

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 SECOND OMNIBUS MOTION TO TAX COSTS AGAINST
DEFAULTED DEFENDANTS**

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY (“*Receiver*”), pursuant to Fed. R. Civ. P. 54(d)(1) and Local Rule 4.18(a), moves the Court to tax costs against Defendants, Kayla Crowley (“*Crowley*”), Divergent Investments, LLC (“*Divergent*”), Alan Johnston (“*Johnston*”), Kevin Kerrigan (“*Kerrigan*”), David Lipinczyk (“*Lipinczyk*”), Frank Nagel (“*Nagel*”), and Vince Petralis (“*Petralis*”) (collectively, “*Defaulted Defendants*”), and states as follows:

1. On April 14, 2020, the Receiver filed the Complaint against the Defaulted Defendants to recover false profits paid to the Defaulted Defendants in furtherance of a Ponzi scheme. (Doc. 1).

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2. On November 30, 2020, the Court entered an Order Granting the Receiver’s Second Omnibus Motion for Default Judgment Against Defaulted Defendants (**“Order”**). (Doc. 662) The Order directed the Clerk to enter default judgments against the Defaulted Defendants as set forth therein.

3. On December 1, 2020, pursuant to the Order, the Clerk entered default judgments against the Defaulted Defendants and in favor of the Receiver. (Docs. 666, 667, 668, 669, 670, 671, and 672).

4. The Receiver incurred costs and out of pocket expenses in connection with obtaining its judgments against the Defaulted Defendants as set forth in the Affidavit of Costs attached hereto as **Exhibit “1”** and summarized on the following page:

Defaulted Defendant	Cost	Cost Type	Final Judgment Doc. No.
Crowley	\$683.70	Service of Process	Doc. 666
Divergent	\$1,256.25	Service of Process	Doc. 667
Johnston	\$163.85	Service of Process	Doc. 668
Kerrigan	\$228.85	Service of Process	Doc. 669
Lipinczyk	\$173.85	Service of Process	Doc. 670
Nagel	\$173.85	Service of Process	Doc. 671
Petralis	\$173.85	Service of Process	Doc. 672

Memorandum of Law

Rule 54(d) “creates a presumption in favor of awarding costs to the prevailing party” which the non-prevailing party must overcome. *Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639 (11th Cir.1991). 28 U.S.C.A. § 1920 provides for taxable costs in the form of clerk and marshal fees, transcript fees, printing and witness fees, copying and exemplification fees, docket fees, and court appointed expert and interpreter fees. Similarly, Fla. Stat. § 57.071 provides for the following taxable costs: reasonable premiums or expenses paid on all bonds, court reporter fees, any sales or

use tax due on legal services, and expert witness fees when such expert's written report is furnished to the opposing party. Furthermore, Fed. R. Civ. P. 4(d)(2) provides that,

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must on the defendant:

- (A) the expenses later incurred in making service; and
- (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

In this case, the Receiver is the prevailing party with regard to the Defaulted Defendants and is entitled to recover costs set forth in **Exhibit "1."** These costs relate to service of process. Prior to incurring the service of process fees, the Receiver requested that the Defaulted Defendants waive service of summons pursuant to Fed. R. Civ. P. 4(d); however, the Defaulted Defendants did not execute the waivers or provide good cause for failing to do so. Accordingly, the Receiver seeks the taxation of costs against the Defaulted Defendants as set forth herein.

WHEREFORE, the Receiver respectfully requests that the Court tax costs against the Defaulted Defendants in accordance with Exhibit "1."

Respectfully submitted,

ENGLANDER FISCHER

/s/ Beatriz McConnell

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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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Dated: December 10, 2020.

/s/ *Beatriz McConnell*
Attorney for Plaintiff

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_____ /

AFFIDAVIT AS TO COSTS

BEFORE ME, the undersigned authority, appeared BEATRIZ MCCONNELL, who upon being duly sworn, deposes and says as follows:

1. I am an attorney for the Plaintiff, Burton W. Wiand PA, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY ("**Receiver**") in the above styled action.

2. I make this affidavit in support of the Receiver's Second Omnibus Motion to Tax Costs Against Defaulted Defendants and based on information personally known to me or gathered by me or by others at my request.

3. Attached hereto as **Exhibit "A"** is a detailed transaction list ("**Report**") of the costs expended by the firm on behalf of the Receiver in connection with Defendants, Kayla Crowley ("**Crowley**"), Divergent Investments, LLC ("**Divergent**"), Alan Johnston ("**Johnston**"), Kevin

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Exhibit "1"

Kerrigan (*“Kerrigan”*), David Lipinczyk (*“Lipinczyk”*), Frank Nagel (*“Nagel”*), and Vince Petralis (*“Petralis”*) (collectively, *“Defaulted Defendants”*), in the above-styled. With respect to the Report:

- A. The Report is generated from the Firm’s computer billing system known as ActionStep.
- B. Entries are made contemporaneous with the costs incurred.
- C. The information in the report is identical to the information contained in the actual billings.
- D. The system is regularly maintained and updated, and is reliable for providing accurate reporting based on the information inputted.
- E. The Report is the type of report which is maintained in the ordinary course of, and as part of the ordinary business practice of the firm.
- F. I am familiar with, and one of the custodians of the Report and other similar type records.

4. That the Report reflects costs incurred in connection with service of process as set forth

below:

Defaulted Defendant	Cost	Cost Type
Crowley	\$683.70	Service of Process
Divergent	\$1,256.25	Service of Process
Johnston	\$163.85	Service of Process
Kerrigan	\$228.85	Service of Process
Lipinczyk	\$173.85	Service of Process
Nagel	\$173.85	Service of Process
Petralis	\$173.85	Service of Process

5. Prior to attempting service of process on the Defaulted Defendants included in the table, my office mailed notices of the lawsuit, copies of the Complaint, and waivers of service of summons to the Defaulted Defendants. The Defaulted Defendants included in the table failed to sign and return the waivers, which resulted in service of process expenses.

6. That said costs were reasonable and of necessity to the Receiver’s case.

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

Executed on this 10TH day of December, 2020.


FURTHER AFFIANT SAYETH NAUGHT.



BEATRIZ MCCONNELL

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was sworn to and subscribed before me by means of physical presence this 10TH day of December, 2020 by BEATRIZ MCCONNELL, who is personally known to me and who did take an oath.



Notary Public – signature

Serial/Commission Number:

TARA MARIE DILLON
Notary Public, State of Florida
My Comm. Expires Jan. 01, 2024
No. GG 943316



Notary Public – Print

My Commission Expires:

Date	Description	Bill amount
16-Sep-20	Service of Process Kayla Crowley Invoice 2388	\$683.70
26-Jun-20	SOP Divergent Investments LLC	\$63.85
5-Sep-20	Service of Process Divergent Investments Invoice No. 2391	\$536.85
24-Sep-20	Service of Process Divergent Investments c/o R.D. Lawrence Invoice No. 2955	\$370.55
28-Sep-20	Service of Process Divergent/Ronald Lawrence Invoice No. 5249	\$285.00
		\$1,256.25
29-Jun-20	SOP Alan Johnston	\$163.85
21-Jul-20	SOP Kevin Kerrigan	\$228.85
3-Sep-20	Service of Process David Paul Lipinczyk Invoice No. 5098	\$173.85
3-Sep-20	Service of Process Frank Nagel Invoice No. 5073	\$173.85
3-Sep-20	Service of Process Vince Petralis Sr. Invoice No. 5061	\$173.85

Exhibit "A"