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,	)	Case No. 8:20-cv-00862
Plaintiff,	)	
v.	)	
KAYLA CROWLEY	)	
Defendant.	)	

BY SPECIAL APPEARANCE

MOTION TO DISMISS

COMES NOW by Special Appearance, Kayla Crowley, as Defendant pro per in the instant case respectfully moves this honorable Court to grant this Motion to Dismiss for one or more of the following reasons (1) Insufficient Process; (2) Lack of Personal Jurisdiction; (3) Failure to Join an Indispensable Party, and; (4) Failure to State a Claim Upon Which Relief May Be Granted.

BACKGROUND FACTS

1. Kayla Crowley is before this Court by special appearance in propria persona.
2. On April 15, 2019, a complaint was filed beginning Case No. 8:19-cv-00886, against the following among others: Joseph S. Anile, II, LLC, Michael J. Dacorta, Francisco "Frank" L. Duran, John J. Haas, Raymond P. Montie, III, Oasis International Group, Limited (OIG), and Oasis Management (OM), filed by Commodity Futures Trading Commission (CFTC). (Dkt. 1)

3. On April 15, 2019, in 8:19-cv-0086, an Order granting appointment of a temporary receiver was filed (Dkt. 7). Plaintiff recognized in his Motion to Approve Filing of Clawback Litigation, filed on April 24, 2020, that "Courts have held that period begins to run no earlier than a receiver's appointment and expires one-year later – here, April 15, 2020". (Dkt 258). Plaintiff therein identified the toll under operative Florida Statutes § 726.110(1) to date from April 15, 2019.
4. On April 30, 2019, in Case No. 8:19-cv-00886, the Court issued an Order Appointing Receiver and Staying Litigation (Dkt. 44). This Order provided Receiver with every authority required to pursue recoveries under the instant case.
5. Plaintiff's permanent appointment as Receiver on April 30, 2019 began the clock regarding Title 28 §§754 and 1692. See *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133 (9th Cir. 1996); (Dkt. 44).
6. On May 13, 2019, the Receiver directed "M. Mariani and A. Wilson regarding preparation of filings pursuant to 28 U.S.C. 754" (Dkt. 114- 6) and billed the Receiver Estate for 0.5 hours of billable time at $320 per hour.
7. On June 14, 2019, the Receiver's First Interim Report was filed in which the Receiver verified his intent to pursue "clawback" litigation and indicated the preliminary identification of "at least 47 investors" from whom he intended to recover "false profits". (Dkt. 113, pp. 29, 34).
8. On June 26, 2019, on Motion, United States' Application to Intervene for a Temporary Stay of All Proceedings was filed, with "no objection..to the Receiver continuing to gather assets..., as set forth in Doc. 7 and Doc. 44". (Dkt. 149).
9. On July 11, 2019, a Consolidated Receivership Order was filed. (Dkt. 177)
10. On April 14, 2020, by authority of the Court, Plaintiff filed a Complaint against

Defendants CHRIS AND SHELLEY ARDUINI, et. al., starting Case 8:20-cv-00862. (Doc.1).

11. On April 28, 2020, the Court issued an Order directing Plaintiff to "effect service of process as required by Rule 4, Fed. R. Civ. P."

12. On August 24, 2020, United States Magistrate Judge Thomas G. Wilson entered an order denying Receiver's motion for Default Judgment against 26 defendants (Dkt. 383).

13. On August 24, 2020, Defendant Alan Johnston filed Supplemental Evidence (Dkt. 388), the absence of which may have resulted in misunderstandings during the August 17, 2020 Status Conference concerning Mr. Winter's relationship with Defendants in this case.

14. On September 12, 2020 Defendant was served a summons issued by Plaintiff.

1) INSUFFICIENT PROCESS

Pursuant to Fed. Rules of Civ. Proc. (FRCP) Rule 12(b)(4)

Argument

15. Pursuant to FRCP Rule 12(b)(4) Receiver had power to issue summons by authority of 28 U.S.C. §§ 754 and 17692, and Fed. R. Civ.P. 66 effective 04/30/19, per Order Appointing Receiver (Dkt. 44, Case 8:19-cv-00886). *infra*, ¶65.

16. The Federal Circuit Courts of Appeal have recognized two forms of appointment respecting receivers, those being (1) upon permanent appointment following

temporary appointment, or; (2) upon remand from Appeal. *infra*, ¶67.

17. On April 30, 2019, consistent with the Circuit Court's ruling per *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133 (9th Cir. 1996), the Court permanently appointed Receiver following his temporary appointment and in doing so a new ten-day period ran for purposes of §754 from the date of that appointment. (Dkts 44 and 7, respectively) *infra*, ¶67(b).

18. Under the "General Powers and Duties of Receiver" filed April 30, 2019, the Receiver was granted "all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754 and 17692, and Fed. R. Civ.P. 66." (Dkt 44, ¶5). *infra*, ¶¶54-57.

19. Receiver reports exercising his authority respecting 28 U.S.C. §754 not later than May 13, 2019 and again by June 14, 2019. *supra*, ¶¶6-7.

20. The Consolidated Receivership Order (Dkt. 177) confirmed the Order Appointing Receiver (Dkt 44) without making any substantial additions to Receiver's authority already granted and fully chargeable to his duties respecting Defendant. There were no new powers augmenting Receiver's authority respecting Defendant and no new defendants were added. (compare Dkt 44 to Dkt. 177, ¶5).

21. Without delegated authority the court may not 'reappoint' a receiver or extend a statutorily defined divesture deadline. There is no delegation of such authority by law or by rule. *See* Exhibits A &B.

22. The Consolidated Receivership Order (Dkt. 177, Case 8:19-cv-00886) did not lawfully 're-appoint' Plaintiff as Receiver in such manner as to grant modification or reset of the statutory tolling requirement of 28 U.S.C. §754.

23. The Consolidated Receivership Order (Dkt. 177, Case 8:19-cv-00886) did not reset

the toll for application of the time restrictions relative to Plaintiff's authority to summons under 28 U.S.C. §754.

24. Plaintiff issued Summons to Defendant in Case No. 8:20-cv-00862 on a date after which 28 U.S.C. §754 had divested Plaintiff of authority to do so.

25. The Receiver was barred from issuing a summons to Defendant at the time the summons was issued pursuant to the requirements of 28 U.S.C. §754 as argued in Defendant's Motion to Quash.

26. 28 U.S.C. §754 did not extend the divesture deadline via the Consolidated Receivership Order. There is no statute or rule granting authority for the **re**appointment of a receiver. *infra*, ¶¶ 48, 62-63, Exhibits A & B.

27. Summons issued to Defendant constituted insufficient process. *infra*, ¶¶ 48.

2) LACK OF PERSONAL JURISDICTION

Pursuant to FRCP Rule 12(b)(2).

Argument

28. This court's exercise of its inherent power cannot conflict with any express limitation on its power as contained in a statute or rule. *infra*, ¶¶69-70.

29. Plaintiff has not conferred jurisdiction by the presumption of consent or conduct. *infra*, ¶69.

30. Sufficient process is required to obtain personal jurisdiction over Defendant. ¶¶72-74

31. Absent sufficient process, the Court is without personal jurisdiction over Defendant. *infra*, ¶74

32. Pursuant to paragraphs 24-36, above and paragraphs 58-72, inclusive, below,

Summons issued to Defendant constituted insufficient process.

33. Thus, Defendant argues that the Court lacks personal jurisdiction over Defendant.

3) FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Pursuant to FRCP Rule 12(b)(6)

34. Pursuant to FRCP Rule 12(b)(6) the determination whether there is federal question jurisdiction is made on the basis of the plaintiff 's pleadings and not upon the response or the facts as they may develop. *infra*, ¶76.

35. To bring a case within the statute, . . . A genuine and present controversy, not merely a conjectured one, must exist with reference thereto. *infra*, ¶77.

36. Plaintiff must state the elements of his claim with citations to legal authority and show how the well-pleaded allegations of the **complaint** establish each of those elements. (Dkt. 383) *infra*, ¶78. (*See* Florida's Uniform Fraudulent Transfer Act or its alternative the Unjust Enrichment Count) [emphasis added].

37. Further, Plaintiff must set forth the factual basis for the requested damages from each defendant. It is not sufficient to provide conclusory evidence from which the calculations and factual underpinnings cannot be discerned. (Dkt 383) *infra*, ¶78.

38. Plaintiff's Complaint fails to identify which parts of §726 specifically pertain to Defendant. *infra*, ¶75.

39. As no Ponzi scheme has been proven to exist and as so-called 'false profits', which are the object of Plaintiff's clawback claims, arise solely by virtue of such schemes, there is no material evidence on record to substantiate claims against Defendant.

40. Plaintiff failed to state a claim upon which relief may be granted.

(4) FAILURE TO JOIN A PARTY UNDER RULE 19
Pursuant to FRCP Rule 12(b)(7).

(5) Certain parties not named in the complaint are considered indispensable and must be joined *infra*, ¶79.

(6) Plaintiff seeks to recover money from Defendant allegedly transferred by "Insiders" not joined in the instant case. *infra*, ¶80, 82.

(7) The instant case under which cause of action is brought defines Michael J. DaCorta, Joseph S. Anile, II; Raymond P. Montie, III; Francisco "Frank" L. Duran, and John J. Haas as "insiders". (*See* Florida Title XLI: ¶726.) *infra*, ¶¶81-82.

(8) A party is "materially interested" or "indispensable" when it is "impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Fla. Dep't of Revenue v. Cummings*, 930 So.2d 604, 607 (Fla.2006). *infra*, ¶84.

(9) Judgment against Defendant may prejudice the interests, good name, reputation or other property of insiders not joined in this case in violation of FRCP 19.

(10) Absent joinder of certain indispensable parties, judgment against Defendant may result in exposure to risk of a double or inconsistent liability that may arise from other parties.

(11) The insiders named above, among others, are indispensable parties whom Plaintiff has failed to join.

MEMORANDUM OF LAW

INSUFFICIENT PROCESS
PURSUANT TO FRCP RULE 12(B)(4)

(12) Service of Process is defined as any means used by court to acquire or exercise its jurisdiction over a person or over specific property (Henry Campbell Black, M.A., Black's Law Dictionary 6th ed. 1990) at 1205. *Austin Liquor Mart, Inc. v. Department of Revenue*, 18 Ill. App.3d 894, 310 N.E.2nd 719, 728. "The means whereby a court compels appearance of defendant before it or a compliance with its demands." See *Dansby v. Dansby*, 222 Ga. 18, 149 S.E.2nd 252, 254. That which is legally insufficient is variously defined as "inadequate to some need, purpose, or use; incompetent; unfit." *Black's Law Dictionary* (Henry Campbell Black, M.A., 4th ed. 1951) 942

> Among the incidental powers of courts is that of making all necessary rules governing their process and practice and for the orderly conduct of their business. *(Washington-Southern Nav. Co. v. Baltimore & P.S.B.C. Co.*, 263 U.S. 629 (1924)) However, this power too is derived from the statutes and cannot go beyond them. The landmark case is *Wayman v. Southard*, 23 U.S. 10 Wheat. 1 1 (1825), which sustained the validity of the Process Acts of 1789 and 1792 as a valid exercise of authority under the necessary and proper clause.

Constitution of the United States Annotated-2017.pdf, (hereafter "COTUS-A") 718.

And

> The notion has frequently been entertained, that the federal courts derive their judicial power immediately from the constitution: but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise: and if Congress has not given the power to us, or to any other Court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would, perhaps, be inexpedient, to

> enlarge the jurisdiction of the federal courts, to every subject, in every form, which the constitution might warrant.

COTUS-A, 4 U.S. at 10, 877.

> "[T]he judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances applicable exclusively to this court), dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good."

COTUS-A, 44 U.S. at 244–45, 877.

> [W]hile Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation.

COTUS-A, 169 F.2d at 257, 886.

(13) 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).

(14) 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.

(15) Neither FRCP 4(k)(1)(A) nor (B) apply to Defendant and thus did not provide Plaintiff any authority to summons him.

(16) FRCP 4(k)(1)(C) provided Plaintiff conditional authority to summons Defendant "when authorized by a federal statute."

(17) 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).

(18) Within the statutory limitations of his office as provided under 28 U.S.C. §§754 and 1692, Plaintiff was granted "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, by the governing charters, bylaws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754 and 1692, and Fed. R. Civ. P. 66." (Dkt. 44, ¶5).

(19) Paragraph 8.B. of the Receiver's Appointment gave Plaintiff "the general powers and duties: To ... sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto." (Dkt. 44).

(20) The Receiver's Appointment further authorized Plaintiff, within statutory limits, "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;" (¶ 8.I.) [and] "

> To request the assistance of the U.S. Marshals Service, in any judicial district, to assist the Receiver in carrying out his duties to take possession, custody, and control of, or identify the location of, any Receivership Assets, Documents or other materials belonging to the Receivership Defendants. In addition, the Receiver is authorized to request similar assistance from any other federal, state, county, or civil law enforcement officer(s) or constable(s) of any jurisdiction."

(Dkt. 44, ¶8.I., 8.K.).

The Appointment of April 30, 2019 stated,

> [T]he Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or Plaintiffs.

(Dkt. 44, ¶25).

(21) To finally accomplish the comprehensive range of his authority under law, the Appointment stated,

> [T]he Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

(Dkt. 44, ¶42).

(22) Plaintiff 's authority to issue summons derives from strict adherence to the statutory authorities and limitations that 28 USC §§ 754 and 1692 provide. *See* FRCP 4(k)(1)(C).

(23) 28 U.S.C. §754 states:

> 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]

(24) 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].

(25) 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.

(26) 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).

> Among the incidental powers of courts is that of making all necessary rules governing their process and practice and for the orderly conduct of their business. *Washington-Southern Nav. Co. v. Baltimore & P.S.B.C. Co.*, 263 U.S. 629 (1924) However, this power too is derived from the statutes and cannot go beyond them.

COTUS-A, 718.

Also,

> Conceding, in 1934, the limited competence of legislative bodies to establish a comprehensive system of court procedure, and acknowledging the inherent power of courts to regulate the conduct of their business, Congress authorized the Supreme Court to prescribe rules for the lower federal courts not inconsistent with the Constitution and statutes. In the Act of June 19, 1934, 48 Stat. 1064, and contained in 28 U.S.C. § 2072, Congress, in authorizing promulgation of rules of civil

> procedure, reserved the power to examine and override or amend rules proposed pursuant to the act which it found to be contrary to its legislative policy. See *Sibbach v. Wilson*, 312 U.S. 1, 14–16 (1941). Their operation being restricted, in conformity with the proviso attached to the congressional authorization, to matters of pleading and practice, the Federal Rules of Civil Procedure thus judicially promulgated neither affect the substantive rights of litigants nor alter the jurisdiction (Cf. *United States v. Sherwood*, 312 U.S. 584, 589–590 (1941)) of federal courts and the venue of actions therein and, thus circumscribed, have been upheld as valid."

COTUS-A, 719.

(27) Nowhere in 28 U.S.C. does there appear authority for the **re**appointment of a receiver. The word "reappoint" and all of its derivatives (e.g. reappointment, re-appoint, reappointed, etc") collectively appear 29 times within Title 28 of the United States Code and without exception refer only to the reappointment of judges. There is no authority for the reappointment of a receiver. *See* Exhibit A.

(28) Nowhere within the Federal Rules of Civil Procedure nor in the Local Rules for United States District Court: Middle District of Florida is authority provided for the reappointment of a receiver. *See* Exhibits A & B.

(29) Plaintiff's citations in support of a receiver's authority under 28 U.S.C. §754 are uncontested insofar as the receiver exercises that authority within the limits of the statute. Plaintiff's reliance upon an "extension of [a] pertinent deadline" (Dkt. 326) to expand the statutory limitation that would divest him of that authority is not supported by statute or rule and argues for a dangerous, expedient ad hoc avoidance of restraints established by law.

(30) Plaintiff cited district court cases in support of the ad hoc reappointment of a receiver. The cases cited are inapplicable or reversible error had they been challenged on appeal.

Not Applicable:
Sallah v Nat'l Strategic Corp., LLC 2017 S.D. Fla (defendants argued that receiver's attorneys lacked standing to file in their respective courts, not against any violation of 28 U.S.C. §754).

Non-persuasive:
Wiand v. Buhl, No. 8:10-CV-75-T-17MAP, 2011 WL 6048829, at *5 (M.D. Fla. Nov. 3, 2011), report and recommendation adopted, No. 8:10-CIV-75-T-17-MAP, 2011 WL 6048741 (M.D. Fla. Dec. 6, 2011). The report and recommendation was adopted to the extent it recommended the denial of Defendant's motion to strike and/or dismiss the amended complaint; allowed the amended complaint as filed and made operative, and that other motions, specifically Dkt 29, which presented the argument respecting lack of personal jurisdiction via 28 U.S.C. §§754 and 1692, be dismissed as moot. The District Court did not rule on the merit of arguments presented by the Receiver respecting extension of time limitations established by 28 U.S.C. §754 as referenced in the Magistrate's report (Dkt 67, 11, case 8:10-cv-00075-EAK-MAP).

Non-persuasive:
Terry v. June, 2003 WL 21738299, at *3 (W.D. Va. July 21, 2003) The District Court specifically stated that ("Courts having addressed this issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by section 754." [emphasis added]

Non-persuasive:
S.E.C. v. Nadel, Case No. 8:09-cv-0087-T-33CPT (M.D. Fla.) arg. A recursive citation by which Plaintiff seems to suggest that having been conveniently 'reappointed' multiple times previously the statutory limits were thereby once and for all time removed and therefore repeated ad hoc applications for opportune 'reappointments' are permissible by bequest of the court. By this standard, there would be no reason for Congress to have established a time limit in §754 at all since any receiver could readily avoid it by application to his court for expedient remedy to the limitation.

(31) The only decisions of record respecting the extension of the 10-day limitation in 28 U.S.C. §754 ruled by Circuit Courts of Appeal required either (a) a remand to the District Court for reconsideration of the receiver's appointment or (b) the

district court's entry of permanent appointment order following a temporary appointment order:

(a) *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 388 (D.C. Cir. 1996) ("On remand, the court may reappoint the receiver and start the ten-day clock ticking once again."

(b) *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133 (9th Cir. 1996) (holding that the district court's entry of a permanent appointment order following a temporary appointment order set a new ten-day period running for purposes of section 754).

(32) On April 30, 2019, Dkt. 44 (case 8:19-cv-00886) set the permanent appointment of Plaintiff in the instant case following his temporary appointment on April 15, 2019 (Dkt. 7). Plaintiff identifies his "initial" appointment on April 15, 2019, but did not cite his permanent appointment on April 30, 2019 (Dkt. 326, 9).

LACK OF PERSONAL JURISDICTION

PURSUANT TO FRCP RULE 12(B)(2)

(33) In *Mayor v. Cooper*, the Supreme Court says

> [E]xcept for the original jurisdiction of the Supreme Court, which flows directly from the Constitution, two prerequisites to jurisdiction must be present: first, the Constitution must have given the courts the capacity to receive it, and, second, an act of Congress must have conferred it.*The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1868); *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845); *Sheldon v. Sill*, 49 U.S. (8 How.) 441 (1850); *United States v. Hudson & Goodwin*, 11 U.S. (7 Cr.) 32, 33 (1812); *Kline v. Burke Constr. Co.*, 260 U.S. 226 (1922). The fact that federal courts are of limited jurisdiction means that litigants in them must affirmatively establish that jurisdiction exists and may not confer nonexistent jurisdiction by consent or conduct.

COTUS-A, 688.

And

> All federal courts, other than the Supreme Court, it was asserted, derive their jurisdiction solely from the exercise of the authority to ordain and establish inferior courts conferred on Congress by Article III, § 1, of the Constitution. This power, which Congress is left free to exercise or not, was held to include the power "of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.

U.S. at 187 (quoting *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845). COTUS-A, 717, 718.

> While the Court has not "precisely delineated the outer boundaries" of a federal court's inherent powers to manage its own internal affairs, the Court has recognized two limits on the exercise of such authority. See *Dietz v. Bouldin*, 579 U.S. ____, No. 15-458, slip op. at 4 (2016) First, a court, in exercising its inherent powers over its own processes, must act reasonably in response to a specific problem or issue "confronting the court's fair administration of justice." Second, any exercise of an inherent power cannot conflict with any express grant of or limitation on the district court's power as contained in a statute or rule, such as the Federal Rules of Civil Procedure. *Id.* at 4–5.

COTUSA, 720.

(34) 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).

(35) Insufficient 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)).

(36) Barring Defendant's voluntary appearance, without sufficient 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)).

(37) Defendant has not made a voluntary appearance before this Court.

(38) 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)).

> The courts of the United States also possess inherent power to amend their records, correct the errors of the clerk or other court officers, and to rectify defects or omissions in their records even after the lapse of a term,

> subject, however, to the qualification that the power to amend records conveys no power to create a record or re-create one of which no evidence exists. *Gagnon v. United States*, 193 U.S. 451, 458 (1904).
>
> COTUS-A, 721

FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FRCP RULE 12(B)(6)

(39) Claims against Defendant are generally asserted, Under Florida Law Title XLI §726.110. §726 provides three different subsections identifying separate time limits upon which extinguishment of the cause of action may be affected. The Claims fail to identify which parts of §726 specifically pertain to Defendant.

(40) Determination whether there is federal question jurisdiction is made on the basis of the plaintiff 's pleadings and not upon the response or the facts as they may develop. (See generally *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983)). Plaintiffs seeking access to federal courts on this ground must set out a federal claim which is "well-pleaded" and the claim must be real and substantial and may not be without color of merit. (*Newburyport Water Co. v. City of Newburyport*, 193 U.S. 561, 576 (1904); *Levering & Garrigues Co. v. Morrin*, 289 U.S. 103, 105 (1933); *Binderup v. Pathe Exchange*, 263 U.S. 291, 305–308 (1923). If the complaint states a case arising under the Constitution or federal law, then federal jurisdiction exists even though on the merits the party may have no federal right. In such a case, the proper course for the court is to dismiss for failure to state a claim on which relief can be granted rather than for want of jurisdiction. *Bell v. Hood*, 327 U.S. 678 (1946). Of course, dismissal for lack of jurisdiction is proper if the federal claim is frivolous or obviously insubstantial. *Levering*

& Garrigues Co. v. Morrin, 289 U.S. 103, 105 (1933)). Plaintiffs may not anticipate that defendants will raise a federal question in answer to the action. (*Louisville & N.R.R. v. Mottley*, 211 U.S. 149 (1908). See *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950); *Phillips Petroleum Co. v. Texaco, Inc.*, 415 U.S. 125 (1974)). COTUS-A, 805

(41) To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. . . . The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. . . . A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto. . . (299 U.S. at 112–13. Compare *Wheeldin v. Wheeler*, 373 U.S. 647 (1963), with *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). See also *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921)). COTUS-A, 806

(42) In *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir.1975) the court stated, "It is axiomatic that the plaintiff is not entitled to entry of a default judgment merely because a default has been entered against a defendant." Thus, "[t]he defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law." *Id.* Therefore, the plaintiff must state the elements of his claim (under Florida's Uniform Fraudulent Transfer Act or its alternative unjust enrichment) with citations to legal authority and show how the well-pleaded allegations of the complaint establish each of those elements. See Local Rule 3.01(a)· (requiring that all motions or other applications for an order shall include a memorandum of authority in support of the request). Furthermore, the plaintiff must set forth the factual basis for the requested damages from each defendant. Conclusory evidence from which the calculations and factual

underpinnings cannot be discerned are insufficient (see, e.g. Doc. 313, ¶7)." *Thomas G. Wilson, United States Magistrate Judge* (Dkt. 383).

FAILURE TO JOIN A PARTY UNDER RULE 19
PURSUANT TO FRCP RULE 12(B)(7)

(43) According to FRCP Rule 19, a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction must be joined if, in that person's absence, the court cannot provide **complete** relief among the parties named; or if the absent person's interest relating to the action is such that judgement rendered in that absence would impair the absent party's ability to protect their interest or otherwise leave existing parties subject to the risk of incurring additional obligations for lack of absent party's ability to defend.

(44) In Plaintiff's Complaint the term "Insider" is used twice (Dkt 1) to describe Joe Anile and Mike DaCorta (¶ 125.C). "Anile and DaCorta ("Insiders"). At paragraph seven, the Complaint says, "The Receiver brings this action to recover money transferred to each Defendant by the Insiders through or on behalf of the Oasis Entities (or their fund administrator) in an amount that exceeds the amount invested by each Defendant in the Oasis Entities." (Dkt. 1, ¶7).

(45)Title XLI, §726.120 726.101-726-112 provides definitions if the debtor is a corporation as any of the following:

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
6. A relative of a general partner, director, officer, or person in control of the debtor.

(46) Defendants in Ancillary Case 8:19-cv-00886, Michael J. DaCorta, Joseph S. Anile, II; Raymond P. Montie, III; Francisco "Frank" L. Duran, and John J. Haas are 'insiders' relative to the adjudication of the instant case as defined in the section cited above.

(47)A party is "materially interested" or "indispensable" when it is "impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Fla. Dep't of Revenue v. Cummings,* 930 So.2d 604, 607 (Fla.2006) (citing *Hertz Corp. v. Piccolo,* 453 So.2d 12, 14 n. 3 (Fla.1984) (describing indispensable parties as ones so essential to a suit that no final decision can be rendered without their joinder); In *Bastida v. Batchelor,* 418 So.2d 297, 299 (Fla. 3d DCA 1982) it states than "[a]n indispensable party [is] one without whom the rights of others cannot be determined."(*Two Islands Dev. Corp. v. Clarke,* 157 So. 3d 1081 (Fla. Dist. Ct. App. 2015).

(48) Florida case law has defined "indispensable parties" to a lawsuit as

> [p]ersons who have not only an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

Phillips v. Choate, 456 So.2d 556, 557 (Fla. 4th DCA 1984) (quoting *Shields v. Barrow,* 58 U.S. (17 How.) 130, 15 L.Ed. 158, 160 (1854)).

(49) Defendant Michael J. DaCorta has been criminally indicted based upon his status as an "insider" as defined in both Plaintiff's Complaint (Dkt 1) and Title XLI § 726.120 of Florida law. Since a judgment against Defendant may arguably produce prima facie evidence of a crime, which could potentially prejudice Mr. DaCorta's

defense, the protection of Mr. DaCorta's interest fundamentally requires his joinder in this case, per Rule 19(a)(10(A), 19(a)(1)(B)(i). Since Defendant may upon judgment face substantial risk of incurring additional obligations resulting from the absence of Mr. DaCorta's joinder, his joinder is required per 9(a)(1)(B)(ii).

(50) Plaintiff has brought suit against Defendant Raymond P. Montie III under Florida Statutes § 726: Uniform Fraudulent Transfer Act (case 8:20-cv-00863). Since a judgment against Defendant may arguably produce prima facie evidence of a crime, which could potentially prejudice Mr. Montie's defense, the protection of Mr. Montie's interest fundamentally requires his joinder in this case.

(51) Francisco "Frank" L. Duran, and John J. Haas face potential criminal charges for their participation as "insiders" under Florida Statutes § 726, or otherwise under Federal law. Since a judgment against Defendant may arguably produce prima facie evidence of a crime, which could potentially prejudice any defense potentially required for Mr. Duran or Mr. Haas, the protection of their respective interests fundamentally require their joinder in this case, per Rule 19(a)(10(A) and 19(a)(1)(B)(i).

(52) Joe Paniagua operated as OM and OIG's account manager for Defendant's account and Defendant relied upon his representations as to the status of his funds therein. Plaintiff states in the Complaint that, "OIG, Oasis Management, and Satellite Holdings had no policies, procedures or financial controls, did not keep regular or accurate books and records, and did not prepare regular or accurate financial or pool performance statements." Joe Paniagua's testimony is essential to Defendant's claims. As a consequence of his insider responsibilities and employment in OM/OIG, Joe Paniagua is known to be an ex parte target of Plaintiff claims for clawback of

alleged "false profits". Joe Paniagua is an indispensable party to the suit and his joinder is required.

(53) Plaintiff claims Defendant gained "false profits" from "money the Ponzi perpetrators stole from other defrauded investors." (Dkt. 1).

(54)Pursuant to Rule 19(a)(B)(ii) alleged "Ponzi perpetrators" need to be individually identified and joined as indispensable parties because other investors may be entitled to additional claims against Defendant in the event of an adverse judgment.

(55) Simple logic dictates that in order for there to exist a "false profit" by Defendant, there must first exist proof that an underlying Ponzi scheme provided the foundation for the "fraudulent transfer" of funds from the perpetrators of the scheme into Defendant's unlawful possession.

(56)Plaintiff claims by reference to "Background" that, among other things, "No investor in the Oasis Entities receive actual profits from forex trading because there were none. All purported trading gains were fabricated and fictitious." And "[A]ll transfers to investors were funded exclusively with money stolen from other investors." "From as early as 2011 through April 2019, the Insiders and others raised millions of dollars... as part of a single, continuous Ponzi scheme." Representations in paragraph 11, Dkt. 1, are stated as facts, but these and other similar allegations upon which Claims I & II are based are not supported by material evidence known to Defendant. As the Ancillary Case 8:19-cv-00886 is stayed, thus preventing Defendant's discovery of material evidence to rebut the allegations underlying the Claims, those parties upon whose expertise Plaintiff bases the Claims are indispensable parties whose joinder is required per Rule 19(a)(1)(A) in order for the court to accord complete relief among existing parties.

CONCLUSION

Plaintiff was statutorily divested of his conditional authority to issue summons by failing to adhere to the requirements of 28 U.S.C. § 754. The statutory time limit began at the Receiver's permanent appointment on April 30, 2019 (Dkt. 44) per the precedent established per *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133 (9th Cir. 1996). Summons issued to Defendant constituted insufficient process because Plaintiff failed to adhere to the 10 day filing requirements in the respective district courts. Therefore, Defendant moves the Court to Dismiss the Complaint with prejudice per Fed. R. Civ. Pro. Rule 12(b)(4).

Absent sufficient process or, in that alternative, voluntary appearance by Defendant, the Court lacks personal jurisdiction over Defendant. The Court lacks personal jurisdiction because neither sufficient process nor voluntary appearance have been obtained. Defendant, therefore, moves the Court to Dismiss the Complaint for lack of personal jurisdiction per Rule 12(b)(2).

Plaintiff's Complaint failed to state the elements of his Claim as required under Florida's Uniform Transfer Act or its alternative, unjust enrichment, with citations to legal authority needed to provide well-pleaded allegations of the complaint establishing each element. Plaintiff's claims fail to identify which parts of §726 of the cited Florida law pertain to Defendant and no material evidence exists in the record to substantiate claims against Defendant. Therefore, Defendant moves the Court to Dismiss the Complaint for failure to state a claim upon which relief may be granted, per Rule 12(b)(6).

Plaintiff seeks to recover money from Defendant allegedly transferred by "Insiders' not joined. Judgment against Defendant may prejudice the proprietary interests of insiders not joined in violation of Rule 19. Absent joinder of certain indispensable parties, judgment against Defendant may result in exposure to risk of a double or otherwise inconsistent liability. Defendant, therefore, moves the Court to Dismiss the Complaint for Failure to join a party under Rule 19, per Rule 12(b)(7).

Date: 9/28/2020

Kayla Crowley, Defendant
1221 Goose Pond Rd
Lake Ariel, Pennsylvania. 18436
Email: benevolence7@startmail.com

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

Date: 9/28/2020

Kayla Crowley

EXHIBIT A

TITLE 28 U.S.C.

STATUTES PERTAINING TO REAPPOINTMENT

There are no statutes for reappointment of any office other than judge.

"Reappoint" – no occurrences

"Reappointing" (1 occurrence)

1. §153: re reappointing incumbent bankruptcy judges

"Reappointed" (11 occurrences)

2. §158: re reappointed bankruptcy judges
3. §178: re reappointed judges in the Court of Federal Claims (2 occurrences)
4. §373: re territorial judges not reappointed
5. §377: re retirement upon a judge's failure to be reappointed
6. §377: re bankruptcy or magistrate judge not reappointed
7. §631: re limitations upon reappointment of magistrate judge
8. §631: re exception to reappointment of over-age 70 judge
9. §631: re substitution of words related to service of judges within a Federal Agency
10. §632: re qualification of magistrates to exercise jurisdiction under 28 U.S.C. §636(c)
11. §632: re special reappointment of magistrate judge

"**Reappointment**" (17 occurrences)

12. §135: re reappointment of judges in Puerto Rico.
13. §152: re reappointment of bankruptcy judge after vacancies.
14. §153: re reappointment to fill vacancies for judge in a court of appeals (2 occurrences of word).
15. §178: re reappointment as judge of the Court of Federal Claims.
16. §373: re judge failure of reappointment (2 occurrences).
17. §375: re Puerto Rican judge failure of reappointment.
18. §376: re territorial judge failure of reappointment.
19. §377: re failure of judicial reappointment (2 occurrences).
20. §377: re willingness of judge to accept reappointment
21. §631: re appointment or reappointment of territorial judges by a concurrence of the majority of all judges.
22. §631: re reappointment of magistrate judge under a Federal agency by the concurrence of a majority of judges.
23. §632: word occurs in section re reappointment of magistrate judges (2 occurrences).
24. §636: re: reappointment of magistrate judge under § 631.