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11/21/2023 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-011499 11/20/2023

HONORABLE DEWAIN D. FOX

CLERK OF THE COURT
L. Gilbert
Deputy

PETER S DAVIS JEFFREY B MOLINAR

v.

U S BANK N A, et al.

NICOLE GOODWIN
GEOFFREY M STURR
COLIN F CAMPBELL
PAUL J. FERAK
JONATHAN H. CLAYDON
JUDGE FOX

UNDER ADVISEMENT RULING ON MOTIONS FOR SUMMARY JUDGMENT

The following motions are pending before the Court:

1. Plaintiff Receiver's Motion for Partial Summary Judgment on Underlying Pattern of Racketeering, filed March 2, 2023;

2. Defendant JPMorgan Chase Bank, N.A.'s ("Chase") Motion for Summary Judgment, filed May 31, 2023;

3. Defendant Samantha Nelson ("Nelson") and Kristofer Nelson's Motion for Summary Judgment, filed May 31, 2023; and

4. Defendant Vikram Dadlani ("Dadlani") and Jane Doe Dadlani's Motion for Summary Judgment, filed May 31, 2023.[1]

The Court heard oral argument on these motions on September 22, 2023, at which time the matter was taken under advisement. For the reasons set forth below, the Court will grant the Chase Defendants' Motions for Summary Judgment and deny Plaintiff's Motion for Partial Summary Judgment.

Factual Background

Plaintiff Peter S. Davis is the court-appointed receiver ("Receiver") of DenSco Investment Corporation ("DenSco"). DenSco was a "one-man band," solely owned and operated by Denny Chittick ("Chittick"), its founder.

Until it entered receivership in 2016, DenSco made hard money loans to "foreclosure specialists" to purchase foreclosed homes to fix and flip for a profit. To fund the loans, DenSco raised money from investors through private offerings of general obligation notes. DenSco raised approximately $85 million from investors from 2001 to 2016.

DenSco told its investors that its loans would be secured by first-position deeds of trust on the properties purchased and that the loans would not exceed 70% of the property value. DenSco also represented to its investors that it would loan no more than 10 to 15 percent of its total portfolio to a single borrower.

The First Fraud

Yomtov Scott Menaged ("Menaged"), through his company Arizona Home Foreclosure, LLC ("AZHF"), was one of DenSco's borrowers beginning in 2007. For a time, DenSco's relationship with Menaged was "problem-free." At some point, however, Menaged began borrowing from DenSco and another lender to buy the same property. For example, if Menaged needed $100,000 to buy a property, he would borrow $100,000 from DenSco and $100,000 from another lender. He would use the funds from one lender to purchase the property but double lien the property for both loans. Menaged then diverted the extra loan proceeds for personal uses such as gambling, lifestyle expenses and repaying old loans with new money.

The Receiver refers to the double-liening scheme as Menaged's "First Fraud." Menaged was able to perpetrate this fraud because Chittick gave the loan funds directly to Menaged, rather than to the trustee or escrow company conducting the sale.

[1] Chase, Dadlani and Nelson are collectively referred to as the "Chase Defendants."

Chittick's Discovery of the First Fraud and Plan to Recoup Losses

Chittick learned about the First Fraud in November 2013, when one of Menaged's other hard money lenders discovered it was a victim of the double-liening scheme. Chittick discovered that approximately 100 of DenSco's loans were not in first position and undersecured.

When Chittick confronted Menaged about the double-liening problem, Menaged falsely told Chittick that his cousin perpetrated the fraud while he was distracted caring for his wife who had cancer. Menaged claimed that the cousin absconded to Israel with the money.

Chittick did not investigate Menaged's story that the cousin was behind the double-liening scheme or make any effort to recover the missing funds. Chittick did not tell his investors about the double-liening fraud and the losses DenSco suffered as a result. Chittick also did not disclose to investors that, by the end of 2013, 43% of DenSco's loan portfolio was comprised of loans to Menaged and that a large number of those loans were undersecured. It is undisputed that, as a result of Menaged's double-liening fraud, DenSco was insolvent by December 2012, another fact Chittick kept from DenSco's investors.[2]

Chittick was concerned that exposure of the fraud and resulting losses "could be the collapse of my entire 14 years of work and my entire networth (sic). I'm just not prepared to watch it go away. I think we can work our way out of this nightmare if we have everyone playing on the same side." (Chase Ex. 21 at Dec. 31, 2013, JPMC-Receiver_0007841). To avoid exposing the fraud to his investors and the repercussions to himself and his business, Chittick and Menaged created a plan to cover up the problems and recoup DenSco's losses.[3] Chittick described the plan to his lawyer as follows:

[2] The Receiver admitted that Chittick was obligated to disclose to DenSco's investors that the investments did not align with his prior representations regarding lien position, loan-to-value ratio and borrower diversity. (Plaintiff's Controverting Statement of Facts and Evidentiary Objections ("PCSOF") at ¶ 27). The Receiver also acknowledged that Chittick continued to solicit new investments without disclosing the true nature of DenSco's portfolio. (*Id*. at ¶¶ 28-29).

[3] Chittick wrote in his journal on February 20, 2014: "I'm more concerned about telling my investors and their reaction to the problem. I have to tell them and hope they stick with me. If I get a run on the bank I'm in deep shit. I won't be able to fund new deals, I won't be able to payoff investors and wont' (sic) be able to support scott (sic). The whole things crators (sic)." (Chase Ex. 25 at Feb. 20, 2014, JPMC-Receiver_0007849).

> Scott and i (sic) spent a great amount of time creating a plan to fix this. Our plan is simple, sell off the properties and pay off both liens with interest and make everyone whole. Because many of the houses were bought in the first half of the year. they are upside down …. Coming up with the short fall on all these houses is a challenge, but we believe it's doable. our (sic) plan is a combination of *injecting capital and extending cheaper money, along with continuing the business as he's run it for years, by flipping homes which will generate profits*.
>
> * * *
>
> i've (sic) been over this plan 100 times and the numbers and i (sic) truly believe this is the right avenue to fix the problem. we have been proceeding with this plan since November and we've already cleared up about 10% of the total $'s in question.
>
> * * *
>
> What we need is an agreement that as long as the other lenders are being paid their interest and payoffs continue to come … that no one initiates foreclosure for obvious reasons, which will give us time to execute our plan.

(Chase Ex. 15 at JPMC-Receiver_0008619-8621) (emphasis added).

In other words, the workout plan provided that Chittick would continue raising money from investors and making loans to Menaged and AZHF. Chittick would use the profits made on new loans to pay the losses on the old loans created by the double-liening fraud. Chittick apparently believed that profits from the new loans would be sufficient to cover the losses and that he would not have to disclose the fraud to DenSco's investors. Although Chittick never investigated Menaged's story about the First Fraud, he believed that Menaged would use all future loans monies for their intended purpose.[4]

[4] The Receiver admitted that DenSco's decision to continue conducting business with Menaged after learning of the First Fraud was unreasonable and improper. (Chase Ex. 78, Davis depo. at 37:23-38:3; 163:13-164:18).

Chittick told his attorney about the double-liening fraud in January 2014. The attorney did not advise Chittick to stop lending to Menaged or to disclose the problems to DenSco's investors.[5]

Chittick's attorney participated in negotiating the Forbearance Agreement between DenSco and Menaged/AZHF. The Forbearance Agreement entered into in April 2014, generally provided that Menaged would make certain payments and take other action in exchange for DenSco forbearing its rights on the prior defaulted loans. (Chase Ex. 35). The Forbearance Agreement provided that DenSco would make additional loans to Menaged/AZHF. *(Id*. at JPMC-Receiver_0002548). Chittick did not disclose the Forbearance Agreement to DenSco's investors.

DenSco continued to wire loan funds directly to Menaged's bank accounts, rather than sending the funds directly to a trustee or an escrow account.[6] Beginning in January 2014, DenSco established new procedures for its loans to AZHF/Menaged. For each loan, DenSco required that Menaged provide copies of: (1) the cashier's check payable to the trustee conducting the sale, with DenSco's name and the address of the property to be purchased; and (2) the receipt from the trustee documenting Menaged's purchase of the property identified on the cashier's check.

Despite the new lending procedures, Menaged devised a new scheme to continue diverting loan funds for his own purposes. Rather than double liening properties, Menaged falsified property purchases with photos of redeposited cashier's checks and forged trustee receipts. The Receiver refers to Menaged's new scheme as the "Second Fraud."

Chase's Involvement

In April 2014, Menaged opened bank accounts for AZHF and himself at a Scottsdale branch of Chase. Nearly every business day after the accounts were opened, DenSco wired loan funds directly to the AZHF account. The wire transfers identified specific property addresses. According to the Receiver's expert, Jeffery Gaia, 95% of the funds deposited in AZHF's account (excluding the redeposited cashier's checks) were from DenSco. Nearly every business day, AZHF wired funds back to DenSco.

[5] The Receiver filed suit against DenSco's lawyer for malpractice and aiding and abetting a breach of fiduciary duty owed to DenSco. *Davis v. Clark Hill PLC*, CV2017-013832 (Maricopa County Superior Court).

[6] The Receiver did not dispute that sending money directly to Menaged created the opportunity for Managed to use the money for other purposes and that the better practice would have been to pay the funds to the trustee conducting the foreclosure sale. (PCSOF at ¶¶ 32-33).

From April 2014 to July 2014, Menaged came into the branch nearly every business day. Each visit, Menaged instructed Chase to issue multiple cashier's checks, each payable to a trustee, with DenSco's name and a property address printed on the face. Menaged took a photograph of each cashier's check in the presence of bank employees and immediately redeposited the checks into the same account. The back of each cashier's check was endorsed with a stamp stating, "NOT USED FOR INTENDED PURPOSES." (*See, e.g.,* Depo. Ex. 347 at JPMC_0007800-7804).

Nelson claims that Menaged told her that he photographed the cashier's checks for "bookkeeping" purposes. Menaged testified that he told her he took the photos for proof of funds.

Menaged did not purchase the property with the DenSco loan funds. Instead, he sent DenSco photographs of the cashier's checks and forged trustee receipts, documenting fictitious real estate purchases. Menaged used the redeposited funds for his own purposes. Some of the money was spent on gambling, personal expenses and payments to family members. Menaged wired some of the funds back to DenSco as purported payments on outstanding loans.

Beginning in July 2014, Chase employees set up a system to speed up the process by preparing the cashier's checks and related paperwork ahead of Menaged's arrival to the branch. With this streamlined procedure, Menaged would email Nelson, the assistant branch manager, and Dadlani, the branch manager, the information needed to issue the cashier's checks for the following day. The email included the name of a trustee to whom the check was to be made payable, the amount of the "DenSco payment" and the property address for which the check was issued. (*See, e.g.,* Depo. Ex. 81 at JPMC_0000589). The email threads included Menaged's corresponding email to "dcmoney," which listed property addresses and dollar amounts for each. *(Id*.). Menaged emailed the bank nearly every business day until around July 2015.

After receiving Menaged's email, Nelson or another Chase employee prepared the documents needed to process multiple cashier's checks in the drive-through lane.[7] A Chase employee prepared the withdrawal slip for the amount needed to purchase the cashier's checks.[8] (*See, e.g*., Depo. Ex. 347 at JPMC_0007798). Chase also prepared each of the cashier's checks and a deposit slip for redepositing the cashier's checks into the AZHF account. (*Id*. at

[7] Dadlani may have prepared and processed the cashier's checks and related paperwork when Nelson was not available.

[8] From July to December 2014, a bank employee filled out the withdrawal slips with a note on the signature line "at the customer request." Later, the bank's policy changed, and the customer was required to sign the withdrawal slip before the cashier's checks could be printed.

JPMC_0007799). Thus, when Menaged arrived at the branch, the withdrawal slip, the cashier's checks and the deposit slips were ready.

On occasion, Menaged would use the drive-through window to complete cashier's check/redeposit transactions from his car. He took pictures of the cashier's checks while in his car, before immediately redepositing them. Nelson denies ever seeing Menaged take photographs of cashier's checks in his car.

From April 2014 to July 2015, Menaged purchased over 1,344 cashier's checks at Chase, which he photographed at the branch and immediately redeposited as not used for their intended purpose. Menaged sent copies of each of these photographed cashier's checks, along with forged trustee receipts, to DenSco. Menaged never bought properties with the 1,344 cashier's checks.

Chase had policies and procedures to detect suspicious and unusual banking activities for money laundering and fraud. Chase trained its employees in these policies. Chase also had software to monitor transactions for suspicious banking activities. Examples of suspicious activities identified in Chase's policies included large wire transfers coming into and out of an account in a short period of time, large wire transfers coming into and going out to the same entity, cashier's checks being issued and then redeemed within a short time period, transactions involving sequentially numbered checks and transactions with no discernable purpose. According to the Receiver, Menaged engaged in suspicious transactions involving wire transfers and cashier's checks nearly every business day during his relationship with Chase.

Chase's AML Investigations Unit reviews manual and automated alerts of unusual activity. The AML Investigations Units is comprised of analysts and investigators. An analysts' role is to determine whether the alerted account activity should be closed or escalated for further investigation. The investigators are responsible for reviewing escalated transactions.

Menaged's banking activity triggered multiple alerts and reports of unusual and suspicious banking activity. On April 10, 2014, following the opening of AZHF's account, Nelson reported AZHF for unusual wire activity. Her report indicated that "customer just opened account and received large wire than has wired out large increments same day as wire came in." (Chase Ex. 44 at JPMC-SOF_000641). AZHF's bank statements show that on April 9, 2014, DenSco wired over $1 million into the AZHF account, listing specific property addresses, and the same day, AZHF wired funds back to DenSco's Bank of America account. (Depo. Ex. 343 at JPMC-0010548, JPMC_001551).

Nelson made a second report of unusual activity in May 2014. Her second report stated that that AZHF "receives wires into account every day and then sends them back out. Customer also makes cashier's checks and then redeposits them in the account." (Chase Ex. 44 at JPMC-SOF_000642).

Several alerts were generated by Chase's automated alert system. Each of these were escalated by the analysts for investigation. (Chase Ex. 44 at JPMC-SOF_000650-654). None of the four investigators who examined AZHF's account activity found any unusual activity.

In May 2014, a Chase AML analyst noted that given "the rapid and circular movement of funds, the high-risk nature of the industry, and the extensive prior AML history" further investigation was warranted. (Depo. Ex. 241 at JPMC_0013057). An analyst noted that "large inbound and outbound wires seem unusual for this newly opened business in the real estate industry. Large cashier's checks deposits and cashier's checks purchases are inconsistent with this business profile. The activity and rapid movement of funds is unusual for this typical business customer and therefore warrants further review." (Chase Ex. 44 at JPMC-SOF_000644).

In July 2014, an AML investigator reviewed certain transactions in AZHF's account and certain publicly available information. (*Id*. at JPMC-SOF_00644-649). The investigator concluded that, "Given the business description and review of the transaction history, the activity appears normal and expected for this type of business. Google searches of the business, signer, and other parties associated shows an internet presence in the real estate sector. Although transactions are high dollar, they are transparent and appear to be for typical business activity (for this type of business)." (*Id*. at JPMC-SOF_000648).

Another analyst noted that, "The primary source of funds is inbound Domestic Wire Transfers from DenSco Investment Corp. The primary use of funds the purchase of cashier's checks to DenSco Investment Corp. The course and use of funds are both unusual … The alerted customer is receiving large wires from DenSco and then purchasing high volume large dollar cashier's checks. These checks are made out to DenSco but are deposited into the alerted customer's account. Thereafter the funds are sent to DenSco via outbound wire transfers. The purchase of the cashier's checks may be for record keeping purposes, however the sheer volume and amounts of the transfers, as well as an open pending investigation … Further review is recommended." (Depo. Ex. 243 at JPMC_0013272).

After reviewing cashier's check transactions from May 14 to July 26, 2014, one investigator noted that AZHF and Menaged "are in the business of purchasing foreclosed homes and therefore need to utilize monetary instruments for auction purchases. If the sale does not take place, then the monetary instrument is deposited back into the account." (Chase Ex. 44 at JPMC-SOF_000654). The investigator concluded that "based on the review of the account activity during this investigation and the information obtained from the referral … sources funding the account appear legitimate and other account activity appears consistent with a consumer account." (*Id.*).

In October 2014, another alert was generated due to "patterns of sequentially numbered checks, monetary instruments" in the AZHF account. (*Id*. at JPMC-SOF_000655-659). The Chase investigator concluded that: (1) the sequentially numbered checks were due to "the customer's

business model and process of bidding for houses;" (2) the activity was consistent with AZHF's business as it is "regularly receiving loans to assist with purchasing properties then they sell the properties and payback initial loans to DenSco Investment Corp."; and (3) AZHF needed to use monetary instruments to purchase auction properties and that if the sale did not take place "then the monetary instrument is deposited back into the account." (*Id.* at JPMC-SOF_00068-659).

Another suspicious activity alert was generated in February 2015, due to "patterns of funds transfers between customers and external entities" in the AZHF account. (*Id.* at JPMC-SOF_0000660-665). This alert was escalated for investigation. The AML investigator reviewed banking activity from December 24, 2015 to February 9, 2015. (*Id*. at JPMC-SOF_000655-659). The investigator also reviewed an email from a branch employee. The branch employee explained that "[b]ecause of the large numbers of purchases/auctions [Menaged] is involved with the auction operators allow him to take pictures of cashier's checks for the sell amount instead of having the actual cashier's check with the bidder of the property. The net result is that on any given day he can purchase several checks, take photos of them and then redeposit into his account. Densco (sic) appears to be a private funding organization and does many transactions with Arizona Home Foreclosure. Again due to the high volume of properties being bought and sold there can be multiple wires daily, incoming wires for funds to purchase properties and outgoing wires to repay funds when properties are sold." (Chase Ex. 76).

The investigator noted that the primary source of AZHF's funds was inbound wire transfers from DenSco for short-term loans. (Chase Ex. at 44 at JPMC-SOF_000663-665). She also noted that multiple cashier's checks were redeposited into the account. She concluded that "[t]his was normal activity in the real estate industry when purchasing properties at auctions. The buy[er] must provide proof that they have the funds available. This is commonly done with the purchase of cashier checks each check has the property's [address] listed that is to be purchases[d]." (*Id*.).

Chase was aware of other suspicious activity on AZHF's and Menaged's personal accounts. For example, Menaged sent numerous emails to Dadlani and Nelson requesting large sums of cash from his business and personal accounts and for large payments to various casinos. (*See* Depo. Ex. 81 at JOMC_0000702-0001018). Chase also was alerted that Menaged was using his personal account for business activity. (Depo. Ex. 1734 at JPMC_0013443).

Chase had a "Know Your Customer" program to determine whether transactions were in character with the customer's business. When he opened the accounts, Menaged told Chase that AZHF would not do more than $235,000 in aggregate in checks/monetary instruments and no more than $231,000 in aggregate electronic fund transfers. (Depo. Ex. 17 at JPMC_0006406). The Receiver's banking expert, Mr. Gaia, asserts that Menaged's banking activity exceeded these parameters every month throughout his relationship with Chase. (*See* Receiver Ex. B, attachment 2 at 6).

DenSco's Collapse and The Appointment of The Receiver

Menaged stopped banking with Chase in July 2015. In April 2016, Menaged filed for Chapter 7 bankruptcy. At the time, Menaged and AZHF owed DenSco approximately $44 million.

After learning about the bankruptcy, Chittick and Menaged discussed the fraud. During this recorded conversation, Menaged disclosed that never used most of the cashier's checks for the loans DenSco funded. (Chase Ex. 12 at 108:13-109:9). Menaged admitted the sales were bad and that he redeposited the cashier's checks within 24 hours and use the redeposited funds to make payments to DenSco on the outstanding loans. (*Id*).

Chittick committed suicide on July 28, 2016. In a note to his investors, Chittick explained that he did not tell them about the First Fraud and the losses out of "fear." (Chase Ex. 17 JPMC_Receiver_0002846). He expressed that if he disclosed the problems in 2013, there would have been "a classic run on the bank." (*Id*.). He was afraid the investors would sue and "the whole thing would implode." *(Id*.). He explained that he agreed to lend Menaged more money because no one else would, and he "needed [Menaged] to make money so that [he] could be paid back." (*Id.* at JPMC-Receiver_0002847).

The Arizona Corporation Commission filed a complaint for securities fraud against DenSco. The Court presiding over that case appointed the Receiver on August 18, 2016.

On October 17, 2017, Menaged pleaded guilty to conspiracy to commit various federal crimes related to AZHF and a furniture business he owned and operated. He was sentenced to 17 years in federal prison. As part of his plea, Menaged admitted that he "defrauded DenSco by embezzling millions of dollars without purchasing properties with the loans obtained from DenSco" by using fabricated documents. (Receiver's Ex. G (MPSJ) at 11).

The Receiver filed this action against the Chase Defendants on August 16, 2019. Two claims remain against the Chase Defendants: aiding and abetting fraud against the Chase Defendants, and civil racketeering against Dadlani and Nelson.

Analysis

Chase's Motion for Summary Judgment

Chase makes four arguments in support of summary judgment: (1) the Receiver lacks standing to bring any claims against Chase; (2) the statute of limitations has expired on the Receiver's claims; (3) there is no evidence Menaged committed an underlying fraud to support the aiding and abetting claim; and (4) the Receiver cannot establish that Chase had actual knowledge

of Menaged's fraud and substantially assisted his fraud. Dadlani and Nelson join in each of these arguments.

Standing

Arizona courts require that a plaintiff must establish standing to sue. *Bennett v. Brownlow*, 211 Ariz. 193, 195 ¶ 14 (2005). To establish standing, a plaintiff must show a particularized injury to itself. *Id*. at 463 ¶ 17.

A court-appointed receiver "stands in the shoes" of the entity he represents. *Gravel Resources of Arizona v. Hills*, 217 Ariz. 33, 38 ¶ 16 (App. 2007). In other words, the receiver "takes the rights, causes and remedies ... which were available to those whose interests the receiver was appointed to represent. Accordingly, the property of an entity in receivership includes any causes of action available to that entity." *Id*. (*quoting* 65 Am. Jur. 2d *Receivers* § 100 (2001)).

Here, the Receiver was appointed to "receive and collect any and all sums of money due or owing to [DenSco]." (Chase Ex. 6 at ¶ 17). As such, the Receiver "stands in the shoes" of DenSco to bring claims belonging to DenSco.

The Chase Defendants argue that the Receiver lacks standing to bring the aiding and abetting claims against them because DenSco was not injured by Menaged's fraud scheme but rather helped perpetrate and benefited from it. According to defendants, a company that benefited from a Ponzi scheme lacks standing to bring a claim for aiding and abetting because it was not injured by a scheme it helped perpetrate. *See Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1309 (11th Cir. 2020).

In *Isaiah*, a state court-appointed receiver filed a complaint against a bank in connection with its alleged enablement of a Ponzi scheme. The Ponzi scheme was executed by the principals of the entities in receivership. The receiver sought damages for aiding and abetting the principals' breach of fiduciary duty, conversion, and fraud. *Id.* at 1300. Specifically, the receiver alleged that the bank failed to follow sound banking practices and willfully ignored suspicious banking activity. *Id.* at 1301.

The court in *Isaiah* held that the receiver lacked standing to pursue aiding and abetting claims against third parties because the entities in receivership were controlled exclusively by persons engaged in a fraudulent scheme. *Id*. at 1307. The court explained that the receiver's claims were barred by the fact that the entities were controlled exclusively by persons engaged in and benefiting from the Ponzi scheme. *Id*. at 1308. Without at least one honest director or shareholder, the fraud and intentional torts of the insiders could not be separated from the corporation. The receiver, who stands in the shoes of the corporation, lacks standing because the corporation,

"whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated." *Id.*

The Receiver argues that Chittick was not a Ponzi schemer, but rather was a victim of Menaged's fraud. The Receiver points out that Chittick was not involved in the First Fraud and did not learn about the Second Fraud until shortly before his death. According to the Receiver, Chittick believed Menaged's story that the First Fraud was committed by his cousin. The Receiver also points to the fact that Chittick sought legal advice on the Forbearance Agreement and the new lending procedures.

The Receiver cannot dispute that after November 2013, Chittick operated DenSco as a Ponzi scheme. What Chittick knew about Menaged's involvement in the First Fraud or about the Second Fraud is immaterial. The undisputed facts establish that after November 2013, Chittick was aware a fraud had been committed by AZHF and that DenSco had substantial losses because of undersecured loans caused by the fraud. Rather than disclosing the problems to investors and putting an end to the fraud, Chittick decided to conceal the fraud by raising new money from investors and continuing to make loans to Menaged with the aim of generating enough profits from the new loans to cover the losses on the old loans created by the fraud. Chittick admittedly did this to avoid the fallout if the fraud was exposed.

The Receiver has repeatedly acknowledged that after November 2013, Chittick was operating DenSco as a Ponzi scheme. For instance, in a petition filed in the receivership case, the Receiver stated that "as of December 31, 2012, DenSco became insolvent and essentially became a Ponzi Scheme as DenSco's assets were insufficient to pay the necessary interest and principal payments to DenSco's investors" and that "DenSco's insolvency forced DenSco to rely on operating income and new DenSco investor deposits to make principal and interest payments to existing DenSco investors." (Chase Ex. 70 at ¶ 4; *see also* Chase Ex. 73 at ¶ 3 ("[D]espite being insolvent, DenSco knowingly continued to raise new money from investors, which was utilized to pay DenSco's obligations to its existing investors. With a clear pattern of DenSco raising and utilizing new investor money to pay older DenSco investors, the Receiver determined that after December 31, 2012, DenSco operated as a Ponzi investment scheme.")).

The Receiver argues Chittick's actions cannot be attributed to him and that he, DenSco and Chittick cannot be treated as one and the same. The Receiver asserts that he is not culpable and he is the person appointed by the Court to recover DenSco's assets. He claims that once the Receiver was appointed, "DenSco was freed from the impact of Chittick and became entitled to recover for the harm it suffered when Menaged used its funds for unauthorized purposes." (Receiver Response at 12).

The cases cited by the Receiver hold that a receiver has standing to bring fraudulent transfer claims against those who received funds from the company in receivership. These cases do not

hold that the receiver of a company that operated as a Ponzi scheme can bring an action against third parties for allegedly aiding and abetting the scheme. For instance, in *Wiand v. Lee*, 753 F.3d 1194, 1202 (11th Cir. 2014), the court explained that defenses such as unclean hands or *in pari delicto* do not apply when the receiver is bringing an action directly against the principals or the recipients of fraudulent transfers to recover assets rightfully belonging to the corporation. *Id.* The court explained that when assets are transferred for an unauthorized purpose to the detriment of the defrauded investors, the corporation itself is harmed. *Id*. The court concluded that the receiver for the corporation has standing to sue the recipients of fraudulent transfers. *Id.* at 1203; *see also Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008) (receiver brought California fraudulent transfer act claim against Ponzi scheme investor); *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995) (receiver had standing to bring fraudulent conveyance action against Ponzi scheme investor and others who had received funds from corporation).

As the court in *Isaiah* explained, a receiver has standing to sue for the return of company assets diverted for unauthorized purposes, including recipients of fraudulent transfers. 960 F.3d at 1306. The receiver, however, cannot bring common law tort claims against third parties who perpetrated the fraud with the corporation's insiders. *Id.* Here, the Receiver cannot bring tort claims against the Chase Defendants because DenSco, through its sole owner and director, participated in a Ponzi scheme that harmed DenSco's investors.

The Receiver also cites to *FDIC v. O'Melveny & Myers*, in which the Ninth Circuit, applying California law, held that "defenses based on a party's unclean hands or inequitable conduct do not generally apply against that party's receiver." 61 F.3d 17, 19 (9th Cir. 1995). The court concluded that the FDIC, as receiver for a failed savings and loan, could sue the savings and loan's former lawyer for malpractice and breach of fiduciary duty without being subject to equitable defenses that could have been raised against the savings and loan. *Id*. The court held that "there is little reason to impose the same punishment on a trustee, receiver or similar innocent entity that steps into the party's shoes pursuant to court order or operation of law." *Id*. *O'Melveny* has been criticized for not considering the general rule that "a receiver occupies no better position than that which was occupied by the party for whom it acts." *FDIC v. Refco Group, Ltd.*, 989 F. Supp. 1052, 1088 (D. Colo. 1997).

The parties have not cited an Arizona appellate decision addressing this issue. At least one Arizona appellate court has stated that a receiver stands in the shoes of the corporation. *Gravel Resources*, 217 Ariz. at 38 ¶ 16. As such, the Court finds that under Arizona law, a receiver does not have standing to bring claims where the corporation under receivership participated in a Ponzi scheme through its sole owner and director.[9] *See also Knauer v. Jonathon Roberts Fin. Group,*

[9] The Receiver's argument that fault should be apportioned by the jury does not apply here. A.R.S. § 12-2506(A) applies to actions for "personal injury, property damage and wrongful

Inc., 348 F.3d 230, 236 (7th Cir. 2003) (holding that the *in pari delicto* doctrine defeated the receiver's tort claims against parties allegedly partly to blame for the embezzlement because, under Indiana law, the receiver stands in the shoes of the corporation).[10]

For these reasons, the Court finds that the Receiver lacks standing to bring claims against Chase. Accordingly, the Court will grant Chase's Motion for Summary Judgment.

Statute of Limitations

A.R.S. § 12-543(3) provides that an action for fraud "shall be commenced and prosecuted within three years after the cause of action accrues." As such, claims for aiding and abetting fraud have a three-year limitations period. *See* A.R.S. § 12-543(3). "The statute of limitations in a fraud case begins to run when the plaintiff by reasonable diligence could have learned of the fraud, whether or not he actually learned of it." *Coronado Dev. Corp. v. Superior Court*, 139 Ariz. 350, 352 (App. 1984); *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 130 (1966) (when a plaintiff alleges fraud, "the statute of limitations runs from the time the aggrieved party should have discovered the fraud in the exercise of reasonable care and diligence").

DenSco, through Chittick, knew of Menaged's Second Fraud by the spring of 2016, when Chittick and Menaged discussed it during a recorded phone call. It is undisputed that, at the very latest, Chittick knew of the Second Fraud by July 28, 2016, as evidenced in his letter to DenSco's investors shortly before his death. The Chase Defendants argue that because the Receiver did not file his initial complaint until August 16, 2019, the statute of limitations bars this action because it was filed more than three after DenSco/Chittick discovered the fraud.

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death." The statute makes no reference to fraud claims. Moreover, the issue raised by defendants is not apportionment of fault, but whether the Receiver, standing in the shoes of DenSco, can assert a claim for damages caused by a Ponzi scheme in which DenSco itself participated to its benefit.

[10] In *Warfield v. Alaniz*, the court held that the receiver had standing to bring state law claims on behalf of the corporation. 453 F. Supp. 2d 1118, 1127 (D. Ariz. 2006). The court noted that there was a split of authority on the issue but reasoned that the receiver could pursue the tort claims because, if successful, the action would benefit the receivership estate as a whole rather than any individual creditor. *Id*. *Warfield*, however, is not controlling and was decided before *Gravel Resources*, 217 Ariz. at, 38 ¶ 16, in which the Arizona Court of Appeals held that a receiver stands in the shoes of the company in receivership.

The Receiver argues that the statute of limitations did not begin to run until his appointment, at the earliest. As such, he claims that this action is timely because it was filed within three years of his appointment on August 18, 2016, and within three years of discovering Chase's complicity in the fraud.

The Receiver further argues that the adverse domination rule applies to toll the statute of limitations. The adverse domination rule (also known as the adverse interest exception) holds that the statute of limitations is tolled as long as the company is controlled or dominated by those involved in the wrongdoing. *See, e.g., Wing v. Dockstander*, 2010 WL 5020959, at *3 (D. Utah. Dec. 3, 2010) (Under the adverse domination theory, the statute of limitations is tolled because the wrongdoers cannot be expected to take action against themselves.); *Seaman v. Sedgwick*, 2011 WL 13393442, at *4 (C.D. Cal. Aug. 31, 2011) ("When a company is controlled by wrongdoers who fraudulently conceal their misdeeds from investors, the statute of limitations cannot begin to run until a receiver is appointed.").

Chase counters that Chittick's knowledge and misconduct must be imputed to DenSco under the "sole actor" rule. The sole actor rule is an exception to the adverse interest rule, which holds that the adverse interest exception does not preclude imputation if the agent whose knowledge is to be imputed is the sole agent or sole shareholder of the company. *See, e.g., USACM Liquidating Tr. v. Deloitte & Touche*, 754 F.3d 645, 647 n.2 (9th Cir. 2014) (*quoting Glenbrook Capital Ltd. P'ship v. Dodds,* 252 P.3d 681, 695 (Nev. 2011).[11]

It is undisputed that Chittick was DenSco's sole shareholder, director and employee. Under the sole actor rule, Chittick's knowledge and conduct are imputed to the Receiver. By November 2016, Chittick was acting adversely to DenSco. Although he was aware of the First Fraud by November 2013, he raised additional funds from investors to conceal his own misconduct and the company's losses. In so doing, he put Menaged in a position to continue looting investors' monies. Under the sole actor rule, Chittick's knowledge is imputed to the Receiver, and the claim against Chase is barred by the statutes of limitation.[12] Accordingly, for this additional reason, the Court will grant Chase's Motion for Summary Judgment.

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[11] The cases the Receiver cited in its Supplemental Authority are not persuasive because they do not address the sole actor rule. *See RTC v. Blasdell*, 930 F. Supp. 417 (D. Ariz. 1994) (RTC brought action against the company's directors, its law firm and "certain" officers); *FDIC v. Jackson*, 133 F.3d 694 (9th Cir. 1998).

[12] If Chittick was innocent of wrongdoing, the adverse domination rule would not apply, and Chittick's knowledge would be imputed to the Receiver. Because it is undisputed that Chittick was aware of Menaged's Second Fraud by July 16, 2016, the Receiver's claim is barred by the statute of limitations.

Aiding and Abetting Fraud

Arizona recognizes that "a person who aids and abets a tortfeasor is himself liable for the resulting harm to a third person." *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 485 ¶ 31 (Ariz. 2002). A claim for aiding and abetting fraud requires proof that (1) the primary tortfeasor committed a fraud that caused injury to plaintiff; (2) the defendant knew that the primary tortfeasor's conduct constituted a fraud; and (3) the defendant substantially assisted or encouraged the primary tortfeasors fraud. *Id.* at ¶ 34; *Restatement (Second) of Torts* § 876(b). Chase argues that the Receiver has not met the second or third elements.[13] For the reasons discussed below, the Court agrees.

Knowledge of Menaged's Fraud

Liability for aiding and abetting is "based on proof of scienter … the defendants must *know* that the conduct they are aiding and abetting is a tort." *Id.* at ¶ 33 (*quoting Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 186 (Minn. 1999) (emphasis in original)). To be secondarily liable for aiding and abetting, it must be shown that the defendant had knowledge of the fraud, which knowledge may be inferred from the circumstances." *Id.* at ¶ 36. A showing of "actual and complete" knowledge of all the details of the underlying fraud is not necessary. *Id.* at 488 ¶ 45. Rather, the knowledge requirement may be met by showing "general awareness" of the primary tortfeasor's fraudulent scheme. *Dawson v. Withycombe*, 216 Ariz. 84, 102 ¶ 50 (App. (2007).[14]

[13] Chase also argues that the Receiver has not met the first element. Chase argues that no fraud was committed because Chittick could not have justifiably relied on Menaged's representations after learning of the fraud in November 2013. The Court need not decide this issue because, as discussed above, the Receiver lacks standing to bring this claim and it is barred by the statute of limitations. Further, as discussed herein, there is insufficient evidence that Chase knew that Menaged was engaged in a fraud that it substantially assisted.

[14] The Receiver argues that "willful blindness" or "conscious disregard" is sufficient scienter for aiding and abetting. The Receiver acknowledges that Arizona courts have not adopted this standard to impose secondary liability for aiding and abetting, citing only non-Arizona cases. This Court must follow *Wells Fargo*, which clearly holds that knowledge of the fraud is required. As such, this Court will not adopt a different standard for proving aiding and abetting. *See Stern v. Charles Schwab & Co.*, 2010 WL 1250732, at *9 (D. Ariz. Mar. 24, 2010) ("Stern II") (*citing Wells Fargo*, refusing to adopt reckless disregard of fraud to prove scienter for aiding and abetting). In any event, no evidence has been presented that any Chase employee "took deliberate action and consciously avoided confirming a high probability that the Bank's customer was obtaining cashier's checks,

Knowledge of suspicious activity is not enough to satisfy the scienter requirement. *See Stern v. Charles Schwab & Co., Inc.,* 2009 WL 3352408, at *7 (D. Ariz. Oct. 16, 2009) ("Stern I").[15] "The defendant must be aware of the fraud." *Id*.[16] Knowledge of red flags and irregular transactions is not sufficient to infer knowledge of an underlying fraud. *Stern II*, 2010 WL 1250732, at *12.

The Receiver argues that Chase's knowledge can be inferred from the following facts: (1) the issuing and redepositing of 1,344 cashier's checks, which Chase knew were not used for their intended purpose; (2) the lack of real estate transactions; (3) suspicious wire transfers; and (4) Menaged's payments to casinos and family members. (Receiver Response at 16). According to the Receiver, this is sufficient to show Chase's general awareness of Menaged's fraud.

The Receiver's banking expert, Jeffery Gaia, identified several "red flags" to which Chase was "blind." The "red flags" included: (1) millions of dollars of transactions with no logical economic purpose (Receiver Ex. B at 5); (2) suspicious round-trip wire transfers to and from DenSco's account at Bank of America to Menaged's account at Chase (*Id.* at 5-6, 16-22); (3) suspicious cashier's checks to gambling casinos (*Id*. at 6, 23-26); (4) suspicious and large debit

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photographing them and then redepositing them for a fraudulent purpose." (*See* Minute Entry, 8/8/2022 at 4).

[15] Numerous courts have recognized that suspicious or unusual banking activity is insufficient to satisfy the actual knowledge standard. *See, e.g., Zhao v. JPMorgan Chase & Co*., 17 Civ. 8570 (NRB), 2019 WL 1173010, *5 (S.D.N.Y. Mar. 13, 2019) ("knowledge of frequent withdrawals, wire transfers to accounts in countries recognized as money laundering havens, and the single transfer recall request" fall short of creating an inference of actual knowledge of a primary violation); *Rosner v. Bank of China*, 528 F. Supp. 2d 419, 426 (S.D.N.Y. 2007 (suspicious withdrawals of large amounts of cash inconsistent with customer's business indicate, at most, only constructive knowledge of scheme, and were insufficient to support claim of actual knowledge of underlying fraud).

[16] The Receiver argues that Chase's knowledge must be assessed based on the collective knowledge of its employees. *See U.S. v. Bank of New England, N.A.*, 821 F.2d 844 (1st Cir. 1987). Chase argues that collective knowledge is not sufficient and has been rejected by courts in other jurisdictions. *See, e.g., Southland Sec. Corp. v. INSpire Ins. Sols., Inc.*, 365 F.3d 353, 366 (5th Cir. 2004); *Rosemann v. St. Louis Bank,* 858 F.3d 488, 495 (8th Cir. 2017) ("[Defendant] cannot be found to have 'actual knowledge' … by piecing together all the facts known by different employees of the bank[.]"). The parties have not cited an Arizona appellate decision addressing this issue. The Court does not need to decide this issue because the Court finds that Chase's collective knowledge is not sufficient to establish that Chase knew of Menaged's scheme to defraud DenSco.

card withdrawals at casinos (*Id.* at 6, 23-26); (5) DenSco's wire transfers and the redeposits of the cancelled cashier's checks were the main sources of deposits in AZHF's account (*id*. at 6-7, 27-32); (6) large and frequent cash withdrawals (*Id*. at 7); (7) use of AZHF account to pay personal credit card debit (*Id*.); (8) use of AZHF to make large payments to Menaged's family members (*Id*.); and (9) use of company funds to pay unrelated third-party lenders. (*Id.* at 7-8). Mr. Gaia concluded that Chase "looked blindly upon facts and activities that were both highly suspicious and fraudulent." (*Id.* at 42). He did not opine that Chase actually knew of Menaged's fraud.

At most, the evidence shows that Chase was aware of suspicious transactions. There is insufficient evidence, however, that Chase was aware Menaged was engaged in a fraud. Chase knew that there were large wire transfers in and out of AZHF's account to DenSco. Chase also knew that Menaged was redepositing a large number of cashier's checks after taking a photo of them with his phone. Chase's AML Unit reviewed multiple alerts of suspicious activity and found the transactions to be normal. Chase's investigations failed to detect the fraudulent nature of Menaged's transactions. Chase did not discover that Menaged's was using the cashier's checks to fraudulently obtain loan funds from DenSco.

What is missing here is any evidence Chase knew that Menaged was fraudulently obtaining loans from DenSco. There is no evidence, for instance, that Chase knew Menaged was sending photos of the cashier's checks, along with forged trustee receipts, to DenSco and falsely representing that he had purchased the properties listed on the cashier's checks. Although the transactions were suspicious, the Receiver has not provided any evidence Chase was aware of Menaged's fraud.

This case is similar to *Dawson.* In that case, the plaintiff asserted that officers of a company aided and abetted a third party's fraudulent scheme to procure a loan from the plaintiff. 216 Ariz. at 94 ¶ 14. The third party made various misrepresentations to plaintiff to induce the loan. *Id.* at ¶¶ 12-13. The Court of Appeals found that the defendants did not have actual awareness of the fraudulent scheme. *Id.* at 103 ¶ 52. The defendants knew the third party was dishonest and that the company was in poor financial condition, yet they sent the third party to procure a loan from plaintiff. *Id*. Although the defendants' conduct indicated "poor judgment and risky business practices," their knowledge of the relevant facts "[did] not . . . rise to the level of scienter required for aiding and abetting, specifically that they were *aware* that [the third party] *did or would in fact* use fraudulent statements as a mean of procuring the loan." *Id.* (emphasis in original); *see also Stern I*, 2009 WL 3352408, at *7-8 (allegations that the bank knew of its customers' poor financial condition and large cash deposits and substantial withdrawals was insufficient to allege knowledge of its customers' fraud to state a claim for aiding and abetting fraud).

Stern II also is instructive. 2010 WL 1250732, at *10-12. There, plaintiffs alleged that the bank was aware of its customers' fraud because it knew, among other things: (1) the customers lacked income and had a low net worth; (2) large deposits came in from random third parties for

no justifiable purpose; (3) large sums were transferred to a brokerage account; (4) funds were spent on luxury goods; (5) large transfers were made to family members; and (6) large checks were issued to random third parties without any justifiable purpose. *Id*. at *10. The court stated that, at most, the facts supported a reasonable inference that the bank knew of "unusual, unprecedented, and unexplained levels of activity" in the customers' account. *Id*. The bank had good reason to be suspicious about the customers' activities, which plaintiffs alleged should have prompted further inquiry. *Id.* The court, however, held that the facts were insufficient to support an inference of knowledge of fraud because there was no evidence the bank knew anything about its customers' relationship with the plaintiff investors who provided the money in the account. *Id.* at *11.

Wells Fargo illustrates the level of knowledge required to establish aiding and abetting liability. 201 Ariz. at 486-88 ¶¶ 37-45. In *Wells Fargo*, the bank was party to a tri-party agreement with its customer and plaintiffs. *Id.* The bank knew that under the tri-party agreement, its customer had a duty to provide accurate financial statements to plaintiffs. *Id.* at 485 ¶ 36. There was evidence that the bank was aware of specific misstatements in its customer's financial statements, including the overstatement of the value of the property on which the bank held a construction loan and the understatement of personal liability on a project based on the bank's own appraisal. *Id.* at ¶ 37. The bank also knew that its customer falsely represented that it was not in default even though the bank knew that its loan was in technical default. *Id.* The bank's internal documents showed that the bank knew the financial statements were misstated. *Id.* at ¶ 38. The Supreme Court determined that the evidence was sufficient to raise an inference that the bank knew its customer was making false representations to plaintiffs. *Id.* at 488 ¶ 45. The Supreme Court concluded that a jury could find that the bank's internal communications and actions were evidence of a "resolute strategy" to avoid having the plaintiffs learn what it knew about its customer's financial condition. *Id.*

Here, unlike *Wells Fargo*, the Receiver has presented no facts raising an inference that Chase knew Menaged was making false representations to DenSco to obtain loan funds. Menaged's suspicious banking transactions are insufficient to infer Chase's knowledge of his fraud. Accordingly, for this additional reason, the Court will grant Chase's Motion for Summary Judgment.

Substantial Assistance

Substantial assistance requires "more than a little aid." *Id*. at ¶ 46 (*quoting In re American Continental Corp./Lincoln Sav. And Loan Sec. Litig.,* 794 F. Supp. 1424, 1435 (D. Ariz. 1992)). Substantial assistance does not mean that the assistance is necessary to commit the fraud, only that the assistance makes it "easier" for the fraud to occur. *Id*. at 489-90 ¶ 54. Generally, processing day-to-day banking transactions does not constitute substantial assistance unless there is "an extraordinary economic motivation to aid in the fraud." *Id.* at 489 ¶ 48.

Substantial assistance requires affirmative action. *See Stern I*, 2009 WL 3352408, *9. Thus, the failure to supervise, to monitor accounts, to investigate transactions or to detect and report fraud do not constitute substantial assistance. *Id.*

The Receiver did not address Chase's argument that it did not substantially assist Menaged's fraud in its Response. In any event, the Receiver has not come forward with facts showing that Chase substantially assisted Menaged's fraud. The evidence shows that Chase processed wire transfers and cashier's check transactions. The bank's processing of these ordinary banking transactions and its failure to detect Menaged's fraud, however, is not enough to establish that Chase substantially assisted the fraud.

The Receiver cannot show substantial assistance because there is no evidence Chase had an "extraordinary economic motivation" to assist in Menaged's fraud. There is no evidence that Chase received any compensation or had any financial interest in Menaged and AZHF's business other than payment of ordinary account and transaction fees. See Stern I, 2009 WL 3352408, at *8 (ordinary account fees and credit interest are not an extraordinary economic motivation).

This case is not similar to *Wells Fargo* where the Supreme Court found that the bank had heightened economic motive to assist in its customer's fraud. 201 Ariz. at 489 ¶ 49. In that case, the bank decided to extend a defaulted loan and enter into a forbearance agreement with its customer, contrary to standard banking practices, to keep the customer financially viable until plaintiffs funded the permanent loan. *Id.* at ¶¶ 51-53. The bank was highly motivated to aid and abet the fraud to secure a permanent loan that would replace the bank's multi-million dollar construction loan. *Id*. at ¶ 49-50.

In short, the evidence is insufficient to establish that Chase knew of Menaged's fraud and substantially assisted it. Accordingly, for this addition reason, the Court will grant Chase's Motion for Summary Judgment.

Dadlani's and Nelson's Motions for Summary Judgment

Standing

Dadlani and Nelson joined in Chase's argument that the Receiver lacks standing. For the reasons discussed above, the Receiver does not have standing to assert claims for aiding and abetting and racketeering against Dadlani and Nelson. Accordingly, the Court will grant Dadlani's and Nelson's Motions for Summary Judgment.

Statute of Limitations

Dadlani and Nelson joined in Chase's argument that the Receiver's aiding and abetting claim is barred by the three-year statute of limitations. Dadlani and Nelson make the additional argument that the civil racketeering claim is barred by the three-year statute of limitations. A.R.S. § 13-2314.04(F) (Arizona civil racketeering claim must be brought within three years from the date the violation was discovered or should have been discovered through reasonable diligence).

For the reasons discussed above, the Court finds that the aiding and abetting and civil racketeering claims against Dadlani and Nelson are barred by the statutes of limitations. Accordingly, for this additional reason, the Court will grant Dadlani's and Nelson's Motions for Summary Judgment.

Aiding and Abetting Fraud

Dadlani

Dadlani was manager of the Scottsdale branch beginning in July 2014. He had no prior personal or business relationship with Menaged. Dadlani was included on some of the daily emails from Menaged requesting cashier's checks. It is likely he assisted Menaged with issuing and redepositing cashier's checks and related paperwork when Nelson was unavailable.

At most, the evidence shows that Dadlani was aware that Menaged was purchasing multiple cashier's checks in large dollar amounts on a daily basis and immediately redepositing them. Nothing in the record suggests he knew Menaged was sending DenSco copies of cashier's checks and falsified trustee receipts to DenSco to fraudulently obtain loans funds. Evidence that Dadlani did not follow bank monitoring policies or failed to report suspicious activity is not enough to show substantial assistance.

There also is no evidence that Dadlani had an extraordinary economic motive to assist in the fraud. The Receiver has presented no evidence that Dadlani received any bonus, profits or other incentive because of the bank's relationship with Menaged.

Nelson

Nelson was the assistant branch manager from April 2014 and June 2016. Nelson had no prior personal or business relationship with Menaged.

The evidence shows that Nelson handled hundreds of cashier's check transactions for Menaged. At some point, she suggested that Menaged email his cashier's checks requests so that she could have the necessary paperwork prepared before he arrived at the bank each day. The

evidence suggests that Nelson prepared withdrawal slips, cashier's checks and deposit slips in advance of Menaged arriving at the bank. She certainly knew that on most occasions, Menaged would redeposit each of the cashier's checks back into AZHF's account because he did not use them for the intended purpose. She was also aware that on occasion Menaged photographed the cashier's checks before redepositing them.

Nelson was aware that Menaged's transactions were suspicious. In fact, she twice submitted reports of unusual activity.

There is insufficient evidence that Nelson was aware of Menaged's fraud. Although she was aware that Menaged was photographing the cashier's checks for bookkeeping or proof of funds, there is no evidence she knew he was using the photos of the cashier's checks, along with forged trustee receipts, to falsify property purchases and obtain loans from DenSco.

There also is no evidence that Nelson had an extraordinary economic motive to assist in Menaged in the fraud. The Receiver has presented no evidence that Nelson received any bonus, profits or other incentive because of the bank's relationship with Menaged.

The Court finds there is insufficient evidence Dadlani and Nelson knew of and substantially assisted Menaged's fraud. Accordingly, for this additional reason, the Court will grant Dadlani's and Nelson's Motions for Summary Judgment on the aiding and abetting fraud claims.

Civil Racketeering

A.R.S. § 13–2314.04(L) provides that a natural person may only be liable for civil racketeering if he or she "authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct" of another. Dadlani and Nelson argue that the racketeering claim should be dismissed because there is insufficient evidence that they "authorized," "ratified" or "recklessly tolerated" Menaged's scheme.[17]

Defendants argue that to prove "ratification" or "reckless tolerance" the Receiver must establish that defendants had actual knowledge or conscious awareness that Menaged's conduct

[17] Dadlani and Nelson also argue that the racketeering claim should be dismissed because: (1) the securities fraud exception bars the racketeering claim; (2) the Receiver cannot establish that Menaged committed a predicate act; and (3) the predicate acts lack continuity. Because there is insufficient evidence Dadlani and Nelson authorized, ratified or recklessly tolerated Menaged's scheme, the Court will not address defendants' additional arguments.

was criminal in nature. The Receiver seems to suggest that some lower standard applies, but he is not clear on what the standard should be instead.[18]

To interpret the statute, the Court must determine what the legislature intended, relying on the plain meaning of the terms. *See Dearing v. Ariz. Dep't of Econ. Sec*., 121 Ariz. 203, 204 (App. 1978) ("A cardinal principle of statutory interpretation is to follow the plain and natural meaning of language to discover what the legislature intended to say."). The Court can consider dictionary definitions of terms used in a statute. *Id.*

Black's Law Dictionary defines "authorize" as "giv[ing] legal authority; to empower." *Black's Law Dictionary* (11th ed. 2019). Black's Law Dictionary defines "ratification" as the "[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done." *Black's Law Dictionary* (11th ed. 2019); *see, e.g., Bentley v. Slavik*, 663 F. Supp. 736, 740 (S.D. Ill. 1987) ("The concept of ratification includes an understanding and full knowledge of the facts necessary to an intelligent assent.") (*citing Black's Law Dictionary* (4th ed. 1968)).

Arizona's criminal statute defines "recklessly" to mean "that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists." A.R.S. § 13–105(10)(c). "Recklessly" is defined in Black's Law Dictionary to mean "[i]n such a manner that the actor knew that there was a substantial and unjustifiable risk that the social harm the law was designed to prevent would occur and ignored this risk when engaging in the prohibited conduct." *Black's Law Dictionary* (11th ed. 2019). Black's Law Dictionary also refers to Model Penal Code § 2.02(2)(c), which defines recklessly as "consciously disregard[ing] a substantial and unjustifiable risk." *Id.*

All the definitions of "authorized," "ratified" and "recklessly tolerated" suggest a level of knowledge or conscious awareness. In other words, to authorize, ratify or recklessly tolerate an act, one must necessarily have knowledge or conscious awareness of the criminal nature of the conduct.

As discussed above, the record here is devoid of evidence demonstrating that Dadlani and Nelson knew or were consciously aware that Menaged's conduct was criminal in nature. They certainly knew or should have known Menaged's transactions were suspicious. There is no evidence, however, that they knew he was using the cashier's checks to falsify property purchases

[18] The Receiver correctly points out that the citation to *Digital Sys. Eng'g, Inc.v. Bruce-Moreno*, 2010 WL 5030808 (Ariz. App. Nov 16, 2010), was improper under Rule 111(c) of the Rules of the Arizona Supreme Court, because it is a memorandum decision issued prior to January 1, 2015.

and fraudulently obtain loan funds. Accordingly, for this additional reason, the Court will grant Dadlani's and Nelson's Motions for Summary Judgment on the racketeering claims.

Receiver's Motion for Partial Summary Judgment on Underlying Pattern of Racketeering

The Receiver filed a separate Motion for Partial Summary Judgment requesting a finding that Menaged engaged in a pattern of racketeering activity. For the reasons discussed above, the Court is granting the Chase Defendants' Motions for Summary Judgment on the civil racketeering claims. For those same reasons, the Court will deny the Receiver's Motion for Partial Summary Judgment on Underlying Pattern of Racketeering.

Disposition

For the reasons set forth above,

IT IS ORDERED granting Chase's, Nelson's and Dadlani's Motions for Summary Judgment.

IT IS FURTHER ORDERED denying Plaintiff's Motion for Partial Summary Judgment on Underlying Pattern of Racketeering.

IT IS FURTHER ORDERED directing the Chase Defendants to lodge a single form of Judgment, incorporating a Rule 54(c) finding, and to file any applications for attorneys' fees and costs by **December 12, 2023**.