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Transaction ID 57851434
Case No. 11231-ML

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MATTHEW D. PINNAVAIA	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. 11231-ML (VCN)**
	:	
J.P. MORGAN CHASE AND COMPANY, JAMES DIMON (IN THE CAPACITY OF CHIEF EXECUTIVE OFFICER)	:	
	:	
Defendants.	:	

MEMORANDUM OPINION AND ORDER

Date Submitted: September 8, 2015
Date Decided: September 11, 2015

Matthew D. Pinnavaia, of Oceanside, California, Self-Represented Plaintiff.

NOBLE, Vice Chancellor

Plaintiff Matthew D. Pinnavaia takes Exceptions from the Master's Final Report which dismissed his *in forma pauperis* derivative action as legally frivolous under 10 *Del. C.* § 8803(b).[1]

Plaintiff purports to bring a derivative action on behalf of J.P. Morgan Chase & Co. (the "Company") against its Chief Executive Officer, James Dimon, for a wide-range of corporate misconduct, amounting to an alleged failure to comply with his fiduciary duties that exposed the Company to substantial liability.[2] Plaintiff is a self-represented litigant and not a member of the Delaware Bar or, apparently, the bar of any other state. The Master dismissed the action because a derivative action may not be pursued by a non-lawyer.[3]

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[1] Transaction ID 57478478 (June 30, 2015) (Draft Report) and Transaction ID 57684785 (August 10, 2015) (Final Report). Plaintiff took exceptions from the Master's Draft Report. Because he failed to file the necessary opening brief, the Master adopted her Draft Report as her Final Report.

Plaintiff filed his Notice of Exceptions to the Master's Final Report on August 17, 2015. By Court of Chancery Rule 144(a)(1), his opening brief in support of his exceptions should have been filed within twenty days thereafter. That did not occur. Perhaps the Court, because of Plaintiff's failure to comply with Rule 144, should simply deem Plaintiff to have waived his right to seek review of the Master's Final Report, but, in the interest of justice, the Court will turn to the merits of Plaintiff's Exceptions.

[2] The action is derivative because the alleged conduct harmed the Company and any recovery would be paid to the Company. *See Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004).

[3] *Kelly v. Fuqi Int'l, Inc.*, 2013 WL 135666, at *7 (Del. Ch. Jan. 2, 2013).

A derivative plaintiff seeks to "enforce a right of a corporation,"[4] and corporations appearing in this Court may only do so through counsel.[5] Thus, the derivative plaintiff who asserts the rights of the corporation must also be represented by counsel. Retaining competent counsel to pursue derivative claims is one component of the adequacy of the representative plaintiff. Although not expressly required by Court of Chancery Rule 23.1, the concept is well-established:

> It is now quite clear that a derivative plaintiff's qualifications and adequacy to serve as the representative of his fellow stockholders is a legitimate focus of judicial inquiry and that, where the plaintiff is found wanting in this respect, he or she will be precluded from prosecuting the action in a representative capacity.[6]

This is necessary to ensure that the rights of the corporation are fairly protected and properly asserted. Moreover, Delaware is not unique in requiring lawyers to prosecute a derivative claim on behalf of a corporation. By Rule 23.1 of the Federal Rules of Civil Procedure, a derivative plaintiff must "fairly and adequately represent the interests of shareholders." That requirement has been construed as mandating that derivative plaintiffs be represented by lawyers.[7] In short, Plaintiff's

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[4] Ct. Ch. R. 23.1(a).

[5] *See, e.g.*, *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 2006 WL 903578, at *2 (Del. Ch. Apr. 3, 2006).

[6] Donald J. Wolfe, Jr. and Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 9.02[b][1], at 9-22 (2014).

[7] *See, e.g.*, *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997); *see also James v. Daley & Lewis*, 406 F. Supp. 645, 648 (D. Del. 1976).

attempt to pursue a derivative action without counsel was "legally frivolous" within the meaning of 10 *Del. C.* § 8803(b),[8] and dismissal is warranted.

Plaintiff makes two other arguments that should be addressed.

First, he inaccurately asserts that selecting a Master would forfeit a party's right to appeal to the Delaware Supreme Court. A decision by a Master (*i.e.*, the Final Report) is subject to *de novo* review by this Court.[9] When a judge of this Court rules on the Exceptions to a Master's Final Report, that decision is subject to appeal, as are other decisions of this Court, to the Delaware Supreme Court. Thus, a Master's handling of a case does not deprive a party of the right to appeal to the Delaware Supreme Court—it is simply a matter of review by a judge of this Court before appeal may be taken to the Delaware Supreme Court.

Second, Plaintiff argues that his rights under the First and Fourteenth Amendments to the United States Constitution, essentially freedom of speech and the right to petition for redress of grievance, were abridged by the Master's decision. That decision addressed whether he could act in a representative capacity for the Company and, indirectly, its shareholders. His personal rights—to assert his own views or his own claims—were not restricted. That someone is not an

[8] 10 *Del. C.* § 8803(b) provides in part: "Upon [the court's review of the complaint], the complaint shall be dismissed . . . upon a court's finding that the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised."
[9] Ct. Ch. R. 144(a)(2); *Digiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

adequate representative plaintiff does not implicate free speech or other constitutionally protected rights.

In sum, nothing in the Master's decision can fairly be said to have compromised Plaintiff's constitutional rights.

Accordingly, for the foregoing reasons, Plaintiff's Exceptions to the Master's Final Report are overruled, the Master's Final Report is confirmed, the action is dismissed as legally frivolous under 10 *Del. C.* § 8803(b), and process shall not issue.[10]

IT IS SO ORDERED.

/s/ John W. Noble
Vice Chancellor

[10] That a self-represented litigant should not represent the interests of others is well-settled law that the Plaintiff, if acting with due diligence, should have found.
There is no material dispute of fact. This memorandum opinion and order sets forth the Court's *de novo* review of the relevant legal issues.