UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GEOFFREY A. HOLLIS, SHARON R. HOLLIS, EDMUND J. MANSOR, and ROBERTA M. MANSOR Plaintiffs, v. JPMORGAN CHASE BANK, N.A. Defendant	)	Civil Action No: 1:12-cv-10544-JGD

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION

Plaintiffs, Geoffrey A. Hollis, Sharon R. Hollis, Edmund J. Mansor and Roberta A. Mansor (collectively "Plaintiffs"), individually and on behalf of all Class Members, hereby file their Opposition to Defendant, JPMorgan Chase Bank, N.A.'s, Motion for Reconsideration of this Court's Order dated July 31, 2012 granting Plaintiffs' Motion for Leave to Serve Summons and Complaint Late. Plaintiffs hereby seek to clarify the record on the events prior to Plaintiff's attempt to effect service of the Complaint.

The Plaintiffs and proposed Class Members are the victims of a Ponzi scheme known as "Millennium Bank" ("Millennium"). In November, 2009, certain Millennium victims filed a class action in the U.S. District Court for the Northern District of California against JPMorgan Chase Bank, N.A. ("JPMorgan"), individually and as successor to Washington Mutual, Inc. ("WAMU"). *Benson v. JPMorgan Chase Bank, N.A.*, 2010 WL 3168390 (N.D. Cal. Aug. 10, 2010) (No. C-09-5560 MEJ) ("Benson Action"). The Benson Action was eventually dismissed

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on August 10, 2010 on Defendant's motion, based on a finding of preemption under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"). The plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit. Oral arguments were heard on December 6, 2011. On March 20, 2012, the 9th Circuit issued its Opinion, affirming the Defendant's Motion to Dismiss. *Benson v. JPMorgan Chase Bank, N.A.*, 673 F.3d 1207 (9th Cir. 2012) (See Exhibit "1").

The 9th Circuit found that FIRREA preempted claims against JPMorgan, as the acquiring bank, but that direct claims against JPMorgan, following the acquisition, were not preempted. However, the Court further found that the Complaint before it did not adequately plead a claim against JPMorgan for its independent post-acquisition conduct, and therefore dismissal was appropriate[1].

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[1] We reject plaintiffs' first contention. Litigants cannot avoid FIRREA's administrative requirements through strategic pleading. Accordingly, we join three other circuits in concluding that a claim asserted against a purchasing bank based on the conduct of a failed bank must be exhausted under FIRREA.

The same is not true, however, with respect to claims based on a purchasing bank's post-purchase actions. Such claims are not governed by FIRREA. They could not, and accordingly need not, be exhausted before the FDIC.

Although we agree with plaintiffs' legal argument on this score, we conclude it has no application to the case at bar. Plaintiffs did not adequately plead a claim based on JPMorgan's independent conduct; they relied instead solely on conclusory allegations. The district court's dismissal of plaintiffs' claims, along with its subsequent denial of plaintiffs' Federal Rules of Civil Procedure 60(b) motion, was therefore proper. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Id. at 1209. (internal citations omitted).

Counsel for Plaintiffs in this case ("Counsel"), who also represented plaintiffs' in the Benson Action, reviewed the decision and concluded that a tort action was still viable for post-acquisition conduct, subject to time limitations. It was also apparent that the statute of limitations in Massachusetts was going to expire on March 25, 2012, three years from the date that the Securities and Exchange Commission ("SEC") had filed its action against Millennium, and thereby halted the scheme. Counsel immediately drafted a new Complaint and filed it on Friday, March 23, 2012, within three days of receipt of the Ninth Circuit's decision, and two days before the Massachusetts statute of limitations ostensibly was going to expire. See G.L. c. 260, § 2A.

Within two weeks of filing, Counsel telephoned Stacey R. Friedman, Esq. ("Friedman"), of Sullivan & Cromwell, LLP, who had represented JPMorgan in the Benson Action, to put her on notice of the filing. In that conversation, Friedman communicated her prior knowledge of the filing.

Upon the filing of the new Complaint, Counsel had under consideration the addition of Counts for violation of G.L. c. 93A, and was also aware that, under the statute, it was a prerequisite that Plaintiffs first tender a demand letter and wait a period of thirty (30) days so that the opposing party could respond. Only then, could the Complaint be amended to add such claims.

Consequently, on May 31, 2012, Counsel forwarded a G.L. c. 93A demand letter, certified mail, return receipt requested, to CT Corporation System, the agent for service of process in Massachusetts for JPMorgan's parent, JPMorgan Chase & Co. A copy of the Complaint, as filed, was attached to the letter (See Exhibit "2").

Subsequently, on June 29, 2012, Defendant's local Counsel, Beth I.Z. Boland, Esq. ("Boland") of Bingham McCutchen LLP, forwarded her response to the G.L. c. 93A demand letter, which advised, *inter alia*, that her firm would be representing JPMorgan in the action (See Exhibit "3"). The letter made no mention that JPMorgan Chase & Co. was not the proper party to the action.

Following review of Boland's letter, and the case law cited therein, Counsel made an election not to amend the Complaint by adding G.L. c. 93A Counts. Therefore, on July 10, 2012, Plaintiffs made service of the Summons and Complaint by hand delivering copies upon CT Corporation System, as more fully described in the Motion to Extend, previously filed.

Upon review of these facts and Exhibits, it should be evident to the Court that the new Complaint was not ripe for filing until the 9th Circuit issued its decision on March 20, 2012. Plaintiffs filed immediately, as was necessary to preserve the statute of limitations, but did not immediately serve the Complaint, upon a considered decision to serve a G.L. c. 93A demand letter, as would be required under the statute, prior to bringing such a claim by amendment of the Complaint.

Following the correct sequence, as required under the statute, Plaintiffs made their demand expeditiously, and received JPMorgan's response thirty days later. Only then, after making the decision not to amend, did Plaintiffs attempt to make service. That Counsel elected not to amend, after review of the response letter provided by JPMorgan, does not alter the necessary and methodic steps, which would have been necessary under the statute, had Plaintiffs moved forward with the G.L. c. 93A claims.

It is both disingenuous and disturbing that counsel for JPMorgan would claim prejudice without even reciting these essential facts. Plaintiff took conscious and courteous steps to put Defendant on notice of the filing of the Complaint and has communicated directly with Counsel representing JPMorgan, starting two weeks after filing. There has been no undue delay in this case, and JPMorgan cannot possibly claim prejudice under the circumstances. By Attorney Friedman's admission, JPMorgan knew of the Complaint within days of its filing, and local counsel certainly had a copy shortly thereafter.

The Court has wide discretion to allow extra time for Plaintiff to effect proper service, and a showing of just cause for delay is no longer required under revised Fed.R.Civ.P. Rule 4(m). Given the statute of limitations issue, the prejudice to Plaintiffs and the Class, were this Court to dismiss this action, would be profound.

Therefore, this Court should deny Defendant's Motion for Reconsideration of its Order issued on July 31, 2012, and permit the Complaint to be re-served as previously Ordered.

WHEREFORE the Plaintiffs move this Court to:

1) Deny Defendant's Motion to Reconsider.

Respectfully Submitted,
For the Plaintiffs,
And the Proposed Class
By their Attorney,

/s/ Keith L. Miller
Keith L. Miller
BBO# 347280
Fifty-Eight Winter Street, 4th Floor
Boston, MA 02108
(617) 523-5803

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by electronic and regular mail to those indicated as non registered participants on August 2, 2012.

/s/ Keith L. Miller
Keith L. Miller