

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.

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT BY CLERK AGAINST
DEFENDANT ZHUO XU PURSUANT TO FED. R. CIV. P. 55(b)(1)**

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY (“*Plaintiff*”), pursuant to Fed. R. Civ. P. 55(b)(1) and Local Rule 1.07(b), moves the Clerk of Court to enter a default judgment in the amount of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Defendant, ZHUO XU (“*Xu*”), and states as follows:

1. On April 15, 2019, Plaintiff was appointed by the Court presiding over *C.F.T.C. v. Oasis International Group, Ltd.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the “*Receivership Case*”), as the Receiver and directed Plaintiff to take custody, control and possession of the Receivership Estate. *See* Wiand Declaration attached hereto as **Exhibit “A.”**

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ATTORNEYS

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2. In connection with Plaintiff's appointment in the Receivership Case, Plaintiff initiated this action and on April 14, 2020, Plaintiff filed his Complaint against Xu (Doc. 1). (Exhibit A ¶ 3).

3. On July 24, 2020, Plaintiff substitute served Xu with the summons and complaint. The process server spoke to a man through the speaker. He said Xu is his friend and doesn't live here right now. He said that Zhou Xu is in China right now. See Affidavit of Service filed on July 30, 2020 (Doc. 292). (Exhibit A ¶ 4).

4. Xu failed to serve or file a responsive pleading or otherwise defend this action. On August 17, 2020, Plaintiff moved for entry of a clerk's default. (Doc. 342). On August 18, 2020, the Clerk entered a default against Xu. (Doc. 353). (Exhibit A ¶ 5).

5. Upon information and belief, Xu is not an infant or an incompetent person or an active duty member of the U.S. Military. (Exhibit A ¶ 6).

6. As set forth in the Complaint, Plaintiff seeks recovery of a sum certain in the amount of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Xu. *See* Compl. Ex. A at 86 (Doc. 1); (Exhibit A ¶ 7).

7. The prejudgment interest in the amount of \$29,886.80 is calculated as directed by the 11th Circuit Court of Appeals in *Wiand v. Dancing \$, LLC*, 578 Fed. Appx. 938 (11th Cir. 2014).

Legal Memorandum

Fed.R.Civ.P. 55(a) provides that, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Additionally, Rule 55(b)(1)

provides that if the plaintiff's claim is for an amount certain or can be made by certain computation (on plaintiff's request and with an affidavit showing the amount due), the clerk must enter judgment for that amount against a defaulted defendant. In this case, because Xu failed to respond to the Complaint, Xu is neither a minor nor an incompetent person, and Plaintiff has set forth the sum certain of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 with a declaration showing same, the Clerk must enter a default judgment in the amount of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540. *See Wiand v. Dancing \$, LLC*, 578 Fed. Appx. 938 947 (11th Cir. 2014) (holding that the Receiver was entitled to recover prejudgment interest on FUFTA claim, "...in light of Florida's general rule that prejudgment interest is an element of pecuniary damages.")

WHEREFORE, Plaintiff moves for entry of a Default Judgment in the amount of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Xu.

Respectfully submitted,

ENGLANDER FISCHER

/s/ John W. Waechter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and served by U.S. mail and/or email, as indicated, to the following: Zhuo Xu, 5025 186th St., Fresh Meadows, NY 11365.

Dated: August 20, 2020.

/s/ John W. Waechter

Attorney for Plaintiff

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**DECLARATION OF PLAINTIFF BURTON W. WIAND IN SUPPORT
OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT ZHUO XU**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I make this declaration in support of the Plaintiff's Motion for Default Judgment Against ZHUO XU ("***Xu***"). I make this declaration based on information personally known to me or gathered by me or by others at my request.

2. On April 15, 2019, I was appointed by the Court presiding over *C.F.T.C. v. Oasis International Group, Ltd.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the "***Receivership Case***"), as the Receiver and directed to take custody, control and possession of the Receivership Estate.

3. In connection with my appointment in the Receivership Case, I initiated this action and on April 14, 2020, I filed the Complaint against Xu (Doc. 1).

Exhibit "A"

4. On July 24, 2020, I substitute served Xu with the summons and complaint. The process server spoke to a man through the speaker. He said Xu is his friend and doesn't live here right now. He said that Zhou Xu is in China Right now. See Affidavit of Service filed on July 30, 2020 (Doc. 292).

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6. Upon information and belief, Xu is not an infant, an incompetent person or an active duty member of the U.S. Military.

7. As set forth in the Complaint, I seek recovery of a sum certain in the amount of \$136,000.00 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$29,886.80 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Xu. See Compl. Ex. A at 86 (Doc. 1).

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of August, 2020.



BURTON W. WIAND