

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**RECEIVER’S RESPONSE TO FEDERAL TRADE COMMISSION’S NOTICE
REGARDING REDRESS PROCESS AND REQUEST FOR STATUS CONFERENCE
AND GUIDANCE FROM THE COURT (DOC. 1460)**

Marc-Philip Ferzan of Ankura Consulting Group, LLC (“Receiver”), the Receiver appointed as successor Receiver on October 26, 2021 pursuant to the Order Appointing Marc-Philip Ferzan as Receiver (Doc. 1305), hereby submits this Response to the Federal Trade Commission’s (“FTC”) Notice Regarding Redress Process and Request for Status Conference and Guidance from the Court (Doc. 1460, the “Notice”) and asks that the Court set a status conference as soon as the Court’s calendar can accommodate.

I. THE PROPOSAL IN THE FTC’S NOTICE WOULD MODIFY THE JUNE 2023 REDRESS ORDER

The FTC’s Notice requests the Court’s guidance on a material change to the consumer lot options approved in the Court’s June 14, 2023 Order Implementing Next Phase of Consumer Redress Plan (Doc. 1446, “June 2023 Redress Order”) and seeks a status conference in January 2024. But guidance is needed *before* the survey called for under the June 2023 Redress Order is sent to consumers, not after it is complete, because the proposed change is inconsistent with the June 2023 Redress Order and would necessitate material changes to the language in the survey, and likely result in consumer confusion and added expense.

Specifically, by way of the Notice, the FTC is questioning whether certain consumers who will be ineligible to acquire their lots under the June 2023 Redress Order because such lots are not legally or practically available for transfer should be offered alternative lot purchasing options. In this respect, consumer survey Option No. 1 provided for in the June 2023 Redress Order directs that “Consumers electing Option No. 1 shall only be entitled to buy the Eligible Lots reflected in their Claim Applications,” and that the option is only available “to Consumers with ownership interests in lots located in Belize government-approved subdivisions and for which any competing claims have been resolved in their favor.” *Id.*, at §7. Section 7 also makes clear that “Option No. 1 will also be subject to the permissibility of such transactions pursuant to Belize legal and regulatory requirements, encumbrances, competing claims, and other relevant considerations that may preclude transferability.” *Id.*

The Receiver evaluated this issue far in advance of making its recommendations to the Court to streamline the existing proposed Redress Plan in its March 9, 2023 report (Doc. 1412) and at the April 2023 status conference. Declaration of Marc Ferzan, ¶¶3-4. In particular, as detailed further in the Receiver’s accompanying declaration, the Receiver considered the additional receivership costs associated with the consumer lot options matter raised in the Notice as well as a number of other equitable considerations. *Id.*, ¶¶6-11. Additionally, the Receiver’s recommendations were discussed at length with the FTC before the Receiver made them to the Court. *Id.*, ¶¶3-4. Further, the FTC had the opportunity to respond to the Receiver’s proposed order and did so. The FTC “fully support[ed]” the Receiver’s order with “relatively minor revisions” that did not modify the consumer lot options recommended by the Receiver. *See* Doc. 1433.

Since the Court entered the June 2023 Redress Order, the Receiver has been implementing the Order and is poised to continue doing so. As the FTC recognized in its redress plan motion, “there is no plan that will come anywhere close to compensating lot purchasers fully, nor is there any solution that will leave everyone happy” and the proposed redress plan itself did not “strive for perfect equality where, in this context, that result is impossible, legally improper, practically unworkable, or would substantially reduce consumer welfare overall.” Doc. 1117 at 3 and 4. The consumer lot choices already approved in the June 2023 Redress Order strike the best balance possible in a case that presents only imperfect alternatives.

The change raised in the FTC’s Notice is inconsistent with the June 2023 Redress Order and is untimely under Federal Rule of Civil Procedure 59(e). The Receiver is requesting a status conference at the Court’s earliest convenience because the issue raised would necessitate changing the upcoming survey and as such, cannot be delayed until January 2024.

II. THE RECEIVER REQUESTS A STATUS CONFERENCE WITH RESPECT TO ADMINISTRATION OF THE SURVEY AT THE COURT’S EARLIEST CONVENIENCE

A status conference at the Court’s earliest convenience is requested for the additional reason that clarification is needed regarding the administration of the survey itself. Ferzan Decl., ¶12. Section 4 of the June 2023 Redress Order provides that the Receiver “shall prepare and distribute” the survey. At the same time, Section 5 of the order provides that the FTC shall have authority to review, provide revisions and draft the survey and related materials. While the Receivership Team will continue to welcome input from the FTC, the Receiver is seeking confirmation from the Court that, under the June 2023 Redress Order, the Receiver, acting as a neutral fiduciary and an arm of the Court, and who is directly answerable to the Court, has the discretion and ultimate authority to finalize the survey content and related consumer communications pursuant to the approach he envisioned and recommended to the Court, in order

to enable swift, coordinated and efficient implementation. Ferzan Decl., ¶12; *see also* Doc. 13, Section XV (appointing original receiver and providing the receiver is an agent of the Court); *FTC v. First Universal Lending, LLC*, 773 F. Supp. 2d 1332, 1354 (S.D. Fla. 2011) (explaining a “receiver is a neutral court officer”) (internal citations omitted).

III. CONCLUSION

In light of the foregoing, the Receiver joins in the FTC’s request that the Court set a status conference, but respectfully asks that the conference be set at the Court’s earliest convenience in the next few weeks, as direction is needed before the survey can be implemented.

Dated: September 14, 2023

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

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No: 18-cv-3309-PJM

**DECLARATION OF MARC-PHILIP FERZAN IN SUPPORT OF RECEIVER'S
RESPONSE TO FEDERAL TRADE COMMISSION'S NOTICE REGARDING
REDRESS PROCESS AND REQUEST FOR STATUS CONFERENCE AND GUIDANCE
FROM THE COURT**

I, Marc-Philip Ferzan, declare:

1. I am a Senior Advisor with Ankura Consulting Group, LLC ("Ankura") and serve as the Court-appointed successor Receiver ("Receiver") in this action. My colleagues at Ankura assigned to support the receivership and I are collectively referred to in this declaration as the "Receivership Team." I was appointed successor receiver on October 26, 2021 to replace Robb Evans & Associates LLC. As Receiver, I am one of the members of the Receivership Team primarily responsible for the supervision, management and administration of the receivership estate. I have personal knowledge of the matters set forth in this declaration, or I have gained knowledge of the matters set forth in this declaration through other members of the Receivership Team, or through my review of various books, documents, records and Court files pertaining to the receivership, as well as documents described in this declaration.

I. OFFERING NEW LOTS IN OTHER PARTS OF THE DEVELOPMENT AREAS

2. The Federal Trade Commission's ("FTC") Notice Regarding Redress Process and Request for Status Conference and Guidance from the Court ("Notice") advises the Court that the FTC may seek to change the approach to consumer lot options recommended by the Receiver

in its March 2023 report, outlined by the Receiver at the April 2023 status conference before the Court, and adopted in the Court's June 14, 2023 Order Implementing Next Phase of Consumer Redress Plan (Doc. 1446, "June 2023 Redress Order"). In particular, the FTC is questioning whether certain consumers who will be deemed ineligible to acquire their lots because they are not legally or practically available for transfer should be offered new lot purchasing options in the master plan subdivisions created and employed by the Defendants during the underlying fraud scheme. Guidance is needed before the survey called for under the June 2023 Redress Order is sent to consumers, not after it is complete, because the proposed change is inconsistent with the June 2023 Redress Order and would necessitate material changes to the language in the survey and the Receiver's recommended approach to administration.

3. This is something the Receiver evaluated long before making its recommendations to Court in March 2023, and the approach is opposed for the reasons set forth below. In any event, this issue should be put to rest *before* the Survey is administered, not after. The Receiver, therefore, requests a status conference to resolve the issues set forth in the FTC's Notice as soon as practical. Deferring consideration of the issues identified in the FTC's Notice could likely create implementation challenges, confuse consumers, increase costs, and impede the marketing and sales process of the Belize land assets.

4. As part of the Receiver's efforts to envision streamlined approaches to the remaining steps of consumer redress, prioritize the marketing and sale of the Belize development areas, achieve significant cost savings, and better inform consumer choices, the Receivership Team evaluated a broad range of factors. Among other things, the factors included the procedural history before the Court in considering the proposed Redress Plan, the Redress Plan parameters and goals, the substantial delays visited upon the receivership, administration costs,

the understandable frustration of consumers and related equitable considerations, and the inherent risks and uncertainties associated with the future of the Belize land assets. Between November of 2022 and February of 2023, the Receiver and counsel engaged with the FTC on a frequent basis with respect to the remaining steps for consumer redress and the Receiver's recommendations relating to the same.

5. With respect to the development of Survey Option No. 1 provided for in the June 2023 Redress Order, the Receiver very deliberately proposed language in Paragraph 7 of the order stating that “[t]he Consumers electing Option No. 1 shall only be entitled to buy the Eligible Lots reflected in their Claim Applications,” and that the option would only be available “to Consumers with ownership interests in lots located in Belize government-approved subdivisions and for which any competing claims have been resolved in their favor.” Moreover, Paragraph 7 also makes clear that “Option No. 1 will also be subject to the permissibility of such transactions pursuant to Belize legal and regulatory requirements, encumbrances, competing claims, and other relevant considerations that may preclude transferability.”

6. In proposing this language to the Court, the Receiver had carefully thought through the implications and costs of arguably “marketing” new lots to consumers in a failed development shrouded in Defendants’ fraud, while not knowing what future development will look like. It is one thing to enable those who bargained for the purchase of a specific lot to make the decision to consummate the transfer of that lot (after considering the risks, of course). In the Receiver’s view, it is quite something else to offer victim consumers other lots in subdivisions that were conceived by the Defendants to defraud unwitting buyers (and have not been validated by legitimate developers). This approach seems neither fair nor appropriate, and would indeed add administration costs to envision what lots may be “comparable” (and why), how to

communicate this consequential information to consumers, and what resources need to be developed to address additional consumer questions.

7. While it is unfortunate that there are not suitable alternative lot choices for consumers who do not have the ability to acquire the original lot they contracted for with the Defendants, it is a hard truth that imperfect remedies are a reality in the wake of fraud schemes. As observed by the FTC in its Motion in Support of the Redress Plan and Executive Summary Thereof, “there is no plan that will come anywhere close to compensating lot purchasers fully, nor is there any solution that will leave everyone happy” and the Redress Plan did not “strive for perfect equality where, in this context, that result is impossible, legally improper, practically unworkable, or would substantially reduce consumer welfare overall.” Doc. 1117 at 3, 4.

8. There are also a number of other equitable considerations. As an example, for those consumers selecting Option No. 3, and singularly interested in maximizing redress payments, the Receiver is informed and believes that the sale of other lots across the development areas may negatively impact the marketing and sales efforts contemplated in the request for proposal (RFP) bidding process outlined in the June 2023 Redress Order. Based on information gathered from a range of individuals with real estate experience and expertise, including information gathered during the request for information (RFI) process completed in accordance with the June 2023 Redress Order, there is a significant risk that the more land that has been allocated in various parts of the development areas, the more of a negative impact there may be on the financial models of prospective bidders (in accommodating the cost of infrastructure, such as roadways and utilities, as well as other maintenance services). Moreover, such additional lot transfers may also limit prospective bidders’ abilities to re-envision how to allocate the land, and which desired project(s) may be feasible to undertake and/or when.

9. As highlighted for the Court at the April 20, 2023 Status Conference, the Receiver strongly believes that prioritizing the sale of the Belize land assets to a successor investor is in the best interest of the estate. Therefore, the Receiver urges retaining the balanced approach set forth as part of Option No. 1 in the June 2023 Redress Order to provide consumers with an immediate lot acquisition choice only to the extent that the subject lot is available, because this is fair and equitable when factoring in comprehensive cost-benefit and other considerations.

II. PARTICULAR CONSIDERATIONS RELATING TO KANANTIK LOTS

10. Among other things, the consumer Survey process was designed to provide consumer choice across three enumerated options in aid of the development area sales process. With respect to Kanantik lots, the underlying subdivision plans filed with the Belize Lands and Surveys Department present a unique situation. While Defendants took steps to seek government approval of a subdivision plan, it is unclear whether the process was fully consummated. Following consultation with local counsel, it is the understanding of the Receiver that, at the very least, the commission of a perimeter survey may be necessary to validate the status of the subdivision and confirm that lots of Kanantik consumers choosing Option No. 1 could be transferred to them. Particularly considering the passage of time and the distressed nature of the development project, it may be possible that the Belize government may require substantially more.


11. In the interests of efficiency, the Receivership Team had intended to administer the Survey to eligible Kanantik consumers to understand, as a starting point, what level of interest those consumers may have in pursuing Option No. 1. If interest for corresponding Kanantik lot acquisitions is significant, the Receiver would further pursue steps to determine whether cost-reasonable and timeline-manageable steps can lead to a government-approved subdivision, to the extent that such steps may be required. If, on the other hand, the Belize

government will require more substantive, costly, and time-consuming steps to validate the subdivision plans with uncertain outcomes, then the Receiver would consider the corresponding lots unavailable for transfer in connection with consumer Survey choices.

III. THE RECEIVER REQUESTS A STATUS CONFERENCE AT THE COURT'S EARLIEST CONVENIENCE

12. A more immediate status conference is requested for the additional reason that, with respect to the consumer Survey itself, clarification is needed concerning its administration. Despite the FTC's good intentions to help draft the Survey and related materials, the Receiver has found the collaboration to be challenging and which, among other things, has resulted in unanticipated delays. While the Receivership Team will continue to welcome input from the FTC, ultimately the Receiver is seeking confirmation from the Court that under the June 2023 Redress Order, it is the Receiver who has the responsibility and discretion to finalize the Survey content and related consumer communications in order to manage swift, coordinated and efficient implementation.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 14, 2023 in Haverford, Pennsylvania.



Marc-Philip Ferzan