

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

***In re* SANCTUARY BELIZE
LITIGATION**

Civil No. 18-3309-PJM

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**REPRESENTED DEFENDANTS’ REPLY TO FEDERAL TRADE
COMMISSION’S OPPOSITION TO THE PUKKE DEFENDANTS’ PROPOSED ORDER**

There is no merit to the opposition filed by the Federal Trade Commission (“FTC”) to the order proposed by the Represented Defendants.¹ Here is why:

1. The FTC claims it would be “inappropriate” and serve “no purpose” to return to the Represented Defendants the assets and property that the Court ordered to be seized from them and placed in the custody and control of the Receiver.² Speculating that such a return would give the Represented Defendants “the opportunity to divert, hide, secrete, or diminish these assets,” the FTC contends that “[l]eaving assets in the Receiver’s care is “legally justified.”³

No, it is not. In light of *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021) and the Fourth Circuit’s decision on appeal, the Receiver has no legal authority to retain custody and control of any of the Represented Defendants’ assets or property.

¹ The “Represented Defendants” are identified in the Memorandum they filed in support of their proposed order and in the FTC’s opposition.

² Federal Trade Commission’s Opposition to the Pukke Defendants’ Proposed Order (“FTC Opp.”) at 2.

³ *Id.*

In its “De Novo Order” (ECF Dkt. No. 1194), the Court ordered the Receiver to take permanent custody and control of the Represented Defendants’ assets and property which would be used to provide consumers with \$120.2 million in restitution pursuant to section 13(b) of the Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 53(b). Under the compulsion of *AMG*, the Fourth Circuit vacated that portion of the De Novo Order. Therefore, this Court is bound faithfully to implement the mandate of the Fourth Circuit by ordering the Receiver to return to the Represented Defendants the assets and property that should not have been seized from them.

The FTC claims that the Represented Defendants’ proposed order that the seized assets and property be returned to them is “problematic” because “it fails to identify what assets should be returned (e.g. would this include assets from settlements or those already paid to the Receiver), to whom, and what claims that particular defendants has on the particular asset.”⁴ The FTC also complains that the Represented Defendants’ proposed order “says nothing about how the Receiver would go about distributing assets, particularly given costs and fees the Receivership has incurred and been paid from the receivership estate.”⁵

However, the Represented Defendants’ proposed order is crystal clear. It says: “The Receiver shall return to the Represented Defendants all assets, all property, and all passports seized *from them* and placed in its custody and control by order of this Court (emphasis added).” To be sure, the Receiver must make an individualized determination of which assets and property were seized from each of the Represented Defendants. But given that the Receiver seized those assets and property in the first place, it should be able to make those individualized

⁴ FTC Opp. at 3.

⁵ *Id.* at 3 n. 8.

determinations. That the Receiver has incurred costs that have been paid from the receivership estate is not the Represented Defendants' problem and should not have detract from their entitlement to their own assets and property.⁶

2. The FTC characterizes as “additional burdensome reporting” the Represented Defendants' proposed order that the Receiver calculate the amounts of assets and property it seized from the Represented Defendants and identify the source documents supporting that calculation, and that the Receiver calculate the amount each lot purchaser was contractually bound to pay the Represented Defendants during the course of this litigation but was excused from paying those amount by the FTC and the Receiver.⁷ The FTC says that the Represented Defendants' counsel should make those calculations because any additional work by the Receiver would serve to increase the Receiver's compensation and reduce “the value of the remaining assets in the estate.”⁸

There is nothing “burdensome” about the calculations the Represented Defendants propose that the Court order the Receiver to make and, unlike the FTC, the Receiver has not claimed it would be “burdensome” for it to make these calculations. Indeed, it would be surprising if the Receiver has not already made some or all of these calculations within the framework of its multi-million-dollar budget. Contrary to the FTC's suggestion, counsel for the Represented Defendants cannot make these calculations because they do not have access to the documentation showing, among other things, which lot purchasers have been excused from

⁶ The FTC does not challenge the portion of the Represented Defendants' proposed order directing the Receiver to return to the Represented Defendants their passports, and that should be done expeditiously.

⁷ FTC Opp. at 3.

⁸ *Id.*

making their contractually-bound payments to the Represented Defendants and by how much. The Court also has the option of appointing a Special Master to perform this task.

3. The FTC challenges the Represented Defendants' position that the amount of the contempt sanctions entered under the Contempt Order (ECF Dkt. No. 1113) against defendant Andris Pukke for "non-cooperation" with the FTC (\$172 million) and against defendants Pukke, Peter Baker, and John Usher for the "TSR Contempt" (\$120.2 million) should be reduced by the amounts the lot purchasers were contractually bound to pay to the Represented Defendants but were excused by the FTC from doing so. The FTC contends that the Represented Defendants "do not get 'credit' for consumers not being forced to make additional payments on fraudulently induced contracts."⁹ The FTC also argues that the Represented Defendants "were required to present these arguments at trial to reduce their judgment and did not do so."¹⁰

However, it was the Court itself that provided in its Contempt Order that the sanctionable amounts must be reduced by "the amounts credited to him" (Pukke) and "the amounts, if any, already distributed to consumers by the FTC" (Pukke, Baker, and Usher)."¹¹ Although the Court did not give a reason for this credit and these distributions, presumably it was based on the Supreme Court's well-known rule that, for a civil "compensatory" contempt sanction to stand, it may only "compensate the complainant for the losses sustained." *United States v. United Mine Workers of America*, 330 U.S. 268, 303-304 (1947). Such a contempt sanction may not confer a windfall on the complainant. There is no legally significant difference between a credit for a

⁹ FTC Opp. at 4.

¹⁰ *Id.*

¹¹ ECF Dkt. No. 1113 at 3.

distribution to a consumer by the FTC or a credit for a contractually-bound payment owed by a consumer but excused by the FTC.

The FTC's argument that the Represented Defendants should have argued for this type of reduction at trial is specious. The Court did not issue its Contempt Order until January 13, 2021 (ECF Dkt. No. 1113), nearly a year after the trial was over.

4. Finally, the FTC argues that the Court should not enter the order propose by the Represented Defendants because Pukke, Baker, and Usher "have come nowhere close to satisfying any meaningful portion of their financial liabilities."¹² The FTC asserts that it "has not yet received significant payments of any type and consumers have not received any distributions."¹³ Although it acknowledges that, "[p]ursuant to some settlements, the FTC has received relatively small payments from other defendants," and that "[t]he Receiver has marshalled other assets and received certain payments through various settlements," the FTC contends that Pukke, Baker, and Usher "do not receive credit for those amounts unless and until those funds are turned over to the FTC or distributed to consumers."¹⁴

However, the FTC ignores that, given *AMG* and the Fourth Circuit's decision, this Court has no authority to award *any* monetary relief to the FTC for consumers under section 13(b) of the FTCA. The Receiver, "an agent of this Court,"¹⁵ is similarly constrained. The only funds to which consumers are now entitled are those due to be paid under the Court's Contempt Order. As the FTC recognizes, it would be consistent with ¶ 4 of the Contempt Order for the Receiver to

¹² FTC Opp. at 4.

¹³ *Id.*

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 3.

transfer to the FTC all assets and payments it has “marshalled” in partial satisfaction of the amounts owed under that Order.¹⁶ These assets and payments in the hands of the FTC would be augmented by the proceeds of the sale of the Sanctuary Belize properties by the Represented Defendants under their proposed order.¹⁷

Respectfully submitted,

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Counsel for the Represented Defendants and Entities

¹⁶ FTC Opp. at 4, citing ¶ 4 that the “contempt sanction must be ‘transfer[red] to the FTC’ and additional credit is given for ‘amounts, if any, distributed to consumers.’”

¹⁷ The FTC gratuitously mentions that Pukke was indicted by the United States Attorney for the Southern District of New York for mail fraud in connection with the sale of Sanctuary Belize properties. FTC Opp. at 1. The FTC does not mention that, according to the United States Attorney, who has been investigating the Sanctuary Belize matter for years, the total amount of the fraud was \$13 million, a fraction of the \$172 million contempt sanction imposed by the Court on Pukke and the \$120.2 million contempt sanction imposed on Pukke, Baker, and Usher.

CERTIFICATE OF SERVICE

I certify that today, April 17, 2023, I served the foregoing Represented Defendants' Reply to the Federal Trade Commission's Opposition to the Pukke Defendants' Proposed Order by filing it via the Court's CM/ECF system, which automatically will transmit a copy electronically to all counsel of record.

/s/ Neil H. Koslowe
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