

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENTESAR OSMAN KASHEF, et al.,

Plaintiff,

-against-

BNP PARIBAS S.A., BNP PARIBAS S.A. NEW
YORK BRANCH, BNP PARIBAS NORTH
AMERICA, INC., and DOES 2-10,

Defendant.

Civil No.: 1:16-Civ-03228-AJN

Judge Alison J. Nathan

**DECLARATION OF THOMAS B. WATSON
REGARDING BNP PARIBAS, S.A. NEW YORK BRANCH
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

I, THOMAS B. WATSON, make this declaration pursuant to 28 U.S.C. § 1746. I hereby state as follows:

1. I am a principal of the law firm of McKool Smith P.C. and am admitted pro hac vice to practice before this Court. I am counsel of record for Plaintiffs in the above-entitled action. I respectfully submit this declaration in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint.

2. In the course of addressing service of Plaintiffs' Second Amended Complaint, Lawrence B. Friedman, counsel for Defendants, raised the legal status of Defendant BNP Paribas, S.A. New York Branch ("the New York Branch"). Mr. Friedman wrote, "as a matter of law the New York branch cannot be sued as a separate entity distinct from BNP Paribas...." A true and correct copy of an email chain between Mr. Friedman and me, dated from February 24, 2017 to February 28, 2017, discussing this issue, is attached hereto as **Exhibit 1**.

3. On March 1, 2017, I had a discussion with Defendants' counsel Lawrence B. Friedman and Mark S. Grube regarding dismissing the New York Branch as a separate defendant as a result of Mr. Friedman's prior emails to me. In response to that discussion, Mr. Grube forwarded me information on the New York Branch and the case *Greenbaum v. Handelsbanken*, 26 F. Supp. 2d 649 (S.D.N.Y. 1998). A true and correct copy of Mr. Grube's email, without exhibits, dated March 1, 2017, is attached hereto as **Exhibit 2**.

4. On March 15, 2017, my colleague Matthew P. Rand, who is also counsel for Plaintiffs, and I had a further discussion with Mr. Grube regarding the New York Branch. In that discussion, I explained, among other things, that we were willing to consider dismissing the New York Branch, but that it did appear, at least for some purposes, to be a distinct legal entity. As such, I explained Plaintiffs' concerns that Defendant BNP Paribas, S.A. agree to liability for any

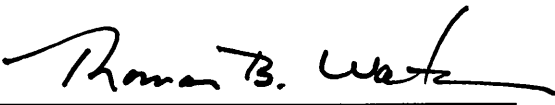
actions by the New York Branch and that Defendant BNP Paribas, S.A. not assert any objections to discovery or assert any defenses based on any separate legal status of the New York Branch.

5. In response to our discussion, on March 16, 2017, Mr. Grube forwarded the New York Branch's proposed stipulation. A true and correct copy of Mr. Grube's email and the draft stipulation are attached hereto as **Exhibit 3**.

6. However, the proposed stipulation did not address any of Plaintiffs' concerns that I raised in our March 15, 2017 conversation. Rather, it simply proposed to dismiss "all claims asserted by Plaintiffs against the Branch" with prejudice. On March 17, 2017, I then wrote to Mr. Grube explaining that Plaintiffs' position. Later that day, Mr. Friedman responded and stated that Plaintiffs' "conditions are not acceptable." A true and correct copy of the email chain dated from March 16, 2017 to March 17, 2017 is attached hereto as **Exhibit 4**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: Los Angeles, California
May 22, 2017

A handwritten signature in black ink, appearing to read "Thomas B. Watson", written over a horizontal line.

Thomas B. Watson

EXHIBIT 1

2/24/17 - 2/28/17 Email Chain

Thomas B. Watson

From: Friedman, Lawrence B. <lfriedman@cgsh.com>
Sent: Tuesday, February 28, 2017 5:46 PM
To: Thomas B. Watson
Cc: K. Lee Boyd; Matthew P. Rand
Subject: RE: Kashef - Service

Thanks -- I will give you a call about this.

—

Lawrence B. Friedman
Cleary Gottlieb Steen & Hamilton LLP
Assistant: pkhanna@cgsh.com
One Liberty Plaza, New York NY 10006
T: +1 212 225 2840 | F: +1 212 225 3999
lfriedman@cgsh.com | clearygottlieb.com

-----Original Message-----

From: Thomas B. Watson [<mailto:TWatson@McKoolSmithHennigan.com>]
Sent: Tuesday, February 28, 2017 5:20 PM
To: Friedman, Lawrence B.
Cc: K. Lee Boyd; Matthew P. Rand
Subject: Re: Kashef - Service

Larry,

Thank you for your response. Per your request, we will mail out a hard copy of the second amended complaint and exhibits.

With respect to your statement that “as a matter of law the New York branch cannot be sued as a separate entity distinct from BNP Paribas”, there is no need for your client to address this issue in your motion to dismiss. Please forward us any documentation your client has to demonstrate that the New York Branch referred to in the Statement of Facts is not a separate entity from BNP Paribas S.A.; and if we agree, then we would dismiss the New York Branch as a party. Our research indicates otherwise, but of course your client would have the most accurate information on BNP’s corporate structure.

We look forward to hearing from you.

Best regards,

Tom

On Feb 27, 2017, at 1:17 PM, Friedman, Lawrence B. <lfriedman@cgsh.com<<mailto:lfriedman@cgsh.com>>> wrote:

Tom –

We will use the form, so please mail a hard copy of the complaint to me.

Let me reiterate that, among all of the other defenses that are being preserved, as a matter of law the New York branch cannot be sued as a separate entity distinct from BNP Paribas, and therefore service on it is redundant, because BNP Paribas has already been served. We will address this point in our dismissal motion.

Best regards.

Larry

—

Lawrence B. Friedman

Cleary Gottlieb Steen & Hamilton LLP

Assistant: pkhanna@cgsh.com<<mailto:pkhanna@cgsh.com>>

One Liberty Plaza, New York NY 10006

T: +1 212 225 2840 | F: +1 212 225 3999

lfriedman@cgsh.com<<mailto:%22Lawrence%20B.%20Friedman%22%20%3cfriedman@cgsh.com%3e>> | [clearygottlieb.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.clearygottlieb.com__&d=DwIGaQ&c=6ldJ3EG4a4nVimLYnfpfYA&r=xo58SQgsZFq1SyLYpKkQ0ELnVGyphgFM77MRHZLL3c&m=CSnS3OPbQ8WfBqqLNClqOJdDewGKeBgonwpgqCA_8gs&s=aTicYHu1XSPWKH1n_v405bgi8nUCzy8Mbmaof58Gft0&e=)<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.clearygottlieb.com__&d=DwIGaQ&c=6ldJ3EG4a4nVimLYnfpfYA&r=xo58SQgsZFq1SyLYpKkQ0ELnVGyphgFM77MRHZLL3c&m=CSnS3OPbQ8WfBqqLNClqOJdDewGKeBgonwpgqCA_8gs&s=aTicYHu1XSPWKH1n_v405bgi8nUCzy8Mbmaof58Gft0&e=>

From: Thomas B. Watson [<mailto:TWatson@McKoolSmithHennigan.com>]

Sent: Friday, February 24, 2017 3:09 PM

To: Friedman, Lawrence B.

Cc: K. Lee Boyd; Matthew P. Rand

Subject: Kashef - Service

Larry,

I write to follow up on your agreement to accept service on behalf of BNP Paribas New York Branch (while preserving defenses, etc.). I have attached the standard federal form for accepting service. Would you like to use that form or do you have another preferred method. Please let us know. And if you would like to use the form please let us know if you want us to mail a hard copy of the complaint, etc., as set out in the form.

Thank you very much.

Best,

Tom Watson

213-694-1095 w

310-890-9080 c

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EXHIBIT 2

3/1/17 M. Grube Email

Thomas B. Watson

From: Grube, Mark S. <mgrube@cgsh.com>
Sent: Wednesday, March 01, 2017 3:13 PM
To: Thomas B. Watson
Cc: Friedman, Lawrence B.
Subject: Kashef et al. v. BNP Paribas S.A. et al., 16-Civ-3228-AJN (S.D.N.Y.)
Attachments: Greenbaum v Handlesbanken.pdf; BNPP NY Branch License as of 4-1-2011.pdf

Tom –

Further to our discussion earlier today, below are the three documents Larry stated we would provide in response to your February 28 email request:

- BNP Paribas 165(d) Resolution Plan at 21, filed with the Federal Deposit Insurance Corporation, available at <https://www.fdic.gov/regulations/reform/resplans/plans/bnp-idi-1512.pdf> (December 31, 2015);
- The Branch License for the New York branch of BNP Paribas; and
- *Greenbaum v. Handlesbanken*, 26 F. Supp. 2d 649 (S.D.N.Y. 1998).

Let us know if it would be helpful to discuss any of these documents after you have reviewed them.

Best regards,
Mark

Mark S. Grube

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mgrube@cgsh.com | clearygottlieb.com

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EXHIBIT 3

3/16/17 M. Grube Email Attaching
Proposed Stipulation

Thomas B. Watson

From: Grube, Mark S. <mgrube@cgsh.com>
Sent: Thursday, March 16, 2017 7:45 AM
To: Thomas B. Watson; Matthew P. Rand
Cc: Friedman, Lawrence B.
Subject: Kashef v. BNPP, 16-Civ-3228 (S.D.N.Y.)
Attachments: Kashef Stip re NY Branch.docx

Tom and Matt –

Further to our discussion yesterday, attached is a draft stipulation dismissing the NY branch as a separate defendant from the above-referenced matter. Let us know if you have any comments.

Regards,
Mark

Mark S. Grube

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-against-

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YORK BRANCH, BNP PARIBAS NORTH
AMERICA, INC., and DOES 2-10,

Defendants.

Civil No. 1:16-Civ-03228-AJN

Hon. Alison J. Nathan

**STIPULATION OF DISMISSAL WITH PREJUDICE OF PLAINTIFFS' CLAIMS AS
AGAINST DEFENDANT BNP PARIBAS S.A. NEW YORK BRANCH**

WHEREAS, Plaintiffs have asserted claims against Defendant BNP Paribas S.A. New York Branch (the "Branch") in their Second Amended Complaint ("SAC"), filed on January 20, 2017, ECF No. 43; and

WHEREAS, Defendant BNP Paribas S.A. ("BNP Paribas") has informed Plaintiffs of its intention to move to dismiss the claims against the Branch because the Branch is not a separate subsidiary or affiliate of BNP Paribas;

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and Defendant BNP Paribas that all claims asserted by Plaintiffs against the Branch in the SAC shall be, and are hereby, dismissed with prejudice.

Dated: March __, 2017

CLEARY GOTTLIEB STEEN & HAMILTON LLP

Lawrence B. Friedman
One Liberty Plaza
New York, New York 10006
Tel: (212) 225-2840
Fax: (212) 225-3999
lfriedman@cgsh.com

Counsel for Defendant BNP Paribas S.A.

MCKOOL SMITH

Lee Crawford Boyd
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Fax: (213) 694-1200
lboyd@mckoolsmithhennigan.com

Counsel for Plaintiffs

SO ORDERED:

Hon. Alison J. Nathan
United States District Judge

Dated: _____, 2017

EXHIBIT 4

3/16/17 – 3/17/17 Email Chain

Thomas B. Watson

From: Friedman, Lawrence B. <lfriedman@cgsh.com>
Sent: Friday, March 17, 2017 3:07 PM
To: Thomas B. Watson; Grube, Mark S.
Cc: Matthew P. Rand; K. Lee Boyd
Subject: RE: Kashef v. BNPP, 16-Civ-3228 (S.D.N.Y.)

Tom, your conditions are not acceptable. We will proceed to seek the branch's dismissal from this case.

Larry

Lawrence B. Friedman

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lfriedman@cgsh.com | clearygottlieb.com

From: Thomas B. Watson [<mailto:TWatson@McKoolSmithHennigan.com>]
Sent: Friday, March 17, 2017 5:35 PM
To: Grube, Mark S.
Cc: Friedman, Lawrence B.; Matthew P. Rand; K. Lee Boyd
Subject: RE: Kashef v. BNPP, 16-Civ-3228 (S.D.N.Y.)

Dear Mark,

Thank you for forwarding your client's proposed stipulation.

As we discussed during our call earlier this week, Plaintiffs have considered the information and authority you provided with respect to BNP Paribas S.A. New York Branch (the "New York Branch") and whether it is properly named as a defendant in its own right as opposed to being part of Defendant BNP Paribas S.A. ("BNPP"). Although we agreed to review and consider any proposed stipulation because we would like to resolve this informally if possible, the stipulation your client proposed does not address the general concerns that Plaintiffs raised on our call, including the fact that branches are, at least for some purposes, distinct legal entities.

Among other things, BNPP would need to agree that the New York Branch is part of BNPP and that BNPP therefore accepts any liability for the actions of the New York Branch. In addition, BNPP would have to agree that there would be no defenses raised based on any separate legal status of the branch – whether procedurally, such as in discovery, or substantively, and that if at some time in the future it were necessary to have the New York Branch as a distinct party that BNPP would consent to an amended complaint adding them back in as a party.

We look forward to hearing from you.

Best,

Tom Watson

From: Grube, Mark S. [<mailto:mgrube@cgsh.com>]
Sent: Thursday, March 16, 2017 7:45 AM

To: Thomas B. Watson; Matthew P. Rand
Cc: Friedman, Lawrence B.
Subject: Kashef v. BNPP, 16-Civ-3228 (S.D.N.Y.)

Tom and Matt –

Further to our discussion yesterday, attached is a draft stipulation dismissing the NY branch as a separate defendant from the above-referenced matter. Let us know if you have any comments.

Regards,
Mark

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