UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

In re:

COUDERT BROTHERS LLP,

Debtor.

App. Case No .11-2785 (CM)

x

RETIRED PARTNERS OF COUDERT BROTHERS TRUST,

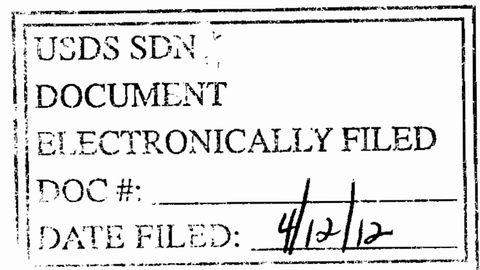
Plaintiff-Objectant,

Adv. Pro. No. 08-1472

-against-

BAKER & MCKENZIE LLP, ORRICK HERRINGTON & SUTCLIFFE LLP, and DECHERT LLP,

Defendants-Respondents.



x

MEMORANDUM ORDER ADOPTING THE "RECOMMENDATION" OF BANKKRUPTCY JUDGE DRAIN AND DISMISSING THE ADVERSARY COMPLAINT WITH PREJUDICE

McMahon, J.:

INTRODUCTION

This case reached the Court as a Bankruptcy appeal, arising from a series of rulings by Judge Drain of the Bankruptcy Court. Judge Drain dismissed, with prejudice, the complaint in an adversary action filed by Plaintiff Retired Partners of Coudert Brothers Trust (the "Trust") – a trust representing the interests of some, but not all, of the retired partners of the debtor Coudert Brothers LLP – against three Law Firms, Baker & McKenzie LLP, Orrick Herrington & Sutcliffe, and Dechert LLP (the "Firms"). Collectively, the Firms purchased a large share of

Coudert's business while it wound down, but no one firm obtained more than 50%. Judge Drain's grounds for dismissal were (1) that the Trust lacked standing to pursue claims for successor firm liability and tortious interference with contract, because those claims were premised on the theory that the Firms' asset purchases made it impossible for Coudert to continue as a going concern, a theory that would entitle any and all creditors to recover, and, thus, a theory that could be pursued only by the estate administrator; and (2) that, in any event, the Trust failed to state a claim for relief on either count.

While the parties briefed the appeal from Judge Drain's rulings, the Supreme Court issued Stern v. Marshall, 131 S.Ct. 2594 (2011); shortly thereafter, the Trust moved to dismiss its appeal and remand the case to New York State court, where the Trust first brought it. The Trust argued that, because the Bankruptcy Court could not enter final judgment on the State law claims at issue, this Court would need to evaluate those claims from scratch. However, rather than do so, the Trust argued, the Court should remand the claims to State court, given that the claims present novel and difficult questions of New York law.

In a Decision and Order dated September 23, 2011, the Court agreed that the Trust's claims against the Firms implicated only "private rights," and that, as a result, the Bankruptcy Court did not have the power to enter final judgment dismissing them. In re Coudert Bros. LLP, 2011 WL 5593147, at *1 (S.D.N.Y. Sept. 23, 2011). However, rather than vacate the Bankruptcy Court's "final" order of dismissal and remand the case, the Court sought to effectuate, as far as possible, the division of labor intended by Congress, and, therefore, converted Judge Drain's final determinations into recommended findings of fact and conclusions of law for de novo review. Id. at *13-15.

Thus, what began as the Trust's appellate brief has been converted into its objections to the Judge Drain's recommendations. The Firms have since filed their responses to the objections, and the Trust has filed a reply.

The issue is whether, after de novo review, the Court should adopt Judge Drain's findings and dismiss the adversary complaint with prejudice.

Having read the Complaint (in its several forms), Judge Drain's orders and the transcripts of his conferences, as well as the parties' submissions, it is hereby ORDERED that Judge Drain's recommendations are adopted, and the Trust's complaint is DISMISSED with prejudice.

BACKGROUND

Coudert filed for Chapter 11 bankruptcy in September 2006. It is not clear, from the complaint and appended materials, precisely when Coudert became insolvent; in any event, there is no allegation that Coudert had sufficient profits in 2004 and 2005 to meet all of its obligations to its creditors, including payments owed to its retired partners. (See Compendium of Collected Documents, Ex. 8 (Second Proposed Third Amended Complaint), ¶¶ 20-24.)

Under Schedule 5 of the Coudert Partnership Agreement, the retired partners of Coudert are entitled to retirement income, calculated as a percentage of their "Profit Shares" on the date of retirement. (Compendium, Ex. 5 (Partnership Agreement) Schedule 5.) However, the Partnership Agreement imposes several "limitations" on the retired partners' right to payment. (Id., Art. 9.) As pertinent here, the Partnership Agreement specifies that "The allocation priorities provided in Article 6(j) shall be observed" in the distribution of retirement income. (Id., Art. 9(i).) Article 6(j) of the Partnership Agreement, in turn, says that

> In determining the value of Profit Shares, profits shall be allocated among the Partners in accordance with the following priority, it being the intention that the total number and value of participating Profit Shares in each class of Partners listed below shall (where appropriate) be reduced by the Profit Shares or other

> compensation attributable to prior classes before determining the values of the Profit Shares of the remaining classes.

(Compendium Ex. 5 (Partnership Agreement) Art. 6(j).) The Agreement then lists four classes of profit allocations with higher priority than the payment obligations to the retired partners: allocations guaranteed by contract to certain lateral equity partners; guaranteed payments to partners; allocations to contract partners; and payments of interest on capital. (Id.) As Judge Drain recognized, and the parties agree, the effect of these provisions was to condition the retired partners' rights to a share of profits on Coudert's generating profits sufficient to meet the firm's obligations to the higher priority claimants.

Finally, the Partnership Agreement limits the parties to whom the retired partners can look for payment: "Payees of Retirement Income shall not have any claim for same against any individual Partner but shall look for payment only to the Partnership *or a partnership which may fairly be considered a successor partnership of the Partnership by reason of continuity of personnel and clients*." (Id., Schedule 5, Art. 9(iv).)

Six months after Coudert filed for bankruptcy, the Trust commenced an action in Westchester County Supreme Court. The Defendants included ten of Coudert's "active" partners and several law firms, including Baker, Orrick, and Dechert, the Defendant Firms here.

The Trust alleged that the active partners and the Firms conspired together to transfer Coudert's assets to the Firms for less than fair market value; in exchange, the active partners were allegedly to be given "soft landings" at the Firms. Because no one of the Firms would acquire 50% of Coudert's assets, none of them would become a "successor firm," and so none would become liable for Coudert's contractual obligations to its retired partners. The Trust alleged causes of action under state law for, among other things, breach of Coudert's Partnership Agreement by the active partners and tortious interference with the Partnership Agreement by

the Firms. It also sought to impose successor firm liability on the Firms collectively notwithstanding the fact that none of the Firms had individually acquired half or more of Coudert's assets.

In June 2007, the Firms removed the action to federal District Court under 28 U.S.C. § 1452(a); the asserted jurisdictional basis was that the Trust's action was "related to" the Coudert bankruptcy petition under 28 U.S.C. §§ 1334(b) and 157(a). Then-District Court Judge Lynch referred the matter to Bankruptcy Court to be considered with Coudert's Chapter 11 petition.

The Trust ultimately participated in the liquidation, submitting a proof of claim for retirement payments owing under Coudert's Partnership Agreement. This action was stayed pending confirmation of Coudert's liquidation plan. After the plan was confirmed in August 2008, the administrator of Coudert's estate, Development Specialists, Inc. ("DSI") moved successfully to intervene as a party plaintiff in the Trust's action against the Firms.

DSI and the Trust then filed a Second Amended Complaint, naming the Firms as Defendants,[1] and including the successor liability and tortious interference claims at issue on this motion. The successor liability claim was premised on the theory that the Firms became liable for Coudert's retirement payment obligations to its retired partners when they conspired together with the active partners to evade those obligations. (See Compendium, Ex. 2 (Second Amended Complaint), ¶¶ 19-21, 33-35.) The Trust and DSI alleged that the Coudert practice was "de facto" merged with, or merely continued at each of the Firms, rendering them liable as successor firms under New York law. (Id. ¶¶ 36-43 (as to Baker); ¶¶ 44-57 (as to Orrick); ¶¶ 69-73 (as to Dechert).)

---

[1] The Second Amended Complaint also named as Defendant DLA Piper. That firm is noted named as a Defendant in subsequent iterations of the Complaint, and is no longer a party to this action.

On the tortious interference count, the Trust and DSI alleged that the Firms intentionally induced a breach of the provisions of the Coudert Partnership Agreement that require payments of a share of Coudert's profits to the retired partners: "[The Firms] intended to and did induce the incumbent partners of Coudert to breach the Partnership Agreement by, among other things, disregarding their obligations to the retired partners contained therein as a predicate to their acquisition of certain assets of Coudert and in order for the incumbent partners to obtain continued employment." (Id. ¶ 78.) The theory of damages was that, "But for the interference . . . the retired partners would still be receiving pension benefits or at a minimum the assets of Coudert would not be so depleted as to render the Trust Members' interest therein worthless." (Id. ¶ 93.)

On the Firms' motion, Judge Drain dismissed both claims in July 2010. (Compendium, Ex. 4 (Order), at 1-3.) He held that the Trust lacked standing to pursue the successor liability claims, which properly belonged to the estate representative, DSI. He reasoned that, "in order to prevail in requiring an alleged successor partnership to be liable for retirement income under [the Partnership Agreement], the Trust would have to prevail like any other creditor of Coudert in establishing that these [Firms] were in fact a 'successor partnership' . . . under New York common law principles as a successor to Coudert Brothers LLP." (Id. (Hearing), at 5-7.) Thus, to the extent that the Trust's recovery depended on finding the Firms generally liable as successors for all the obligations of Coudert, the Trust had no unique legal injury conferring standing; thus, the Trust's claims, if any, belonged to the estate, and the Trust had no standing to pursue them.

DSI, on the other hand, did have standing to pursue successor liability claims on behalf of all creditors, as it was the administrator of Coudert's estate. Nevertheless, Judge Drain held that

the Second Amended Complaint failed to allege facts on which the Firms would be liable for Coudert's obligations as a successor firm. DSI relied on the "de facto merger" and "mere continuation of business" exceptions to the general rule that a party acquiring the assets of a dissolved entity does not thereby acquire its liabilities as well. However, Judge Drain considered the law well established that those exceptions require an allegation that the business had continued in a different form, and that here – where Coudert's partners scattered to numerous law firms, taking their respective clients with them to preexisting entities with entirely different management – no such allegation could be made.

Judge Drain also held that the Trust's non-successor claims, including its claim for tortious interference with the Partnership Agreement, amounted to no more than "a generalized claim that the [Firms] caused harm to Coudert's estate" by poaching partners and business, "that rendered Coudert less able to pay its debts;" he found that insufficient to confer standing. As with the claim for successor liability to Coudert's contractual obligations to the Trust's members, the Trust's theory of tortious interference is not unique to it, but, if it were successful, would provide a ground of recovery to every creditor that claimed against the Coudert estate. That is, if poaching partners and business tortiously interfered with the Coudert Partnership Agreement by making Coudert unable to make the contractually required payments to the retired partners, then poaching partners and business and causing Coudert's dissolution also made Coudert unable to perform its other obligations, potentially giving a claim to every creditor of Coudert. See, e.g., id. at 11, 20-21.

Alternatively, Judge Drain ruled that the Trust failed to allege that the Firms intentionally procured a breach, or even that the Partnership Agreement was breached: "under paragraph 6(j) [Coudert] had to make payments to the retired partners only under certain circumstances, where

there were sufficient profits to do so and the parties entitled to prior payments had received their payments. Satisfaction of these conditions is not alleged." Id. at 19-20.

Following the dismissal of the Second Amended Complaint, DSI stopped pursuing these claims on behalf of the Coudert estate. (See Compendium, Ex. 11.) Nevertheless, the Trust – proceeding without DSI, and naming only the Firms as Defendants – subsequently tried twice to amend the complaint. (See Compendium, Ex. 5 (first proposed Third Amended Complaint); Ex. 8 (second proposed Third Amended Complaint).) After reviewing the proposed Complaints, and holding hearings, Judge Drain denied both motions, in November 2010 (id., Exs. 6, 7) and March 2011 (id., Exs. 9, 10). He adhered to his conclusions regarding standing to pursue claims on a successor liability theory. Judge Drain also found that the Trust had failed, despite his repeated instructions, to allege that Coudert had sufficient profits in 2004 and 2005 to satisfy, not only the claims of higher priority payees, but also the claims of the retired partners, and therefore failed to allege satisfaction of a condition precedent to the Trust's members' right to be paid under the Partnership Agreement. Thus, no breach of contract was alleged, and thus, no claim for tortious interference was stated against the Firms.

The procedural path this case took between Judge Drain's "final" decision to today is explained in the Introduction.

Pursuant to this Court's September 23, 2011 Decision and Order, Judge Drain's decision is treated as a report and recommendation subject to de novo review. See 28 U.S.C. § 157(c)(1).

DISCUSSION

The Trust objects to the recommendation of dismissal of its two remaining claims: first, for successor liability on the retirement payments allegedly owing under the Coudert Partnership Agreement; and second, for tortious interference with the Partnership Agreement. I address each in turn.

A. Successor liability claim

With respect to the first claim, I agree with Judge Drain that the Trust lacks standing to pursue its contract rights under the Partnership Agreement against the Firms on the theory that they are successors to Coudert.

The Second Circuit has held that "If a claim is a general one, with no particularized injury arising from it, *and if that claim could be brought by any creditor of the debtor*, the trustee is the proper person to assert the claim, and the creditors are bound by the outcome of the trustee's action." Kalb, Voorhis & Co. v. American Financial Corp., 8 F.3d 130, 132 (2d Cir. 1993).

Here, the Trust argues that the Firms are liable for retirement payments to the Trust's members because the Firms should be regarded as successor firms under New York law. But without even asking whether the Trust is right under the law, the Court observes that every single creditor could recover on its claims against Coudert, the debtor, under the Trust's theory. A successor firm becomes liable for *all* the obligations of its predecessor, not just some. If the Firms are successors under New York law, anyone with any claim against Coudert could move directly against the Firms on the same successor theory that the Trust alleges. Thus, a sufficient condition for vesting sole standing in the debtor's representative is satisfied, and the Trust lacks standing to pursue this claim as a creditor.

Kalb, and the cases it relies on, are analogous. They arose in response to creditor claims against third-party owners of a bankrupt entity, premised on piercing the debtor's corporate veil to hold the owners responsible for all the debtor's obligations. Insofar as any and every creditor could recover on that theory, since they all could pursue their claims against the solvent owners, no creditor had a particularized injury, and only the debtor/trustee/plan administrator had standing to pursue the owners on a veil-piercing theory.

As the Court recently explained in Picard v. JPMorgan, although this standing rule might seem to undermine the more fundamental principle that the trustee has standing to pursue only the claims of the debtor – and none of the claims of creditors – its rationale is tied to the basic purpose of vesting a trustee with exclusive standing over a bankrupt's legal rights:

> the analysis in [cases like Kalb] is employed consistently with [the general rule that the trustee only has standing to pursue the claims of the debtor] to determine which claims should be considered debtor property. Courts that follow this approach reason that allowing individual creditors to pursue certain claims common to all of them would result in the kind of rush to judgment and inconsistent adjudications that the bankruptcy laws exist to avoid. Thus, to further the goals of the bankruptcy laws generally, such claims should be deemed vested in the trustee, with exclusive standing to pursue them for the benefit of all creditors.

Picard v. JPMorgan Chase & Co., 460 B.R. 84, 95-96 (S.D.N.Y. 2011) (citing Koch Refining v. Farmers Union Cent. Exchange, Inc., 831 F.2d 1339, 1349 (7th Cir. 1987) ("[A] single creditor may not maintain an action on his own behalf against a corporation's fiduciaries if that creditor shares in an injury common to all creditors and has personally been injured only in an indirect manner.")); see also Pereira v. Farace, 413 F.3d 330, 342 (2d Cir. 2005); In re Keene Corp., 164 B.R. 844, 853–54 (Bnkr. S.D.N.Y. 1994).

That rationale applies here. If the Trust can rely on a theory of successor liability to recover from the Firms, then so can every other Coudert creditor, and who recovers depends

merely on who sues the Firms first. This is precisely the sort of result the Bankruptcy Code exists to forestall, by placing exclusive standing over estate claims in the bankruptcy trustee or plan administrator. See In re Keene Corp., 164 B.R. 844, 853 (Bnkr. S.D.N.Y. 1994) ("For the same reasons stated with respect to the piercing claims, claims based upon successor liability should be asserted by the trustee on behalf of all creditors.")

In its objections, the Trust repeats its effort, unsuccessful before Judge Drain, to establish a unique legal injury. It argues that the active partners and the Firms entered into a "hub and spokes" conspiracy to deprive the retired partners of their share of Coudert's continuing profits. This theory is completely off the mark.

First, as Judge Drain recognized, there is no tort of conspiracy under New York law. Rather, there must be a conspiracy to do something tortious before the Trust could have suffered a legal injury that might confer standing. "The allegation of a civil conspiracy, without more, does not in and of itself give rise to a cause of action. The actionable wrong lies in the commission of a tortious act, or a legal one by wrongful means, but never upon the agreement to commit the prohibited act standing alone." Hoag v Chancellor, Inc., 246 A.D.2d 224, 230 (1st Dept 1998) (internal citation omitted); Stokes v. Lusker, 425 Fed. Appx. 18, 22 (2d Cir. 2011) ("New York state law does not recognize an independent tort of conspiracy, and because no underlying primary tort supports plaintiff's claim, the claim fails."). The only tort the Trust even tries to allege is a tortious interference with contract (see below).[2] The allegation of a conspiracy does nothing to enhance the viability of that cause of action.

Apparently, the Trust thinks that a conspiracy allegation might help it on the merits of its successor liability claim: the argument would be that, while none of the Defendant Firms

---

[2] The Trust never brought a claim for breach of fiduciary duty before the Bankruptcy Court, another claim that belongs to the estate, and not to any creditor. In re Keene, 164 B.R. at 853-54.

individually became a successor firm under New York common law, the Defendant Firms as a collective can be so considered. The conspiracy allegation, then, would be intended to provide the Court with a reason to consider the Firms together when assessing the merits of the successor liability claim.

But the allegation of a conspiracy, and the novel legal theory of successor liability premised on it, have absolutely nothing to do with the standing problem Judge Drain correctly identified. Assuming there was a conspiracy, and that a conspiracy allegation is a sufficient reason to analyze the successor liability issue as if the Firms were collective successors, then every creditor of Coudert can recover on that allegation and that theory. For the reasons discussed above, that is reason enough to vest exclusive standing in the debtor, and through the debtor, its trustee or administrator.

Judge Drain recognized this and correctly dismissed the successor liability claim for lack of standing. I adopt his conclusion without reaching the merits, and dismiss the Trust's of the successor liability claims with prejudice.

B. Tortious interference with contract

1. *Standing*

The Trust's standing problem on tortious interference is less obvious. On its face, one might conclude that a tortious interference with contract claim by a creditor against a third-party is a claim that belongs to the creditor, not to the debtor, and that therefore the creditor alone has standing to pursue it.

However, the Court is not bound by the label a creditor affixes to its claim. Judge Drain ruled that the Trust's claim does not confer standing because it is premised on a theory under

which every creditor could recover. Specifically, the Complaint suggests that the Firms tortiously interfered with the Partnership Agreement by luring away Coudert partners and buying chunks of Coudert business large enough to render Coudert insolvent, but small enough to avoid successor liability under New York law. But, as Judge Drain recognized, if this theory works for the Trust, it would also work for every other creditor of Coudert: each could say that the Firms tortiously interfered with its contract by rendering Coudert unable to perform. Nor is the Trust's theory limited to creditors who entered contracts with Coudert; a judgment creditor, or a tort creditor, could claim that the asset sales rendered Coudert insolvent and therefore constituted a fraudulent transfer. It is well-established that only the trustee has standing to pursue such claims. See In re Madoff, --- F. Supp. 2d ----, 2012 WL 990829, at *10 (S.D.N.Y. March 26, 2012) (citing In re Ionosphere Clubs, Inc., 156 B .R. 414, 439 (S.D.N.Y. 1993) ("The creditor of any bankrupt may allege that the prior dealings of other parties with the bankrupt rendered it insolvent; however, such a claim is for fraudulent conveyance properly brought by the Trustee, not for tortious interference of contract"), aff'd 17 F.3d 600 (2d Cir. 1994).

Once again, I agree with Judge Drain. Although he did not go as far to say that the Trust's claim is a disguised claim for fraudulent conveyance, that conclusion is implicit in his reasoning. Because fraudulent conveyance claims belong to the estate, not to a creditor, the Trust has no standing to pursue it on behalf of its members.

Contrary to the Trust's objection, the doctrine of *in pari delicto* does not bar the debtor's trustee from bringing a (disguised) fraudulent conveyance claim, even in the face of allegations that the debtor conspired with the third-party to effect a transfer for less than fair market value. That common law doctrine does not apply where the Bankruptcy Code specifically vests the authority to bring such claims in the trustee.

2. *Failure to state a claim*

In any event, even if the Trust had standing to pursue this claim for tortious interference with contract, the claim fails on its own terms.

To state a claim for tortious interference with contract, a plaintiff must allege the following: "[1] a valid contract between the plaintiff and a third party, [2] defendant's knowledge of that contract, [3] defendant's intentional procurement of the third-party's breach of the contract without justification, [4] actual breach of the contract, and [5] damages resulting therefrom." Lama Holding Co. v Smith Barney, 88 N.Y.2d 413, 424 (1996).

Judge Drain ruled that the Trust failed to allege a breach of the Coudert Partnership Agreement. In particular, the Partnership Agreement does not guarantee any particular amount of payments to the retired partners, or any payment at all. Rather, the retired partners' right to payment is conditioned on Coudert's earning sufficient profit to pay off four higher priority classes of claimants: (1) lateral equity partners with special arrangements for top priority; (2) guaranteed payments to partners; (3) allocations to contract partners; and (4) payments of interest on capital. Only after such payments are made do the retired partners become entitled to payment under the Partnership Agreement. (See Compendium, Ex. 5, at 20-21 (Partnership Agreement, Art. 6(j); id., at Schedule 5, Art. 9(i).)

Moreover, nothing in the Partnership Agreement, or in the schedule setting forth the rights of the retired partners, guarantees that Coudert will remain a going concern, or prevents the practice from ceasing or the partners from leaving. Obviously, on dissolution of the firm, the firm could not earn sufficient profits to trigger the retired partners' right to payments, and the retired partners would have no breach of contract claim in that event.

Thus, Judge Drain found that in order to plead a breach of the Partnership Agreement (a prerequisite to pleading tortious interference with that contract), the Trust must allege (1) that Coudert earned sufficient profits before its dissolution to trigger the retired partners' rights to payment, and (2) that those payments were never made. However, despite several opportunities and Judge Drain's clear instructions on what needed to be pleaded, the Trust failed to allege that their right to payments ever accrued by reason of Coudert's earning a sufficient profit. Thus, he finally rejected the second proposed Third Amended Complaint and dismissed with prejudice following the hearing of March 4, 2011.

I agree with Judge Drain's analysis. Despite several opportunities, the Trust never alleged the condition precedent to its members' rights to payment, despite very clear and specific directions from Judge Drain on what needed to be pleaded. Rather, the Trust included allegations in its second proposed Third Amended Complaint (Compendium, Ex. 8, ¶¶ 20-24), that (1) Coudert was "profitable" in 2004 and 2005, and that (2) the Trust's members had actual accrued payments owing, or unpaid capital accounts with the firm, worth ~$1.8M, which amounts remain unpaid despite due demand. However, these allegations are not sufficient to state a claim a breach of the Partnership Agreement. The Trust does not allege that sufficient cash remained after making higher priority payments to actually trigger the obligations to pay these amounts, so the original problem Judge Drain identified had is not solved.

More importantly, however, even assuming the Trust could allege a breach of contract with respect to past due amounts at the time of dissolution, this breach does not underlie the Trust's claim for tortious interference against the Firms. The Trust does not alleged that the Firms intentionally procured a breach of *these* payment obligations, even assuming these obligations existed and were breached. Rather, the Trust's complaint is that the Firms conspired

to help the active partners avoid *future* pension liability by structuring the asset sales to avoid becoming successor firms under the law. But, as noted, the Partnership Agreement contains no promise to continue as a law practice, or to sell the practice to a successor firm wholesale, and thus, the active partners were free to dissolve Coudert and thereby extinguish the retired partners' future rights under the Partnership Agreement. So, even if the Law Firms intentionally procured the dissolution of Coudert in a manner that created no successor liability, that dissolution was not a breach of any contract.

Any accrued obligations Coudert breached when it sold its assets (and hence its ability to meet past due payments to its creditors) are not a basis to sue the acquirers of those assets. Rather, any accrued payments left unpaid were properly the subject of a claim against the Coudert estate in bankruptcy, which the Trust filed. That, as Judge Drain found, is the end of its legal remedies.

CONCLUSION

In conclusion, the Court adopts Judge Drain's recommendation and dismisses the complaint with prejudice, on the grounds that (1) the Trust lacks standing to pursue any claim premised on successor liability, and (2) the Trust failed to state a claim for tortious interference with contract. To the extent the Court's September 23, 2011 Decision and Order left open the possibility of abstention and remand, that possibility closed with the Trust's failure to adequately state any claims that could be remanded.

The Clerk of Court is directed to close the case. All related matters should now be indexed to the lowest remaining case number.

Dated: April 12, 2011

U.S.D.J.

BY ECF TO ALL COUNSEL