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## Court Provides Guidance on a Bank's Quincecare Duty of Care

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In *The Federal Republic of Nigeria v JP Morgan Chase Bank, NA* [2019] EWHC 347 (Comm), the High Court dismissed an interim application by the Defendant, JP Morgan Chase Bank (“JP Morgan”), for reverse summary judgment, finding that JP Morgan owed a *Quincecare* duty of care to the Claimant.

### The Case

As the Court noted, the case concerned a “complex web of facts” whereby the Claimant, the Federal Republic of Nigeria, alleged that it was the victim of a fraudulent scheme. Specifically, the claim was for a total of \$875,740,000, representing the sums that JP Morgan allegedly transferred from the Claimant’s depository account in breach of its *Quincecare* duty of care.

JP Morgan applied to the High Court for reverse summary judgment and/or for the Court to strike out the Claimant’s statement of case.

### Quincecare Duty of Care

The parties did not dispute the law establishing a *Quincecare* duty of care.

A *Quincecare* duty provides that a bank will be liable to its customer in negligence if it makes a payment in circumstances where it had reasonable grounds for believing that the payment instruction was an attempt to misappropriate the funds of its customer. In essence, the duty will usually arise when a bank is put ‘on inquiry’ in this respect. Once the duty is triggered, a bank is required to protect its customer by not paying out unless and until it is ‘off inquiry’ (ie the grounds for believing that the payments are an attempt to misappropriate no longer exist).

The Court determined that the Claimant had a realistic prospect of establishing at trial that JP Morgan was ‘on inquiry’ as the bank had reasonable grounds for believing that the transactions in question were part of an attempt to defraud the Claimant. In those circumstances, it followed that JP Morgan should not have processed the transactions until it was ‘off inquiry’.

The main argument before the Court was whether the terms of the depository account agreement between the parties excluded the duty. The Court ultimately concluded that the terms of the depository agreement did not exclude the duty. A *Quincecare* duty of care was implied into the agreement by common law, or under section 13 of the Supply of Goods and Services Act 1982, or by the tort of negligence.

The Court said that a *Quincecare* duty of care is imposed for good policy reasons and is a valuable right for a customer. Accordingly, there must be clear wording (including clear inconsistency) to exclude a valuable right such as this. It is not enough merely to point to an entire agreement clause, exemption clause or inconsistent express terms as excluding the duty. It is certainly possible for such clauses/terms to exclude a *Quincecare* duty. However, it must be unequivocal from the wording of those clause/terms that this was the parties’ intention.

### Reverse Summary Judgment



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The Court also provided some useful guidance regarding the scope of a reverse summary judgment hearing. The Court re-stated the principle that a summary judgment hearing is not a 'mini-trial'. The Court must consider whether the Claimant has a 'realistic' as opposed to a 'fanciful' prospect of success at trial. In a reverse summary judgment case, the burden of proof is on the Defendant in this regard.

If facts are disputed, the Court must "*assume that the claimant will be able to prove the facts it is alleging unless it is clear that those allegations have no real substance.*" Therefore, the Court assumed that the Claimant had a realistic prospect of establishing at trial that it was defrauded and that JP Morgan was 'on inquiry'.

If there is a short point of law or construction that the parties have adequately addressed in their arguments, and the Court is satisfied that it has all the evidence it requires to determine the point - it should do so.

## **Conclusion**

This case, while not saying anything significantly new provides some helpful guidance on the *Quincecare* duty of care and summary judgment applications. The case clearly illustrates that a bank cannot easily exclude its *Quincecare* duty of care without clear and express words to this effect.

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