

Thomas K. Herskowitz, Esq

301 West "G" St. Unit # 139
San Diego, Ca. 92101
Tom@Therskowitz.com
(405) 821-0209

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The Honorable Peter J. Messitte
United States District Court
District of Maryland, Southern Division
6500 Cherrywood Lane, Suite 475A
Greenbelt, Maryland, 20770

RE: *In re Sanctuary Belize*, No. 18-cv-3309-PJM (D. Md.)
Comments on FTC Redress Plan

Judge Messitte,

I am sending this comment to the court because I was unable to find any instructions on where to send comments on the proposed FTC redress plan. I am also copying the FTC and the Receiver.

I am an owner of property in Sanctuary Belize (SB) and the individual that raised the issue of Pukke's parole violation in 2015 in your court. I have been involved with Sanctuary Belize since 2010 when I bought my lot in SB. I was instrumental in forming the IOSB in an attempt to wrest the project from Pukke, Usher et al and allow the SB owners to control the project as they were promised.

I have reviewed the FTC proposed Redress plan and have several suggestions that I believe are needed to modify the plan.

BACKGROUND: If I am repeating information that you know, I apologize, but it important that everyone understands the legal background of Sanctuary Belize. Throughout the past two years of the legal proceedings, as well as in the Redress plan, the FTC has ignored the fact that Sittee River Wildlife Reserve (SRWR), a named defendant corporation and legal owner all the land and assets of Sanctuary Belize and the legal seller of every lot, *is a Belize nonprofit corporation*.

The Belizean nonprofit laws are similar to the US laws governing nonprofit organizations. A nonprofit corporation has no owners, only members. All funds received by a nonprofit corporation must stay within the corporation and be used for the nonprofit purposes for which the corporation was formed. Of paramount importance, there can be no private inurement; no member or officer may profit from the operations of the corporation¹. (Individuals may, however, receive reasonable

¹ The Memorandum of Association that formed the SRWR in 2003 incorporates the legal restrictions. Section 4 of the Memorandum states, "the income and property of the corporation... Shall be applied solely towards the

salaries as employees of the corporation.) This was why Pukke and his salesforce said that all money from the sale of lots would stay in Sanctuary Belize for the benefit of the property. It was a legal requirement.

The legal reality is that neither Pukke, Baker, Usher or any other defendant in this case own the land and assets of Sanctuary Belize, i.e., SRWR, it is a nonprofit corporation. That, however, did not stop Pukke et al from taking most of the money from SRWR. In 2008, with the legal help of Rodwell Williams, the defendants amended the SRWR Articles of Association to put all the control of SRWR in the hands of a limited number of “Full Members” and relegating the lot purchasers as “Provisional Members” with no control of the company. These Full Members had sole power to elect the Board of Directors. All the Full Members were either Pukke, Usher, and Baker or relatives or close friends of them.

As sales began to pick up, in 2010 the Pukke conspirators formed a new Belize corporation, Eco Futures Belize (EFB). This was a for-profit corporation whose putative owner was John Usher, but as this court found, was controlled by Pukke and Baker. One day after the formation of EFB, EFB and SRWR signed a development agreement, and funds from the sale of lots at SB began to flow to EFB, Pukke and other defendants. There were also several large land transfers from SRWR to EFB. All these transactions were illegal under both Belize and US nonprofit law. Pukke was ramping up his theft of money and assets from SRWR; money that was supposed to go for development of SRWR. As this court has found, the consumers, i.e., the SB owners, were the victims of Pukke and company’s fraud. The difficulty is that they are also members of SRWR.

CURRENT STATUS: SRWR is a nonprofit company that was highjacked by Pukke et al. While SRWR was controlled by Pukke, Usher and Baker, it is not owned by any of them. Every lot that was sold included a Provisional Membership in SRWR. *The legal owners of SRWR are the consumers that purchased lots in Sanctuary Belize.*

The FTC and Receiver are aware of this. They also have all the corporate documents, land transfers and interlocking contracts as part of their discovery.

THE REDRESS PLAN:

1. **Proposed HOA** – there is no need to form a new HOA for Sanctuary Belize. The purpose of an HOA is to own and manage common property for the benefit of the HOA members. In a for-profit development, this is the property and assets owned by the developer until a number of units have been sold and thereafter the land and assets are deeded to the HOA. However, in this case the Consumers/lot owners already own all the assets of SRWR. The Redress plan will take back all the land and property that Pukke and Usher transferred out of SRWR and return it to SRWR.

The HOA is superfluous. The SRWR corporation has a Board of Directors that will need to be elected every year as part of the requirements of the nonprofit corporation, just as an

promotion of the objects of the Corporation... And no portion thereof shall be paid for transfer directly or indirectly in cash or in-kind by way of distribution, dividend, bonus or otherwise howsoever by way of profit to the members of the Corporation, and no member shall be paid for his services as member.” Section 7 of the Memorandum states that upon winding up of the corporation any surplus shall not be distributed to any member but shall be transferred to some other corporation having the same objectives as the Corporation which are charitable.

HOA Board would do. The Redress plan does not address the issue of the interaction between an HOA and the SRWR Board. The HOA will add additional cost to form and transfer assets to it plus add an additional layer of unnecessary management. SRWR holds legal title to all the inventory lots, the marina and its facilities, all the buildings and assets that have been added over the years, the beach club, the Sanctuary Island, several homes, a large maintenance yard with equipment, and thousand acres of land that are part of the planned Reserve. SRWR was the seller of all the lots and the holder of all the loans from the buyers.

The Receiver already has a draft of proposed amendments to SRWR Articles of Association to eliminate the Full and Provisional members and make all lot owners equal voting members. The SRWR Board can and should act as the HOA Board with just a few changes to SRWR's Articles. Why do we need the contractual agreements between an HOA and SRWR that will only add additional costs to operate, confusion and ultimately, turf wars between the HOA and SRWR, when all the assets already belong to the owners as members of the nonprofit SRWR?

It should also be noted that the previous HOA, the Reserve HOA, was a major perpetrator of Pukke's scam. It wrongfully caused hundreds of thousands of dollars from owners to be sent to Pukke's Newport office in the name of HOA fees. Creating a new HOA will cause suspicion and concern by some consumers when they consider opting in or out of the new Redress plan.

The Redress Plan can easily be modified to substitute the SRWR Board in place of New Sanctuary Belize HOA with all the same protections that would be included in the new HOA.

2. **Lot Loan and Future Sale Proceeds** – The Redress plan does not address what happens to the payments of any notes from those consumers that elect to keep their lots. Likewise, there is no discussion of revenue from future lot sales. The Redress plan needs to be explicit that all money from the payment of notes held by SRWR will stay in SRWR for the future development of Sanctuary Belize. This makes economic sense since lot owners will not want to make payments on their lots knowing that their payments will be going to help repay Pukke's judgement and not to the development of the project.

Additionally, there is the legal requirements to be considered. As a Belizean nonprofit organization, all money is to be kept in the company to meet the needs of the company. There is also the issue of private inurement. Currently, all the recovered funds that will be used to compensate the consumers comes from outside SRWR. It is money paid by the defendants. If, however, funds from SRWR are included in the pool of funds that are available for the Distributions as set forth in the Redress Plan, the Receiver will be in violation of the law by distributing SRWR assets to its members. These requirements are more than provisions in the Corporate Articles, they are the legal requirements that constituted the formation of SRWR as a nonprofit corporation in 2003.

3. **Sale of Development Rights** – Statements by the FTC indicate that the Receiver will be searching for a Qualified Developer and any money paid for development rights will become part of the funds that constitute Distributions for Consumers. As noted above, that

is in violation of Belizean nonprofit law. The Receiver certainly has the authority to negotiate a development agreement since the Receiver is functioning as the Board of Directors for SRWR. However, whatever purchase price that is negotiated should stay in SRWR for its development. Using such funds to pay SRWR members is a violation of the private inurement restrictions of the law.

It is important to remember that SRWR is a legally chartered nonprofit organization with a major part of its objectives to develop and maintain a wildlife reserve. The reserve area constitutes over 14,000 acres. While the focus is on the residential lots and commercial area, those areas are not the entire project. Many consumers bought lots because they expected to live in the middle of a protected nature reserve that would be a major amenity of the development. Just because Pukke, Baker and Usher violated the law, does not mean that the legal restrictions on SRWR are any less viable and that the Receiver can ignore the legal requirements of Belizean nonprofit law. None of this discussion benefits any defendant in this case, it only benefits the affected consumers, the SRWR members, i.e., the victims in this massive fraud.

4. **Marina and Marina Village** – A major omission of the Redress Plan is the omission of any discussion of the Marina and Marina Village. This is a portion of Sanctuary Belize that was the major attraction for lot buyers. It holds some of the highest valued land in Sanctuary Belize. It is a major selling representation made to consumers when selling lots. It also has some of the Receiver's highest maintenance costs going forward. It is the heart of the Sanctuary Belize vision that was sold to the consumers. *Yet it is not mentioned in the Redress Plan.* Nor is it included in the discussion of the minimum development required of a new developer. The Consumers have a right to know what the plans for this key part of the development are before they make their decision to keep or not to keep their lot.

Your Honor, thank you for taking the time to consider these points before making your final decision on the proposed Redress Plan.

Very Respectfully,

Thomas K. Herskowitz

Thomas K. Herskowitz
SB Lot Owner

CC: FTC
Johnathan Cohen (via email)
Jcohen2@ftc.gov

Receiver
Brick Kane (via email)
bkane@Robbevans.com