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**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.

ALAN JOHNSON

Defendant.

Case No. 8:20-cv-00862

**MOTION BY SPECIAL APPEARANCE REQUESTING JUDICIAL NOTICE AND RESPONSE
TO RECEIVER'S "MOTION FOR EXTENSION OF TIME TO FILE OMNIBUS RESPONSE
TO MOTIONS TO QUASH SUMMONS AND OBJECT TO JURISDICTION (DOCS. 232-
243, 258-261) AND REQUEST FOR STATUS CONFERENCE" (DOC. 293) AND
OBJECTION TO OMNIBUS RESPONSE**

COMES NOW BY SPECIAL APPEARANCE, Alan Johnson, as Defendant pro per in the instant case and submits this limited response to Plaintiff's MOTION FOR EXTENSION OF TIME TO FILE OMNIBUS RESPONSE TO MOTIONS TO QUASH SUMMONS AND OBJECT TO JURISDICTION (Document 293).

BACKGROUND

1. On April 30, 2019, the Court issued an ORDER APPOINTING RECEIVER AND STAYING LITIGATION (Doc. 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.).

2. On April 14, 2020, by authority of the Court, Plaintiff filed a Complaint against Defendants CHRIS AND SHELLEY ARDUINI, et. al., establishing Case 8:20-cv-00862. (Doc.1).
3. Beginning June 9, 2020, Plaintiff filed various documents related to the issuance of summons.
4. Having been issued a summons by Plaintiff, Defendant Alan Johnson filed a MOTION BY SPECIAL APPEARANCE TO QUASH SUMMONS AND OBJECT TO JURISDICTION (Doc. 241) on 07/21/20.
5. In his motion, Defendant came before the court by special appearance in propria persona. (Doc. 241, 6)
6. On 07/31/20 over this and other Defendants’ objections, Plaintiff filed RECEIVER’S MOTION FOR EXTENSION OF TIME TO FILE OMNIBUS RESPONSE TO MOTIONS TO QUASH SUMMONS AND OBJECT TO JURISDICTION (DOCS. 232-243, 258-262) AND REQUEST FOR STATUS CONFERENCE.

MEMORANDUM OF LAW

7. Alan Johnson comes before the Court by special appearance in propria persona (not pro se, as alleged by Plaintiff). Defendant files all documents pro per to move the Court by special appearance in propria persona – in his proper person, as himself, not for himself as he would if he were pro se.
8. FRCP Rule 4 deals generally 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 has been named 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).

9. 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).

10. 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.

11. Alan Johnson resides in Smith County, Texas, which lies within the jurisdiction of the United States District Court: Eastern District of Texas.
12. Neither FRCP 4(k)(1)(A) nor (B) apply to Defendant and thus did not provide Plaintiff authority to summons him.
13. FRCP 4(k)(1)(C) provided Plaintiff conditional authority to summons Defendant “when authorized by a federal statute.”
14. Plaintiff cited statutory authority under 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)
15. 28 U.S.C. §754 reads:

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, [sic] 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]

16. 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].**

17. Plaintiff is barred by statute from issuing a summons to Defendant.
18. In order for Plaintiff to issue summons or have jurisdiction over Defendant's property, the law requires Plaintiff's strict adherence to the statutory authorities and limitations that 28 USC §§ 754 and 1692 provide. *See* FRCP 4(k)(1)(C).
19. Per FRCP 4(k)(1)(C) the Receiver was required to file "copies of the complaint and such order of appointment in the district court for each district in which property is located" between April 30, 2019, the date of the Court-issued "ORDER APPOINTING RECEIVER . . ." (Doc. 44, Case 8:19-cv-00886) and May 10, 2019, the date which the Rule specifies divestiture of the Receiver's authority to summons.

20. No copy of the Complaint (Doc. 1; Case 8:19-cv-00886), nor the Receiver's Order of Appointment (Doc. 44; Case 8:19-cv-00886) was filed in the U.S. District Court: Eastern District of Texas by May 10, 2019 pursuant to FRCP 4(k)(1)(C).
21. 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)).
22. The Receiver was barred by statute from issuing summons to Defendant. Summons issued were not valid service of process.
23. Barring Defendant's voluntary appearance, without valid personal service of process, this Court is without jurisdiction to render judgment against 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)).

24. The Eleventh Circuit stated that the absence of personal jurisdiction destroys all jurisdiction:

An absence of personal jurisdiction may be said to destroy "all jurisdiction" because the requirements of subject matter and personal jurisdiction are conjunctional. Both must be met before a court has authority to adjudicate the rights of parties to a dispute. If a court lacks jurisdiction over a party, then it lacks "all jurisdiction" to adjudicate that party's rights, whether or not the subject matter is properly before it. *See, e.g., Kulko v. Superior Court*, 436 U.S. 84, 91, 98 S.Ct. 1690, 1696, 56 L.Ed.2d 132 (1978) ("[i]t has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant") (citations omitted). . . . Because the limits of personal jurisdiction constrain judicial authority, acts taken in the absence of personal jurisdiction do not fall within the scope of legitimate decisionmaking [sic] that judicial immunity is designed to protect. *See Gregory v. Thompson*, 500 F.2d at 63.

Although the modern conception of personal jurisdiction generally refers to due process, *see, e.g., International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the foundation of personal jurisdiction has always been a court's power to act. *McDonald v. McBee*, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed. 608 (1917); *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1878). When a court acts without personal jurisdiction, its authority is as much a usurped authority as when the court acts without subject matter jurisdiction.

We also agree with the *Rankin* court that immunity for judicial acts in the clear absence of jurisdiction is lost only if the judge knows that he [sic] lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction”.

(*Dykes v. Hosemann*, 743 F.2d 1488 (11th Cir. 1984). Affirmed on appeal, 783 F.2d 1000 (11th Cir. 1986)).


LIMITED RESPONSE TO PLAINTIFF’S MOTION (DOC. 293)

25. Plaintiff’s Motion wrongly uses the description “pro se’ 45 times in reference to Defendants who submitted MOTIONS BY SPECIAL APPEARANCE TO QUASH SUMMONS AND OBJECT TO JURISDICTION similar to Defendant’s. None of the referenced Documents (232-243, 258-261) were submitted by pro se defendants.
26. Plaintiff’s Motion contains numerous irrelevant and unsupported assertions about DEFENDANT’S MOTION TO QUASH AND OBJECTION TO JURISDICTION. These include comments about Attorney Brent Winters. Brent Winters did not represent Defendant in the instant case.
27. Providing no evidence or proof to support such an assertion, Plaintiff states that Defendant’s motion raises baseless facts and legal issues.
28. Absent the Court’s personal jurisdiction over him, Defendant declines to attend the proposed status conference.

CONCLUSION

Plaintiff was statutorily divested of his conditional authority to issue summons over a year ago on May 10, 2019 by his failure to adhere to the requirements of 28 U.S.C. § 754, which provided 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.

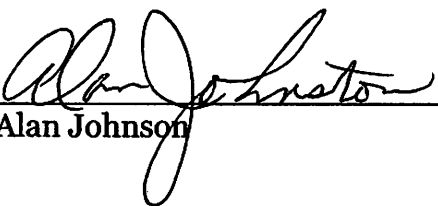
Therefore, Defendant respectfully moves this Court to DENY Plaintiff’s MOTION FOR EXTENSION OF TIME TO FILE OMNIBUS RESPONSE TO MOTIONS TO QUASH SUMMONS AND OBJECT TO JURISDICTION; DENY Plaintiff’s Request for Status Conference; and GRANT Defendant’s MOTION BY SPECIAL APPEARANCE TO QUASH SUMMONS AND OBJECT TO JURISDICTION.

 Date: 8-10-2020
Alan Johnson, Defendant
2020 Holly Leaf Drive
Tyler, Texas 75703

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:

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



Alan Johnson

Date: 8-10-2020

2020 Hollyleaf Dr.
Tyler, TX 75703

Sam M. Gibbons United States Courthouse
Attn: Clerk of the Court
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Tampa, Florida
33602