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 RESPONSE TO COURT'S
ORDER TO SHOW CAUSE REGARDING CASE MANAGEMENT REPORT

Burton W. Wiand, as receiver for the plaintiff entities (the "**Receiver**"), responds to the Court's order to show cause (Doc. 32) and asks that the Court not dismiss this case for failure to prosecute, even without prejudice. As explained below, the failure to file a case management report was due to an oversight regarding the pertinent deadline. The parties have now held a case management meeting and will file a case management report imminently.

PROCEDURAL HISTORY

The Receiver filed this action on April 14, 2020. Doc. 1. On May 14, 2020, the Court entered its Related Case Order, Interested Persons Order, Order Requiring Electronic Filing, and Notice of Track Designation (Doc. 7) (the "**Order**"). In relevant part, the Order provided as follows: "**Counsel and any unrepresented party shall meet within sixty days after service of the complaint upon any defendant for the purpose of preparing and filing a Case Management Report.**" Doc. 7 at 2 (original emphasis). The defendant's counsel filed notices of

appearance on June 16 and 17, 2020. Docs. 10-11. The Receiver obtained a summons on July 6, 2020 (Doc. 15), and the defendant's counsel accepted service on July 7, 2020 (Doc. 17). At the latest, the parties should have held a case management conference on or before September 5, 2020 and filed a case management report on or before September 19, 2020 (not accounting for deadlines that fall on weekends). The Court issued its Order on September 15, 2020. Doc. 32. The parties held a case management conference on September 22, 2020 and will file a case management report imminently.

ARGUMENT

"Federal Rule of Civil Procedure 41(b) allows the District Court to dismiss a case for failure to prosecute or to comply with … any order of the court." *Roper v. Bd. of Cty. Comm'n. of Brevard Cty.*, 2007 WL 4336170, at *6 (M.D. Fla. Dec. 7, 2007) (dismissing complaint after plaintiffs failed to comply with three prior orders to show cause regarding the parties' case management report) (quotation omitted). "Dismissal for failure to comply with local rules or a court order is appropriate where (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice." *Id.* (quotation omitted).[1]

I. DISMISSAL IS NOT WARRANTED BECAUSE THERE HAS BEEN NO CLEAR PATTERN OF DELAY OR WILLFUL CONTEMPT

Neither the Receiver nor his counsel have engaged in a clear pattern of delay or willful contempt/contumacious conduct. First, the Order provides, in relevant part, as follows: "**Counsel and any unrepresented party shall meet within sixty days after service of the complaint upon any defendant for the purpose of preparing and filing a Case Management Report.**" Doc. 7

[1] Although many cases applying this standard concern orders of dismissal "with prejudice," which the Court has not proposed here, the case should not be dismissed "without prejudice" for similar reasons.

at 2 (original emphasis). The undersigned recognizes that plaintiffs typically coordinate the case management meeting, but the Order ultimately places the obligation on all parties (including, although not directly relevant here, unrepresented parties). While the Receiver's counsel did not affirmatively schedule a case management meeting until recently, counsel also did not ignore or refuse any scheduling requests from the defendant's counsel.

Second, the defendant has previously noted that the Receiver did not immediately serve him with process, but the Receiver did not violate any governing rules or orders. On the same day the Receiver filed this action, he also filed another lawsuit against almost 100 defendants. *See Burton W. Wiand, as Receiver for Oasis International Group, Ltd.; Oasis Management, LLC; and Satellite Holdings Company v. Chris and Shelley Arduini, et al.,* 8:20-cv-862-T-33TGW (M.D. Fla.). Both of these lawsuits are in addition to the Receiver's other activities, which are detailed in the quarterly reports available on his website – www.oasisreceivership.com/receiver-reports. One of the Receiver's highest priorities is balancing his responsibility to recover assets and to obtain judgments with his obligation to conserve the Receivership Estate. Any unintended delay in the prosecution of this litigation resulted from the attempted management of that obligation – not any desire by the Receiver or his counsel to willfully violate the Order. As such, the Court should not construe any delay to serve the defendant (even within the pertinent rules) as demonstrating a pattern of willful contempt.

Third, as *Roper* (cited above) and many other cases illustrate, parties whose cases are dismissed for failing to comply with case management requirements typically ignore numerous opportunities to correct the pertinent issue over months or even years. This explains why courts require a pattern of misconduct. Again, there is no such pattern here, and any failure to comply with the Order was unintentional.

II. THE COURT NEED NOT IMPOSE ANY SANCTIONS MUCH LESS MAKE A SPECIFIC FINDING THAT LESSER SANCTIONS THAN DISMISSAL WILL NOT SUFFICE

No sanction is necessary because the parties held a case management meeting on September 22, 2020 and will imminently file a case management report. The Court has not imposed, and the Receiver has not ignored, any "lesser sanctions."

In addition, the Receiver is not a typical litigant, seeking to address a private wrong. Dismissal, even without prejudice, could create limitations issues, the possibility of litigation over those issues, or at minimum, the need to simply refile the complaint. That would only cause the Receiver to expend more attorneys' fees and costs to the detriment of the Receivership Estate. *Cf. S.E.C. v. Hollenbeck*, 2008 WL 11336458 (N.D. Ga. July 9, 2008) (noting that dismissal would "put the MBA Receiver—and hence the victims of the MBA scheme—at risk of losing out on potential judgments in their favor. It is for this reason that this Court must ultimately decline to grant [the defendant's] motion to dismiss the SEC's claims for a failure to prosecute, as the cause of justice would be ill-served by dismissing claims that could potentially benefit the MBA victims…."). Although the Receiver could and would refile his claims against the defendant, any unforeseen consequences would primarily impact the creditors of the plaintiff entities, who are mostly defrauded victim-investors.

Finally, no party has been prejudiced, and even assuming *arguendo* that were not true, any prejudice will be cured when the parties imminently file a case management report.

CONCLUSION

For the reasons explained above, the Court should not dismiss this case, even without prejudice. The Receiver is moving forward with the case management process and will diligently prosecute this litigation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 22, 2020, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court, which served counsel of record.

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