UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. **Case No. 8:20-cv-325-MSS-MRM**

BRIAN DAVISON, et al.,

Defendants.
_____/

DEFENDANT BRIAN DAVISON'S REPLY IN SUPPORT OF HIS MOTION TO QUASH SUBPOENAS

Brian Davison files this reply to the Receiver's response to Mr. Davison's motion to quash the Receiver's subpoena and alternative motion for protective order. (Doc. 669). Mr. Davison will address various factual and legal inaccuracies included in the Receiver's response.

The Receiver argues that the Federal Rules of Civil Procedure do not apply to him because he is not a party to this litigation but the Court's agent. *See* (Doc. 669 at 6) ("Federal Rules of Civil Procedure governing party and nonparty discovery are inapposite to the question before the Court."). Mr. Davison agrees that the Receiver is the Court's appointed officer. *See SEC v. N. Am. Clearing, Inc.*, No. 6:08-cv-829-Orl-35KRS, 2015 WL 13389926, at *4 (M.D. Fla. Jan. 12, 2015) (Scriven, J.). The Receiver incorrectly concludes from that principle that the Rules of Civil Procedure do not apply to him.

The Federal Rules of Civil Procedure apply in all civil actions and proceedings and, at times, mandate certain judicial actions. *See, e.g.*, Fed. R. Civ. P. 1 ("These rules govern the procedure in *all civil actions and proceedings* in the United States district courts.") (emphasis added); Fed. R. Civ. P. 16(b)(1) ("[T]he district judge—or a magistrate judge when authorized by local rule—*must* issue a scheduling order."); Fed. R. Civ. P. 16(b)(2) ("The judge *must* issue the scheduling order as soon as practicable."); Fed. R. Civ. P. 55(a) (stating the instances in which "the clerk *must* enter the party's default."); Fed. R. Civ. P. 58 ("Every judgment and amended judgment *must* be set out in a separate document.") (emphasis added).

The Federal Rules of Civil Procedure apply to the Court and to Court-appointed officers. No case cited by the Receiver holds otherwise. *See* (Doc. 669 at 6) (collecting cases). As a result, the Court should reject the Receiver's argument that his subpoenas need not comply with the Federal Rules of Civil Procedure.[1]

Next, the Receiver argues that Mr. Davison puts forth a "narrow interpretation" of Rule 69. (Doc. 669 at 10–12). Mr. Davison's argument about Rules 69 and 70 is based on the plain text of each Rule and on one court's recognition of the difference between the two Rules. (Doc. 637 at 6–7) (citation omitted). Although the Receiver

[1] The Receiver also relies on this argument (that the Rules do not apply to him) to counter Mr. Davison's argument about Rule 34's applicability. (Doc. 669 at 12). The Receiver cites no additional caselaw when asserting this response. *Id.* As a result, the Court should reject the Receiver's response to Mr. Davison's argument about Rule 34. *See Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016) (Kanne, J.) ("[A]rguments that are unsupported by pertinent authority are waived.") (cleaned up); *see also United States v. Vargas*, No. 20-14442, 2022 WL 766848, at *1 (11th Cir. Mar. 14, 2022) (deeming abandoned appellant's argument, which lacked "supporting legal authority[] or any meaningful discussion of the issue").

accurately cites one non-Eleventh Circuit decision—which is not binding on this Court—that states that Rules 65 and 69 allow for "reasonable discovery to enforce an injunction against the parties bound by that injunction," the text of Rules 65 and 69 apply to separate remedies: one is for an injunction and restraining order; the other is for a money judgment for which discovery is allowed. *Compare Campaign for S. Equality v. Bryant*, 197 F. Supp. 3d 905, 914 (S.D. Miss. 2016) *with* Fed. R. Civ. P. 65 & 69; *see also* (Doc. 669 at 9) (citing *Bryant*). The Fifth Circuit case *Bryant* relied on for that statement did not involve Federal Rule of Civil Procedure 65 because monetary sanctions were at issue (i.e., a money judgment under Rule 69). *See Cooper v. Dallas Police Ass'n*, 584 F. App'x 208 (5th Cir. 2014). The Court should reject the Receiver's attempt to insert into the Rules discovery mechanisms that do not exist.

The Receiver also argues that Rule 70 allows for discovery when a court holds a party in contempt. (Doc. 669 at 10–11) (citations omitted). But the Receiver puts the cart before the horse. The Court has not found Mr. Davison in contempt so this argument is premature. *See* (Doc. 637 at 5–6) (At a minimum, the Court should issue a protective order against the Subpoenas . . . pending the Magistrate Judge's recommendation or the Court's ruling on the motions [to show cause and amend or alter final judgment].").

Finally, the Receiver argues that Mr. Davison failed "to provide evidentiary support" for his argument that complying with the subpoenas will result in undue burden. (Doc. 669 at 13–14). The Receiver overlooks that Mr. Davison filed a declaration that details the measures he has gone through to comply with the

Receiver's requests, including his search into the very items that spawned this motion practice (the gold and silver coins). (Doc. 605-2). That burdensome process would only be amplified if he had to comply with the current subpoena. *See* (Doc. 637-1). The Receiver's argument that Mr. Davison put forth no evidence showing undue burden is contradicted by the record.[2]

In the end, the Receiver's gripe that Mr. Davison's arguments constitute "bait-and-switch tactics" or "heads-I-win; tails-you-lose" scenarios ignores reality. Mr. Davison has a pending Motion to Alter or Amend the Final Judgment. (Doc. 605). If that Motion is granted, there is no basis upon which the Receiver can recover additional assets from Mr. Davison and no basis for the discovery sought in the subpoena.

Neither the facts nor the law support the Receiver's subpoenas; therefore, his subpoenas should be quashed. *See generally Vargas*, 2022 WL 766848, at *1 ("Due to

[2] The Receiver justifies his subpoenas and arguments by referring to Mr. Davison's business and conduct as "fraud" and citing to caselaw involving Ponzi schemes. (Doc. 669 at 2, 5, 8, 9). The Court's Final Judgement against Brian Davison states:

> The Securities and Exchange Commission having filed an Amended Complaint and Defendant Brian Davison ("Davison") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment.

(Doc. 355-1); *see also* (Doc. 355 at 2) ("[T]his Order is entered on the consent of Defendant Brian Davison, not based on any independent review or findings by the Court other than as to venue and jurisdiction.").

Vargas's omission of facts, supporting legal authority, or any meaningful discussion of the issue, we deem abandoned this challenge to the three-level enhancement.").

The Court should grant the relief sought in Mr. Davison's motion and quash the Subpoenas, or alternatively, delay any decision on the subpoenas until after a decision on Davison's Motion to Alter or Amend the Final Judgment Pursuant to Fed. R. Civ. P. 60(b)(1) and 60(b)(5) (Doc. 605), and further protect Mr. Davison's personal financial information. (Doc. 637 at 9).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Court's CM/ECF system on this October 24, 2022.

/s/ Stanley T. Padgett