

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13472

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TODD STEPHENS,

Defendant-Appellant,

PNC MORTGAGE,
a division of PNC Bank
National Association, et al.,

Defendants.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-80043-AHS

Before JORDAN, JILL PRYOR, and BRASHER, Circuit Judges.

PER CURIAM:

Todd Stephens, proceeding *pro se*, appeals from the district court's order granting summary judgment to the government for enforcement of a federal restitution lien. He argues that the district court's decision should be reversed due to procedural errors and the failure to consider his substantive defenses. He argues that the court's procedural deficiencies included the mismanagement of appeal fees and the improper handling of his motions. He also argues that his several substantive defenses were not adequately considered by the court, including issues related to the validity of the foreclosure process and the calculation of the alleged debt. He further argues that the court abused its discretion in denying his motions related to the appointment of a receiver and the stay of property sale. He argues that the court erred in ordering restitution in excess of \$130 million.

In response, the government moves for summary affirmance, arguing that such disposition is warranted because Mr.

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Stephens failed to oppose summary judgment or sufficiently brief his appeal, and he has abandoned any argument for reversal.

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where . . . the appeal is frivolous.” *Groen-dyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1161-62 (5th Cir. 1969).

We generally review *de novo* the district court’s grant of a motion for summary judgment, considering all of the evidence and the inferences it may yield in the light most favorable to the non-moving party. *See Ellis v. England*, 432 F.3d 1321, 1325 (11th Cir. 2005). Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

But an appellant can abandon issues by failing to brief them on appeal. *See Irwin v. Hawk*, 40 F.3d 347, 347 n.1 (11th Cir. 1994) (applying this rule to a *pro se* litigant). An appellant can also abandon a claim by presenting it only in “passing references” or “in a perfunctory manner without supporting arguments or authority.” *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). Simply stating that an issue exists, without providing reasoning and citation to authority that the appellants rely on, constitutes abandonment of that issue. *See id.*

Furthermore, we have repeatedly held that an issue not raised in the district court and raised for the first time in an appeal generally will not be considered. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004). This principle is not a jurisdictional limitation but merely a rule of practice, and the decision whether to consider an argument first made on appeal is left primarily to our discretion, to be exercised on the facts of individual cases. *See Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 360 (11th Cir. 1984). In certain exceptional circumstances, it may be appropriate to exercise this discretion. These include situations where: (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the appellant raises an objection to an order which he had no opportunity to raise at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; and (5) the issue presents significant questions of general impact or of great public concern. *See id.* at 360-61.

Absent exceptional circumstances, we will not consider objections to the district court's initial restitution calculation in a criminal case when the defendant fails to raise his objections to a restitution order before the sentencing court and on direct appeal and presents them for the first time only in a collateral proceeding. *See Cani v. United States*, 331 F.3d 1210, 1212 (11th Cir. 2003).

Here, Mr. Stephens's contention that the district court procedurally erred was waived because he failed to raise it before the district court. Even if the matter was properly before us, it was

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abandoned on appeal because Mr. Stephens made only a passing reference to it in his brief. *See Access Now, Inc.*, 385 F.3d at 1331; *Sapuppo*, 739 F.3d at 681. Similarly, his argument that the court failed to address his substantive defenses was abandoned because he simply raised it in a perfunctory manner without supporting authority. *See Sapuppo*, 739 F.3d at 681. His arguments that the court erred in denying his motions relating to the appointment of a receiver and the stay of property sale are not properly before us. *See Bogle*, 162 F.3d at 661. Finally, he failed to timely challenge the calculation of his restitution amount before the district court or on direct appeal. *See Cani*, 331 F.3d at 1212.

Thus, we summarily affirm the district court's order granting summary judgment to the government. It is clear as a matter of law that the court did not err.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-80043-CIV-SINGHAL

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD STEPHENS, PNC MORTGAGE,
a division of PNC Bank National Association, and
CADLEROCK III, LLC, an Ohio limited liability
company,

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff United States of America's ("Plaintiff" or "United States") Motion for Summary Judgment against Defendant Todd Stephens (DE [39]). Defendant Todd Stephens ("Defendant" or "Stephens") has not filed a response to Plaintiffs Motion for Summary Judgment.¹ Defendant PNC Mortgage has stipulated that it does not object to Plaintiff's Motion for Summary Judgment.² (DE [54]). For the reasons discussed below, Plaintiff's motion is granted.³

I. FACTUAL BACKGROUND

On March 23, 2017, Stephens was sentenced in case No. 16-cr-60227-DTKH (S.D. Fla.) to 120 months imprisonment and restitution ordered with the amount to be

¹ "[T]he Court cannot grant the motion simply because it was conceded or procedurally defaulted." *Est. of Reed v. Nat'l Specialty Ins. Co.*, 2020 WL 5547922, at *6 (S.D. Fla. July 29, 2020) (citing *Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 505 (D.C. Cir. 2016)). Rather, the court must "conduct an independent evaluation to determine whether the record and any undisputed material facts justify granting summary judgment." *Id.* (quoting *Parker v. U.S. Immigration and Customs Enforcement*, 238 F. Supp. 3d 89, 97 (D.D.C. 2017) (citing *Grimes*, 794 F.3d at 98-99 (Grimes, J., concurring))).

² Defendant NC Two, L.P. and Defendant Cadlerock III, LLC have also not filed responses to the Motion for Summary Judgment.

³ Because the Court is granting Plaintiff's Motion for Summary Judgment, it need not address Plaintiff's Motion for Default Judgment (DE [43]). Plaintiff's Motion for Default Judgment is dismissed as moot.

determined on one count of conspiracy to launder monetary instruments in violation of 18 U.S.C. § 1956(h). (DE [28-4]) (Exhibit A to Amended Complaint). On May 17, 2017, Stephens was ordered to pay restitution in the amount of \$130,220,803.56, plus statutory interest pursuant to 18 U.S.C. § 3612. (DE [28-4]) (Exhibit A to Amended Complaint). As of August 1, 2023, \$23,324,092.75 has been received and credited toward Stephens' federal criminal restitution debt leaving a balance owed of \$115,274,291.82, including statutory interest. (DE [40-3])

On September 12, 2018, the United States recorded a Notice of Lien for Fine and/or Restitution (Notice of Lien) in Official Records Book 30117, Page 1179 of the Public Records of Palm Beach County, Florida. (DE [28-6]) (Exhibit C to Amended Complaint). The United States thus holds a valid lien that has been perfected and valid as to third parties pursuant to 18 U.S.C. § 3613(c)-(d).

On January 12, 2023, the United States filed a complaint in federal court seeking to foreclose its lien against the property located at 230 Miramar Way, West Palm Beach, Florida 33405 (hereinafter, "the Property"). (DE [1] at 1). When the restitution judgment was entered against Stephens, he was the sole owner of the Property. (DE [1] at 2). In May 2023, the United States filed an Amended Complaint to clarify certain factual issues. (DE [28]). While the United States initially argued that Defendants PNC Mortgage and Cadlerock III had inferior interests in the Property, see (DE [1]) and (DE [28]), it now acknowledges that PNC Mortgage has a superior mortgage on the Property and that Cadlerock III, LLC has a judgment encumbering the Property. (DE [39] at 1-2).

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment "is appropriate only if 'the movant shows that there is no genuine [dispute] as to any material

fact and the movant is entitled to judgment as a matter of law.” *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (per curiam) (quoting Fed. R. Civ. P. 56(a)); see also *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010). “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An issue is “genuine” if a reasonable trier of fact, viewing all the record evidence, could rationally find in favor of the nonmoving party considering his burden of proof. *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014). And a fact is “material” if, “under the applicable substantive law, it might affect the outcome of the case.” *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259–60 (11th Cir. 2004). “[W]here the material facts are undisputed and do not support a reasonable inference in favor of the non-movant, summary judgment may properly be granted as a matter of law.” *DA Realty Holdings, LLC v. Tenn. Land Consultants*, 631 Fed. Appx. 817, 820 (11th Cir. 2015).

Where a non-moving party fails to respond, “summary judgment may be granted ‘if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it[.]’” Fed. R. Civ. P. 56(e)(3); see also *Fetchick v. Seminole Cty.*, 719 Fed. Appx. 973, 974 (11th Cir. 2018). Further, “[a]ll material facts in any party’s Statement of Material Facts may be deemed admitted unless controverted by the other party’s Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply.” S.D. Fla. L.R. 56.1(c).

III. DISCUSSION

In the current foreclosure action, the United States is seeking to enforce a federal

restitution lien pursuant to the Mandatory Victim Restitution Act ("MVRA"). 18 U.S.C. §§ 3663A-3664.⁴ Pursuant to 18 U.S.C. § 3613(f), which addresses the applicability of that statute to an order of restitution as opposed to a fine, all provisions of section 3663 are available to the United States for the enforcement of an order of restitution. According to this same provision, a restitution lien statutorily arises against all a defendant's property interests at sentencing and that lien is treated like a federal tax lien. See 18 U.S.C. §3613(c), (f). A sentencing court's restitution judgment can reach any property the IRS can reach to satisfy a tax lien and the United States' lien reaches every interest in property that a debtor may have. *United States v. DeCespedes*, 603 Fed.Appx. 749, 771 (11th Cir. 2015) (citing *United States v. Craft*, 535 U.S. 274, 288 (2002)).

In enforcing its restitution lien under the MVRA, the United States may use any federal or state procedure available, including federal foreclosure law. See 18 U.S.C. §§ 3613(a), (f); 18 U.S.C. 3664 (m)(1)(A)(i)-(ii); 26 U.S.C. § 7403; 28 U.S.C. §§ 2001-2003. Also, in ordering the judicial sale of real property, Congress has given the federal judiciary broad discretion in setting the terms and the conditions of sale. See 28 U.S.C. §2001(a).

In this case, a restitution lien against Todd Stephens was issued for \$130,220,803.56 on May 17, 2017. The United States perfected this lien as to third parties when it recorded its Notice of Lien in the official records of Palm Beach County on September 12, 2018. Todd Stephens remaining balance is \$115,274,291.82, including statutory interest. The United States thus has a perfected lien against Todd Stephens' real property interests. Further, Todd Stephens is the sole owner of the Property, and outside of PNC Mortgage's mortgage and Cadlerock III, LLC's judgment (which will be paid upon the sale of the property), there are no other liens or encumbrances against the

⁴ This statute authorizes courts, when sentencing individuals convicted of certain offenses, to require the individual to make restitution payments to the victim(s). 18 U.S.C. 3633(a)(1).

property. The United States is therefore entitled to foreclose its lien against the property and sell the property. Accordingly, it is hereby

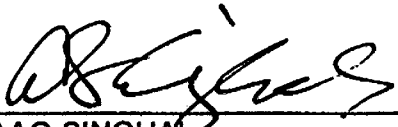
ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment is **GRANTED:**

1. The United States is entitled to foreclose the Restitution Lien against the Property and said Property will be sold through a receiver pursuant to 18 U.S.C. §§ 3613 and 3664 (m)(1)(A) and 26 U.S.C. § 7403.
2. The net proceeds, after payment of all reasonable and customary costs and expenses incurred in connection with the sale of the subject property including receiver's costs and fees, shall be disbursed as follows:
 - a. PNC Mortgage for the remaining balance of the mortgage recorded in Official Records Book 27688 Page 0304 of the Public Records of Palm Beach County, Florida;
 - b. Cadlerock III, LLC to pay the remaining balance of the assignment of judgment and judgment lien recorded in Official Records Book 32426 Page 618 of the Public Records of Palm Beach County, Florida;
 - c. Receiver's fees and costs; and
 - d. The remaining net proceeds shall be paid to "U.S. Courts" and applied toward Defendant, Todd Stephens', criminal restitution judgment.
3. In accordance with Federal Rule of Civil Procedure 58, judgment for Plaintiff United States will be entered separately.

4. Plaintiff's Motion for Default Judgment (DE [43]) is dismissed as moot.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 13th day of
October 2023.

Copies furnished counsel via CM/ECF



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-80043-CIV-SINGHAL/VALLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD STEPHENS, PNC MORTGAGE,
a division of PNC Bank National Association, and
CADLEROCK III, LLC, an Ohio limited liability
company,

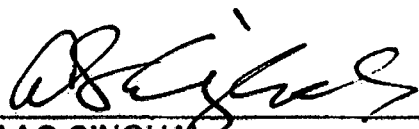
Defendants.

FINAL JUDGMENT

PURSUANT to the Court's October 13, 2023, Order granting Plaintiff's Motion for Summary Judgment, the Court enters this separate Final Judgment under Fed. R. Civ. P. 58(a). Accordingly, it is hereby

ORDERED AND ADJUDGED that Final Judgment is entered in favor of Plaintiff United States. The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 13th day of October 2023.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies to counsel of record via CM/ECF