

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
HADASSAH ACADEMIC COLLEGE,

Plaintiff,

-against-

HADASSAH, THE WOMEN'S ZIONIST
ORGANIZATION OF AMERICA, INC.,

Defendant.

ANALISA TORRES, District Judge:

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18 Civ. 2446 (AT)

ORDER

Plaintiff, Hadassah Academic College (“HAC”), brings this action against Defendant, Hadassah, the Women’s Zionist Organization of America, Inc. (“Hadassah”), asserting claims for breach of fiduciary duty, accounting, conversion, unjust enrichment, and imposition of a constructive trust. Compl., ECF No. 1. Hadassah moves to dismiss for lack of standing and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 27. Hadassah also moves, in the alternative, to strike certain paragraphs of the complaint as irrelevant and prejudicial pursuant to Rule 12(f). *Id.* For the reasons stated below, Hadassah’s motion to dismiss is GRANTED and its motion to strike is DENIED as moot.

BACKGROUND

The following facts are taken from the complaint, which the Court accepts as true for purposes of this motion. *See Koch v. Christie’s Int’l PLC*, 699 F.3d 141, 145 (2d Cir. 2012) (evaluating a Rule 12(b)(6) motion); *J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107, 110 (2d Cir. 2004) (evaluating a Rule 12(b)(1) motion). HAC is a college in Jerusalem, Israel, serving approximately 4,000 students. Compl. ¶ 1. Hadassah is a New York, not-for-profit corporation committed to “women’s health and well-being, to Israel, and to Jewish values and continuity.” *Id.* ¶¶ 2, 20.

Over the past five decades, Hadassah has raised tens of millions of dollars for HAC and its predecessor, the Hadassah College of Technology. *Id.* ¶ 3. Hadassah has donated funds directly to HAC, and has also “served as a conduit for North American donors to make donations” to HAC through Hadassah. *Id.* ¶ 4. The relationship between HAC and Hadassah has deteriorated in recent years largely due to a dispute over the use and ownership of the real property comprising the HAC campus. *Id.* ¶ 8.

HAC alleges that Hadassah has failed to forward funds donated to it for HAC’s benefit “in an attempt to gain leverage and exert pressure” with respect to the campus dispute. *Id.* ¶ 11. HAC also alleges that Hadassah has withheld funds and information related to bequests and annuities. *Id.* ¶ 14.

DISCUSSION

I. Legal Standard

“A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). To survive a Rule 12(b)(1) motion to dismiss, the party asserting jurisdiction “has the burden of proving by a preponderance of the evidence that [subject matter jurisdiction] exists.” *Id.* On such a motion, “the district court must take all uncontroverted facts in the complaint . . . as true, and draw all reasonable inferences in favor of the party asserting jurisdiction.” *Tandon v. Captain’s Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014). However, “[w]here jurisdictional facts are placed in dispute, the court has the power and obligation to decide issues of fact by reference to evidence outside the pleadings, such as affidavits.” *Id.* (alteration in original) (citation omitted).

II. Analysis

A. Standing

Hadassah argues that HAC lacks standing because under New York law, only the Attorney General has standing to challenge the actions of a not-for-profit corporation. Def. Mem. at 4, ECF No. 28.

New York’s Estates, Powers and Trusts Law (“EPTL”) empowers the state Attorney General to enforce the terms of charitable bequests. Specifically, EPTL § 8-1.1(f) provides that: “The attorney general shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts.” N.Y. Est. Powers & Trusts Law § 8-1.1(f) (McKinney 2010). This provision codifies New York’s long standing rule that “[n]ormally, standing to challenge actions by the trustees of a charitable trust or corporation is limited to the Attorney-General.” *Alco Gravure, Inc. v. Knapp Found.*, 64 N.Y.2d 458, 466 (1985). The purpose of this rule is to “prevent vexatious litigation and suits by irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations.” *Id.* The Attorney General has the power and duty to represent beneficiaries of charitable organizations and the “general rule is that one who is merely a possible beneficiary of a charitable trust, or a member of a class of possible beneficiaries, is not entitled to sue for enforcement of the trust.” *Id.* at 465.

There is a narrow exception to the general rule, however, “when a particular group of people has a special interest in funds held for a charitable purpose, as when they are entitled to a preference in the distribution of such funds and the class of potential beneficiaries is sharply defined and limited in number.” *Id.*; see also *Sagtikos Manor Historical Soc’y, Inc. v. Robert David Lion Gardiner Found., Inc.*, 9 N.Y.S.3d 80, 82 (2d Dep’t 2015) (“A party with a special interest in the enforcement of the trust may have standing to commence such an action.”). HAC argues that it has standing under

this exception, because it is both “(i) part of a class of potential beneficiaries and (ii) . . . a class of one.” Pl. Opp. at 8, ECF No. 30 (internal quotation marks omitted). Because of the narrowness of the exception, however, courts have routinely rejected efforts by litigants to claim standing under it. *See, e.g., In re Rosenthal*, 952 N.Y.S.2d 194, 195 (1st Dep’t 2012); *Bd. of Educ. of Mamaroneck Union Free Sch. Dist. v. Attorney General of New York*, 811 N.Y.S.2d 685, 686 (2d Dep’t 2006).

1. Special Interest

Hadassah contends that although HAC is a “potential beneficiary of Hadassah’s charitable purposes,” it “does not possess any special interest” because Hadassah was not organized to support HAC and HAC is “merely one of a number of organizations in Israel Hadassah has supported over the years.” Def. Mem. at 6. Hadassah argues that “HAC cannot claim any greater right to Hadassah’s assets than other individuals or entities that support women’s health and well-being, Israel, and/or the Jewish values and continuity that Hadassah supports.” *Id.* The Court agrees. HAC has not demonstrated that it has a special interest in Hadassah’s funds.

A “special interest” is “found by looking to the [corporation’s] chartering documents to discern the purpose of the [corporation], and whether there is a class of intended beneficiaries that is entitled to a preference.” *Sagtikos Manor*, 9 N.Y.S.3d at 82. HAC does not contend that it possesses a special interest, stating only that it brings this action “to recover funds to which it is entitled.” Pl. Opp. at 7. Nor does the complaint allege that Hadassah was created for the benefit of HAC or that Hadassah’s governing documents reflect this.¹ Because HAC has failed to articulate a special interest

¹ Neither party submitted Hadassah’s chartering documents. However, HAC and Hadassah entered into an agreement in 2016 (the “Gift Protocol”) which defines their relationship as that of a grantor and grantee. The Gift Protocol provides that Hadassah maintains complete control and discretion over funds donated to Hadassah and has no obligation to forward them to HAC. Kurtz Decl., Ex. 4 at 1, ECF No. 29-4 (“[T]he Grantor may, at its sole discretion, notify Grantee of any amounts available to be considered for a Grant, including those donations to Grantor in which specific recommendations of use of donations have been made by the donor to Grantor.”); *see also id.* at 6 (“Grantee acknowledges and understands that the award of any Grant does not constitute a promise or guarantee that Grantor shall make any subsequent grants or provide any future funding to Grantee.”). Although the Gift Protocol is not attached to the complaint as an exhibit, the Court can properly consider this document on a Rule 12(b)(1) motion. *See Morrison v. Nat’l Austl. Bank Ltd.*, 547 F.3d

in Hadassah’s funds, it lacks standing. *See, e.g., Nasar v. Trs. of Columbia Univ. in New York*, 997 N.Y.S.2d 19, 20 (2014) (finding plaintiff did not have standing to sue university because plaintiff did not fall within special interest exception).

Here, as in *Nasar*, HAC lacks standing because the funds at issue “belong entirely to [Hadassah]” and, therefore, HAC’s attempt to have the funds “paid to [it] personally places [it] in conflict with future, undetermined beneficiaries of the fund.” *Id.* “[T]here is no indication . . . that plaintiff is an intended rather than an incidental beneficiary.” *Id.* Where a plaintiff “has no interest in the funds . . . [it] cannot state a cause of action for conversion or unjust enrichment.” *Id. Alco Gravure*, the case that first applied the exception, is distinguishable. 64 N.Y.2d at 458. In *Alco Gravure*, employees of related corporations brought an action to prevent the transfer of assets from a foundation, where the foundation’s certificate of incorporation specified that its purpose was specifically to “render aid and assistance” to such employees. *Id.* at 462–63. The Court of Appeals held that the plaintiffs had articulated a special interest because they were the primary beneficiaries of the foundation’s charitable purposes and had been given a preference in the certificate of incorporation. *Id.* at 465–66. Here, by contrast, Hadassah’s mission (as described by HAC)—a commitment to “women’s health and well-being, to Israel, and to Jewish values and continuity,” Compl. ¶ 2—does not support HAC’s claim of a special interest in Hadassah’s funds.

2. Remaining Arguments

HAC ignores the special interest requirement, asserting that it has standing because it is “part of a class of potential beneficiaries” and that class is “sharply defined and limited in number.” Pl. Opp. at 10 (internal quotation marks and citation omitted). That HAC is a past beneficiary of Hadassah’s largesse, having received “millions of dollars from Hadassah over the years,” and is a

167, 170 (2d Cir. 2008) (“In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) a district court may consider evidence outside the pleadings.”).

“class of one,” *id.* at 8–9, is insufficient, however, to confer standing. *See, e.g., Jewish Secondary Sch. Movement v. Conference of Jewish Material Claims Against Germany, Inc.*, 174 N.Y.S.2d 560, 561 (Sup. Ct. 1958) (holding that petitioner had no standing to sue as a past beneficiary of funds from respondent). Nor does it transform a plaintiff who is a possible recipient of charitable funds into a potential beneficiary of those funds, if the plaintiff is not expressly designated as a beneficiary of the charitable foundation. *See Sagtikos Manor*, 9 N.Y.S.3d at 82–83 (holding that plaintiff was not a potential beneficiary because it was not named in the defendant foundation’s certificate of incorporation).

The law vesting the Attorney General with the “statutory power and duty to represent the beneficiaries of any disposition for charitable purposes” protects charitable assets from being wasted in litigation involving potentially numerous parties who may be disappointed by a not-for-profit organization’s decisions, but who have no legal right or entitlement to receive donations. *Alco Gravure*, 64 N.Y.2d at 465–66. The Court rejects HAC’s argument that it has standing under the exception because it is a “class of one,” Pl. Opp. at 8–11; allowing HAC to sue Hadassah would “set[] a precedent of allowing [every former and potential future beneficiary] to commence multiple actions against a charitable trust.” *Lucker v. Bayside Cemetery*, 979 N.Y.S.2d 8, 15 (1st Dep’t 2013); *see also Revici v. Conference of Jewish Material Claims Against Germany Inc.*, 174 N.Y.S.2d 825, 829 (Sup. Ct. 1958) (noting that charitable “operations would be seriously fettered and chaos might well ensue” if all indefinite or past beneficiaries were “allowed to call [them] to account in court”).

The Court holds, therefore, that HAC lacks standing, and Hadassah’s motion to dismiss under Rule 12(b)(1) is GRANTED.

B. Failure to State a Claim

Because the Court has dismissed the complaint for lack of standing, the Court does not reach Hadassah’s alternative argument that the complaint should be dismissed for failure to state a claim

pursuant to Federal Rule of Civil Procedure 12(b)(6). *Cf. Jacobs v. Carnival Corp.*, No. 06 Civ. 0606, 2009 WL 856637, at *6 n.1 (S.D.N.Y. Mar. 25, 2009) (declining to reach defendants' motion to dismiss for lack of subject matter jurisdiction after granting motion under Rule 12(b)(6)).

C. Motion to Strike

Hadassah also moves to strike certain paragraphs of the complaint as irrelevant and prejudicial, pursuant to Federal Rule of Civil Procedure 12(f). Def. Mem. at 16. In light of the foregoing, this motion is moot.

CONCLUSION

For the reasons stated above, Hadassah's motion to dismiss is GRANTED and its motion to strike is DENIED as moot.

The Clerk of Court is directed to terminate the motion at ECF No. 27, and to close the case.

SO ORDERED.

Dated: November 1, 2018
New York, New York



ANALISA TORRES
United States District Judge