FILED: April 18, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1738
(1:18-cv-03309-PJM)

FEDERAL TRADE COMMISSION

Plaintiff - Appellee

and

MARC-PHILIP FERZAN

Receiver- Appellee

v.

YU LIN; QUAN LIN; JAMIE TENG; JULIANA TENGONCIANG; ALFONSO KOLB, JR.; JASMIN TENGONCIANG; ROEL PAHL; CLARISSA TENGONCIANG; ALLAN PRIJOLES; MARY JANE PRIJOLES; DARREN CHRISTIAN; CHAN MARTIN; JULIE SANTOS; DAVID HEIMAN; HEARTLAND PROPERTY GROUP, INC.

Movants - Appellants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1738, Federal Trade Commission v. Yu Lin
1:18-cv-03309-PJM

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

• Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is $500 (effective 12/1/2013). The $5 fee for filing a notice of appeal is recoverable as a cost in the district court.

• Itemize the costs (not to exceed $.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.

• Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			**Amount Requested: _____**			**Amount Allowed: _____**	
Document	**No. of Pages**		**No. of Copies**		**Page Cost (≤$.15)**	**Total Cost**	
	Requested	**Allowed** (court use only)	**Requested**	**Allowed** (court use only)		**Requested**	**Allowed** (court use only)
TOTAL BILL OF COSTS:						$0.00	$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than $.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1738

FEDERAL TRADE COMMISSION,

Plaintiff – Appellee,

and

MARC-PHILIP FERZAN,

Receiver – Appellee,

v.

YU LIN; QUAN LIN; JAMIE TENG; JULIANA TENGONCIANG; ALFONSO KOLB, JR.; JASMIN TENGONCIANG; ROEL PAHL; CLARISSA TENGONCIANG; ALLAN PRIJOLES; MARY JANE PRIJOLES; DARREN CHRISTIAN; CHAN MARTIN; JULIE SANTOS; DAVID HEIMAN; HEARTLAND PROPERTY GROUP, INC.,

Movants – Appellants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Peter J. Messitte, Senior District Judge. (1:18-cv-03309-PJM)

Argued: March 8, 2023 Decided: April 18, 2023

Before WILKINSON and THACKER, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Motz wrote the opinion, in which Judge Wilkinson and Judge Thacker joined.

ARGUED: Kyle Singhal, HOPWOOD & SINGHAL PLLC, Washington, D.C., for Appellants. Imad Dean Abyad, FEDERAL TRADE COMMISSION, Washington, D.C., for Appellees. **ON BRIEF:** Shon Hopwood, HOPWOOD & SINGHAL PLLC, Washington, D.C., for Appellants. Anisha S. Dasgupta, General Counsel, Joel Marcus, Deputy General Counsel, FEDERAL TRADE COMMISSION, Washington, D.C., for Appellee Federal Trade Commission.

DIANA GRIBBON MOTZ, Senior Circuit Judge:

This appeal marks another installment in a series of disputes involving an enforcement action by the Federal Trade Commission (FTC) against a group of fraudulent real estate developers (the Sanctuary Belize enforcement action). Appellants, a group of 14 individual investors and a family-owned corporation, moved to intervene in an action brought by others and sought relief from the district court's judgment. But Appellants did not do so until *after* the district court had entered final judgment and that judgment had been appealed to this court. *See FTC v. Pukke*, 53 F.4th 80 (4th Cir. 2022) (affirming in part *In re Sanctuary Belize Litig.*, 482 F. Supp. 3d 373 (D. Md. 2020)). Because the Sanctuary Belize enforcement action was already on appeal when Appellants filed their motions, the district court concluded that it lacked jurisdiction to entertain those motions. It held alternatively that the motions should be denied as meritless. We affirm.

I.

The following facts are drawn from the record and unless otherwise noted are uncontested. In mid-2018, Appellants collectively invested $1.95 million in Newport Land Group (NLG). Appellants believed that NLG would use that investment to develop a residential project in Costa Rica. A few months later, the FTC initiated the Sanctuary Belize enforcement action, alleging that Andris Pukke and others had coordinated "a large-scale land sales scam in the Central American country of Belize." *Sanctuary Belize*, 482 F. Supp. 3d at 385. The FTC asserted that this project, known as Sanctuary Belize, was "directed and controlled" by "a web of individuals and corporate entities,"

and that one such fraudulent entity was NLG. *Id.* at 386–87. The FTC offered abundant evidence demonstrating that NLG's principals had interlocking relationships with Sanctuary Belize principals, that funds were commingled between NLG and Sanctuary Belize for no apparent legitimate business purpose, that the entities shared a common address and corporate headquarters, and that NLG had direct involvement in the Sanctuary Belize scam.

Also in 2018, the FTC successfully obtained a temporary restraining order and, at the district court's direction, the Sanctuary Belize entities (including NLG) turned over their assets to a court-appointed Receiver. *See id.* at 385, 388. Because NLG was jointly and severally liable for the scheme, the Receiver sought and received approval from the district court to begin using NLG's assets, including Appellants' investment funds, for general receivership purposes. Although Appellants received timely notice of the Receiver's takeover of the NLG assets, they did *not* attempt to intervene in the case at that time.

In early 2020, the district court conducted a nearly three-week bench trial. David Heiman, one of the Appellants now seeking intervention, testified at that trial but neither he nor the other Appellants sought to intervene. NLG, for its part, never appeared in the proceedings. The district court later imposed final judgment on all defendants in two thorough opinions, one issued on August 28, 2020, and the other on January 13, 2021.

In its August 2020 opinion, the court acknowledged that Heiman "challenged the Receiver's seizure of NLG's assets as being assets of the Receivership." Though noting Heiman "face[d] a steep uphill battle" to have his investment returned, the district court

explained that it was "willing at least to give him his day in court" and accordingly granted Heiman leave to file a motion requesting the return of his investment. The district court also deferred imposing default judgment against NLG until Heiman had an opportunity to present his argument. The following month, Heiman and other NLG investors sent nearly identical pro se letters to the district court in which they requested that their investments be returned. But neither Heiman nor any of the other NLG investors moved to intervene in the action. On November 9, 2020, Pukke noted an appeal of the district court's judgment to this court. In its January 2021 opinion, the district court rejected the NLG investors' written requests and extended its judgment to NLG.

On November 12, 2021, while Pukke's appeal was pending before us, Appellants finally moved in the district court to intervene in the Sanctuary Belize enforcement action and for relief from judgment. The district court denied Appellants' intervention motion, reasoning that it lacked jurisdiction, that Appellants' motion was untimely, and that they lacked sufficient interest in the litigation to intervene as a matter of right. The court also determined that its denial of the motion to intervene disposed of Appellants' motion for relief from judgment, and so denied the latter motion as a matter of course. Appellants then noted this appeal.

II.

This case does not present a difficult legal issue. Forty years ago, in *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), the Supreme Court held that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those

aspects of the case involved in the appeal." We followed suit in *Doe v. Public Citizen*, 749 F.3d 246, 258 (4th Cir. 2014), observing that "[g]enerally, a timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal." We explained that "[t]his rule fosters judicial economy and guards against the confusion and inefficiency that would result if two courts simultaneously were considering the same issues." *Id.*

Moreover, in *Public Citizen* we specifically addressed the relationship between a notice of appeal and a motion to intervene. We concluded that there was "no reason why an intervention motion should be excepted from the general rule depriving the district court of authority to rule on matters once the case is before the court of appeals." *Id.* Thus, we held "that an effective notice of appeal divests a district court of jurisdiction to entertain an intervention motion." *Id.*

Appellants offer two arguments in an effort to resist the explicit holdings of *Griggs* and *Public Citizen*. First, they maintain, assertedly relying on *Public Citizen*, that "one party's notice of appeal [does not] divest the district court of jurisdiction to adjudicate claims made by *other parties*." Appellants' Opening Br. at 21. Second, they argue that "one party's appeal of only some issues in a given controversy does not divest the district court of jurisdiction over *other issues*." *Id.* Both arguments fail.

As to the first, Appellants misread *Public Citizen*. In their view, *Public Citizen* held that "when a putative intervenor file[s] a notice of appeal, the district court then lack[s] jurisdiction to entertain an intervention motion *by that same party*." *Id.* Those were the facts of *Public Citizen* (i.e., Public Citizen, along with other consumer groups,

noted an appeal after filing a motion to intervene), but Appellants mistake those facts for the holding of the case.

In *Public Citizen*, we addressed the question of "[w]hether a district court retains jurisdiction to rule on a motion to intervene following a notice of appeal," recognizing that it was "a matter of first impression in this Circuit." 749 F.3d at 258. We held that in such scenarios, a district court lacks jurisdiction. *Id.* We placed no emphasis on the fact that Public Citizen itself had filed the notice of appeal. Rather, we focused on the fact that any effective notice of appeal transfers jurisdiction from the district court to the court of appeals. *See id.* Regardless of whether the moving and appealing parties are the same, simultaneous jurisdiction between the two courts would surely result in the "confusion and inefficiency" that the *Public Citizen* holding was designed to prevent. *Id.*

Appellants' argument to the contrary is further undermined by the holdings of courts that have considered cases where the moving and appealing parties differ. *See, e.g.*, *Taylor v. KeyCorp*, 680 F.3d 609, 616 (6th Cir. 2012); *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743 F.2d 298, 299 (5th Cir. 1984). Those courts have concluded, as we hold here, that a district court lacks jurisdiction over a motion to intervene while an appeal is pending, regardless of who noted the appeal. Thus, it matters not that Pukke, rather than Heiman and his co-investors, noted the appeal.

Appellants next argue that the district court retained jurisdiction because Pukke's initial appeal divested the district court of control only over "those aspects of the case involved in the appeal." Appellants' Opening Br. at 21 (quoting *Griggs*, 459 U.S. at 58) (emphasis omitted). Appellants are doubly wrong.

First, Appellants suggest that they sought intervention merely to challenge rulings that had not been appealed. *See id.* at 21–22. But Appellants' motion to intervene expressly stated that they wished to intervene to set aside portions of the district court's final judgment. That final judgment, unquestionably, was before us by virtue of Pukke's appeal. Thus, Appellants did indeed seek to challenge an aspect of the case that was then on appeal. Second, even if Appellants had sought to intervene to challenge different issues, "an effective notice of appeal divests a district court of jurisdiction to entertain an intervention motion." *Public Citizen*, 749 F.3d at 258. Because a notice of appeal had already been filed by the time Appellants moved to intervene, the district court lacked jurisdiction to entertain Appellants' motion.

As a final matter, we note that this appeal is somewhat unusual in the sense that the FTC, which argues that the district court lacked jurisdiction, joins Appellants in asking us to address the *merits* of the underlying motions. *See* Oral Arg. at 26:16–26:39 (FTC's counsel arguing that if this court fails to address the merits, it will be "leaving everybody . . . open to another motion to intervene . . . only to go back up [on appeal] with exactly the same arguments"); Appellants' Reply Br. at 2 (arguing that "any jurisdictional obstacle is now removed because this Court has decided the *Pukke* appeals").[*]

[*] At oral argument, the FTC suggested that *Lytle v. Griffith*, 240 F.3d 404 (4th Cir. 2001) and *Fobian v. Storage Tech. Corp.*, 164 F.3d 887 (4th Cir. 1999), allow *this court* to reach the merits even if the district court was without jurisdiction. The relevant portions of *Lytle* and *Fobian*, however, only concern a *district court's* ability to "take (Continued)

While we are sympathetic to this suggestion, we cannot rule on the merits. Because the district court correctly determined it lacked jurisdiction on a matter that had been appealed to our court, we only have jurisdiction to review that decision, not to entertain the underlying merits. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); *Public Citizen*, 749 F.3d at 259.

III.

For the foregoing reasons, the district court correctly held it lacked jurisdiction over Appellants' motions, and accordingly its judgment is

AFFIRMED.

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subsequent action on matters that are collateral to," or in aid of, the appeal. *See Public Citizen*, 749 F.3d at 258.