

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-cv-60907-FAM

FEDERAL TRADE COMMISSION, et al.,

Plaintiff,

vs.

JEREMY LEE MARCUS, et al.,

Defendant,

**REPLY TO THE RESPONSE TO THE MOTION FOR LEAVE OF COURT FROM
PRELIMINARY INJUNCTION TO COMPLETE FORECLOSURE ACTION**

SUMMITBRIDGE NATIONAL INVESTMENTS VI LLC (“SummitBridge”) hereby submits its reply to the response [DE 302] to the motion for leave of Court under the Court’s Preliminary Injunction Order [DE 21] to complete a foreclosure action presently pending in the Circuit Court of Broward County, and in support thereof states:

INTRODUCTION

The Receiver’s Response provides no legal basis to deny SummitBridge leave to proceed with the Foreclosure Action. The Receiver’s suggestion that there is no dispute that the stay provisions of the Preliminary Injunction Order do not apply is contradicted by the Receiver’s own exhibits. The Receiver states that, “the Receiver indicated to SummitBridge that he did not believe the stay imposed by the PI applied to the Foreclosure Action.” [DE 302]. However, the Receiver’s own exhibits show that the Receiver’s counsel actually said to SummitBridge, “Arguably, that stay would apply to the Foreclosure Action.” *See* DE 302, Ex. A. Emails from the Receiver that are attached as an exhibit hereto reiterated this position. But, regardless of what the Receiver said, the Court’s language in the Court’s Preliminary Injunction Order is

controlling. Thus, whether or not the Receiver intends to abstain from seeking to enforce the Court's Preliminary Injunction Order against SummitBridge or not, the fact remains that the plain meaning of the words in the Preliminary Injunction Order arguably stay the Foreclosure Action. This fact was acknowledged, in writing, by the Receiver's counsel. Thus, SummitBridge requests leave of Court to proceed with the Foreclosure Action, or alternatively, clarification from this Court that the Preliminary Injunction Order does not stay the Foreclosure Action.

ARGUMENT

The Receiver's response to SummitBridge's motion states that, "the Receiver indicated to SummitBridge that he did not believe the stay imposed by the PI applied to the Foreclosure Action." In fact, the Receiver's conduct and statements suggested the opposite to SummitBridge. First, SummitBridge (and its predecessor in interest BB&T) only became aware of the Receivership because the Receiver's counsel, Greg Garno, Esq., ("Receiver's Counsel") furnished a copy of the Preliminary Injunction Order [DE 21] to the foreclosing plaintiff's counsel and requested a temporary halt of the Foreclosure Action. If the Preliminary Injunction Order has no bearing on the Foreclosure Action, it is unclear why the Receiver bothered interfering in the Foreclosure Action in the first place. Second, the Receiver's Counsel clearly stated to SummitBridge by letter, "[a]rguably, that stay would apply to the Foreclosure Action." *See* [DE 302, Ex. A.] Earlier, in email correspondence omitted from the Receiver's motion, the Receiver's counsel disavowed any understanding that the stay did not apply because the Titan Funding mortgage is not owned by a Receivership Defendant. A copy of that correspondence is attached hereto as **Exhibit A**. Thus, the Receiver never unambiguously communicated that the Receiver felt that the stay imposed by the Preliminary Injunction Order did not apply to the

Foreclosure Action.

Separate and aside from the contradictory statements made by the Receiver and his counsel, it is undisputed that the text of the Preliminary Injunction Order “arguably” stays the Foreclosure Action. Specifically, the Preliminary Injunction Order not only stays actions against the Receivership Defendant’s, but also entities affiliated with Receivership Defendants and/or the assets of the Receivership. Specifically, the Preliminary Injunction Order states:

1. Except by leave of the Court, during pendency of the receivership ordered herein, Defendants and Relief Defendants, together with their officers, agents, directors, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, and all other Persons are hereby stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, any of their subsidiaries, affiliates, partnerships, assets, documents, or the Receiver or the Receiver’s duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:
 - a. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

[DE 21, p. 24-25] (emphasis added). SummitBridge’s Foreclosure Action will have the effect of foreclosing a junior lien held by Titan Funding that is expressly listed in the Receiver’s Second Interim Report [DE 136, p. 40] as a receivership asset because the Receiver believes it was funded by Receivership Defendant Halfpay with misappropriated consumer funds. Therefore, under at least one reasonable reading of the Preliminary Injunction Order, the Foreclosure Action is arguably stayed.

The Receiver has made clear that even though the Preliminary Injunction Order “arguably” applies, he will not seek to enforce the Preliminary Injunction Order against SummitBridge in

the Foreclosure Action. However, SummitBridge is not comfortable arguably violating this Court's applicable Preliminary Injunction Order simply because the Receiver's counsel has agreed not enforce the Preliminary Injunction Order. Instead, SummitBridge requests the Court clarify whether the stay provisions of the Preliminary Injunctive Order stay the Foreclosure Action, and to the extent necessary, grant SummitBridge leave to complete the Foreclosure Action.

CONCLUSION

In sum, a controversy exists over the applicability of the Preliminary Injunction Order and whether the Court will permit SummitBridge leave to complete the Foreclosure Action. The Receiver's Response provides no reason to deny SummitBridge leave to complete the Foreclosure Action. If the Court feels, as the Receiver apparently now does, that the stay provisions of the Preliminary Injunction Order do not apply to the Foreclosure Action, SummitBridge simply requests the Court provide an order of clarification so that there is no lingering doubt whether the Preliminary Injunction Order applies to the Foreclosure Action. If the Receiver's interpretation of the Preliminary Injunction Order is incorrect, SummitBridge is entitled to leave of Court to complete the Foreclosure Action, and nothing in the Receiver's Response suggests the contrary.

WHEREFORE, SummitBridge requests the Court grant SummitBridge's request for leave to complete its foreclosure action, or in the alternative, clarification regarding whether the stay provisions of the Preliminary Injunction Order [DE 21] apply to stay the Foreclosure Action.

Respectfully submitted,

/s/ Nicholas S. Agnello

Nicholas S. Agnello, Esq. (FL Bar No. 90844)
BURR & FORMAN LLP

350 E. Las Olas Boulevard, Suite 1440
Fort Lauderdale, FL 33301
Telephone: (954) 414-6202
Facsimile: (954) 414-6201
Email: flservice@burr.com
Secondary Email: nagnello@burr.com
Secondary Email: rzamora@burr.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2018, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which will serve a copy of the aforesaid via Notice of Electronic Filing upon:

Ryann Flack, Esq.
Ronnie Adili, Esq.
Office of the Attorney General
Consumer Protection Division
SunTrust International Center
1 S.E. 3rd Avenue, Suite 900
Miami, FL 33131
Email: Ryann.Flack@myfloridalegal.com
Email: Ronnie.Adili@myfloridalegal.com
*Attorneys for State of Florida, Office of
Attorney General*

Valerie M. Verduce, Esq.
Angeleque P. Linville, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303
Email: vverduce@ftc.gov
Email: alinville@ftc.gov
Attorneys for Federal Trade Commission

Maurice B. VerStandig, Esq.
THE VERSTANDIG LAW FIRM, LLC
2505 Park Potomac Avenue, Sixth Floor
Potomac, Maryland 20854
Email: mac@mbvesq.com
*Counsel for Defendant Jeremy Lee Marcus and
Relief Defendants Halfpay International, LLC;
Halfpay NV LLC; JLMJP Pompano, LLC; and
Nantucket Cove of Illinois, LLC*

Jonathan E. Perlman, Esq.
Gregory M. Garno, Esq.
Allison Day, Esq.
Theresa M.B. Van Vliet, Esq.
GENOVESE JOBLOVE & BATTISTA, P.A.
Miami Tower, 44th Floor
100 Southeast 2nd Street
Miami, FL 33131
Email: jperlman@gjb-law.com
Email: ggarno@gjb-law.com
Email: aday@gjb-law.com
Email: tvanvliet@gjb-law.com
Receiver and his Counsel

Rachel Hirsch, Esq.
A. Jeff Ifrah, Esq.
IFRAH LAW
1717 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006
Email: rhirsch@ifrahlaw.com
Email: jeff@ifrahlaw.com

Edward Shohat, Esq.
Barry S. Turner, Esq.
JONES WALKER, LLP
201 S. Biscayne Blvd, 26th Floor
Miami, Florida 33131
Email: eshohat@joneswalker.com
Email: bturner@joneswalker.com
*Counsel for Defendants Craig Davis Smith
and Yisbet Segrea*

/s/ Nicholas S. Agnello
Nicholas S. Agnello, Esq. (FL Bar No. 90844)
BURR & FORMAN LLP

EXHIBIT "A"

Zamora, Rosa

Subject: FW: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

From: Garno, Greg [<mailto:GGarno@gjb-law.com>]
Sent: Monday, August 27, 2018 2:01 PM
To: Agnello, Nicholas S. <nagnello@burr.com>
Cc: Ryann Flack <Ryann.Flack@myfloridalegal.com>; Verduce, Valerie M. <VVERDUCE@ftc.gov>; alinville@ftc.gov; Day, Allison <aday@gjb-law.com>; Van Vliet, Theresa <tvanvliet@gjb-law.com>
Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

Sounds good.

From: Agnello, Nicholas S. [<mailto:nagnello@burr.com>]
Sent: Monday, August 27, 2018 1:48 PM
To: Garno, Greg
Cc: Ryann Flack; Verduce, Valerie M.; alinville@ftc.gov; Day, Allison; Van Vliet, Theresa
Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

My concern is that I'm not sure a comfort letter from the Receiver will matter if the Court feels the action was stayed. If all agreed the lien was not a receivership asset because it was not held by a receivership defendant, that would be one thing. But if it is a receivership asset, I'm not sure how motion practice can be avoided.

Regardless, we'll circle back next week and see where everyone is at.

From: Garno, Greg [<mailto:GGarno@gjb-law.com>]
Sent: Monday, August 27, 2018 12:59 PM
To: Agnello, Nicholas S. <nagnello@burr.com>
Cc: Ryann Flack <Ryann.Flack@myfloridalegal.com>; Verduce, Valerie M. <VVERDUCE@ftc.gov>; alinville@ftc.gov; Day, Allison <aday@gjb-law.com>; Van Vliet, Theresa <tvanvliet@gjb-law.com>
Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

Nick,

I do not believe that your e-mail is completely consistent with what we discussed.

We appreciate that your client will wait another week to decide whether or not to file the proposed motion for stay while we wait for the insurance carrier.

However, we don't see why your client would file such a motion and our call this morning focused on avoiding that motion practice. If we can work this out without the need for motion practice, that would seem to best serve your client. We do not agree that the loan/lien is not a receivership asset. As we discussed, if your client needs some sort of comfort next week in pursuing foreclosure relief, then we would be willing to entertain providing it with a comfort letter on the stay issue. The Receiver has not decided what his position will be if your client files its proposed motion.

Please give me a call.

From: Agnello, Nicholas S. [<mailto:nagnello@burr.com>]

Sent: Monday, August 27, 2018 11:47 AM

To: Garno, Greg

Cc: Ryann Flack; Verduce, Valerie M.; alinville@ftc.gov; Day, Allison; Van Vliet, Theresa

Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

All, thank you for joining me on the call this morning. If you all could reply off this email and let me know if this is consistent with what we discussed, or if there is any objection.

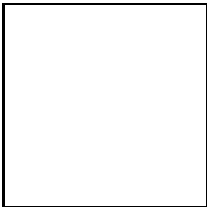
My client will go ahead and wait a week while the Receiver secures the coverage letter from Titan's title insurance carrier. I have confirmed my client will not object to that.

Furthermore, you all agree that the stay does not apply because the loan/lien at issue is not a receivership asset.

In an abundance of caution however, my client would like to file the motion Tuesday of next week since the Titan loan is referenced in the Receiver's report. It is my understanding that if the Receiver receives a favorable coverage determination from the title carrier, there will be no objection to the relief sought. Please correct me if I misunderstood.

Thanks again for everyone's cooperation on the call,

Nick



Nicholas S. Agnello • *Attorney at Law*

350 East Las Olas Boulevard

Suite 1440

Ft. Lauderdale, Florida 33301

direct 954-414-6202 • fax 954-414-6201 • main 954-414-6200

nagnello@burr.com • www.burr.com

blog: www.burr.com/blogs/consumer-finance-litigation/

AL • DE • FL • GA • MS • NC • TN

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From: Garno, Greg [<mailto:GGarno@gjb-law.com>]

Sent: Friday, August 24, 2018 4:29 PM

To: Agnello, Nicholas S. <nagnello@burr.com>

Cc: Ryann Flack <Ryann.Flack@myfloridalegal.com>; Verduce, Valerie M. <VVERDUCE@ftc.gov>; alinville@ftc.gov; Day, Allison <aday@gjb-law.com>; Van Vliet, Theresa <tvanvliet@gjb-law.com>

Subject: Re: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

Yes

Sent from my iPhone

On Aug 24, 2018, at 4:22 PM, Agnello, Nicholas S. <nagnello@burr.com<<mailto:nagnello@burr.com>>> wrote:

Greg, I know you and I have discussed this some already, does 11:00 AM work for you for a quick call on Monday?

From: Ryann Flack [<mailto:Ryann.Flack@myfloridalegal.com>]

Sent: Friday, August 24, 2018 4:16 PM

To: Agnello, Nicholas S. <nagnello@burr.com<<mailto:nagnello@burr.com>>>; Verduce, Valerie M. <VVERDUCE@ftc.gov<<mailto:VVERDUCE@ftc.gov>>>; alinville@ftc.gov<<mailto:alinville@ftc.gov>>>; ggarno@gjb-law.com<<mailto:ggarno@gjb-law.com>>>; Day, Allison <aday@gjb-law.com<<mailto:aday@gjb-law.com>>>>; Van Vliet, Theresa <tvanvliet@gjb-law.com<<mailto:tvanvliet@gjb-law.com>>>>; Ryann Flack <Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>>>

Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

That works for the FTC and FL if it works for the Receiver. Thank you.

Ryann Flack, Esq.

Assistant Chief Attorney General, South Florida Bureau

Office of the Attorney General

Consumer Protection Division

SunTrust International Center

1 SE 3rd Ave, Suite 900

Miami, FL 33131

Telephone: (786) 792-6249

Facsimile: (305) 349-1403

Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>

Note: Florida has a very broad public records law. Most written communications to or from state officials and employees regarding public business are public records and subject to public disclosure.

From: Agnello, Nicholas S. <nagnello@burr.com<<mailto:nagnello@burr.com>>>

Sent: Friday, August 24, 2018 4:15 PM

To: Ryann Flack <Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>>>; Verduce, Valerie M. <VVERDUCE@ftc.gov<<mailto:VVERDUCE@ftc.gov>>>>; alinville@ftc.gov<<mailto:alinville@ftc.gov>>>; ggarno@gjb-law.com<<mailto:ggarno@gjb-law.com>>>; Day, Allison <aday@gjb-law.com<<mailto:aday@gjb-law.com>>>>; Van Vliet, Theresa <tvanvliet@gjb-law.com<<mailto:tvanvliet@gjb-law.com>>>>

Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

Certainly, I can make myself available whenever works for the group. Would Monday at 11:00 AM work?

From: Ryann Flack [<mailto:Ryann.Flack@myfloridalegal.com>]

Sent: Friday, August 24, 2018 4:12 PM

To: Agnello, Nicholas S. <nagnello@burr.com<<mailto:nagnello@burr.com>>>>; Verduce, Valerie M. <VVERDUCE@ftc.gov<<mailto:VVERDUCE@ftc.gov>>>>; alinville@ftc.gov<<mailto:alinville@ftc.gov>>>; ggarno@gjb-law.com<<mailto:ggarno@gjb-law.com>>>; Day, Allison <aday@gjb-law.com<<mailto:aday@gjb-law.com>>>>; Van Vliet, Theresa <tvanvliet@gjb-law.com<<mailto:tvanvliet@gjb-law.com>>>>; Ryann Flack <Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>>>

Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary

injunction to complete a foreclosure action

Nick,

The FTC and FL would like to have a conversation with you and the Receiver before you file anything. Please advise when you are available. I will be on leave next week but will make myself available for a phone call. Thank you.

Ryann Flack, Esq.
Assistant Chief Attorney General, South Florida Bureau
Office of the Attorney General
Consumer Protection Division
SunTrust International Center
1 SE 3rd Ave, Suite 900
Miami, FL 33131
Telephone: (786) 792-6249
Facsimile: (305) 349-1403
Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>

Note: Florida has a very broad public records law. Most written communications to or from state officials and employees regarding public business are public records and subject to public disclosure.

From: Agnello, Nicholas S. <nagnello@burr.com<<mailto:nagnello@burr.com>>>
Sent: Friday, August 24, 2018 4:04 PM
To: Ryann Flack <Ryann.Flack@myfloridalegal.com<<mailto:Ryann.Flack@myfloridalegal.com>>>; Ronnie Adili <Ronnie.Adili@myfloridalegal.com<<mailto:Ronnie.Adili@myfloridalegal.com>>>; 'vverduce@ftc.gov' <<mailto:vverduce@ftc.gov>>' <vverduce@ftc.gov<<mailto:vverduce@ftc.gov>>>; 'alinvill@ftc.gov' <<mailto:alinvill@ftc.gov>>' <alinvill@ftc.gov<<mailto:alinvill@ftc.gov>>>; 'ggarno@gjb-law.com' <<mailto:ggarno@gjb-law.com>>' <ggarno@gjb-law.com<<mailto:ggarno@gjb-law.com>>>; 'aday@gjb-law.com' <<mailto:aday@gjb-law.com>>' <aday@gjb-law.com<<mailto:aday@gjb-law.com>>>; 'tvanvliet@gjb-law.com' <<mailto:tvanvliet@gjb-law.com>>' <tvanvliet@gjb-law.com<<mailto:tvanvliet@gjb-law.com>>>; 'rhirsch@ifrahlaw.com' <<mailto:rhirsch@ifrahlaw.com>>' <rhirsch@ifrahlaw.com<<mailto:rhirsch@ifrahlaw.com>>>; 'jeff@ifrahlaw.com' <<mailto:jeff@ifrahlaw.com>>' <jeff@ifrahlaw.com<<mailto:jeff@ifrahlaw.com>>>; 'mac@mbvesq.com' <<mailto:mac@mbvesq.com>>' <mac@mbvesq.com<<mailto:mac@mbvesq.com>>>; 'eshohat@joneswalker.com' <<mailto:eshohat@joneswalker.com>>' <eshohat@joneswalker.com<<mailto:eshohat@joneswalker.com>>>; 'bturner@joneswalker.com' <<mailto:bturner@joneswalker.com>>' <bturner@joneswalker.com<<mailto:bturner@joneswalker.com>>>
Subject: RE: FCC v. Jeremy Marcus 17-cv-60907 - conferral regarding relief from stay imposed by preliminary injunction to complete a foreclosure action

Following up, please let me know by 12:00 Monday if we should represent the motion as opposed by any of your clients.

Thanks,

Nick

From: Agnello, Nicholas S.
Sent: Thursday, August 23, 2018 11:30 AM

