

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 - v. - :
 :
 POKERSTARS, et al. :
 :
 Defendants; :
 :
 ALL RIGHT, TITLE AND INTEREST IN THE :
 ASSETS OF POKERSTARS, et al.; :
 :
 Defendants-in-rem. :
 :
 - - - - - x

11 Civ. 2564 (LBS)

**MEMORANDUM OF LAW IN SUPPORT OF THE GOVERNMENT’S MOTION TO STRIKE
THE CLAIM OF ROBB EVANS OF ROBB EVANS & ASSOCIATES LLC, RECEIVER**

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum of law in support of its motion, pursuant to Rule 12(b) and (c) of the Federal Rules of Civil Procedure and Rule G(8)(c) of the Supplemental Rules for Admiralty and Maritime Claims, to strike the claim filed in this in rem forfeiture action by Robb Evans of Robb Evans & Associates LLC, Receiver ("Robb Evans" or "Receiver" or "Claimant"). The defendants-in-rem in this matter include, among others, all right title and interest in the funds previously held in certain accounts at Sunfirst Bank in Utah. Because the Claimant lacks standing to assert a claim for the assets in those accounts, his claim should be stricken.

Robb Evans filed a claim on October 5, 2011, contesting the forfeiture of certain funds in which he claims an ownership interest in his capacity as Receiver in an unrelated action pending in United States District Court for the District of Nevada, Federal Trade Commission v. Jeremy Johnson, Case No. 2:10-cv-02203-RLH-GWF (the "FTC Action"). The FTC Action concerns an individual named Jeremy Johnson and various corporate entities through which he and others allegedly perpetrated consumer fraud involving, inter alia, repeating unauthorized charges to unwitting consumers' credit cards. (See, generally, Complaint in FTC Action, a copy of which is attached hereto as Exhibit A). Robb Evans was appointed Permanent Receiver for the corporate defendants and the assets of Jeremy Johnson (the

"Receivership Estate") on or about February 10, 2011. On November 28, 2011, Robb Evans filed an answer to the in rem portion of the Complaint in this matter.

Robb Evans's claim should be stricken because he lacks standing to assert a claim for the defendants-in-rem in this action. None of the assets in which the Receiver asserts an ownership interest in his Claim were among the corporate assets covered by the preliminary injunction entered in the FTC Action. His verified claim fails to show any legal interest in or control over the accounts to which he asserts a claim.

BACKGROUND

A. The Criminal Indictment of Isai Scheinberg and Others for Various Gambling, Fraud, and Money Laundering Offenses

On or about March 10, 2011, a superseding indictment, S3 10 Cr. 336 (LAK) (the "Indictment") was filed under seal in the Southern District of New York, charging Isai Scheinberg, Raymond Bitar, Scott Tom, Brent Beckley, Nelson Burtnick, Paul Tate, Ryan Lang, Bradley Franzen, Ira Rubin, Chad Elie, and Jason Campos with conspiring to violate the Unlawful Internet Gambling Enforcement Act ("UIGEA"), 31 U.S.C. § 5363, in violation of Title 18, United States Code, 371; violating the UIGEA; operating illegal gambling businesses, in violation of Title 18, United States Code, Sections 1955 and 2; conspiring to commit wire fraud and bank fraud, in violation of Title 18, United States Code, Section 1349; and conspiring to launder money, in violation of

Title 18, United States Code, Section 1956(h).

As set forth in the Indictment, from at least in or about November 2006, the three leading internet poker companies doing business in the United States were PokerStars, Full Tilt Poker, and Absolute Poker/Ultimate Bet (collectively, "the Poker Companies"). (Ind. ¶ 1). PokerStars, headquartered in the Isle of Man, provided real-money gambling through its website, pokerstars.com, to United States customers. PokerStars did business through several privately held corporations and other entities. (Ind. ¶ 4). Full Tilt Poker, headquartered in Ireland, provided real-money gambling through its website, fulltiltpoker.com, to United States customers. Full Tilt Poker did business through several privately held corporations and other entities. (Ind. ¶ 5). Absolute Poker, headquartered in Costa Rica, provided real-money gambling through its websites, absolutepoker.com and ultimatebet.com, to United States customers. Absolute Poker did business through several privately held corporations and other entities. (Ind. ¶ 6).

As described in the Indictment, because internet gambling businesses such as those operated by the Poker Companies were illegal under United States law, internet gambling companies, including the Poker Companies, were not permitted by United States banks to open bank accounts in the United States to receive proceeds from United States gamblers. Instead, the

principals of the Poker Companies operated through various deceptive means designed to trick United States banks and financial institutions into processing gambling transactions on the Poker Companies' behalf. (Ind. ¶ 16).

For example, as described more fully in the Indictment, the defendants, and others, worked with and directed others to deceive credit card issuers and to disguise poker payments made using credit cards so that the issuing banks would process the payments. (Ind. ¶¶ 17-18). These deceptive and fraudulent practices included, for example, creating phony non-gambling companies that the Poker Companies used to initiate the credit card charges (Ind. ¶ 19), and creating pre-paid cards designed for United States gamblers to use to transfer funds to the Poker Companies and other gambling companies, with the purpose of the cards disguised by fake internet web sites and phony consumer "reviews" of the cards making it appear that the cards had some other, legitimate, purpose. (Ind. ¶ 20).

In addition, as described more fully in the Indictment, the defendants, and others, worked with and directed others to develop another method of deceiving United States banks and financial institutions into processing their respective Poker Companies' internet gambling transactions through fraudulent e-check processing. (Ind. ¶ 21). The Poker Companies used poker processors to establish payment processing accounts at various

United States banks and disguised from the banks the fact that the accounts would be used to process payments for internet poker transactions by making the transactions appear to relate to phony internet merchants. (Ind. ¶¶ 22-26).

B. The In Rem Forfeiture and Civil Money Laundering Complaint

On or about April 14, 2011, this action was commenced by the filing of a sealed in rem forfeiture and civil money laundering complaint (the "Complaint"). The Complaint sought the forfeiture of all right, title and interest in the assets of the Poker Companies, including but not limited to certain specific properties set forth in the Complaint. As alleged in the Complaint, the defendants-in-rem are subject to forfeiture (1) pursuant to Title 18, United States Code, Section 1955(d), as properties used in violation of the provisions of Section 1955; (2) pursuant to Title 18, United States Code, Section 981(a)(1)(C), as properties constituting or derived from proceeds traceable to violations of Section 1955; (3) pursuant to Title 18, United States Code, Section 981(a)(1)(C), as properties constituting or derived from proceeds traceable to a conspiracy to commit wire fraud and bank fraud; and (4) pursuant to Title 18, United States Code, Section 981(a)(1)(A), as properties involved in transactions and attempted transactions in violation of Sections 1956 and 1957, or property traceable to such property. The Complaint also sought civil monetary penalties for

money laundering against the Poker Companies and the entities that operated those companies for the conduct laid out above.

On or about September 21, 2011, the United States filed an Amended Complaint in this action, adding additional fraud allegations against Full Tilt Poker and the members of its Board of Directors, and naming certain assets of those defendant-directors.

C. Robb Evans's Claim and Answer

On or about October 5, 2011, Robb Evans filed a claim with respect to certain of the Defendant Property (the "Claim"). (Docket Entry 68). Specifically, the Claimant asserts an ownership interest in all funds held in, and traceable to, the eight accounts listed in Schedule B of the Complaint as "The Sunfirst Bank Accounts and Related Accounts." Those accounts are:

1. account numbered 121015408 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a Netwebfunds.com, and all funds traceable thereto;
2. account numbered 121015390 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a A WEB DEBIT, and all funds traceable thereto;
3. account numbered 27351910081015 held at Société Generale Cyprus LTD, Cyprus, in the name of Golden Shores Properties Limited, and all funds traceable thereto;
4. account numbered CY1211501001065983USDCACC002 held at FBME Bank LTD, Cyprus, in the name of Triple Seven Inc., and all funds traceable thereto;

5. account numbered 5510045221 held at Wells Fargo, N.A., in the name of Triple Seven L.P., and all funds traceable thereto;
6. account numbered 7478010312 held at Wells Fargo, N.A., in the name of Kombi Capital, and all funds traceable thereto;
7. account numbered 12900584 held at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Powder Monkeys/Full Tilt, now in the name of Sunfirst Bank, and all funds traceable thereto;
8. account numbered 129000576 on deposit at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Mastery Merchant/Psars, now in the name of Sunfirst Bank, and all funds traceable thereto;

(hereinafter, the "Claimed Accounts"). The Receiver further claims:

right, title and interest in the above-identified in rem assets, funds and property, all or a portion of which are claimed to be property of the receivership estate established in the FTC Action pursuant to the Preliminary Injunction Order.

(Claim p. 2).

As discussed more fully below, the Preliminary Injunction Order in the FTC Case (the "Injunction"), a copy of which was attached to the Claim, does not on its face cover any of the Claimed Accounts.

On or about November 28, 2011, Robb Evans filed an answer to the Complaint (the "Answer"). (Docket Entry 125).

ARGUMENT

I. THE RECEIVER LACKS STANDING TO FILE A CLAIM

A. The Law

“In order to contest a governmental forfeiture action, claimants must have both standing under the statute or statutes governing their claims and standing under Article III of the Constitution as required for any action brought in federal court.” United States v. Cambio Exacto, S.A., 166 F.3d 522, 526 (2d Cir. 1999). Standing is a threshold issue. If the claimant lacks standing, the court lacks jurisdiction to consider his challenge of the forfeiture. The burden of proof to establish sufficient standing rests with the claimant. Mercado v. U.S. Customs Service, 873 F.2d 641, 644 (2d Cir. 1989); United States v. One 1986 Volvo 750T, 765 F. Supp. 90, 91 (S.D.N.Y. 1991); United States v. One 1982 Porsche 928, 732 F. Supp. 447, 451 (S.D.N.Y. 1990) (abbreviated title). Where the claimant’s own allegations are insufficient to demonstrate standing, a motion to strike his claim should be granted. See United States v. \$38,570 U.S. Currency, 950 F.2d 1108, 1111-13 (5th Cir. 1992) (“Unless claimant can first establish his standing he has no right to put the government to its proof”).

To have statutory standing, a claimant in a civil forfeiture proceeding must comply with the procedures laid out in Supplemental Rule G. To have constitutional standing, however, a

claimant must demonstrate an "ownership or possessory interest in the seized or forfeited property." United States v. Pokerstars, No. 11 Civ. 2564 (LBS), 2012 WL 1659177, at *2 (S.D.N.Y. May 9, 2012) (citing Cambio Exacto, S.A., 166 F.3d at 527). "If the claimant cannot show a sufficient interest in the property to give him Article III standing there is no case or controversy, in the constitutional sense, capable of adjudication in the federal courts." United States v. New Silver Palace Restaurant, Inc., 810 F. Supp. 440, 442 (E.D.N.Y. 1992) (internal quotation marks, alterations, and citations omitted). See also United States v. U.S. Currency, \$81,000.00, 189 F.3d 28, 35 (1st Cir. 1999); United States v. \$9,041,598.68, 163 F.3d 238, 244-45 (5th Cir. 1998); United States v. Contents of Accounts (Friko Corporation), 971 F.2d 974, 985 (3d Cir. 1992).

Thus, "[t]o establish standing, 'the claimant must demonstrate that he has a colorable ownership, possessory or security interest in at least a portion of the defendant property.'" United States v. One Silicon Valley Bank Account, 05 Civ. 295, 2007 WL 1594484, at *2 (W.D. Mich. June 1, 2007) (quoting United States v. \$38,852.00, 328 F. Supp. 2d 768, 769 (N.D. Ohio 2004)); see also United States v. Contents of Account Numbers 208-06070 and 208-06068-1-2, 847 F. Supp. 329, 333 (S.D.N.Y. 1994); One 1982 Porsche 928, 732 F. Supp. at 451. An unsecured creditor does not have a legal interest in any

particular property owned by the debtor, and does not have standing to contest the forfeiture of the debtor's property. Cambio Exacto, S.A., 166 F.3d at 529 (person to whom a money transmitter owes money lacks standing as a general creditor to contest forfeiture of money transmitter's account).

B. Discussion

Under these established legal principles, the Receiver's allegations are insufficient on their face to demonstrate standing in this matter. Notwithstanding the Receiver's assertion that the Receivership Estate has an ownership interest in the Claimed Accounts, an examination of the plain language of the Injunction demonstrates that none of the Claimed Accounts are covered therein.

The Claimed Accounts consist of eight bank accounts (out of 70 bank accounts) set forth in Schedule B of the Complaint in this action. The eight Claimed Accounts were held, respectively, in the names of the following entities:

1. Triple Seven LP d/b/a Netwebfunds.com
2. Triple Seven LP d/b/a A WEB DEBIT
3. Golden Shores Properties Limited
4. Triple Seven Inc.
5. Triple Seven L.P.
6. Kombi Capital
7. Powder Monkeys/Full Tilt

8. Mastery Merchant/Psars

(Complaint, Schedule B, ¶¶ 1-8).

The Receiver's Claim to any right, title and interest in the Claimed Accounts is based on the Receivership Estate established in the Injunction in the FTC Action. (Claim p. 2). The plain language of the Injunction authorizes both "the appointment of a Permanent Receiver for the Corporate Defendants and the assets of Jeremy Johnson," and "the freezing of the assets of Jeremy Johnson and the Corporate Defendants." (Injunction, p. 4, ¶ 7). But, the definition of "Corporate Defendants" – and therefore the scope of interest the Receiver may have in the Claimed Accounts – does not include any of the corporate entities listed in paragraphs one through eight of Schedule B to the Complaint. Compare Injunction pp. 6-7, ¶ 8 (defining "Corporate Defendants" as numerous specific companies) with Complaint, Schedule B, ¶¶ 1-8 (the Claimed Accounts).

Moreover, none of the accounts set forth in Schedule B of the Complaint were held in the name of Jeremy Johnson. To the extent that the Receiver claims an interest in the Claimed Accounts through Jeremy Johnson or the Corporate Defendants in the FTC Action, the Claim identifies no connection. And, while not necessarily pertinent to the standing inquiry, there is no apparent connection between the Claimed Accounts and the alleged conduct that gave rise to the receivership, that is, consumer

fraud involving unauthorized charges to unwitting consumers' credit cards. The Claimed Accounts, rather, were used to process payments in connection with unlawful internet gambling by the Poker Companies.

The Claim fails to establish any authority over, or interest in, the Claimed Accounts by the Receiver. In the absence of demonstrating an "ownership or possessory interest in the seized or forfeited property," United States v. Pokerstars, 2012 WL 1659177, at *2, the Receiver cannot establish Article III standing. Consequently, the Claim should be dismissed on its face for lack of standing, based on its failure to establish any interest that the Receiver may have in the Claimed Accounts.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court enter an order striking the claim of Robb Evans of Robb Evans & Associates LLP, Receiver, for lack of standing.

Dated: New York, New York
July 9, 2012

Respectfully submitted,

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