assignment was a "transfer" in violation of the Utah court's February 17, 2009 Supplemental Order and was thus in contempt of court. The Assignment itself is therefore void and the rights purportedly transferred -- including the right to sue -- are unenforceable. See Stone v. Freeman, 298 N.Y. 268, 271 (1948); Szerdahelyi v. Harris, 67 N.Y.2d 42, 48 (1986).

The publicly available Supplemental Order is binding on Pelican even though Pelican was not a party to the Fairstar Proceeding in which that restraining order was issued. Rule 65A(d) of the Utah Rules of Civil Procedure (which substantially tracks the language of Rule 65(d)(2)(C) of the Federal Rules of Civil Procedure) provides that restraining orders bind "those persons in active concert or participation with [the parties to the action, their officers, agents, servants, employees, and

counsel] who receive notice, in person or through counsel, or otherwise, of the order." Utah R. Civ. P. § 65A(d). The facts presented here -- particularly the common ownership and management of AIP and Pelican, both entities founded by Mark Robbins -- compel the conclusion that Pelican and its principals were "in active concert or participation" with AIP, Robbins, and others explicitly bound by the Supplemental Order and thus were on constructive, if not actual, notice of that injunction. See European American Bank v. Royal Aloha Vacation Club, 704 F. Supp. 1233, 1245 (S.D.N.Y. 1989) (holding assignment void for violating an injunction in an action where the assignee was not a party, owing to the assignee's affiliation with assignor and constructive notice).

In what appears to be a carefully crafted response to defendants' arguments and assertions, plaintiff raises certain disputed details. However, even accepting plaintiff's assertions as true, those granular points of fact would not even begin to create a material dispute as to the close relationship among the parties to the Assignment. In this connection, Pelican's third brief (submitted only upon explicit invitation from the Court) cites an affidavit of Pelican manager Doug Roberts for the proposition that "Pelican knew not about the February 17, 2009 Supplemental Order of the Utah Third Judicial District Court prior to the current motion practice [in this

action]." (8/4/10 Pelican Br. at 10 (citing Roberts Aff. ¶ 9) (emphasis added).) But that is not what Roberts actually says in his affidavit. Roberts avers, "my review of the [Supplemental Order] in connection with the preparation of this affidavit was the first time I ever saw that document, and . . . I was previously unaware of it." (Roberts Aff. ¶ 9 (emphasis added).) Plaintiff's use of this narrow assertion concerning Roberts' lack of personal knowledge is too clever by half. While Roberts' testimony may be material in any potential contempt proceedings against him personally, it does not create a dispute as to whether Pelican itself -- most likely through the actual notice of its self-described "Authorized Person" and "Founder," Mark Robbins -- was bound by the injunction by virtue of its close affiliation with AIP.[12] See Royal Aloha Vacation Club, 704 F. Supp. at 1245. Indeed, the facts discussed above establish various interconnections and concerted actions -- in addition to those facilitated by Doug Roberts himself -- that put Pelican on constructive (and probably actual) notice of the Utah restraining order. By participating in the Assignment and taking the assigned Talos Claims notwithstanding that binding

[12] Curiously, Roberts goes one step further in his affidavit, arguing that even if he had been aware of the Supplemental Order, he "do[es] not believe [it] would have prevented him from entering into the business transaction reflected in the Assignment Agreement." (Id. ¶ 10.) Apart from being simply erroneous -- given that AIP, Robbins, and Pelican were inextricably linked -- this conclusion of law would not suffice to create a dispute of fact.

prohibitive injunction, Pelican did not obtain its purported right to sue in an enforceable way.

Having failed to persuade with its artful dodging of facts, plaintiff fares no better with its legal arguments, which largely rely on inapposite legal standards and burdens of persuasion. In this connection, Pelican relies on Bunge Corp. v. Manufacturers Hanover Trust Co., 65 Misc. 2d 829, 842, 318 N.Y.S.2d 819 (Sup. Ct. N.Y. Cty. 1971), for the proposition that the "defense of illegality" is not established absent proof of plaintiff's knowledge of the alleged illegality. (See 8/4/10 Pelican Br. at 10.) Plaintiff's reliance on that case is misplaced. Unlike Bunge, the issue here is not defendants' "defense" to an allegedly illegal contract which formed the subject matter of the dispute. Rather, Bryan Cave and the Talos Defendants have asserted the illegality of the Assignment in addressing the issue of plaintiff's standing based upon that Assignment. On this threshold issue of standing, plaintiff bears the burden of persuasion. See, e.g., Lujan, 504 U.S. at 561-62; MOORE'S § 101.31 n.5. Pelican's other cited cases are similarly inapposite, as they involved defendants who attempted to assert contract defenses to contract claims brought against them, see Schmidt v. Fleet Bank, 16 F. Supp. 2d 340, 345-46 (S.D.N.Y. 1998) (in pari delicto); Seagirt Realty Corp. v. Chazanof, 13 N.Y.2d 282, 286 (1963) (illegality); Southwestern

Shipping Corp. v. Nat'l City Bank of N.Y., 6 N.Y.2d 454, 462 (1959) (same), and not defendants who challenged the plaintiff's standing to sue as an assignee of a void assignment.[13] In any event, Pelican's constructive knowledge of illegality has been shown through, inter alia, Robbins involvement in both entities.

Furthermore, Pelican's efforts to distinguish defendants' cases, such as Bernstein v. The Greater N.Y. Mutual Ins. Co., 706 F. Supp. 287 (S.D.N.Y. 1989), and McCormack v. Bloomfield Steamship Co., 399 F. Supp. 488 (S.D.N.Y. 1974), are wholly unpersuasive. To be sure, the particular facts of Bernstein and McCormack may be distinguishable, since each case involved the assignment of a personal injury action expressly unassignable under New York law. Nonetheless, the fundamental principle of those cases -- namely, that a void assignment cannot provide a valid basis for standing -- plainly applies here. Plaintiff's attempt to distinguish defendants' other cases are unpersuasive for similar reasons.

Finally, plaintiff suggests that the only entity "that might reasonably raise an issue about the Assignment Agreement

[13] Indeed, plaintiff's own briefing essentially concedes this distinction. (See 8/4/10 Pelican Br. at 2 ("Pelican is not in this action seeking to enforce a contractual duty of the defendants against which illegality could be argued as Pelican has done no wrong for which it should be penalized and for which the Talos Defendants and Bryan Cave should receive a windfall.").)

In addition, that Fairstar itself has chosen not to intervene in this case or otherwise to set aside the Assignment does not undermine our conclusion that the Assignment violated the Utah court's orders. What is more, this holding, which goes to our jurisdiction and not to the merits of plaintiff's claims, is not a "get out of jail free card for the defendants," as plaintiff argues. (8/4/10 Pelican Br. at 12.)

is AIP creditor, Fairstar" and that "the possibility . . . that any judgment secured by Pelican may be subject to a claim by Fairstar is not a get out of jail free card for the defendants." (8/4/10 Pelican Br. at 12.) As noted, standing is not a "get out of jail free card" for a party sued, but a threshold jurisdictional requirement. Without commenting in any way on the potential merit of Pelican's claims in this case, we note that plaintiff's own premise -- that its claims against defendants in this case have merit and will result in a judgment -- only serves to underscore our finding that the assignment of the Talos Claims, along with the other assigned property, was a prohibited "transfer." If the Talos Claims have any value, that value was frozen by Judge Peuler's order for Fairstar's potential benefit pending a court hearing. Moreover, with respect to the AIP bankruptcy that soon followed, any value attributable to the Talos Claims would have been in the bankruptcy estate for potential distribution to creditors.[14] Pelican is thus hoisted on its own petard.

In sum, we agree with plaintiff's conclusion that there is no reason to hold a further hearing on the issue of standing -- but for reasons contrary plaintiff's. The record shows that the

[14] On the other hand, assuming that the Talos Claims were worthless and thus arguably not "property" subject to the Utah court's prohibition on transfers, this assumption would totally undermine the substantive merit of this action. Put simply, if the Talos Claims have value, plaintiff has no standing; if the Talos Claims are worthless, plaintiff has no case.

Assignment on which Pelican bases its standing violated a binding court order and is therefore void. Accordingly, Pelican has no standing.[15]

CONCLUSION

For the foregoing reasons, plaintiff lacks standing. Accordingly, the action is dismissed for want of subject matter

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[15] While the violation of the Utah court order alone is sufficient to demonstrate Pelican's lack of standing to sue and the case is dismissed solely on that basis, we note further that the chronology and circumstances of the Fairstar Judgment and Supplemental Order, the Assignment, the AIP bankruptcy, and Pelican's subsequent conduct do suggest that the Assignment was at least a constructive fraudulent conveyance -- and may even indicate champerty.

Pelican's briefing avoids the substance of the fraudulent conveyance issue. Instead, plaintiff counters obliquely that only certain creditor-defendants have standing to raise this argument -- and that counsel for one of those creditors should be disqualified. As noted above, the first argument is a non-starter. The second argument, raised in premotion correspondence to the Court, is not material to -- and has been mooted by -- our resolution of the standing issue and in any event appears meritless.

Beyond its non-starter "counter-standing" arguments, plaintiff merely relies on the general principle that constructive or intentional fraudulent conveyance claims often entail fact-intensive inquiries and thus are rarely decided on motion. However, Pelican fails squarely to address these issues on the facts of this case. Indeed, in light of the undisputed facts presented -- including publicly available records and the recently disclosed description of Pelican by Robbins himself, which demonstrate that AIP and Pelican were closely linked through Robbins and others -- plaintiff's conclusory assertions that the Assignment was conducted at "arm's length" (5/20/10 Tr. at 6), and was "a legitimate and perfectly legal and appropriate business transaction with a third party" (6/10/10 Pelican Br. at 6), seem specious at best.

Furthermore, and notwithstanding the self-serving affidavit of Pelican's manager as to the primary purpose of the Assignment, the concern of champerty raised in defendants' papers may well have been proven valid -- given the indication that Pelican appears not to be conducting any business and until only recently was not even in good corporate standing. See, e.g., Refac Int'l, Ltd. v. Lotus Development Corp., 131 F.R.D. 56, 58 (S.D.N.Y. 1990) (finding assignment champertous where its primary purpose was to enable plaintiff to commence actions as another party's surrogate).

In sum, while the Assignment's violation of the Utah court order is sufficient to establish that Pelican Equity does not belong in this Court, the facts and additional arguments presented on this issue prevent us from refraining to ask whether "Pelican Equity" is a misnomer.

jurisdiction. The Clerk of the Court is respectfully instructed to close this case.

IT IS SO ORDERED.

Dated: New York, New York
August 17, 2010

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Copies of the foregoing Order have been mailed on this date to the following:

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