

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-60907-CIV-MORENO/SELTZER

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

**REPLY TO RECEIVER’S RESPONSE TO EXPEDITED MOTION
TO REQUIRE THE RECEIVER TO CONTINUE TO HOLD IN TRUST
\$107,500 OF THE PROPERTY SALES PROCEEDS THAT ARE THE *RES*
OF MS. FINLEY’S EQUITABLE LIEN CLAIM THROUGH ADJUDICATION
OF THE MOTION FOR RECONSIDERATION, OR ALTERNATIVELY,
MOTION FOR A STAY PENDING APPEAL**

Basis for Expedited Relief:

This request is made on an expedited basis in order to prevent transfer of the *res* of Ms. Finley’s equitable lien claim to avoid it potentially being unrecoverable if Ms. Finley prevails on appeal to the Eleventh Circuit. The Receiver has admitted to already removing the funds from his trust account, which makes the urgency of this time-sensitive Motion even greater. Eliminating the *res* of Ms. Finley’s equitable lien would cause irreparable harm to Ms. Finley and continuing to hold the funds in trust, as this Court ordered previously, does not harm or prejudice the Plaintiffs or Receiver.

Non-party, claimant, Amanda Finley, files this Reply to the Receiver's Response [D.E. 459] to the Expedited Motion to Require the Receiver to Continue to Hold in Trust \$107,500 of the Property Sales Proceeds that are the *Res* of Ms. Finley's Equitable Lien Claim through Adjudication of the Motion for Reconsideration, or Alternatively, Motion for Stay Pending Appeal [D.E. 455] (the "Motion") of this Court's Order Denying Ms. Finley's Motion for Imposition of Equitable Lien Based on the Separately Contributed Funds for the Purchase of the Real Property [D.E. 404] (the "Motion for Equitable Lien") located at 300 Royal Plaza Dr. Fort Lauderdale, Florida 33301 (the "Property") [D.E. 451] (the "Order"), and in support, states as follows:

On February 28, 2020, Ms. Finley filed a Notice of Appeal of the Order [D.E. 461]. As such, any argument that the Receiver makes regarding the Motion being premature is moot. The Receiver admitted in his Response that he has already transferred the funds from the escrow account into his general operating fund. Response at 3. This admission makes Ms. Finley's request even more urgent. Although the date that the Receiver may further transfer these funds is unknown, that does not undermine the time-sensitive nature of the request.¹

The Receiver previously agreed to essentially the same relief in specifically offering to hold the funds in trust pending this Court's resolution of the matter [D.E. 409 at 5]. The Court recognized that agreement and approvingly referenced it in a Court Order [D.E. 410] (citing "the Receiver's agreement to hold \$107,500 of the sale proceeds in trust pending the resolution of Finley's equitable lien claim"). The "resolution" referenced in that Court Order is still ongoing

¹ The Receiver argues that the Motion does not contain a date by which expedited relief is needed under Local Rule 7.1(d)(2). However, Ms. Finley has no way to know when the Receiver will further transfer the funds that represent the *res* of her equitable lien, which further supports consideration of this issue on an expedited basis.

given the pending appeal. The Receiver should continue to abide by his agreement and the Court's Order until there is a final resolution by the Eleventh Circuit.

Now, for unspecified reasons, the Receiver has changed his position and objects to continuing to hold the funds separately pending adjudication of the appeal. The circumstances have not materially changed after the Receiver initially agreed to hold the funds in trust such that continuing to do so would prejudice or harm the Receiver or the Plaintiffs in any way. There is no burden to the Plaintiffs or the Receiver in holding these funds for a short time longer until the Eleventh Circuit adjudicates the appeal.

The Receiver's only assertion of harm is that "the \$107,500 continues to be held up." Response at 2. However, a slight delay cannot outweigh final determination on the merits of who is actually entitled to those funds. Ms. Finley is not seeking – and has never sought – to take any source of redress that the victims are truly entitled to. From the very beginning of this case, she cooperated with the Receiver; voluntarily turned over to the Receiver everything requested that she owned, which the defendant purchased, with no objection; and purchased certain items from the Receiver with her clean funds. There is no justification for minimal delay taking precedence over final adjudication on the merits of entitlement to the funds at issue.

Furthermore, the Receiver continues to request that this case remain open for prosecution and investigation of claims, so this request does not elongate administration of the estate or unduly prevent closure of this case. If the Receiver concludes his investigation and all pending litigation against certain financial institutions, which is still at a relatively early stage, prior to final adjudication of the appeal, then the Court may always revisit this issue at that time to ensure that there is no delay in the closure of the case.

For a stay pending appeal, likelihood of success on the merits and irreparable injury to the moving party if relief is withheld are “the most critical” factors. *See LabMD, Inc. v. Federal Trade Commission*, 678 Fed. Appx. 816, 819 (11th Cir. 2016) (granting motion for stay pending appeal) (citing *Nken v. Holder*, 556 U.S. 418, 425–26 (2009)). If the Court determines that the first prong is not satisfied, the Court should still grant the Motion since a “balance of the equities” favors Ms. Finley since irreparable injury is evident, the stay would allow for effective appellate review, and there is no harm to the Plaintiffs or Receiver. *See id.* (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981) (per curiam)).

The Motion is seeking nothing more than to continue the status quo pending resolution of Ms. Finley’s appeal in order to ensure that her funds are still recoverable if she prevails on appeal. There must be an “identifiable res for an equitable lien to attach.” *In re 21st Century Satellite Commc’ns, Inc.*, 278 B.R. 577, 585 (Bankr. M.D. Fla. 2002). If the relief requested is not granted, it could necessitate a difficult tracing analysis if Ms. Finley prevails on appeal and the Receiver has further transfer the funds. No harm could be more irreparable than potentially eliminating the *res* of the entire claim that is subject to a pending appeal. Denying the Motion could potentially undermine the entire purpose of appellate review in this matter. The law supports maintaining the status quo in order to facilitate a resolution on the merits through appeal because the “ability to appeal ... is a ‘substantial and important right.’” *CW Capital Asset Management, LLC v. Burcam Capital II, LLC*, 2013 WL 3288092, *9 (E.D.N.C. June 28, 2013) (granting a stay because “denying a stay in this case will likely moot appellate review.”).

WHEREFORE, Ms. Finley respectfully requests that this Honorable Court enter an Order granting the Motion to Require the Receiver to Continue to Hold in Trust \$107,500 of the Property

Sales Proceeds that are the *Res* of Ms. Finley's Equitable Lien Claim through Adjudication of the Pending Appeal to the Eleventh Circuit and any further relief that this Court deems just and proper.

Dated: February 28, 2020

Respectfully Submitted,

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/s/ Amanda E. Finley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via electronic filing using the CM/ECF system with the Clerk of the Court which sent e-mail notification of such filing to all CM/ECF participants in this case on February 28, 2020.

/s/ Amanda E. Finley

Amanda E. Finley