

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of October, two thousand twenty-six.

PRESENT:

RICHARD C. WESLEY,
RICHARD J. SULLIVAN,
STEVEN J. MENASHI,
Circuit Judges.

MICHAEL WYSE, as Plan
Administrator for the Voyager
Wind-Down Debtor,

Plaintiff-Appellant,

v.

No. 25-2106

METROPOLITAN COMMERCIAL BANK,

Defendant-Appellee.

For Plaintiff-Appellant:

ANDREW B. KRATENSTEIN (John J. Calandra, *on the brief*), McDermott Will & Schulte LLP, New York, NY.

For Defendant-Appellee:

JOHN K. CROSSMAN (Jeffrey L. Friesen, *on the brief*), Zukerman Gore Brandeis & Crossman, LLP, New York, NY.

On appeal from a judgment of the United States District Court for the Southern District of New York (Paul A. Engelmayer, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the August 4, 2025 judgment of the district court is **AFFIRMED**.

Michael Wyse, as Plan Administrator (the “Administrator”) for a corporate debtor in bankruptcy, appeals from the district court’s dismissal of his complaint for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). The Administrator brought this action as the assignee of claims held by 31,867 former customers (the “Assignors”) of Voyager Digital, LLC, and its corporate affiliates (referred to collectively as “Voyager”), which operated a cryptocurrency brokerage platform until Voyager filed for bankruptcy in July 2022. The Complaint alleged fifty-three

claims – including common law fraud, statutory consumer fraud, statutory securities fraud, and claims arising from the sale of unregistered securities – all premised on the contention that Metropolitan Commercial Bank (“MCB” or the “Bank”) (i) directly participated in or aided and abetted Voyager’s fraudulent activity, and (ii) was vicariously liable for Voyager’s conduct.¹ The district court concluded that the complaint failed to establish that (i) MCB had actual knowledge of Voyager’s alleged fraud, as required by Federal Rule of Civil Procedure 9(b); and (ii) MCB was vicariously liable. We assume the parties’ familiarity with the facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

I. Standard of Review.

We review a district court’s dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6) *de novo*, “accepting all factual allegations in the complaint as true and drawing all reasonable inferences in the plaintiff’s favor.” *Bangs v. Smith*, 84 F.4th 87, 95 (2d Cir. 2023) (internal quotation marks omitted). To survive a Rule 12(b)(6) motion to dismiss, the complaint must allege “enough facts to state

¹ The Administrator has not appealed the district court’s dismissal of his unjust enrichment claims. Accordingly, we do not address those claims here. See *Tarpon Bay Partners v. Zerez Holdings*, 149 F.4th 176, 187 (2d Cir. 2025) (“An argument not raised on appeal is generally deemed abandoned.”).

a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A pleading that offers only “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555.

Where, as here, the complaint alleges claims sounding in fraud, a plaintiff must “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). And while Rule 9(b) permits plaintiffs to allege “knowledge[] and other conditions of a person’s mind . . . generally,” *id.*, we have made clear that “plaintiffs must still plead the events which they claim give rise to an inference of knowledge,” *Devaney v. Chester*, 813 F.2d 566, 568 (2d Cir. 1987).

Nevertheless, the heightened pleading requirements of Rule 9(b) are sometimes relaxed in the bankruptcy context when the fraud claims are brought by a trustee or a trust formed for the benefit of creditors. *See id.* at 569; *see, e.g., In re APF Co.*, 308 B.R. 183, 188 (Bankr. D. Del. 2004). “The rationale for relaxing the particularity requirement in such cases is that [a bankruptcy trustee] is a third party, who is pleading fraud on secondhand information,” and thus, may lack direct access to the relevant facts. *Devaney*, 813 F.2d at 569 (internal quotation marks omitted). But to be entitled to this more lenient pleading standing in the first place, the plaintiff must “plead that the particulars of [the fraud] claims were

peculiarly within the opposing party's knowledge." *U.S. ex rel. Chorchos for Bankr. Est. of Fabula v. Am. Med. Response, Inc.*, 865 F.3d 71, 86 (2d Cir. 2017).

Here, the Administrator urges us to apply the relaxed pleading standard so that he may plead fraud on information and belief. He argues that this standard is warranted because he lacked knowledge as to what each Assignor saw, knew, or relied on, which he contends is necessary to plead fraud with particularity under Rule 9(b). In support of that argument, the Administrator points to the fact that he did not have assignment agreements with the 31,867 Assignors, who merely assigned their claims "via a check-box on mail-in ballots." Wyse Br. at 57.

But the Administrator does not dispute that he *could* have discovered the information necessary to plead with particularity. *See Devaney*, 813 F.2d at 569 (noting that the "degree of particularity required" in pleading hinges on whether the plaintiff "had an opportunity to take discovery of those who may possess knowledge of the pertinent facts"). In this case, the Administrator had ample opportunity to gather facts from both the Assignors and MCB sufficient to satisfy Rule 9(b)'s pleading requirements. For instance, the Section 11 Plan expressly authorized the Administrator to "examin[e] any [individual, partnership, or corporation] pursuant to Federal Rule of Bankruptcy Procedure 2004." *In re*

Voyager, Case No. 22-bk-10943, Dkt. 1166-1 at 15 (Bankr. S.D.N.Y. Mar. 10, 2023); *Id.*, Dkt. 1626 (Bankr. S.D.N.Y. Dec. 26, 2023). And Rule 2004 has expansive reach, permitting broad discovery to “assess[] whether wrongdoing has occurred.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004); *see also Billard v. Rockwell Intern. Corp.*, 683 F.3d 51, 57 (2d Cir. 1982) (“The policies underlying Rule 9(b) call upon us to require greater precision than is found in this complaint when full discovery has been had in a prior case.”). The Administrator also had access to all of Voyager’s internal documents, including communications between Voyager and MCB.

Furthermore, as the assignee of the claims, the Administrator had access to the Assignors themselves and could have requested testimony relevant to his claims through Rule 2004 examinations. The Administrator effectively concedes as much – acknowledging that he could have followed up with the Assignors – yet counters that it would have been inefficient to serve pre-complaint subpoenas on all 31,867 of them. *See Wyse* Br. 58. But that potential inefficiency fails to justify relaxing the pleading standard where the Administrator possessed both the authority and the opportunity to obtain the necessary facts. *See Devaney*, 813 F.2d

at 569. Accordingly, we agree with the district court that the Administrator is not entitled to a relaxed pleading standard.

II. The Administrator Failed to Plead That MCB Had Actual Knowledge of Voyager's Fraud.

To state a claim that MCB directly participated in or aided and abetted Voyager's fraud, the Administrator was required to allege facts showing that MCB had "actual knowledge" of fraud. And while Rule 9(b) allows a defendant's knowledge to be alleged "generally," Fed. R. Civ. P. 9(b), that does not mean that it may be pleaded "conclusorily," *Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014) (internal quotation marks omitted). A plaintiff asserting fraud must "allege facts that give rise to a strong inference of fraudulent intent." *Acito v. IMCERA Grp., Inc.*, 47 F.3d 47, 52 (2d Cir. 1995); *Devaney*, 813 F.2d at 568–69. That "strong inference" may be established either by (i) "alleging facts to show that defendants had both motive and opportunity to commit fraud" or (ii) "alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 290–91 (2d Cir. 2006) (internal quotation marks omitted).

In his complaint, the Administrator asserts that MCB was "in close contact with Voyager," "maintained oversight and control over Voyager's programs," and

“was an active participant in the Voyager scheme.” App’x at 66 (internal quotation marks omitted). But general assertions of proximity and control are insufficient to plead with particularity that MCB actually *knew* of Voyager’s allegedly “improper” conduct. *Lerner*, 459 F.3d at 293; *see Krys*, 749 F.3d 127–29. At most, these assertions demonstrate that MCB “*should have*” inferred or discovered the fraud, which does not suffice to plead actual knowledge. *Krys*, 749 F.3d at 127.

The Administrator’s other allegations of “actual knowledge” are insufficient for similar reasons. For instance, he alleges that MCB knew of and was involved in Voyager’s efforts to obtain money transmitter licenses (“MTLs”), which – he argues – demonstrated that MCB had knowledge of the falsity of Voyager’s public statements about the MTLs. *See* App’x at 46–50, 76. But these allegations, at most, suggest that MCB was aware of potential deficiencies in Voyager’s licensing status. Indeed, the Administrator did not allege that MCB was so closely involved in supervising Voyager’s MTL applications that it could assess the accuracy of Voyager’s external representations about MTLs. Nor did the Administrator allege that MCB actually reviewed any of Voyager’s allegedly false statements on the subject. *See, e.g., id.* at 48–53.

The Administrator next argues that MCB had actual knowledge of Voyager's fraud because at least one person at MCB acknowledged, when reviewing Voyager's documents, "that . . . [certain] statements [about the extent to which Voyager accounts were FDIC insured] could be 'misleading'" and asked Voyager to change that language. *Id.* at 58, 80. But the Administrator takes that email out of context.² For starters, MCB's message did not concern a statement that Voyager had *already* made to the public about its deposits being protected by FDIC insurance; it merely reflected concerns about draft language – proposed for a future debit cardholder agreement – that mentioned FDIC insurance. Furthermore, the MCB executive qualified the "could-be-misleading" comment with a request for a follow-up meeting "to discuss what the appropriate disclosure should be, or if any at all." *Id.* at 359. Considered in context, this exchange hardly shows that MCB actually knew of Voyager's false statements about FDIC

² The complaint quotes part of this email exchange as well as portions of the FBO Agreement, full copies of which were submitted (without objection) by MCB in support of its motion to dismiss. We therefore consider these documents as having been incorporated by reference by the complaint. See *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002) (stating that "on a motion to dismiss, a court may consider documents attached to the complaint as an exhibit or incorporated in it by reference" as well as documents "of which plaintiff[] had knowledge and relied on in bringing suit" (internal quotation marks omitted)); see also *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991) ("[W]e have held that when a plaintiff chooses not to attach to the complaint . . . [evidence] upon which it solely relies and which is integral to the complaint, the defendant may produce the [evidence] when attacking the complaint for its failure to state a claim, because plaintiff should not so easily be allowed to escape the consequences of its own failure.").

insurance. Nor does the complaint otherwise allege that MCB wrote, reviewed, or even saw any of the public statements that Voyager ultimately made about FDIC coverage. And under Rule 9(b), allegations that MCB *should* have been suspicious about the potential for fraud are not sufficient to establish “actual knowledge.” *Lerner*, 459 F.3d at 293.

Finally, the Administrator contends that the complaint adequately alleged that MCB had actual knowledge of the “material falsity” of Voyager’s statements about its platform being “Safe and Regulated.” Wyse Br. at 31 (internal quotation marks omitted). For this argument, the Administrator points to internal emails in which MCB employees expressed concern about the risks associated with Voyager’s lending strategy or the broader cryptocurrency market. But allegations that a bank was aware of business risk or regulatory uncertainty do not plausibly establish that the bank knew its counterparty was making fraudulent statements.³ *See Lerner*, 459 F.3d at 293. At most, the cited communications – in which MCB’s

³ The Administrator takes issue with the district court’s dismissal of these internal MCB emails as mere “soundbites,” Sp. App’x at 43, noting that in another case, the district court allowed the plaintiff to “marshal emails” from the defendants to meet the pleading standard as to actual knowledge, Wyse Br. at 29 (citing *Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 444 (S.D.N.Y. 2017)). But in *Silvercreek*, the plaintiffs offered emails that included statements such as “Is it OK for us to be entering into such an ‘obvious’ loan transaction?” and references to “income statement manipulation”; moreover, those were only some of the facts that plaintiffs offered in support of the defendants’ actual knowledge of fraud. *See Silvercreek*, 248 F. Supp. at 444–45. That is a far cry from what the Administrator offers here.

CEO observed that Voyager's "lending strategy [was] under pressure" and in which an MCB employee stated that "we could all be wishing we never met Voyager" – merely suggest that MCB recognized the risk inherent in Voyager's lending activities. App'x at 72–73. Neither supports an inference that MCB actually knew that Voyager was making false statements about the safety and legality of its platform.

In sum, because the complaint does not allege that MCB reviewed, approved, or knew of the falsity of the specific statements at issue, the Administrator failed to plead facts with the requisite particularity under Rule 9(b) to support a fraud claim under either a direct or an aiding-and-abetting theory. And because failure to plead actual knowledge is fatal to the Administrator's fraud claims on both direct and aiding-and-abetting theories, the district court correctly dismissed those claims.

III. The Administrator Failed to Plead That MCB Had an Agency Relationship with Voyager.

The district court was also correct to dismiss the Administrator's claims that MCB is vicariously liable for Voyager's actions. At bottom, the Administrator contends that the for-the-benefit-of ("FBO") Agreement between MCB and Voyager – which stipulated that Voyager could act as MCB's representative to

“market, offer[,] and sell crypto currency exchange services . . . that meet Bank requirements,” App’x at 362 – established a broad agency relationship under which MCB could be held vicariously liable for Voyager’s conduct. But the FBO Agreement did not “grant Voyager broad authority to bind MCB through actions outside the [Agreement],” and the Administrator has not otherwise established that an agency relationship existed between Voyager and MCB. Sp. App’x at 46.

To plead the existence of an agency relationship under New York law,⁴ the plaintiff must plead “facts sufficient to show (1) the principal’s manifestation of intent to grant authority to the agent, and (2) agreement by the agent.” *Com. Union Ins. v. Alitalia Airlines, S.p.A.*, 347 F.3d 448, 462 (2d Cir. 2003). Further, “the principal must maintain control over key aspects of the undertaking,” *id.*, and both parties must “consent” to the agency relationship, *In re Shulman Transp. Enters.*, 744 F.2d 293, 295 (2d Cir. 1984) (internal quotation marks omitted). Where an agency relationship is established by contract, we look to the language of that agreement to ascertain the relationship created between the parties. *See, e.g., EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19–20 (2005); *Ne. Gen. Corp. v. Wellington Adver., Inc.*, 82 N.Y.2d 158, 162 (1993).

⁴ The parties agree that the FBO Agreement is governed by New York law.

The Administrator argues that the FBO Agreement created a broad agency relationship that made MCB liable for the misconduct of Voyager, which the Agreement referred to as the “Client.” See Wyse Br. at 45–46. But the plain text of that Agreement expressly disclaims such a relationship. Section 12.6 of the agreement states that the “Bank and Client agree they are independent contractors to each other in performing their respective obligations” and that “[n]othing in this Supplement” should be construed to deem “Bank and Client to be treated as partners, joint ventures, or otherwise as joint associates for profit.” App’x at 373. This explicitly limiting language is a far cry from consent to an agency relationship. See *In re Shulman Transp. Enters.*, 744 F.2d at 295.

Furthermore, all other details of the Agreement confirm that it creates only a limited relationship between MCB and Voyager – not the expansive agent-principal bond that the Administrator asserts. For example, Section 3.1 clearly states that “the scope of this Agreement shall be limited to the Bank’s formally accepted and approved Program(s).” App’x at 362. And Section 6.1, which speaks to the “Assessment, Development[,] and Approval of Programs,” makes clear that the authority conferred on Voyager under any such program was tightly controlled, since it provides that “[a]ny Programs proposed by [Voyager] shall be

reviewed and assessed by [MCB], and shall be approved or declined in [MCB]’s sole discretion.” *Id.* at 366. While the Administrator counters that the “program” created by the Agreement ultimately gave Voyager the authority to market, offer, and sell cryptocurrency on MCB’s behalf, Wyse Br. at 47–53, that is unsupported by either the text of the Agreement or the allegations of the complaint. As the Agreement recital itself states, the only program created by the Agreement was the FBO account established by and at the Bank “whereby [the] Bank provides cash management and payment concentration services.” App’x at 362.

Given the plain language of the agreement, we cannot say that Voyager and MCB had an agency relationship sufficiently broad to make MCB vicariously liable for Voyager’s alleged fraud. To the contrary, the plain language of the agreement precludes the inference that Voyager was acting on MCB’s behalf when making the allegedly misleading statements. We therefore agree with the district court that the Administrator failed to state any claims against MCB on a vicarious liability theory.

* * *

We have considered the Administrator's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court