

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff.

v.

CASE NO. 8:19-cv-886-VMC-SPF

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

**UNITED STATES' APPLICATION TO INTERVENE TO
MOVE FOR A TEMPORARY STAY OF ALL PROCEEDINGS,
INCLUDING STAYING ENTRY OF A CASE MANAGEMENT
AND SCHEDULING ORDER, TO PREVENT HARM TO
FEDERAL CRIMINAL INVESTIGATION**

The United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, through the undersigned Assistant United States Attorney, pursuant to Rule 24, Federal Rules of Civil Procedure, hereby respectfully moves to intervene in this civil action to stay the proceedings, including, but not limited to, a stay of any discovery and the entry of a *Case Management and Scheduling Order*, for a period of one-hundred eighty (180) days, or provide other relief to the government as required in the interests of justice. The government seeks to intervene because it has a direct and substantial interest in the subject matter of this action which, in significant part, overlaps with the subject matter of an ongoing federal criminal investigation now pending in the Middle District of Florida, Tampa Division. The government therefore seeks to intervene in this action to request a limited stay of the civil proceedings to avoid prejudice or harm to the government's ongoing federal criminal investigation and the parties in this case. As set forth in *Intervenor United States' Motion for Temporary Stay of All Proceedings, Including Staying Entry of a Case Management and Scheduling Order, To Prevent Harm to Federal Criminal Investigation* ("United States' Motion to Stay Proceedings"), filed in conjunction with this application, the conduct at issue

in this civil action overlaps with significant aspects of the ongoing federal criminal investigation.

MEMORANDUM IN SUPPORT

The government seeks to intervene in this action based on two provisions of Rule 24, Federal Rules of Civil Procedure. First, Rule 24(a)(2) provides for intervention as of right “when the applicant claims an interest relating to the property or transaction which is the subject of the action” and the applicant is so situated that “disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.” Second, Rule 24(b)(2) provides for permissive intervention “when the applicant’s claim or defense and the main action have a question of law or fact in common.” The government respectfully submits that its application satisfies both of those provisions.

Intervention As Of Right

In the Eleventh Circuit, an applicant may be entitled to intervention of right when:

- (1) the application is timely;
- (2) the applicant has an interest relating to the property or transaction which is the subject of the action;
- (3) the applicant is so situated that a disposition of the action, as a practical matter, may impede its ability to protect that interest; and
- (4) the applicant demonstrates that his interest is represented inadequately by the existing parties to the suit.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989), citing *Athens Lumber Co., Inc. v. Federal Election Comm’n*, 690 F.2d 1364, 1366 (11th Cir. 1982). In other words, a party is entitled to intervene as a matter of right “if the party’s interest in the subject matter of the litigation is direct, substantial, and legally protectable.” *Georgia v. United States Army Corps of Eng’rs.*, 302 F.3d 1242, 1249 (11th Cir. 2002) (hereinafter “*Corps of Eng’rs*”).

In light of the parallel nature of the proceedings, as more fully explained in the United States’ Motion to Stay Proceedings, the government is entitled to intervene as of right pursuant to Rule 24(a)(2). First, there is no question that the government’s motion is timely. The Commodity Futures Trading Commission (“CFTC”) filed its Amended Complaint on June 12, 2019 (Doc. 110); the parties have filed a Joint Motion Requesting a Track Three Case Designation (Doc. 121)¹; and civil discovery is about to commence.

The second *Chiles* factor is satisfied here, in that the government indisputably has a direct and substantial interest in the subject matter of this action because the pending federal criminal investigation concerns, in significant part, the same transactions involved in this action. Thus, the government has a “discernable interest in intervening in order to prevent discovery in a civil case

¹ The Court has scheduled this motion for a hearing on July 2, 2019, at 9:00 am. (Doc. 128).

from being used to circumvent the more limited scope of discovery in the criminal matter.” *SEC v. Chestman*, 861 F.2d 49, 50 (2d Cir. 1988).

The third and fourth *Chiles* factors are also satisfied. Absent intervention, the government’s ability to enforce the criminal laws implicated in this civil action will be adversely affected. The public interest in enforcement of the criminal laws cannot, and should not be expected to, be protected adequately by any party to this civil suit. Although both the civil complaint and the Middle District of Florida’s ongoing federal criminal investigation concern fraud against more than 700 victim-investors, the federal criminal investigation is also focused on other potential violations of federal criminal laws, including possible violations of 18 U.S.C. §§ 1349 (conspiracy), 1343 (wire fraud), 1341 (mail fraud), 1956 (money laundering), 1957 (illegal monetary transactions), 26 U.S.C. § 7206(1) (false statements on tax returns), 15 U.S.C. § 77e(a) (sale of unregistered securities) and related offenses.

The Supreme Court has explicitly held that the ‘inadequate representation’ requirement of Rule 24(a) “is satisfied if the [proposed intervenor] shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972); see *Corps of Eng’rs*, 302 F.3d at 1255; *Chiles*, 865 F.2d at 1214. The United States here has certainly met that burden;

no party to this action is properly situated or motivated to adequately represent the government's interests with respect to the enforcement of the criminal statutes under consideration. *See SEC v. Downe*, 1993 WL 22126, *12 (“even though the SEC is involved in this action, the United States Attorney may have an interest in this litigation which is qualitatively different from the SEC's interest”).

Accordingly, the Court should grant the government's application pursuant to Rule 24(a)(2).

Permissive Intervention

Alternatively, the government's application readily satisfies the standard for permissive intervention under Rule 24(b)(2). That provision requires only that the government's claim and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties. Rule 24(b)(2); *Corps of Eng'rs*, 302 F.2d at 1250, *citing Walker v. Jim Dandy Co.*, 747 F.2d 1360, 1365 (11th Cir. 1981). As set forth more fully in the United States' Motion to Stay Proceedings, a primary aspect of the ongoing federal criminal investigation is the fraudulent conduct of both the individual defendants in this civil action and of others – that is, their knowledge and intent with respect to the victim-investors and the more than \$72 million in deposits from same. Thus, the ultimate determination of any person's guilt or innocence on federal criminal charges will turn on many of the same

factual and legal issues presented in this civil action. Accordingly, intervention is appropriate under Rule 24(b)(2). *Downe*, 1993 WL 22126, *11 (granting permissive intervention where grand jury investigation and SEC enforcement action involved common questions of law and fact); *First Merchants Ents., Inc. v. Shannon*, 1989 W.L. 25214, *2 (Fed. Sec. L. Rep. ¶ 94,421 (S.D.N.Y. 1989) (granting permissive intervention in private securities fraud action).

CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court grant this application to intervene in this civil action so that the government can move to stay the proceedings, including a stay of any discovery and of the entry of a *Case Management and Scheduling Order*, for a period of one-hundred eighty (180) days, or provide other relief to the government as required in the interests of justice.

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

Per Rule 3.01(g), Rules of the U.S. District Court for the Middle District of Florida, the government has discussed the substance of this motion with the Jo E. Mettenburg, Jennifer J. Chapin, and J. Alison Auxter, counsel for plaintiff Commodity Futures Trading Commission (“CFTC”), as well as with Burton W. Wiand, the Receiver appointed by the Court. They do not object to the relief requested by the government, so long as such relief does not impede the Receiver’s ability to gather assets and perform the other functions tailored to gathering assets with which to compensate victims, as set forth in the Court’s Orders at Doc. 7 and Doc. 44. In addition, the CFTC does not object so long as the government’s requested relief does not impact the upcoming Preliminary Injunction hearing (now set for July 1, 2019, before the Honorable Magistrate Judge Sean P. Flynn) and the relief requested therein.

The government communicated with presently-unrepresented defendant Michael J. DaCorta, via electronic mail copied to his former counsel, about the substance of this motion. Mr. DaCorta indicated that he has no objection to the relief requested by the government.

The government communicated with Gerard Marrone, counsel for defendant Joseph S. Anile, II, about the substance of this motion. Per Mr.

Marrone, defendant Anile has no objection to the relief requested by the government.

The government communicated with Vincent Citro, counsel for defendant Raymond P. Montie, III, about the substance of this motion. Per Mr. Citro, defendant Montie objects to the relief requested by the government, due primarily to the asset freeze now in place.

The government communicated with Allan M. Lerner, counsel for defendant Francisco “Frank” Duran, about the substance of this motion. Per Mr. Lerner, defendant Duran has no objection to a stay of discovery in this action, but he does object to the extent any stay would preclude the possibility of challenging the asset freeze as overbroad and/or reaching a settlement.

The government communicated with Brian Phillips, counsel for defendant John J. Haas, about the substance of this motion. Per Mr. Phillips, defendant Haas objects to the relief requested by the government, due primarily to the asset freeze now in place.

The government communicated with Scott S. Allen, Jr., counsel for Mainstream Fund Services, Inc., about the substance of this motion. Per Mr. Allen, defendant Mainstream Fund Services objects to the relief requested by the

government because it submits that it should not be burdened by the CFTC's civil action while the criminal investigation continues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2019, 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 the following:

Jo E. Mettenburg, Esquire
Jennifer J. Chapin, Esquire
J. Alison Auxter, Esquire
Mark Horwitz, Esquire
Vincent Citro, Esquire
Christopher A. Walker, Esquire
Dennis Vacco, Esquire
Scott S. Allen, Jr., Esquire
Brian Phillips, Esquire
Andrew Searle, Esquire
Allan M. Lerner, Esquire

I hereby certify that on June 26, 2019, a true and correct copy of the foregoing document and the notice of electronic filing were sent electronic mail to the following non-CM/ECF participant(s):

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