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. LIFE'S ELEMENTS, INC. Defendant.	)	Case No. 8:20-cv-00862-T-33TGW

MOTION BY SPECIAL APPEARANCE
TO QUASH SUMMONS AND OBJECT TO JURISDICTION

COMES NOW, LIFE'S ELEMENTS, INC. Defendant, pursuant to Rules 12 and 45 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 754 and 1692, and for his Motion for an Order quashing the Summons in a Civil Action issued by Plaintiff's attorney Beatriz McConnell, England Fischer, 721 First Avenue North, St. Petersburg, Florida 33701, states as follows:

RELEVANT PROCEDURAL HISTORY

1. On 15 April 2019, Commodity Futures Trading Commission ("CFTC" or "Commission") filed an enforcement action against (1) defendants Oasis International Group, Limited; Oasis Management, LLC; Michael J. DaCorta; Joseph S. Anile, II; Francisco "Frank" L. Duran; Satellite Holdings Company; John J. Haas; and Raymond P. Montie, III (the CFTC Defendants) and (2) relief defendants

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 Founders Club Drive, LLC; 6922 Lacantera Circle, LLC; 13318 Lost Key Place, LLC; and 4Oaks, LLC and, collectively with the CFTC Defendants, the "Receivership Defendants" (*CFTC. v. Oasis International Group, Ltd.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the "CFTC Action")).

2. On 30 April 2019, the Court issued an "Order Appointing Receiver and Staying Litigation" (Dkt. 44). The Court authorized the Receiver "to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto" (*Id.* ¶ 8. B.); and "To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver." (*Id.* ¶ 8. I.).

3. On 24 March 2020, Plaintiff filed "Receiver's Motion to Approve (1) Filing of Clawback Litigation and (2) Retention of Clawback Counsel; specifically, "John Waechter of Englander Fischer," described in the public record as "Motion for Miscellaneous Relief." (Dkt. 258).

4. On 13 April 2020, an "Order on Motion for Miscellaneous Relief" was entered on the record (Dkt. 264), wherein Plaintiff alleged in Dkt. 272 (p. 4) that the Court granted his Motion (Dkt. 258); but the Order is not available for review in the public record, and Plaintiff does not refer to the docket number of the Order granting his Motion.

5. On 14 April 2020, Plaintiff filed a Complaint against Defendant establishing Case 8:20-cv-00862. (Dkt.1).

MEMORANDUM OF LAW

6. Life's Elements, Inc. by Kevin Johnson comes before the Court by special

appearance in propria persona.

7. Life's Elements, Inc. is situated in Suffolk County, New York, within the U.S. Court's Eastern District of New York ("New York E.D. Court").

8. FRCP 4(k) provides the guidelines for proper service of summons:

> In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located; (B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or (C) when authorized by a federal statute.

9. Rule 4 generally is deals with Jurisdiction over the person, governing the methods of service through which personal jurisdiction may be obtained. (*Insurance Corp. of Ireland*, 456 U.S. at 715 n. 6, 102 S.Ct. at 2111, n.6). Rule 4 therefore has been characterized as a "jurisdictional provision." (*Point Landing, Inc. v. Omni Capital Intern*, 795 F.2d 415, 423, 424 (5th Cir. 1986); Stm. of Justices Black and Douglas, 374 U.S. 865, 869 (1963).

10. Neither FRCP 4(k)(1)(A) nor (B) apply to Defendant herein. FRCP 4(k)(1)(C) does apply for Plaintiff to have authority to summons Defendant, citing 28 U.S.C. §§754 and 1692, and Fed. R. Civ. P. 66 in support of service of summons to Defendant. (Docs. 44 (¶ 8), 172-4 (¶ 5), 177 (¶ 5), and Doc. 266 ¶ 2, p. 31 (Case No. 8:19-CV-886) under FRCP 4(k)(1)(C) which provides:

> The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Defendants under applicable state and federal law, . . . and all powers conferred upon a receiver by the provisions of 28 USC § 754 [which provides that] . . .
>
> A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof. . . . He shall have capacity to sue in any district without ancillary

> appointment, and may be sued with respect thereto as provided in section 959 of this title. . . . **Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.** [bold added]

11. Further, 28 USC § 1692 provides:

> In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, **but orders affecting the property shall be entered of record in each of such districts.** [bold added].

12. In order for the Receiver in the above-referenced case to have jurisdiction over Defendant's property, the law requires Receiver's strict adherence to the statutory authorities and limitations that 28 USC §§ 754 and 1692 provided (supra).

13. Absent a rule or statute to the contrary, FRCP 4(e) allows a federal court to exercise jurisdiction over only those defendants who are subject to the jurisdiction of courts of the state in which the court sits. (*Point Landing, Inc. v. Omni Capital Intern., Ltd.*, 795 F. 2d 415, 419 (5th Cir. 1986).

14. Tolling on Receiver's required filings per FRCP 4(k)(1)(C) date from 30 April 2019, the date of the Court-issued "Order Appointing Receiver . . . (Dkt. 44). The date which the Rule specifies expiration of the Receiver's jurisdiction to summons was 10 May 2019. supra ¶ 4

15. However, as of 10 May 2019, no document pertaining to FRCP 4(k)(1)(C) requirements in the instant case had been filed in the New York, E.D. Court. To date, no copy of the Complaint (Dkt. 1) nor the Receiver's Order of Appointment (Dkt. 44) has been filed in the New York E.D. Court.

16. Defective process does not affect in personam jurisdiction. In order for there to be in personam jurisdiction, there must be valid service of process. (*Attwell v. LaSalle Nat. Bank*, 607 F.2d 1157 (5th Cir. 1979)).

17. Because the Receiver is barred from issuing summons to Defendant, this Court is without jurisdiction to render judgment against the Defendant. Without personal service of process in accordance with Rule 4, or the law of the State in which the suit is filed, a federal district court is without jurisdiction to render a personal judgment against a defendant. (*Royal Lace Paper Works, Inc. v. Pest-Guard Products*, Inc., 240 F.2d 814, n.3 (5th Cir. 1957)).

18. The proposition that the judgment of a court lacking jurisdiction is void, traces back to the English Year Books (*Bowser v. Collins*, Y. B. Mich. 22 Edw. IV, f. 30, pl. 11, 145 Eng. Rep. 97 (Ex. Ch. 1482), and was made settled law by Lord Coke. (*Case of the Marshalsea*, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). Traditionally the phrase coram non judice, "before a person not a judge," embodied that proposition, meaning, in effect, that the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment.

19. American courts invalidated or denied recognition to judgments that violated this common-law principle long before the Fourteenth Amendment was adopted. (*Grumon v. Raymond*, 1 Conn. 40 (1814); *Picquet v. Swan*, 19 F. Cas. 609 (No. 11,134) (CC Mass. 1828); *Dunn v. Dunn*, 4 Paige 425 (N. Y. Ch. 1834); *Evans v. Instine*, 7 Ohio 273 (1835); *Steel v. Smith*, 7 Watts & Serg. 447 (Pa. 1844); *Boswell's Lessee v. Otis*, 9 How. 336, 350 (1850); *In Pennoyer v. Neff*, 95 U. S. 714, 732 (1878) (the judgment of a court lacking

personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment); *Burnham v. Superior Court of Cal., County of Marin*, 495 U.S. 604, 609 (1990)).

BACKGROUND

20. On 4 June 2020, Defendant requested clarification as to the statutory authority under which Plaintiff was intending to issue summons to Defendant. That same day, Attorney Beatriz McConnell cited authority to issue summons under 28 U.S.C. § 754 and 28 U.S.C. § 1692.

21. Bottom line, 28 U.S.C. §§ 754 and 1692 disallows the Receiver's authority where he has not, "within ten days after the entry of his order of appointment, file[d] copies of the complaint and such order of appointment in the district court for each district in which property is located." (FRCP 4(k)(1)(C)). Receiver has been a litigant in numerous Ponzi cases for the U.S. District Court and M.D. Florida, Tampa Division, including, but not limited to the following cases:

    A. *Wiand v. Waxenberg*, 611 F. Supp. 2d 1299 (2009)
    B. *Wiand v. Wells Fargo Bank*, NA 938 F. Supp. 2d 1238 (2013)
    C. *Wiand v. Morgan*, 919 F. Supp. 2d 1342 (2013)
    D. *Wiand v. Wells Fargo Bank*, NA 981 F. Supp. 2d 1214 (2013)
    E. *Wiand v. Dancing $ LLC*, 919 F. Supp. 2d 1296 (2013)
    F. *Wiand v. Wells Fargo Bank, NA.*, 86 F., Supp. 3d 1316 (2015)

22. Plaintiff's work as Receiver in similar cases extends to the Federal Court of Appeals for the Eleventh Circuit, in the following cases:

    A. *Wiand v. Lee*, 753 F. 3d 1194 (2014)
    B. *Wiand v. Meeke*, (2014) (unpublished)
    C. *Wiand v. Schneiderman*, 778 F. 3d 91 (2015)

CONCLUSION

Receiver's authority to summons Defendant is void for failure to follow 28 U.S.C. § 754, providing that "within ten days after the entry of his order of appointment, [Receiver must] file copies of the complaint and such order of appointment in the district court for each district in which property is located." Plaintiff failed, in addition, to follow 28 U.S.C. § 1962, to file a copy of the complaint under which authority was granted in the district wherein Defendant resides.

Therefore, Defendant respectfully moves this Court to quash the summons issued by Plaintiff.

Date: 7/17/20

Kevin Johnson for Life's Elements, Defendant

CERTIFICATE OF SERVICE

I certify that I filed a copy of the foregoing document with the Clerk of the Federal District Court of Middle Florida, Tampa Division, and sent a copy to:

Beatriz McConnell
bmcconnell@eflegal.com
721 First Avenue North
St. Petersburg, Florida 33701
P: 727.898.7210 | F: 727.898.7218

Date: 7/17/20

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