UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, not individually but solely in his capacity as Receiver for OASIS INTERNATIONAL GROUP, LIMITED, et al., Plaintiffs, v. ATC BROKERS LTD., DAVID MANOUKIAN, and SPOTEX LLC, Defendants.	No. 21-cv-1317

DEFENDANTS' JOINT MOTION TO STAY DISCOVERY

Pursuant to Federal Rule of Civil Procedure 26(c), Defendants—ATC Brokers, Ltd., David Manoukian, and Spotex LLC—jointly request a stay of all remaining discovery until the Court rules on the pending Motions to Dismiss for lack of personal jurisdiction (Docs. 43 and 58) and for lack of standing and failure to state a claim on which relief can be granted (Docs. 41 and 42).

STANDARD

District courts have broad discretion in managing their cases. *See Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001). "Matters pertaining to discovery are committed to the sound discretion of the district court . . . ." *Patterson v. U.S. Postal Serv.*, 901 F.2d 927, 929 (11th Cir. 1990). A discovery stay is appropriate where the movant shows "good cause and reasonableness." *Bocciolone v. Solowsky*,

No. 08–20200, 2008 WL 2906719, at *2 (S.D. Fla. July 24, 2008). District courts may stay discovery for good cause "wherein 'resolution of a preliminary motion may dispose of the entire action.'" *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003) (quoting *Ass'n Fe Y Allegria v. Republic of Ecuador*, 1999 WL 147716 (S.D.N.Y. Mar. 16, 1999)).

ARGUMENT

Despite lengthy conferrals and detailed motion to dismiss briefings (Docs. 24, 25, and 32), the Receiver filed an Amended Complaint (Doc. 36) that still fails to establish personal jurisdiction, standing, or any plausible cause of action against Defendants. Accordingly, Defendants renewed their Motions to Dismiss as the Receiver could not correct the deficiencies of his original complaint. (Docs. 41, 42, 43, and 58.)

Defendants have raised dispositive legal issues regarding the Court's jurisdiction and the Receiver's standing that should "be resolved before discovery begins." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). The resolution of these threshold issues would obviate the need for any discovery or further litigation beyond the motion practice and extensive jurisdictional discovery the Receiver has taken over the last months. ATC UK has produced thousands of pages of jurisdictional discovery that have crossed into merits discovery. "Therefore, neither the parties nor the court have any need for discovery before the court rules on the motion[s]." *Id.* (citing *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir. 1981) ("Discovery should follow the filing of a well-pleaded complaint. It is not a device to enable a

plaintiff to make a case when his complaint has failed to state a claim.")). Accordingly, Defendants can establish both good cause and reasonableness to stay discovery during the pendency of their Motions to Dismiss.

I. Defendants' Motions to Dismiss are dispositive of the entire case.

A request to stay discovery is appropriate because the "resolution of the motion will dispose of the entire case." *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). Here, each Motion to Dismiss—if granted as they should be—would obviate the entire case against each Defendant that filed it. ATC UK challenges personal jurisdiction (Docs. 43 and 58), and Mr. Manoukian and Spotex challenge the Receiver's standing (Docs. 41 and 42). Additionally, Mr. Manoukian and Spotex challenge the legal sufficiency of each count against them. *Id.* Further, "if the Motion[s] to Dismiss were granted—even in part—it would substantially impact the viability of claims against one or more Defendants and drastically alter the scope of discovery." *Taylor v. Serv. Corp. Int'l*, No. 20-CIV-60709, 2020 WL 6118779, at *2 (S.D. Fla. Oct. 16, 2020).

To determine the appropriateness of a discovery stay, a court may take a "preliminary peek at the merits of the dispositive motion to see if it appears to be clearly meritorious and truly case dispositive." *Koock v. Sugar & Felsenthal, LLP*, No. 8L09-CV-609-T-17EAJ, 2009 WL 2579307, at *2 (M.D. Fla. Aug. 19, 2009) (citation omitted). Should this Court take a "preliminary peek" at the Motions to Dismiss, it will find that each is highly meritorious and would dispose of the entire case against the Defendants.

As a foreign corporation, the Court does not have jurisdiction over ATC UK and the Receiver failed to carry his burden to establish that it does. *See* Docs. 43 and 58. ATC UK is a foreign entity, operating in London, selling financial service products under U.K. regulation to foreign customers. *See* Doc. 43 at 3–4. The only relationship between ATC UK and this matter stems from the purchase of ATC UK's U.K.-based services by two foreign entities: Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize). Doc. 43 at 4–5. As such, the Receiver cannot establish general or specific jurisdiction. The Commodities Future Trading Commission ("CFTC"), the Department of Justice, and the district court that appointed the Receiver have properly declined to exercise jurisdiction over ATC UK.[1] Doc. 43. at 23–24. This Court should stay discovery until it makes its own determination regarding whether jurisdiction over ATC UK exists.

David Manoukian challenges both the Receiver's standing and the legal sufficiency of his claims. Doc. 42. Under binding Eleventh Circuit precedent, "[t]he corporation—and the receiver who stands in the shoes of the corporation—lacks standing to pursue such tort claims because the corporation, 'whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated.'" *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020). Mr. Manoukian points out that, long before the Receiver was ever

[1] CFTC made document requests of ATC UK through the U.K.'s Financial Conduct Authority, the Department of Justice requested a witness statement from ATC UK through the U.K.'s National Crime Agency, and the district court that appointed the Receiver adopted a Report and Recommendation noting that the Receiver had not established the court had jurisdiction over ATC UK.

appointed, all alleged innocent shareholders sold their shares back to the Receivership entities, leaving the Receivership entities entirely under the control of the wrongdoers. Doc. 42 at 12–14. This argument alone is dispositive as the Receiver cannot benefit from the scheme the Receivership entities perpetrated.

Mr. Manoukian also argues that the Receiver has failed to plead plausible allegations of his knowledge of the wrongdoing. Doc. 42 at 18–21. This is dispositive of the Receiver's aiding and abetting claims. *Lawrence v. Bank of Am., N.A.*, 455 F. App'x 904, 906–07 (11th Cir. 2012); *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1244–45 (M.D. Fla. 2013). Mr. Manoukian further argues that the Receiver has failed to plead a duty. Doc. 42 at 21–25. This is a fundamental requirement to open the courthouse doors to bring a negligence claim. *Davis v. Dollar Rent a Car Sys.*, 909 So. 2d 297, 302 (Fla. 5th DCA 2005). Mr. Manoukian's Motion to Dismiss addresses the Receiver's insurmountable pleading failures, all of which should preclude the Receiver from pursuing his harassment against Mr. Manoukian any further.

Spotex similarly asserts that the Amended Complaint fails to state claims on which relief can be granted. Both the aiding and abetting claim and the negligence claim must be dismissed. To assert a claim for aiding and abetting, the Amended Complaint must sufficiently allege: (1) an underlying wrongdoing (fraud, breach of fiduciary duty); (2) actual knowledge by *each* defendant; and (3) substantial assistance. *See ZP No. 54 Ltd. P'ship v. Fid. & Deposit Co. of Md.*, 917 So. 2d 368, 372 (Fla. 5th DCA 2005) (noting the elements of aiding and abetting fraud); *In re Caribbean K Line, Ltd.*, 288 B.R. 908, 919 (S.D. Fla. 2002) (noting the elements of aiding and abetting breach

of fiduciary duty). The Receiver failed to plead facts sufficient to establish, beyond mere speculation, that Spotex had actual knowledge of the CFTC Defendants' fraud or breach of fiduciary duty. OIG operators and directors never even contended that Spotex had any knowledge of any wrongdoing or participated in any illegal conduct.

To maintain an action for negligence, a plaintiff must establish that the defendant owed a duty, that the defendant breached that duty, and that this breach caused the plaintiff damages. *Wiand*, supra at 1247 (citing *Fla. Dep't of Corrs. v. Abril*, 969 So. 2d 201, 204 (Fla. 2007)). Just as the court determined the Receiver's allegations in *Wiand* were insufficient (e.g., Wells Fargo allegedly had a duty to meet the standard of care in the banking industry and duty to investigate suspicious transactions made by customers), here, the Receiver's allegations are similarly insufficient.

Just as a bank does not owe a duty to a non-customer, Spotex does not owe a duty to non-customers. The Amended Complaint makes clear that the "customers" in this matter were ATC UK's clients, not Spotex's clients. "Spotex provided a 'white label' software suite that would support ATC [UK]'s clients and generate online account records with various back-office tasks for such clients. Spotex, through their affiliation with ATC [UK], was a firm that provided the technology for these services to **ATC [UK]'s clients**, such as Anile, DaCorta and other Oasis representatives." Am. Compl. at ¶95 (emphasis added). Spotex's only duty is to ATC UK, not ATC UK's customers. Accordingly, Spotex does not have the required duty for the Receiver to maintain a negligence cause of action against it in this matter.

The claims against Spotex are also completely barred by the immunity provisions of the Communication Decency Act, 47 U.S.C. § 230(c), because Spotex is a passive "interactive computer service." Congress enacted the statute to protect interactive computer service providers, like Spotex, from liability for their users' content and conduct. The Amended Complaint fails to sufficiently allege that Spotex acted as an "information content provider" rather than an "interactive computer service." *In re BitConnect Sec. Litig.*, No. 18-CV-80086, 2019 WL 9104318, at *12 (S.D. Fla. Aug. 23, 2019). Spotex, as a service provider, cannot be held liable for information originating with a third-party user of the service. *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). *See also Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1249 (S.D. Fla. 2020); *Mezey v. Twitter, Inc.,* No. 1:18-CV-21069-KMM, 2018 WL 5306769, at *1 (S.D. Fla. July 19, 2018); *Kimzey v. Yelp! Inc.*, 836 F.3d 1263 (9th Cir. 2016); *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605 (N.D. Ill. 2008); and *Doe v. Kik Interactive, Inc.,* 482 F. Supp. 3d 1242 (S.D. Fla. 2020). Accordingly, because the Amended Complaint fails to allege that Spotex was responsible, in whole or in part, for the creation or development of the information provided on its software platform, the claims against Spotex are barred by the Communication Decency Act.

II. The Receiver has conducted extensive discovery and would not be harmed by a stay.

Along with the strength of the Motions to Dismiss, the benefit to the Receiver of proceeding through discovery is minimal. "In deciding whether to stay discovery

pending resolution of a pending motion, the Court inevitably must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery." *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). The Receiver has taken extensive discovery. For instance, the Receiver was provided thousands of pages of documents (ATCUK0000001 to ATCUK0004592) and hours of corporate representative testimony from ATC UK as part of his attempted opposition to ATC UK controverting baseless jurisdictional allegations. Doc. 58 at 2. In fact, one of the many Receiver's discovery requests that ATC UK provided responsive documents to was for "[a]ll communications to, from or copying You with the Receivership Entities or their former principals or agents." *See* Exhibit 1 at 61, Request 10.[2]

This discovery from ATC UK supplemented an extensive investigation performed by the CFTC that was apparently provided to the Receiver. ATC UK's regulator, the U.K. Financial Conduct Authority ("FCA"), requested documents from ATC UK based on requests it received from the CFTC under a Mutual Legal Assistance Treaty ("MLAT").[3] Doc. 43-2 ¶¶ 31–33. ATC UK voluntarily complied with the FCA request on behalf of the CFTC. *Id.* The Receiver attached documents to his Response in Opposition to ATC UK's Motion to Dismiss bearing an MLAT

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[2] Exhibit 1 is a composite exhibit that comprises the extensive jurisdictional discovery already served, including (1) Requests for Production served on ATC UK; (2) Requests for Production served on David Manoukian; (3) a subpoena served on Jack Manoukian; (4) a subpoena served on Jen Claudio; and (5) a 30(b)(6) Deposition Notice.

[3] CFTC requested, among other things, all communications or documents concerning the Receivership entities since January 1, 2014.

bates label. *See, e.g.*, Doc. 55-10 at 26. The Receiver also represented several times to the district court that appointed him that he has reviewed the documents ATC UK produced to the FCA.[4]

Spotex has also been voluntarily cooperating with the Federal Government in its prosecution against Michael J. DaCorta. Beginning in July 2021, the Government has sought assistance from Spotex in its case against DaCorta. On July 19, 2021, the Government had a telephone conference with counsel for Spotex wherein the Government requested assistance from Spotex. The Government thereafter sent a letter, dated July 27, 2021, requesting additional assistance from Spotex. Since July 2021, Spotex has met and corresponded with the Government, and continues through present day. In fact, the Government has recently requested another meeting with a representative from Spotex. In the Government's numerous communications to Spotex, the Government reiterated that the Government views Spotex as a witness, and that the Government does **not** view Spotex as a target or subject.

III. Proceeding with additional discovery during the pendency of the Motions to Dismiss would unnecessarily burden Defendants and the Court.

As noted above, the Receiver has many, if not all, of the documents he would request in discovery. A stay only prevents the unnecessary burden and expense of *additional* discovery while the Court considers the Motions to Dismiss. "[I]f the

[4] Further, while the Receiver has always referred to the CFTC's collection as "inadequate", he never explained *what* he found inadequate. Report and Recommendation, *CFTC v. Oasis Global Int'l Group Ltd.*, No. 8:19-cv-00886-VMC-SPF, Doc. 316 at 5 (M.D. Fla. Sept. 14, 2020). In any event, the collection is now larger given a secondary production by ATC UK to FCA and subsequently to CFTC. Doc. 43-2 ¶¶ 31–33.

Motion[s] to Dismiss were granted—even in part—it would substantially impact the viability of claims against one or more Defendants and drastically alter the scope of discovery." *Taylor v. Serv. Corp. Int'l*, No. 20-CIV-60709, 2020 WL 6118779, at *2 (S.D. Fla. Oct. 16, 2020). This prejudices the Defendants and this Court:

> Allowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system.

Chudasama, 123 F.3d at 1368.

The Defendants have engaged with the Receiver in one form or another since April 2019. *Oasis Global Int'l Group Ltd.*, Doc. 316 at 5. Over almost three years, the Receiver has capriciously worked with and threatened the Defendants when expedient. *Id.* Now the Defendants seek a reprieve from the continued expense and burden of responding to the Receiver until this Court determines whether the Receiver's Amended Complaint can state any viable claim.

ATC UK voluntarily cooperated with the Receiver beginning in April 2019. *Id.* The Receiver, however, unilaterally terminated communications in June 2019. *Id.* Instead, he tried to strongarm ATC UK's documents from a separate company through an improperly issued subpoena. *Id.* When he was appropriately rebuffed—rather than attempting to enforce his subpoena over valid objections—the Receiver subpoenaed Mr. Manoukian personally. *Id.* at 5–6. When served with valid objections a second time, the Receiver again ceased communication rather than contest the

objections. *Id.* at 6. The Receiver instead moved the court that appointed him to hold Mr. Manoukian, ATC US, and ATC UK in contempt—which the court swiftly and soundly rejected. *Id.* at 8 ("The Receiver's interpretation of the powers afforded by the Court's Order, however, is overly broad. The Court's Order does not, in fact, provide the powers that the Receiver alleges to have been violated.").

The court explained, "the Federal Rules of Civil Procedure provide protection to non-parties from undue burden or expense, and the Receiver has not established that the Order and the powers provided therein override the protection afforded by the Federal Rules of Civil Procedure in this respect." *Id.* at 13. Rather than attempting to enforce improperly issued subpoenas, the Receiver chose to further burden the Defendants (and now this Court) by filing the frivolous Amended Complaint that is the subject of three pending dispositive Motions to Dismiss.

Spotex has also been engaged in communications with the Receiver since May 2020. Spotex began producing documents to the Receiver on November 3, 2020, wherein Spotex sent an initial document production in electronic format, bearing the Bates' Stamp numbers Spotex_000001 through and including Spotex_025673. The following month, in December, Spotex produced a second production in electronic format, bearing the Bates' Stamp numbers Spotex_025674, through and including Spotex_025977. Accordingly, Spotex has already produced over 25,000 pages of documents to the Receiver, which required Spotex to spend significant resources.

CONCLUSION

The Receiver should not be allowed to continue burdening the Defendants and the courts with inappropriate legal maneuvering during the pendency of the Motions to Dismiss. The Defendants have spent years dealing with the Receiver's overreach and now seek relief from further discovery until the Court has determined whether it has jurisdiction over ATC UK and whether the Receiver has stated a claim against Mr. Manoukian and Spotex. Without establishing the right to discovery with a well-pleaded Complaint, the Receiver should not be permitted to further pursue an improper and burdensome fishing expedition in an effort to substantiate an action that is destined for dismissal. Accordingly, the Defendants jointly request a stay of all remaining discovery until the Court rules on the pending Motions to Dismiss for lack of personal jurisdiction (Docs. 43 and 58) and for lack of standing and failure to state a claim on which relief can be granted (Docs. 41 and 42).

[*Signature page follows*]

Dated: April 14, 2022

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

The undersigned certifies that he conferred with Plaintiff's counsel, who opposes the requested relief.

/s/ Christopher Torres
Attorney

CERTIFICATE OF SERVICE

I certify that on April 14, 2022, 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 counsel of record.

/s/ Christopher Torres
Attorney

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