

**Khan v JP Morgan Chase Bank, N.A.**

2020 NY Slip Op 30686(U)

March 2, 2020

Supreme Court, Kings County

Docket Number: 520395/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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MUHAMMAD R. KHAN and MEDPRO PHARMACY LLC  
d/b/a U PASS PHARMACY,

Plaintiffs, Decision and order

- against -

Index No. 520395/19

ms # 1

JP MORGAN CHASE BANK, NA, IMRAN ASLAM,  
ALINA WASIF, PHILLIPS PHARMACY INC.,

Defendants, March 2, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendant Phillips Pharmacy Inc., has moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiffs have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The complaint alleges that defendant Imran Aslam who worked at plaintiff Medpro Pharmacy LLC also owned defendant Phillips Pharmacy inc., and diverted funds from Medpro to Phillips. Specifically, the complaint alleges that from October 2017 through July 2019 Aslam forged the signature of Muhammad Khan the owner of Medpro and stole over \$350,000 which he diverted to himself, his wife, defendant Alina Wasif and the pharmacy he owned, Phillips Pharmacy. Phillips Pharmacy has now moved seeking to dismiss the complaint arguing that Aslam was not an owner of Phillips Pharmacy, was never an owner of Phillips Pharmacy and was merely a worker there. Moses Brull the purported true owner of Phillips Pharmacy has submitted an

affidavit wherein he states that he purchased Phillips Pharmacy pursuant to a stock purchase agreement in March 2017 and that he has been the sole owner since. He further states that he hired Aslam in April 2019 to help him manage the pharmacy and that prior to that date Aslam had no connection with Phillips Pharmacy at all. Phillips Pharmacy is seeking to dismiss the lawsuit on the grounds they have nothing whatsoever to do with the allegations against Aslam.

#### Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (see, e.g. AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005], Leon v. Martinez, 84 NY2d 83, 614 NYS2d 972, [1994], Hayes v. Wilson, 25 AD3d 586, 807 NYS2d 567 [2d Dept., 2006], Marchionni v. Drexler, 22 AD3d 814, 803 NYS2d 196 [2d Dept., 2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

The complaint alleges two causes of action, the first against JP Morgan Chase for improperly negotiating checks in violation of the UCC. The second cause of action is against the remaining defendants for embezzling money from Medpro. There is no dispute that Mr. Brull as the true owner of Phillips Pharmacy committed any wrongdoing at all. Rather, as amplified in the opposition to the motion to dismiss the plaintiffs seek to impose liability against the pharmacy because the plaintiff "utilized Phillips Pharmacy Inc in his embezzlement scheme and Phillips Pharmacy Inc was a party to this embezzlement scheme" (see, Affirmation in Opposition, ¶2). The plaintiff further argues that the embezzled funds "went to the benefit of Phillips Pharmacy Inc and Aslam had an interest in said funds held by Phillips Pharmacy Inc." (Id at ¶3). Thus, it is alleged Phillips Pharmacy was part of conspiracy to embezzle funds from Medpro. However, it is clear and even undisputed that Phillips Pharmacy was merely an instrumentality of Islam's plot without any benefit accruing to Phillips Pharmacy at all. Islam utilized Phillips Pharmacy as a way to hide or obscure the funds until the funds could be utilized by Islam or his spouse. The complaint does not allege any specific wrongdoing committed by Phillips Pharmacy regarding embezzlement in any active manner. The mere passive and passing involvement of Phillips Pharmacy is insufficient to establish any liability. Further, there is no cause of action

for civil conspiracy as an independent tort in New York (McSpedon v. Levine, 158 AD3d 618, 72 NYS3d 97 [2d Dept., 2018]). Thus, since there is no independent wrongdoing alleged against Phillips Pharmacy, the motion of Phillips Pharmacy seeking to dismiss the complaint is granted.

So ordered.

ENTER



DATED: March 2, 2020  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC

KINGS COUNTY CLERK  
FILED  
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