UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-60907-CIV-MORENO/SELTZER

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.
_____/

NOTICE OF APPEAL

Non-party claimant, Amanda Finley, pursuant to 28 U.S.C. §§ 1291 and 1294 as well as Federal Rule of Appellate Procedure 4(a) and all other applicable Rules, gives notice of filing an appeal to the United States Court of Appeals for the Eleventh Circuit of the Order Denying the Motion for Equitable Lien [D.E. 451] (the "Order"), which rejected the Report and Recommendation to Grant the Motion for Equitable Lien [D.E. 419]. A copy of the Order and the Report and Recommendation are attached as **Composite Exhibit A**.

Dated: February 27, 2020

Respectfully Submitted,

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/s/ Amanda E. Finley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via electronic filing using the CM/ECF system with the Clerk of the Court which sent e-mail notification of such filing to all CM/ECF participants in this case on February 27, 2020.

/s/ Amanda E. Finley
Amanda E. Finley

COMPOSITE EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on Amanda Finley's Expedited Motion for Imposition of Equitable Lien on Real Property Located at 300 Royal Plaza Drive, Fort Lauderdale, Florida 33301 ("Motion") (DE 404). This matter was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida (DE 407). The undersigned has carefully considered the motion and the record, and is otherwise fully advised. For the reasons stated below, it is **RECOMMENDED** that Finley's Motion (DE 404) be **GRANTED**.

I. BACKGROUND

This dispute invokes the Court's equitable authority to distribute assets in a receivership, namely, the proceeds of a home sale. The receivership was created to benefit victims of Defendants' fraudulent debt-relief scheme. (DE 6, 21). The particulars of the scheme are not relevant for present purposes, and the bulk of the underlying litigation between the plaintiffs and the individual defendants was concluded in April 2008

based on a series of stipulated orders (DE 212, 231, 232). Among other things, the stipulations provided for the turnover of certain assets belonging to Defendant Jeremy Marcus, as well as injunctive relief and damages (Id.).

At the time this litigation was initiated, non-party Claimant Amanda Finley ("Finley") was Marcus's spouse, as well as a co-owner and tenant-by-the-entirety of real property located at 300 Royal Plaza Drive, Fort Lauderdale, Florida 33301 ("Property"). It is undisputed that in exchange for Finley's cooperation in marshalling receivership assets, and to eliminate the need to join her as a defendant in the underlying lawsuit, the Receiver recognized her potential right to assert an equitable lien in the Property based on her financial contributions to its purchase price. That contribution, $107,500, was rebated by Finley from a commission she earned as the buyer's sales associate on the purchase.

Because the Property was purchased in part by Marcus based on the proceeds of the fraud, this asset, or at least a portion of it, was subject to eventual turnover. Accordingly, the Receiver wrote Finley a letter inviting Finley to quitclaim her interest in the Property by "agree[ing] that [Finley] [was] not waiving any potential right [she] may have to assert an equitable lien in the property based solely on a brokerage fee [she] claim[ed] to have earned in its purchase . . . ." (DE 415, Ex. A). Finley assented and provided the Receiver a quitclaim deed (DE 406: 7-8). At some point thereafter, however, the Receiver adopted the inconsistent position that the quitclaim deed extinguished her equitable interest. (See DE 411: 10-11).

Ultimately, the Receiver arranged a sale of the Property. At the insistence of the title insurance company, the Receiver further requested that Finley execute a special warranty deed disavowing any homestead interest in the property. In principle, Finley did

not object to executing the deed, but before doing so, sought reassurance from the Receiver that she would not be waiving her entitlement to seek an equitable lien on the sale proceeds. Unwilling to agree, the Receiver moved to compel Finley on an expedited basis to execute the special warranty deed. (DE 406). The Receiver ultimately agreed to hold $107,500 in trust pending the resolution of Finley's equitable lien claim. While maintaining that Finley was not entitled to the equitable lien, the Receiver argued that "it can be addressed on a different day." (Id.). Finley subsequently executed the special warranty deed (DE 409), and the day to resolve her equitable lien claim has now arrived.

II. DISCUSSION

Courts must look to applicable state law when determining whether an equitable lien should be imposed. See, e.g., In re Fin. Federated Title & Tr., Inc., 347 F.3d 880, 886 (11th Cir. 2003). In Florida, an equitable lien may be granted upon "general considerations of right or justice" as applied to the particular circumstances of a case. See Jones v. Carpenter, 106 So. 127, 129 (1925); Ross v. Gerung, 69 So.2d 650, 652 (Fla. 1954). In Palm Beach Savings & Loan Assoc., F.S.A., et al. v. Fishbein, 619 So.2d 267, 271 (Fla. 1993), the Florida Supreme Court further recognized that the imposition of an equitable lien may be appropriate, even on a homestead property, "in order to prevent unjust enrichment" and "where equity demands." Id. Whether to impose an equitable lien in the receivership context is a matter of court discretion. Cox Enterprises, Inc. v. Pension Ben. Guar. Corp., 666 F.3d 697, 701 (11th Cir. 2012).

Given the particular circumstances of this case, the undersigned concludes that the imposition of an equitable lien on the sale proceeds is appropriate. Several considerations compel this conclusion.

Initially, the Receiver does not dispute that Finley rebated $107,500 towards the purchase of the Property.[1] Indeed, Finley has provided the Court with a HUD-1 settlement statement confirming the rebated amount, as well as a contract identifying Finley as the sales associate entitled to a commission on the purchase transaction (DE 404, Exhs. A-B). The Receiver did not object to these exhibits. Accordingly, the undersigned will credit the exhibits, as well as Finley's statements (which are both unrefuted and presumptively credible[2]), as sufficient to establish the fact that Finley's personal funds, earned in the course of legitimate employment, were used to pay down a portion of the Property's purchase price.

The Receiver then expressly agreed, as a condition of Finley quitclaiming her interests in the Property, that Finley **did not** "waiv[e] any potential right . . . to assert an equitable lien in the property based solely on a brokerage fee [she] claim[ed] to have earned in its purchase . . . ." (DE 415, Ex. A).

But after receiving the benefit of his bargain, the Receiver is now arguing the opposite: that the very quitclaim deed he expressly induced by recognizing Finley's ability to litigate her equitable claim at a later time, in fact, extinguished her equitable claim. This is a prototypical example of a "gotcha" argument, and the undersigned is unmoved by it.

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[1] Rather, the Receiver disputes that Finley is a "broker." (DE 411: 11). Finley, however, does not claim to be a "broker," nor does she seek the imposition of a "broker's lien," as confusingly argued by the Receiver.

[2] Finley is a member of the Bar in good standing. See Holloway v. Arkansas, 435 U.S. 475, 486 (1978) (accepting the tenet that "attorneys are officers of the court, and when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath.") (quotations omitted).

Had the Receiver taken this position at the outset, Finley would have had her day in Court as a party to the underlying lawsuit and could have asserted her equitable claim at an earlier stage in these proceedings.

Accepting the Receiver's argument would require the undersigned to conclude that the Receiver's agreement was a mere ruse or trick. Applying the principles of equity, the undersigned declines to endorse this result and concludes that an equitable lien should be imposed in Finley's favor on the basis of her financial contributions to the purchase of the Property. See, e.g., In re Hecker, 316 B.R. 375, 390 (Bankr. S.D. Fla. 2004), aff'd, 264 Fed. Appx. 786 (11th Cir. 2008) (recognizing that an innocent spouse may be entitled to assert a claim to a portion of the proceeds prospectively to be derived from a sale of a property based on the amount of her contributions to the purchase price). [3]

The undersigned further concludes that if the Receiver were permitted to retain Finley's contribution, it would amount to an improper windfall for the Receiver because the commission Finley earned as a real estate sales associate is independent of the underlying fraud scheme that was the genesis of the receivership. The Receiver has not explained how it would be entitled to this sum. Indeed, the Eleventh Circuit has instructed that a trustee's interests over fraudulently acquired real estate can be no greater than the

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[3] The Receiver alternatively argues that even if Finley were entitled to an equitable lien, it would be subordinate to the Receiver's equitable lien. The undersigned disagrees.

First, the Receiver did not establish an equitable lien because the Property was turned over by stipulation of the parties. See In re All Star Mortg. Fin. Corp., 411 B.R. 774, 782 (Bankr. S.D. Fla. 2009) (unperfected equitable interest is subordinate to the interest of a judicial lien creditor under Florida law) (citing In re Mabbott, 255 B.R. 787 (Bankr. M.D. Fla. 2000)). Nor was the Receiver a bona fide purchaser without notice since he expressly agreed to Finley's reservation of rights prior to the the transfer.

Second, Finley's contributions to the property are akin to a purchase-money security interest, which would take priority over the Receiver's lien, even if he had one. See generally Fla. Stat. § 679.324.

amount fraudulently obtained and used to benefit the land. In re: Fin. Federated Title & Trust, Inc., 347 F.3d 880, 892 (11th Cir. 2003). Applying that maxim here, the Receiver's equitable interest in the Property does not extend to Finley's sales commission.

Finally, the undersigned addresses the doctrine of "unclean hands." Despite his various statements appearing to conflate Finley's conduct with those of her ex-husband, the Receiver has provided no evidence to support its assertion that Finley was complicit in the fraud or that her sales commission was tainted in any way. Contrary to the Receiver's repeated assertions that the commission was "comprised entirely of stolen funds," (DE 411: 13, 14), in fact, the commission was **paid by the seller**, as it usually is. (See DE 404: Ex. A, ln. 703).[4] Although the Receiver accuses Finley of enjoying an "extravagant lifestyle" and failing to "pay rent" for living in her own house, these remarks, even if true, are wholly insufficient to establish unclean hands. See generally Calloway

[4] The undersigned is troubled by the Receiver's repeated accusations—and subsequent failure to produce evidence of—fraudulent misconduct by Finley. In particular, the Receiver makes the following unsupported assertions: (1) "Amanda [Finley] was a participant . . . of the debt relief scheme." (DE 411: 3); (2) "Immediately after Amanda [Finley] had notice of this Court's asset freeze, she violated the freeze . . . ." (Id.: 12); (3) "[Amanda Finley] utilized her real estate commission, comprised entirely of stolen consumer funds, in the acquisition of the Property . . . ." (Id.: 14); (4) "[Amanda Finley] and Jeremy [Marcus] ended up getting back over $158,000 in overages after closing." (Id.), and; (5) "The Receiver has undisputably [sic] traced the monies Defendant Jeremy [Marcus] and Amanda [Finley] used to purchase the Royal Plaza Property as coming from the Receivership Defendants . . . ." (Id.: 17).

The undersigned notes that previously, the Receiver strongly implied in his First Interim Report that Finley fraudulently utilized a federal judge's judicial stamp to approve a payment to herself in an unconnected litigation. (DE 19: 37-38). That document has since been restricted and amended after the Receiver revealed that it had not conducted an adequate investigation prior to making the false accusation. (DE 70: 37). Although the undersigned will presume the good faith of the parties, the Receiver's mistake was egregious and reckless at best.

The undersigned is further displeased with the Receiver's unprofessional and disparaging references to Amanda Finley—a member in good standing of the Florida Bar—as "Amanda." The Receiver shall address litigants appropriately in future filings.

v. Partners Nat. Health Plans, 986 F.2d 446, 450 (11th Cir. 1993). The undersigned has considered the Receiver's remaining arguments and finds them to be without merit.

III. CONCLUSION

For the foregoing reasons, therefore, the undersigned respectfully **RECOMMENDS** that the Motion for Imposition of Equitable Lien (DE 404) be **GRANTED**. The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable Federico A. Moreno, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

DONE AND SUBMITTED in Chambers, Fort Lauderdale, Florida, this 27th day of September 2019.

BARRY S. SELTZER
United States Magistrate Judge

Copies furnished via CM/ECF to:

The Honorable Federico A. Moreno
United States District Judge

Counsel of record

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Case Number: 17-60907-CIV-MORENO

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

vs.

JEREMY LEE MARCUS, et al.,

Defendants.

_____/

ORDER DENYING MOTION FOR EQUITABLE LIEN

THIS CAUSE came before the Court upon Amanda Finley's Motion for Equitable Lien **(D.E. 404)**, filed on **August 29, 2020** and the Objections to the Magistrate Judge's Report and Recommendation **(D.E. 425, 426)** filed by the Receiver Jonathan Perlman and the State of Florida, with the concurrence of the co-Plaintiff, the Federal Trade Commission, on **October 11, 2020**.

THE COURT has considered the Magistrate Judge's Report and Recommendation, the objections, the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion for an equitable lien is DENIED as the Court agrees with the objections raised by the Plaintiffs and the Receiver.

I. Summary of Report and Recommendation

Non-party Amanda Finley filed a motion for an equitable lien on her former home. Amanda Finley was the Defendant Jeremy Marcus's spouse. She was a co-owner and tenant by the entirety of real property located at 300 Royal Plaza Drive, Fort Lauderdale, Florida 33301. Finley seeks to recover $107,500, which she claims is her real estate commission fee, which was rebated from the purchase of the property.

In the Report and Recommendation, the Magistrate Judge relied on a letter written by the Receiver to Finley asking her to quitclaim her interest in the property and "agree[ing] that [Finley] [was] not waiving any potential right [she] may have to assert an equitable lien in the property based solely on a brokerage fee [she] claim[ed] to have earned in its purchase. . . ." Finley provided the Receiver a quitclaim deed. Ultimately, the Receiver arranged a sale of the property. At the request of the Title Insurance Company, the Receiver requested that Finley execute a special warranty deed disavowing homestead interest in the property. Finley executed her special warranty deed, subject to her claim for an equitable lien. The Receiver agreed to hold $107,500 in trust pending resolution of this equitable lien claim.

The Magistrate Judge relied on the HUD-1 settlement statement and the contract for the purchase of the home to recommend that the Court find that Finley's personal funds, earned by her as the real estate sales agent, were used to rebate the property's purchase price. The Magistrate Judge found that the Receiver's letter induced her to quitclaim her property, and he opines that the Receiver, should not now, be allowed to argue that she has no equitable claim. Accordingly, the Report and Recommendation states that "[a]pplying principles of equity, [leads to the conclusion] that an equitable lien should be imposed in Finley's favor on the basis of her financial contributions to the purchase of the property."

The Magistrate Judge also concluded that denying Finley her equitable lien would result in a windfall for the Receiver. He reasoned that the "commission Finley earned as a real estate associate is independent of the underlying fraud scheme that was the genesis of the receivership." He recommended that the Court decide for that reason, the Receiver's equitable interest in the property did not extend to the sales commission.

Finally, the Magistrate Judge found that because the commission was technically paid "by the seller" the Court should not find that the sales commission was tainted.

II. Objections to the Report and Recommendation

Both Plaintiffs, the Federal Trade Commission and the Florida Office of the Attorney General, and the Receiver filed objections to the Magistrate Judge's Report and Recommendation. The first objection is that Amanda Finley lacks standing to assert an equitable lien because the HUD statement on the sale of the property reflects that Florida Coastal Realty was the entity that credited the $107,500. The objectors also argue that Florida Statute § 475.42 precludes Finley, as the real estate salesperson, from filing an action to collect a real-estate brokerage commission. The objections also assert that because the property is now being sold for a loss of $1,250,000, there is no equity for which Finley can assert a claim. Finally, the objectors argue that Finley's interest does not take priority over the defrauded consumers.

A. Transaction

Finley asserts a claim for an equitable lien based on her real estate sales commission. Generally, an equitable lien is a right granted by a court of equity, which entitles someone to proceed against certain property. *Spikes v. OneWest Bank, FSB*, 106 So. 3d 475, 478 (Fla. 4th DCA 2012). She was the real estate sales person for the broker Florida Coastal Realty. She claims that Florida Coastal was contractually obligated to pay her $107,500, which she agreed to credit toward the purchase price. Finley says she made this decision based on her expectation that she would have a $107,500 proportional interest in the property as set forth in her prenuptial agreement with the Defendant Marcus. As part of the transaction, Finley received $34,250 in cash at closing. On April 5, 2018, Finley submitted a financial affidavit in the divorce proceeding with Jeremy Marcus. In that affidavit, she did not request the state court award her any interest in the home. On September 6, 2017, the Receiver sent Finley a letter asking her to quitclaim her interest in the home to Jeremy Marcus. In that letter, the Receiver agreed that Finley was not waiving any potential right to assert an equitable lien in the property based on the brokerage fee not to exceed

$107,500. Finley assented and provided the quitclaim deed. When the Receiver arranged the sale of the property, he requested that Finley execute a special warranty deed disavowing any homestead interest in the property. The Receiver is holding $107,500 in trust pending the resolution of Finley's equitable lien claim.

B. Finley's Standing to Assert an Equitable Lien

Undisputedly, the HUD statement lists Florida Coastal Realty as the entity that credited the $107,500, and not Amanda Finley. Amanda Finley is listed on the purchase contract as the real estate sales associate on the transaction. The Receiver and the Plaintiffs argue that not only is Finley not the proper party to assert any claim for the real estate commission, but she is precluded from doing so by Florida Statute § 475.42(1)(d), which states:

> [N]o real estate sales associate, whether the holder of a valid and current license or not, shall commence or maintain any action for commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.

The Receiver and the Plaintiffs read the statute to preclude Finley's claim. Finley asserts that the statute only applies limitedly to claims by real estate sales associates against sellers of real property. *Bergin v. Kickliter*, 538 So. 2d 950 (Fla. 2d DCA 1989) is instructive on this point, when it states "[c]learly, the legislature has prohibited a real estate salesman from maintaining any action to collect a real estate brokerage commission except from his employer at the time." In that case, the Second District Court of Appeal affirmed a summary judgment finding section 475.42(1) prohibits a real estate salesman from maintaining an action to collect a commission. Although in *Bergin* the defendants were the sellers of real property, the court's reading of the statute does not limit the applicability of the statute to actions against sellers. Indeed, the statute's plain language does not limit it to actions against sellers as Finley suggests.

Additionally, Finley has not provided this Court with evidence of the transaction, i.e. that she was contractually entitled to the $107,500. The HUD only indicates that Florida Coastal provided the credit on the transaction. Put differently, she did not produce a contract evincing that Florida Coastal agreed to pay her this money and that she was the real party crediting the commission toward the purchase price of the home. Accordingly, this Court finds that Finley is not the proper party to assert the claim, and even if she was, Florida law precludes her from doing so.

C. Equitable Lien

Even if Finley was the proper party to assert a claim for the rebated real estate commission, the question arises whether the credit or rebate of a real estate commission to reduce the purchase price of the buyer and sale associate's home, gives rise to an equitable lien allowing the sales associate to recover such funds at a later date. The rebate was not a loan that Finley made to Marcus to facilitate the purchase of the home. *See Craven v. Hartley*, 102 Fla. 282, 285 (1931) (allowing an individual to obtain an equitable lien when the individual *loaned* a widow money to pay for land, and the widow declined to execute a mortgage); *Spikes*, 106 So. 3d at 478 (allowing a mortgagee to assert an equitable vendor's lien when the wife, who did not execute the mortgage, subsequently defaulted on payments on the mortgage executed by her husband); *Golden v. Woodward*, 15 So. 3d 664, 699 (Fla. 1st DCA 2009) (allowing a vendor's lien on property when party retained property without paying the agreed-upon price). The rebate of the purchase price is unlike a loan in that there was no obligation for Marcus to repay Finley for that amount. Put simply, Finley had no reasonable expectation based on the terms of the deal that she would be repaid that money, which makes it difficult for this Court to find that equity requires that she now be compensated. Finley obtained the benefit of that bargain when the purchase price was rebated. Allowing her to collect the $107,500 now is akin to giving her a windfall.

Finley asserts that her prenuptial agreement with Marcus gave her a proportional interest in the property in the amount of her $107,500 contribution. Finley, however, did not assert this interest in her financial affidavit filed in her divorce proceeding. Again, it is difficult to say that equity requires this Court to now award Finley this amount, when she did not request that the state court in her divorce safeguard that interest.

The Magistrate Judge found that the Receiver does not have an equitable lien on the property because it was turned over by the parties by stipulation subject to Finley's reservation of rights to pursue an equitable lien. In support of this position, the Report cites *In re: Fin. Federated Title & Trust, Inc.*, 347 F.3d 880, 892 (11th Cir. 2003), where the Eleventh Circuit instructed that a trustee's interest over fraudulently acquired real estate can be no greater than the amount fraudulently obtained. In *Fin. Federated*, however, the Eleventh Circuit recognized that the property was not exempt from an equitable lien in favor of a trustee where the property was originally purchased with fraudulently obtained funds. The Eleventh Circuit noted with approval that "the fact that the property had been purchased by a husband and wife was immaterial to whether an equitable lien could be imposed against the property, regardless of the spouse's innocence or lack of knowledge." *In re: Hecker*, 316 B.R. 375, 387 (Bankr. S.D. Fla. 2004) (discussing *Fin. Federated*, 347 F.3d at 890-91), *aff'd* 264 F. App'x. 786 (11th Cir. 2008). The language of *Fin. Federated* supports the conclusion that the Receiver has an equitable interest in the property, because all the cash proceeds used to purchase the property are traceable to stolen consumer funds.

Likewise, *Commodity Futures Trading Comm'n v. Hudgins*, 620 F. Supp. 2d 790, 793-794 (E.D. Tex. 2009) also supports the conclusion that the Receiver has an equitable interest in the property in the place of the defrauded consumers. In *Hudgins*, the defendant gave his innocent girlfriend $362,500 in tainted funds to pay off her debts. His girlfriend then paid the mortgage on

her apartment in the amount of $328,034.41. All the proceeds were traceable to the ponzi scheme and like this case, the property was worth significantly less money when the Receiver sought to place an equitable claim. The *Hudgins* court, applying Florida law, found that the Receiver had an equitable lien on the property for the fraudulently obtained funds used to pay off the girlfriend's mortgage. The court also did not allow the "innocent spouse to claim the homestead exemption where a guilty spouse used fraudulently obtained funds to purchase or pay off a mortgage." *Id.* The court further noted that it is immaterial to the court's ability to allow the Receiver to impose an equitable lien whether the fraudulently obtained funds were used to purchase a home or satisfy a mortgage. Under *Fin. Federated*, *Hecker*, and *Hudgins*, the Court finds that the Receiver can assert an equitable interest in the property because the cash proceeds used to purchase this property are traceable to stolen consumer funds.

As previously noted, the Report cites *Fin. Federated*, 347 F.3d at 892, where the Eleventh Circuit instructed that a trustee's interest over fraudulently acquired real estate can be no greater than the amount of fraudulent funds used. The Court agrees with the objectors' argument that because the Receiver is selling the property at a $1,250,000 loss, the maxim of *Fin. Federated* does not apply because the current sale price and the current appraisal are much lower than the amount of fraudulent funds used by Marcus to purchase the house in the first place. The Court does not agree with the Report's position that *Fin. Federated* dictates a different result.

D. Priority of Liens

The Magistrate Judge found that Finley's contribution would take priority over any claim of the Receiver's. He reasoned that her contribution (in the form of the reduced purchase price) was independent of the fraud and allowing the Receiver to obtain the money would result in a windfall. *In re: Hecker*, 316 B.R. at 390 (recognizing that an innocent spouse may be entitled to

assert a claim to a portion of the proceeds prospectively to be derived from a sale of a property based on the amount of her contributions to the purchase price).

Finley's argument that the money is separately earned is unpersuasive. The undisputed forensic accounting shows that the monies for the all-cash purchase of the home are all traceable to stolen consumer funds. The HUD shows that the property was purchased with all cash from the buyer and reflects that no cash was provided by the seller at closing. The HUD shows the $107,500 was credited toward the purchase price to reduce the cash due by the buyer at closing. It is hard to see that the principle in *Hecker*, which stems from an independent contribution, is applicable here. Stated differently, this is not a case where Finley contributed $107,500 from her clean bank account toward the purchase of the home. The transaction is intertwined with the fraudulent monies and therefore, the Court does not find that Finley's interest, if any, would take priority over the Receiver's.

Finally, the Magistrate Judge noted that Finley's $107,500 contribution to reduce the purchase price of the property is akin to a purchase-money security interest, which would take priority over the Receiver's lien. *See* § 679.324, Fla. Stat. A purchase money security interest is a statutory secured interest in a consumer good or software. Such interests must be perfected under Florida Statute § 679.324. Finley's interest in a real estate commission is not a purchase money security interest in a good and the Court finds that the statutory priority rules do not apply.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st of January 2020.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record