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Subject: Activity in Case 8:20-cv-00862-VMC-TGW Wiand v. Arduini et al Order on Motion to Dismiss
Date: Saturday, October 3, 2020 2:40:37 PM

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U.S. District Court

Middle District of Florida

Notice of Electronic Filing

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Case Name: Wiand v. Arduini et al

Case Number: [8:20-cv-00862-VMC-TGW](#)

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Docket Text:

ENDORSED ORDER denying [416] Motion to Dismiss. The receiver has outlined in its response (DE# 480) the reasons why this Court must deny the motion to dismiss. As explained by the receiver, the motion moves for dismissal based on previously rejected arguments of insufficiency of process and lack of personal jurisdiction and raises new claims that plaintiff failed to join an indispensable party and failed to state a cause of action. However, the defenses of lack of personal jurisdiction and insufficient process have already been rejected by this Court. As recognized by the receiver, apart from being procedurally barred, Mr. Johnston's arguments are contrary to settled law and insufficient to entitle him to relief. Finally, Mr. Johnston argues that the complaint should be dismissed because the receiver failed to join indispensable parties--Michael J. DaCorta, Joseph S. Anile, II, Raymond Montie, III, Francisco "Frank" L. Duran, and John J. Haas pursuant to Rule 19. As explained by the receiver in its response, However, "the [d]ebtor is not an indispensable party to a fraudulent transfer suit." Jensen v. Captiva Limousine Serv. (In re Rajkovic), 289 B.R. 197, 199 (Bankr. M.D. Fla. 2002). For these reasons, and for the reasons explained by the receiver in his response, the motion is denied. While the receiver has moved the Court for entry of default, in an abundance of fairness and in recognition of his pro se status, the Court provides Mr. Johnson with an opportunity to file his answer. Mr. Johnson's answer is due by October 19, 2020. Signed by Judge Virginia M. Hernandez

Covington on 10/3/2020. (Covington, Virginia)

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