

**Akhtar v JPMorgan Chase & Co.**

2019 NY Slip Op 32646(U)

September 5, 2019

Supreme Court, New York County

Docket Number: 652274/2018

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 39EFM

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HUMAIRAH AKHTAR, SYED HUSSAIN-AAMIR,  
DAKHAKHNI ABDULHAMID H, MAX FRICKER, JAYVANT  
HEERA, HOLGER HALFMANN, KUNAL PATEL,  
BENJAMIN KOLLOORI, DANIEL MOORE, KRISH  
PRABHAKAR, DHANESH SHELAT, AMIR ZEBIAN,  
SAJAN SHAH,

INDEX NO. 652274/2018

MOTION DATE 11/20/2018

MOTION SEQ. NO. 001

Plaintiffs,

**DECISION + ORDER ON  
MOTION**

- v -

JPMORGAN CHASE & CO.,

Defendant.

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HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DISMISSAL

Defendant JPMorgan Chase & Co. (“JPMorgan Chase”) moves to dismiss the complaint of plaintiffs Humairah Akhtar, Syed Hussain-Aamir, Dakhakhni Abdulhamid H, Max Fricker, Jayvant Heera, Holger Halfmann, Kunal Patel, Benjamin Kolloori, Daniel Moore, Krish Prabhakar, Dhanesh Shelat, Amir Zebian, Sajam Shah (collectively “plaintiffs”) on the grounds that plaintiffs sued the wrong defendant and that the complaint fails to state causes of action for aiding and abetting fraud, aiding and abetting a breach of fiduciary duty, and a violation of General Business Law § 349.

## **Background**<sup>1</sup>

Plaintiffs are investors in Bar Works, Inc. (“Bar Works”), a corporation that was owned and controlled by non-party Renwick Haddow (“Haddow”). In their complaint, plaintiffs allege that for two years, through Bar Works, Haddow conducted a fraudulent Ponzi scheme which operated from September 2015 to June 2017.

On September 8, 2015, Bar Works allegedly began selling investments in restaurants, bars, and other locations converted into work spaces for license or lease by professionals. Bar Works charged a purchase price for each investment and told investors they would earn revenue from ownership in the work spaces based on the monthly fee charged to customers.

Between October 2015 and June 2017, Haddow allegedly raised \$36 million from investors, including plaintiffs, and deposited those investment funds in a JPMorgan Chase bank (“Chase Bank accounts”). Haddow opened the Chase Bank accounts in Bar Works’ name and designated himself, in the name Renwick Haddow, the sole signatory on the accounts.

Plaintiffs allege that, in 2017, Bar Works stopped making payments to plaintiffs, because Haddow had stolen their money. Plaintiffs allege that on July 25, 2017, Haddow was arrested in Morocco. He has since been extradited and has been criminally charged in connection with this matter.

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<sup>1</sup> All the facts presented herein are taken from the complaint and accepted as true.

Plaintiffs claim that when Haddow opened the Chase Bank accounts, JPMorgan Chase was required to obtain documentation and information identifying Bar Works, its managers and directors, and any owners that owned more than 10% of it, as well as the nature of its business. Plaintiffs contend that JPMorgan Chase was also required to search for derogatory information about Bar Works and/or Haddow, and if any was found, to notify its Anti-Money Laundering Unit and make further investigations. Plaintiffs allege that pursuant to the Know Your Client (“KYC”), Anti-Money Laundering (“AML”), and Banks Secrecy Act (“BSA”) laws, JPMorgan Chase was required to investigate Haddow’s past. Plaintiffs posit that had JPMorgan Chase conducted an investigation into Bar Works and/or Haddow, it would have discovered Haddow’s publicly known misconduct.

The complaint alleges three causes of action.<sup>2</sup> In its first cause of action, plaintiffs allege that because JPMorgan Chase knew Haddow was a “crook,” it aided and abetted his fraudulent scheme by providing banking services to him, and by allowing Haddow to use JPMorgan Chase’s name to give legitimacy to his scheme. The second cause of action alleges that JPMorgan Chase aided and abetted Haddow’s breach of fiduciary duty

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<sup>2</sup> I note that, in a separate, but related action, *Fricker v JP Morgan Chase Bank, N.A.*, 656961/2017 (Sup Ct, NY County), (the “Fricker action”), four of the plaintiffs in this action brought an action against JPMorgan Chase and Chase Bank. Chase Bank removed the Fricker action to federal court on the grounds that Chase Bank is a citizen of Ohio, and all the Fricker plaintiffs were citizens of other states or countries. Chase Bank and JPMorgan Chase then filed a pre-motion letter with the federal court explaining that the case should be dismissed against JPMorgan Chase because it was a holding company, not a bank. Rather than proceed with their action against JPMorgan Chase and Chase Bank in federal court, the Fricker plaintiffs voluntarily dismissed their action, and they, along with nine new plaintiffs, commenced this action.

to plaintiffs by knowingly providing banking services to Haddow. In the third cause of action, plaintiffs assert a claim for the violation of General Business Law § 349.

JPMorgan Chase makes this pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a) (1) and (7), arguing, in part, that it is merely a holding company, and that Haddow opened bank accounts at Chase Bank, JPMorgan Chase's banking subsidiary not named in this action. JPMorgan Chase argues that it is the wrong defendant and for this reason the action must be dismissed.

### Discussion

A CPLR 3211 (a) (1) motion to dismiss on the ground that the action is barred by documentary evidence may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*see Leon v Martinez*, 84 NY2d 83, 88 [1994]). Moreover, on a motion to dismiss for failure to state a claim, I “accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Wilson v Dantas*, 29 NY3d 1051, 1056–57 [2017], quoting *Leon*, 84 NY2d at 87–88; *see* CPLR 3211[a][7]).

There is no dispute that JP Morgan Chase is a holding company that does not provide banking services. There is also no dispute that Chase Bank provided banking services to Haddow and Bar Works, not JPMorgan Chase. JPMorgan Chase and Chase Bank are two separate corporate entities and therefore, JPMorgan Chase cannot be liable for the actions of Chase Bank simply because Chase Bank is JP Morgan Chase's

subsidiary (*see e.g., Goodspeed v Hudson Sharp Machine, Co.*, 105 AD3d 1204, 1204 [3d Dept 2013] [it is well settled that a parent corporation is not presumptively liable for the conduct of its subsidiary]; *American Real Estate Holdings, Ltd. Partnership v Citibank*, 45 AD3d 277, 278 [2d Dept 2007] [Citigroup, the parent company, not liable for breach of lease of Citibank]).

Courts routinely have refused to impute the operating activities of a subsidiary to its holding company, and it is a well-settled principle of corporate law that “[p]arent and subsidiary or affiliated corporations are, as a rule, treated separately and independently” (*Sheridan Broadcasting Corp. v Small*, 19 AD3d 331, 332 [1st Dept 2005]). Further, plaintiffs’ claim, that Chase Bank is a really a “division” of JPMorgan Chase, is directly refuted by JPMorgan Chase’s Form 10K filing, which shows that Chase Bank is a subsidiary; an entire separate corporation.<sup>3</sup> Finally, plaintiffs fail to allege any conduct upon which I can impute the actions of Chase Bank to JP Morgan Chase.

I also note that plaintiffs’ argument, that JP Morgan Chase was required by the KYC, AML, and BSA statutes and regulations to investigate Haddow’s past, has been rejected in a related case, *Hongying Zhao v JPMorgan Chase & Co.*, 17 CIV. 8570 (NRB), 2019 WL 1173010 (SDNY Mar. 13, 2019) (hereinafter, *Zhao*).

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<sup>3</sup> To the extent plaintiffs argue that JP Morgan Chase has admitted in public filings, including filings in a “Madoff” lawsuit, that it was responsible for investigating persons who open Chase Bank accounts, I note that one of the documents relied upon by plaintiffs, a “Statement of Facts”, was part of a deferred prosecution agreement between the U.S. attorney’s office and Chase Bank, not JP Morgan Chase. Moreover, in that Madoff lawsuit, only Chase Bank was charged with failure to maintain an effective AML program, and only Chase Bank was required to remediate and forfeit funds.

*Zhao* was an action brought by 245 individual investors who also lost their investment funds in Haddow's Bar Work's alleged Ponzi scheme. The *Zhao* plaintiffs asserted, among other things, that JP Morgan Chase knowingly participated in a breach of trust, aided and abetted embezzlement, aided and abetted a breach of fiduciary duty, aided and abetted conversion, and aided and abetted fraud.

In granting JPMorgan Chase's pre-answer motion to dismiss<sup>4</sup>, the district court found that JPMorgan Chase, as a holding company, could not be held liable for the alleged improper actions of Chase Bank. The court also noted that while plaintiffs argued that JPMorgan Chase created and implemented AML policies governing how Chase Bank was to monitor and manage the accounts Haddow opened on behalf of Bar Works, the creation and implementation of AML policies was not sufficient to bring claims against JPMorgan Chase, a party that was not involved in any alleged non-compliance with those policies. (*See Zhao*, 2019 WL 1173010 at 3).

The same analysis applies here; JP Morgan Chase cannot be held liable for the alleged actions or inaction of Chase Bank. Further, to the extent that Chase Bank was required to comply with the KYC, AML, and BSA statutes and regulations, any failure of

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<sup>4</sup> The district court also granted Chase Bank's pre-answer motion to dismiss on the ground that, among other things, plaintiffs failed to allege Chase Bank's actual knowledge of the alleged fiduciary relationship between Haddow and plaintiffs. The district court also found that that plaintiffs failed to properly plead that Chase Bank, as an alleged aider and abettor, affirmatively assisted Haddow in perpetrating his fraud against the *Zhao* plaintiffs. The *Zhao* complaint was therefore dismissed in its entirety.

Chase Bank to comply cannot be imputed to JP Morgan Chase, because JP Morgan Chase was not involved in these transactions.

For the foregoing reasons, it is

ORDERED that defendant JPMorgan Chase & Co.'s motion to dismiss the complaint is granted, the complaint is dismissed in its entirety, and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

9/5/19  
DATE

*Saliann Scarpulla*  
SALIANN SCARPULLA, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
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