

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(SOUTHERN DIVISION)**

***In re* SANCTUARY BELIZE
LITIGATION**

Case No. 18-cv-3309-PJM

**DEFENDANT ROD KAZAZI'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO MODIFY STIPULATED ORDER**

I. INTRODUCTION AND FACTUAL BACKGROUND

The unfortunate and extraordinary circumstances necessitating the instant motion are well-detailed in Defendant Rod Kazazi's ("Kazazi") concurrently filed Opposition to the Federal Trade Commission's ("FTC") Turnover Motion and the declarations filed therewith, which are incorporated herein by reference. At bottom, Kazazi has made all reasonable efforts to obtain a loan to pay the \$268,873.37 required of him under the Court's January 8, 2020 Stipulated Order for Permanent Injunction and Monetary Judgment against Defendants Rod Kazazi and Foundation Partners (hereinafter the "Order"), but these efforts have been stymied by unforeseen bad timing with his lender and the occurrence of a historical pandemic.

In November 2019, Kazazi made plans to borrow \$250,000 from his friend and California attorney Farshid Ghamari ("Ghamari"). At that time Ghamari represented that he should have such funds available in January 2020. Kazazi thus believed that he would have the funds necessary to make the \$268,873.37 payment by the denoted date in the Order (14 days after entry – January 22, 2020), and signed the Order under the belief and intention that the payment would be made on

time. Section III(C) of the Order states: “Settling Defendants [i.e. Kazazi] shall pay to the [FTC], within fourteen (14) days of the entry of this Order, [\$268,873.37].

Settling Defendants hereby stipulate that their counsel holds such funds in escrow for no purpose other than payments to the [FTC].”¹

However, when Kazazi called on Ghamari in January for said loan, Ghamari advised that he was not then in a position to lend because he was attempting to purchase a house. Kazazi, through his counsel David Wiechert, notified the FTC of this disruption on January 22. The FTC did not demand immediate payment at this time and Kazazi looked to family and other alternative sources for the funds.

Ghamari’s financial situation subsequently cleared to the point that on March 4, 2020 he and Kazazi signed a loan agreement for \$250,000, with Kazazi’s home serving as collateral for the loan. The money was set to be transferred by mid-March, which is unfortunately when California and the rest of the United States began experiencing the brunt of the COVID-19 pandemic and when California began issuing shutdown orders. Ghamari’s firm, like so many other U.S. businesses, closed down in mid-March, leaving Ghamari unable to lend Kazazi the money given the precarious and uncertain financial situation facing his firm. The pandemic also

¹ As demonstrated in his concurrently filed opposition and in Mr. Wiechert’s opposition to the FTC’s Turnover Motion, Section III(C) incorrectly intimates that Kazazi already had the funds and had given them to Mr. Wiechert to hold. This statement did not reflect reality nor the understanding of Kazazi and FTC at the time the Order was entered, as evidenced by the fact that the FTC never once, until its Turnover Motion, demand immediate payment of escrow funds pursuant to Section III(C).

affected the willingness or ability of others to step into the shoes of Mr. Ghamari to loan Kazazi the necessary funds.

In several subsequent communications, Kazazi advised the FTC of his difficulties in obtaining a loan due to the ongoing pandemic. On August 12, Kazazi offered to sell his house in order to make the \$268,873.37. The FTC advised that selling his house would put Kazazi in violation of the prevailing asset freeze.

On September 1, the FTC filed its Turnover Motion, ECF 1023, charging Kazazi and his attorney Mr. Wiechert with contempt and requesting the Court impose the suspended \$144,000,000 judgment against Kazazi. Kazazi immediately forwarded the pleadings to Ghamari and the two negotiated a new loan agreement, which would provide Kazazi with \$250,000, provided that Kazazi is able to his home as collateral. This last point appears to be an anathema to the FTC, as it has demanded that Kazazi turn over his house in addition to paying the \$268,873.37 in exchange for it dropping the charge of contempt and request for imposition of the \$144,000,000 judgment.

Kazazi thus makes the instant motion to modify the Order to change the deadline for the \$268,873.37 until 15 days following this Court's ruling on this motion modifying the Order.

II. LEGAL ARGUMENT

Kazazi's motion for modification of the Order comes under the ambit of Federal Rule of Civil Procedure Rule 60(b), which provides six separate grounds for relief from a judgment or order of the court. Kazazi is alternatively relying on

subdivisions (b)(5) and (b)(6) given the unforeseen events that transpired after the Order was entered.

A. Relief Under Rule 60(b)(5) is Warranted

Rule 60(b)(5) provides for relief if “applying [the judgment or order] prospectively is no longer equitable.” Modification under this subdivision is appropriate “when changed factual conditions make compliance with the decree substantially more onerous [,]...when a decree proves to be unworkable because of unforeseen obstacles[,] or when enforcement of the decree without modification would be detrimental to the public interest.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383 (1992). The “no longer equitable” clause is “based on the historic power of a court of equity to modify its decree in the light of changed circumstances.” *Hudson v. Pittsylvania Cnty., Va.*, 107 F. Supp. 3d 524, 526 (W.D. Va. 2015) (citing Wright & Miller, Federal Practice and Procedure § 2863 (2d ed. 1995)). As such, “the proper analysis under the no-longer-equitable clause is flexible and focuses on the particular facts of the case.” *United States v. Welsh*, No. 5:11-HC-2209-D, 2017 WL 7805581, at *5 (E.D.N.C. March 16, 2017) (citing *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 404 F.3d 821, 830 (4th Cir. 2005)).

Here, the unforeseen circumstances necessitating modification are twofold. First, Kazazi expected to have the requisite funds to make the \$268,873.37 payment in January based on his initial discussions with Ghamari, where it was represented that Ghamari would lend him \$250,000 when the time came for Kazazi to make the payment. But then, when that time came and Kazazi called on Ghamari for the

money, he was advised that Ghamari's finances were tied up in a home purchase of which Kazazi was not previously aware. Secondly, Kazazi was *this* close to obtaining the money in March 2020, pursuant to an executed loan agreement no less, but then the world was upended by COVID-19 and the ensuing economic devastation which rendered Ghamari's financial situation too uncertain to lend a quarter of a million dollars. It cannot be gainsaid that almost no one could have predicted in November 2019 and January 2020 when the Order was entered the widespread disruption COVID-19 would wreak across almost every aspect of modern American life. Kazazi would have made the \$268,873.37 payment months ago if not for this historical pandemic tearing his plans and intentions asunder.

Equity surely must take into account these historical and extenuating circumstances. And equity surely must take into account Kazazi's continued effort to update the FTC regarding his difficulties and then his offer to sell his home to make the payment, all evidence that Kazazi has, despite the disruption, tried to comply with the Order. Equity should help those who have tried to help themselves but have been unable to due to unforeseen obstacles. A once-in-a-century pandemic certainly fits the definition of an "unforeseen obstacle" warranting relief under Rule 60(b)(5). *Rufo*, 502 U.S. at 383. Moreover, the end result if the Order is not modified is a \$144,000,000 financial life destroying catastrophic event for Mr. Kazazi and a windfall for the FTC.

B. Alternatively, Relief is Warranted Under Rule 60(b)(6)

Should the Court find that relief is unwarranted under Rule 60(b)(5), it

should nevertheless find that modification of the Order is warranted under the “catch-all” provision of Rule 60(b)(6), which allows for modification of an order or judgment for “any other reason that justifies relief.” Rule 60(b)(6) requires a showing of “extraordinary circumstances” which are not accounted for in any of the other reasons for relief listed in Rule 60(b). *Aikens v. Ingram*, 652 F.3d 496, 500 (4th Cir. 2011).

Kazazi acknowledges that Rule 60(b)(6) is a very high, exacting standard that truly requires a showing of “extraordinary circumstances.” But, how else could one describe the onset of the COVID-19 pandemic except as an “extraordinary circumstance” that has not been seen in the United States in over a century? As recited above, Kazazi and Ghamari signed a loan agreement in early March and transfer of \$250,000 thereunder was being prepped right as the pandemic began to spread and states and municipalities began to order shutdowns in mid-March. Had it not been for the “extraordinary circumstance” of the pandemic, in all likelihood the money would have been transferred and Kazazi would have made the required payment. Put differently, the parties would not be in the instant position if not for the COVID-19 pandemic.

Relief is rare under Rule 60(b) and even rarer under Rule 60(b)(6). But these have been unprecedented times. Kazazi is merely requesting that the Order be changed to reflect the extraordinary circumstances that befell Kazazi (and the nation) after it was entered. Relief is thus warranted under Rule 60(b)(6).

C. A New Deadline of 15 Days Following Modification of the Order Is Appropriate

One aspect that should aid the Court in finding for Kazazi under either Rule 60(b)(5) or (b)(6) is that Kazazi is now ready, willing, and able to make good on the \$268,873.37 payment, either by paying this amount from borrowed proceeds or via transferring his home to the FTC, as detailed in his declaration and in his opposition to the Turnover Motion. This means the Court will not be giving sanctuary to an insubordinate litigant who will once again skirt his responsibilities but instead will be relieving one who has every intention, and finally the means, to comply with the Order.

Ghamari has committed to lending Kazazi \$250,000, but it will take several weeks for him to arrange the actual transfer of the money. As such, Kazazi asks the Court to make the new deadline for the \$268,873.37 payment December 15, 2020 – or 30 days from the date of the modified order – which will give time for Ghamari to transfer the money to Kazazi who will then transfer the funds to the FTC.

III. CONCLUSION

Based on the foregoing, Defendant Rod Kazazi respectfully requests the Court modify the January 8, 2020 Order to state that he has until 15 days from the date of the modified Order to make the \$268,873.37 payment.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY THAT on September 29, 2020, I served the foregoing filing, and all related documents through ECF and by email to the following people and entities identified below:

All Federal Trade Commission counsel;

Peter Baker and entities he owns or controls, including Global Property Alliance, Inc., Sittee River Wildlife Reserve, Eco-Futures Belize Limited, Eco-Futures Development, Buy Belize LLC, Buy International LLC, and Foundation Development Management Inc. at peterbakerx@gmail.com;

Gary Caris, James E. Van Horn, and Kevin Driscoll, Counsel for the Receiver, which controls all of the Defaulting Defendants but the Estate of John Pukke and John Usher, by ECF or at gcaris@btlaw.com; jvanhorn@btlaw.com; and kevin.driscoll@btlaw.com;

Luke Chadwick and entities he owns or controls, including Prodigy Management Group LLC, Belize Real Estate Affiliates LLC, Exotic Investor LLC, and Southern Belize Realty LLC, at luketchadwick@gmail.com;

Andirs Pukke and entities he owns or controls, including the Estate of John Pukke, at ekkup@msn.com; and

Bruce Searby, as standby counsel for Luke Chadwick and entities he owns or controls, at bsearby@searby.law.

I further certify that on September 29, 2020, I caused the foregoing filing, and all related documents, to be served by email and methods otherwise specified, to the following people and entities identified below.

John Usher, and the entities he owns or controls including Sittee River Wildlife Reserve, Eco-Futures Belize Limited, and the Sanctuary Belize Property Owners' Association by email at johnusher758@gmail.com, johnusher758@yahoo.com, and cotinga63@gmail.com;

Joseph Rillotta, by email at joseph.rillotta@faegredrinker.com;

David Heiman, by email at David@regencyhomesllc.com;

Global Property Alliance Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Brandi Greenfield through her counsel, Cori Ferrentino and Michael King, at cori@ferrentinolaw.com and mking@wintersking.com;

Sittee River Wildlife Reserve, by email on Counsel for the Receiver, Peter Baker, and John Usher;

Buy Belize LLC, by email on Counsel for the Receiver and Peter Baker;

Buy International Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com;

Foundation Development Management Inc., by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com

Eco Futures Development, by email on Counsel for the Receiver and Peter Baker, as well as by email on Frank Costanzo at ecologicalfox@gmail.com;

Eco-Futures Belize Limited, by email on Counsel for the Receiver, Peter Baker, and John Usher;

Newport Land Group LLC, by email on Counsel for the Receiver and to Frank Costanzo;

Power Haus Marketing, by email on Counsel for the Receiver and by email on Angela Chittenden through her counsel Wayne Gross, at the following email address: wgross@ggtriallaw.com;

Prodigy Management Group LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Belize Real Estate Affiliates LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Exotic Investor LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Southern Belize Realty LLC, by email on Counsel for the Receiver, Luke Chadwick, and Bruce Searby;

Sanctuary Belize Property Owners' Association, by email on Counsel for the Receiver, and John Usher;

The Estate of John Pukke, by email to Andris Pukke, Executor for the Estate of John Pukke, at ekkup@msn.com;

David Wiechert at dwiechert@aol.com

Frank Costanzo at exologicalfox@gmail.com; and

Brandi Greenfield through her counsel, Cori Ferrention and Michael King, at cori@ferrentinolaw.com; and mking@wintersking.com

A handwritten signature in black ink, appearing to read "Charles N. Curlett, Jr.", written in a cursive style.

Charles N. Curlett, Jr.