UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff, Case No.: 8:20-cv-863-T-60SPF

v.

RAYMOND P. MONTIE, III,

Defendant.
_____/

RECEIVER'S OPPOSITION TO RAYMOND MONTIE'S MOTION TO STRIKE

Burton W. Wiand (the "**Receiver**"), as Receiver for Oasis International Group, Ltd.; Oasis Management, LLC; and Satellite Holdings Company opposes the motion to strike (Doc. 13) filed by defendant Raymond P. Montie, III ("**Montie**") because it ignores the Federal Rules of Civil Procedure, frivolously seeks to terminate a $50 million fraudulent transfer and breach of fiduciary duty case "with prejudice" over a pre-service, 7-day disagreement regarding the interplay between this District's Local Rules and the Federal Rules of Civil Procedure, and is otherwise legally and factually baseless.

PROCEDURAL HISTORY

The Receiver filed his initial complaint on April 14, 2020. Doc. 1. Pursuant to the Federal Rules of Civil Procedure (the "**Federal Rules**"), the Receiver had 90 days within which to serve the defendant – *i.e.*, until July 13, 2020. Fed. R. Civ. P. 4(m). On June 16,

2020, before the issuance of process or the acceptance of service, the defendant filed a motion to dismiss pursuant to Federal Rule 12(b). Doc. 9. As expressly authorized by Federal Rule 15(a)(1)(B), the Receiver elected to file an amended complaint on or before July 7, 2020. On June 30, 2020, the Receiver filed a five-sentence notice of his intent to exercise his right under Federal Rule 15(a)(1)(B) "to avoid any confusion about the timeliness of his pleadings." Doc. 12 (the "**Notice**"). On July 2, 2020, the defendant filed a motion to strike the Notice. Doc. 13. As indicated, the Receiver filed an amended complaint (the "**Amended Complaint**") on July 7, 2020 – *i.e.*, within 21 days of the defendant's motion to dismiss. Doc. 16. The defendant filed an acceptance of service that same day. Doc. 17.

ARGUMENT

The Court should deny the motion to strike for six independent reasons. First and most importantly, the motion ignores Federal Rule 15, which provides, in relevant part, as follows:

> (a)(1)(A) Amending as a Matter of Course. (A) A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or
>
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15 (emphasis added). Montie filed his motion to dismiss before accepting service of the complaint. *See* Docs. 9, 17. As such, Federal Rule 15(a)(1)(A) does not apply. Instead, the Receiver's filing is governed by Rule 15(a)(1)(B) – *i.e.*, Montie filed his Federal Rule 12(b) motion to dismiss on June 16, 2020 (Doc. 9), and the Receiver filed his Amended

Complaint on July 7, 2020 (21 days thereafter). The Receiver had an absolute right to amend his complaint, as a matter of course, without leave of Court under Rule 15(a)(1)(B).

Second, Local Rule 3.01(b) does not apply to the Notice or Amended Complaint (which, in any event, is not the subject of the motion to strike) because it provides, in relevant part, that "[e]ach party opposing a motion or application shall file within 14 days after service of the motion or application a response that includes a memorandum of legal authority in opposition to the request…." For example, in *Weiss v. PPG Indus., Inc.*, 148 F.R.D. 289 (M.D. Fla. 1993), the plaintiffs filed a motion for leave to file an amended complaint, and the court held that the motion for leave was not governed by "Local Rule 3.01(b) since it [was] not a legal memorandum in opposition to a motion." *Id.* at 292. "Therefore[,] the motion [was] not 'untimely' because it failed to comport with Rule 3.01(b)." *Id.* As explained above and pursuant to Federal Rule 15(a)(1)(B), the Receiver did not require leave of Court to file the Amended Complaint, but in any event, Local Rule 3.01(b) does not apply to the Receiver's filings.

Third, under Montie's interpretation of Local Rule 3.01(b), a plaintiff seeking to take advantage of the right, pursuant to Federal Rule 15(a)(1)(B), to file an amended complaint "as a matter of course" following a defendant's motion to dismiss under Federal Rule 12(b) would have three equally nonsensical options. First, the plaintiff could file an opposition to the motion to dismiss within 14 days and then – 7 days later – file an amended complaint, which would moot the original complaint, the motion to dismiss, and the plaintiff's opposition. *Cf. S. Pilot Ins. Co. v. CECS, Inc.*, 15 F. Supp. 3d 1284, 1287 n.1 (N.D. Ga.), *order clarified*, 15 F. Supp. 3d 1329 (N.D. Ga. 2013) ("An amended complaint supersedes

the original complaint, and thus renders moot a motion to dismiss the original complaint."). That approach would be deeply wasteful and would only impose needless costs on the Court and the parties. Second, the plaintiff could file the amended complaint within 14 days of the motion to dismiss, thus foregoing the additional 7 days afforded by Federal Rule 15(a)(1)(B), but courts regularly refuse to interpret rules and statutes in ways that would render other rules or statues superfluous or meaningless. *See, e.g. Williams v. Taylor,* 529 U.S. 362, 364 (2000) (It is a "cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute…"); *Allen v. USAA Cas. Ins. Co.,* 790 F.3d 1274, 1281 (11th Cir. 2015) ("Statutory interpretations that render statutory provisions superfluous are, and should be, disfavored."). Third, the plaintiff could seek a 7-day extension of Local Rule 3.01(b)'s 14-day deadline to match Federal Rule 15(a)(1)(B)'s 21-day deadline, but that would require needless motion practice (even if unopposed) and further consume the Court's limited resources. Put simply, the defendant's interpretation of the pertinent rules is wasteful and nonsensical. It ignores the foundation of these requirements, which the drafters thought important enough to designate Federal Rule 1: "These rules … should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The Receiver filed the Notice in that spirit – *i.e.*, to communicate his anticipated course of action to the defendant and the Court to avoid the unnecessary expenditure of resources.

Fourth, Federal Rule 12(f), which governs motions to strike, only applies to pleadings – not motions, notices, or other documents. Pursuant to that rule, courts may "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous

matter." Fed. R. Civ. P. 12(f) (emphasis added). But motions, notices, affidavits, responses to motions, and similar documents are not pleadings under Federal Rule 7(a) that may be stricken under Federal Rule 12(f).[1] *See, e.g., Marfut v. Gardens of Gulf Cove POA, Inc.,* 2018 WL 746866, at *2 (M.D. Fla. Feb. 7, 2018) ("[A] Rule 12(f) motion allows a court to strike pleadings, not motions."); *Weaver v. Mateer & Harbert, P.A.*, 2011 WL 13141503, at *1 (M.D. Fla. Jan. 28, 2011) (denying motion to strike because a filing is not a "pleading" under Rule 7(a)); *Judson v. Allstate Life Ins. Co.*, 2007 WL 45674, at *1 (M.D. Fla. 2007) (denying motion to strike an affidavit because such motions can only be directed to pleadings and pleadings are defined as complaints, answers and replies to counterclaims); *Feingold v. Budner*, 2008 WL 4610031, at *3 (S.D. Fla. 2008) (denying motion to strike a motion because it is not a pleading); *U.S. ex rel. Baklid-Kunz v. Halifax Hosp. Med. Ctr.*, 2012 WL 5415108, at *15 n.10 (M.D. Fla. Nov. 6, 2012) (denying motion to strike declaration and noting that Local Rules 3.01(c) and 3.01(g) are not valid legal authority to support such a motion). The Court should deny the motion to strike for this reason alone.

Fifth, even assuming Federal Rule 12(f) applied to the Notice, "[a] motion to strike is a drastic remedy that will ordinarily be denied unless the material sought to be stricken is insufficient as a matter of law." *Miller v. Summers*, 2015 WL 12859329, at *1 (M.D. Fla. 2015). Motions to strike are disfavored and typically denied unless "the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." *S.D. v. St.*

[1] A pleading is "(1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a).

Johns County Sch. Dist., 2009 WL 1941482, at *1 (M.D. Fla. July 7, 2009). Even if allegations in a pleading fall within one of the categories enumerated in Rule 12(f), a court should nevertheless deny a motion to strike if the challenged allegations are not prejudicial. *See Pardo v. Fleetwood Motor Homes of PA, Inc.*, 2005 WL 3113215, at *1 (M.D. Fla. Nov. 20, 2005). In other words, courts do not strike pleadings "unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Id*. Because of this exacting standard, "motions to strike are … often considered time wasters." *Id*. By filing the motion to strike, Montie has wasted the parties' and the Court's time. The Notice has a relationship to this controversy because it was intended to prevent exactly this type of unnecessary motion practice. The Receiver chose to amend his complaint as a matter of right and course under the Federal Rules, and he filed the notice to inform the defendant and the Court that the operative filings would soon be moot. This relates to the controversy, helps to clarify issues, and does not prejudice any party. Montie never attempts to argue otherwise.

Sixth and finally, defendants like Montie often complain about the cost of the Receiver and his professionals (*see, e.g.,* Doc. 13 fn.1), while simultaneously ignoring inconvenient facts, including: (1) the Receiver only exists in that capacity because a federal judge appointed him to unravel Montie's and his conspirators' massive theft from investors; (2) unwinding the defendant's near-decade-long fraud will be expensive and time-consuming under the best circumstances; and (3) the expense and the time at issue is compounded by unnecessary filings like the instant motion to strike that do not resolve disputes on the merits, waste judicial resources, increase costs to both the defendants and the Receivership Estate,

and raise issues that are wrong as a matter of black-letter law. Even assuming the defendant's argument had technical merit (which for the reasons described above, it does not), the United States Supreme Court long-ago rejected the defendant's litigation tactics:

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley* v. *Gibson,* 355 U. S. 41, 48. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1.

Foman v. Davis, 371 US 178, 181-82 (1962). Again, Federal Rule 12(f) does not apply to the Notice; Local Rule 3.01(b) does not apply to the Notice or the Amended Complaint; the filing of the Amended Complaint was expressly authorized by Federal Rule 15(a)(1)(B), but even if none of that were true, the Court should nevertheless deny the motion to strike and resolve this case on the merits.

Dated: July 15, 2020

Respectfully submitted,

s/ **Jared J. Perez**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July 2020, 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.

/s **Jared J. Perez**
Jared J. Perez, FBN 0085192