

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

BLACK DRAGON CAPITAL

Defendant.

Case No. 8:20-cv-00862

**MOTION BY SPECIAL APPEARANCE
TO JOIN LIFE'S ELEMENTS, INC. MOTION TO
QUASH SUMMONS AND OBJECT TO JURISDICTION**

COMES NOW, BLACK DRAGON CAPITAL, defendant, pursuant to Rules 12 and 45 of the Federal Rules of Civil Procedure, U.S.C. 28 § 754 and U.S.C. § 1692, 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, FL 33701. Defendant BLACK DRAGON CAPITAL seeks the same relief Defendant Life's Elements, Inc. seeks on the same grounds offered in its Motion to Quash Summons.

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. BLACK DRAGON CAPITAL by Michael Obay comes before the Court by special appearance in propria persona.
7. Defendant BLACK DRAGON CAPITAL is situated in Richmond County, New York

within the U.S. Court's Eastern District of New York. ("EDNY"). In order for the U.S. Court's Middle District of Florida Receiver to have jurisdiction over Defendant's property, the law requires that Receiver must have filed in the District Court wherein Defendant resides, ten days after the entry of his order of appointment.

8. Further, FRCP 4(k) provides the guidelines for proper service:

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. Neither FRCP 4(k)(1)(A) nor (B) apply with respect to Defendant. But FRCP 4(k)(1)(C) does apply for Plaintiff to have authority to summons Defendants. (28 U.S.C. §§754, 1692, and Fed. R. Civ. P. 66 (supporting of service of summons to Defendants); 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).

10. Further, 28 U.S.C. § 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).

11. However, on 24 April 2020, no case was filed in New York's Eastern District Court; to date, no copies of the Complaint and Order of Appointment of Receiver had been filed in the Eastern District Court of New York.

BACKGROUND

On 4 June 2020, Defendant requested clarification about the statutory authority under which Plaintiff was intending to issue summons to Defendants. That same day, Beatriz McConnell responded, affirming Plaintiff's authority under 28 U.S.C. §§ 754 and 1692.

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." In addition, Plaintiff failed to follow 28 U.S.C. § 1962, and file a copy of the Complaint under which authority is granted in the court district wherein Defendant resides.

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



Date:

7/17/20

Michael Obay for BLACK DRAGON CAPITAL, Defendant

CERTIFICATE OF SERVICE

I certify that I sent a copy of the foregoing document by USPS, FED EX, or UPS to:

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

_____ Date: _____

ORIGIN: TAMPA, FL 33602
MICHAEL SCOTT OBAY

450 LEVERETT AVE

STATEN ISLAND, NY 10308
UNITED STATES US

ACTWGT: 0.20 LB
CAD: 6997748/SSF02110

BILL CREDIT CARD

TO **SAM M GIBBONS US COURTHOUSE**
ATTN: CLERK OF THE COURT
801 NORTH FLORIDA AVENUE

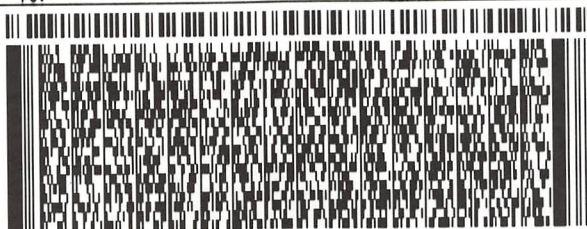
TAMPA FL 33602

(999) 999-9999

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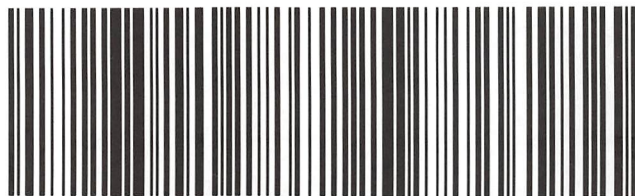
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