

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING,)
COMMISSION,)

Plaintiff,)

v.)

Case No. 8:19-CV-886-T33-SPF

OASIS INTERNATIONAL GROUP)
LIMITED; OASIS MANAGEMENT, LLC;)
SATELLITE HOLDINGS COMPANY;)
MICHAEL J. DACORTA; JOSEPH S.)
ANILE, II; RAYMOND P. MONTIE, III;)
FRANCISCO "FRANK" L. DURAN; and)
JOHN J. HAAS,)

Defendants;)

and)

MAINSTREAM FUND SERVICES, INC;)
BOWLING GREEN CAPITAL)
MANAGEMENT LLC; LAGOON)
INVESTMENTS, INC.; ROAR OF THE)
LION FITNESS, LLC; 444 GULF OF)
MEXICO DRIVE, LLC; 4064 FOUNDERS)
CLUB DRIVE, LLC; 6922 LACANTERA)
CIRCLE, LLC; 13318 LOST KEY PLACE,)
LLC; and 4OAKS LLC,)

Relief Defendants.)

_____)

**DEFENDANTS JOHN J. HAAS' AND SATELLITE
HOLDINGS COMPANY'S MOTION FOR
CLARIFICATION OR, IN THE ALTERNATIVE,
MOTION TO QUASH DEPOSITION OF MICHAEL J. DACORTA**

COME NOW, the defendants, John J. Haas [hereinafter "Haas"] and Satellite Holdings Company [hereinafter "SHC"] [hereinafter, collectively, "Defendants"], by and through the undersigned counsel, hereby move, pursuant to Rule 30 of the Federal Rules of

Civil Procedure, for an Order clarifying the Court's Related Case Order and the Court's Case Management Report referenced therein regarding the taking of depositions, Dkt. 26, or, in the alternative, an Order quashing the Notice of Taking Videotaped Deposition of Michael J. DaCorta. In support thereof, Defendants state as follows:

I. RELEVANT PROCEDURAL HISTORY

1. On April 15, 2019, the plaintiff, Commodity Futures Trading Commission [hereinafter "CFTC"], filed a Complaint with the Court. [Dkt. 1].

2. The CFTC also applied, *ex parte*, for a Statutory Restraining Order, the appointment of a temporary receiver, and other equitable relief (hereinafter "SRO"). [Dkt. 4]. The Court entered the SRO on April 15, 2019. [Dkt. 7]. The SRO does state that "[t]he CFTC may take depositions of Defendants Michael J. DaCorta, Joseph S. Anile, II, Raymond P. Montie, III, John J. Haas, and Francisco "Frank" L. Duran subject to two calendar days' notice pursuant to Rule 30(a), that notice may be given personally, by facsimile, or by electronic mail, and, if necessary, any deposition may last more than seven hours." [Dkt. 7, ¶ 48].

3. On or about April 30, 2019 and May 29, 2019, Defendants Oasis International Group, Limited, Oasis Management, LLC, Michael J. DaCorta, Joseph S. Anile, II, Francisco Duran, and Relief Defendants Bowling Green Capital Management, LLC, Lagoon Investments, Inc., Roar of the Lion Fitness, LLC, 444 Gulf of Mexico Drive, LLC, 6922 Lacantera Circle, LLC, 4064 Founders Club Drive, LLC, 13318 Lost Key Place, LLC, 4Oaks, LLC, and Mainstream Fund Services, Inc., consented to the entry of the Preliminary Injunction and other Equitable Relief and the Receivership. [Dkts. 43, 44, & 85]. The Order Appointing Receiver and Staying Litigation [hereinafter "Receivership Order"] states that:

[a]bsent a valid assertion of rights against self-incrimination under the Fifth Amendment, Defendants DaCorta, Anile, and Duran, Relief Defendant Mainstream

Fund Services, Inc., and the entity Receivership Defendants' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

[Dkt. 44, ¶ 13].

4. Defendants Haas, SHC, and Montie have not consented to the Preliminary Injunction or the Receivership and a hearing on the Commission's Motion for Preliminary Injunction is scheduled for July 1, 2019. [Dkt. 79].

5. The Court's Related Case Order states that "[u]nless otherwise ordered by the Court, a party may not seek discovery from any source before the meeting [of attorneys]. Fed. R. Civ. P. 26(d); Local Rule 3.05(c)(2)(B)." [Dkt. 26, p. 2]. In this Order, the Court made reference to its Case Management Report, which sets a limit on the number of depositions each side may take (not per party). The parties held the meeting of attorneys on June 6, 2019 and agreed that this case would involve a significant amount of discovery.

6. On June 17, 2019, the Commission and the defendants Michael J. DaCorta, Raymond P. Montie, III, Francisco Duran, John J. Haas, Satellite Holdings Company, and Relief Defendant Mainstream Fund Services, Inc., filed a Joint Motion Requesting a Track Three Case Designation. [Dkt. 121]. The Court scheduled a hearing on this motion for July 2, 2019. [Dkt. 126].

7. On or about June 20, 2019, counsel for the Receiver, served Defendants with a Notice of Taking Videotaped Deposition [hereinafter "Notice"] of the lead defendant Michael J. DaCorta on June 27, 2019 at 9:00 a.m. in Tampa, Florida. A true and correct copy

of the Notice of Taking Videotaped Deposition is attached hereto as Exhibit A. No prior consultation with counsel for Defendants regarding the scheduling of the deposition was conducted by the Receiver or his counsel.

8. Under the Court's current instructions, discovery was not to begin until the Court entered a Case Management Order. Further, discovery is limited to ten (10) depositions per party. Fed. R. Civ. P. 30(a)(2)(A)(i). In addition, the Court's Case Management Report, referred to in the Related Case Order, currently limits the depositions to ten (10) per side (not per party).

9. Taking the deposition of the lead defendant at this stage of the case would prejudice the other defendants' rights because no other meaningful discovery could have been conducted by the other defendants.

10. The attorney for the Receiver takes the position that this is not a deposition because "[t]he Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under the Order." [Dkt. 7, ¶ 32, p. 14]. The Receiver's position is that as an agent of court, he does not believe his activities affect the parties' deposition limits or other requirements. The Receiver, however, has no objection to the clarification requested herein, but he does not intend to postpone the deposition. However, it is of note that the Notice states that the "videotaped deposition" is being conducted pursuant to Rule 30 of the Federal Rules of Civil Procedure. Exhibit A.

11. Consequently, and in order to have Haas and SHC's rights protected, Defendants move this Court to exempt the deposition of DaCorta from the limited number of depositions permitted by the scheduling order or to stay the deposition until all parties have had an opportunity to conduct meaningful discovery.

II. MEMORANDUM OF LAW

Rule 30(b)(1), Federal Rules of Civil Procedure, requires that “[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party.” Rule 3.02, of the Local Rules of the Middle District of Florida states that with respect to noticing depositions:

[u]nless otherwise stipulated by all interested parties pursuant to Rule 29, Fed.R.Civ.P., and excepting the circumstances governed by Rule 30(a), Fed.R.Civ.P., a party desiring to take the deposition of any person upon oral examination shall give at least fourteen (14) days notice in writing to every other party to the action and to the deponent (if the deponent is not a party).

M.D. Fla. L. R. 3.02 (emphasis added). Further, the Civil Discovery Handbook for the Middle District of Florida states that it is the general policy and practice regarding scheduling depositions that:

[a]n attorney is expected to accommodate the schedules of opposing counsel. In doing so, the attorney should normally pre-arrange a deposition with opposing counsel before serving the notice. If this is not possible, counsel may unilaterally notice the deposition while at the same time indicating a willingness to be reasonable about any necessary rescheduling.

Middle District Discovery (2015) at Section II.A.1, p. 6.

With respect to the Notice of DaCorta's deposition, counsel for the Receiver made no attempt to coordinate the deposition with counsel for Defendants and he has made it clear that he does not intend to postpone the deposition. As a result, the Receiver's Notice fails to provide the parties with “reasonable notice” because the deposition was not coordinated and

the Notice was served seven (7) days before the date of the deposition. The Receiver's Notice fails to meet the standard for noticing depositions in Local Rule 3.02 because he only gave the other parties seven (7) days' notice and not fourteen (14) days' notice.

Last, the parties have not had the opportunity to conduct any written discovery. DaCorta is the lead defendant in this case, and is likely to be an adverse party to Defendants Haas and SHC. In order to have a meaningful opportunity to depose DaCorta, the Defendants would require the opportunity to serve him with and obtain responses to Requests for Production of Documents, Requests for Admissions, and Interrogatories. Therefore, Defendants will be prejudiced if they do not have enough time to prepare for DaCorta's deposition by conducting their own discovery and having proper notice of the deposition.

III. CONCLUSION

Defendants request clarification from the Court as to whether the Receiver's deposition of DaCorta will be exempt from the limited number of depositions allowed by Fed. R. Civ. P. 30 and under any future Case Management Report or Order entered by the Court, and whether they would be permitted to conduct another deposition of DaCorta. In the alternative, should the Court not allow the Defendants another opportunity to conduct a deposition of DaCorta, Defendants request that the Court stay the deposition until all parties have had an opportunity to conduct meaningful discovery.

WHEREFORE, the Defendants respectfully request that the Court enter an Order clarifying the Court's Related Case Order and the Court's Case Management Report referenced therein regarding the taking of depositions, Dkt. 26, or, in the alternative, an Order quashing the Notice of Taking Videotaped Deposition of Michael J. DaCorta, and grant any other relief that the Court deems just and appropriate.

Respectfully submitted the 21st day of June, 2019.

/s/A. Brian Phillips, Esq.

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LOCAL RULE 3.01(G) CERTIFICATE

Pursuant to Local Rule 3.01(g) of the Middle District of Florida, on June 21, 2019, A. Brian Phillips, Esq., and Andrew C. Searle, Esq., conferred by telephone with counsel for the Receiver, Jared Perez, Esq., regarding the relief requested in the instant motion. Counsel for the Receiver does not oppose the clarification sought herein, but opposes any change to the date of the scheduled deposition.

Further, on June 21, 2019, Andrew C. Searle, Esq., conferred with Mark Horwitz, Esq., and Vincent A. Citro, Esq., counsel for Raymond Montie, and Scott S. Allen, Jr., counsel for Mainstream Fund Services, Inc., who do not oppose the relief requested.

On June 21, 2019, Andrew C. Searle, Esq., and Patricia E. Carbone, Esq., associate attorney at A. Brian Phillips, P.A., conferred by telephone with Michael DaCorta regarding the instant motion. Mr. DaCorta said that he is in the process of retaining new counsel and has no position on the instant motion.

On June 21, 2019, Andrew C. Searle, Esq., conferred by telephone with counsel for the CFTC, Jo E. Mettenburg, Esq., and Jennifer J. Chapin, Esq. The CFTC does not oppose Defendants' request for clarification, but does oppose the motion to quash.

On June 21, 2019, Andrew C. Searle, Esq., conferred with Allan Lerner, Esq., counsel for Francisco L. Duran. Mr. Lerner has no objection to the relief requested herein.

On June 21, 2019, Andrew C. Searle, Esq., contacted Gerard Marrone, Esq., counsel for Joseph S. Anile, II, by telephone and e-mail, but was not able to obtain his position on the instant motion. Mr. Marrone is not registered with CM/ECF and his voicemail was not set up to receive messages.

s/ A. Brian Phillips
A. Brian Phillips, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on June 21, 2019, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system, which served all parties to this case who are equipped to receive service of documents via that system.

I FURTHER CERTIFY on June 21, 2019, I provided service of the foregoing via electronic mail to:

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