

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

BURTON W. WIAND, not individually  
but solely in his capacity as Receiver for  
OASIS INTERNATIONAL GROUP,  
LIMITED, et al.,

Plaintiffs,

v.

ATC BROKERS LTD., DAVID  
MANOUKIAN, and SPOTEX LLC,

Defendants.

No. 21-cv-1317

**ATC BROKERS LTD.’S REPLY IN SUPPORT OF ITS RULE 12(b)(2)  
MOTION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT FOR  
LACK OF PERSONAL JURISDICTION**

ATC Brokers Ltd. (“ATC UK”) replies to the Receiver’s Response in Opposition to its Motion to Dismiss. (Doc. 55.)

ATC UK—a U.K. company with U.K. operations subject to U.K. regulation that sells foreign exchange services to foreign entities for trading on foreign-regulated markets—moved to dismiss the Receiver’s Amended Complaint (Doc. 36) pursuant to Federal Rule of Civil Procedure 12(b)(2). (Doc. 43.) ATC UK filed two declarations supporting its Motion and controverting the Receiver’s jurisdictional allegations by detailing the foreign nature and control of its operations.<sup>1</sup> (Docs. 43-1, 43-2.)

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<sup>1</sup> To some degree, even the Receiver agrees that these declarations contest the allegations he made as he sought jurisdictional discovery on the issues raised. The Eleventh Circuit recognizes a “a qualified ‘right’ to jurisdictional discovery when a court’s jurisdiction is *genuinely in dispute*.” *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 730 n.7 (11th Cir. 1982) (emphasis added).

ATC UK also provided the Receiver jurisdictional discovery comprised of thousands of pages of documents and the deposition of a corporate representative similarly detailing the foreign nature and control of its operations.

ATC UK is entitled to dismissal with prejudice as the Receiver makes incurable errors of law in his Response. First, the Receiver wrongly conflates the residence of a corporation's shareholders with the residence of the corporation. It is black letter law that corporations exist as entities separate from their shareholders. *Gater Assets Ltd. v. AO Moldovagaz*, 2 F. 4th 42, 58 (2d Cir. 2021). Second, the Receiver misses the forest for the trees by ignoring the overwhelming weight of discovery evidencing the foreign control of ATC UK. It is black letter law that courts must analyze where the corporation's actual "nerve center" is located, not some limited telework functions. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). Finally, the Receiver wrongly tries to connect ATC UK's lawful activities in the U.K. with the Ponzi schemers' unlawful activities in Florida. It is black letter law that jurisdiction must be based on defendant's connections to a forum, not plaintiff's. *Walden v. Fiore*, 571 U.S. 277, 285–86 (2014).

Plaintiff has failed to carry his burden required to establish jurisdiction as a matter of law. The Court must now dismiss the Receiver's Amended Complaint with prejudice and end his abusive pursuit of a lawfully operating foreign company.

**I. It is black letter law that "a corporation and its controlling shareholder are distinct entities." Shareholder residency is irrelevant to jurisdiction.**

Much of the Receiver's Response rests on the proposition that the controlling shareholders of ATC UK—David and Jack Manoukian—reside in California.

However, “[b]lack letter corporate law provides that a corporation and its controlling shareholder are distinct entities.” *Gater Assets Ltd.*, 2 F. 4th at 58 (citing *United States v. Bestfoods*, 524 U.S. 51, 61(1998)). ATC UK and the Manoukians are not the same entity, and the Manoukians’ residence is not a proxy for personal jurisdiction over ATC UK.

The Receiver points out that “year after year, ATC [UK] has been required to file annual reports with the Companies House in the United Kingdom.” (Doc. 55 at 2.) ATC UK is required to file these reports as a U.K. company. (*See, e.g.*, Annual Report and Financial Statements for the Year Ended 30 April 2021, Doc. 55-6 at 122 (“Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice), including Financial Reporting Standard 102 ‘The Financial Reporting Standard applicable in the UK and Republic of Ireland’.”).)

In its annual reports, ATC UK properly discloses the Manoukians as “persons with significant control.” Companies House defines this term: “A person of significant control is someone that holds more than 25% of shares or voting rights in a company, has the right to appoint or remove the majority of the board of directors or otherwise exercises significant influence or control.”<sup>2</sup> What the Receiver, however, incorrectly

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<sup>2</sup> Companies House, People with Significant Control Companies House Register Goes Live, (Feb. 7, 2022), <https://www.gov.uk/government/news/people-with-significant-control-companies-house-register-goes-live>.

regards as determinative, only establishes that the Manoukians own ATC UK. Ownership does not establish jurisdiction over the corporation, which is a separate legal entity. *Transamerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 849 (D.C. Cir. 2000) (“If majority stock ownership and appointment of the directors were sufficient, then the presumption of separateness . . . would be an illusion.”); *see also Best Foods*, 524 U.S. at 61 (collecting cases).

**II. It is black letter law that courts must analyze where the corporation’s actual “nerve center” is located, not some limited telework functions. Jurisdictional discovery confirms that ATC UK operates out of London and is controlled by the corporate officers located there.**

The Receiver ignores vast bulk of the jurisdictional discovery and the testimony of ATC UK’s corporate representative. Contrary to the Receiver’s assertions, the evidence confirms that ATC UK is a London-based company operating in the U.K. Among other things, accounts management, client treasury, compliance, and operations functions all occur and are controlled in London. (Doc. 43-2 ¶ 7.)

The Receiver asserts: “Ms. Claudio is the person who purportedly runs ATC’s London office, but her deposition revealed that she made no decisions relating to trading, expenses, the transfer of funds or bank accounts – and, for the most part, did not know who did make those decisions.” (Doc. 55 at 3.) The Receiver’s claim fails to establish jurisdiction for several reasons. First, it is inaccurate. No officers at ATC UK makes trading decisions. ATC UK offers its *clients* an electronic foreign exchange service to trade on foreign-regulated markets from its London operations. *See Claudio Dep. Tr. 173:7–15* (Doc. 55-5).

Contrary to the Receiver's claims, Ms. Claudio, ATC UK's Chief Operating Officer, makes many decisions regarding ATC UK expenses. She testified that she, without consent from the Manoukians, engaged vendors:

**Q.** Can you tell me the contracts that you've signed that you have never checked with either Jack or David Manoukian?

**A.** I recently signed a DocuSign contract on behalf of ATC U.K.

**Q.** I -- I couldn't hear you, the DocuSign for what contract?

**A.** A DocuSign. So we -- I wanted to start using DocuSign for ATC Brokers, Limited, and I signed a contract to allow ATC Brokers, Limited to begin its use of that.

**Q.** Okay, other than the DocuSign agreement what, what other agreements or contracts have you signed without first checking or speaking with, or communicating with in some capacity David and/or Jack Manoukian?

**A.** The decision to move our human resources from Peninsula in the U.K. to our current human resources person now.

*Id.* at 48:17–49:10.

Ms. Claudio testified that she made the decision to enter into leases on behalf of ATC UK:

**Q.** Who -- who made the decision to lease with, with WeWork as a shared office space?

**A.** I did.

**Q.** Did anybody else play a role in that decision of leasing with, with WeWork, or was that a sole decision that you made without any involvement or input from anyone else?

**A.** I found the space, and I discussed it with the senior managers within ATC, which included Dave, Jack (unintelligible) to ensure that it was beneficial for the operations of ATC Brokers, Limited.

**Q.** And what was Jack and David Manoukian's involvement, or feedback regarding leasing of WeWork?

**A.** They had none. It was more of a formality.

*Id.* at 94:4–20. And, regarding expenses, Ms. Claudio received no input from anyone else on the amount of the lease:

**Q.** Well, let's -- let -- let me -- let me ask you the question this way. Did either Manoukian brother ever tell you the, the maximum monthly lease amount for WeWork, or any other landlord?

**A.** No.

**Q.** So you, yourself, made the decision of, of the lease amount, how much ATC Brokers could spend on a lease?

**A.** I made a decision that it was within reason of the lease amount compared to our previous office space.

*Id.* at 94:25–95:10.

The record establishes the exact opposite of the Receiver's assertions: Chief Operating Officer, Ms. Claudio regularly makes decisions regarding ATC UK's expenses in London. Indeed, the only function called out by the Receiver as being handled by the Manoukians is authorizing the movement of funds from U.K. bank accounts.

Second, the Receiver's selective identification of peripheral facts fails to satisfy the holistic test of ATC UK's core operations that is necessary to establish jurisdiction. A corporation's "principal place of business" is the "nerve center" where the "officers direct, control, and coordinate the corporation's activities." *Hertz Corp.*, 559 U.S. at 92–93. The proper test examines "where the 'overall supervision and coordination of all functional operations' occurs." *Richey v. Auto- Owners Ins. Co.*, No. 2:19-cv-219-GMB, at \*5 (M.D. Ala. Jun. 7, 2019) (quoting *Cail v. Joe Ryan Ent., Inc.*, 65 F. Supp. 3d 1288, 1294 (M.D. Ala. 2014)). As made clear by controlling precedent in *Hertz*, the test examines where the officers control the company, not where the directors reside.

Although some financial decisions may be made by Jack Manoukian, operational control of ATC UK is vested in London.<sup>3</sup>

The supervision and coordination of ATC UK's operations occur in London. For instance, the entirety of company's human resource functions reside in London. Ms. Claudio hires and fires employees without consideration from anyone outside the United Kingdom:

**Q.** If -- if ATC Brokers, Limited wanted to fire Praj, and obviously I don't want that to happen, I don't want to see anyone, you know, that happen to, but hypothetically speaking if that happened, or Emma, could you make that decision, or—

**A.** Yes, I could.

**Q.** You have the authority to fire Praj?

**A.** Yes, I do.

**Q.** Okay. Have you fired any prior employees at ATC Brokers, Limited?

**A.** Yes, I have.

**Q.** Okay. Can you tell me Jack and/or Dave's involvement with the firing of prior employees at ATC Brokers, Limited?

**A.** They did not -- they were not involved.

Claudio Dep. Tr. 112:19–113:9.

All the employees of ATC UK are supervised by Ms. Claudio in London:

**Q.** Do you know who Praj reports to under the, under her employment agreement?

**A.** It is to me I believe.

\* \* \*

**Q.** Okay, does Emma report to you under her employment agreement?

**A.** She reports to Praj as the manager, but ultimately to me, yes.

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<sup>3</sup> Another example of the Receiver emphasizing the trivial and inane is his focus on David Manoukian's LinkedIn page. First, Ms. Claudio testified that the page was wrong. Claudio Dep. Tr. 36:12–24. Second, David Manoukian is not an officer of ATC UK and falls outside of a *Hertz* analysis. Third, the relevant question under *Hertz* is control, not a social media post.

*Id.* at 114:23–115:6.

ATC UK's compliance functions also reside in London. In fact, it was Ms. Claudio who reviewed the equity reports for Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) following the U.K.'s National Crime Agency's account freeze orders. She testified that it was "part of my duty as the [Money Laundering Reporting Officer] at that time when you receive a phone call from the National Crime Agency to look." *Id.* at 140:17–3. It is also Ms. Claudio who, with assistance from U.K. counsel, handles legal responses to ATC UK's regulators. For example, when the National Crime Agency requested a witness statement and cooperation regarding Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize), Ms. Claudio and the company's U.K.-based law firm provided that statement and cooperation:

**Q.** And can you -- can you describe the purpose of this witness statement?

**A.** It is my understanding that the U.S. Department of Justice contacted the National Crime Agency in order to obtain information from ATC Brokers, Limited regarding Oasis entities.

**Q.** And you're the person on behalf of ATC Brokers, Limited that signed this witness statement.

**A.** Correct.

**Q.** Can you explain David Manoukian's and Jack Manoukian's involvement with the creation of this witness statement?

**A.** With the creation of the statement?

**Q.** Yes.

**A.** Just myself and Martine Jays (ph) our U.K. Counsel, when this was created and signed.

**Q.** Did David Manoukian review this witness statement before you signed it?

**A.** No.

**Q.** Did Jack Manoukian review this witness statement before you signed it?

**A.** This witness statement, no.



*Id.* at 153:15–154:11.

ATC UK’s director and executive officers control operations in the U.K. for the purpose of remaining in compliance with U.K. regulations to provide services regulated exclusively in that jurisdiction. *See id.* at 104:10–15. For the entirety of its existence, ATC UK has had a director and officers controlling operations from the U.K. *See id.* at 104:21–105:13.

Management of client accounts is also based, and regulated, in London:

**Q.** And who at ATC Brokers, Limited currently is involved with accounts management other, other than your, other than yourself?

**A.** That is Prajakta Agashe and Emma Chan.

**Q.** And what do they do for, for accounts management?

**A.** They process incoming KYC, and maintain existing KYC.

**Q.** Are either of them registered with the FCA?

**A.** Praj is registered with FCA as our MLRO, and Emma is a certified individual under FCA.

**Q.** The issue of accounts management, do either Manoukian brother, Dave or Jack, do they have any involvements past or present with accounts management for ATC Brokers, Limited?

**A.** No, Praj has ultimate decision making on onboarding as our MLRO.

*Id.* at 107:10–108:2.

While Jack Manoukian handles some duties, even those duties are not performed exclusively in California. For example, much of the financial work Mr. Manoukian works on is performed by ATC UK’s accountant in London. *See id.* at 18:1–18. Even the work done by Jack Manoukian alone cannot be done completely through telework from California. Accordingly, Mr. Manoukian regularly travels to the U.K. to work on issues related to the company that can be handled only in London and spends significant time meeting with Ms. Claudio:

**Q.** Do you meet with him every single day that he's there in the U.K.?

**A.** I can't say it's every single day, because there are weekends when he was there, but on business days, yes.

**Q.** So on those business days you physically see him, and he physically sees you when he's in the U.K. On business days, business working days.

**A.** Correct, from our U.K. office space.

**Q.** And -- and can you describe the work that you and he do together while he's physically there in the U.K. from the beginning in point of time, whenever that started, I know I asked you about that, until the present?

**A.** We carry on with our prescribed duties for FCA, the ones listed earlier.

**Q.** Can you -- can you describe those, just to make sure I'm clear?

**A.** Jack's duties, again, include accounting, where we would probably meet with any Barclay's representatives that we needed to, Ecovis representatives, our third party compliance, human resources connections, all based in the U.K.

*Id.* at 32:2–24.

The Manoukians own ATC UK, but do not operate it. Indeed, the Manoukians hired, and placed in London, a chief operating officer who manages the company. As Ms. Claudio explained at her deposition, she makes the decisions for the company:

**Q.** Do you have a boss?

**MR. TORRES:** Object to form.

**WITNESS:** I personally don't see that.

**BY MR. RENGSTL:** Why do you say that?

**A.** Because I make decisions on behalf of ATC Brokers, Limited being at the U.K. office. Whilst I have to advise the Board on decisions, I may make I can make those decisions freely.

*Id.* at 118:19–119:2.

**III. It is black letter law that jurisdiction must be based on defendant's connections to a forum, not plaintiff's. Plaintiff cannot establish sufficient connections between ATC UK and any non-U.K. jurisdiction.**

The Receiver again fails to establish any ground for specific jurisdiction over ATC UK. Most of the Receiver's arguments regarding specific jurisdiction miss the

mark by focusing on the Receivership Entities' and their principals' contacts with the forum as opposed to focusing on ATC UK's operations. The Receivership entities are irrelevant for establishing jurisdiction. Accordingly, the Receiver is forced to minimize decades of Supreme Court law on the issue. *Walden*, 571 U.S. at 285–86; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985); *Rush v. Savchuk*, 444 U.S. 320, 332 (1980); *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84, 93, (1978).

It is no wonder that the Receiver fails to properly distinguish the facts of *Walden*. Although, the Receiver states that the principals of Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) were in Florida or New York, it was the foreign-licensed entities that used ATC UK's services to trade foreign exchange on U.K.-regulated markets. The Receiver has never sought to controvert the fact that the Oasis foreign entities transferred funds to the U.K. and conducted trading on U.K.-regulated markets.

The Receiver ignores a key fact of which he is abundantly aware: ATC UK contracted with foreign entities, Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize). Both these Receivership entities were registered in foreign jurisdictions and regulated by foreign regulators to operate in foreign markets, which ATC UK always understood:

**Q.** Okay. Now, when we looked at those financial institution questionnaires for Oasis Global FX Limited in New Zealand, and Oasis Global FX SA in Belize, Mr. Rengstl pointed you to the fact that directors of those entities listed their, their addresses as city and county in New York and Florida; do you remember that?

**A.** Yes, I do.

**Q.** Was that a concern with respect to the onboarding of Oasis Global FX and Oasis Global FX Limited?

**A.** No, because --

**Q.** Because why -- I'm sorry, why is that?

**A.** We were able to verify that the entities were licensed in the respective countries where they were registered.

**Q.** Is there a prohibition under U.K. Regulations over Forex trading entities that prohibits a foreign entity from having a director reside in the United States?

\* \* \*

**A.** No. The shareholders and directors can reside anywhere as long as the entity itself that is onboarded with ATC Brokers, Limited is outside of the U.S.

Claudio Dep. Tr. 177:6–178:7.

Finally, the Receiver cannot establish jurisdiction over ATC UK by attempting to establish jurisdiction over its technical support vendor, ATC Brokers (“ATC US”). The Receiver does not even attempt to pierce the corporate veil—as there is no basis for corporate veil piercing—and accordingly cannot connect contacts with ATC US, or the Manoukians for that matter, to ATC UK for jurisdictional purposes.

### CONCLUSION

ATC UK is entitled to dismissal with prejudice as the Receiver makes incurable errors of law in his Response. The Receiver wrongly conflates the residence of a corporation’s shareholders with the residence of the corporation. *Gater Assets Ltd.*, 2 F. 4th at 58. The Receiver ignores the overwhelming weight of discovery evidencing the foreign control of ATC UK. *Hertz Corp.*, 559 U.S. at 92–93. The Receiver wrongly tries to connect ATC UK’s lawful activities in the U.K. with the Ponzi schemers’ unlawful activities in Florida. *Walden*, 571 U.S. at 285–86. Plaintiff has failed to carry his burden required to establish jurisdiction as a matter of law.

Repleading would be futile. ATC UK is a foreign defendant with foreign operations subject to foreign regulators. The Receiver has tried to state his case twice and failed twice. The Court should now grant ATC UK's Motion to Dismiss and dismiss the Receiver's Amended Complaint with prejudice.

Dated: February 9, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on February 9, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Christopher Torres  
Attorney

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