

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD,
et al.,

Plaintiffs

v.

SAMUEL LEE, et al.,

Defendants

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C.A. No. PC-2019-3654

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS BY DEFENDANT JPMORGAN CHASE BANK, N.A.**

Pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, Defendant JPMorgan Chase Bank, N.A. (“JPMC”) submits this Memorandum of Law in support of its Motion to Dismiss all counts and claims against JPMC in the Verified First Amended and Supplemental Complaint (the “Complaint”) in this action.

Introduction

The Complaint in this action does not state a claim for which relief can be granted, as a matter of law, against Defendant JPMC. JPMC is named solely in its capacity as an administrative agent and collateral agent in connection with a loan and credit agreement entered into with other named co-defendants. Plaintiffs argue that funds received by those other defendants, as borrowers, were then distributed and disbursed in violation of the borrowers’ then-outstanding obligations to Plaintiffs, thereby constituting fraudulent conveyances or

“voidable” transactions under the Rhode Island Uniform Fraudulent Transfers Act (RIUFTA).¹

Those claims are set forth in Counts IX and X of the Complaint.

However, even if Plaintiffs are correct that those distributions were improper, Plaintiffs fail to allege a sufficient basis on which JPMC would be culpable in any way for such payments by its borrowers. There are no allegations that JPMC had any role in determining to whom such payments would be made, or in making such payments. Moreover, the Complaint is completely lacking in any articulated basis on which JPMC had any obligations or duties to Plaintiffs, or engaged in any acts or omissions in violation of the applicable Rhode Island statutes. There are no allegations that JPMC had the requisite level of knowledge or intent, or that it engaged in any conduct covered by the applicable statutes that form the basis of the sole claims against it in Counts IX and X. Accordingly, as a matter of law, even assuming the truth of the very limited factual allegations about JPMC in the Complaint, there is no basis upon which relief against JPMC can be granted. Accordingly, the claims against JPMC in Counts IX and X should be dismissed.

Standard of Review

A motion to dismiss made pursuant to Rule 12(b)(6) of the Rhode Island Rules of Civil Procedure “has a narrow and specific purpose: ‘to test the sufficiency of the complaint.’”

Mokwenyei v. Rhode Island Hosp., 198 A.3d 17, 21 (R.I. 2018) (quoting Multi-State Restoration, Inc. v. DWS Properties, LLC, 61 A.3d 414, 416 (R.I. 2013)). “Dismissal is

¹ Although Rhode Island recently adopted the Uniform Voidable Transactions Act (RIUVTA), see P.L. 2018, ch. 141 (18-H 7334), the RIUVTA only applies to transfers made after the effective date of July 18, 2018. See Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *9 n.12 (R.I. Super. Ct. Oct. 15, 2019) (Stern, J.) As alleged, Plaintiffs’ fraudulent transfer claims appear to arise in from transfers made in “early 2018.” (See Complaint, ¶ 89). Therefore, RIUFTA, not RIUVTA, governs Plaintiffs’ fraudulent transfer claims. Gemma, 2019 WL 5396136, at *9 n.12.

appropriate ‘when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.’” McKenna v. Guglietta, 185 A.3d 1248, 1251 (R.I. 2018) (quoting Palazzo v. Alves, 944 A.2d 144, 149-50 (R.I. 2008)).

In assessing a motion to dismiss, a court must “‘assume[] the allegations contained in the complaint to be true and view[] the facts in the light most favorable to the plaintiffs.’” Rein v. ESS Grp., Inc., 184 A.3d 695, 699 (R.I. 2018) (quoting Goddard v. APG Security–RI, LLC, 134 A.3d 173, 175 (R.I. 2016)). Importantly, however, “[a]llegations that are more in the nature of *legal* conclusions rather than factual assertions are not necessarily assumed to be true.” Doe ex rel. His Parents & Nat. Guardians v. E. Greenwich Sch. Dep’t, 899 A.2d 1258, 1262 n.2 (R.I. 2006) (citing Avery v. Rhode Island Hospital, 495 A.2d 254, 257 (R.I. 1985)).

Therefore, “even under [the] Supreme Court’s lenient standard applicable on a motion to dismiss, this Court need not accept [Plaintiffs’] legal conclusions as true.” Gemma v. Sweeney, No. PC-2018-3635, 2019 WL 5396136, at *9 (R.I. Super. Ct. Oct. 15, 2019) (Stern, J.) (citing DiLibero v. Mortg. Elec. Registration Sys., Inc., 108 A.3d 1013, 1016 (R.I. 2015)). “If a complaint does not contain ‘specific statements’ from which the necessary elements of the claim may be inferred, the Court is not ‘at liberty to presume’ that Plaintiff has a claim.” Id. (quoting Berberian v. Solomon, 122 R.I. 259, 262, 405 A.2d 1178, 1180 (1979)).

Facts

There are very limited facts concerning JPMC in what is an otherwise extremely detailed, 40-page, 169-paragraph Complaint. Plaintiffs allege at Paragraph 25 that JPMC “is sued herein in its capacity as administrative agent and collateral agent under certain credit agreements as

described herein.” (See Complaint, ¶ 25.)² Those credit agreements are later identified in the Complaint as an Amended and Restated Term Loan Credit Agreement dated February 22, 2018 (the “Amended Term Loan Agreement”), between JPMC and Defendant Prospect Medical Holdings, Inc. (“PMH”), and an Amended and Restated ABL Credit Agreement dated February 22, 2018 (the “Amended ABL Credit Agreement”) between JPMC and PMH (sometimes collectively, the “Credit Agreements”). (See Complaint, ¶ 96.) Those are the **only** factual allegations in the Complaint concerning JPMC. There are no facts alleged concerning any direct relationship of any kind between JPMC and any of the Plaintiffs, let alone the type of relationship that could form the basis for a claim under RIUFTA.

Based solely on the foregoing, Plaintiffs name JPMC in two counts – Count IX and Count X – seeking relief from JPMC and others for alleged fraudulent or voidable transfers in violation of Plaintiffs’ rights. (See Complaint ¶¶149-165.) But, based on the statutory criteria for such claims, as laid out in the Complaint and in RIUFTA, the claims against JPMC must fail. The Complaint fails to establish any basis on which JPMC has engaged in any acts or omissions in violation of the applicable statutes, or engaged in any conduct that would satisfy or constitute any of the essential elements for such claims as a matter of law. Put differently, Plaintiffs have not alleged any basis on which JPMC would be liable to them under RIUFTA.

Accordingly, for reasons set forth in further detail below, it is clear beyond a reasonable doubt that there is no basis as a matter of law upon which Plaintiffs are entitled to any relief from

² Plaintiffs in the instant action are CharterCARE Community Board (through Thomas S. Hemmendinger as Permanent Liquidating Receiver), individually and derivatively, as member of Prospect Chartercare, LLC and as trustee of the beneficial interest of its membership interest in Prospect Chartercare, LLC; and Stephen DelSesto, as receiver and administrator of the St. Joseph Health Services of Rhode Island Retirement Plan and as holder of the beneficial interest of CharterCARE Community Board’s membership interest in Prospect Chartercare LLC. Those parties shall be collectively referred to herein as “Plaintiffs.”

JPMC on the facts alleged. The claims alleged are insufficient and they fail to state a claim upon which relief can be granted.

Discussion

A. Plaintiffs Fail to Allege That JPMC is an Entity That is Liable to Them on a Claim Under RIUFTA

“The Rhode Island Supreme Court has explicitly held that a creditor can only proceed under [RIUFTA] against an entity that is liable to it on [such] a claim.” Rohm & Haas Co. v. Capuano, 301 F. Supp. 2d 156, 161 (D.R.I. 2004) (citing Kondracky v. Crystal Restoration, Inc., 791 A.2d 482, 484 (R.I. 2002)); see also Gemma, 2019 WL 5396136, at *11 (“Plaintiff can proceed on the fraudulent transfer claim against any entity that is liable to it on a claim.”) (internal quotation marks omitted). Under RIUFTA, a creditor can proceed against a debtor, defined as “a person who is liable on a claim.” See R.I.G.L. § 6-16-1(6). Hence, the crux of the allegations in this case is that other defendants were liable to Plaintiffs on outstanding claims, but transferred funds to other persons or entities in violation of those obligations. But there is no allegation in the Complaint that JPMC is “a person who is liable [to Plaintiffs] on a claim,” or that JPMC is a debtor of any of the Plaintiffs.

RIUFTA also permits creditors to pursue judgments against those entities that have directly or indirectly received property of the debtor in violation of the statute. R.I.G.L. § 6-16-1(2) (defining “asset” as “property of the debtor”); §§ 6-16-8(b)(1)(i)-(ii) (providing that a creditor may proceed against “the first transferee of the asset” or “any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee”). However, Plaintiffs do not allege that JPMC is a transferee of any such asset. Again, the sole factual allegation against JPMC states that it is “named herein in its capacity as administrative

agent and collateral agent under certain credit agreements as described herein.” (See Complaint, ¶ 25.) This allegation, even if true, does not entitle Plaintiffs to relief against JPMC as a “transferee” under RIUFTA.

Last, RIUFTA allows recovery against “the person for whose benefit the transfer was made.” R.I.G.L. § 6-16-8(b)(1)(i). The Complaint appears to base claims against JPMC solely on this language, alleging in connection with both Count IX and Count X that JPMC is a “person[] for whose benefit the transfers were made within the meaning of R.I. Gen. Laws § 6-16-8(b)(1).” (Complaint, ¶¶ 154, 162). This unadorned legal conclusion should not be accepted as true. DiLibero, 108 A.3d at 1016. Indeed, Rhode Island courts have rejected similar legal conclusions of RIUFTA liability that lack any supporting factual allegations. For example, in M2 Multihull, LLC v. West, the plaintiff alleged that a certain defendant was a “debtor” within the meaning of RIUFTA. No. KC 10-1530, 2012 WL 3279463, at *8 n.5 (R.I. Super. Ct. Aug. 07, 2012). Rejecting this allegation, the court found that “[n]ot only is this legal conclusion erroneous, . . . it is not taken as true for purposes of the within Rule 12(b)(6) Motion to Dismiss.” Id. (citing Doe, 899 A.2d at 1262-63 n.2).

This Complaint lacks any support for the allegation that JPMC is purportedly a “person for whose benefit the transfers were made.” Indeed, there is no allegation of how JPMC benefitted from funds loaned to PMH. Instead, the sole factual allegation regarding JPMC’s role is that it was an “administrative agent and collateral agent” under the Credit Agreements related to Plaintiffs’ claims. (See Complaint, ¶¶ 25, 96). Those roles, by their nature, confer administrative responsibilities, not beneficiary status. Plaintiffs have offered nothing but a legal conclusion to the contrary. Even under Rhode Island’s lenient standard for motions to dismiss,

Plaintiff's proffered legal conclusion, without more, does not entitle Plaintiffs to relief against JPMC under RIUFTA.

In sum, the Complaint fails to make a single factual allegation that could support Plaintiffs' RIUFTA claims against JPMC. Plaintiffs do not allege that JPMC is a debtor or a transferee of assets within the meaning of the statute; moreover, their allegation that JPMC is a "person for whose benefit the transfers were made" is a legal conclusion that the Court need not and should not take as true, particularly in light of the total absence of any factual allegations to support it. Because there is no basis upon which Plaintiffs are entitled to any relief from JPMC on the facts alleged, both Counts IX and X fail as a matter of law.

B. Plaintiffs Fail to Allege That JPMC Had Any Actual Intent to Hinder, Delay, or Defraud Within the Meaning of RIUFTA

Although Counts IX and X fail for the reasons discussed above, Plaintiffs have also failed to allege any actual intent on JPMC's part, as required, in Count IX. Specifically, Count IX makes a claim of fraudulent transfer against JPMC and others under Rhode Island General Laws §6-16-4(A)(1), which provides, in pertinent part, as follows:

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ith *actual intent* to hinder, delay, or defraud any creditor of the debtor (Emphasis added.)

"Such 'actual' intent may be proved inferentially through other circumstances which include the non-exclusive 'badges of fraud' contained in § 6-16-4(b)." Boveri, S.A. v. Alcoa Fujikura Ltd., No. PC-2002-1084, 2007 WL 1234523 (R.I. Super. Ct. Apr. 11, 2007). Yet the Complaint makes no allegations to support any inference of intent by JPMC.

Rather, the crux of Count IX is that other defendants, who were the borrowers and guarantors under the aforementioned Credit Agreements with JPMC, used funds from those transactions to make dividend payments and distributions to certain of the individual defendants, contrary to then-outstanding obligations owed to Plaintiffs. In Paragraph 151, Plaintiffs allege that certain borrowers and/or guarantors under those Credit Agreements (specifically PMH and Prospect East Holdings, Inc.) had the “intent” required under the statute to “hinder, delay, or defraud their creditors.” By contrast, there is no such allegation of intent by JPMC, nor is there any indication of a basis for any such allegation. Hence, the claim against JPMC is deficient in this respect.

In sum, Count IX fails to state a claim against JPMC upon which any relief can be granted as a matter of law. There is no allegation that JPMC had the requisite “actual intent” to hinder, delay, or defraud creditors, nor is there any basis on which to infer intent. Without such allegations, there is no basis upon which Plaintiffs are entitled to any relief from JPMC with respect to Count IX.

C. Plaintiffs Seek Further Remedies That Properly Lie Against Other Parties

For the reasons discussed above, the legal causes of action that Plaintiffs have brought against JPMC fail as a matter of law. In connection with those causes of action, Plaintiffs also seek a number of avenues of relief against JPMC. However, those remedies properly lie against parties other than JPMC. Specifically, to the extent that Plaintiffs are seeking injunctive relief against any further advance of funds to PMH pursuant to the aforementioned Credit Agreements, or an attachment on proceeds already advanced or collateral pledged, as set forth in Paragraphs 153, 155 and 157 of the Complaint, such claims could be accomplished entirely through relief against the borrowers or recipients of funds, and not by direct claims against JPMC. Paragraph

157 of the Complaint specifically references the prospect that Plaintiffs would be entitled to levy execution of proceeds of the Credit Agreements. There is no reason that Plaintiffs must proceed against JPMC to obtain this requested relief—and indeed, there is no basis as a matter of law for Plaintiffs to do so, given the deficiencies in their stated causes of action against JPMC as outlined above.

Conclusion

For the reasons set forth above, and to be further articulated at any hearing on the instant motion, the Court should grant Defendant JPMorgan Chase Bank, N.A.'s Motion to Dismiss as to Count IX and Count X of Plaintiffs' Verified First Amended and Supplemental Complaint.

Respectfully submitted,

JPMORGAN CHASE BANK, N.A.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2020, I filed and served this document through the electronic filing system on all counsel of record.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Mark W. Freel