

**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.

David Lipinczyk

Defendant

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) Case No. 8:20-cv-00862
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MOTION BY SPECIAL APPEARANCE

**TO JOIN CHAD HICK'S 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)**

COMES NOW, David Lipinczyk, defendant pro per, BY SPECIAL APPEARANCE pursuant to
FRCP 12.

1. Having been issued a summons by Plaintiff, Defendant David Lipinczyk filed a MOTION BY SPECIAL APPEARANCE TO QUASH SUMMONS AND OBJECT TO JURISDICTION (Doc. 239) on 07/21/20.
2. In his motion, Defendant came before the court by special appearance in propria persona. (Doc. 239, 6)
3. 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

4. David Lipinczyk comes before the Court by special appearance in propria persona.
5. Defendant David Lipinczyk resides in Monroe County, New York, within the U.S. District Court for the Western District of New York. In order for the U.S. Court's Middle District of Florida Receiver to have jurisdiction over Defendant's property, the law requires that 'within ten day after entry of his order of appointment' Receiver must have filed in the District Court wherein Defendant resides 'copies of the complaint and such order of appointment'.
6. 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 U.S. District Court for the Western District of New York. To date, no copy of the Receiver's **ORIGINAL** Order of Appointment (Doc. 44) has been filed.
7. David Lipinczyk comes before the Court by special appearance in propria persona (not pro se). 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. FCRP 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. David Lipinczyk resides in Monroe County, New York, which lies within the jurisdiction of the U.S. District Court for the Western District of New York.
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. (Doc. 44, ¶ 5) (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 divested of authority 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. The Receiver was required to file per FRCP 4(k)(1)(C) between April 30, 2019, the date of the Court-issued its **ORIGINAL** "ORDER APPOINTING RECEIVER . . ." (Doc. 44, Case 8:19-cv-00886) and May 10, 2019, the date which the Statute specifies divestiture of the Receiver's authority to summons.

20. The CONSOLIDATED RECEIVERSHIP ORDER (Doc. 177, 3) issued 07/11/20, RE-appointed the Receiver for purposes of 28 U.S.C. §753.

21. No copy of the Complaint (Doc. 1; Case 8:19-cv-00886), nor the Receiver's Order of Appointment (Doc. 44) were filed in the U.S. District Court for the Western District of New York by May 10, 2019 pursuant to FRCP 4(k)(1)(C).

22. 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)).

23. Summons issued was not valid service of process. **The Receiver was divested by statute from authority to issue summons to Defendant.**
24. Barring Defendant's voluntary appearance, without valid 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)).

25. 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”.

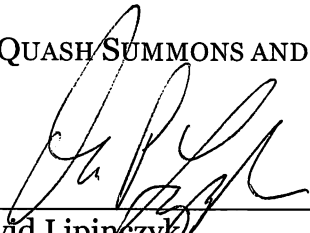
(*Dykes v. Hosemann*, 743 F.2d 1488 (11th Cir. 1984). Affirmed on appeal, 783 F.2d 1000 (11th Cir. 1986)).

26. Absent the Court’s personal jurisdiction over him, Defendant declines to attend the proposed status conference on August 17, 2020.

CONCLUSION

By statute, Plaintiff was **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.”

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 and GRANT Defendant’s MOTION BY SPECIAL APPEARANCE TO QUASH SUMMONS AND OBJECT TO JURISDICTION.



David Lipinczyk
6336 REDMAN RD
BROCKPORT, NEW YORK 14420

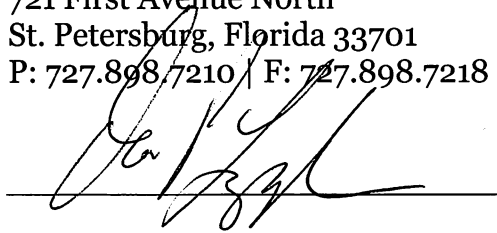
Date: _____

8/13/20

CERTIFICATE OF SERVICE

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

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

A handwritten signature in black ink, appearing to read 'Beatriz McConnell', is written over a horizontal line.

Date: _____

8/13/20