NO. 01-21-00284-CV

IN THE COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

GREAT VALUE STORAGE, LLC AND WORLD CLASS CAPITAL GROUP, LLC, Appellants

v.

PRINCETON CAPITAL CORPORATION, Appellee

On Appeal from 165th Judicial District Court
Harris County, Texas
Trial Court Cause No. 2019-18855

APPELLEE'S RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF REGARDING INTERLOCUTORY APPEAL OF RECEIVER ORDER

ORAL ARGUMENT NOT REQUESTED

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Statement of the Case

Nature of the Case	This is an interlocutory appeal of a post-judgment Order requiring turnover and appointing a Receiver to collect the assets of the Judgment Debtors who did not stay execution of the judgment, refused to comply with post-judgment discovery, and have been concealing information related to assets.
Trial Court	165th Judicial District Court, Harris County Hon. Ursula Hall
Disposition Below	The trial court entered the Order appointing the Receiver and ordering turnover on September 8, 2021. 3rd CR 193.

Statement Regarding Oral Argument

Princeton believes that the trial court's Order appointing the Receiver easily can be affirmed on the record alone. However, Princeton will be pleased to provide the Court with oral argument if requested.

Issues Presented

1. Whether this Court should dismiss this appeal under Texas Rule of Appellate Procedure 42.3 because the Appellants "failed to comply with … a court order."

2. Whether the Appellants failed to preserve error on issues raised in their brief because they failed to raise those objections in the trial court.

3. Whether the trial court's Order was within its sound discretion:

    a. Where it was supported by sufficient evidence of the Appellants/Judgment Debtors' non-exempt assets;

    b. Where the Order permissibly allowed the Receiver to take custody of Judgment Debtors' membership interests in subsidiary entities, and

    c. Where the Order permissibly set the Receiver's fee as a contingent percentage of the assets recovered in satisfaction of the judgment.

Statement of Facts

I. Princeton obtained a $9.7 million judgment against the Judgment Debtors.

The facts relating to Princeton Capital Corporation's ("Princeton") judgment against the Appellants and Judgment Debtors, Great Value Storage LLC ("Great Value") and World Class Capital Group LLC ("World Class"), are detailed in Princeton's merits brief docketed in this same appeal, filed November 29, 2021.

In short: after months of Great Value and World Class's refusals to participate in the litigation, Princeton moved for partial summary judgment on a contract claim for amounts owed under a Note Purchase Agreement ("NPA"). CR 144.[1] On January 22, 2021, the trial court granted summary judgment. CR 333.

Princeton then moved to sever its remaining claims (fraudulent transfer, unjust enrichment, and money had and received) against Great Value and World Class and their sole-owner and operator, Nate Paul, into a separate proceeding. CR 334. Princeton simultaneously moved for final judgment on the breach claim. 2nd CR 5. The trial court granted Princeton's motions. Final judgment was entered March 4, 2021, making Great Value and World Class the "Judgment Debtors." CR 350.

[1] Several separate Clerk's Records were certified for appeal. Princeton will refer to citations from the first record with "CR," the second as "2nd CR," and the third as "3rd CR." Princeton filed an additional request for subsequent material from the clerk's record; that record has not yet been filed by the clerk at the time of this submission.

II. Judgment Debtors did not supersede the judgment and refused to participate in post-judgment discovery.

Judgment Debtors filed a series of meritless motions to prolong the period of time to file an appeal and to delay the execution of the judgment under Texas Rule of Appellate Procedure 26: (1) a Request for Findings of Fact and Conclusions of Law (despite the fact that the case was not "tried"), CR 352, and (2) a Motion for New Trial. CR 354. The trial court correctly denied both motions. *See* 3rd CR 190.

At no point in this time did Judgment Debtors satisfy the judgment by paying it, suspend enforcement pursuant to Texas Rule of Appellate Procedure 24 by posting a "good and sufficient" supersedeas bond, depositing the judgment with the clerk, or seeking an alternative security with the court. The Judgment Debtors then filed their notice of appeal of the final judgment on June 2, 2021. CR 371.

In June 2021, Princeton served post-judgment discovery requests.[2] Princeton's discovery sought information about Great Value and World Class's assets and financial records in order to be able to take steps to execute on the judgment. Notably, Princeton had already sought much of this information through discovery in the litigation, and Judgment Debtors had refused to produce anything at all. *See* 3rd CR 5.

[2] Princeton will supplement this brief with an errata to provide appropriate citations when the supplemental Clerk's Record is made available.

Judgment Debtors blew through the response deadline for the post-judgment discovery, and then served boilerplate and baseless objections, refusing (yet again) to produce any documents or records at all. Judgment Debtors' counsel declined to meet and confer with Princeton to discuss their failure to produce any documents.

III. Princeton moved for an Order appointing a Receiver and requiring turnover of assets and information.

With its discovery, Princeton simultaneously filed a June 30, 2021 motion with the trial court seeking the entry of an order compelling the Judgment Debtors to turn over the critical financial records. 3rd CR 148. Princeton's motion also asked for the appointment of a Receiver, Mr. Seth Kretzer, to preserve assets of the Judgment Debtors needed to satisfy Princeton's judgment and to authorize the Receiver to take certain actions necessary to secure those interests. *Id*.

Princeton had substantial reason to believe that Judgment Debtors had already or were in the process of concealing or transferring assets outside the reach of Princeton as a judgment creditor.[3] As important background, prior to the litigation

[3] Judgment Debtors' owner, Nate Paul, had initiated several bankruptcy proceedings in Delaware and the Northern District of Texas, putting all of the "Great Value Storage" related entities into bankruptcy, but specifically *not* including the Judgment Debtor entities. *See, e.g., In re GVS Portfolio I B, LLC*, Case No. 21-10690-CSS, in the U.S. Bankruptcy Court for the District of Delaware (filed April 12, 2021) (dismissed by the district court as a bad faith filing); *In re GVS Texas Holdings I, LLC, et al*., Case No. 21-31121-mvl, in the U.S. Bankruptcy Court for the Northern District of Texas (filed June 17, 2021) (proceedings still ongoing).

In light of these and other ongoing circumstances, Princeton determined that appointment of an independent Receiver would be the most effective path to ensure that the relevant records and assets were located and protected.

the Judgment Debtors had abruptly stopped providing Princeton the financial records and information that they were contractually-required under the NPA to disclose. *See generally* 3rd CR 5. During the litigation, Judgment Debtors *never* produced a single page of documents in response to Princeton's discovery requests, repeatedly refused to present any witnesses for depositions, and refused to provide any information in pretrial disclosures.[4] *Id*.

In its motion seeking turnover and appointment of a receiver, Princeton provided evidence that Judgment Debtors possessed non-exempt assets. 3rd CR 148. Specifically, Princeton addressed the following:

- Great Value: The company's then-existing website, https://www.greatvaluestorage.com, which constitutes a commercial asset over which Great Value had control.[5] 3rd CR 151. That website described Great Value as "one of the nation's largest self-storage companies, with 69 locations and approximately 45,000 units in 11 states." *Id*. Princeton also identified financial assets over which Great Value had control, including a Wells Fargo bank account at a branch in Austin, Texas, and its self-described $5,000,000 "Investments in Real Estate," approximately $1.4 million in "Cash and Cash Equivalents," and $66,696 in "Furniture, Fixtures, & Equipment" that appeared on Great Value-produced financial statements from 2018. 3rd CR 151.

- World Class: For World Class, Princeton also identified evidence of non-exempt assets, including again its commercial website,

[4] Princeton moved to compel discovery in the underlying case, 3rd CR 5–61; the motion was pending for many months, and ultimately was not ruled on before the trial court granted summary judgment.

[5] As of April 15, 2022, the website no longer appears to be active, likely as a result of the March 2022 bankruptcy sale of the related GVS-branded facilities approved by the bankruptcy court in the Northern District of Texas, *see In re GVS Texas Holdings I, LLC, et al*., Case No. 21-31121-MVL, Dkt. No. 858 (March 17, 2022 Order Approving Sale of Assets).

> http://www.wccapitalgroup.com.[6] *Id*. That website disclosed that World Class was the holding company for numerous other entities, including World Class Property Company, Great Value Storage, NowSpace, World Class Technologies, World Class Mortgage Capital, and Westlake Industries. *Id*.

Again, Judgment Debtors had refused at this point throughout the case to produce *any* financial records or other discovery material that would have allowed Princeton to provide the trial court with additional evidence of their assets.[7]

Judgment Debtors' opposition to the Turnover Order and Receiver contended only (and incorrectly) that that Princeton had not met its burden to show that the Judgment Debtors owned any non-exempt property and complained of the Receiver selected. 3rd CR 167. Judgment Debtors did not dispute that they owned these assets, nor did they argue that the assets constituted exempt property. The Judgment Debtors' opposition also did *not* object to the form of the proposed order, or to any of the powers to be authorized to the Receiver to secure assets for satisfaction of the judgment, or to the formula for calculating the Receiver's fee. *Id*. In other words, Judgment Debtors did not raise to the trial court the issues they now seek to address on appeal.

Princeton replied. 3rd CR 182. Princeton directed the trial court to additional record evidence of the Judgment Debtors' assets already admitted before the trial

[6] This website is still actively maintained as of the filing of this brief.
[7] Subsequent discovery efforts taken by the Receiver confirm that the Judgment Debtors indeed owned substantial non-exempt assets at the time that Princeton moved for entry of the Receiver.

court: a list of 23 self-storage facilities in which the Judgment Debtors represented that they owned an interest, which were identified and described in the parties' original Note Purchase Agreement:

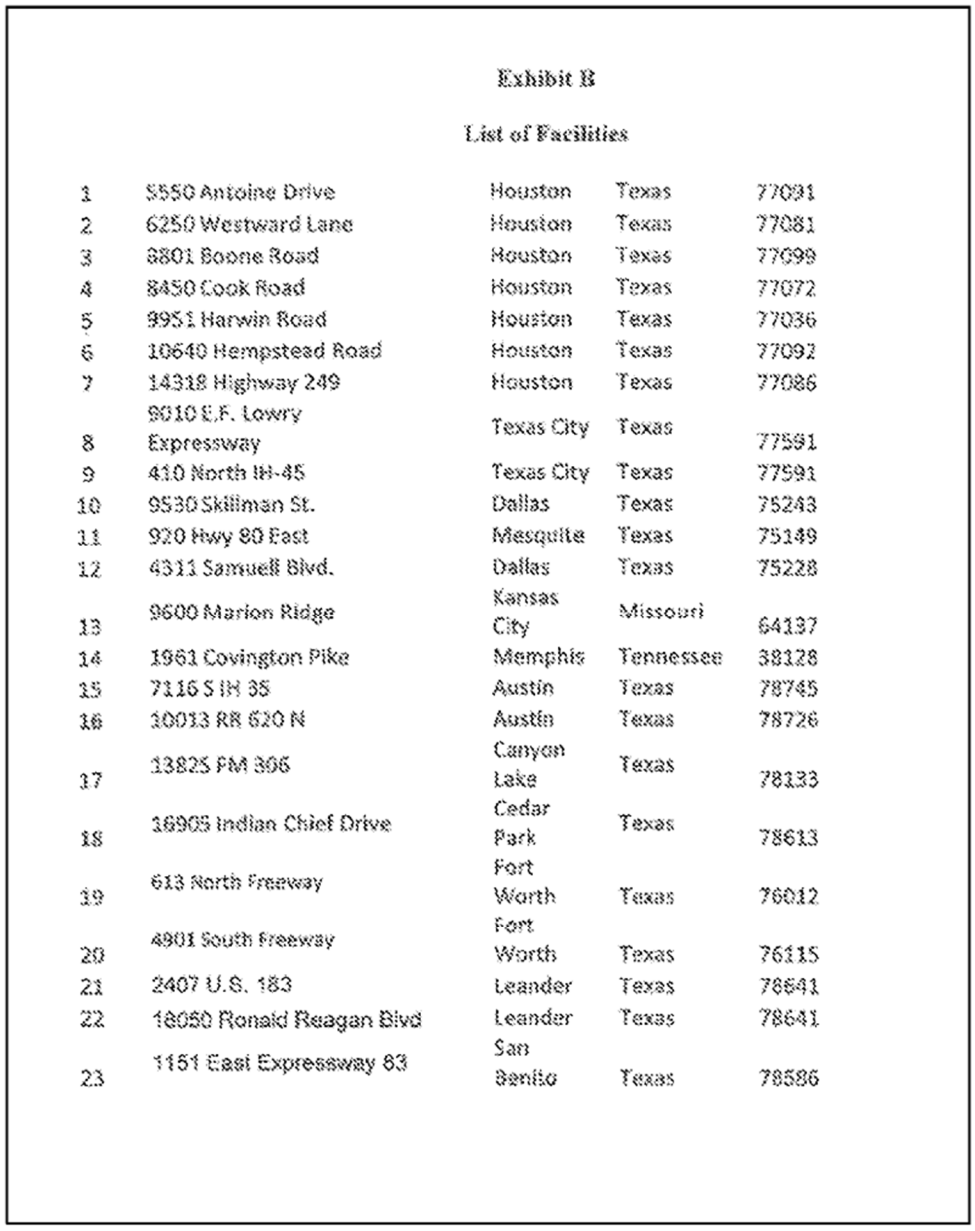

Exhibit B

List of Facilities

1	5550 Antoine Drive	Houston	Texas	77091
2	6250 Westward Lane	Houston	Texas	77081
3	8801 Boone Road	Houston	Texas	77099
4	8450 Cook Road	Houston	Texas	77072
5	9951 Harwin Road	Houston	Texas	77036
6	10640 Hempstead Road	Houston	Texas	77092
7	14318 Highway 249	Houston	Texas	77086
8	9010 E.F. Lowry Expressway	Texas City	Texas	77591
9	410 North IH-45	Texas City	Texas	77591
10	9530 Skillman St.	Dallas	Texas	75243
11	920 Hwy 80 East	Mesquite	Texas	75149
12	4311 Samuell Blvd.	Dallas	Texas	75228
13	9600 Marion Ridge	Kansas City	Missouri	64137
14	1961 Covington Pike	Memphis	Tennessee	38128
15	7116 S IH 35	Austin	Texas	78745
16	10013 RR 620 N	Austin	Texas	78726
17	13825 FM 306	Canyon Lake	Texas	78133
18	16905 Indian Chief Drive	Cedar Park	Texas	78613
19	613 North Freeway	Fort Worth	Texas	76012
20	4901 South Freeway	Fort Worth	Texas	76115
21	2407 U.S. 183	Leander	Texas	78641
22	18050 Ronald Reagan Blvd	Leander	Texas	78641
23	1151 East Expressway 83	San Benito	Texas	78586

See 3rd CR 186; *see also* CR 78 (NPA Exhibit B) and CR 65 ("Facility" in the NPA defined as each of the self-storage facilities listed on the attached Exhibit B and "any

other storage facility that WCCG hereafter acquires, develops or otherwise has an ownership interest in."). Judgment Debtors did not further respond.

IV. The trial court issued the September 8, 2021 Receiver Order.

On September 8, 2021, the trial court granted Princeton's motion, entering the Order and appointing the Receiver. 3rd CR 193. The trial court ordered the Judgment Debtors to turn over—within 10 days from the Order—certain relevant and specified documents related to assets owned by Great Value or World Class, including:

- Monthly statements from all financial accounts where the Judgment Debtors are signatories or owners;
- All cancelled checks and wire transfers;
- Copies of all articles of incorporation, operating agreements, membership agreements and documents of ownership of any LLC, corporation, partnership or other entity owned by either Judgment Debtor;
- Federal and state tax returns;
- Motor vehicle titles;
- Stocks, bonds, and promissory notes;
- Bills of sale;
- Real property deeds;
- Business journals, ledgers, and accounts payable/receivable files;
- Pledges, security agreements, and financial statements;
- Any other document evidencing ownership to real or personal property or debt owed or money had;

- Credit applications or other documents stating financial condition.

Id. These are easily-identifiable records that should have been readily available to Judgment Debtors and immediately turned over in compliance.

The Order also appointed Mr. Seth Kretzer as its Receiver. *Id*. Among other things, the Order ordered the Judgment Debtors to "identify and turn over to the receiver all interests of the Judgment Debtors in any business or venture, including limited liability companies and limited partnerships, and all agreements, stock certificates and other documents pertaining to the Judgment Debtors' ownership in the business or venture." 3rd CR 197. The Order also states that "the Receiver is authorized to seize the membership interest of any Limited Liability Company in which Great Value Storage LLC or World Class Capital Group LLC is a member, and to sell, manage, and operate the Limited Liability Company as the Receiver shall think appropriate." 3rd CR 200.

Last, the Order also compelled the Judgment Debtors to pay costs to Princeton ($2,400) necessitated with filing the motion. 3rd CR 200.

V. Judgment Debtors refused to comply with the Order.

Judgment Debtors completely refused to comply with any of the terms of the trial court's Order. Substantially more than ten days passed; no records or information of any kind was turned over to the Receiver, no costs were paid to Princeton. Nor did Judgment Debtors file a motion with the trial court objecting to

the Order. Instead, Judgment Debtors merely filed a second notice of appeal (this one) on September 21, 2021. That appeal went un-briefed by Judgment Debtors for more than five months.

In those intervening months, Judgment Debtors (and their related Nate Paul-controlled entities, represented by the same counsel) launched a series of collateral attacks against the Receiver's authority across different venues:[8]

- On November 30, 2021, two World Class entities filed a lawsuit against Mr. Kretzer to obtain a Temporary Restraining Order (TRO) preventing the sale of real property. *See WC 4th and Colorado, LP and WC 4th and Rio Grande, LP*, Cause No. 2021-77945 (Harris County). The ancillary judge granted the TRO, but set a $1,000,000 bond and set a hearing for the TI. The World Class entities never paid the bond and passed on the TI. The Receiver has since moved to dismiss under Rule 91a.

- Throughout December 2021 and January 2022, Judgment Debtors' counsel (representing other World Class parties) repeatedly told federal bankruptcy courts in hearings that the Receiver Order was superseded—despite orders from this Court to the contrary—and that the courts should disregard the Receiver.

[8] On top of these filings in other courts, the Judgment Debtors also repeatedly asked this Court to stay the Receiver Order on the (incorrect) basis that they had superseded the judgment by posting $100 with the clerk and filing so-called declarations of negative net worth. They did so in seriatim motions in this appeal, as well as by filing a separate mandamus petition. *See In re Princeton Capital Corporation*, Case No. 01-21-672-CV. This Court repeatedly told the Judgment Debtors to return to the trial court and obtain factual findings supporting a sufficient supersedeas (in orders issued on October 26, 2021 and November 18, 2021 in this appeal, and on December 23, 2021 in Case No. 01-21-672).

The Judgment Debtors refused to comply with this Court's orders. To this day, the Judgment Debtors have not obtained factual findings from the trial court on supersedeas, and have refused to provide Princeton with the discovery required by the rules necessary to proceed to an evidentiary hearing on the Judgment Debtors' net worth. Seemingly, the Judgment Debtors do not want to provide the information necessary to fairly determine what their assets are (and where their assets have gone). Princeton was forced to move to compel, and the trial court further ordered discovery on January 24, 2022 and awarded monetary sanctions. Judgment Debtors have not complied with that order either.

- On March 21, 2022, World Class Holdings, LLC filed a new lawsuit attempting to obtain a TRO against Mr. Kretzer as Receiver. *See World Class Holdings, LLC v. Seth Kretzer, Individually and as Receiver for World Class Capital Group, LLC and Great Value Storage LLC*, Cause No. 2022-16833 (Harris County). The ancillary judge denied the TRO, and the trial judge granted the motion to transfer the case back to the trial court which appointed the Receiver.

For some apparent strategic reason, all of this activity was taken in separate courts *rather than* raise any issues about the Receiver's authority in the very trial court that had appointed the Receiver, and *rather than* briefing the question of any supposed deficiency in the Order to this Court. Judgment Debtors attempted to secure a stay of the Order on a unilateral basis by completely refusing to comply and undermining the Receiver's authority without basis in other courts.

Summary of the Argument

Appellants/Judgment Debtors owe more than $10 million to Princeton. But they have not satisfied the judgment and they appear adamant that they will refuse to comply with the Texas law governing post-judgment enforcement and the explicit orders from this Court and the trial court related to the Receiver and post-judgment proceedings.

On that basis alone, Judgment Debtors' repeated failures to comply with court orders is a reason for this Court to dismiss the appeal under Texas Rule of Appellate Procedure 42.3(c). Debtors' actions have shown blatant disrespect for the judicial system and have severely prejudiced Princeton, shielding disclosure of their finances

and further bad acts through procedural maneuvering that provides cover to siphon off additional funds and transfer assets to insiders outside the reach of the court.

Judgment Debtors' appeal purportedly takes issue with three aspects of the trial court's Order, two of which Judgment Debtors definitively did not raise below: (1) whether the order was supported by sufficient evidence, (2) whether the court was within its discretion to allow the Receiver to take control of the Debtors' membership interests in subsidiary entities (not raised below), and (3) whether the court was within its discretion to set the Receiver's fee as a contingent percentage of the ultimate recovery (not raised below). It is black-letter Texas appellate procedure that an appellant cannot raise issues on appeal that it did not present to the trial court, and this Court should not excuse the Debtors' failure to do so.

Notwithstanding this clear waiver, affirmance of the trial court's Order is also appropriate on each of the substantive grounds. First, Princeton's motion to the trial court was supported by sufficient evidence of the Judgment Debtors' non-exempt assets, and Judgment Debtors took no steps to controvert that evidence. Second, no Texas law prevents the trial court from granting the Receiver the authority to seize and sell a debtors' membership interests in another corporate entity in order to satisfy the judgment. And third, there was abuse of discretion in the trial court's order to set the calculation of the Receiver's fee as a percentage of the ultimate recovery in this case—indeed, a common type of fee arrangement in receivership situations. And the

issue is not yet ripe, because the Receiver has not yet asked the trial court to approve a fee based on a final recovery.

Last, despite the significant obstacles created by the Judgment Debtors, the Receiver has developed a factual record showing that Debtors have misrepresented information about assets and engaged in fraudulent transfers of funds and properties to avoid the liability to Princeton and others. The Receiver's work is sorely needed to shine the light on what has occurred and unwind the complex financial transactions in order to secure Princeton's judgment from the Debtors' fraud.

The Court should affirm the trial court's Order.

Argument

I. Judgment Debtors' supplemental appeal should be dismissed under Rule 42.3(c) for failure to comply with court orders.

Texas Rule of Appellate Procedure 42.3(c) authorizes an appellate court to dismiss an appeal if "the appellant has failed to comply with a court order[.]" *Velasco v. Ellis*, No. 01-10-00073-CV, 2011 WL 2118865, at *4–8 (Tex. App.—Houston [1st Dist.] May 26, 2011, no pet.); *WC 1st & Trinity, LP v. Roy F. & JoAnn Cole Mitte Found.*, No. 03-19-00799-CV, 2021 WL 4465995, at *4 (Tex. App.—Austin, Sept. 30, 2021, no pet.) ("Assuming without deciding that Rule 42.3 authorizes dismissal for failure to comply with a trial court's orders," though not exercising that authority).

Judgment Debtors here have unquestionably failed to comply with the trial court's September 8 Turnover Order in the more than seven months since it was entered. They did not turn over the required documents or assets, and they did not pay the sanctions award to Princeton.[9]

Nor did Judgment Debtors comply with this Court's October 26, 2021 Order requiring them to return to the trial court to obtain factual findings regarding supersedeas. Judgment Debtors also refused to comply with this Court's December 23, 2021 Order requiring the same and effectively denying Debtors' mandamus relief. And most recently, Judgment Debtors did not comply with the trial court's January 24, 2022 Order compelling them to produce documents and pay additional monetary sanctions to Princeton. Judgment Debtors' repeated refusals to comply with applicable court orders cannot be mistaken as accidental. This Court has good cause to exercise its authority under Rule 42.3(c) to dismiss the appeal.

II. Judgment Debtors did not preserve the issues they raise on appeal.

The error preservation rules are plain and also counsel against hearing Judgment Debtors' new arguments raised here. Rule 33.1 requires as a "prerequisite" for appellate review, that the appellant must have made a timely request, objection,

[9] Under the Turnover Statute § 31.002(e), a judgment creditor that prevails in a turnover proceeding is entitled to recover reasonable costs, including attorney's fees. The trial court awarded Princeton $2,400 in attorney's fees required to bring the motion. (Princeton's actual incurred attorney's fees in litigating post-judgment and Receiver issues have been far greater than that amount). Judgment Debtors do not appeal this award of fees, which was proper under Section 38.004, yet they also provide no justification for their blatant failure to pay it.

or motion to the trial court which "stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint," among other requirements. Tex. R. App. P. 33.1; *HS Tejas, Ltd. v. City of Houston*, 462 S.W.3d 552, 558 (Tex. App.—Houston [1st Dist.] 2015, no pet.) ("Ordinarily new issues may not be raised for the first time on appeal…"); *Coleman v. Klockner & Co. AG*, 180 S.W.3d 577, 587 (Tex. App.—Houston [14th Dist.] 2005, no pet.) ("It is an established rule of Texas Procedure that, absent fundamental error, an appellate court has no discretion to reverse an otherwise error-free judgment based on a new argument raised for the first time on appeal.").

Judgment Debtors' 5-page opposition brief in the trial court contained all of their arguments objecting to Princeton's Motion and Proposed Order. 3rd CR 167–171. Judgment Debtors made just three arguments below: (1) that the motion was not supported by evidence, (2) that Princeton was required to specifically identify the non-exempt property subject to turnover relief, and (3) that Princeton's proposed receiver, Mr. Kretzer, should not be appointed. The second and third arguments are not raised here on appeal at all and are thus abandoned. *See* Tex. R. App. P. 38.1(i). The *only* argument in Judgment Debtors' brief on appeal here that was raised to the trial court below is the question of whether sufficient evidence was presented in support of the motion. Each of Judgment Debtors' remaining arguments is completely new on appeal, and thus has not been preserved under Rule 33.1.

Judgment Debtors cannot argue that they did not have a fair opportunity to object to certain provisions of the Order at the time. Princeton attached its proposed order to its motion, filed June 30, 2021. Judgment Debtors' objection was filed a week later, on July 8, 2022. The issues relating to Princeton's application for a Receiver were fully and fairly litigated, and the trial court entered Princeton's proposed order two months later, on September 8, 2021. Judgment Debtors had ample opportunity to lodge an objection to the scope of the Order's turnover requirements and the authority granted to the Receiver, and they did not do so.

III. The trial court did not abuse its discretion in appointing the Receiver.

The trial court's Order appointing a Receiver and ordering turnover is reviewed for abuse of discretion, and "a trial court may be reversed for abusing its discretion only when the court of appeals finds that the court acted in an unreasonable or arbitrary manner." *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). In the context of turnover orders, "it has been held that a trial court's issuance of a turnover order, even if predicated on an erroneous conclusion of law, will not be reversed for abuse of discretion if the judgment is sustainable for any reason. *Id*.

A. The Order was supported by sufficient evidence of the Judgment Debtors' non-exempt assets.

Judgment Debtors argue that the trial court abused its discretion and that the Order must be vacated because, they contend, there was no evidence before the court

of the Judgment Debtors' non-exempt assets. That is wrong.

Curiously, Judgment Debtors' brief does not even discuss or address the specific evidence of the Judgment Debtors' assets that Princeton offered with its motion to the trial court: the Judgment Debtors' commercial websites, the information disclosed in earlier financial reports, or the identification of 23 specific self-storage facilities disclosed by the Debtors' in the NPA. *See supra* at 8–9. Similarly, the Judgment Debtors chose not to respond to this evidence or contradict that evidence in any way in the trial court. *See* 3rd CR 184, 3rd CR 167–171. Nor did the Judgment Debtors argue that the assets that Princeton identified were exempt from turnover. *See id*.

The evidence that was presented is more than sufficient to support the Order. In a turnover proceeding, a creditor need only show "some evidence" of possession or control of the subject asset by the judgment debtor. *Brink v. Ayre*, 855 S.W.2d 44, 46 (Tex. App.—Houston [14th Dist.] 1993, no writ); *see also Cre8 Int'l, LLC v. Rice*, No. 05-14-00377-CV, 2015 Tex. App. LEXIS 5613, at *12 (Tex. App.—Dallas June 3, 2015, no pet.) (mem. op.). "Once a judgment creditor traces the assets to the judgment debtor, a presumption arises that those assets are in the debtor's possession and the burden then shifts to the debtor to account for those assets." *Pillitteri v. Brown*, 165 S.W.3d 715, 722 (Tex. App.—Dallas 2004, no pet.) (citing *Buller*, 806 S.W.2d at 226).

The sole crux of Judgment Debtors' issue appears to be that the evidence before the trial court was not sworn by affidavit. But Section 31.002 does not specify or restrict the manner in which evidence may be received in order for a trial court to determine whether the conditions of § 31.002(a) exist, nor does it require that such evidence be in any particular form, that it be at any particular level of specificity, or that it reach any particular quantum before the court may grant relief under section 31.002. *See Tanner v. McCarthy*, 274 S.W. 3d 311, 322 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (modifying a turnover order only when there was "*no* evidence" in the record, "by affidavit *or otherwise*" (emphasis added)). Judgment Debtors cite no law (and there is none) requiring that the trial court's Order be supported by evidence of some higher standard.

Judgment Debtors did not (nor could they) disclaim their ownership of the public-facing, commercial websites for Great Value and World Class. Texas courts have confirmed that commercial websites such as these are non-exempt assets sufficient to support a turnover order. *See Restreop v. All. Riggers & Constructors, Ltd*., 538 S.W.3d 755, 758 (Tex. App.—El Paso 2017, no pet.) (upholding a turnover order and specifically finding that a domain name—allianceriggersandconstructors.com—was not exempt personal property). These websites alone demonstrate that Judgment Debtors owned assets—and such assets are not exempt from turnover under the Turnover Statute. *See* Tex. Prop. Code

§ 42.002 (listing the categories of exempt types of personal property). The trial court was well within its discretion to consider this evidence and find that the Judgment Debtors owned non-exempt assets.

B. The Order appropriately grants the Receiver authority to seize Judgment Debtors' membership interests in subsidiary entities.

Judgment Debtors' principal complaint appears to be that they are unhappy that the Receiver is taking steps to locate valuable real estate assets that the Debtors' own and that are housed within wholly-owned subsidiary entities. Debtors contend that the trial court abused its discretion in authorizing the Receiver to seize membership interests in the subsidiary companies. This is a new argument that was *not* raised below in opposition to Princeton's proposed order, and thus the issue is not preserved for this Court's review. *See* supra at 16–18. Even if the Court were to consider the issue, Judgment Debtors' argument is nonetheless incorrect as a matter of law.

Under the Turnover Statute, a trial court may appoint a receiver with the authority to take possession of nonexempt property, to sell it, and to pay the proceeds to the judgment creditor as required to satisfy the judgment. Tex. Civ. Prac. & Rem. Code § 31.002(b)(3). A receiver then acts as an "officer of the court, the medium through which the court acts." *Goin v. Crump*, No. 05-18-00307-CV, 2020 WL 90919, at *10 (Tex. App.—Dallas, Jan. 8, 2020, no pet.) (mem. op.); *see also* Tex. Civ. Prac. & Rem. Code § 64.031 (powers of receiver that may be exercised subject

to court's control). He is a "disinterested party, the representative and protector of the interests of all persons, including creditors, shareholders and others, in the property of the receivership." *Magaraci v. Espinosa*, No. 03-14-00515-CV, 2016 WL 858989, at *2 (Tex. App.—Austin Mar. 4, 2016, no pet.) (mem. op.) (citing *Trust Co. v. Lipscomb Cty*., 180 S.W.2d 151, 158 (Tex. 1944)). Once a trial court appoints a receiver, the receivership property is *in custodia legis*, or in the custody of the court. *See Clark v. Clark*, 638 S.W.3d 829, 836 (Tex. App.—Houston [14th Dist.] 2021, no pet. h.).

Texas law is clear: in a Receivership, a membership interest in a limited liability company constitutes a form of non-exempt intangible personal property and is therefore properly a component of the receivership estate. "A membership interest in a limited liability company is personal property." Tex. Bus. Orgs. Code § 101.106(a). Any membership interests in other LLCs that World Class or Great Value own constitute a form of non-exempt intangible personal property subject to the Receiver's authority.

Judgment Debtors do not cite any law stating expressly that it is unlawful for a Receivership Order to authorize a Receiver to seize a judgment debtor's LLC interests. Judgment Debtors cite only to Texas Business Organizations Code § 101.112 and *Pajooh v. Royal W. Investments LLC*, 518 S.W.3d 557, 559 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

But TBOC Section 101.112 ("Member's Membership Interest Subject to Charging Order") is not a statutory provision governing the Turnover Statute or Receivership Orders. It is a section of the Business Organizations Code relating to LLCs generally, and it warns members of LLCs that their interests may be seized by a judgment creditor exclusively pursuant to a charging order. The plain language of Section 101.112(c) applies to "judgment creditors" only, and does not mention at all a court-appointed Receiver or trustee. Section 101.112 thus does not prevent a Receiver from being granted authority to seize and control membership interests, particularly of wholly-owned, single-member LLCs. Other provisions of the Business Code confirm this authority. For example, TBOC Section 6.155 ("Voting of Interests by Receiver") explicitly authorizes a Receiver to "vote an ownership interest standing in the name of the receiver.[10]

Indeed, a court-appointed receiver is materially different from a judgment creditor. A Receiver is an officer of the court and is independent from the interested party judgment creditor. It is reasonable for the trial court to authorize his seizure of or participation in the operation of an LLC or a partnership owned by the Judgment Debtors in order to monetize assets for the judgment.

[10] Section 6.155 is not limited to corporations. It is contained in Title 1: General Provisions of the Texas Business Organizations Code and therefore applies to all business organizations governed by the Code, including LLCs.

This Court's decision in *Pajooh* is likewise distinguishable and its rule has not been adopted in other appellate courts in this state. In *Pajooh*, the Receiver Order was entered into against two judgment debtors—Pajooh and U.S. Capital Investments, LLC, as well as a third-party entity County Investment, LP that was jointly owned by the judgment debtors. 518 S.W.3d at 559. This Court determined that the receivership could not be imposed over the interests in non-party County Investment, LP pursuant to Tex. Bus. Orgs. Code § 153.256(d) (charging orders for partnership interests). *Id*. In *Pajooh*, unlike here, there was no suggestion that the subsidiary partnership structure was being utilized to cover fraudulent transfers of assets. In this case, as detailed in the Receiver's own brief, the evidence that Nate Paul (the sole owner of World Class, which itself is the sole owner of Great Value) treated his companies as alter ego improperly transferred assets away from the Judgment Debtors into a myriad other of his single-member LLCs is overwhelming.

Review of other Receiver Orders entered by Texas trial courts indicate that courts frequently authorize Receivers to exercise authority over a judgment debtor's interests in LLCs without requiring a separate charging order in advance:

- *Antolik v. Antolik*, 625 S.W.3d 530, 540 n. 17 (Tex. App.—Texarkana, 2021). This precise issue was briefed in this case, with the appellate court noting that: "Victor claims, under [TBOC § 101.112], the Receiver's sole remedy (assuming the trust is disregarded) was to obtain a charging order against his membership interest in BP II. The Receiver maintains that Section 101.112 does not apply because the Receiver is not a judgment creditor. Instead, as a Receiver, he stands in the shoes of the judgment debtor, Victor, and was empowered by the Receivership Order to sell Victor's non-exempt

membership interests." *Id*. The court noted that the Receivership Order "specifically referenced the ability to sell membership interests." *Id*. The appellate court didn't need to reach the issue, because it determined that the question had been mooted by the Receiver's sale of the interests, and denied the debtors' other appellate issues.

- *Heckert v. Heck*ert, No. 02-16-00213-CV, 2017 WL 5184840, at *8–9 (Tex. App. Nov. 9, 2017, no pet.). The Fort Worth Court of Appeals affirmed the trial court's turnover order of the judgment debtor's interests in two corporate entities, including membership interests in an LLC, where neither business was an "operating business," "both entities appear to have been formed…for the sole purpose of taking ownership of nonexempt assets awarded in the divorce," and, as single-member LLCs, "No other party's interest will be disrupted by the turnover of those interests and the stock owned[.]" Accordingly, the *Heckert* court, unlike *Pajooh*, determined that that the provision of TBOC § 101.112 was not an absolute requirement that a charging order be used in all circumstances.

- *Gillet v. Zupt, LLC*, 523 S.W.3d 749, 752–53 (Tex. App.—Houston [14th Dist.] 2017, no pet.). The appellate court's ruling specifically approved of the trial court's turnover order which included the debtors' ownership interest in "ZUPT LLC." As a matter of first impression, the Fourteenth Court of Appeals held that a charging order is not the exclusive remedy to obtain membership interests in an LLC when the judgment creditor is the limited liability company of which the judgment debtor owns a membership interest. *Id*. Again, the *Gillet* court adopted a different interpretation than that in *Pajooh*.

- *Bennett v. Backer Broocks & Lange, LLP*, 2014 WL 3107661 at *2 (Tex. App.— Houston [1st Dist.] July 8, 2014, no pet.). The First Court of Appeals heard an appeal from a judgment debtor who complained that the trial court's order improperly appointed a receiver over a wholly-owned PLLC. The order specifically granted the receiver authority over the debtor's individual property, "including business entities…which have possession, custody, or control of any assets or funds in the name of or for the benefit of" the judgment debtor or are operated by the judgment debtor. *Id*. The appellate court explicitly noted that "The Business Organizations Code explains that a membership interest in a limited liability company is personal property" and thus is appropriately subject to a receivership order.

- *The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, et al*, Cause No. D-1-GN-18-007636, in the 126th Judicial District of Travis County, Texas. In this dispute related to other Nate Paul-controlled entities, the trial court appointed a receiver, Gregory Milligan, with the power to take custody of all assets, including "membership interests in any limited liability company" owned by the defendants. Mr. Paul's entities did not appear to object to this particular provision in this Receivership Order. The Third Court of Appeals affirmed the Receiver appointment in full. *See* Case No. 03-19-00799-CV.

And just weeks ago, the United States Court of Appeals for the Fifth Circuit was presented with this question in *Jiao v. Xu*, and concluded that § 101.112(d) does not preclude a turnover order of a member's interest in a limited liability company where, in that case, the judgment creditor seeking a membership interest was the limited liability company itself. 28 F.4th 591, 600 (5th Cir. 2022) (noting that the Texas Supreme Court has not spoken to the interplay between turnover orders and §101.112(d)). The Fifth Circuit suggested that the turnover of such interests would not disrupt the operation of the business itself, a policy justification behind § 101.112(d).

Trial courts thus can and do authorize their appointed Receivers to take possession of a judgment debtors' ownership interests in other business enterprises, including stocks, partnership interests, and membership interests in limited liability companies. *See Trinity Fin. Servs., Inc. v. Crockett*, No. 05-97-02061-CV, 2000 WL 140505, at *1 (Tex. App.—Dallas Feb. 8, 2000, no pet.) (finding that stock in a corporation was within the scope of the turnover statute). To exclude these assets

from a Receiver's reach would allow judgment debtors simply to shield all of their assets from recovery by moving them into subsidiary LLCs after an adverse judgment, leaving an empty shell behind. That is not the law or good policy.

Judgment Debtors' appeal on this issue is not preserved, nor is it correct. To the extent Debtors have objections about specific actions that the Receiver takes pursuant to his court-ordered authority, Debtors must first raise that issue with the trial court and they have failed to do so.

C. The Order appropriately sets the contingent fee of the Receiver.

First, as discussed supra at 16–18, because Judgment Debtors did not raise any issue with the Order's award of fee in the trial court below, this Court need not and should not consider the Debtors' new argument that it was improper to set the fee as a contingent interest in the Receiver's ultimate recovery. *See also Roberts v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend*, No. 01-19-00622-CV, 2020 WL 7502052, at *4 (Tex. App.—Houston [1st Dist.] Dec. 22, 2020, no pet.). Nonetheless, Debtors' arguments are not correct and they cannot show that the trial court's Order was an abuse of its discretion.

Second, this issue is not ripe for review. Princeton has not received any funds from the Receiver, and accordingly does not believe that the Receiver has taken any fee yet. The Receiver is subject to the court's authority, and any ultimate fee disbursement will need to be approved by the trial court in a final accounting and

receiver's discharge. In *Blunck v. Blunck*, No. 03-15-00128-CV, 2016 WL 690669, at *5 (Tex. App.—Austin, Feb. 18, 2016, pet. denied) the Austin Court of Appeals rejected a judgment debtor's similar challenge of the turnover order's award of hourly receivership fees. The appellate court did not find any abuse of discretion where, although the trial court pre-approved the receiver's hourly rate, "the receiver will still have to submit a request and obtain approval of any request for fees in order to be paid." *Id*. (citing *Moyer v. Moyer*, 183 S.W.3d 48, 57–58 (Tex. App.—Austin)).

This is precisely the distinction acknowledged by this Court in *Roberts v. Abrahm, Watkins, Nichols, Sorrels, Agosto & Friend*, in a separate case where Mr. Kretzer was also appointed as Receiver by the trial court. No. 01-19-00622-CV, 2020 WL 7502052, at *4 (Tex. App.—Houston [1st Dist.] Dec. 22, 2020, no pet.). There, the trial court's original order appointing the receiver also provided that the receiver's fee was 25% "of all gross proceeds that came into the receiver's possession…." *Id*. This Court noted that the order appointing the receiver "provided a calculation for determining the receiver's fees but did not itself award actual compensation," because the "amount of receiver's fees could not have been determined at the time of the March 18, 2019 order; rather, the trial court could only determine what amount of fees were due" after determining all gross proceeds that were recovered to satisfy the judgment. *Id*. Accordingly, the receiver's fee was not determined until the later July 12 court order after the trial court held a hearing on

the question of the receiver's fee. *Id*. No such hearing or determination by the trial court as to the final calculation of the Receiver's fee here has yet occurred—therefore, Judgment Debtors' purported objection is not ripe and this Court should decline to consider the objection.

Prayer

For these reasons, Princeton respectfully requests that the Court affirm the trial court's Order appointing the Receiver.

Respectfully submitted,

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