

No. 20-10832

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

FEDERAL TRADE COMMISSION and STATE OF FLORIDA,
Plaintiffs-Appellees,

and

JONATHAN PERLMAN,
Receiver-Appellee,

v.

JEREMY LEE MARCUS. *et al.,*
Defendants,

and

AMANDA FINLEY,
Nonparty-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

No. 17-cv-60907

Hon. Federico A. Moreno

**FTC AND FLORIDA'S RESPONSE TO
APPELLANT'S MOTION TO EXTEND SIXTY-DAY STAY**

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No. 20-10832

Federal Trade Commission v. Amanda E. Finley.

Appellees, FTC and State of Florida, certify that the following is a list of interested persons as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1:

1. Abbott, Alden F. (FTC General Counsel)
2. Adili, Ronnie (Plaintiff's counsel below)
3. Bild, Michael (Receiver's counsel below)
4. Federal Trade Commission (Appellee/Plaintiff below)
5. Finley, Amanda (Appellant/Non-party Claimant below)
6. Flack, Ryann (Plaintiff's counsel below/Counsel for Appellee)
7. Friedman, Michael (Receiver's counsel below)
8. Garno, Gregory (Receiver's counsel below/Counsel for Appellee)
9. Gayo-Guitian, Mariaelena (Receiver's counsel below)
10. Genovese Joblove & Battista, P.A. (Receiver's law firm below)
11. Hoffman, Matthew M. (Counsel for Appellee)
12. Linville, Angeleque (Plaintiff's counsel below)
13. Marcus, Joel (FTC deputy general counsel)
14. Moody, Ashley, Esq., Florida Attorney General (Appellee/Plaintiff below)
15. Moreno, Honorable Federico A., (United States District Judge for the Southern District of Florida, Judge presiding over the case below)
16. Percival, James H. (Counsel for Appellee)
17. Perlman, Johnathan (Appellee/Receiver below)
18. Sadovnic, Irina (Receiver's counsel below)

No. 20-10832

Federal Trade Commission v. Amanda E. Finley.

19. Seltzer, Honorable Barry S., (United States Magistrate Judge for Southern District of Florida, Magistrate Judge that presided over the matter below)
20. Sequor Law, P.A. (Appellant's law firm)
21. State of Florida (Plaintiff/Appellee)
22. Verduce, Valerie (Plaintiff's counsel below)

In accordance with this Court's Rule 26.1-3(b), Appellees certify that no publicly traded company or corporation has an interest in the outcome of this appeal.

The Federal Trade Commission and the Office of the Attorney General, State of Florida, Department of Legal Affairs (“State of Florida”) join in the opposition filed by the court-appointed Receiver, Jonathan Perlman, to the motion filed by Appellant Amanda Finley to require the Receiver to continue to hold \$107,500 in trust pending the disposition of this appeal. We write separately to further explain the background of this case and to discuss (1) why Finley has not demonstrated a likelihood of success on the merits of her claim and (2) why requiring the Receiver to continue to hold these funds in trust pending the disposition of this appeal would be contrary to the public interest.

BACKGROUND

The FTC and State of Florida filed this action in May 2017 against Jeremy Lee Marcus and other individual and corporate defendants who operated a massive debt-relief scam that bilked consumers out of more than \$85 million. Appellant Finley, a non-party below, is Marcus’s ex-wife. The district court appointed Perlman as Receiver to take custody of the defendants’ assets. ECF Nos. 13, 21. The parties eventually settled with Marcus, and the Court entered a stipulated order for injunction and monetary judgment against Marcus for \$85 million. ECF 231 at 8. Pursuant to that order, the Receiver is disbursing the money he has collected to

the FTC to satisfy the judgment, and the FTC, in turn, is distributing that money to consumers injured by Marcus's scam.

In partial satisfaction of the monetary judgment, Marcus was required to turn over to the Receiver a residence located at 300 Royal Plaza Drive in Fort Lauderdale—a 7,568 square-foot mansion with 160 feet of waterfrontage and a dock suitable for a 100-foot yacht. Marcus and Finley purchased this property in 2016 for \$5.25 million in cash, using funds directly traceable to Marcus's debt-relief scam.

Finley served as the buyer's agent for the purchase of the Royal Plaza property, which was purchased for Marcus and Finley to live in. As reflected on the HUD-1 (Finley Mot. Ex. E), Finley's employer, Florida Coastal Realty Group, credited \$107,500 toward the purchase price. Finley contends that this money represented a portion of a sales commission she was owed, which she elected to take in the form of a reduced purchase price. Finley also received \$34,250 in cash as commission at closing.

The Receiver ultimately sold the Royal Plaza property for \$4 million—a \$1.25 million loss. Finley asserts that she is entitled to an equitable lien on the sale proceeds in the amount of her purported \$107,500 additional commission. The district court denied Finley's motion for an equitable lien for a multitude of

reasons, and Finley appeals. In this motion, she seeks to compel the Receiver to continue to hold the \$107,500 pending the final disposition of the appeal.

ARGUMENT

Although Finley describes the relief she seeks as a “stay,” she actually seeks an injunction barring the Receiver from disbursing the \$107,500 pending final adjudication of this appeal. An injunction pending appeal is an “extraordinary remedy,” which requires Finley to show (1) a substantial likelihood that she will prevail on the merits of the appeal, (2) a substantial risk of irreparable injury if the injunction is not granted, (3) no substantial harm to other interested persons, and (4) no harm to the public interest. *Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000) (en banc). As discussed below, and for the reasons set forth in detail by the Receiver, Finley is unlikely to succeed on the merits. Furthermore, even assuming that she will be irreparably injured if the money is disbursed, factors (3) and (4) strongly favor the prompt return of the money to the victims of Marcus’s scam.

I. FINLEY HAS NOT SHOWN A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

The district court denied Finley’s motion to impose an equitable lien in a thorough and well-reasoned opinion. ECF No. 451. The court’s decision to grant or deny an equitable lien is reviewed for abuse of discretion. *See, e.g., Cox Enters. v. Pension Benefit Guar. Corp.*, 666 F.3d 697, 701 (11th Cir. 2012); *Crawford v.*

Silette, 608 F.3d 275, 278 (5th Cir. 2010). Finley is highly unlikely to succeed on appeal in her claim that the district court abused its discretion in denying the lien.

The district court denied Finley's claim for a number of separate and independent reasons. First, it held that Florida Statute § 475.42(1)(d) precludes a real estate sales associate (like Finley) from maintaining an action for a commission against anyone other than her employer (Florida Coastal Realty). ECF No. 451 at 4. Second, the court held that Finley had not provided any evidence that she was contractually entitled to the \$107,500.¹ *Id.* at 5. Third, the court held that there was no basis for an equitable lien in any event. It explained that the rebate on the purchase price was not a loan, so Finley had no reasonable expectation of being repaid, which made it "difficult for this Court to find that equity requires that she now be compensated." *Id.* The court held that "Finley obtained the benefit of that bargain when the purchase price was rebated. Allowing her to collect the \$107,500 now is akin to giving her a windfall." *Id.* Further, the court reasoned, Finley had not claimed an interest in the Royal Plaza property in her divorce proceeding. *Id.* at 6. Finally, the court rejected Finley's

¹ Finley failed to produce a valid contract evidencing her entitlement to the funds in her original motion. After the district court denied her motion, she filed a motion for reconsideration attaching a broker agreement, but that agreement was not in effect at the time the Royal Plaza property was purchased. Finley also never produced a prenuptial agreement.

argument that the \$107,500 rebate could be deemed equivalent to a cash contribution toward the purchase, noting that all of the money used to buy the property was traceable to stolen consumer funds, and that any interest in the property that Finley might have did not take precedence over the Receiver's interest.

Finley disputes the district court's interpretation of Florida law and her alleged contractual right to the money. But even if she could show both a contractual right to the \$107,500 and that Florida law does not bar her claim, the district court's decision to deny her an equitable lien on the other independent grounds it invoked was not an abuse of discretion. The district court reasonably concluded that Finley had already received the \$107,500 benefit of her bargain with her employer in the form of a reduced purchase price. Because she already received the benefit of the reduced purchase price, and because she did not claim any interest in the house during her divorce from Marcus, the court was correct that allowing her to recover the money now would simply give her a windfall.

Moreover, because the entirety of the \$5.25 million in cash used to buy the property came directly from the illegal debt-relief scam and the house has now sold for \$1.25 million less than its purchase price, the district court was well within its discretion to conclude that the victims of the scam have superior rights to these

funds as a matter of equity. In short, the district court made an equitable determination here, and none of the equities favors Finley.

II. THE PUBLIC INTEREST AND THE INTEREST OF VICTIMIZED CONSUMERS WEIGH HEAVILY AGAINST AN INJUNCTION PENDING APPEAL.

The public interest and the interests of Marcus's victims weigh strongly against Finley. This case has been pending for three years, and the Receiver is nearing the completion of his duties. Forcing him to retain the \$107,500 while this case is litigated would only "prolong the Receivership and delay recovery for injured consumers." *FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1313 (S.D. Fla. 2013). Given the lack of any merit to Finley's legal argument, the harm to consumers caused by delay becomes decisive. Victims should not be forced to wait longer while Finley fruitlessly litigates this case.

CONCLUSION

Finley's motion should be denied.

Respectfully submitted,

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/s/ Ryann Flack

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**CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This response complies with the type-volume limit of Fed. R. App. P. 27(d)(2) because it contains 1,349 words (excluding the parts exempted by Fed. R. App. P. 32(f)).

2. This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in 14 point Times New Roman.

April 16, 2020

/s/Matthew M. Hoffman
Matthew M. Hoffman

CERTIFICATE OF SERVICE

I certify that on April 16, 2020, I filed the foregoing brief via the Court's electronic filing system. All parties will be served by the CM/ECF system.

April 16, 2020

/s/Matthew M. Hoffman
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