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FEB 24 2021

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

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U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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IN RE SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

OBJECTION TO THE RECEIVER’S PROPOSED PLAN OF REDRESS

INTRODUCTION

My name is Douglas Holloway. I am a U.S. citizen residing in the state of Arizona. I am a claimant in *In Re* Sanctuary Belize Litigation(the “Receivership”). The Receivership came in to being when Sanctuary Belize, a real estate development in the country of Belize (“Sanctuary Belize”) functionally defrauded interests associated with it, many of which were American interests. The Federal Trade Commission (the “Receiver”), jumped into action to protect American interests in Sanctuary Belize. In doing so, it began a coordinated involving the government of Belize, the Receiver, and the judiciary branch of the United States of America. An action was filed in the United States District Court for the District of Maryland (the “Court”) for the establishment of a federal receivership and the Court appointed the Federal Trade Commission as the receiver in the action. In order to effectuate its purpose, the Receiver did what receivers are supposed to do. The Receiver protected the remaining assets of Sanctuary Belize by coordinating with the government of Belize and imposing a constructive trust which effectively froze the assets and protecting them. The Receiver was able to do this under the federal law governing receivership and because the government of Belize acceded to the authority of this Court and the Receiver. This Receiver was probably chosen because its purpose was in line with the facts of the case. The Receiver’s natural purpose is to protect American interests from fraudulent activities, the Federal Trade Commission, as arm of the United States government, had bargaining power to get the government of Belize to cooperate, and the resources to effectuate the receivership. However, this is the first point where thing begin to go awry. It is dubious that the Federal Trade Commission

was the best choice to be the receiver in this matter. From this point on, my interests began to be compromised by questionable methods and interpretations of fairness, justice, and equity. In other words, this receivership began to me and others similarly situated to me in a negative. I was a depositor in a bank in Belize called the Atlantic International Bank (the "Bank"). I had placed \$85,269.00 USD in a savings account at that bank because I, like so many others, was considering or were about to retire in Belize. This money, \$85,269.00 USD, encompassed a significant amount of my retirement savings. This action made perfect sense to me because I placed the money in the most secure account I could think of that I could access appropriately. Belize is a safe and secure country with a stable government and has a strong relationship with the United States government and governments around the world. It also has a reputation of having security because Belize is often used by people around the world to secure their assets. If I retired in Belize then I would have immediate access to my retirement funds and they would be secure. Security was my primary motive to make this transaction. I wanted to secure my retirement so I chose this Bank and deposited my funds in a low risk account, in a bank in a stable country with a positive relationship with the United States, and where I would have access to these funds. However, in the aftermath of the Sanctuary Belize scandal, the actions of its perpetrators, the actions of this Receiver, the government of Belize, and the Bank have destroyed my goal of security. Security was not only my goal it was the goal of others, American and otherwise, because one of the most attractive features of Belize is that it is a secure place to hold assets. This is where the facts get fuzzy and opaque.

The Bank had a relationship with Sanctuary Belize. It is unclear what the nature of that Relationship was. Nobody outside of the Receiver, the Court, the government of Belize, the Bank, and the perpetrators of Sanctuary Belize has a clear and transparent picture of this relationship. However, we do know that shortly after the onset of the receivership, the Bank closed and was liquidated under the insolvency laws of Belize. As a depositor of the Bank, I received a share of the Bank's assets from the liquidation, however, my share was converted from US dollars to Belize dollars. The government of Belize converted my asset, hard currency, into Belize dollars, a currency with no real value. If this was adjudicated under the law of any state in the United States,

the government of Belize would be liable to me under the common law action of conversion. This begins that start of mine and others' problems. I received a recovery, however, most of the recovery was in Belize dollars it has no value to me a recovery in United States dollars, as hard currency that is widely accepted across the world would have reap some value, but because the recovery was in Belize dollars my recovery has no value and therefore the recovery was illusory and a sham. I put real value into the Bank and got nothing in return, even though I was entitled to a recovery under the insolvency laws of Belize. The Receiver should have accounted for this in its Proposed Plan of Redress or taken other actions to protect American interests in the Bank. Since the Bank had American interests in it and was likely engaged in or complicit in fraudulent activity. The Receiver, in furtherance of its purpose and the policies behind its existence, had every right to step in as it did in Sanctuary Belize to protect American interests. It didn't. It made a decision to forgo its mandate and selectively chose to get involved in Sanctuary Belize. Ultimately, the facts are unclear because those in possession of the facts have been forced to disclose them in open pursuant to the discovery rules of the Federal Rules of Civil Procedure. We also have a bifurcated proceeding here. Sanctuary Belize is being accorded under a federal receivership in this Court some unknown reason. It is not easily accessed by all the claimants. I am in Arizona. The Receiver is based in Washington, D.C. The Bank is located in Belize. The government of Belize is in Belize. Claimants are all over the place. The Bank has a position in this receivership, but Americans have interest in potentially fraudulent bank Everything is spread out and much is unclear. In the time of the Covid pandemic, we need to be careful and cautious. Efficiency and speed is important but it must be balanced with traditional notions of equity, justice, and due process. All parties want a quick resolution to this matter, but a quick resolution that is not equitable or just goes against the equitable nature of receivership. There are bigger issues at stake here. For me, my financial interests and retirement have been compromised and I am suffering a mental health condition and under the care of a physician. Pushing forward with the Proposed Plan of Redress compromises me and the other claimants. The mandate of the Receiver is compromised by the Proposed Plan of Redress and a speedy resolution that is quick and dirty compromises the nature and policies of receivership which is to act equitably. Receivership is

used because it is quick and efficient, but we are here to get to an equitable result. Equity can't be compromised for the sake of efficiency. The judiciary is tasked to formally resolve disputes and has rules of procedure and existing laws designed to allow for a formal resolution of this matter to promote the principal reason for this proceeding – to devise and implement an equitable plan of distribution. For the foregoing and below reason I formally object to the Receiver's Proposes of Redress and request additional proceedings to devise and implement a fair and equitable plan of distribution.

I. THE PROPOSED PLAN OF REDRESS IS PREMATURE

The Proposed Plan of Redress is premature given the facts known to all parties. The Receiver's Proposed Plan of Redress promotes judicial efficiency while compromising justice, fairness, and equity. I don't know all of the facts surrounding this Sanctuary Belize nor do I have all the facts surrounding the Bank and its relationship. All I know is that my recovery has been converted in the Bank's insolvency. The nature of the Bank's relationship with Sanctuary Belize is unclear, yet in order to devise and effectuate an equitable plan of distribution this relationship must be determined because it affects me and others involved in the receivership. Other claimants might also have a view. I have been told by the Receiver that I should happy with my share but I have no facts to justify the Receiver's conclusion. The facts I do have are in conflict with the Receiver's conclusion.

The Receiver has a fiduciary duty to the Court and to the estate (i.e., the claimants) *See Sovereign Bank v. Schwab*, 414 F.3d 450, 454 (3d Cir. 2005) (a "receiver owes a fiduciary duty to the owners of the property under his care") and so it has to stand in the shoes of the claimants and act accordingly. However, the Receiver cannot do so without consulting the claimants and making sure the claimants have all of the facts so that the claimants can express what is in their best interests. So in order to satisfy its fiduciary duties, the Receiver needs to consult with the claimants, help discover all the facts surrounding the receivership, and listen to the claimants' statements about what is in their interests when comes to distributing the assets of the estate. Claimants' interests may conflict and so the Receiver needs to here all voices and broker a deal, not impose one. However, no debate or discovery has been done in open court.

The claimants don't know all the facts, the claimants don't know other claimants positions, and the Receiver has no real knowledge of what the claimants want either individually or as a group or groups

The Receiver did its job when it marshaled the assets of Sanctuary Belize and imposed a constructive trust on those assets. In order to complete its job and act as a fiduciary it needs help. it needs the claimants to be informed and express themselves in court so that everybody knows where each other stands. The Proposed Plan of Redress is a grand assumption and isn't the next logical step in the receivership process. The next logical step is a formal process of discovery and then allow each claimant to assert their position. Then a plan of distribution can be developed and effectuated.

The Receiver is the Federal Trade Commission its primary purpose is to protect American consumers and the promotion of fair trade. Forcing the Proposed Plan of Redress, through compromises the Receivers dual role. American interests aren't protected unless the distribution scheme is fair, just, and equitable. The only way to properly reconcile the Receiver's dual role is to allow all facts be discovered and all claimants to be heard. Once all the facts are discovered and the claimants agree to a proposed plan of distribution, then a complete process will result. The Receiver's next logical role is to help discover the facts and broker a deal among the claimants not force a deal on all of us based on its interpretation of justice and equity. We have the rules and laws to allow the proceedings to proceed in the manner in which our federal judicial system is designed to work.

All parties in interest are governed by the Federal Rules of Civil Procedure and the law surrounding the facts of this case. However, without all the facts we cannot decipher which laws to apply or come up with the proper. The Proposed Plan of Redress is premature, not of the facts have been discovered, not all of the legal issues have been fleshed out, and most importantly not all voices have been heard. Once everything is out in the open and all parties agree in the manner that disputes are to be resolved under federal law then a plan of distribution can be formulated and all the Receiver needs to do is implement that plan. Without this process, any plan of redress would be premature, it would paternalistic, it would ignore conflicts of interests

the claimants, and would make the Receiver unable to satisfy its fiduciary duties.

II. THE PROPOSED PLAN OF REDRESS IS PREFERENTIAL

The Receiver has a broad mandate under the laws governing federal receivership. However, since the Court is sitting in equity and the Receiver is the fiduciary of the claimants it cannot prefer a claimant in any plan of distribution. If it did it would commit a preference, which is generally not permitted under certain state and also under federal bankruptcy law, and thus is a core principle to be applied in similar proceedings such as state or federal receiverships. Preferential action also compromises the Receiver's role as a fiduciary in this proceeding. Therefore, any plan proposed by the Receiver cannot be preferential.

This principle against preferences is well-grounded in law. It is recognized in federal bankruptcy law and in certain state preference laws. Preferential action in is conflict the equitable nature of receivership. If a plan of distribution if preferential it cannot be implemented and another way must be found. Under the circumstances, since not all the facts have been discovered, we cannot assess whether any plan is preferential. However, the Proposed Plan of Redress is facially preferential and cannot be adopted by the Court.

The Receiver's plan is preferential because it is distributing assets through multiple asset classes, and it is giving some classes of claimants the option to choose the assets it receives for their recovery while others have no choice. Let me explain. I can only receive my recovery in cash and have been told by the Receiver, that I am getting the best deal of all the claimants. However, I don't get a choice but, others do. Other claimants have the option of taking their recovery in cash or in land. Since have a choice and I don't, they are preferred over me. In order to provide equivalent recovery either all claimants get their recovery in one form of asset or all claimants get a choice. If the Receiver liquidated all assets then the recovery would be maximized, in theory, and all the assets would be in one asset class – cash. But, since the Receiver hasn't done this and it has kept the assets of Sanctuary Belize partly in cash and partly is land. By giving some claimants and others no choice then Proposed Plan of Redress is facially preferential and cannot be adopted and implemented.

The Proposed Plan of Redress is also preferential because it has a valuation problem.

Land and cash are very different assets with different systems and methods of valuation. Cash or, currency has a clear and transparent value. Transparent markets value the US dollar every second of every day in markets around the world. Cash is liquid. The US dollar is hard currency with real value. Land, however, is a radically different class of assets. Land isn't a liquid asset. There is no clear value because there is no transparent market to deal in land, much less land in Belize. We have different valuation techniques to value land. Those methods differ from the techniques to value cash or currency. We value land as compared to other comparable land. However, this is imprecise because no perfect class of comparable land be determined. We can value land as the rental value of the property. Land has different values depending the context and holder of the land. Land can valued from its value as a rental property. Land has different value depending on the holder's tax interests. There are just way too many ways to determine the value of land to know its precise value. The Proposed Plan of Redress values the land the way the Receiver's has valued the land. However, only way to properly value the land is to auction it off because then the true fair market value of the land will be determined by the market. The Receiver has the power to auction the land. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) ("we conclude that the power of sale is within the scope of receivership assets under 28 U.S.C. Section 754, a conclusion firmly rooted in the common law of equity receiverships.") and that would be appropriate under the circumstances in order to fairly value the land. However, the Proposed Plan of Redress doesn't do this and as such doesn't eliminate the valuation problem or solve the multiple asset class issue either. An auction, would at least consolidate the assets into a singular asset class which is easily valued and can be distributed across all claimants in the manner the parties in interest see fit.

The other issue the Proposed Plan of Redress doesn't address is the scenario whether a cash recovery or recover in land is the clear preferred option. If the cash option is the clearly preferred recovery, what then happens to the land? If land is preferred then what happens to excess cash? The Proposed Plan of Redress doesn't fairly account for situations where excess cash or land exists leaving an open hole in the plan. For the above reasons, the Proposed Plan of Redress is Preferential and it cannot be legally adopted.

III. THE PROPOSED PLAN OF REDRESS IS ARBITRARY AND CAPRICIOUS

The Proposed Plan of Redress is arbitrary and capricious because it imposes the Receiver's interpretation of equity upon a various claimants. The Receiver never consulted the claimants as to what was their interpretation of equity. This Court is sitting in equity not law. The Receiver er was appointed for equitable reasons because this was the only real was to stop the fraudulent actions of the developers of Sanctuary Belize and protect the assets of the claimants. As such, the Receiver acted equitably. However, the Receiver is an extension of the Court. *S.E.C. v. Hardy*, 803 F.2d 1034 (9th Cir. 1986), and it such must act equitably in all parts of this proceeding. The Proposed Plan of Redress hasn't done that. The Receiver never consulted the claimants in determining the plan of distribution, rather, it determined the classes of claimants and who would get what. It's just the Receiver's interpretation of what is equitable and as such it is arbitrary and capricious. Not all of the voices have been heard. Now the Receiver is saying we can object, and I am. Even worse, the Receiver has wasted time and resources concocting this Proposed Plan of Redress when it could have just let claimants properly debate the merits of their claims. We have guiding principles here that can be applied. Federal bankruptcy law has rules of procedure, is supervised by the court, and has established law. Receivership is comparable to bankruptcy, those principles can be applied here. The law governing federal class actions requires parties to certify a class and then lets members opt-in or opt-out of such class. The claimants in should be allowed to form their own classes opting in or out of them, The Receiver's Proposed Plan of Redress lumps all of the claimants in classes the Receiver has defined and then assigned a value to each class based on the Receiver's interpretation of what is fair and equitable. It is the sole arbiter of a process that needs to be determined by the claimants in open court so that a fair and equitable distribution results rather than an arbitrary and capricious one.

IV. THE SCOPE OF THE RECEIVERSHIP HAS NOT BEEN PROPERLY DEFINED

The scope of the Receivership and therefore the powers of the Receiver has not been properly defined. The Receivership is limited solely to the assets of Sanctuary Belize. As such my interest in the receivership is limited to my share of the Bank's interest in the assets of Sanctuary Belize. The Receiver was appropriately appointed since its inherent purpose is to

protect American consumers and prevent unfair trading practices. However, in my case I don't know the relationship of the Bank to Sanctuary Belize. Was the Bank so intertwined with Sanctuary Belize as to be an extension of it? Did the Bank just make a bad investment decision? Was the Bank itself fraudulent separate and apart from Sanctuary Belize and since there was an American interest in the Bank, should the Federal Trade Commission step in regarding the Bank? What should the assets of the receivership really be? Should there be multiple receiverships? There are just too many remaining unopened questions to say that the receivership is properly defined and where and over what the Federal Trade Commission should have stepped into to protect or what assets the Receiver should be protecting or distributing. From the known facts, it appears that the Federal Trade Commission coordinated and cut a deal with the government of Belize and the deal was imperfect. The Receiver would get the assets of Sanctuary Belize and the Bank would be liquidated under the insolvency laws of Belize. Since we don't know all the facts, the scope of the receivership isn't properly defined. In most real estate development projects, a lender has close ties to the real estate developer and the project itself, it may act at arm's length but each side is so dependent on the other that they can rise and fall together. That is what it looks like here and, if so, the scope of this receivership is just too narrow.

On top of all that, why was this Court chosen? I can't easily access this Court and I am sure other claimants are in a similar position. None of the claimants chose this forum, the Federal Trade Commission did. The Court was just selected by somebody as the appropriate forum, there has been no debate as to whether this is the appropriate Court to resolve this litigation in. There was no debate on who the receiver should be, the Federal Trade Commission was just appointed as Receiver.

Without full knowledge of facts and without a more formal dispute resolution process in the Court, the scope of the receivership and the nature of the Receiver and its powers aren't defined. Under the circumstances, the Proposed Plan of Redress can't be properly defined either and therefore cannot be adopted and implemented.

CONCLUSION AND REQUESTED RELIEF

The Receiver has proposed a plan of distribution that has lumped claimants into various

classes and assigned value to each class according to its interpretation of what is fair and equitable. In doing so it has compromised its fiduciary duties to the Court and claimants. The Proposed Plan of Redress is preferential and it is also arbitrary and capricious. No plan of distribution can be devised unless, formal discovery ensues, claimants assert their interests, and the scope of the receivership, therefore I object to the Proposed Plan of Redress and request additional proceedings and a more formal process be adopted in accordance with existing rules of law and the Federal Rules of Civil Procedure to develop a plan of distribution of the assets of Sanctuary Belize.

Douglas A Holloway 2021-02-09

Douglas Holloway

Claimant in *In re* Sanctuary Belize Litigation

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