

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.

MOTION FOR FINAL JUDGMENT IN GARNISHMENT

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY (“*Plaintiff*”), moves this Honorable Court for entry of a Final Judgment in Garnishment directing the Garnishee, CANANDAIGUA NATIONAL BANK & TRUST (“*Garnishee*”), to release \$6.28 of garnished funds to the Receiver and states as follows:

1. On November 4, 2020, Plaintiff obtained a final judgment against Defendant, Kathryn McClare (“*Defendant*”) (Doc. 626). The Amended Final Judgment entitled the Plaintiff to recover \$8,941.26 plus post judgment interest from

ENGLANDER FISCHER

A T T O R N E Y S

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the Defendant (“**Judgment**”). (Doc. 763).

2. The full amount of the Judgment remains due and owing.

3. On June 15, 2021, Plaintiff filed an *Ex Parte* Motion for Writ of Garnishment related to Garnishee. (Doc. 838).

4. On June 24, 2021, a Writ of Garnishment was issued directed to the Garnishee and served on Garnishee on July 19, 2021. (Doc. 890, 984).

5. Pursuant to the Notice of Compliance with *Fla. Stat. 77.041(2)* filed on July 16, 2021, Defendant was timely served with the Receiver’s *Ex Parte* Motion for Issuance of Writ of Garnishment, Writ of Garnishment issued by the Court on June 24, 2021, and requisite “Notice to Defendant.” (Doc. 966).

6. On July 21, 2021, Garnishee filed its Answer of Garnishee stating that Garnishee was holding funds for the Defendant. (Doc. 985).

7. Defendant was timely served with the Answer of Garnishee pursuant to the Notice filed on July 21, 2021. (Doc. 988).

8. Defendant has not objected to the Writ of Garnishment, filed a claim of exemption, or moved to dissolve the Writ of Garnishment.

9. Plaintiff is entitled to a Final Judgment in Garnishment against Garnishee for the amount the Garnishee is indebted to Defendant and Garnishee is entitled to the \$100.00 statutory fee payable to Garnishee’s attorney, Bach, Jacobs & Byrne, P.A..

10. The Receiver has caused a \$100.00 check to be made payable and mailed to Garnishee's attorney on August 26, 2021 in payment of the statutory fee.

11. Accordingly, Plaintiff requests that the Court enter the Proposed Final Judgment of Garnishment attached hereto as **Exhibit "1."**

Memorandum of Law

Garnishment proceedings are statutory in nature and must be strictly complied with. *Zivitz v. Zivitz*, 16 So. 3d 841, 847 (Fla. 2d DCA 2009). In this case, Defendant was timely served by first class mail with a copy of the Writ of Garnishment, *Ex Parte* Motion for Writ of Garnishment, and the "Notice to Defendant" because it was sent to Defendant's last known address within three (3) business days after the writ was served on Garnishee. See *Fla. Stat.* § 77.041(2). Debtor was also timely served with a copy of the Garnishee's Answer and notice regarding a motion to dissolve the Writ of Garnishment pursuant to *Fla. Stat.* § 77.055 because it was mailed and emailed to Defendant within five (5) days after the Garnishee filed its Answer.

Moreover, the Defendant waived her right to object to the Writ, file a claim of exemption form, or move to dissolve the Writ. Accordingly, entry of the proposed final judgment attached hereto as Exhibit 1 is appropriate in light of the Defendant's waivers.

WHEREFORE, Plaintiff prays this Honorable Court will enter a Final

Judgment of Garnishment directing the Garnishee to release \$6.28 of garnished funds to the Receiver and for any further relief this Honorable Court finds fair and just under the circumstances.

Local Rule 3.01(g) Certification

Pursuant to Local Rule 3.01(g), M.D. Fla., undersigned counsel certifies that he conferred with counsel for Garnishee, who does not oppose the relief sought herein.

DATED this 27th day of August, 2021.

ENGLANDER FISCHER

/s/ John W. Waechter

JOHN W. WAECHTER

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing has been electronically filed with the Clerk of Court by using the CM/ECF system

and sent by U.S. Mail to Kathryn McClare, 47 Wincanton Drive, Fairport, NY 14450.

/s/ John W. Waechter
JOHN W. WAECHTER

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
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Plaintiff,

v.

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

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

FINAL JUDGMENT OF GARNISHMENT

THIS CAUSE came before the Court without a hearing on Plaintiff's, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY ("***Plaintiff***"), Motion for Final Judgment in Garnishment ("***Motion***") and this Court having reviewed the reviewed the Motion, the docket, and being otherwise duly advised in the premises, hereby finds as follows:

1. On November 4, 2020, Plaintiff obtained a final judgment against Defendant, Kathryn McClare. (Doc. 626). An Amended Final Judgment entitled the Plaintiff to recover \$8,941.26 plus post judgment interest from the Defendant ("***Judgment***"). (Doc. 763).

2. On June 15, 2021, Plaintiff filed an *Ex Parte* Motion for Writ of Garnishment related to Garnishee, CANANDAIGUA NATIONAL BANK & TRUST (“*Garnishee*”) (Doc. 838), and on June 24, 2021, the Clerk issued a Writ of Garnishment directed to Garnishee (“*Writ*”) (Doc. 890).

3. On July 21, 2021, Garnishee filed its Answer of Garnishee stating that Garnishee was holding funds for the Defendant. (Doc. 985).

4. On July 21, 2021, Plaintiff filed and served Garnishee’s Answer on Defendant. (Doc. 988).

5. The Plaintiff served proper notice on Defendant regarding the Writ. (Doc. 989).

6. Defendant has not objected to the Writ of Garnishment, filed a claim of exemption, or moved to dissolve the Writ of Garnishment.

It is therefore **ORDERED AND ADJUDGED:**

7. Final Judgment in Garnishment is hereby entered in favor of Plaintiff BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY, whose address is c/o Beatriz McConnell, Esq., Englander Fischer, 721 First Avenue North, St. Petersburg, FL 33701, and against Garnishee, CANANDAIGUA NATIONAL BANK & TRUST, the address of which is c/o Sean Byrne, Esq., Bach, Jacobs & Byrne, P.A., 240 S. Pineapple Ave. #700, Sarasota, FL 34236.

8. Pursuant to the Final Judgment and Writ, Plaintiff does have, receive and recover from the Garnishee, CANANDAIGUA NATIONAL BANK & TRUST, the sum of \$6.28 for all of which amount let execution issue forthwith. The Receiver shall remit \$100.00 to Garnishee's counsel, Bach, Jacobs & Byrne, P.A. as payment of the statutory garnishment fee.

9. The Court retains jurisdiction to enter orders as may be necessary to enforce this Final Judgment.

10. The Plaintiff is entitled to attorney's fees pursuant to Fla. Stat. § 57.115. The Court retains jurisdiction to determine a reasonable fee award.

DONE AND ORDERED in Tampa, Florida, this ____ day of _____, 2021.

THOMAS G. WILSON
UNITED STATES MAGISTRATE JUDGE

Copies to:
Beatriz McConnell, Esq.
Kathryn McClare, 47 Wincanton Drive, Fairport, NY 14450
Sean M. Byrne, Esq.