

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18-cv-3309-PJM
	)	
ECOLOGICAL FOX, LLC, <i>et al</i>	)	
	)	
Defendants.	)	
_____	)	

**OWNERS’ GROUP’S COMMENTS TO TEMPORARY RECEIVER’S  
PROPOSED ORDER GOVERNING INTERIM RECEIVERSHIP MANAGEMENT**

**TO: THE HONORABLE PETER J. MESSITTE, UNITED STATES DISTRICT  
JUDGE, TO THE PARTIES AND THEIR COUNSEL, AND OTHER PARTIES IN  
INTEREST:**

As per the Court’s July 10, 2019 Memorandum Order (DE 519) and in response to the Temporary Receiver’s Proposed Order Governing Interim Receivership Management (DE 524) (the “Receiver’s Proposed Order”), the Owners’ Group provides the following comments to the Receiver’s Proposed Order.

**I. Introduction**

1. On July 9, 2019, this Court conducted a hearing regarding the competing interim management plans submitted by the Federal Trade Commission (the “FTC”), Defendant Peter Baker (“Baker”), Defendant Andris Pukke (“Pukke”), and the Owners’ Group.

2. After several hours of discussion, the Court largely adopted the FTC’s plan, albeit with some modifications. In its July 10, 2019 Order (DE 519), the Court directed counsel for the

Temporary Receiver to submit a proposed order on or before July 19, 2019 at 5:00 p.m. The Receiver did so.

3. The Court also directed the other parties to file any comments to that proposed order on or before 5:00 p.m. on July 29, 2019. The Owners' Group now submits the following comments.

## **II. Comments to the Receiver's Proposed Order**

4. The Owners' Group's comments are limited to two issues contained in Exhibit 1 to the Receiver's Proposed Order.

5. During its July 9, 2019 presentation to the Court, the Owner's Group advocated for, among other things, the ability of lot purchasers to voluntarily make lot payments. The Owner's Group suggested that those payments would be made to the Receiver, and the funds would then be applied against those respective lot purchaser's outstanding loan amounts. Once taken into the receivership estate, these funds could then be used for development of the Reserve. This is one of the hallmarks of the Supplemental Owners' Proposal for Future Operations and Development at the Reserve (DE 447) that was presented by Mr. Craig Hibbert to this Court on July 9.

6. The Owners' Group understood that these voluntary lot payments would be subject to certain disclosures and waivers. If the Court recalls, there was some debate as to the breadth of those disclosures and waivers.

7. The Receiver's position was that the disclosures would necessarily have to be onerous and complicated. The Receiver submitted that it would be administratively difficult to provide the necessary disclosures and questioned whether or not it would be pragmatic to do so.

8. Over these objections, the Court agreed that lot purchasers could voluntarily make payments on their respective lots. Further, the Court directed the Receiver to draft the necessary disclosures.

9. The Owners' Group suggests that the disclosures and the language included in the Receiver's Proposed Order is onerous and is intentionally designed to dissuade lot purchasers from making these voluntary payments.

10. Exhibit 1 to the Receiver's Proposed Order contains the following admonishment in the first bullet point: "I understand there is no guarantee that any payments I make will be credited to my account, and I may not receive a refund."

11. If the Receiver is going to accept voluntary lot payments, then the Receiver should also set up the administrative infrastructure to accept those payments and apply them against the individual lot purchaser's outstanding loan balance or, at the least, keep track of the lot payments made so they can be applied in the future.

12. When it administers the future claims process, the Receiver is going to likely have to undertake this analysis whether lot purchasers choose to voluntarily make payments at this juncture or not.

13. If lot purchasers who choose to make these payments have no guarantee that the payments will be applied against their loan balance, then why would any lot purchaser make the payment? Making a voluntary lot payment subject to certain disclosures, waivers, and with the knowledge that a lot purchaser is ratifying the underlying contract is one thing, but making this payment with no guarantee that it will be applied against the lot purchaser's loan or for their specific lot, is quite another.

14. Thus, the Owners' Group suggests the following language be adopted in lieu of the current language in the first bullet point of Exhibit 1 to the Receiver's Proposed Order: "The Receiver makes no guarantees as to the outcome of the preliminary injunction hearing for which the Court has not yet issued its order and/or what the ultimate outcome will be at the final trial on the merits of this case. Further, the Receiver makes no guarantee regarding the viability of the Reserve and does not guarantee a refund of any voluntary lot payments made."

15. In addition to this comment, the Owners' Group further suggests that the language of the last bullet point contained in Exhibit 1 also be altered.

16. As drafted, this last bullet point provides, "Making payments could affect or eliminate any right I may have to future monetary and non-monetary compensation."

17. This issue with this last bullet point is similar to the problem with the Receiver's suggested language in the first bullet point—why would a lot purchaser voluntarily make a payment if they may then be precluded from benefitting from a future claims process?

18. Because of this issue, the Owners' Group suggests that the following language be used in lieu of the current language in the last bullet point of Exhibit 1 to the Receiver's Proposed Order: "Volunteering to make payments or to fully pay off your lot does not preclude you from being a claimant if you fit within the ultimate definition of a "claimant" when the Receiver creates and initiates its formal claims process. This also does not guarantee compensation through any future claims process."

### **III. Conclusion**

For the reasons stated herein, the Court should adopt the language suggested by the Owners' Group and replace the Owners' Group suggested language for the language contained in bullet

points one and five in Exhibit 1 to the Receiver's Proposed Order Governing Interim Receivership Management.

Dated: July 29, 2019

Respectfully requested,

MUNSCH HARDT KOPF & HARR, P.C.

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Attorneys for Ad Hoc Committee Appointed  
to Represent the Interests of Certain Owners