

No. 19-2353

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

In re: Andris Pukke

On Petition for a Writ of Mandamus
To the United States District Court
for the Southern District of Maryland
No. 18-cv-3309
Hon. Peter J. Messitte

FTC’s Opposition to Emergency Motion

Petitioner Andris Pukke has moved the Court for an “emergency review” of his petition for mandamus, or in the alternative to stay the district court proceedings below pending the Court’s consideration of the petition. The Court should deny both the motion and the mandamus petition itself.

Mandamus is an extraordinary remedy that should be granted only when the petitioner has a clear and indisputable right to relief. Pukke comes nowhere close to that demanding standard. He has no right—much less one that is a clear and indisputable—to a jury trial because the sanctions at issue here are civil, not criminal. Nor does he have a clear right to change venue. Venue disputes rarely if ever justify mandamus, and the district court plainly did not abuse its discretion in declining to transfer venue.

Background

This matter involves two consolidated cases: a contempt action arising from Pukke's violation of a 2006 permanent injunction entered against him in connection with a debt-counseling scam (*Ameridebt*); and a new enforcement matter against Pukke for running a real-estate scam ("Sanctuary Belize").

1. In 2003, the FTC filed an enforcement action against Pukke and others to halt a credit-counseling scam that took more than \$172 million from consumers. *See FTC v. Ameridebt, Inc.*, 373 F. Supp. 2d 558, 560-561 (D. Md. 2004). While the *Ameridebt* scam was ongoing, Pukke purchased a large parcel of land, amounting to 12,000 acres, in Belize. *See* D.Ct. Docket No. 267 at 5-9.

On the eve of the *Ameridebt* trial, Pukke agreed to an injunction and judgment against him for \$172 million. *Id.* at 3; *Ameridebt* Docket No. 473, No. 8:03-cv-3317 (D. Md.). Although the injunction required Pukke to turn all of his assets over to a court-appointed receiver, he hid his interest in the Belize land and prevented the receiver from taking control of it. *See* D.Ct. Docket No. 267 at 5-8; *Ameridebt* Docket No. 473 at 15. As part of that effort, Pukke orchestrated a sham transaction to transfer part of his interest to Peter Baker, and kept the rest concealed in an entity, Sittee River Wildlife

Reserve, that was secretly under his and Baker's control.¹ See D.Ct. Docket No. 267 at 6-8, 10-12.

When the district court learned of that conduct, it held Pukke and Baker in contempt for failing to turn over the land. *Ameridebt* Docket No. 571. In the face of their continued failure to obey, the court ultimately ordered them incarcerated to coerce compliance. D.Ct. Docket No. 267 at 8-10; *Ameridebt* Docket No. 604. Even then, however, Pukke and Baker continued to elude the district court's orders through their secret control of Sittee River. As the FTC later learned, Pukke and Baker caused Sittee River to falsely purport to terminate their rights in the land. D.Ct. Docket No. 267 at 9. Sittee River then entered into a fraudulent settlement with the *Ameridebt* receiver, making a modest payment that allowed Pukke and Baker to retain control of the land, which they had already begun to telemarket as a development called "Sanctuary Bay." *Id.* at 9-11, 5 & n.4.

Sanctuary Bay evolved into Sanctuary Belize, the real-estate development scam now at issue. Pukke, Baker, and other defendants convinced consumers to spend more than \$100 million on empty lots in remote southern Belize on false promises that the lots were low-risk investments in a soon-to-

¹ Baker is a co-defendant in the Sanctuary Belize case and has filed his own mandamus petition and motion to stay, to which the Commission will respond separately. See *In re Peter Baker*, No. 19-2366 (4th Cir.).

be-completed luxury resort development. In fact, the investment was risky, the promised luxury amenities never materialized, and the development was little more than a mirage.

2. In 2018, the FTC filed a new complaint in the District of Maryland seeking to halt the Sanctuary Belize scam. *See* D.Ct. Docket No. 1. At the same time, the FTC filed three contempt motions in the *Ameridebt* case, alleging (1) that Pukke, Baker, and a third person violated the permanent injunction in *Ameridebt* by engaging in deceptive telemarketing practices for Sanctuary Belize (Docket. No. 266); (2) that they violated the district court's orders in *Ameridebt* to turn over the land in Belize (Docket No. 267); and (3) that Pukke and another defendant violated the order releasing Pukke from coercive confinement in *Ameridebt* (Docket No. 268). In light of the overlap between the *Ameridebt* contempt motions and the allegations in the Sanctuary Belize complaint, the FTC moved to consolidate the contempt motions with the new complaint. D.Ct. Docket No. 8.

Before ruling on consolidation, the district court entered an ex-parte temporary restraining order and asset freeze in connection with the Sanctuary Belize complaint. *See* D.Ct. Docket No. 615 at 2. The court then entered an interim preliminary injunction while the parties prepared for an evidentiary hearing held in March 2019. *See id.* Following the hearing, the district court

announced that it would enter a preliminary injunction and granted the FTC's motion to consolidate, *see* D.Ct. Docket Nos. 261; 634 at 2-3. After post-hearing briefing, the court entered a preliminary injunction which also set a discovery schedule for the FTC's Sanctuary Belize claims and scheduled the trial to begin on January 20, 2020. *Id.* at 10-25, 38-39.

The court allowed Pukke (and the other defendants) to withdraw \$3,000 per month from frozen funds for living expenses. *See* D.Ct. Docket No. 649. Pukke, who lives in California, sought to unfreeze an additional \$75,000 to cover the expenses of attending the trial. D.Ct. Docket No. 656 at 4. He asked in the alternative to transfer the case for trial in California, or to stay the proceedings pending his appeal of the preliminary injunction. *Id.* at 4-5. The court granted the motion in part, unfreezing \$30,000 for each defendant "to cover travel, incidentals, and at least some consultations with counsel." D.Ct. Docket No. 649 at 1. The court also allowed Pukke and other out-of-town defendants to appear for a Jan. 14, 2020 pretrial conference by video, and the Commission provided the defendants with video facilities in California to do so. *See id.*; D.Ct. Docket No. 768.

Following the consolidation order, the court directed the parties to brief whether the contempt at issue in the Commission's motions is civil or criminal in nature and whether a jury trial is required. D.Ct. Docket No. 529. Af-

ter receiving the parties submissions, the court agreed with the Commission that “the remedies the FTC seeks are civil in nature and that the alleged contemnors do not have the right to a jury trial.” D.Ct. Docket No. 634 at 1, 5.

3. Pukke appealed the preliminary injunction² and also filed a pro-se petition for mandamus asking the Court to order the district court (1) to hold a jury trial on the contempt motions; (2) to transfer the case to the Central District of California; and (3) to stay the district court litigation until the mandamus petition is resolved. Pukke Pet. 1. On January 9, 2020, Pukke separately asked the Court “for an emergency review” of his petition, contending with little elaboration that “the critical issues outlined in the filings[] desperately need to be reviewed and ruled upon prior to trial.” Pukke Mot. 1. In the alternative, Pukke asked the Court to stay the district court proceedings. *Id.* The Court directed the Commission to respond to the emergency motion by January 14.

Argument

Pukke’s motion and the mandamus petition itself should be denied. Mandamus is a drastic remedy to be used only in extraordinary circumstances. *In re Beard*, 811 F.2d 818, 826 (4th Cir. 1987) (citing *Kerr v. United States*

² *FTC v. Pukke* (No. 19-2204). Two other individual defendants have also filed pro-se appeals from the preliminary injunction. *See FTC v. Baker* (No. 19-2306); *FTC v. Chadwick* (No. 19-2387).

Dist. Court, 426 U.S. 394, 402 (1976)). It is available only when there is no other way to secure the relief sought, *id.*, and it may not be used as a substitute for appeal. *In re Catawba Indian Tribe*, 973 F.2d 1133, 1135 (4th Cir. 1992). The party seeking mandamus thus carries the heavy burden of showing both that (1) there is no other adequate means to attain the relief requested and (2) the entitlement to such relief is clear and undisputable. *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980). “In short, only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy.” *United States v. Moussaoui*, 333 F.3d 509, 516 (4th Cir. 2003) (cleaned up). None of Pukke’s arguments meets that standard.

1.a. Pukke does not have a clear and indisputable right to a jury trial on the contempt charges. The contempt charges here are civil, not criminal, and accordingly they trigger no right to a jury. *See* D.Ct. Docket No. 634. In the absence of a right to jury trial, Pukke has no right to mandamus on that issue. *See In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007).

Pukke is wrong that the contempt charges against him must be criminal because he was previously incarcerated for failing to turn the Sanctuary Belize property over to the *Ameridebt* receiver and may face the same sanction again this time. Pukke Pet. 7-10; *see* D.Ct. Docket No. 267. That claim fails

because the possibility of incarceration does not by itself turn a contempt proceeding into a criminal matter. To the contrary, “confining a contemnor indefinitely until he complies with an affirmative command” is “[t]he paradigmatic coercive, *civil* contempt sanction.” *Int’l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 828 (1994) (emphasis added). Indeed, Pukke admits that his earlier incarceration was “coercive,” allowing him to “be released once the contempt was purged.” Pet. 7-8. Any potential imprisonment here—a sanction that FTC does not currently seek—would likewise be a coercive, civil contempt sanction, for which there is no right to a jury trial. *Shillitani v. U.S.*, 384 U.S. 364, 365 (1966); *Bagwell*, 512 U.S. at 827.

b. Pukke likewise has no clear and indisputable right to a jury trial on the monetary remedies sought by the Commission in the Sanctuary Belize case. He claims that such remedies amount to a jury-demandable civil penalty, Pukke Pet. 10-12, but that argument is foreclosed by this Court’s holding that the “monetary consumer redress” awarded in FTC cases “is a form of equitable relief.” *FTC v. Ross*, 743 F.3d 886, 891 (4th Cir. 2014). The constitutional right to a jury trial extends only to “Suits at common law,” U.S. Const. Amnd. VII, and not to cases in equity.

Disregarding *Ross*, Pukke claims that the Supreme Court ruled in *SEC v. Kokesh*, 137 S.Ct. 1635 (2017), that monetary relief under the FTC Act necessarily “qualifies as a penalty.” Pukke Pet. 11. But this Court ruled to the contrary in *Gonzales v. Sessions*, 894 F.3d 131, 138 (2018). There, distinguishing *Kokesh*, the Court recognized that “courts generally refuse to treat a monetary assessment as a punishment or penalty when the assessment solely reflects the costs of compensating a private party or the government for losses resulting from the wrongdoing.” That is the situation here. The FTC seeks monetary relief solely to redress harm to consumers from the Sanctuary Belize scam. *See* D.Ct. Docket No. 1 at 46. Under *Gonzales*, that relief is not a penalty and does not trigger the right to a jury trial.³

2. Pukke is not entitled to mandamus ordering the district court to transfer the case below to California. Because the transfer decision is “committed to the discretion of the district court,” “it cannot be said that a litigant’s right to a particular result is clear and undisputable,” as required for mandamus.

In re Ralston Purina Co., 726 F.2d 1002, 1004-1005 (4th Cir. 1984)

³ Pukke also claims a right to jury trial because of the district court’s alleged bias against him (Pukke Pet. 12-15), but even if the charge were proven (which it plainly is not) he cites no authority to demonstrate that bias creates a “clear and undisputable” right to a jury trial. *Allied Chemical*, 449 U.S. at 35.

(cleaned up) (citing *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33 (1980)).

In addition, because the ruling on a transfer motion can be challenged on appeal from a final judgment, “it is difficult to say that [the petitioner] has no other adequate means to attain the relief it desires.” *Ralston Purina*, 726 F.2d at 1005 (cleaned up). Accordingly, to qualify as “exceptional circumstances” that would justify mandamus to review a transfer decision, the district court’s decision must go beyond “a mere abuse of discretion” and instead “amount to a ‘judicial usurpation of power.’” *Id.* at 1006 (*quoting Allied Chemical*, 449 U.S. at 35). As a result, mandamus is not appropriate even if the district court’s venue decision “does not withstand analysis.” *Id.*

Pukke has shown no error at all, let alone the judicial usurpation required by *Ralston Purina*. He simply asserts that that Maryland is “the wrong venue” because the Sanctuary Belize defendants are located in California or Belize, and that “forc[ing] the defendants to litigate the case 3000 miles from their homes” is “a financial impossibility.” *See* Pukke Pet. 3, 4, 5, 7. Pukke fails to mention, however, that the Court has alleviated the claimed financial hardship by allowing him to use \$30,000 of frozen funds to attend the trial. D.Ct. Docket No. 649 at 1.

Moreover, “[d]istrict courts within this circuit consider four factors when deciding whether to transfer venue: (1) the weight accorded to plaintiff's choice of venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice.” *Trs. of the Plumbers & Pipefitters Nat. Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015). Here, the district court duly considered those factors, noting that the FTC’s choice of forum was entitled to some weight, and while Maryland was a less convenient forum for the defendants and some witnesses, it was convenient for the FTC and no less convenient for witnesses who are in neither D.C. nor California. March 1, 2019 Tr. at 36-37. The court stated that the “key component” in its denial of the motion to transfer was the interest of justice, based on the overlap between the Sanctuary Belize case and the *Ameridebt* contempt motions (which no party sought to transfer), the court’s familiarity with the *Ameridebt* case, and the interests of judicial economy that would be served by avoiding duplicative trials. *Id.* at 37. Pukke does not show that the district court’s assessment of those factors was an abuse of discretion, much less a “judicial usurpation of power.”

3. Pukke has failed to show either in his petition or his emergency motion that a stay of the district court proceedings pending the Court’s resolution of the mandamus petition is appropriate. To obtain a stay pending appeal, Puk-

ke must show “(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.” *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970). For the reasons described above, Pukke cannot show that he will likely prevail on the merits of his petition. He has he not argued that he will suffer irreparable injury if a stay is denied, that other parties will not be harmed, or that a stay is in the public interest. His request for a stay should therefore be denied. Indeed, the Court may wish to simply render this argument moot by denying the mandamus petition.

Conclusion

Pukke’s emergency motion and his petition for a writ of mandamus should be denied.

January 14, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 14, 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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January 14, 2019

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