

**McNair v J.P. Morgan Chase Bank President**

2013 NY Slip Op 31655(U)

July 17, 2013

Supreme Court, New York County

Docket Number: 402403/2012

Judge: Louis B. York

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 402403/2012

MCNAIR, LARRY

vs

J.P. MORGAN CHASE BANK

Sequence Number : 001

DISMISS

PART 2

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION.**

### UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 7/17/13

Luy, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED
  - 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED     DENIED     GRANTED IN PART     OTHER
  - 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER     SUBMIT ORDER
- DO NOT POST     FIDUCIARY APPOINTMENT     REFERENCE

**LOUIS B. YORK**  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 2

-----X

**LARRY MCNAIR,**

Plaintiff,

Index No. 402403/12

-against-

**DECISION/ORDER**

**J.P. MORGAN CHASE BANK PRESIDENT,  
MALIK HODGES, CEO JAMIE DIAMON,  
BANK TELLER JANE DOE,**

Defendants.

-----X

**LOUIS B. YORK, J.S.C.:**

In this action, plaintiff Larry McNair (“McNair”) seeks \$1,000,000 against Yero Malik Hodges (“Hodges”), the Vice President Branch Manager at JPMorgan Chase Bank, N.A. (“Chase”)<sup>1</sup>; Jamie Diamon (“Diamon”), Chase’s CEO, and Jane Doe, a bank teller. McNair alleges that around November and December of 2011, while he was incarcerated at Rikers, Lisa L. Stevens<sup>2</sup> forged his signature and cashed two of his social security checks at Chase Bank, with the assistance of both the bank teller and Hodges. Diamon, he alleges, shares responsibility for their actions because of his role at Chase. He states that he has schizoaffective disorder, and these actions caused him great distress, resulting in his hospitalization at a mental institution. The amount of the

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<sup>1</sup> McNair refers to Yero Malik Hodges as “Malik Hodges” and as the president of Chase.

<sup>2</sup> He includes her name in his earlier Federal complaint but not in the complaint before this Court.

checks totaled \$1,365.00. The remainder of the damages, McNair contends, relate to the devastating emotional impact of the actions at issue.

Previously, McNair attempted to file a criminal complaint against Chase, but the Attorney General's office informed him, correctly, that a citizen cannot file a criminal complaint. Instead, that is the role of the Attorney General. He also filed a case in Federal District Court against Chase and Stevens. The Court dismissed the action, finding that the amount McNair sought in the case, \$20,000 plus the \$1,365.00, did not equal the \$75,000 monetary threshold for diversity jurisdiction, there was no diversity of citizenship, and his complaint raised no federal question. The Court also noted that McNair asserted criminal charges in his complaint and that a private citizen cannot prosecute criminal claims.

Now, all defendants move to dismiss the complaint. As for the first ground for dismissal, defendants submit Hodges' affidavit, which states that he received McNair's complaint on January 10, 2013, via first class mail. Defendants contend that this is improper service. They note that under CPLR § 308<sup>3</sup> plaintiff must perform personal service, and that under subsections (2) and (4) he had to file an affidavit of service with the County Clerk within 20 days of the date of service. Defendants are correct in this assertion.

The Court notes that under CPLR § 312-a, a plaintiff can serve pleadings by mail. However, the defendants must consent to this form of service, and in this case

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<sup>3</sup> As Mr. McNair cites to Federal rather than State procedural rules, the Court points out that CPLR is the shorthand form for The Civil Practice Laws and Rules, which govern the procedure for this State.

defendants did not consent. Moreover, even if they had consented, service would be defective because he did not file the form described in section (d) of the statute.

In response to this motion, plaintiff argues that because he properly served defendants with the complaint and defendants did not answer, he is entitled to a default judgment of \$1,000,000 against them. The Court notes that though plaintiff cited to federal law and New York law actually applies, the prevailing principles are essentially the same. Regardless, Mr. McNair's argument does not address defendants' argument, which is that he did *not* serve them properly. As the Court explains above, they are correct in this assertion. Defendants did not agree to service by mail and therefore personal service was necessary through one of the methods that CPLR § 308 describes. If service is not proper, the defendants need not answer. Instead, defendants moved for a pre-answer dismissal, which is proper and timely under the CPLR.

Defendants also claim service was improper on Chase. However, it does not appear to the Court that Chase is a named defendant. For one thing, the caption begins by listing "J.P. Morgan Chase Bank President Malik Hodges" and does not include Chase independently. For another, the complaint itself lists only the three individual defendants in paragraph 2. However, were it to reach the issue the Court would conclude that service on the bank was improper.

The Court further notes that even if defendants were in default, Mr. McNair could not obtain a judgment for \$1,000,000.00. Instead, he would have to show a *prima facie* case – that is, submit evidence (such as copies of the forged checks and any other

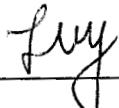
appropriate documents) that support his contentions. If he means to accuse Mr. Hodges and the bank teller of fraud or collusion, he would have to provide some specific information supporting this. Moreover, before the Court would grant judgment for \$1,000,000 plaintiff would have to show that his losses equal \$1,000,000 and/or that there is a legal and evidentiary basis for this award.

As the Court dismisses for lack of personal jurisdiction, it does not reach defendants' argument that plaintiff did not state a valid claim; and it is therefore

ORDERED and ADJUDGED that the motion is granted and the action is dismissed.

ENTER:

Dated: 7/17/13

  
\_\_\_\_\_  
Louis B. York, J.S.C.

**LOUIS B. YORK**  
**J.S.C.**

**UNFILED JUDGMENT**  
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