UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADINGCOMMISSION,

Plaintiff,

v.

Case No. 8:19-cv-00886-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" L. 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 FOUNDERSCLUB DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE ,LLC; and 4OAKS LLC,

Relief Defendants.

MICHAEL J. DACORTA'S OBJECTION TO RECEIVER BURTON WIAND'S MOTION (DOC. 459)

1. Comes now Michael J. DaCorta, pro se Defendant, and objects to Receiver's (Doc. 459) "Tenth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and His Professionals".

SUMMARY OF OBJECTION

2. The Receiver's Doc. 459 Motion should be denied for the following reasons:
3. The Plaintiff did not fulfill applicable statutory requirements pertaining to prejudgment appointment of receivers; and
4. Receiver's Behavioral Fact Pattern betrays unprincipled personal pecuniary motivations that are inconsistent with a receiver's fiduciary obligations; and
5. The Plaintiff did not fulfill applicable statutory requirements pertaining to due process relative to the forfeiture action in case no. 8:19-cv-00908 in consequence of which a substantial portion of the assets were unlawfully seized; and
6. Because the cited authority upon which the Consolidated Order (Doc. 177) is explicitly based is without foundation in law or rule and was issued in clear contradiction of every United States Appellate Court decision pertaining to the "reappointment" of a receiver; and

7. Because Receiver Wiand ("the Receiver" or "Wiand") exceeded authority granted by his Temporary Receivership; and
8. Because the Receiver's temporary authority did not lawfully extend into a permanent receivership; and
9. Because in seizing Defendant assets the Receiver repeatedly violated statutory law and prohibitions; and
10. Because Defendant was repeatedly denied constitutionally-protected rights of due process; and
11. Because Defendant was barred by the Court from defending assets from forfeiture; and
12. Because Receiver's claims for restitution result from several violations of due process and statutory prohibitions, the assets seized are "fruit from the poisoned tree" and therefore neither the Receiver nor his employees should be granted access to any of the spoils resulting from their liquidation into the Receivership Estate.

DETAILED OBJECTION

FAILURE TO FULFILL STATUTORY PREJUDGMENT REQUIREMENTS

13. The Application for the Search Warrant used for the 18 April 2019 raid on my home specifies "the search is related to a violation of: Code Sections 18 U.S.C. §§ 1349, 1343, 1341, 1956(h) and 1957; and to 26 U.S.C. § 7206(1).

14. The invocation of 26 U.S.C. § 7206(1) ascribes to the Defendant the existence or expectation of a debt owing to the United States.
15. The invocation of 26 U.S.C. § 7206 gave the Government immediate recourse to effective tools under the Fair Debt Collection Practices Act ("FDCPA") for the protection, security, sequestration, and administration of target Defendants' properties while it awaited adjudication on its claims.
16. The invocation of 26 U.S.C. § 7206 immediately put into effect authorities and requirements under 28 U.S.C.§§ 3001(a)(2), 3101, and 3013 respecting prejudgment remedy and appointment of a receiver after the expiration of his Temporary Receivership appointment under 7 U.S.C. § 13a-1(a).
17. "Prejudgment remedy" is defined under 28 U.S.C. § 3002 to mean: "the remedy of attachment, receivership garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of the claim for debt.".
18. The Court in the instant case ordered Defendant properties sequestered prejudgment under the authority of the Temporary Receiver. (Doc. 7).
19. Sequestration of Defendant properties immediately invoked requirements under 28 U.S.C. §§ 3101 and 3103 respecting the permanent prejudgment appointment of a receiver.
20. The Court's issuance of a temporary restraining order at the outset of the case, which remained in effect at least until 30 April 2019, was akin to a prejudgment writ of attachment, presented (though not so named) in the

form of an injunction against the Defendants. As a writ of attachment, it too compelled Plaintiff to adhere to requirements under 28 U.S.C. § 3101.

21. The 11th Circuit has ruled upon such a restraining order:

> The temporary restraining order to which the parties consented at the outset of this case was akin to a prejudgment writ of attachment, presented in the form of an injunction against the defendants. . . When faced with motions appearing to call for an attachment but labelled something else, federal courts again look past the terminology to the actual nature of the relief requested. See, e.g., *Lechman v. Ashkenazy Enter*., Inc.,712 F.2d 327, 329–30 (7th Cir. 1983); *Ashland Oil Co. v. Gleave*, 540 F. Supp. 81, 83 (W.D.N.Y. 1982) ("It is plain that attachment is the relief sought by plaintiff notwithstanding its labelling as a preliminary injunction; moreover, were it not simply improperly labelled it would be no less necessary to treat plaintiff's motion as one for attachment because the preliminary injunction would be equivalent to an attachment order and thus subject to state law under rule 64's last sentence."). As is the case when we evaluate our jurisdiction, we will call a duck a duck when characterizing district court rulings in this context.

Mitsubishi Int'l. v. Cardinal Textile Sales, 14 F.3d 1507, 1521 (11th Cir. 1994).

22. Authority for a prejudgment permanent appointment of a receiver in the instant case is found exclusively under 28 U.S.C. § 3103 "if the requirements of section 3101 are satisfied.".

23. The law requires that the United States' "application to the court shall set forth the factual and legal basis for each prejudgment remedy sought." (28 U.S.C. § 3101). The United States did not set forth any factual or legal basis for any prejudgment remedy sought.

24. No Declaration filed in support of the Complaint in the instant case nor in case no. 8:19-cv-00908, nor case no. 8:19-MJ-1484-T-AAS (identified as the

case pertaining to the search warrant) 1) specified the amount of the debt or 2) showed grounds to believe that the presumed debtor under 26 U.S.C. § 7206 was about to leave the jurisdiction of the U.S. to hinder, delay, or defraud the U.S.'s effort to recover, or was about to assign, dispose, remove, conceal, waste, or destroy property in order to hinder, delay, or defraud the U.S. or was about to convert the debtor's property into money, securities, in order to hinder, delay, or defraud the U.S. (*See* 3102(b), 3103(a), 3104(a), or 3105(b); *see* 28 U.S.C. § 3101 (c)(1)(2)(A)(B)).

25. Defendant was not noticed nor given an opportunity for a hearing pursuant to 28 U.S.C. § 3103, prior to the permanent appointment of the Receiver. (*See* 28 U.S.C. § 3101 (a)(3)(A). Appointment of a receivership is an extraordinary remedy:

> A district court's appointment of a receiver, by way of contrast, is "an extraordinary equitable remedy." 13 Moore's Federal Practice, § 66.04[2][a] (3d ed. 2010). And equity intervenes only when there is no remedy at law or the remedy is inadequate. Here, the Government has not, and we believe could not, explain why the FDCPA's procedures, or those provided by the Federal Rules of Civil Procedure, are inadequate. At bottom, they are more adequate than the self-help devices, whatever they might be, that a receiver would have to use. It is for this reason that the court's appointment of a receiver to collect the defendants' fines and special assessments was inappropriate.

U.S. v. Bradley, 644 F.3d 1213, 1310 (11th Cir. 2011).

26. There is no evidence showing that the Receiver was lawfully appointed pre-judgment, according to the requirements of 28 U.S.C. § 3103.

27. In *Hawes v. Gleicher*, the court held:

> At an irreducible constitutional minimum, a plaintiff must show an injury-in-fact, a causal connection between the injury and the defendant's conduct, and a likelihood that the injury will be redressed by a favorable decision from the court. *Lujan*, 504 U.S. at 560, 112 S.Ct. at 2136. "In addition to these three constitutional requirements, the Supreme Court has held that prudential requirements pose additional limitations on standing." *Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1353 (11th Cir.2003). For example, a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975).
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> (*Hawes v. Gleicher*, 745 F.3d 1337, 1341–42 (11th Cir. 2014)).

28. "If a plaintiff does not have statutory standing, he lacks a cause of action, and the action should be dismissed under Federal Rule of Civil Procedure 12(b)(6)." (*Walker v. New Orleans City, La.*, No. 16-31229, 2017 WL 3467879, at *1 (5th Cir. Aug. 11, 2017) (per curiam) (citing *Malvino v. De lluniversita*, 840 F.3d 223, 229-30 (5th Cir. 2016); *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2 (5th Cir. 2011).

    Royal v. Boykin, CIVIL ACTION No. 1:16-cv-00176-GHD-RP, at *4 (N.D. Miss. Sep. 5, 2017)).

29. Wiand does not have statutory standing as permanent receiver and therefore lacked any cause of action in his forfeiture actions under case 8:19-cv-00908 beyond authorities granted under his Temporary Receivership pursuant to 7 U.S.C. § 13a-1(a). Nor did he have any authority in case no. 8:20-cv-00862, nor any in case no. 8:20-cv-00863, nor, therefore, in his pending Motion for reimbursements stemming from activities engaged in well beyond the term of his Temporary Receivership in all three of the aforementioned cases.

30. Wiand's Temporary Receivership authorities did not include those required to liquidate Defendant properties.

31. Defendant's (Doc. 35-3) consent was coerced under duress (*See* Defendant's Informational Notice (Doc. 464) and Declaration Doc. 464-1), therefore void of force and effect.
32. Defendant has never acquiesced to the permanent appointment of a receiver.
33. Defendant has repeatedly objected to the motions made by the receiver; (*See* Exhibit A).
34. There is no statutory authority, rule or law that grants authority for the unconditional "reappointment" of a receiver. (*See* Doc. 445, ¶¶ 21–53, included herein by reference).
35. Because it asserted a reappointment of Receiver Wiand in contravention of statute, rule and pertinent Circuit Court case law, this Court's Consolidated Receivership Order (Doc. 177), based as it was upon prior misrepresentations perpetrated upon it by Wiand in prior cases designed to mislead the Court into misplaced exercises of jurisdiction, was statutorily and legally void *ab initio*, without force or effect. (*S*ee Doc. 445, ¶¶ 20–37).
36. Wiand is not entitled by fraud to receive any funds accruing from, or in any way related to, the sale of Defendant properties.
37. Plaintiff never provided substantial evidence of its claim that Defendants operated a Ponzi scheme.

38. Without evidence, discovery hearings, and adjudication of Plaintiff's claim that Defendant operated a Ponzi scheme, there was no basis for Wiand's clawback case no. 8:20-cv-00862.

39. Though relying upon Fla. Stat. § 726.101 et seq as the basis for his claim, Wiand failed to identify himself as a creditor as a required under § 726.102(4) when he filed case no. 8:20-cv-00862, the clawback case:

> As noted, the Receiver has not alleged that he or the Receivership Entities are "creditors," and if so, which entity is a "creditor." Nor does he identify any alleged "debtor(s)." More importantly, the Receiver fails to allege what "claim' the unidentified "creditor" possesses against the unidentified "debtor." Cf. *Southmark Corp. v. Cagan*, 999 F.2d 216, 222 (7th Cir. 1993). Accordingly, the Receiver's claims under FUFTA are subject to dismissal without prejudice, for failure to state a claim under FUFTA.
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> *In re Burton Wiand Receivership Cases*, [citations excluded] (M.D. Fla. Apr. 12, 2007).

40. Wiand failed to timely file the documents 28 U.S.C. §§ 754 & 1692 required to claim Clawback defendant assets.

41. Therefore, all "clawback" assets seized by Wiand were acquired unlawfully and without authority and no one should be granted access to any part of them.

42. In the instant case, none of the adverse factors cited in *Consolidated Rail Corp*. had been subject to discovery, hearing, or trial by 30 April 2019 when the Order Appointing Receiver and Staying Litigation (Doc. 44) was issued:

> Courts have recognized many factors that are relevant for a court to consider when determining the appropriateness of the appointment of a

receiver. These include **fraudulent conduct on the part of the defendant**, see *Burnrite Coal Briquette Co. v. Riggs*, 274 U.S. 208, 212, 47 S.Ct. 578, 579, 71 L.Ed. 1002 (1927); **imminent danger that property will be lost or squandered**, see *Gordon v. Washington*, 295 U.S. 30, 37–39, 55 S.Ct. 584, 588–89, 79 L.Ed. 1282 (1935); *Garden Homes, Inc. v. United States*, 200 F.2d 299, 301 (1st Cir. 1952); **the inadequacy of available legal remedies**, see *Leighton v. One William Street Fund, Inc.*, 343 F.2d 565, 568 (2d Cir. 1965); **the probability that harm to the plaintiff by denial of the appointment would be greater than the injury to the parties opposing appointment**, see , 263 F.2d at 825; **the plaintiff's probable success in the action and the possibility of irreparable injury to his interests in the property**, see *Bookout v. First Nat'l Mortgage Discount Co.*, 514 F.2d 757, 758 (5th Cir. 1975); **and whether the interests of the plaintiff and others sought to be protected will in fact be well served by the receivership**, see *Commodity Futures*, 481 F. Supp. at 441. [bold type added].

Consolidated Rail Corp. v. Fore River Railway Co., 861 F.2d 322, 326–27 (1st Cir. 1988).

43. In *Netsphere, Inc.*, the court held as follows: "When a receivership is improper or the court lacks equitable authority to appoint a receiver, the party that sought the receivership at times has been held accountable for the receivership fees and expenses. *W.F. Potts Son & Co. v. Cochrane*, 59 F.2d 375, 377–78 (5th Cir.1932). " *Netsphere, Inc. v. Baron*, 703 F.3d 296, 311–12 (5th Cir. 2012).

44. The authorization for the permanent receivership of Burton Wiand explicitly relied upon prior District Court case law based on the Receiver's earlier misrepresentations to the court and lacking statutory or legal authority. Therefore, pursuant to *Netsphere*, the presumptive receivership active in the instant case is not entitled to fees and expenses.

WIAND'S ACTIONS BAR HIS QUALIFICATION AS RECEIVER

45. Wiand's self-serving, rapacious pursuit of fees and unbridled, avaricious willingness to avoid legal limitations and moral responsibilities placed on his receivership by custom, statute, rule, and law in order to gain increased incomes, became evident in this Court not later than 2006 when he deceived the Court in *SEC. v. HKW Trading LLC*, No. 8:05-cv-1076 into believing authority existed for reappointing him on an *ad hoc* basis, at any time, in order that he might avoid the 10-day limitations placed upon his authority by 28 U.S.C. § 754; (*See* Defendant's first Objection, Doc. 445, ¶¶ 20–28 for details).

46. According to the online record, on 15 April 2020, the day after filing the Clawback case and case no. 8:20-cv-00863, while taking funds from the legal work associated asset seizures, Wiand's company, Wiand Guerra King, applied for and received a Government COVID-19 Paycheck Protection Program ("PPP") Loan in the amount of $476,400.00.

47. Wiand Guerra King's loan was forgiven on 8 April 2021; despite the fact that on 14 April 2020, a year previously, this Court appointed Burton W. Wiand as receiver in case no. 8:20-cv-325-T-35AEP ("The Equialt Receivership").

48. Wiand left Wiand Guerra King to establish his own firm in September 2020 and retained the receivership granted by this court the previous April, but successfully moved the court to retain Guerra King P.A. on his payroll.

49. On 7 August 2020, Wiand was given $63,648.00 and Wiand Guerra King was given $134,035.95 in response to the Receiver's First Quarterly Fee Application for The Equialt Receivership; (*See* Doc. 172, case 8:20-cv-0325).

50. On 24 November 2020, Wiand was given $54,662.40 and Wiand Guerra King received $155,296.90 in response to the Receiver's Second Quarterly Fee Application for The Equialt Receivership; (*See* Doc. 230, case 8:20-cv-0325).

51. On 24 February 2021, Wiand was given $35,222.40 and Wiand Guerra King received $111,217.86 in response to the Receiver's Third Quarterly Fee Application for The Equialt Receivership; (*See* Doc. 260, case 8:20-cv-0325).

52. On 6 April 2021, Wiand was given $61,740.00 and Wiand Guerra King received $119,062.03 in response to the Receiver's Fourth Quarterly Fee Application for The Equialt Receivership; (*See* Doc. 288, case 8:20-cv-0325).

53. All in all, Wiand was given $215,272.80 and Wiand Guerra King received $519,612.71 from The Equialt Receivership in addition to funds taken from the Oasis Receivership between the time Wiand Guerra King applied for government PPP loan assistance and the date those loans were forgiven.

54. Wiand continues to perpetuate his fraudulent misrepresentations of case law in this Court in the The Equialt Receivership case; (*See* Doc. 345, case 8:20-cv-0325, pp. 6–8).

55. According to the online record, on 8 April 2020, the law firm of Englander & Fischer, PA, working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Relief Loan in the amount of $372,200.00.

56. Englander & Fischer's loan was forgiven on 29 July 2021.

57. According to the online record, on 16 April 2020, the day after Wiand Guerra King applied for government assistance, Sallah Astarita & Cox, LLC, which firm Wiand had moved the Court to let him retain as counsel (Doc. 238), and which motion was granted over objection on April 7, 2020 (Doc. 261), was approved for a government COVID-19 PPP loan in the amount of $118,100.00.

58. Wiand had again moved the Court to approve his engagement of Sallah Astarita to "prosecute potential claims against ATC Brokers." (Doc. 385), which motion was granted on 23 April 2021 (Doc. 390).

59. Sallah Astarita's loan was forgiven on 11 August 2021–despite the fact that by 8 February 2021, James Sallah of Sallah Astarita had already earned a commission of approximately $395,000.00 through a contract Wiand had awarded him for claims against Mainstream Funding.

60. According to the online record, on 15 April 2020, E-Hounds, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $77,400.00.

61. E-Hound's loan was forgiven on 12 November 2020.

62. According to the online record, on 28 April 2020, KapilaMukamal, LLP, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $360,661.00.
63. KapilaMukamal, LLP's loan was forgiven on 31 March 2021.
64. According to the online record, on 15 May 2020, Martha Thorn, PA, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $61,946.00.
65. Martha Thorn, PA's loan was forgiven on 12 August 2021.
66. According to the online record, on 28 April 2020, Orlando Auto Auction 55 LLC, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $96,900.00.
67. Orlando Auto Auction 55 LLC's loan was forgiven on 19 April 2021.
68. According to the online record, on 1 May 2020, the Integra Realty Group, LLC, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $35,580.00.
69. Integra Realty Group, LLC's loan forgiveness has not yet been reported.
70. According to the online record, on 10 April 2020, Ian Black Real Estate, LLC, who worked under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $76,142.00.
71. Ian Black Real Estate, LLC's loan was forgiven on 8 December 2021.

72. According to the online record, on 11 April 2020, PDR CPA & Advisors, while working under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $520,100.00.

73. PDR CPA & Advisors' loan was forgiven on 22 June 2021.

74. According to the online record, on 6 April 2020, Johnson Cassidy Newlon & DeCort, who later worked under contract with Wiand Guerra King, applied for and received a Government COVID-19 PPP Loan in the amount of $189,479.00.

75. Johnson Cassidy Newlon & DeCort's first loan was forgiven on 17 February 2021.

76. According to the online record, on 12 February 2021, Johnson Cassidy Newlon & DeCort, who later worked under contract with Wiand Guerra King, applied for and received a second Government COVID-19 PPP Loan in the amount of $193,177.00.

77. Forgiveness of Johnson Cassidy Newlon & DeCort's second loan has not been reported.

78. In all, in addition to over $8.5 million in payments already extracted from the instant case for his efforts, Wiand and his associates applied for and kept U.S. government COVID assistance loans aggregating to a total of $2,577k,885.00; (*See* Exhibit B).

79. A receiver's responsibilities as a fiduciary of the court is explained in Basic Receivership Law:

> A receiver is often referred to as a fiduciary of the court, and of all claimants or parties interested in the property or receivership estate. The receiver holds title and possession of the property in the receivership estate as an agent for the appointing court and on behalf of the beneficial owners of the receivership estate, those parties claiming an interest in the property. Since the receiver occupies a fiduciary relation to persons interested in the property, **the receiver must perform hers/his/its duties with the high degree of care demanded of a trustee or other similar fiduciary and may not deal with property under the receiver's control in such a way as to benefit the receiver or her/his/its associates**. If the receiver does so, the receiver may be surcharged with any profits made as a result of this breach, and also with the profits of those who knowingly join in pursuing an illegal course of action. In this connection, the receiver cannot permit or authorize its agents to do what the receiver is not permitted to do directly. [bold supplied].
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> *Source*: Basic Receivership Law/Concepts by James M. McGee & Ross H. Parker.

80. Receiver Wiand has objectively failed to act as a responsible fiduciary of this court and deserves no compensation for activities performed in violation of the trust this Court bestowed upon him.

81. Respecting receiverships, *U.S. v. Bradley* states: "Because federal and state law provide the United States with ample means of obtaining satisfaction of the judgments at hand—all of them far more efficient than the means the court fashioned—the court abused its discretion in appointing a receiver to perform the Government's work." *U.S. v. Bradley*, 644 F.3d 1213, 1311 (11th Cir. 2011).

PLAINTIFF FAILED TO ABIDE BY STATUTORY REQUIREMENTS

82. Plaintiff in case 8:19-cv-00908 violated 18 U.S.C. § 985, the very statute by which it claimed authority for forfeiture; (*See* Doc. ¶ 5).

83. Barring provisions under § 985(d), 18 U.S.C. § 985(b)(1)(A) prevents real property from being seized before entry of an order of forfeiture; and 18 U.S.C. § 985(b)(1)(B) states that the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

84. Section 985(d)(1)(A) allows for real property to be seized prior to entry of an order of forfeiture IF "the Government notifies the court that it intends to seize the property before trial".

85. The word "seize" does not appear anywhere in the Complaint (Doc. 2).

86. Further, 18 U.S.C. § 985(d)(2) states that for the Government to establish exigent circumstances per § 985(1)(B)(ii) to allow for ex parte determination of probable cause for forfeiture allowing for seizure without prior notice, it "shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property." The Plaintiff failed to do any of these things and lis pendens were filed on all but three Defendant properties:

> Any analysis of an ex parte seizure of real property must begin with an understanding of the Supreme Court's decision in *United States v. James Daniel Good Real Property*, 510 U.S. 43, 114 S.Ct. 492, 126 L.Ed.2d 490

(1993). *Good* concerned an ex parte seizure of property under 21 U.S.C. § 881(a)(7). . . The Court concluded that (1) the private interest affected by an ex parte seizure (property rights) is of historic and continuing importance, (2) the risk of erroneous deprivation after an ex parte hearing is unacceptably high and the value of additional safeguards (a pre-deprivation hearing) is therefore also high, and (3) the Government interest (seizing property before forfeiture) did not justify the ex parte seizure of real property and the administrative burden involved in holding a hearing prior to seizure was not significant because the Government would have to hold a hearing prior to forfeiture and "[f]rom an administrative standpoint it makes little difference whether that hearing is held before or after the seizure." *Good*, 510 U.S. at 59, 114 S.Ct. at 504. The Court determined that a general rule of pre-deprivation hearings was to be violated only in "extraordinary situations." Id. at 53, 114 S.Ct. at 501. Therefore, "[u]nless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture." Id. at 62, 114 S.Ct. at 505. Thus, *Good* indicates that we are to take a pre-deprivation standard of probable cause and then add the requirement of exigent circumstances if the real property is to be seized without pre-deprivation notice and hearing.

U.S. v. Bowman, 341 F.3d 1228, 1233 (11th Cir. 2003).

87. Rule 41(f)(B) of the Federal Rules of Criminal Procedure, relative to the Warrant to Search for and Seize a Person or Property states, in pertinent part:

> (B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken.

88. In violation of Rule 41(f)(B), the officer who prepared and verified the inventory of property seized at 13318 Lost Key Place, Lakewood Ranch, Florida, did not do so in the presence of Defendant from whom the property

was taken despite the fact that Defendant was present on the property at the time of the seizure.

89. During the search and seizure of Defendant's property, 28 U.S.C. § 1691 was violated because the writ of seizure did not contain the seal of the court as required.

PROCEDURES VIOLATED DEFENDANT'S DUE PROCESS RIGHTS

90. FRCP Rule G(2)(b) requires that a complaint must "state the grounds for subject-matter jurisdiction. . . Case 908, Doc. 2, Amended Complaint, ¶ 3 claims that "[t]he Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1345, which provides the Court with jurisdiction over all civil actions commenced by the United States. . ." but the cited statute does not state the grounds for subject-matter jurisdiction, merely that once established, the Court has jurisdiction. Were it otherwise, any civil action commenced by the United States, with or without grounds, would in the eyes of the plaintiff give the Court jurisdiction.

91. Citing in rem authority over Defendant properties presumed to be subject to forfeiture for alleged violations of 18 U.S.C. §§ 981(a)(1)(C) and 981(a)(1)(A), which neither OM nor OIG nor Defendant have been shown to have violated, the claimed statutory basis for forfeiture in case 908 relies on **presumed** violations of 18 U.S.C. §§ 1341, 1343, and 1342 and violation of 18 U.S.C. § 1957(a) (case 908 Doc. 2 ¶ 6), no allegation of which has been

subject of a hearing, discovery, or any other form of due process since not later than 12 July 2019 when the instant case was stayed without any definite end-date due to serial continuations of a stay issued that day. (Doc. 179).

92. Doc. 43(VI)(10)(b) in the instant case clearly prohibits any "taking or attempting to take possession of, or retaining possession of, real and/or personal property of Defendants or Relief Defendants. . . whether such acts are part of a judicial proceeding or otherwise." Even had he received them (which he did not) this injunction prevented Defendant from taking any action in response to Notices of Asset Forfeiture respecting 17006 Vardon Terrace, #105, LLC, 16804 Vardon Terrace 108 LLC, 16904 Vardon Terrace 106, LLC, 13318 Lost Key Place, LLC, and 7312 Desert Ridge Glen, LLC all sent on 10 May 2019 per requirements of Rule G(4)(b) by Tammy Keene, Forfeiture Support Associate (case 908, Doc. 53-1), or to a copy of the Amended Complaint in case 908, dated 10 May 2019 and signed by AUSA Suzanne C. Nebesky instructing him to file, not later than June 14, 2019, a verified claim pursuant to G(5)(a)(ii) in order to avoid forfeiture of defendant property.

93. Had he responded by filing a verified claim in response to Ms. Nebesky's instructions, Defendant would have placed himself in contempt of court.

94. Given that Notice of Forfeiture and the right to file a Verified Claim in defense of Defendant properties was not issued until 10 days after the Doc.

43 Order was filed, the several prohibitions in the Doc. 43(VI)(10)(b) Order represent a clear violation of Defendant's Due Process rights and effectively vitiate lawful forfeiture of Defendant properties.

95. After 19 April 2019 all Defendant's mail, including any notices sent by the Court were delivered to Wiand's offices and not forwarded timely to Defendant.

CONCLUSION

For the foregoing reasons, Defendant objects to (Doc. 459), Receiver's "Tenth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and His Professionals" and urges the Court to Deny the Motion.

The standard for fiduciaries, such as Receiver Wiand, has withstood the test of time, remaining applicable: *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928), famously described the fiduciary duty owed by one co-venturer to another as cited by this Court:

> Many forms of conduct permissible in a workday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (N.Y. 1928).
>
> *Leedom Mgmt. Grp., Inc. v. Perlmutter*, CASE NO.: 8:11-cv-2108-T-33TBM, at *13 (M.D. Fla. Feb. 15, 2012)

Justice Cardozo's articulation of the duty of loyalty imposed upon a fiduciary has endured for decades and has been cited in judicial opinions addressing the fiduciary duty owed not just by co-venturers, but in numerous other contexts.

To the best of his knowledge, information, and belief, Defendant has fully complied with the provisions of the Federal Rules of Civil Procedure Rule 11(b).

CERTIFICATE OF SERVICE

I, Michael J. DaCorta, filed the foregoing with the Middle District of Florida through the Courts e-filing system (ECF) which in turn will send a copy to the following persons:

J. Alison Auxter (CFTC)
A. Brian Phillips (for Satellite Holdings Co. and John J. Haas)
Mark L. Horwitz (for Raymond P. Montie, III)
Francisco "Frank" L. Duran
Christopher Walker (for Mainstream Fund Services, Inc.)
Peter John Grili (Mediator)
Eric Ryan Feld (for Burton W. Wiand)
David W. A. Chee (Movant-United States of America)

Dated: 13 January, 2021
Respectfully,

Signed: /s/ Michael J. DaCorta, *pro se*
11774 Via Lucerna Circle
Windermere FL 34786
Telephone: (941) 807-9933
Email: mdacorta64@yahoo.com

Exhibit A –Defendant Emails in Objection

January 21, 2020: Respecting Sale of LaCantera Property:

From: Carolyn DaCorta <cdacorta@yahoo.com>
To: adam_allen@fd.org <adam_allen@fd.org>; Andrea Wilson <awilson@wiandlaw.com>
Cc: Jared Perez <jperez@wiandlaw.com>
Sent: Tuesday, January 21, 2020, 09:35:26 AM EST
Subject: Re: Oasis LR 3.01(g) - Sale of Lacantera Property

To all;

I do object to the sale price. The home is in perfect condition. New floors, kitchen, professional paint job throughout the entire interior. It has very unique features many homes do not have and is waterfront as well as a water view from the front. It has a state of the art whole house water filtration system as well as a water distillation unit.

Real estate agents are generally lazy and use their computers to determine a price without actually seeing and valuing all the additional features unique to a home. It also has an oversized lot and a fenced yard in a very sought after location.

The price under consideration is well below fair market value.

Respectfully,

Michael DaCorta

February 27, 2020: Respecting Clawback Motion for 3.01(g):

From: Carolyn DaCorta <cdacorta@yahoo.com>
To: Andrea Wilson <awilson@wiandlaw.com>
Cc: Jared Perez <jperez@wiandlaw.com>; Adam Allen <adam_allen@fd.org>
Sent: Thursday, February 27, 2020, 10:24:51 AM EST
Subject: Re: Clawback Motion for 3.01(g)

Since I have had no way to defend myself in Civil Court and will not have that opportunity until the criminal case is adjudicated I have no comment on this issue, except to state the fact that since day 1 this process has lacked due process. These actions should be stayed until the criminal case is settled.

That is my opinion and I would appreciate the court be made aware.

Best regards,

Mike DaCorta

March 28, 2020: Respecting Mtn to Approve Engagment of Sallah Astarita

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Andrea Whitby <awhitby@guerraking.com>
Cc: Jared Perez <jperez@guerraking.com>; Larry Dougherty <ldougherty@guerraking.com>; adam_allen@fd.org <adam_allen@fd.org>; Mark L. Horwitz <mark@horwitzcitrolaw.com>; fduran7@gmail.com <fduran7@gmail.com>
Sent: Sunday, March 28, 2021, 05:51:57 PM EDT
Subject: Re: Oasis - LR 3.01(g) - Motion to Approve the Receiver's Engagement of Sallah Astarita & Cox, LLC to Prosecute Potential Claims Against ATC Brokers

I oppose the motion to retain Sallah Astarita & Cox LLP.

Please provide the court my entire email.

I oppose on two grounds:

1) There is currently a case pending at in the Appellate Court that relates to the authority of the receiver to engage in such activities prior to any actual evidence being presented to any court which proves any of the allegations made against Oasis. I ask the District Court not to approve any motions by the receiver which seeks to expand its jurisdiction and authority prior to a decision by the Appellate Court.

2) The District Court has already rejected an attempt by the receiver to involve ATC Brokers. The Court should reject this new attempt to hire a law firm at the expense of the Oasis Lenders to **" prosecute *potential* claims against ATC brokers"**. This would be a **fishing expedition** at high cost to the lenders, but very profitable for the receiver.

I respectfully request the court give serious consideration to my concerns and reject this motion.

Thank you,

Michael DaCorta

March 28, 2020: Respecting Oasis LR 3.01(g) regarding Litigation Consultant

From: Carolyn DaCorta <cdacorta@yahoo.com>
To: Andrea Wilson <awilson@wiandlaw.com>; Jared Perez <jperez@wiandlaw.com>
Cc: Larry Dougherty <ldougherty@wiandlaw.com>; Adam Allen <adam_allen@fd.org>
Sent: Friday, March 20, 2020, 09:39:19 AM EDT
Subject: Re: Oasis - LR 3.01(g) regarding Litigation Consultant

Ms. Wilson,

I do oppose. It seems like more fees being run up for no justifiable reason.

Mike DaCorta

February 8, 2021: Re: Oasis – LR 3.01(g):

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Jared Perez <jperez@guerraking.com>
Cc: James Sallah <jds@sallahlaw.com>; Patrick J. Rengstl <pjr@sallahlaw.com>
Sent: Monday, February 8, 2021, 03:49:43 PM EST
Subject: Re: Oasis - LR 3.01(g)

> Although I am in favor of recovery of all funds for the lenders, I will **object** to this settlement for the same reasons I objected to the CFTC/Mainstream deal. It is based wholly on unproven allegations and hearsay. Not one allegation made against Oasis et al, has been proven in a court of law.

Michael DaCorta

On Friday, February 5, 2021, 01:18:41 PM EST, Jared Perez <jperez@guerraking.com> wrote:

The Receiver and Fundadministration, Inc. have settled the Receiver's pre-suit claims in the total amount of $3,950,000, with a net amount of $3,555,000 to the Receiver (10% of $3,950,000 (or $395,000) is the previously Court-approved pre-suit contingency fee amount due to the Receiver's previously Court-approved special litigation counsel, Sallah Astarita & Cox, LLC). Payment will be made within five days of the Court's approval of this settlement. Please advise if we can represent in the Receiver's motion to approve that you have no objection to this settlement. Thank you.

March 28, 2021: Re: Oasis – LR 3.01(g):

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Andrea Whitby <awhitby@guerraking.com>
Cc: Jared Perez <jperez@guerraking.com>; Larry Dougherty <ldougherty@guerraking.com>; adam_allen@fd.org <adam_allen@fd.org>; Mark L. Horwitz <mark@horwitzcitrolaw.com>; fduran7@gmail.com <fduran7@gmail.com>
Sent: Sunday, March 28, 2021, 05:51:57 PM EDT
Subject: Re: Oasis - LR 3.01(g) - Motion to Approve the Receiver's Engagement of Sallah Astarita & Cox, LLC to Prosecute Potential Claims Against ATC Brokers

I oppose the motion to retain Sallah Astarita & Cox LLP.

Please provide the court my entire email.

I oppose on two grounds:

1) There is currently a case pending at in the Appellate Court that relates to the authority of the receiver to engage in such activities prior to any actual evidence being presented to any court which proves any of the allegations made against Oasis. I ask the District Court not to approve any motions by the receiver which seeks to expand its jurisdiction and authority prior to a decision by the Appellate Court.

2) The District Court has already rejected an attempt by the receiver to involve ATC Brokers. The Court should reject this new attempt to hire a law firm at the expense of the Oasis Lenders to **" prosecute *potential* claims against ATC brokers"**. This would be a **fishing expedition** at high cost to the lenders, but very profitable for the receiver.

I respectfully request the court give serious consideration to my concerns and reject this motion.

Thank you,

Michael DaCorta

April 27, 2021: Re: CFTC v. Oasis Intl, Case 8:19-cv-00886-VMC-SPF:

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Chapin, Jennifer <jchapin@cftc.gov>
Cc: Adam Allen (Adam_Allen@fd.org) <adam_allen@fd.org>; Jessica_Casciola@fd.org <jessica_casciola@fd.org>; Auxter, Alison <jauxter@cftc.gov>
Sent: Tuesday, April 27, 2021, 11:19:45 AM EDT
Subject: Re: Re: CFTC v. Oasis International Group, Case 8:19-cv-00886-VMC-SPF

Dear Ms. Chapin,

Please provide the court my entire email.

After much consideration I welcome your motion to perform a fishing expedition in regards to our relationship with ATC, however, since I have been unable to retain counsel for this matter, due to the seizure of all company and personal assets over two years ago, my non opposition is contingent upon my questions below being presented to the court.

1) Why is the court allowing a private law firm to be retained to conduct the inquiry at a high cost to the lenders instead of ordering the CFTC, who brought the complaint, to do their own investigation at their cost?

2) If the private law firm is permitted to remain on the case, is the court prepared to deny any fees for billable hours unless the law firm is successful at uncovering any wrongdoing by ATC, or its principals in regards to this case?

3) Is the court aware a letter of complaint was filed with the Florida Bar by a an Oasis Lender in regards to potential misconduct and unethical behavior between Mr. Wiand, the receiver and James Sallah?

4) Why was the motion to retain the Sallah Law firm not granted for three weeks and then suddenly granted?

5) Was there any further correspondence between the court and the receiver during those three weeks? If yes, do all parties involved have the right to know what, if anything was submitted to the court to assist in the court finally granting the motion?

Respectfully,

Michael DaCorta

June 25, 2021: Re: Oasis – LR 3.01(g) Mtn to Approve Engagement of Counsel:

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Andrea Whitby <awhitby@guerraking.com>
Cc: Jared Perez <jperez@guerraking.com>; Larry Dougherty <ldougherty@guerraking.com>; adam_allen@fd.org <adam_allen@fd.org>
Sent: Friday, June 25, 2021, 08:42:46 AM EDT
Subject: Re: Oasis - LR 3.01(g) - Motion to Approve Engagement of Litigation Consultant

Mr. Perez,

Please present my entire email to the court opposing this motion.

I oppose the motion to approve the engagement of Mr. Thomas J Bakas. for the following reasons:

1) This court has previously rejected this receivers attempt to pursue ATC Brokers

2) There has been no evidence to support the notion ATC engaged in any wrongdoing.

3) The CFTC is responsible for ATC Brokers in California and has no jurisdiction over ATC Brokers UK. If the CFTC has any evidence of ATC Brokers UK wrongdoing, they need to work with their counterparts in the UK at their expense.. The receiver has no authority.

With great respect, I ask this court to reject this motion.

Kindest regards,

Michael DaCorta

September 18, 2021: Re: Oasis – LR 3.01(g) Extension of Receiver's Fee Application:

From: mdacorta64@yahoo.com <mdacorta64@yahoo.com>
To: Mark L. Horwitz <mark@horwitzcitrolaw.com>; Vincent A. Citro <vince@horwitzcitrolaw.com>; brian.phillips@phillips-law-firm.com <brian.phillips@phillips-law-firm.com>; gmarronelaw@gmail.com <gmarronelaw@gmail.com>; Frank Duran <flduran7@gmail.com>; Jared Perez <jperez@guerraking.com>
Cc: Andrea Whitby <awhitby@guerraking.com>; adam_allen@fd.org <adam_allen@fd.org>
Sent: Saturday, September 18, 2021, 02:59:34 PM EDT
Subject: Re: Oasis - LR 3.01(g) - Extension on Receiver's Fee Application

Mr. Perez,

I will object to any extension or any fees being paid to the receiver for any purpose until the receiver proves his case in a court of law, which to date has not ever been done.

Michael DaCorta

On Tuesday, September 14, 2021, 05:32:42 PM EDT, Jared Perez <jperez@guerraking.com> wrote:

Good afternoon, I plan to seek an extension of the deadline to file the Receiver's next fee application from 9/15/21 through 9/29/21. The CFTC has no objection. For purposes of Local Rule 3.01(g), please let me know whether you oppose the extension. Thanks.

Exhibit B

Wiand Employees That Received COVID PPP Federal Relief Funds

Name	Location	Amount	Approved	Forgiven
Wiand, Guerra, King	Tampa, FL	$476,400	4/15/20	4/8/21
Englander & Fischer, PA	St. Petersburg, FL	$372,000	4/8/20	7/29/21
Sallah Astarita & Cox, LLC	Boca Raton, FL	$118,100	4/16/20	8/11/21
E-Hounds	Palm Harbor, FL	$77,400	4/15/20	11/12/20
KapilaMukamal, LLP	Ft. Lauderdale, FL	$360,661	4/28/20	3/31/21
Martha Thorn PA	Largo, FL	$61,946	5/15/20	8/12/21
Orlando Auto Auction 55 LLC	Orlando, FL	$96,900	4/28/20	4/19/21
Integra Realty Group, Inc	Bradenton, FL	$35,580	5/1/20	N/A
Ian Black Real Estate, LLC	Sarasota, FL	$76,142	4/10/20	12/8/21
PDR CPA & Advisors	Oldsmar, FL	$520,100	4/11/20	6/22/21
Johnson Cassidy Newlon & DeCort	Tampa, FL	$189,479	4/6/20	2/17/21
Johnson Cassidy Newlon & DeCort	Tampa, FL	$193,177	2/12/21	N/A

Total: $2,577,885

Sample Source:
https://projects.propublica.org/coronavirus/bailouts/search?q=wiand+guerra+king

Sample Search Result: