

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

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

Case No.: 8:19-CV-886-T-VMC-33SPF

OASIS INTERNATIONAL GROUP,  
LIMITED, *et al.*,

Defendants,

and

MAINSTREAM FUND SERVICES, INC., *et al.*,

Relief Defendants.

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**RECEIVER'S LIMITED RESPONSE TO MOTION FOR CLARIFICATION  
OR, IN THE ALTERNATIVE, MOTION TO QUASH DEPOSITION**

Burton W. Wiand, as receiver over the assets of the above-captioned defendants and relief defendants (the “**Receiver**” and the “**Receivership**”), submits this limited response to the Motion for Clarification or, in the Alternative, Motion to Quash Deposition filed by defendants John Haas and Satellite Holdings Company to explain that the Receiver is an officer of the Court and not a traditional party to this litigation. As such and as explained below, the Court should clarify the Receiver’s role but not quash the upcoming deposition.

**BACKGROUND**

On April 15, 2019, the Court appointed Mr. Wiand as Receiver and directed him, in relevant part, to “[t]ake exclusive custody, control, and possession of the Receivership Estate,” which includes “all the funds, properties, premises, accounts, income, now or hereafter due or

owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants.” *See* Order Granting Plaintiff’s Motion for an Ex Parte Statutory Restraining Order, Appointment of a Temporary Receiver, and Other Equitable Relief (Doc. 7 at p. 14, ¶ 32 & p. 15, ¶ 30.b.) (the “**SRO**”).

The Court has since made the Receiver’s appointment permanent (absent further order) with respect, in relevant part, to defendant Michael DaCorta (“**DaCorta**”). *See* Order Appointing Receiver and Staying Litigation (Doc. 44) (the “**Order Appointing Receiver**”) (collectively with the SRO, the “**Receivership Orders**”).

The Receivership Orders authorize, empower, and direct the Receiver to “investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted...” Doc. 44 ¶ 42. Pursuant to that directive, the Receiver seeks to depose DaCorta because he has generally failed to comply with his obligations under the Receivership Orders. For example, he has not filed with the Court or served on the Receiver either of the sworn statements required by paragraphs 10 and 11 of the Order Appointing Receiver, and the pertinent deadlines have expired. He has not provided the Receiver with the historical tax returns required by paragraph 13, and that deadline has also expired. In addition to these specific violations, DaCorta has a duty to cooperate with the Receiver, but he has ignored the Receiver’s requests for information. The Receiver has asked that DaCorta execute corporate consents and other documents to facilitate the transfer of certain entities and related property to the Receiver, and he seeks to inquire about DaCorta’s failure to respond to that request. The Receiver also desires DaCorta to provide explanations of documents, records, and trading systems used by Oasis International Group, Ltd. These matters impair the Receiver’s ability

to carry out his mandate, but they do not affect the parties' substantive litigation. As explained below, the Receiver is not a party to this action in the traditional sense, and the Court should permit him to conduct his investigation without interference.

#### **MEMORANDUM OF LAW**

“A receiver is a neutral court officer appointed by the court, usually to take control, custody, or management of property that is involved in or is likely to become involved in litigation for the purpose of undertaking any appropriate action.” *Sterling v. Stewart*, 158 F.3d 1199, 1201 n.2 (11th Cir. 1998). “It is well recognized that a receiver is the agent only of the court appointing him; he represents the court rather than the parties.” *Ledbetter v. Farmers Bank & Tr. Co.*, 142 F.2d 147, 150 (4th Cir. 1944); *United States v. Smallwood*, 443 F.2d 535, 539 (8th Cir. 1971) (“A receiver is an officer of the court. He is not an agent or employee of either party to the litigation in which he was appointed.”) (citation omitted); *S.E.C. v. Loving Spirit Found. Inc.*, 392 F.3d 486, 490 (D.C. Cir. 2004) (“Neither a plaintiff nor a defendant, the receiver functions as an arm of the court appointed to ensure that prevailing parties can and will obtain the relief it orders.”) (citation omitted); *S.E.C. v. N. Am. Clearing, Inc.*, 2015 WL 13389926, at \*3 (M.D. Fla. Jan. 12, 2015) (describing receiver as an officer of the court), *aff’d* 656 F. App’x 969 (11th Cir. 2016); *S.E.C. v. Nadel*, 2010 WL 146832, at \*1 (M.D. Fla. Jan. 11, 2010) (same).<sup>1</sup>

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<sup>1</sup> These cases should not be interpreted to mean that the Receiver cannot take a position adverse to any of the parties. To the contrary, the Court directed the Receiver to investigate the affairs of the defendants and relief defendants, and as indicated in his First Interim Report, the Receiver has uncovered substantial evidence of fraud.

Based on this well-settled law, the SRO provides that the “Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under the Order.” Doc. 7 at p. 14, ¶ 32. As such, the Receiver is not a party or “side” for case management purposes, and the Receiver’s activities should not count against the parties’ deposition limits or similar requirements and restrictions.

The normal prohibition on discovery before the completion of the parties’ case management report also does not apply to the Receiver because the Receivership Orders expressly authorize the Receiver to immediately seize documents, issues subpoenas, and take depositions. Specifically, Federal Rule of Civil Procedure 26 provides that a “party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except ... when authorized ... by court order.” Fed. R. Civ. P. 26(d)(1). As explained above, the Receiver is not a party for case management purposes, but more importantly, the Order Appointing Receiver expressly exempts the Receiver from this prohibition. *See* Doc. 44 ¶ 8.H. (authorizing the Receiver to “compel testimony of persons” ... “consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed. R. Civ. P. 26(d)(1)”) (emphasis added). As such, the Receiver can depose DaCorta now even if the Court has not yet authorized the parties to conduct discovery. The parties are not required to participate in the upcoming deposition, and in fact, the Receiver would prefer that the deposition remain focused on Receivership issues. Staying the Receiver’s hand for months (*i.e.*, from his appointment through entry of a case management report) while the parties negotiate case management issues would defeat the entire purpose of appointing a receiver.

Finally, the Receiver did not coordinate DaCorta's deposition with the parties, and he asks that the Court not impose that requirement. Federal Rule of Civil Procedure 30 does not require the Receiver to coordinate his investigatory depositions with the parties; it only requires that he provide "reasonable written notice" of the depositions. Fed. R. Civ. P. 30(b)(1). Local Rule 3.02 requires 14 days' notice, but the Receiver asks the Court to exempt him from that requirement, given his Court-ordered obligation to marshal and preserve Receivership assets. This action has numerous parties, and the attorneys for those parties are located in Kansas City, Orlando, Ft. Lauderdale, and New York. Treating the Receiver's investigatory depositions as party depositions would undermine his ability to act quickly and efficiently and impose significant unnecessary costs.<sup>2</sup> The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *See, e.g., S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). As such, the Receiver asks the Court not to quash the upcoming deposition and not to treat the Receiver's investigatory depositions as party depositions.

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<sup>2</sup> Rule 30(a)(2) requires parties to seek leave of court if the parties have not stipulated to the deposition and (i) the deposition would result in more than 10 depositions by the pertinent side, (ii) the deponent has already been deposed in this case; or (iii) the party seeks to take the deposition before the time specified in Rule 26(d). Fed. R. Civ. P. 30(a)(2). As explained above, none of these factors apply to the Receiver under these circumstances. In addition, the Receiver's deposition of DaCorta should not count against the parties with respect to subsection (ii).

**CONCLUSION**

The Receiver understands the movants' concerns but asks the Court to alleviate them by clarifying that the Receiver's activities do not impact the parties' activities in either the prosecution or defense of this action.

Respectfully submitted,

**s/Jared J. Perez**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 23, 2019, I electronically filed a true and correct copy of the foregoing through the Court's CM/ECF system, which served counsel of record. I have also provided the following non-CM/ECF participants with a true and correct copy of the foregoing by electronic mail and US mail:

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**s/Jared J. Perez**  
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