

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-886-T-33SPF

OASIS INTERNATIONAL GROUP,  
LIMITED, et al.,

Defendants,

and

MAINSTREAM FUND SERVICES, INC.,  
et al.,

Relief Defendants.

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**ORDER**

Steve Herrig and Natalee Herrig (collectively the Herrigs) move to direct the receiver, Burton W. Wiand (the "Receiver"), to lower the listing price of a property, 4064 Founders Club Drive (the "Property"), currently for sale. The motion is denied due to lack of standing.

**I. Background**

An exhaustive review of the facts is unnecessary to address this motion. Suffice it to say this action was brought by Commodity Futures Trading Commission (CFTC) based on an alleged fraudulent forex trading and Ponzi scheme engineered

and executed by the defendants. (Doc. # 1). As alleged by the CFTC in its first amended complaint, Relief Defendant Mainstream Fund Services, Inc. – a third-party administrator for the financial services industry – received, directly or indirectly, over \$33 million from hundreds of members of the public (so-called pool participants) for investment in Defendant Oasis International Group, Ltd.’s fraudulent forex pools. (Doc. # 110 at 7). The bank accounts held by Mainstream allegedly acted as pass-through accounts from which investor funds were then transferred to an offshore forex trading account or directly to the defendants. (Id.).

One such defendant, 4064 Founders Club Drive, LLC (“Founders Club”), bought the Property from the Herrigs in October of 2017 for about \$1,775,000.00. (Doc. # 304 at 1). In connection with the sale, the Herrigs hold a mortgage on the Property worth \$1,065,000.00. (Id.). The Herrigs were not involved in the underlying fraud or investment scheme; they merely sold the Property to one of the defendants and retained a mortgage on the Property. (Id. at 2).

On August 20, 2019, the United States Department of Justice obtained a final judgment of forfeiture with respect to the property. (Doc. # 310 at 2). The judgment authorized the Receiver to sell the Property. Once sold, the Herrigs

will receive \$1,065,000.00. Pending the sale, the Herrigs receive interest at a rate of \$160.48 per diem. (Doc. # 304 at 2). The Receiver currently has the property listed for sale at \$2,250,000.00, and there have been no offers on the Property for seven months. (Id. at 3). The Herrigs disagree with this listing price, contending it is too high and will not attract buyers. They urge the Court to enter an order directing the Receiver to reduce the listing price. (Id. at 4).

## **II. Discussion**

The Herrigs do not have standing to intervene in this action under either prong of Rule 24 of the Federal Rules of Civil Procedure. To intervene as of right under Rule 24(a), a party must "(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action." N.Y. News, Inc. v. Kheel, 972 F.2d 482, 485 (2d Cir. 1992). The Herrigs have not filed a formal motion to intervene, remaining non-parties to this action. As such, they fail to satisfy the first requirement of Rule 24(a).

The Herrigs also fail to satisfy the fourth requirement that intervenors must show their interests are not adequately

protected by the Receiver. Although the Herrigs note the Property has been on the market for seven months without an offer, the Receiver explains he has retained a "highly experienced team of realtors" that have successfully sold other properties at issue in this case. (Doc. # 310 at 4). Furthermore, the Receiver states he is currently commissioning a new appraisal and is open to lowering the sale price depending on the result. (Id.). The Herrigs offer no evidence why these efforts are inadequate to protect their interests. Accordingly, the Herrigs do not have standing to intervene under Rule 24(a).

Even if the Herrigs' motion is construed as a timely request to permissively intervene under Rule 24(b), it is still inadequate to establish they are entitled to intervention. Rule 24(b) allows the court to "permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). The Herrigs allege no federal statute granting them a conditional right nor a claim they share with the main action. Therefore, they fail to qualify for intervention under either prong of Rule 24.


The Herrigs seek to direct the Receiver, but as a practical matter intervention by non-party creditors is not efficient or effective. See SEC v. Byers, No. 08 CIV. 7104 (DC), 2008 WL 5102017, at \*1 (S.D.N.Y. Nov. 25, 2008). The “complicating effect of the additional issues and the additional parties outweighs any advantage of a single disposition of the common issues.” SEC v. Everest Mgmt. Corp., 475 F.2d 1236, 1240 (2d Cir. 1972). The Receiver must be allowed to do his job “without being forced into court by every investor or claimant.” United States v. Acorn Tech. Fund, L.P., 429 F.3d 438, 443 (3d Cir. 2005). The Herrigs’ brief motion fails to show the Court how their interests are not being served by the Receiver.

Accordingly, it is now

**ORDERED, ADJUDGED, and DECREED:**

The Herrigs’ Motion to Direct Receiver (Doc. # 304) is **DENIED.**

**DONE** and **ORDERED** in Chambers, in Tampa, Florida, this 14th day of September, 2020.

  
VIRGINIA M. HERNANDEZ COVINGTON  
UNITED STATES DISTRICT JUDGE