

Turner v. J.P. Morgan Chase & Co.

United States District Court for the District of New Jersey

January 22, 2015, Decided; January 23, 2015, Filed

Civil Action No. 14-7148 (JLL)(JAD)

Reporter

2015 U.S. Dist. LEXIS 185621 *

GEORGE HARRY TURNER, Plaintiff, V. J.P. MORGAN CHASE & CO.; J.P. MORGAN CHASE BANK, N.A.; and, ABC CORPORATION 1-5 (fictitiously named), Defendants.

Notice: NOT FOR PUBLICATION

Core Terms

notice, cause of action

Counsel: [*1] For GEORGE HARRY TURNER, Plaintiff: PATRICIA WESTON RIVERA, LEAD ATTORNEY, IRVINGTON, NJ.

For J.P. MORGAN CHASE & COMPANY, Defendant: TYLER JAY KANDEL, LEAD ATTORNEY, EMMET MARVIN & MARTIN LLP, MORRISTOWN, NJ.

For J.P. MORGAN CHASE BANK, N.A., Defendant: PATRICIA WESTON RIVERA, LEAD ATTORNEY, IRVINGTON, NJ; TYLER JAY KANDEL, LEAD ATTORNEY, EMMET MARVIN & MARTIN LLP, MORRISTOWN, NJ.

Judges: JOSE L. LINARES, UNITED STATES DISTRICT JUDGE.

Opinion by: JOSE L. LINARES

Opinion

ORDER

LINARES, District Judge.

This matter comes before the Court upon Defendants J.P. Morgan Chase & Co. and J.P. Morgan Chase Bank,

N.A ("Chase" or "Defendants") motion to dismiss Plaintiff George Harry Turner ("Plaintiff")'s Amended Complaint pursuant to [Federal Rules of Civil Procedure 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#). [CM/ECF No. 11.] The Court has considered the submissions made in support of Defendants' motion, and it appearing that:

1. Plaintiff failed to respond to Defendants' motion to dismiss. As such, Defendants' motion is deemed unopposed. Still, this Court has considered the merits of Plaintiff's claims in deciding Defendants' motion.

2. Plaintiff was a joint accountholder of bank accounts in The Dime Savings Bank ("DSB") and Washington Mutual Bank ("WaMu") with Woodrow Turner. (Compl. Count I: ¶1.) [*2] The latter died on August 5, 2002. (*Id.*) Up to that point, the DSB account had a balance of \$93,761.08, while the WaMu account had \$9,676.35. (*Id.*) On or About January 7, 2002, DSB, a failed financial institution, was acquired by WaMu. (Def. Br. 2.) On September 25, 2008, six years after Woodrow Turner passed, WaMu was placed into the receivership of the Federal Deposit Insurance Corporation ("FDIC"). (*Id.*) On that same day, Chase purchased WaMu's assets and certain liabilities from the FDIC. (*Id.*) On October 1, 2008, the FDIC published a notice in the Wall Street Journal notifying creditors and potential claimants that the FDIC had been appointed as receiver over WaMu. (*Id.*) This notice was republished on October 31 and December 1 of the same year. (*Id.*) The notice explained that: "(1) any claims against WaMu had to be submitted in writing to the FDIC by December 30, 2008 (the 'Bar Date'); (2) failure to file such claims by the Bar Date would result in a final disallowance of the claim by the FDIC; and (3) further remedies with regard to such claims would be barred." (*Id.*)

3. Plaintiff does not allege that he filed a claim with

the FDIC within the Bar Date in his Amended Complaint. [*3] Instead, his Amended Complaint claims that he "demanded 'Chase' to provide its records" for the DSB and WaMu accounts, but that Defendants failed to produce that information (Count I).¹ (Compl. Count I: ¶¶4-5.) He also claims that Defendants "negligently maintain[ed] the aforesaid bank accounts so as to cause the same to be diverted" and "[a]s a direct and proximate result of [Defendants' negligence] . . . [Plaintiff] was caused to sustain a loss" of the money deposited in those accounts (Count III). (Compl. Count III: ¶¶1-2.)

4. Defendants move to dismiss Plaintiffs Amended Complaint (1) for lack of subject matter jurisdiction pursuant to [Rule 12\(b\)\(1\)](#) and [\(2\)](#) for failure to state a claim pursuant to [Rule 12\(b\)\(6\)](#). First, Defendants argue that this Court does not have jurisdiction over these claims because Plaintiff failed to file a claim with the FDIC within the Bar Date as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Second, they contend that Plaintiffs claim for failure to produce bank records should be dismissed because it is not a legally cognizable cause of action; and, that the negligence claim should be dismissed because: (a) Defendants do not owe Plaintiff a duty of [*4] care; (b) the Amended Complaint is devoid of any factual allegations that support this claim; and, (c) this cause of action is time barred.

5. Having carefully considered Defendants' arguments in support of dismissal, as well as the allegations set forth in Plaintiffs Complaint, this Court concludes that it does not have subject matter jurisdiction over Plaintiffs claims. FIRREA authorizes the FDIC to act as receiver of a failed state banking institution and to resolve claims against the failed institution. [12 U.S.C. § 1821\(c\)\(3\)](#). The Act "created a comprehensive administrative procedure for adjudicating claims asserted against a failed depository institution." [Centennial Assoc. v. FDIC, 927 F.Supp. 806, 809 \(D.N.J. 1996\)](#). The FDIC initiates this process by giving prompt notice to the institution's creditors: the receiver shall "promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall not be less than

90 days after the publication of such notice[.]" [Rodriguez v. Indymac Bank, No. 9-5843, 2010 U.S. Dist. LEXIS 27782, 2010 WL 1186315, at *3 \(D.N.J. Mar. 24, 2010\)](#) (quoting [12 U.S.C. § 1821\(d\)\(3\)\(B\)\(i\)](#)). According to the Third Circuit, "FIRREA's claims procedure in [section 1821\(d\)](#) is exclusive." [Fed. Deposit Ins. Corp. v. Shain, Schaffer & Rafanello, 944 F.2d 129, 132 \(3d Cir. 1991\)](#). "Congress expressly withdrew jurisdiction from all courts over any claim [*5] to a failed bank's assets that are made outside the procedure set forth in [section 1821](#)." *Id.* Plaintiff does not allege that the FDIC failed to publish the notice required by FIRREA or that DSB or WaMu are not failed banking institutions pursuant to the Act. Instead, he asks this Court to consider the merits of his claim. Given the Act's clear language, the Third Circuit's interpretation of the Act's jurisdictional requirements, and the fact that Plaintiff failed to oppose Defendants' arguments, this Court finds that it does not have subject matter jurisdiction over Plaintiff's claims.

6. Jurisdictional issues aside, Plaintiffs Amended Complaint should also be dismissed for failure to state a claim pursuant to [Rule 12\(b\)\(6\)](#). Plaintiff's first claim, failure to provide banking records, is not a legally cognizable cause of action. Plaintiff does not cite to any state or federal law in support of this claim. He also does not provide this Court with any relevant case law. This Court is unaware of a cause of action for failure to provide banking documents. As such, Count I of the Amended Complaint is dismissed with prejudice.

7. Additionally, Plaintiff's claim of negligence fails to abide by the pleading standards [*6] of [Rule 8\(a\)](#) and *Twombly* and *Iqbal*. To state a claim for common law negligence, a plaintiff must set forth sufficient facts in support of the following elements: (1) duty of care, (2) breach of that duty, (3) proximate cause, and (4) actual damages. See [Polzo v. Cnty. of Essex, 196 N.J. 569, 584, 960 A.2d 375 \(2008\)](#). Plaintiff's Amended Complaint is devoid of any factual allegations to support this claim. Plaintiff relies only on conclusory statements that do not receive the presumption of truth for the purpose of deciding a motion to dismiss. [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 \(2009\)](#) (citing [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2007\)](#)) ("Threadbare recitals of the elements of a cause of action, supported by mere

¹Count II of the Amended Complaint asserts this "failure to provide banking records" claim against fictitious parties.

conclusory statements, do not suffice."). As explained above, Plaintiff only claims that Defendants "negligently maintain[ed] the aforesaid bank accounts so as to cause the same to be diverted" and "[a]s a direct and proximate result of [Defendants' negligence] . . . [Plaintiff] was caused to sustain a loss" of the money deposited in those accounts. (Compl. Count III: 11111-2.) This parroting of the elements of a negligence claim fails to state a cause of action. As such, Count III of the Amended Complaint is dismissed with prejudice.²

Accordingly, **IT IS** on this **22 day of January, 2015**.

ORDERED that Defendants' motion to dismiss [CM/ECF No. 11] [*7] is **GRANTED**. Plaintiff's Amended Complaint is dismissed in its entirety *with prejudice*. This case is hereby **CLOSED**.

IT IS SO ORDERED.

/s/ Jose L. Linares

JOSE L. LINARES

U.S. DISTRICT JUDGE

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² Though Defendants persuasively argue that they do not owe a duty of care to Plaintiff and that Plaintiff's negligence claim is time barred, that analysis is unnecessary for the purpose of this order.