

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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COMMODITY FUTURES TRADING COMMISSION
Plaintiff,

Civil Action No.:
19-CV-886-T-33SPF

v.

OASIS INTERNATIONAL GROUP, LIMIT ET AL.
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SUR REPLY TO RECEIVER’S ANSWER

I am the appellate attorney for Mr. Michael DaCorta, and I am representing him on the appeal to the 11th Circuit Court of Appeals in the case of *Commodity Futures Trading Commission v. Oasis International Group, et al.* (Civil Action No.: 19-CV-886). My client is Mr. Michael DaCorta, one of the named defendants in that litigation. I make this Sur-Reply in opposition to the motion for contempt of the receiver, Mr. Burton Wiand (the Receiver).

In his Reply, Mr. Wiand makes several arguments in support of his motion: 1) he argues that Mr. Melick is not a paralegal; 2) he argues, inferentially, that Mr. DaCorta’s appeal is somehow undermining his authority; 3) he argues that he attempted to resolve the subpoena dispute, but he never communicated that he was filing a motion for contempt; 4) he argues that Melick cannot be a paralegal because, Wiand asserts, that he asked some undisclosed persons for money, and he is somehow undermining the receiver. All of the Receiver’s arguments have no merit.

A. Greg Melick Is A Paralegal And He Does Not Have To Reside In The Same State As The Law Firm That Employs Him.

First, Mr. Wiand argues that under New Hampshire Sup. Ct. Rules, Rule 35(4)(a) Melick cannot be paralegal to Brent Winters because Winters is not admitted to the bar in New Hampshire where Melick lives. This is incorrect. Mr. Wiand misquotes the New Hampshire Rule. Rule 35 pertains only to appearances in court by paraprofessionals and requires that where a paraprofessional appears in court in New Hampshire on behalf of an attorney, the supervising attorney must be admitted to the State Bar of New Hampshire. Thus, Mr. Wiand has it backwards. Melick is not appearing in court for anyone in New Hampshire. He does legal research and writing of legal memoranda on specific issues for Mr. Winters. Neither Melick nor Winters practice law in New Hampshire.

Furthermore, Mr. Wiand argues that because Melick lives in a different State than Mr. Winters, he can not be a paralegal for Mr. Winters because it would be too difficult to supervise him from far away. This is an antiquated notion. Paralegals, especially experienced paralegals, do not have to be in the same room as the attorney supervising their work. In fact, it has become more commonplace to hire paralegals outside a law firm. Paralegals from different States or even different countries typically advertise their services to law firms in large metropolitan areas as a cost saving feature. Their work can be satisfactorily supervised utilizing email and cloud based services for the retention of documents.

B. Mr. Wiand Argues That The Subpoenaed Material Concerning The Appeal Falls Within The Scope Of His Authority Under This Court's Consolidated Receivership Order.

Mr. Wiand seems to inferentially argue that Mr. DaCorta exercising his right to file an appeal somehow undermines his authority as a receiver. Mr. DaCorta has a statutory right to file and argue an appeal. The scope of the receiver's authority does not permit him to interfere with Mr. DaCorta's statutory right to argue his case on appeal or to seek legal representation. Mr. Wiand has consistently sought to thwart Mr. DaCorta's pursuit of legal representation in both the trial court and now in the appellate courts. It is unfair to interfere with an appellant's right to seek legal representation and make legal arguments to which he is statutorily entitled.

I have itemized all the documents that he seeks in my previous answer and they are all communications regarding the legal arguments, legal research, and legal strategy concerning my representation of Mr. DaCorta on appeal. They are privileged and expressly excluded from production in Mr. Wiand's subpoena.

C. Mr. Wiand Did Not Make A Good Faith Attempt To Resolve This Matter.

Mr. Wiand claims that he made a good faith attempt to resolve this matter and then, in his Reply, he is mistaken about the dates about my admission to this Court and leaves out the important facts.

Mr. Wiand was aware that I intended to bring a motion to modify the subpoena. I communicated this by phone when I spoke with him and I communicated

this in writing. While I was granted admission to this Court in July, I did not receive communication of this until August. I did call the Court clerk in August asking about my motion for admission. I was informed by phone that my admission request had been granted and that I would receive the communication by regular mail. After which I would have to obtain ECF login credentials and then I could file my motion. I received the documents granted my admission the first week in August and applied for ECF login credentials. I had started work on my motion, and my research revealed that the proper place to file the motion was in the District of compliance, i.e. the Southern District of New York.

While I was preparing the motion, Mr. Wiand, who was aware that I intended to file the motion, filed his motion for contempt. I did not receive any phone call or communication before he filed the motion late Friday afternoon after 5pm. I never received a phone call from Mr. Wiand or an email stating that he was going to file this motion that week. As per this Court's rules, an email is not sufficient to show good faith in attempting to resolve the matter.

D. The Receiver Asserts That Melick Is Not A Paralegal Because He Sent Three Emails Approximately Three Years Ago.

Mr. Wiand asserts that the affidavit of Mr. Melick averring that he is a paralegal to Mr. Winters cannot be true because Mr. Melick sent out a few emails about three years ago. The emails purport to raise funds from unidentified parties and speak in an unflattering manner of Mr. Wiand. Mr. Wiand makes no legitimate

connection between being a paralegal and sending out emails to these unidentified parties. There is no plausible or logical explanation in Mr. Wiand's papers as to why Mr. Melick cannot be a paralegal and simultaneously send out emails to raise funds. Whoever the parties are that Mr. Melick is communicating with, he is not soliciting funds that are part of the litigation in this case, i.e. they are not funds that were solicited by Oasis or by Mr. DaCorta in this litigation.

Additionally, it should be noted that my communications with Mr. Melick did not ever touch upon raising of funds. Our communications as outlined in my previous papers dealt exclusively with legal argument, legal research, and legal strategy for Mr. DaCorta's appellate brief to the Eleventh Circuit.

Mr. Wiand is not entitled to privileged communications that occurred between two law firms that have a client in common. Privileged communications are expressly excluded from production in the subpoena. His motion must, therefore, be denied.

Dated: September 24, 2024
New York, New York

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