No. 22-13412-B

In the United States Court of Appeals for the Eleventh Circuit

---

ELEANOR FISHER AND TAMMY FU, IN THEIR CAPACITY AS FOREIGN REPRESENTATIVES OF RELIEF DEFENDANT, TCA GLOBAL CREDIT FUND, LTD.

Petitioners/Appellants

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Appellee

On Appeal from the United States District Court
for the Southern District of Florida

APPELLANTS, ELEANOR FISHER AND TAMMY FU, IN THEIR CAPACITY AS FOREIGN REPRESENTATIVES OF RELIEF DEFENDANT, TCA GLOBAL CREDIT FUND, LTD.'S RESPONSE TO APPELLEE JONATHAN E. PERLMAN'S MOTION TO DISMISS

Mark D. Bloom
John R. Dodd
Baker & McKenzie LLP
1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
mark.bloom@bakermckenzie.com
john.dodd@bakermckenzie.com
Telephone: (305) 789-8900
Counsel for Appellants

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rule 26.1, the following is a list of all persons and entities known to Appellants, Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives of Relief Defendant, TCA Global Credit Fund, Ltd., to have an interest in the outcome of this appeal:

Altonaga, Cecilia M., United States District Judge

Avila, Rodriguez, Hernandez, Mena & Ferri, Attorneys for Respondent, Ocean Bank

AW Exports Pty Ltd, Claimant

Baker & McKenzie LLP, Attorneys for Appellant

Banque Pictet & CIE S.A., Petitioner in Cayman Islands Liquidation Proceeding

Bast Amron LLP, Attorneys for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Bast, Jeffrey P., Attorney for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Batista, Paul J., Attorney for Jonathan E. Perlman, Receiver

Benjamin, Todd, Claimant

Bloom, Mark D., Attorney for Appellants

Broxom, Warwick, Claimant

Cahill Gordon & Reindel LLP, Attorneys for Credit Suisse

Claritas, LLC, Cayman Islands Counsel for Appellants

Clearstream Banking S.A., Limited Objector

Credit Suisse, Limited Objector

Cuccia II, Richard A., Attorney for Paycation Travel, Inc., Xstream Travel, Inc. and David Manning

Cuccia Wilson, PLLC, Attorneys for Paycation Travel, Inc., Xstream Travel, Inc. and David Manning

Dodd, John R., Attorney for Appellant

Dorchak, Joshua, Attorney for Clearstream Banking S.A.

EY Cayman Ltd.

Fide Funds Growth

Fisher, Eleanor, Foreign Representative of Relief Defendant TCA Global Credit Fund, Ltd.

Fu, Tammy, Foreign Representative of Relief Defendant TCA Global Credit Fund, Ltd.

Fulton, Andrew, IV, Attorney for Lease Corporation of America

Garno, Gregory M., Attorney for Jonathan E. Perlman, Receiver

Genovese, Joblove & Battista, P.A. Attorneys for Jonathan E. Perlman, Receiver

Genovese, John H., Attorney for Jonathan E. Perlman, Receiver

Hall, Jason, Attorney for Credit Suisse

Kaplan Saunders Valente & Beninati, LLP, Attorneys for AW Exports Pty Ltd,

Warwick Broxom, and Jonathan James Kaufman

Kaufman, Jonathan James, Claimant

Kellogg, Jason Kenneth, Attorney for Todd Benjamin International, Ltd. and Todd Benjamin

Kelley & Fulton, P.A., Attorneys for Claimant, Lease Corporation of America

Lease Corporation of America, Claimant

Leggett, Jaime B., Attorney for Armand Zohari, Tritium Fund, Hsueh-Feng Tseng, and Fide Funds Growth

Levine Kellogg Lehman Schneider & Grossman, Counsel for Todd Benjamin International, Ltd. and Todd Benjamin

McIntosh, Elizabeth G., Attorney for Jonathan E. Perlman, Receiver

Moot, Stephanie N., Attorney for Securities and Exchange Commission

Mora, Martha Rose, Attorney for Respondent, Ocean Bank

Morgan, Lewis & Bockius LLP, Attorneys for Clearstream Banking S.A.

Ocean Bank, Non-Party Respondent

Paycation Travel, Inc., Claimant

Pearson, Katharine Lucy Bladen, Cayman Island Attorney for Appellants

Perlman, Jonathan, E., Receiver

Roldan Cora, Javier A., Attorney for Clearstream Banking S.A.

TCA Fund Management Group Corp., Defendant, Receivership Entity

TCA Global Credit Fund GP, Ltd., Defendant, Receivership Entity

TCA Global Credit Fund, L.P., Defendant, Receivership Entity

TCA Global Credit Fund, Ltd., Defendant

TCA Global Credit Master Fund, L.P., Defendant

TCA Global Lending Corp.

Tritium Fund, Claimant

Tseng, Hsueh-Feng, Claimant

Todd Benjamin International, Ltd., Claimant

U.S. Securities and Exchange Commission, Plaintiff

Valente, Charles A., Attorney for AW Exports Pty Ltd, Warwick Broxom, and Jonathan James Kaufman

van de Linde, Peter, Claimant

Xstream Travel, Inc., Claimant

Zohari, Armand, Claimant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Appellants, Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives of Relief Defendant, TCA Global Credit Fund, Ltd., state that, to the best of their knowledge based on the information in their possession, there is no parent corporation or any publicly held corporation that owns 10% or more of its stock.

STATEMENT OF THE FACTS AND CASE[1]

This appeal arises out of the District Court's August 4, 2022 Order (the "Distribution Order") partially granting the court-appointed Receiver's Motion for Approval of Distribution Plan and First Interim Distribution (the "Receiver's Motion"), as amended by the District Court's September 2, 2022 Order granting Appellants, Eleanor Fisher and Tammy Fu, in their capacity as Foreign Representatives of Relief Defendant, TCA Global Credit Fund, Ltd.'s motion to alter or amend pursuant to Federal Rule of Civil Procedure 59(e) Motion (the "Rule 59(e) Motion"). *See* D.E. 284; D.E. 299. The Receiver's Motion proposed, and the Distribution Order adopted, a distribution plan that prioritizes distributions to 872 of the 920 pooled net loser investors and subordinates the other 48, and authorizes an initial distribution of $55,452,651 on a "rising tide" basis to the 764 pooled net losers whose losses exceeded 76.95% of their investments. *See* D.E. 208 at 26–27, 30–31; D.E. 284 at 34.

The Distribution Order concluded with a statement that the District Court was staying its enforceability until September 6, 2022, "to allow the filing of an interlocutory appeal." D.E. 284 at 34. On September 1, 2022, the Foreign

[1] This Statement of the Facts and Case includes only the information necessary for this Court to consider and rule on the Receiver's Motion to Dismiss for Lack of Jurisdiction.

Representatives filed the Rule 59(e) Motion to alter or amend the Distribution Order, requesting that the court-ordered stay be extended through October 13, 2022, given that Federal Rule of Appellate Procedure 4 provides 60 days, rather than the customary 30 days, within which to file an appeal where one of the parties involved is a United States agency. D.E. 298 at 3 (citing Fed. R. App. P. 4(a)(1)(B)(ii)). The Receiver did not oppose the Motion. *See* D.E. 298 at 5. On September 2, 2022, the District Court entered an order granting the Rule 59(e) Motion and extending the court-imposed stay through October 13, 2022 (the "Rule 59(e) Order"). D.E. 299.

On October 12, 2022, the Foreign Representatives filed a Notice of Appeal, appealing the Distribution Order, as amended by the Rule 59(e) Order. On November 30, 2022, the Receiver filed a Motion to Dismiss for Lack of Jurisdiction, arguing that the Rule 59(e) Motion was not a proper motion under that rule and, therefore, did not reset the 60-day appeal period. This response follows.

SUMMARY OF THE ARGUMENT

The Foreign Representatives' Rule 59(e) Motion was a proper and timely motion to amend an order, which tolled the applicable time to file the instant appeal. As part of its ruling in the Distribution Order, the District Court *sua sponte* stayed enforceability of the order for the Foreign Representatives to file an interlocutory appeal. Erroneously, however, the Distribution Order stated that it would be stayed for a period of 30 days, through September 6, 2022.[2] Under the facts of this case, the parties actually had 60 days to file an appeal. Thus, the Foreign Representatives filed their Rule 59(e) Motion to correct the time period during which the Order would be stayed to reflect the proper time to take an appeal. This was a proper ground to file a motion under Rule 59(e).

On September 2, 2022, the Court granted the Rule 59(e) Motion, precisely as requested, and amended the Distribution Order, extending the court-ordered stay through October 13, 2022. In doing so, the District Court expressly acknowledged and cited to Federal Rule of Appellate Procedure 4(a)(1)(B)(ii), which it had previously overlooked. Resolution of the Foreign Representatives' Rule 59(e)

[2] Given that the District Court entered the Distribution Order on August 4, 2022, the typical 30-day appellate period would have expired on Saturday, September 3, 2022. The following Monday, September 5, 2022, was Labor Day—a legal holiday. As such, under Rule 6(a), the expiration date for the time period to appeal (in most cases) would have been September 6, 2022.

Motion reset the 60-day time period to file a Notice of Appeal. As such, the Notice of Appeal in this case, filed on October 12, 2022, was timely.

ARGUMENT

I. THE RULE 59(e) MOTION WAS PROPER AND TIMELY.

The Rule 59(e) Motion was a proper and timely-filed motion under Rule 59(e) because it sought to correct an error of law contained in the Distribution Order. "Rule 59 applies to motions for reconsideration of matters encompassed in a decision on the merits of a dispute." *Wright v. Preferred Rsch., Inc.*, 891 F.2d 886, 889 (11th Cir. 1990). Under Rule 59(e), a party may properly move for relief within 28 days of the entry of the judgment or order where the order contains a manifest error of law or fact, or where there is newly discovered evidence. *See, e.g.*, *Samara v. Taylor*, 38 F.4th 141, 149 (11th Cir. 2022) (quoting *EEOC v. St. Joseph's Hosp., Inc.*, 842 F.3d 1333, 1349 (11th Cir. 2016)); *see also White v. State Farm Fire & Cas. Co.*, No. 1:09-CV-1852-0DE, 2010 U.S. Dist. LEXIS 150222, at *5 (N.D. Ga. Aug. 16, 2010) (explaining that a party may move to amend an interlocutory order under the same circumstances). Courts in this Circuit apply the standard governing a motion to alter or amend a judgment made pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to a motion for reconsideration of an interlocutory order. *See In re Chiquita Brands Int'l, Inc. v. Alien Tort Statute & S'holder Derivative Litig.*, No. 08-MD-01916-KAM, 2017 U.S. Dist. LEXIS 226649, at *73 (S.D. Fla. Mar. 27, 2017) ("A district court has broad discretion to reconsider earlier interlocutory rulings . . . , which, in this circuit, is guided by the same standards controlling

motions to alter or amend judgment under Rule 59 (e)."); *Rudd v. Branch Banking & Tr. Co.*, No. 2:13-cv-02016-SGC, 2020 U.S. Dist. LEXIS 263684, at *13 (N.D. Ala. Dec. 2, 2020) (citations and internal quotation marks omitted) (same).

The Foreign Representatives' Rule 59(e) Motion sought to correct an error of law encompassed in an order on the merits. As part of its decision in the Distribution Order, the district court *sua sponte* ordered a stay of the enforceability of the Distribution Order. The District Court had the authority to issue the *sua sponte* stay as part of its order on the merits, as it did in the Distribution Order. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."); *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) ("[D]istrict courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases."); *Four Seasons Hotels & Resorts v. Consorcio Barr S.A.*, 377 F.3d 1164, 1172 n.7 (11th Cir. 2004) (stating that even in the absence of a formal mechanism for entry of a stay, "a district court . . . retains the inherent authority to issue a stay for the purposes of managing its own docket"); *cf. United States v. Morgan*, 307 U.S. 183, 197–98 (1939) (district court has inherent power to stay disbursement of funds

until revised payments are finally adjudicated).[3] The District Court had the power to and, therefore, properly stayed the effectiveness Distribution Order.

This court-imposed stay was not collateral to the District Court's ruling; rather, it was encompassed in the merits decision and was necessary to ensure that the distribution would not occur prematurely and result in irreversible damage. *See SEC v. Torchia*, 922 F.3d 1307, 1316 (11th Cir. 2019) (A distribution order "is effectively unreviewable on appeal because the assets from the receivership will be distributed, and likely unrecoverable, long before the action brought by the SEC is subject to appellate review."). For this reason, the court-ordered stay was part of the order on the merits. *See Lucas v. Fla. Power & Light Co.*, 729 F.2d 1300, 1301 (11th Cir. 1984) ("Rule 59 applies to motions for reconsideration of matters encompassed in a decision on the merits of the dispute[.]"). As the District Court recognized, once this distribution occurred, the funds would have been unrecoverable. *See* Appendix at 77 (July 11, 2022 Hearing Transcript at 76) (The District Court stated that it would need to issue a stay "[b]ecause if [the Receiver] release[s] the funds, [he's] release[d] the funds. There is no calling them back[.]"). This fact necessitated the stay.[4]

---

[3] Federal Rule of Civil Procedure 62(c) expressly contemplates a district court's authority to stay receivership orders. *See* Fed. R. Civ. P. 62(c) ("Stay of an Injunction, Receivership, or Patent Accounting Order. Unless the court orders otherwise, the following are not stayed after being entered[.]").

[4] The sole reason why the Foreign Representatives opted not to seek a stay under Rule 8 is because the Receiver later advised the Foreign Representatives—over one

Given that the court-ordered stay was encompassed in a decision on the merits of the dispute, the Foreign Representatives correctly filed a Rule 59(e) Motion to remedy the error contained in the Distribution Order—the duration of the stay issued by the District Court and clearly intended to cover the full period within which to perfect an appeal. Because the SEC, a United States agency, was a party to the litigation, the parties had 60 days during which to appeal the Distribution Order, not 30. *See* Fed. R. App. P. 4(a)(1)(B). The Rule 59(e) Motion properly requested that the district court amend the Distribution Order to correct this error. *See Reaves v. Tucker*, No. 10-14046-CIV-MIDDLEBROOKS, 2012 U.S. Dist. LEXIS 205735, at *5 (S.D. Fla. Feb. 22, 2012) ("If Respondent believed the Court erred by staying the evidentiary hearing, Respondent should have raised this argument in its Rule 59(e) Motion to Alter or Amend Judgment."). Indeed, the District Court granted the Rule 59(e) Motion and, in so doing, expressly recognized that the Federal Rules of Appellate Procedure permit 60 days to appeal under these circumstances—a fact the Court previously had overlooked. *See* D.E. 299 (citing Fed. R. App. P. 4(a)(1)(B)(ii)).

Importantly, the Rule 59(e) Motion did not ask the District Court to amend the Distribution Order to add something entirely new or to stay enforceability of its

---

month after entry of the Rule 59(e) Order—that he was not in a position to distribute the assets as stated in the Distribution Order. *See* Appendix at 99.

order in the first instance, which might have been a different case with a different outcome. The court-imposed stay (and the length of that stay) here was an important matter already encompassed in the District Court's decision on the merits. So, the Rule 59(e) Motion was a proper request under the rule that asked the District Court to reconsider a portion of its merits decision. *See Alimenta (U.S.A.), Inc. v. Anheuser-Busch Cos.*, 803 F.2d 1160, 1162–63 (11th Cir. 1986) ("Rule 59 applies to motions for reconsideration of matters encompassed in a decision on the merits of the dispute[.]").

The Receiver's reliance on *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1131 (11th Cir. 1994) and *Alimenta*, 803 F.3d 1160 does not aid in furtherance of his position. In *Hertz*, for example, the Rule 59(e) motion asked the district court to change its prior dismissal to be with prejudice. This Court stated that the request was not a request for relief *because of* the judgment; it was a request for a change to the *merits* of the district court's decision because the prior order stated the dismissal was without prejudice. In *Alimenta*, this Court reiterated that a Rule 59(e) motion is appropriate where, as here, the party seeks "reconsideration of matters encompassed in a deicision on the merits." *See Alimenta*, 803 F.3d at 1162. Similar to the motion filed in *Hertz*, the Foreign Representatives' Rule 59(e) Motion did not seek relief *because of* the Distribution Order. The Rule 59(e) Motion sought "a change in the

judgment," *see Hertz*, 16 F.3d at 1131 (citation omitted), requesting that the District Court reconsider and amend the erroneous stay provision in its Distribution Order.

Further, the cases relied upon by the Receiver that deal with motions for post-judgment attorneys' fees are inapposite, because this Court has expressly recognized that those fees requests are entirely collateral to the district court's judgment. *See Osterneck v. E.T. Barwick Indus., Inc.*, 825 F.2d 1521, 1526 (11th Cir. 1987). This Court has unequivocally stated that reliance on *White v. New Hampshire Department of Employment Security*, 455 U.S. 445 (1982), to which the Receiver cites is not proper outside of the fees context. *See Osterneck*, 825 F.2d at 1526. Post-judgment fees motions are not proper motions under Rule 59(e) because they raise a collateral question "regarding what is due *because of* the judgment." *See id.* (emphasis added). In *White*, the Supreme Court noted that an award of attorney's fees under § 1988 is "*uniquely* separable" from the main cause of action and, "does not imply a change in the judgment." *Osterneck*, 825 F.2d at 1526 (quoting *White*, 455 U.S. at 452) (emphasis added).

In *Osterneck*, this Court held that a motion for prejudgment interest under Rule 59(e), on the other hand, was a proper motion under that rule because "prejudgment interest is compensation which directly stems from the injury giving rise to the action." *Id.* The Court also recognized that there are situations where even post-judgment fees considerations may be part of the judgment on the merits

and properly considerable under Rule 59(e). *Id.* ("When the liability for the award arises from a substantive contractual obligation and is an integral part of the merits of the case and therefore compensation for the injury giving rise to an action, a motion for the inclusion of attorney's fees is a Rule 59(e) motion and tolls the time period for appeal." (internal quotation marks and citation omitted)). Thus, there exists no absolute, bright line rule for determining collateral matters in the manner the Receiver presents it.

Because the District Court included a stay provision in the Distribution Order and that provision was an important part of the District Court's ruling and a proper exercise of its authority, the error in that provision was subject to amendment under Rule 59(e). The Foreign Representatives' Rule 59(e) Motion properly asked the District Court to amend the Distribution Order to reflect the correct number of days during which they could file an appeal under Federal Rule of Appellate Procedure 4(a)(1)(B). And the District Court correctly granted the Rule 59(e) Motion, acknowledging that it had erroneously included a stay provision in its judgment that was 30 days too short. *See* D.E. 299 (citing Fed. R. App. P. 4(a)(1)(B)(ii)); *see also Samara*, 38 F.4th at 149 (The decision to grant a Rule 59(e) motion is within the district court's sound discretion.).

II. THE RULE 59(e) MOTION WAS NOT A RULE 8 MOTION IN EITHER FORM OR SUBSTANCE, AND A RULE 8 MOTION WOULD HAVE BEEN IMPROPER UNDER THE CIRCUMSTANCES.

The Receiver contends that the Foreign Representatives' filing should be characterized as a Rule 8 motion for stay rather than a Rule 59(e) motion to alter or amend. [5] Despite the Receiver's contention to the contrary, the Foreign Representatives did not request any form of relief under Rule 8 at any point in their Rule 59(e) Motion. *See generally* D.E. 298. There are specific factors that must be met for a district court to issue a Rule 8 stay, none of which were mentioned, let alone argued, in the Rule 59(e) Motion. *See, e.g.*, *Swain v. Junior*, 958 F.3d 1081, 1088 (11th Cir. 2020) (listing the factors that courts consider in determining whether to issue a stay under Rule 8). Plainly and simply, the Rule 59(e) Motion was—in both form and substance—a motion to amend the Distribution Order due to an error contained therein.

Indeed, in this case it would have been improper for the Foreign Representatives to have filed a motion seeking a stay under Rule 8 instead of the

[5] Although the Receiver argues that the Foreign Representatives' Rule 59(e) Motion was, in actuality, a request for a stay under Rule 8, his agreement with the Foreign Representatives' Rule 59(e) Motion indicates otherwise. The Receiver advised the Foreign Representatives that he would object to a request for stay under Rule 8 because he "[felt] strongly that the necessary elements for such a stay [could not have been] established by [the Foreign Representatives]." *See* Appendix at 99. The Receiver, however, had no objection to the Foreign Representatives' Rule 59(e) Motion to amend the Distribution Order to reflect the proper time to file this appeal. *See* D.E. 298 at 5.

Rule 59(e) Motion. The filing of a notice of appeal must precede a request for stay under Rule 8 for several reasons. First, if no notice of appeal has been filed, there is no appeal for which to stay the lower court proceedings. Second, in the event the lower court denies the stay, Rule 8 permits the party to seek a stay from the appellate court, which it would be unable to do if a notice of appeal had not yet been filed. Third, courts typically contemplate the earlier filing of the notice of appeal—many of them discuss the fact that district courts retain jurisdiction to hear and rule on Rule 8 stay motions despite the fact that they have otherwise been divested of jurisdiction by the filing of the notice of appeal. *See, e.g.*, *Rowell v. Metro. Life Ins. Co.*, No. 12-cv-0491-WSD, 2014 U.S. Dist. LEXIS 117001, at *4 n.5 (N.D. Ga. Aug. 22, 2014) ("The Court retains jurisdiction to grant a stay of its judgment, despite the filing of a notice of appeal."). Some courts even have suggested that a district court can properly deny a motion to stay pending appeal under Rule 8 where the motion was filed prior to the notice of appeal. *See, e.g.*, *Stewart v. Donges*, 915 F.2d 572, 578 (10th Cir. 1990) ("In denying the defendant's motion for a stay of the proceedings pending appeal (which was made before the notice of appeal was filed), the district court ruled that it found the motion was 'not to be well taken.' . . . The district court might simply have been concluding that the motion for a stay was not well taken because no notice of appeal had yet been filed[.]"). Because a notice of

appeal had not yet been filed in this case, the Foreign Representatives properly filed the Rule 59(e) Motion to correct the court-imposed stay.

In fact, in seeking the relief from the Distribution Order the Foreign Representatives had no remedy other than alteration or amendment under the applicable rules of procedure. Even if their Motion had not explicitly cited to Rule 59(e) and instead asked the District Court simply to correct the Distribution Order to extend the erroneous 30-day stay, the District Court's subsequent grant of that extension would have constituted an alteration or amendment of the Distribution Order—a remedy that arises and is properly sought under Rule 59(e), as the Foreign Representatives did here. The Receiver's opportunistic Motion to Dismiss seeks to sow confusion where none exists in the record about the form, substance, or legal effect of the Rule 59(e) Motion and ensuing Rule 59(e) Order, and accordingly must be denied.

III. THE COURT HAS JURISDICTION OVER THIS APPEAL BECAUSE THE RULE 59(e) ORDER RESET THE 60-DAY APPEAL PERIOD, SO THE NOTICE OF APPEAL WAS TIMELY FILED.

The Foreign Representatives' Rule 59(e) Motion tolled the time to file an appeal, and the District Court's Rule 59(e) Order reset the 60-day appeal period in this case. As such, the Notice of Appeal, which was filed just 40 days after the Rule 59(e) Order, was timely and this Court has jurisdiction over this appeal.

A timely and properly-filed Rule 59(e) motion suspends the finality of the order at issue and tolls the time for taking an appeal. Fed. R. App. P. 4(a)(4); *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020); *Wooden v. Bd. of Regents*, 247 F.3d 1262, 1272 (11th Cir. 2001). "If a party files a motion under Rule 59(e) . . . within 28 days of a[n] . . . order, the . . . period for appealing the . . . order resets and runs only from 'entry of the order disposing of the last such remaining motion.'" *Valentine v. BAC Home Loans Servicing, L.P.*, 635 F. App'x 753, 755 (11th Cir. 2015). It is only upon the district court's disposition of the Rule 59(e) motion that the finality of the judgment or order is restored and the appellate clock starts again. *Banister*, 140 S. Ct. at 1703.

Upon the District Court's entry of the Rule 59(e) Order amending the Distribution Order and extending the court-imposed stay through October 13, 2022, the 60-day clock for filing the appeal reset, and the Foreign Representatives had until November 1, 2022, to file this appeal. *See Banister*, 140 S. Ct. at 1703; *Valentine*, 635 F. App'x at 755. As a result, the Foreign Representatives' Notice of Appeal, filed on October 12, 2022, was timely under Federal Rule of Appellate Procedure 4(a)(1)(B) and 28 U.S.C. § 2107(b)(2), and this Court has jurisdiction over this appeal.

CONCLUSION

The Foreign Representatives' proper and timely filing of the Rule 59(e) Motion to amend the Distribution Order by correcting the error in the length of the court-imposed stay tolled the time period for the filing of the instant appeal. The District Court's ensuing Rule 59(e) Order reset the 60-day period for filing the Notice of Appeal. The Notice of Appeal in this case was therefore timely filed, and this Court has jurisdiction over this appeal.

Respectfully submitted this 12th day of December, 2022.

BAKER & McKENZIE LLP
Attorneys for the Foreign Representatives
Sabadell Financial Center
1111 Brickell Ave., Suite 1700
Miami, Florida 33131
Telephone: (305) 789-8900
Facsimile: (305) 789-8953

By: */s/ Mark D. Bloom*
Mark D. Bloom (Fla. Bar No. 303836)
John R. Dodd (Fla. Bar No. 38091)
Email: mark.bloom@bakermckenzie.com
john.dodd@bakermckenzie.com

CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE-STYLE REQUIREMENTS

I certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6).

/s/ Mark D. Bloom
Mark D. Bloom

CERTIFICATE OF SERVICE

I certify that on December 12, 2022, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, and entered the required information on the web-based CIP system on the Court's website. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Mark D. Bloom
Mark D. Bloom