

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-60907-CIV-Moreno/Turnoff

FEDERAL TRADE COMMISSION, and

STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants and Relief Defendants.

**DEFENDANT JEREMY MARCUS'S RESPONSE IN OPPOSITION TO
MOTION TO COMPEL TURNOVER OF BMW**

COMES NOW Defendant, Jeremy Marcus, by and through his undersigned counsel, and hereby files his response in opposition to Receiver's Motion to Compel Turnover of BMW ("Receiver's Motion"), and, in support thereof, states as follows:

As the Receiver's Motion sets forth, the Receiver is seeking turnover of a vehicle solely owned and titled in Mr. Marcus's individual name. *See* Receiver's Motion, Dkt. #182, at p. 3. The vehicle in question – a 2015 BMW – is not titled in the name of any of the Receivership entities. Rather, the Receiver bases his motion on a "tracing analysis" performed by the Receiver's forensic account demonstrating the source of funds for the BMW as purportedly emanating from a Receivership entity – namely, Receivership Defendant Halfpay International, LLC. The Receiver's Motion, however, should be denied by this Court, as it is both premature and unnecessary for the following reasons:

First, there has been no finding of fraud on the part of Mr. Marcus or a final judgment that would warrant turnover of his individual assets. Indeed, the parties are in the middle of discovery, which is set to close in more than five months-time (i.e. May 7, 2018). *See Amended Scheduling Order*, Dkt. No. 171. There is still ample time in the schedule for Mr. Marcus to develop his defenses and build his case,¹ such that a turnover of individually-titled assets before Mr. Marcus has had an opportunity to do so would be unfair and patently prejudicial. While there have been instances in which a Receiver has sought turnover of assets in summary proceedings, the factual record in those cases are distinguishable from the facts present here.² If Plaintiffs – with their broad investigatory powers and added benefit of months (if not years) of investigation prior to filing the instant case – cannot be expected to complete discovery in the timeframe originally

¹ In fact, it was at Plaintiffs' insistence that the parties extend the schedule to allow more time for discovery. *See Affidavit of Valerie Verduce*, Dkt. No. 121, at p. 5 (attesting to the complex nature of this case, including "the extraordinary corporate and financial entanglements that continue to evolve"); *see also Declaration of Counsel in support of Agreed Motion to Continue All Pretrial Deadlines and Trial*, Dkt. No. 168-1 at p. 3, (attesting to "multiple delays in the production of defendants' data to the Parties," which includes "more than nine terra bites" of data).

² The Receiver's Motion cites cases in which the request for turnover of assets was the result of motions filed by the receiver to compel both parties and non-parties to turn over assets after a final judgment on the merits. *See, e.g., FTC v. Pac. First Ben., LLC*, 472 F. Supp. 2d 981, 982 (N.D. Ill. 2007) (proceedings occurring after Order for Permanent and Final Judgment against defendants); *FTC v. Vocational Guides, Inc.*, Civil No. 3-01-0170, 2009 WL 943486, at *1 (M.D. Tenn. Apr. 6, 2009) (seeking finding of civil contempt for failure to comply with Stipulated Final Judgment and Order for Permanent Injunction). The Receiver also cites cases in which the turnover of assets being compelled related to assets belonging to a corporate party or non-party. *See FTC v. NHS Sys., Inc.*, 708 F. Supp. 2d 456 (E.D. Pa. 2009) (compelling non-party payment process company to turn over funds it had processed for corporate defendants); *FTC v. Transcontinental Warranty, Inc.*, No. 09 C 2927, 2009 WL 5166213 (N.D. Ill. Dec. 22, 2009) (seeking turnover of funds from non-party, corporate entity). In this case, however, the asset at issue is individually-titled in Mr. Marcus's name. The vehicle is not otherwise titled in the name of a corporate entity or receivership defendant. The Receiver's Motion is essentially one for turnover based on alleged fraudulent transfer. But, as yet, there has been no finding of fraud or final judgment in this case.

envisioned by this Court,³ then surely Mr. Marcus – who had no prior notice of Plaintiffs’ *ex parte* investigation – cannot be expected to develop his defenses in such a short time frame, months before discovery has been completed. Mr. Marcus requires additional time and opportunity to build and support his defenses through discovery, and such time should be afforded to him before his personal property is taken away from him.

Second, Mr. Marcus has been readily cooperative with respect to the turnover of assets throughout the course of his case. Indeed, the Receiver noted as much in both his Agreed First Verified Motion to Expand Receivership (Dkt. No. 89) and Agreed Motion to Turn Over and Transfer Title to Certain Real Property and Sales Proceeds (Dkt. No. 90).⁴ Time and time again, Mr. Marcus has agreed to turnover property to the Receiver without the need for a contested motion. Mr. Marcus’s reticence in this instance to turnover an asset should not be viewed as a failure to cooperate, but rather as a necessary measure to protect the last available mode of transportation that Mr. Marcus and his family have left to them.

In fact, the Receiver fails to mention in the instant Motion that, on November 8, 2017, Mr. Marcus turned over his family vehicle, a 2015 Range Rover, to the Receiver without the need for a contested motion. At the time that Mr. Marcus negotiated turnover of the Range Rover, he offered the Receiver the BMW in place of the Range Rover because a) the BMW was valued more than the Range Rover, and more importantly, b) Mr. Marcus needed the Range Rover to transport

³ The Court originally set a schedule in which discovery was set to close by December 5, 2017. *See Scheduling Order*, Dkt. No. 106. Thereafter, Plaintiffs took the lead in seeking an extension of this deadline by filing a Joint Scheduling Report (Dkt. No. 108) and Joint Motion to Continue All Deadlines by Extending Dates to Accommodate a Complex Discovery Track (Dkt. No. 109).

⁴ In the Agreed Motion, the Receiver noted that he “appreciates Marcus’ cooperation in this matter.” *See* Dkt. No. 90, at p. 2.

his infant son. It was explained to the Receiver that the 2015 BMW was a two-door vehicle and that it would be extremely difficult and tight to fit an infant car seat into the back. It was further explained to the Receiver that the family needed at least one car for the duration of this case so that Mr. Marcus could seek and obtain gainful employment and so he could, at the very least, transport his infant son to and from doctor's appointments.⁵ Despite his obvious need for a family vehicle, Mr. Marcus turned over the Range Rover to the Receiver and somehow managed with the much smaller vehicle. Without the BMW, Mr. Marcus has no means of transportation. The lack of transportation will indubitably impact his ability to take care of his infant son and his household's basic needs.

To date, Mr. Marcus has not petitioned this court for basic living expenses despite being under asset freeze since May of this year, without the ability to even use his personal credit cards. As evidenced by the agreed motions filed with this Court, Mr. Marcus has been focused on maximizing the funds available for consumer redress. Mr. Marcus is not remotely concerned with having a "luxury" vehicle, as the Receiver alleges, but rather, he is merely concerned with having a single mode of transportation. Further, Mr. Marcus is also concerned with trying to resolve this case with Plaintiffs through settlement, as to save all of the parties the time and expense of litigation. He understands the parameters that settlement entails, including the turnover of assets, and, to the extent the parties reach a settlement in this case, he is willing to turn over the BMW at

⁵ Mr. Marcus even offered to sell the BMW – the pricier vehicle – and use a small portion of the sales proceeds to procure a small, affordable, non-luxury vehicle simply as a means for transportation. The Receiver ultimately rejected this option.

issue in the Receiver's Motion. While the Receiver's general zealousness is seeking the turn over of assets is laudable,⁶ in this particular instance, it is unnecessary and unfair.

WHEREFORE, Mr. Marcus respectfully requests that this Honorable Court (i) deny the Receiver's Motion; and (ii) enter an Order finding that the turnover of the BMW is premature until there has been a final finding of liability (via judgment) against Mr. Marcus. In the alternative, should this Honorable Court be inclined to grant the Receiver's Motion, Mr. Marcus requests a period of three (3) months to retain the BMW, while he is able to secure a safe, reliable, and inexpensive vehicle for transportation purposes.

⁶ One would expect the Receiver to act zealously in his pursuits of assets given that, from the period of May 9, 2017 through August 31, 2017 (which does not even account for the past four months), the Receiver, and his law firm of Genevose Joblove & Battista, P.A., alone, seek approval of a total award of \$1,108,286.27. *See* Receiver's First Motion for Award of Professional Fees and Reimbursement of Expenses, Dkt. No. 135. While the reasonableness of the Receiver's request for fees is for this Court to decide, it appears that the Receiver has already "identified and/or secured assets worth approximately \$32,919,529.58." *See id.* at p. 2. Having done so, it is not necessary for the Receiver to be overzealous in pursuing the turnover of Mr. Marcus's remaining and sole means of transportation. To the extent the Receiver believes that the BMW was purchased with allegedly fraudulently obtained Receivership funds, the Receiver can institute separate proceedings to recoup those funds. To do so now – with more than five months left in the schedule for discovery and continuing settlement discussions – would be unfair.

Dated: December 27, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 2017, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in another authorized manner for those counsel or parties authorized to receive electronically Notices of Electronic Filing.

By: /s/ Maurice B. VerStandig
Maurice B. VerStandig