

No. 20-1594

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Federal Trade Commission,
Plaintiff-Appellee

v.

Peter Baker
Defendant-Appellant

On Petition for Interlocutory Appeal from the
United States District Court
for the Southern District of Maryland
No. 18-cv-3309
Hon. Peter J. Messitte

FTC's Informal Response Brief

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Background

This appeal arises from an FTC enforcement action to halt a real-estate development scam known as “Sanctuary Belize,” which was run by appellant Peter Baker and his codefendants. Sanctuary Belize duped consumers into spending over \$138 million on empty lots in remote southern Belize. Sanctuary Belize promised consumers that they were making a low-risk investment in a luxury resort community that would soon be completed. In fact, the investment was risky, the promised luxury amenities never materialized, and the development was never close to completion. Nevertheless, some of the consumers who purchased lots in the incipient development managed to build on them, and a few even moved in to their properties.

In 2018, the Commission sued to bring a halt to the Sanctuary Belize scam. Dkt. 1. To prevent the defendants from dissipating their assets and the development from falling to waste, the FTC sought, and the district court granted, an ex-parte temporary restraining order, an asset freeze, and the appointment of a receiver to oversee the defendants’ assets and the Sanctuary Belize property. Dkt. 615 at 2. Among his other responsibilities, the receiver initially managed the development while the parties prepared for a preliminary injunction hearing held in March 2019.

As a result of the hearing, the district court entered a preliminary injunction, finding that the Commission was likely to succeed in showing that the defendants violated the FTC Act and that Baker (and other defendants) were personally liable for the violations. *See* Dkt. 539 at 20-33, 40-45. The court then considered proposals from the parties and lot owners on how best to manage the development during the remainder of the lawsuit. Dkt. 559. It ultimately determined that the receiver should continue to manage the property, and it also provided a means for lot owners to have a voice in decisions affecting the property. *See id.* at 2-3.

The court created a “Consumer Committee” to facilitate communication between lot owners and the receiver. It directed the receiver to meet with the committee monthly and permitted the Commission to attend the meetings. *See id.* at 4-5. At the meetings, the committee discussed a variety of matters related to the development, similar to the types of things that a homeowner’s association might typically discuss. The FTC often attended, and at times provided the attendees with updates on the litigation and answered questions about the case (to the extent possible). When asked what would likely happen to the assets held by the receiver if the Commission’s enforcement action succeeded in showing that the defendants had violated the FTC Act—or if it failed—Commission representatives truthfully answered that if the ac-

tion were successful, the Commission would seek to distribute any monetary award to victims as redress, and that if it failed, the assets would be returned to the defendants. After each meeting, the receiver prepared minutes of the meeting and posted them on his website.¹

When the Commission received minutes of the committee meetings, it produced them to the defendants as part of its ongoing discovery obligations while the case progressed toward a trial scheduled for January 2020. On the day before the trial began, the receiver held an in-person meeting with the Consumer Committee, which counsel for the FTC also attended. FTC Counsel explained some logistical information about the trial and answered lot owners' questions about various aspects of the case and other matters. *See* Jan. 20, 2020 Consumer Committee Meeting minutes 1-3 (Attachment 4 to Baker Br.). Counsel explained that the district court was likely to issue "an in-depth written opinion which may take some months," that appeals were possible, and that if the decision were in the FTC's favor, the receiver would not be able to distribute assets to individuals "until final resolution." The Commission did not receive a copy of those minutes before the trial, which began the following day and concluded on February 12, 2020.

¹ *See* <https://www.robbevans.com/find-a-case/ecological-fox-llc-global-property-alliance-inc-dba-sanctuary-bay-and-sanctuary-belize-et-al-receiver/the-reserve-sactuary-bay/proposed-plans-reserve/>.

After the trial, Baker moved the district court to dismiss the case (without rendering a final decision) as a sanction for what he alleges was improper conduct by the Commission. Dkt. 929. Baker alleged that the Commission failed to produce minutes of the committee meetings, which he claimed show that the Commission “brainwashed” the lot owners, convinced them that the outcome of the case was already determined, and bribed them to prevent them from testifying for the defendants. Dkt. 929 at 2-3. The district court denied the motion without requiring the Commission to respond “because the Motion is so clearly lacking in merit.” Dkt. 916. In this appeal, Baker seeks interlocutory review of that decision. The district court has not yet entered a final judgment on the merits of the Commission’s enforcement action.

Argument

The Court lacks jurisdiction to consider Baker’s appeal because it arises from a nonfinal interlocutory decision and the collateral order doctrine does not apply.

Baker’s claims are also meritless. The Commission produced to the defendants all of the Consumer Committee minutes it received before trial, they were available through the receiver’s website, and they do not show any improper conduct by the Commission.

A. The Court lacks jurisdiction.

Baker asserts that the Court has jurisdiction to hear this appeal under 28 U.S.C. § 1291 and the collateral order doctrine. Br. 3. Section 1291 authorizes jurisdiction only over final orders; the order Baker seeks to appeal is not final. Nor does the order qualify as final under the collateral order doctrine. The Court therefore lacks jurisdiction over this appeal.

“A final decision is one that ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 454 (4th Cir. 2017) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). The order that Baker seeks to appeal did not end the litigation on the merits; it simply denied his motion to dismiss the case as a sanction for alleged misconduct by the Commission. *See* Dkt. 916. An order declining to issue a sanction is not final and therefore is not appealable under Section 1291. *See Fawzy*, 873 F.3d at 455 (finding no jurisdiction to review order denying motion for sanctions); *see also United States ex rel. Citynet, LLC v. Gianato*, 2020 WL 3406446, at *3 (4th Cir. June 22, 2020) (“Ordinarily, the denial of a motion to dismiss is interlocutory and thus not subject to immediate appeal.”). Section 1291 therefore does not authorize jurisdiction over this appeal.

Baker argues, however (Br. 14 & n.1), that the Court should review the order under the collateral order doctrine, which permits appellate jurisdiction over “a narrow class of decisions that do not terminate the litigation, but are sufficiently important and collateral to the merits that they should nonetheless be treated as final.” *Will v. Hallock*, 546 U.S. 345, 347 (2006) (cleaned up). To come within this narrow exception to the final order rule, a district court decision “must, at a minimum, meet three conditions. First, it must conclusively determine the disputed question; second, it must resolve an important issue completely separate from the merits of the action; and third, it must be effectively unreviewable on appeal from a final judgment.” *Flanagan v. United States*, 465 U.S. 259, 265 (1984) (cleaned up).

The district court’s order does not meet those criteria. It simply finds that Baker’s fanciful accusations of withholding evidence and improperly influencing potential witnesses did not warrant any sanction (let alone the extreme sanction of dismissal of the entire case) because they were “so clearly lacking in merit.” Dkt. 916. That question is neither “completely separate from the merits” of the FTC’s case, nor “unreviewable on appeal from a final judgment.” *Flanagan*, 465 U.S. at 265. Indeed, the crux of Baker’s argument is that the supposed misconduct *did* affect the merits: he claims it destroyed the district court’s “ability to fairly adjudicate” the matter and that

if it weren't for the misconduct, "Defendants' whole defense would have changed." Br. 24. Because those arguments may be effectively reviewed on appeal from a final order, they do not support appellate jurisdiction under the collateral order doctrine.

To the extent that Baker's brief attempts to show that the collateral order doctrine should apply, his argument fails on its own terms. He claims that through its interactions with the receiver and the Consumer's Committee, the Commission somehow "engaged in a fraudulent transfer of conversion and assets to third parties before trial." Baker Br. 14. He argues that issue—the ownership of the Sanctuary Belize property and the companies in the receivership—is "completely separate from the actual merits of the action" and was not litigated below. Baker Br. 14. But to qualify under the collateral order doctrine, an issue must be both separate from the merits *and* conclusively decided in the order on appeal. *Flanagan*, 465 U.S. at 265. The district court didn't decide anything about property ownership or the structure of the companies in the order denying Baker's motion or in any other order. *See* Dkt. 916. So while Baker may have identified a collateral issue, he has not appealed from a collateral order that decided anything about that issue.

B. Baker's claims are meritless.

Even if it were possible to overlook the Court's lack of jurisdiction, Baker's appeal should be denied for its complete lack of merit.

Simply stated, Baker claims the Commission did something improper by meeting with the court-created committee of Sanctuary Belize property owners before the trial. Br. 18. He claims the Commission sent the minutes of those meetings to Sanctuary Belize property owners but withheld them from its productions to the defendants. Br. 8, 9, 22. Baker claims the minutes show that the Commission "led a campaign of disinformation and false claims against the Defendants" (Br. 10), and that it engaged in witness tampering and bribery, through "[i]ndirect promises of financial benefits" (Br. 19), including "property, assets and future profits to be split among the lot consumers" (Br. 16). *See id.* at 2-3, 12, 13-14, 25. Baker claims that property owners received the minutes and believed the Commission's supposed assertion that the case had already been decided and promise of big payouts to property owners, and that they therefore declined to testify for the defendants and Baker was unable to make his case at trial. Br. 16-17, 19.

Nearly everything about that narrative is wrong. To begin with, there was nothing remotely suspect about the Commission's attendance at the receiver's meetings with the Consumer Committee; to the contrary, the district

court specifically ordered that the Commission “may attend” them. Dkt. 559 at 4-5 (quoted in Baker Br. at 7). Baker’s argument rests on the incorrect premise that “[l]itigants generally are prohibited from directly communicating with any witness, informant, or victim.” Br. 18. And Baker’s claim that the Commission failed to produce minutes of the meetings is false. The Commission produced copies of the minutes in its possession before trial. *See* Dkt. 922 at 10. It did not produce minutes from the meeting held the day before the trial because it didn’t have them: it first received them *after* the trial, as an attachment to another defendant’s motion. *See id.* Indeed, the district court rejected “Baker’s claims that [the minutes] were withheld by the FTC during discovery.” Dkt. 946 at 6. Moreover, the Commission could not have hidden the minutes from the defendants even if it wanted to. Not only were they distributed to all property owners, they were posted on the receiver’s website. *See* note 1, *supra*.

Nor do the minutes even hint that Commission counsel engaged in misconduct. Only one set of minutes—for the meeting held the day before the trial—reflects the participation of Commission counsel. *See* Jan. 20, 2020 Minutes at 1-3. The minutes of that meeting show that counsel explained the logistics of the trial and responded to property owners’ questions on a variety of concerns reflecting the complex challenges that the lot owners and the

Sanctuary Belize development face in light of the receivership and the litigation. *Id.* at 1-3. Those included questions about how the development might go forward if the Commission were to win the trial and how the appeals process might affect the Commission's efforts to provide consumer redress. *See id.* Counsel's answers do not remotely show "a clear case of coercion and bribery" (Br. 13), that counsel declared "a foregone victory for the FTC" (Br. 17), or that it made any promise of financial benefits if the consumers agreed not to testify for the defendants (Br. 19).² Simply put, and as Baker agrees, "[t]he documents speak for themselves" (*id.*); what they say shows that Baker's descriptions of them are wrong.

Baker's claim that consumers declined to testify for the defendants as a result of the minutes thus finds no support in the minutes themselves. *See* Br. 16-17. The minutes do not show the "bribe" that Baker claims or that the Commission declared "a foregone victory." *Id.* at 17. Nor is it plausible that "countless witnesses" who were to testify on defendants' behalf decided not to show after reading the minutes of a meeting held one day before the trial started. Nothing prevented Baker from conferring with his potential witness-

² Baker devotes several pages of his brief to complaints about the receiver's handling of the receivership assets, which he claims violated the preliminary injunction and which the Commission allegedly "allowed" and "endorsed." *See* Br. 8, 9-11, 12-14, 20. But Baker admits those questions were "not litigated" below (Br. 14), and the district court did not rule on them.

es and correcting any misimpressions they might have gotten from the minutes.

In sum, Baker's claim rests on a false narrative. The district court correctly declined to issue any sanction based on that claim. And the court delivered that decision in an interlocutory order that is not subject to appeal.

Conclusion

The Court should dismiss the appeal for lack of jurisdiction.

July 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 10, 2020, I filed this motion using the Court's appellate CM-ECF system, and served appellant by U.S. mail at the following address:

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July 10, 2020

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