

No. 15-3472

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee

v.

KEVIN TRUDEAU,
Defendant,
and

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STATUTES

28 U.S.C. § 1291	3, 4
28 U.S.C. § 1292(a)(2)	4

At oral argument in this matter, the panel asked counsel for both parties questions concerning two recent Supreme Court decisions. One, Bullard v. Blue Hills Bank

overruled the objections to the redress distribution plan, fixed the right of the FTC to receive all the net receivership assets, and denied other parties (such as the law firms here) the right to any of those assets. In the post-judgment context, that constitutes a final order.

Moreover, the October 7 order can be deemed a final appealable decision under section 1291 because it ended the Receiver's collection proceeding over Trudeau's assets and required the Receiver to transfer those assets to the FTC pursuant to the receivership order. On that theory, this Court held in *United States v. Antiques Ltd. P'ship*, 760 F.3d 668 (7th Cir. 2014), that a judgment concluding a receiver's collection proceeding is an appealable final judgment. *Id.* at 671. Bullard has no apparent bearing on that issue.

If the Court disagrees that the October 7 was a final order and determines that the February 23, 2016 order closing the receivership and discharging the Receiver was the final order, then this Court lacks jurisdiction over this appeal. The law firms did not appeal that final order, and the time to do so has long passed. The notice of appeal of the October 7 order cannot ripen into a timely appeal of a subsequent final order. See *Feldman v. Olin Corp.*, 692 F.3d 748, 758-59 (7th Cir. 2012).

Finally, 28 U.S.C. § 1292(a)(2) does not provide appellate jurisdiction. That section provides jurisdiction over interlocutory: "[1] orders appointing a receiver, [2] orders refusing to wind up a receivership, and [3] orders refusing to take steps to

accomplish the purposes for winding up a receivership." *Antiques Ltd. P'ship*, 760 F.3d at 672. The October 7 order plainly falls within none of these categories.

2. Luis Does Not Alter The District Court's Broad Equitable Discretion

It is established law in this Court that a district court sitting in equity has broad discretion to dispos

the contempt judgment, therefore were "tainted" at least in a civil sense, i.e., money to which Trudeau had no right.

This is true regardless of the source of the net proceeds in the receivership fund turned over to the FTC. Trudeau (or lawyers representing his companies) should not be rewarded by his practice of hiding his significant wealth through myriad domestic and offshore entities (as the court found in its July 2013 contempt order) that rightfully belonged all along since 2007 to consumers injured by his violation of the 2004 injunction. Unlike the criminal defendant before trial and conviction, the law firms sought payment solely from funds that the district court found Trudeau controlled and owed his victims.

To put it differently, under the rubric of *Luis*, the money never belonged to Website Solutions (or Trudeau) as "innocent" funds. See 136 S.Ct at 1093. Rather, once the 2007 contempt judgment had been entered, Trudeau's money belonged to the FTC on behalf of consumers who had been injured by Trudeau's contemptuous conduct and were owed compensation. As the Supreme Court put it, this case involves "[t]he robber's loot [that] belongs to the victim, not the defendant." See *id.* at 1090; see also *FTC v. Liberty Supply Co.*, No. 4:15-CV-829, 2016 WL 4182726, at *3 n.2 (E.D. Texas Aug. 8, 2016) (distinguishing *Luis* to deny defendants' pretrial access to frozen funds to pay attorney fees in civil case, because *Luis* involved a criminal defendant's right to representation, defendants sought payment from receivership funds, and defendants had access to exempt funds).

Nothing in Luis suggests that it limits a district court's broad authority overseeing an equitable receivership in civil proceedings. There's no reason why a criminal case involving pretrial, untainted funds should have that effect.

CONCLUSION

For the reasons stated above and in the FTC's Brief, the order of the district court should be affirmed.

Respectfully submitted,

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/s/ Michael D. Bergman



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