

**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.

RECEIVER'S MOTION FOR SUBSTITUTION OF PARTY DEFENDANTS

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD., OASIS MANAGEMENT, LLC, and SATELLITE HOLDINGS COMPANY ("**Receiver**"), by and through undersigned counsel and pursuant to Fed.R.Civ.P. 15 and 21, moves this Court for leave to substitute the Estate of Mary H. McClare as a named party in place of Defendant, Mary McClare. and to substitute Danielle Montie Terranova in place of Defendant, Anne Hennessey. In support thereof, the Receiver states as follows:

Local Rule 3.01(g) Good Faith Certificate

Pursuant to Local Rule 3.01(g), M.D. Fla., the undersigned certifies that on September 23, 2020, they conferred with counsel for Defendants, Joseph Martini, Sr., Joseph Martini, Jr., Bradley Kantor, Carrie Kantor, and Elizabeth McMahon and *pro se* Defendant Elmore Runee Harris, who did not oppose the relief sought herein. Plaintiff's counsel attempted to confer with *pro se* Defendants, Offer Attia, Gregory Corcoran, Betsy Doolin, and Alan Johnston via email on

ENGLANDER FISCHER

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September 23, 2020 and September 24, 2020, regarding the relief sought in this motion. The Receiver has not received a response from any of the remaining *pro se* defendants. Counsel will continue to attempt contact to confer regarding this Motion and will supplement this Motion accordingly.

Executive Summary

After unsuccessfully attempting service on Defendants, Mary McClare (“**McClare**”) and Anne Hennessey (“**Hennessey**”), the Receiver learned that McClare is deceased and that Hennessey used a false name to conceal her identity. As a result, the Receiver attempted to locate the real parties in interest and discovered their whereabouts. Accordingly, the Receiver seeks leave to amend its Complaint to substitute McClare and Hennessey with the properly named party defendants: the Estate of Mary H. McClare and Danielle Montie Terranova.

Factual Background

The Receiver’s Complaint asserted two claims against Defendants McClare and Hennessey for violation of Florida’s Uniform Fraudulent Transfer Act (“**FUFTA**”) and unjust enrichment. (Doc. 1). As explained in the Complaint, McClare and Hennessey received false profits generated from a Ponzi scheme. The Receiver seeks recovery of McClare’s false profits totaling \$15,750.00 and Hennessey’s false profits totaling \$5,804.54. (Doc. 1, Exh. A at 67 and 37).

On July 17, 2020, the Receiver’s process server attempted service on McClare. During the service attempt, McClare’s daughter-in-law advised that McClare was deceased and had been since 2017. See attached **Exhibit “A.”** The Receiver located the attorney for McClare’s estate and has attempted resolution since, however, with little responsiveness or engagement. Thus, substituting the Mary H. McClare Estate as a party defendant is essential to pursue the Receiver’s \$15,750.00 claim.

On July 9, 2020, the Receiver attempted service on Defendant Hennessey at an address provided by the process server after conducting a diligent search. During that service attempt the individual served insisted she was not Hennessey. See attached **Exhibit “B.”** Undersigned contacted and spoke with this individual and confirmed that she was not Defendant Hennessey and continued to investigate her whereabouts. Through the investigation, undersigned discovered that Hennessey used a social security number associated with Danielle Montie Terranova, a relative of Raymond P. Montie, III—mastermind of the Ponzi scheme bringing rise to the Receiver’s claims and defendant in the Receiver’s related case no. 8:20-cv-00863-TPB-SPF. Accordingly, the Receiver seeks to substitute Danielle Montie Terranova as a party defendant in place of Defendant Hennessey.

Memorandum of Law

“On motion or on its own, the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. The decision to add or drop a party under Rule 21 is left to the sound discretion of the trial court. *Lampliter Dinner Theater, Inc. v. Liberty Mut. Ins. Co.*, 792 F.2d 1036 (11th Cir. 1986); See also *Archer v. Mead Corp.*, 998 F. Supp. 2d 1262, 1274-75 (N.D. Ala. 2014) (“There is plainly no reason why a substitution of parties cannot be made under Rule 21, in the discretion of the court...”). Additionally, under Fed. R. Civ. P. 15, “parties may be added or dropped when an amendment is made to a complaint as a matter of course.” *Pretty Punch Shoppettes, Inc. v. Creative Wonders, Inc.*, 750 F.Wupp. 487, 493 (M.D. Fla. 1990). “Unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1319 (11th Cir. 1999).

Here, the Court should use its discretion to substitute the Mary H. McClare Estate as the party defendant for McClare and Danielle Montie Terranova as the party defendant for Hennessey

because they are the real parties in interest in this case. After the Complaint was filed and while trying to serve the Defendants, the Receiver learned that McClare is deceased. The Receiver engaged in settlement communications with the attorney for McClare's estate but was not able to resolve her claim. Additionally, during the investigation to serve Hennessey, the Receiver discovered that Hennessey's social security number is associated with Danielle Montie Terranova and Hennessey was an alias. The claims brought against the Mary H. McClare Estate and Danielle Montie Terranova are identical to the claims originally brought against McClare and Hennessey. The requested substitution comports with the purpose of the Federal Rules of Civil Procedure and would avoid unnecessary delay and costs. See *Archer*, 998 F. Supp 2d at 1274-75 (“[S]ubstitut[ion] of parties is the wiser answer to the problem of expediting trials and avoiding the unnecessary delay and expense of requiring an action to be started anew...”).

Moreover, the motion is not being filed for any improper purpose for any of the recognized bases upon which the requested leave may be denied—bad faith, undue prejudice, or futility. *Rosen v. TRW, Inc.*, 979 F.2d 191, 194 (11th Cir. 1992). To the contrary, this motion will rectify the undue delay caused by Defendant Hennessey's use of a false identity in the underlying transactions in this case. Accordingly, the Court should grant leave to amend the Complaint to substitute the Mary H. McClare Estate and Danielle Marie Terranova as party defendants for McClare and Hennessey.

WHEREFORE, the Receiver respectfully requests that this Court grant the requested leave to amend the Complaint to substitute the party defendants as indicated herein.

Respectfully submitted,

ENGLANDER FISCHER

/s/Alicia Gangi

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Attorneys for Plaintiff

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 a copy by

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PRO SE
Via Email: carduini@frontiernet.net

Shelley Arduini
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Via Email: obaymichael@yahoo.com

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c/o Kevin Kerrigan
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PRO SE

Via Email: irishkevin55@gmail.com

Life's Elements, Inc. c/o Kevin Johnson
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PRO SE

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PRO SE

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PRO SE

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813/227-8500 Fax: 813/229-0134
Attorney for Elizabeth McMahon
Email: keith.fendrick@hklaw.com

Dated: September 24, 2020.

/s/Alicia Gangi

Attorney for Plaintiff

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

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

Plaintiff(s)

v.

CHRIS AND SHELLEY ARDUINI, et al.,

Defendant(s)

Civil Action No. 8:20-cv-00862-VMC-TGW

DATE: 7/10/20

TIME: 6:35 PM

INT: MLF

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Mary McClare
100 Eaglesfield Way
Fairport, NY 14450

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Beatriz McConnell
Englander Fischer
721 First Avenue North
St. Petersburg, FL 33701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 06/11/2020

CLERK OF COURT



Exhibit "A"

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 8:20-cv-00862-VMC-TGW

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) MARY McCLARE
 was received by me on (date) 7/16/20.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
 designated by law to accept service of process on behalf of (name of organization) _____
 on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☒ Other (specify): PER DAUGHTER-IN-LAW STACY McCLARE, THE DEFENDANT DIED
ON 10/25/17 (SEE OBITUARY). ATTEMPTED 7/16/20 AT 5:30PM


My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date:

7/22/20

Server's signature

MARLE L. FRANKEL

Printed name and title

LORNA M. DAVI
 NOTARY PUBLIC, STATE OF NEW YORK
 Registration No. 01DA6033422
 Qualified in Monroe County
 Commission Expires November 15 2021

P.O. Box 10022, ROCHESTER, NY 14610

Server's address

Additional information regarding attempted service, etc:

DC

Mary H. (Hickey) McClare

[Send Flowers](#)

[Share](#)

McClare, Mary H. (Hickey)

Fairport: October 25, 2016, age 81. Predeceased by husband, Andrew; sister, Frances. Survived by children, Kathryn McClare, Michael (Leslie) McClare, William (Stacy) McClare and Brian (Sue) McClare; grandchildren, Julia, Andrew, Caitlin, Timothy, Allison, Nicholas and Rileigh; step-grandchildren, Maddie and Jake; sister, Josephine Kennedy; several nieces, nephews and other beloved family and friends.

Calling hours, Tuesday 4-7 PM at Richard H. Keenan Funeral Home, 7501 Pittsford Palmyra Road (Egypt location). Funeral Mass, Wednesday 10 AM at St. John of Rochester Church (Fairport).

Richard H. Keenan
FUNERAL HOMES
(MF) 223-4944 or (MF) 223-0484



212800

UNITED STATES DISTRICT COURT
Middle District of Florida

**Burton W. Wiand as Receiver for Oasis
International Group, Ltd, et al**

Case No.: 8:20-cv-00862-VMC-TGW

Plaintiff(s),

vs.

AFFIDAVIT OF SERVICE

Chris and Shelley Arduini, et al

Defendant(s).

I certify that I received this process on **07/09/2020** at **10:56 AM** to be served upon:

Anne Hennessey

ss: East Hartford

I, **Sandra Yade**, depose and say that: I am authorized to serve this process in the circuit/county it was served in.

On **07/09/2020** at **6:40 PM**, I served the within **Summons in a Civil Action, Complaint, Civil Case Cover Sheet, Exhibit A, Exhibits A-D** on via **CD** on **Anne Hennessey** at **918A Heritage Village, , Southbury, CT 06488** in the manner indicated below:

INDIVIDUAL SERVICE: - F.S. 48.031 (1)(a): By delivering to the within named person a true copy of this process with the date and hour of service endorsed thereon by me, and a copy of the complaint, petition or other initial pleading or paper (if any) and informing the person of the contents.

Description of person process was left with:

Sex: **Female** - Skin: **Caucasian** - Hair: **Gray** - Age: **73** - Height: **5'** - Weight: **110**
Other:

Comments/Prev. Attempts: **The subject insisted she is not the correct Anne Hennessey. She stated she knows nothing about this matter. She has never resided at the address on the documents.**

I asked the person spoken to if they are in the military and I received a Negative response.

Under penalty of perjury I declare that I have read the foregoing Affidavit Of Service and that the facts stated in it are true.

X
Sandra Yade

TRGT Legal
P.O. Box 1066
Pinellas, FL 33781
813-492-2500 888-642-0130

Signed and sworn to before me on **07/10/2020**
by an affiant who is personally known to
me or produced identification.

Notary Public

AMY J. CHANTRY
NOTARY PUBLIC
MY COMMISSION EXPIRES 3/31/2023

Exhibit "B"

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

DATE: 7-9-2020
TIME: 6:54 PM
SERVER INTLS: [Signature]

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

Plaintiff(s)

v.

CHRIS AND SHELLEY ARDUINI, et al.

Defendant(s)

Civil Action No. 8:20-cv-00862-VMC-TGW

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Anne Hennessey
14 Fieldstone Road
Putnam Valley, NY 10579

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Beatriz McConnell
Englander Fischer
721 First Avenue North
St. Petersburg, FL 33701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 06/10/2020

CLERK OF



Barbara Solin
Deputy Clerk