

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
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 CARDROOM INTERNATIONAL, LLC**

PREET BHARARA,
United States Attorney for the
Southern District of New York

Sharon Cohen Levin
Jason H. Cowley
Michael D. Lockard
Assistant United States Attorneys

- of counsel -

Table of Contents

PRELIMINARY STATEMENT.. 1

BACKGROUND. 2

 A. The Criminal Indictment of Isai Scheinberg and
 Others for Various Gambling, Fraud, and Money
 Laundering Offenses 2

 B. The in Rem Forfeiture and Civil Money Laundering
 Complaint.. 5

 C. Cardroom’s Claim and Answer and
 the California Action.. 6

ARGUMENT 8

I. CARDROOM LACKS STANDING TO FILE A CLAIM

 A. Relevant Law. 8

 B. Discussion. 10

 1. Cardroom Has No Interest in
 Any Particular Funds. 10

 2. The California Action Does Not Create Standing
 in This Matter. 12

CONCLUSION. 13

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 Cardroom International LLC ("Cardroom" or "Claimant"). The defendants-in rem in this matter include, among others, all right title and interest in the assets of several online gambling businesses, including numerous overseas bank accounts controlled by Full Tilt Poker and PokerStars, as well as certain assets of directors of Full Tilt Poker-related entities (collectively, "the Defendant Property").

Cardroom filed a claim on September 30, 2011, asserting an interest in up to \$30,000,000 in Defendant Property based on alleged damages Cardroom sustained by virtue of the conduct of PokerStars and Full Tilt Poker, as set forth in a lawsuit that Cardroom filed that same day in California state court. Cardroom Claim 1-2. Cardroom states that it will have an ownership interest in \$30,000,000 in funds based its expectation of an "inevitable judgment" in its favor in the state court action. Cardroom Claim 3. On October 21, 2011, Cardroom filed an answer expounded upon the theory underlying its claim. Cardroom states that it is filing a "contingent claim" for certain of the defendant property and concedes its claim is "not at this time

enforceable.” Cardroom Answer at ¶ 3.

Cardroom’s claim should be stricken because Cardroom lacks standing to assert a claim for the defendants-in-rem in this action. Cardroom has no legal interest in any assets of Full Tilt Poker and PokerStars, nor any other res named as a defendant in this action. Cardroom does little more than assert that these companies and their principles owe Cardroom damages based on the allegations set forth in its state court action. Cardroom may, of course, continue to pursue its action in state court, but it has no standing to maintain its claim against the Defendant Property in this action.

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 charged 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 charged 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 allegations against Full Tilt Poker and the members of its Board of Directors, and naming certain assets of these Full Tilt insiders as defendant property.

C. Cardroom's Claim and Answer, and the California Action

On or about September 30, 2011, Cardroom filed a claim with respect to the Defendant Property (the "Claim"). (Docket Entry 62). In the Claim, Cardroom asserted an interest in an unspecified \$30,000,000 worth of Defendant Property relating to PokerStars, Full Tilt Poker, or the Full Tilt Poker insiders named in the amended complaint. (Claim, p. 2).

Cardroom makes its claim to the above-referenced funds:

based on damages suffered as a result of defendants' [in the California Action] violation of, inter alia, the Racketeer Influenced and Corrupt Organization Act, which has caused damage to CARDROOM INTERNATIONAL, LLC, in an amount of no less than thirty million dollars (\$30,000,000). A lawsuit is being filed today, September 30, 2011, simultaneously herewith in the Santa Monica Division of the Superior Court of California, and Claimant desires to satisfy the inevitable judgment out of the Defendant Funds.

(Claim, p. 2-3).

The Claim does not allege any actual ownership interest or control of accounts or assets it mentions. Instead, it does little more than allege damages owed by PokerStars and Full Tilt.¹

On September 30, 2011, the same date as its claim in this action, Cardroom filed a civil RICO action in California state court, Cardroom International LLC v. Mark Scheinberg, et al., No. SC114330 (Super. Ct. Cal. L.A. County, Sept. 30, 2011) (the "California Complaint"), alleging violations of the (1) Racketeer-Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964 et seq.; (2) Florida Anti-Trust Act, Fla. Stat. 542; and (3) Cartwright Act, Cal. Bus. & Prof. Code § 16700 et seq. (the "California Action").² As alleged in the California Complaint:

34. Cardroom owns a mature and proven internet poker peer-to-peer system. It has sought to license its technology both for the real money and play money areas. However, the efforts of the company to conduct business

¹ Cardroom also alleges that certain accounts are subject to a one-year statute of limitations under 18 U.S.C. § 1984, and that the proceeds of gambling offenses related to this action were inextricably commingled with other fraudulent proceeds, thus limiting their forfeitability. (Claim, pp. 3-4). Regardless of these additional arguments and allegations, Cardroom fails to establish the threshold requirement of standing to support its Claim. Accordingly, the Government need not address these arguments here.

² A copy of the California Complaint was attached to Cardroom's Answer in this matter. (Docket No. 79). Cardroom refers to the California Action in its Claim, p. 3.

were repeatedly stymied by the illegal conduct of the Defendants, arising from their illegal and anti-competitive servicing of United States poker players to play online.

35. . . . Because the Full Tilt Defendants and the Pokerstars Defendants successfully cooperated in finding mechanisms for illegally transferring money to and from United States players after the passage of the UIGEA, they obtained a dominant position in the world market. The activities of Full Tilt and Pokerstars injured Cardroom as described in the following paragraphs 36 to 38.

(California Complaint, ¶¶ 34-35). Cardroom further alleges a conspiracy involving PokerStars and Full Tilt that interfered with Cardroom's ability to license its software to sports-related web sites (Id., ¶ 36); Cardroom's being "stymied in seeking relationships with major casino companies" because of PokerStars and Full Tilt's dominant positions in the market (Id., ¶ 37); and PokerStars and Full Tilt's dominance as discouraging "new entrants from the international, regulated markets, thus leaving only a small number of potential clients for Cardroom and other competing software companies" (Id., ¶ 38).

On or about October 21, 2011, Cardroom filed an answer to the Complaint (the "Answer"). (Docket Entry 79).

ARGUMENT

I. CARDROOM 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

1. Cardroom Has No Interest in Any Particular Funds

Under these established legal principles, Cardroom's allegations are insufficient to establish Article III standing. Cardroom does not allege any possessory or ownership interest in any Defendant Property. Rather, it grounds its claim on a hypothetical future judgment against Full Tilt Poker and PokerStars in the California Action.

Cardroom may have in personam claims against PokerStars, Full Tilt Poker, or their principals or agents for the conduct alleged in the California Action. But even assuming the validity of such claims, Cardroom lacks standing to assert a colorable interest to any defendant property in this action. As the Second Circuit noted, "an interest 'in' property must be an interest in a particular, specific asset, as opposed to a general interest in an entire forfeited estate or account." United States v. Ribadeneira, 105 F.3d 833, 836 (2d Cir. 1997) (per curiam). "It is well-established that general unsecured creditors do not have standing to contest the forfeiture of their debtor's property." United States v. 105,800 Shares of Common Stock of FirstRock Bancorp, Inc., 830 F. Supp. 1101, 1117 (N.D. Ill. 1993); see also DSI Associates, LLC v. United States, 496 F.3d 175, 184 (2d Cir. 2007) (a general creditor does not possess

a "legal right, title, or interest in the property that was forfeited as required for standing under § 853(n)(6)(A)"); 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); United States v. BCCI Holdings (Luxembourg), S.A., 46 F.3d 1185, 1191 (D.C. Cir. 1995) ("a general creditor can never have an interest in specific forfeited property"); United States v. Schwimmer, 968 F.2d 1570, 1581 (2d Cir. 1992).

2. The California Action Does Not Create Standing in This Matter

Even assuming arguendo that Cardroom were to prevail in the California Action and obtain a \$30,000,000 judgment against Full Tilt Poker and PokerStars, such a judgment still would not confer standing in this matter. It is well established that even holding an in personam judgment against a party does not confer an interest sufficient to assert a claim against that party's assets in a forfeiture action. See United States v. All Assets Held at Bank Julius Baer & Co., 772 F. Supp. 2d. 191, 199 (D.D.C. 2011) (holding that corporate holder of in personam judgment against participant company in criminal enterprise did not give judgment holder ownership interest in specific property, as required to establish standing in forfeiture action). See also United States v. One-Sixth Share of James Bulger, 326 F.3d 36, 44 (1st Cir. 2001) (stating that even if claimants had secured

personal judgment against defendant who owned shares of lottery winnings forfeited to Government, such judgment would not be a secured interest against any particular asset that defendant owned, and would be outside the scope of "owner or lienholder" required for standing) (citations omitted).

Claimant Cardroom does not hold a lien or judgment against any property in this matter. It does hold the hope of a possible future in personam judgment against certain defendants in the California Action, but such hope, even if it realized, does not suffice to confer standing here.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court enter an order striking the claim of Cardroom International LLC for lack of standing.

Dated: New York, New York
July 9, 2012

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York

By: : _____ /s/
Sharon Cohen Levin
Jason H. Cowley
Michael D. Lockard
Assistant United States Attorney
(212) 637-1060/2479/2193