

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
CLARK ENTERPRISES, INC. and THE
CLARK MONEY FUND LIMITED
PARTNERSHIP, :

Plaintiffs, :

- against - :

THE RESERVE, THE RESERVE FUND, and
THE PRIMARY FUND, :

Defendants. :

'08 CIV 9387.

Civ. Action No. _____

----- X
NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441 *et seq.*, and 18 U.S.C. § 80a-1 *et seq.*, Defendants, by their undersigned counsel and with a full reservation of any and all rights, claims, and defenses of any nature whatsoever, including but not limited to defenses related to service of process, jurisdiction, and venue, file this Notice of Removal seeking removal of this action from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York and respectfully show:

FILED
U.S. DISTRICT COURT
2008 OCT 31 PM 3:06
S.D. OF N.Y.

Procedural Background

1. On October 1, 2008, Plaintiffs filed their Notice Of Motion For Summary Judgment In Lieu Of Complaint, styled *Clark Enterprises, Inc. v. The Reserve*, Docket No. 08/602836, in the Supreme Court of the State of New York, County of New York.

2. Beginning on October 1, 2008, Plaintiffs attempted to effect service of the Notice Of Motion For Summary Judgment In Lieu Of Complaint on Defendants.

3. A copy of the Notice of Motion For Summary Judgment In Lieu Of Complaint and Affidavit of Edward Ramos In Support Of Motion For Summary Judgment In Lieu Of Complaint, sworn to September 29, 2008 is attached as Exhibit A.

4. A copy of the Summons received by Defendants is attached as Exhibit B.

5. Pursuant to 28 U.S.C. § 1446(a), Exhibits A and B constitute the only process, pleadings and orders in this case.

Jurisdiction and Grounds for Removal

6. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. §§ 1331, 1441(a), 1441(b), and 1441(c) in that all or part of the relief being sought by Plaintiff arises under the laws of the United States, including without limitation, the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.* and any and all rules promulgated thereunder. There is also complete diversity between the parties for purposes of 28 U.S.C. § 1332.

7. More specifically, Plaintiffs' claims and their entitlement to the requested relief necessarily depend on the construction and application of federal law, and thus raise substantial federal questions, for at least (but not limited to) the following reasons:

- Plaintiffs alleges that Defendants are obligated to pay them the amount of their redemption requests, notwithstanding the suspension of those requests due to extraordinary market conditions and pursuant to an S.E.C. order. Defendants' authority to suspend redemptions is expressly governed by the Investment Company Act and the rules promulgated thereunder by the Securities and Exchange Commission, and by the order issued by the Securities and Exchange Commission on September 22, 2008, pursuant to 15 U.S.C. § 80a-22(e)(3).

- Plaintiffs allege that the actions of Defendants in not processing redemption requests at the next calculated NAV provides a right of action. Rule 22c-1 promulgated under the Investment Company Act (titled “Pricing of Redeemable Securities for Distribution, Redemption and Repurchase”) prohibits a registered investment company from redeeming a security “except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption[.]” Plaintiffs’ alleged claims require the construction and application of Rule 22c-1.

8. Pursuant to 28 U.S.C. § 1441(a), removal to the United States District Court for the Southern District of New York is proper as this is the federal district court for the district and division embracing the place where the state court suit is pending.

9. There are numerous cases filed and pending in the United States District Court for the Southern District of New York arising out of the facts and circumstances alleged in the above-captioned action: *Goodman v. Reserve Management Company, Inc.*, No. 08-CV-8593 (PGG); *Kurtzer v. The Reserve Fund*, No. 08-CV-8292 (PGG); *Lifschitz v. Reserve Management Co., Inc.*, No. 08-CV-8137 (PGG); *Miller v. The Reserve*, No. 08-CV-8098 (PGG); *Pomeranz v. The Primary Fund*, No. 08-CV-8060 (PGG); *Schabel v. Bent*, No. 08-CV-8946 (referred to the Honorable Paul G. Gardephe); and *Third Ave. Institutional International Value Fund v. The Reserve Fund*, No. 08-CV-8103 (PGG). Two other cases pending in this Court also assert claims under the federal securities laws, and Defendants believe these cases will be, or are being, transferred to the Honorable Paul G. Gardephe: *Dyer v. The Reserve Fund*, No. 08-CV-8139 (DJC); and *M.D.C. Holdings, Inc. v. The Reserve*, No. 08-CV-8141 (JSR).

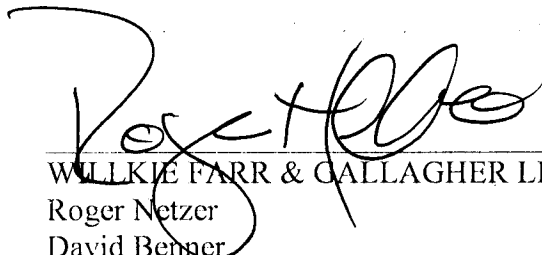
10. Defendant The Reserve Fund is also a defendant in an action styled *Univision Communications Inc. v. The Reserve Fund*, No. 08-CV-9335 and petitioned the Southern District of New York for removal from the Supreme Court of the State of New York, County of New York, on the same grounds as set forth above on October 30, 2008.

11. This Notice of Removal is being filed within thirty (30) days of the receipt of the initial pleading setting forth the claim for relief, as required by 28 U.S.C. § 1446(b).

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be provided to Plaintiffs, and a copy of this Notice will be filed in the appropriate state court.

WHEREFORE, notice is given that this action is removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: October 31, 2008



WILLKIE FARR & CALLAGHER LLP
Roger Netzer
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New York, New York 10019-6099
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rnetzer@willkie.com

Attorneys for Defendants The Reserve, The Reserve Fund, and The Primary Fund

4543890.1

TO: STEPTOE & JOHNSON LLP
750 Seventh Avenue
New York, New York 10019
Telephone: (212) 506-3900

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CLARK ENTERPRISES, INC. and THE CLARK
MONEY FUND LIMITED PARTNERSHIP,

Plaintiff,

- against -

THE RESERVE, THE RESERVE
FUND, and THE PRIMARY FUND,

Defendants.

Index No.:
Purchased:

08602836

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT IN
LIEU OF COMPLAINT**

PLEASE TAKE NOTICE, that upon the Summons, dated October 1, 2008, and Affidavit of Edward Ramos, sworn to on September 29, 2008, and the exhibits annexed thereto, plaintiffs Clark Enterprises, Inc. and The Clark Money Fund Limited Partnership will move this Court at the Motion Submissions Part, Room 130, at the Courthouse of the Supreme Court, 60 Centre Street, New York, New York, 10007, on **October 21, 2008, at 9:30 a.m.**, or as soon thereafter as counsel may be heard, for an order pursuant to C.P.L.R. § 3213 awarding summary judgment to plaintiffs and against defendants The Reserve, The Reserve Fund, and The Primary Fund, jointly and severally, in the amount of \$575,069,432.56 and any interest, attorneys' fees and costs incurred as a result of Defendants' conduct and other damages flowing from Defendant's conduct, and for such other and further relief as this Court deems just and proper.

This action is based on instruments for the payment of money only.

FILED
OCT 01 2008
COUNTY CLERK'S OFFICE
NEW YORK

PLEASE TAKE FURTHER NOTICE THAT pursuant to C.P.L.R. §§ 2214 and 3213, answering papers and affidavits, if any, must be served on the undersigned counsel for plaintiffs no later than ten (10) days before the return date of this motion.

Dated: New York, New York
October 1, 2008

STEPTOE & JOHNSON LLP

By: 

Michael C. Miller

Evan Glassman

Michelle L. Levin

750 Seventh Avenue

New York, NY 10019

(212) 506-3900

Attorneys for Plaintiffs

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**CLARK ENTERPRISES, INC. and THE CLARK
MONEY FUND LIMITED PARTNERSHIP,**

Plaintiffs,

- against -

**THE RESERVE, THE RESERVE
FUND, and THE PRIMARY FUND**

Defendants.

Index No.

AFFIDAVIT OF SERVICE

State of New York)
) ss.:
County of New York)

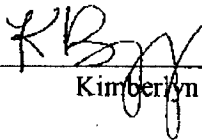
Kimberlyn Brzozowski, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am not a party to this action. I reside in Union City, New Jersey.

2. On October 1, 2008, I served a true and correct copy of the (i) Summons, dated October 1, 2008; (ii) Notice of Motion, dated October 1, 2008; (iii) Affidavit of Edward Ramos, dated September 30, 2008; (iv) Request for Judicial Intervention; and (v) Statement in Support of Request for Assignment to Commercial Division, dated September 30, 2008 on the parties listed below by Hand Delivery:

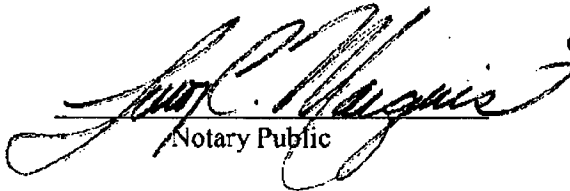
Tariq Mundiya
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, N.Y. 10019

Catherine Crowley
The Reserve
1250 Broadway
New York, NY 10001



Kimberlyn Brzozowski

Sworn to before me on the
1th day of October, 2008



Notary Public

LENOR C. MARQUIS
NOTARY PUBLIC, State of New York
No. 02486 6150495
Qualified in New York County
Commission Expires July 31, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CLARK ENTERPRISES, INC. and THE CLARK
MONEY FUND LIMITED PARTNERSHIP,

Plaintiff,

- against -

THE RESERVE, THE RESERVE
FUND, and THE PRIMARY FUND,

Defendants.

Index No.: 602836/08

**AFFIDAVIT OF
EDWARD RAMOS
IN SUPPORT OF MOTION
FOR SUMMARY JUDGEMENT
IN LIEU OF COMPLAINT
PURSUANT TO CPLR § 3213**

STATE OF MARYLAND)
) ss. :
COUNTY OF MONTGOMERY)

FILED

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COUNTY CLERK'S OFFICE
NEW YORK

I, Edward Ramos, being duly sworn, hereby depose as follows:

1. I am currently the Director of Investment Accounting/Risk Management at Clark Enterprises, Inc., the general partner in the Clark Money Fund Limited Partnership (collectively, "Clark"), located at 7500 Old Georgetown Road, 15th Floor, Bethesda, Maryland 20814.

2. I make this affidavit in support of Clark's Motion for Summary Judgment in Lieu of Complaint pursuant to C.P.L.R. § 3213.

3. I have personal knowledge of the matters set forth in this affidavit and am competent to testify with respect thereto.

4. Clark has approximately \$575,069,432.56 plus interest invested in the Reserve Primary Fund, a money-market fund of the Reserve.

5. Working with my colleague Rebekah Lim, I caused Clark to submit a redemption request for \$32,019,234.21 to the Reserve on Clark's behalf at approximately 3:22 p.m. on September 15, 2008. Clark received an order confirmation, confirming the amount of its redemption request and identifying the request as Reserve Transaction Number 101820. See Ex. 1. The applicable Net Asset Value ("NAV") for the funds at this time was \$1.00. To date, Clark has not received any funds in response to this redemption request.

6. Working with my colleague Rebekah Lim, I caused Clark to submit another redemption request for \$26,416,162.73 to the Reserve on Clark's behalf at approximately 1:39 p.m. on September 16, 2008. Clark received an order confirmation, confirming the amount of this redemption request and identifying the request as Reserve Transaction Number 102076. See Ex. 2. The applicable NAV for the funds at this time was \$1.00. To date, Clark has not received any funds in response to this redemption request.

7. Working with my colleague Rebekah Lim, I caused Clark to submit a third redemption request for \$516,634,035.62 to the Reserve at approximately 2:18 p.m. on September 16, 2008. Clark received an order confirmation, confirming the amount of its redemption request and identifying the request as Reserve Transaction Number 102105. See Ex. 3. The applicable NAV for the funds at this time was \$1.00. To date, Clark has not received any funds in response to this redemption request.

8. To date, Clark has not received any funds from the Reserve in response to its three redemption requests. These redemption requests show that the Reserve owes Clark a total of \$575,069,432.56 plus interest.

9. The governing Prospectus provides for the processing of redemption requests "on the next business day," absent certain circumstances that have not occurred here.

2008 would be honored at \$1.00 per share. Both Clark's September 16, 2008 requests (Reserve Transaction numbers 102076 and 102105) were submitted prior to 3:00 p.m. and should, therefore, be honored according to the Reserve's stated policy at \$1.00 per share. However, Clark has not received any funds in response to its three redemption requests.

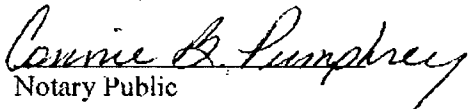
11. Clark relies upon access to its money in the Reserve Primary Fund for its quarterly tax obligations, for its ongoing commitments to third parties, and for the daily expenses of its ongoing construction business. Accordingly, as a result of the Reserve's failure to complete these transactions, Clark has been forced to make alternative financial arrangements in order to meet its daily expenses.

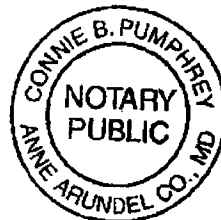
12. According to the three order confirmations from the Reserve to Clark in response to Clark's three redemption requests, annexed hereto, the Reserve owes Clark \$575,069,432.56, separate and apart from any interest, attorneys' fees and costs incurred as a result of Defendants' conduct and other damages flowing from Defendant's conduct.


EDWARD RAMOS

Subscribed and sworn to me this 29 day of September, 2008,

Before me,


Notary Public



My comm. exp. Nov. 17, 2011

EXH 1



The Reserve

A Tradition of Financial Innovation™

Sep 15, 2008

Account Number: xxxx1251	Registration: THE CLARK MONEY FUND
Portfolio: Primary CI Inst	Activity: Institutional Redemption
Trade Date: Sep 15, 2008	Settlement Date: Sep 15, 2008
Reserve Transaction Number: 101820	Amount: \$32,019,234.21
Reserve Agent: BEN KARGER	Client Agent: Rebekah Lim (301-657-7211)
Time of Order (ET): 3:22:32 PM	

This information is being provided as a courtesy and is not to be relied upon in place of the monthly statement sent to you by The Reserve.

All trades are subject to receipt of federal funds on settlement date.

Thank you for the opportunity to serve your cash management needs.

If you disagree with any information provided or have any questions please immediately call (888) 851-7237.

EXH 2



The Reserve

A Tradition of Financial Innovation™

Sep 16, 2008

Account Number: xxx1251	Registration: THE CLARK MONEY FUND
Portfolio: Primary CI Inst	Activity: Institutional Redemption
Trade Date: Sep 16, 2008	Settlement Date: Sep 16, 2008
Reserve Transaction Number: 102076	Amount: \$26,416,162.73
Reserve Agent: DENNIS MCLAUGHLIN	Client Agent: Rebekah Lim (301-657-7211)
Time of Order (ET): 1:39:48 PM	

This information is being provided as a courtesy and is not to be relied upon in place of the monthly statement sent to you by The Reserve.

All trades are subject to receipt of federal funds on settlement date.

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EXH 3



The Reserve

A Tradition of Financial Innovation™

Sep 16, 2008

Account Information	
Account Number: xxxx1251	Registration: THE CLARK MONEY FUND
Portfolio: Primary CI Inst	Activity: Institutional Redemption
Trade Date: Sep 16, 2008	Settlement Date: Sep 16, 2008
Reserve Transaction Number: 102105	Amount: \$516,634,035.62
Reserve Agent: David Blalock	Client Agent: Rebekah Lim (301-657-7211)
Time of Order (ET): 2:18:11 PM	

This information is being provided as a courtesy and is not to be relied upon in place of the monthly statement sent to you by The Reserve.

All trades are subject to receipt of federal funds on settlement date.

Thank you for the opportunity to serve your cash management needs.

If you disagree with any information provided or have any questions please immediately call (888) 851-7237.