

**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,

v.

Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

_____ /

**ROCCO GARBELLANO'S UNOPPOSED MOTION TO APPEAR
TELEPHONICALLY AT THE AUGUST 19, 2021 HEARING**

COMES NOW, Defendant, ROCCO GARBELLANO ("Garbellano"), by and through undersigned counsel, and hereby filed his Unopposed Motion to Appear Telephonically at the August 19, 2021 Hearing set in this cause, and in support thereof states as follows:

PROCEDURAL HISTORY

1. Receiver filed a Complaint in the instant action on or about April 14, 2020 ("Complaint"). [Dkt. 1].
2. On August 11, 2020, Receiver filed a Motion for Default Judgment Against Defendant Rocco Garbellano ("First Motion for Default"). [Dkt. 320.] The First Motion for Default lists a New Jersey address for Garbellano in the Certificate of Service. Garbellano lives in New York.

3. On August 24, 2020, this Court denied Receiver's First Motion for Default. [Dkt. 383.]

4. Thereafter, on October 13, 2020, Receiver filed an Omnibus Motion for Default Judgment Against Defaulted Defendants ("Second Motion for Default"). [Dkt. 523.]

5. In the Second Motion for Default, Receiver sought relief pursuant to Fed. R. Civ. P. 55(b)(2). Receiver included in the Second Motion for Default a Certificate of Service. Garbellano is not listed in the Certificate of Service. Receiver failed to serve Garbellano with the Second Motion for Default.

6. The Court set the Second Motion for Default for hearing on October 28, 2020. On October 20, 2020, the Clerk issued a Court Notice of Hearing. Garbellano is not listed in the Notice. [Dkt. 529.]

7. On November 3, 2020, this Court entered an Order granting Plaintiff's Motion for Default Judgment and directing the Clerk to enter a judgment against Defendant. [Dkt. 592.]

8. On November 4, 2020, the Court entered a Default Judgment against Garbellano for damages in the amount of \$268,692.51, plus prejudgment interest in the amount of \$59,263.00. [Dkt. 613.]

9. On or around May 11, 2021, Garbellano received an electronic filing from the Southern District of New York. The email contained a cover sheet and copy of the Default Judgment. See Burton W. Wiand, as Receiver for Oasis International

Group, Ltd., et. al. v. Rocco Garbellano, et. al., Case No. 1:21-mc-00428-PAE (S.D.N.Y.).

10. On July 1, 2021, while attempting to determine the procedural posture in the instant action, Garbellano learned his only bank account had been frozen.

11. Garbellano, through counsel, learned that on June 5, 2021, Receiver filed an *Ex Parte* Motion for Issuance of Writ of Garnishment and Incorporated Memorandum of Law (“Motion for Writ”).¹ [Dkt. 820.] The Motion for Writ requested that a writ be issued against Garbellano’s tangible and intangible property interests held by JP Morgan Chase Bank, N.A. (“Garnishee”).

12. On June 17, 2021, the Court granted the Motion for Writ and issued an *Ex Parte* Post-Judgment Writ of Garnishment (“Writ”). [Dkt. 853.]

13. On or about June 28, 2021, Receiver served the Writ on Garnishee, Chase Bank, via service on its registered agent at 1200 S. Pine Island Rd., Plantation FL 33324.

14. In response, Garnishee immediately froze Defendant’s bank account held with Chase Bank. Said bank account contains approximately \$8,700 and is Defendant’s only bank account.

15. On or about June 29, 2021, Receiver mailed to Defendant the Motion for Writ with an unsigned writ.

16. Chase Bank, the Garnishee has filed a response.

¹ Undersigned counsel is attempting to negotiate a resolution to the Writ of Garnishment with Receiver’s counsel.

17. On or about July 19, 2021, Garbellano filed two Claims of Exemption and a Request for Hearing. [Doc. 976 and Doc. 977].

18. On August 11, 2021, this Court Noticed Garbellano's Claims of Exemption and Request for Hearing for a hearing to be held in-person on August 19, 2021 at 2:30 p.m. in Tampa, Florida.

19. Undersigned counsel is located in Collier County, Naples, Florida.

20. Garbellano resides in New York and in addition to the logistical issues of traveling to Florida in a short period of time with the considerations of the present status of COVID-19, he additionally suffers from health issues, including issues with his knees that make mobility challenging.

21. In order to avoid any unnecessary expenditure of Garbellano's and his counsel's resources on travel, Garbellano respectfully requests that this Court enter an Order allowing Garbellano and undersigned counsel to attend the August 19, 2021 hearing telephonically.

22. The present motion will not prejudice any party and is not intended for purposes of delay.

23. Counsel for the Receiver has indicated that he has no objection to counsel or Mr. Garbellano appearing telephonically.

MEMORANDUM OF LAW

As mentioned above, this case was initiated by Plaintiff on April 14, 2020. Pursuant to Local Rule 3.01(i) of the local rules in place for the Middle District of Florida at the time of the filing of this action, it encourages "whenever possible,

particularly when counsel are located in different cities,” the use of telephonic hearings and conferences. Counsel additionally notes that Judge Thomas’ preferences allow for videoconference hearings upon a showing of good cause. Undersigned counsel resides in Collier County, Naples, Florida. Garbellano resides in New York and his health, the Covid-19 pandemic, and imminent nature of the upcoming court hearing would make traveling to Florida a significant challenge physically and on financial resources. Rule 1 of the Federal Rules of Civil Procedure instructs for “the just, speedy, and inexpensive determination of every action.” Fed. R. Civ. P. 1. Allowing undersigned counsel and Garbellano to attend the August 19, 2021 hearing telephonically is cost-effective and will expedite the process of resolving the matter at issue, thereby making the instant motion well-founded.

WHEREFORE, Defendant, ROCCO GARBELLANO, hereby respectfully requests that this Court enter an Order allowing undersigned counsel and Garbellano to attend the August 19, 2021 hearing telephonically, and grant Garbellano such other and further relief as appropriate under the circumstances.

Local Rule 3.01(g) Certification

I hereby certify that counsel for movant has conferred with counsel for Plaintiff regarding the instant motion and Plaintiff’s counsel is unopposed to the relief sought herein.

s/Holly A. Rice

Holly A. Rice

Florida Bar No. 89138

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Attorney for Defendants, Rocco Garbellano

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2021 a true copy of the foregoing document was filed electronically with the Clerk of Court via the CM/ECF system, and thereby served on all counsel of record.

/s/Holly A. Rice

Holly A. Rice