(**JUSTICE BRIAN P. STERN**)

STATE OF RHODE ISLAND PROVIDENCE, SC.		SUPERIOR COURT
CHARTERCARE COMMUNITY BOARD, et al.,	:	
Plaintiffs	:	
v.	:	C.A. No. PC-2019-3654
SAMUEL LEE, et al.,	:	
Defendants	:	

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

Defendant JPMorgan Chase Bank, N.A. ("JPMC") submits this Reply Memorandum in further support of its Motion to Dismiss (the "Motion") all counts and claims against JPMC in the Verified First Amended and Supplemental Complaint (the "Complaint") in this action, and in response to Plaintiffs' Objection to the Motion (the "Objection").[1]

Plaintiffs' Objection provides no additional substance to help this Court understand why JPMC should be named as a defendant in this matter at all, let alone why Plaintiffs have asserted certain specific statutory causes of action against JPMC. Plaintiffs simply repeat their unsubstantiated and conclusory allegation that JPMC "is a defendant because of its role in th[e]

[1] 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".

fraudulent transfers and [its] obligations as a transferee and as administrative agent and collateral agent for undisclosed lenders/transferees." (Obj. at p. 2).[2]

Plaintiffs never clearly articulate a factual basis for this statement, let alone cite to any supporting factual allegations in the Complaint. Nor do they explain how those limited allegations would support a valid claim for relief under Rhode Island's Uniform Fraudulent Transfer Act ("RIUFTA"). Instead, in their zeal to include JPMC among the potentially liable parties in this action, Plaintiffs continue to make the unsubstantiated claim that JPMC – which is alleged to be the *lender* of the funds at issue – is somehow a "transferee" or a "debtor," or a party for whose benefit the underlying transactions were made. However, none of those legal conclusions is supported by any actual facts in the Complaint; in fact, the face of the Complaint makes clear that none of those legal conclusions is true.

As a *lender* of funds, JPMC is not a "transferee" or a "debtor" of such funds. Plaintiffs attempt to rely only on a series of detailed factual allegations about their dealings with *other* named defendants, but without sufficient factual reference to JPMC, and never with any link between those alleged facts and any theory about how or why JPMC is an appropriate or necessary party to a claim under RIUFTA. Plaintiffs attempt to argue that because JPMC's borrowers incurred obligations to JPMC, which JPMC fully funded, and those borrowers allegedly transferred those borrowed funds to third parties in a manner that was inconsistent with their alleged underlying obligations to Plaintiffs, JPMC is somehow culpable in a fraudulent transfer or transaction. (See, e.g., Obj., at p. 6.) But Plaintiffs never articulate any basis for that

[2] The reference to other "undisclosed" lenders presumably reflects Plaintiffs' desire to learn the identity of other parties to the subject credit agreements, but that does not warrant JPMC's inclusion in this case as a party and is presumably a discovery issue that can be resolved, if necessary, between Plaintiffs and other named defendants.

claim and instead simply attempt to lump JPMC in with other parties against whom they may or may not have cognizable claims.

In sum, Plaintiffs try to create the illusion of factual support for their claims against JPMC by telling a story involving *other* parties, ultimately asking the Court to make unfounded assumptions or inferences about JPMC's alleged "role" in those events. But, those unsupported legal conclusions are not sufficient under the prevailing standard of review. There are simply no facts alleged in the Complaint, and none cited by Plaintiffs in their Objection, that connect JPMC to the specific statutory claims made against it. Even assuming that the limited facts alleged as to JPMC are true, there is no support for any claim that JPMC has liability under RIUFTA. Hence, there remains no legally cognizable basis for the claims in the Complaint against JPMC and JPMC's Motion to Dismiss should be granted as a matter of law.

Discussion

A. Plaintiffs' Legal Allegations and Conclusions Need Not Be Accepted As True in the Absence of Sufficient Supporting Facts.

Despite Plaintiffs' creative attempts at styling their unsupported legal conclusions as "fact[s] with legal significance," the Court is under no obligation to presume or infer that they have alleged sufficient facts to support their claims against JPMC.

In deciding Gemma v. Sweeney, a case on which both parties rely in establishing the applicable standard for reviewing a motion to dismiss, this Court reiterated a longstanding position of Rhode Island courts that "[a]llegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true." No. PC-2018-3635, 2019 WL 5396136, at *2, *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) (emphasis in original)); see also Doe ex rel. His Parents and Natural Guardians v. Easy Greenwich School Dept., 899 A.2d

1258, 1262 n. 2 (R.I. 2006) (citing Robert B. Kent et al., Rhode Island Civil Procedure § 12:9, III–44 (West 2006) ("sweeping legal conclusions are not admitted" for the purposes of a 12(b)(6) motion)); Avery v. Rhode Island Hospital, 495 A.2d 254, 257 (R.I. 1985) (finding that a trial justice properly dismissed a plaintiff's complaint when the plaintiff's allegation amounted to "a legal conclusion (as opposed to the required allegation of fact)").

The purpose of this, of course, is to give a named defendant some "fair and adequate" notice of the type of claim being asserted against each defendant. Gardner v. Baird, 871 A.2d 949, 953 (R.I. 2005). Hence, Plaintiffs cannot live to fight another day simply by suggesting that their alleged "fact[s] with legal significance" should be accepted without challenge. Those legal conclusions are not facts. Rather, they are legal conclusions that must pass muster under the standard set forth above, and they do not.

Furthermore, while this Court's holding in Gemma does allow for "general averments" that transfers were made with the intent "to hinder, delay, or defraud" under the pleading standard required for fraud claims, it still requires that a plaintiff plead sufficient facts that support that conclusion as to each transfer made to each defendant, and with "particularity". See R.I. Super. Civ. P. 9(b); see also Gemma, 2019 WL 5396136, at *9-*11 (where this Court found that the plaintiff's claims could survive because there were sufficient facts that *each* defendant named in the complaint was liable to the plaintiff on the RIUFTA claims).

Here, even if the claims of improper intent were adequately alleged (which JPMC disputes), the Complaint still fails to make any plausible connection between the very general averments concerning the actual debtors and any way in which JPMC was a "transferee" of such funds. To the contrary, JPMC was the *provider* of those funds. Thus, Plaintiffs fail to make sufficient allegations as to JPMC's role as a putative defendant.

B. JPMC Was Not a Transferee of Proceeds of the Challenged Transaction, Nor Was It a Party For Whose Benefit the Transaction Was Made.

In attempting to argue that JPMC was either a "transferee" of proceeds resulting from the challenged transaction, or that JPMC was a party "for whose benefit" the transaction was made, Plaintiffs simply revert to unsupported and legally inadequate conclusions. That is because they have no factual allegations upon which to rely. In two places in the Complaint, Plaintiffs have merely included JPMC in a list of numerous parties who played some role in the challenged transactions, but with no allegations as to any transfer made to JPMC or other support for why JPMC, as a mere lender, should be included for purposes of any liability under the applicable statutory standards. (See Compl. ¶¶ 153, 161.)

There are no factual allegations to support the allegation that JPMC was a "transferee." It is common sense that a lender is not a "transferee." Plaintiffs do allege that certain other named parties were "transferees" of the funds loaned by JPMC, but JPMC itself could not in any sense be viewed as a transferee of those same funds, nor is there any support for that legal conclusion in the Complaint. See Gemma, 2019 WL 5396136, at *2, *9. In fact, the only portions of the Complaint that Plaintiffs cite in support of their claims against JPMC focus on its role as an administrative and collateral agent. (See Obj. at 10; Compl. ¶ 89-102). Those purely ministerial functions would not fit into any of the necessary roles alleged by Plaintiffs – debtor, transferee, or a person for whose benefit the transactions were made – nor do Plaintiffs make any such argument.

As noted above, Plaintiffs have not alleged any facts in the Complaint that address JPMC's culpability beyond the mere fact that JPMC loaned money to other defendants. Plaintiffs have failed to establish any connection between JPMC's conduct as a *lender* and any alleged fraudulent conduct on behalf of the debtors. Furthermore, Plaintiffs do not allege,

beyond a bare legal conclusion, that the debtors incurred an obligation to JPMC "without receiving a reasonably equivalent value in exchange…" as is required under the statute. See RIUFTA § 6-16-4(a)(2); § 6-16-5(a).

To the contrary, JPMC's borrowers received "full value" in that they received the bargained-for funds. If those borrowers – *othe*r defendants – distributed those funds to third parties for less than reasonably equivalent value, that does not mean that JPMC did not provide its borrower with full value. Plaintiffs make no factual allegations that would attach any culpability or liability to JPMC as a mere lender, or with respect to the manner in which its borrowers may have subsequently distributed those funds.

The allegation that JPMC is a "person for whose benefit the transfers were made" similarly remains a legal conclusion that the Court need not accept as true in the absence of any factual support. Plaintiffs identify no such "transfer" or "benefit" to JPMC, and offer no factual allegations to support this conclusion, and instead state that this, in itself, is a statement of fact that stands on its own and must be accepted for purposes of the instant Motion. Plaintiffs try to accomplish this by labeling this statement a "fact with legal significance." (Obj. at 13.) But this creative turn of phrase is not enough. In order for Plaintiffs to be entitled to relief against JPMC under RIUFTA, Plaintiffs must, as a matter of law, provide some factual support for their claims beyond simply relying on the circular conclusion that they are entitled to relief. See Gemma, 2019 WL 5396136, at *2, *9.

C. JPMC is Not a "Debtor" of Plaintiffs, Nor Does the Complaint Sufficiently Establish Any Such Status.

Plaintiffs rely on statutory language, but without any supporting facts, to insist that they have a valid cause of action against JPMC as a "debtor." (See, e.g., Obj., at p. 6.) But, upon careful scrutiny, the Complaint fails to allege any such relationship between JPMC and any of

the Plaintiffs. There are certainly factual allegations in the Complaint indicating that other defendants were debtors of the Plaintiffs, and that those other defendants allegedly violated their obligations to Plaintiffs by transferring funds to third parties. But, there are no allegations anywhere in the Complaint, even in any "general averments," that JPMC was a debtor to Plaintiffs as defined in § 6-16-1(6). Of course, that is because JPMC is a lender, not a debtor, and even if the use or distribution of loaned funds by other parties was in violation of those parties' obligations to Plaintiffs, that does not render the loan itself a fraudulent transaction. There are absolutely no allegations that JPMC had sufficient knowledge or intent to render its involvement in the underlying credit transactions actionable under RIUFTA, and even so, such intent is only required of debtors. See Gemma, 2019 WL 5396136, at *2, *9.

Plaintiffs' failure to plead any such facts means that they have failed to state a cause of action upon which relief can be granted under either Section 4(a)(2), or Section 5(a), of RIUFTA. Such claims require a showing that a debtor made a transfer, or incurred an obligation, "without receiving a reasonably equivalent value in exchange…" See RIUFTA § 6-16-4(a)(2); § 6-16-5(a). Plaintiffs do not allege anywhere in the four corners of the Complaint that JPMC is a debtor – nor could they, since no such relationship existed – and therefore they have not properly stated a claim against JPMC under either of these provisions of RIUFTA.

D. The Substantive Elements of the Pre-July 2018 Statute At Issue in this Motion Fully Support Our Arguments.

Plaintiffs are eager to make much of the fact that JPMC cited to the post-July 2018 version of RIUFTA with respect to two particular subsections. It is true that the statute was amended, effective July 2018, by the Rhode Island Uniform Voidable Transactions Act ("RIUVTA"). (See Obj. at 9 n. 5.) However, the relevant provisions and language of RIUFTA

cited by JPMC in its Motion remain materially unchanged from the pre-July 2018 version of the statute.[3]

As Plaintiffs acknowledge in their Objection, JPMC does not dispute that the pre-July 2018 version of the statute governs here, nor does it dispute that the amendments made by the 2018 legislation were prospective in nature only. (See Obj. at 3 n. 2; Motion at 2 n. 1). Plaintiffs themselves further acknowledge that there is no legal significance to JPMC's inadvertent citation to the newer version of the statute. (Obj. at 3 n. 2 ("none of these [post-2018] amendments affect the claims against any Defendant in this action.").) Thus, Plaintiffs repeated reference to those citations do not serve any real purpose, and do not provide any support for their claims against JPMC.

Conclusion

Despite their considerable effort to salvage their claims against JPMC – presumably for some sense of leverage or for access to discovery – Plaintiffs' Objection ultimately proves that there are insufficient facts in the Complaint to establish legally cognizable claims against JPMC. JPMC is neither a debtor nor a transferee for purposes of RIUFTA, nor was it a party for whose benefit the subject transactions were made. There are no facts in the Complaint that would indicate that JPMC played any role in the transactions at issue in this case other than as a lender and as a collateral and administrative agent. For the reasons set forth above, as well as those in JPMC's original Motion and Memorandum of Law, the Court should grant JPMC's Motion to

[3] One of the subject provisions of the statute is RIUFTA § 6-16-8(b)(1), which became RIUVTA § 6-16-8(b)(1)(i). The language of that provision remains unchanged – both versions state that a creditor may recover judgment against "[t]he first transferee of the asset or the person for whose benefit the transfer was made[]." This part of the statute was simply restructured in the post-July 2018 amendment, which moved the language into an additional subsection. The other provision referenced by Plaintiffs is RIUFTA § 6-16-4(a)(1), which uses the word "voidable" in the post-July 2018 RIUVTA version, rather than "fraudulent" in the applicable pre-July 2018 RIUFTA version. JPMC's Motion used the word voidable in its quotation of the statute. Again, these citations, while made in error, have no bearing on the substance of the applicable law itself, nor do they help Plaintiffs support their otherwise unsubstantiated claims against JPMC.

Dismiss as to all counts and claims against JPMC in Plaintiffs' Verified First Amended and Supplemental Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 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