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DEBORAH M. YOUNG
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No. 01-23-00618-CV

In the Court of Appeals
For the First Judicial District of Texas
Houston, Texas

Great Value Storage, LLC and World Class Capital Group, LLC,
Defendants/Appellants

v.

Princeton Capital Corporation,
Plaintiff/Appellee

On Appeal from the 165th Judicial District Court
Harris County, Texas
Cause No. 2019-18855
Honorable Ursula A. Hall presiding

BRIEF OF INTERVENORS

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Intervenors certify that the following is a complete list of the counsel and parties to the order from which this appeal is taken:

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[1] Prior appellate counsel represented defendants in the prior appeal of this matter, now pending on petition for review in the Supreme Court of Texas (No. 23-0722).

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Intervenors/Appellees: *Property Intervenors:* WC 4th and Rio Grande, LP WC 4th and Colorado, LP	***Trial & Appellate Counsel:*** *Trial Counsel for Property Intervenors:* Brian Elliott brian@scalefirm.com SCALE LLP 548 Market Street, Suite 86147 San Francisco, California 94104 (415) 735-5933 Stephen A. Roberts (former trial counsel for WC 4th and Colorado, LP) sroberts@srobertslawfirm.com STEPHEN A. ROBERTS, PC 1400 Marshall Ln. Austin, Texas 78703 (512) 431-7337

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Bank Account Intervenors:

World Class Holdings, LLC
World Class Holding Company, LLC
WC 707 Cesar Chavez, LLC
WC Galleria Oaks Center, LLC
WC Parmer 93, LP
WC Paradise Cove Marina, LP
WC MRP Independence Center, LLC
WC Subsidiary Services, LLC

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Constitutions, Rules, and Statutes

Other Authorities

STATEMENT OF THE CASE

Nature of the Case:	This case originated as a breach of contract action relating to the repayment of promissory notes. This appeal concerns the resulting post-judgment turnover proceedings.
Plaintiff-Appellee:	Princeton Capital Corporation ("Princeton")
Defendants-Appellants:	Great Value Storage, LLC ("GVS") World Class Capital Group, LLC ("WCCG")
The Receiver:	Seth Kretzer ("the Receiver")
Property Intervenors:	WC 4th and Rio Grande, LP ("Rio Grande") WC 4th and Colorado, LP ("Colorado")
Bank Account Intervenors:	World Class Holdings, LLC World Class Holding Company, LLC WC 707 Cesar Chavez, LLC WC Galleria Oaks Center, LLC WC Parmer 93, LP WC Paradise Cove Marina, LP WC MRP Independence Center, LLC WC Subsidiary Services, LLC
Trial Court:	The district court entered a $9.9 million judgment for Princeton and appointed the Receiver to aid in collecting it. CR61-69. The Receiver seized control of the Intervenors' real property, financial accounts, and legal rights, resulting in millions of dollars of losses to them.[3]
Trial Court Proceedings:	The Intervenors filed pleas in intervention and sought declaratory and other relief relating to the Receiver's actions.[4] The Receiver filed a motion to strike the pleas. CR4179-200. He did not formally notice it for hearing or submission but twice asked the court by letter "submission" to broadly deny all parties' outstanding requests for relief. CR13087; CR13189.
Trial Court's Disposition:	The district court denied the pleas in intervention, including all requested declaratory and other relief. App.1 [CR13794-98].

[3] CR2060-85, 13045-55 (Rio Grande's pleas in intervention); CR2344-3848, CR13056-69 (Colorado's pleas); CR2094-100, CR2101-07 (World Class Holdings, LLC's pleas); CR3849-62, CR3867-80, CR13070-086 (pleas of all Bank Account Intervenors).

[4] *Id.*

STATEMENT ON ORAL ARGUMENT

The primary question raised by the Intervenors is easy to state: "Did the district court have discretion to deny their intervention, thus denying them any opportunity to challenge the actions of the district court's appointed receiver who had seized control over the Intervenors' real property, financial accounts, and legal rights, thereby resulting in millions of dollars of losses to them?"

And it should be similarly easy to answer: "No, because third parties are entitled to intervene in post-judgment turnover proceedings to protect their property and associated legal rights."

However, this case does have a complex factual and procedural background, spanning several years; a prior appeal that did not involve Intervenors; and a voluminous record. In addition, the Receiver has filed a lengthy motion to dismiss the appeal for lack of jurisdiction, while the Defendant Appellants have appealed separate actions of the district court.

Given these added complexities, the Intervenors believe oral argument would materially assist this Court's decisional process.

ISSUES PRESENTED

1. Whether the district court abused its discretion in denying the Intervenors' pleas in intervention, associated requests for declaratory and other relief, and motions for new trial, including whether the district court had jurisdiction to permit intervention.

2. Whether the district court denied the Intervenors' pleas in intervention and requests for declaratory and other relief without the due process required by Texas procedural rules and laws, and the Texas and federal constitutions.

3. Whether this Court has appellate jurisdiction to review the district court's actions.

INTRODUCTION

After entering a $9.9 million judgment in favor of Princeton and against GVS and WCCG, the district court appointed the Receiver to help collect the judgment.

Yet while the judgment was on appeal, the Receiver seized and took control of property belonging to third parties (*i.e.*, non-parties to the case and judgment).

In particular, the Receiver seized funds from the bank accounts of eight other entities and separately asserted and exercised control over real property, funds, and legal rights belonging to two other entities – including purporting to appear as "their" counsel in high-stakes litigation – with the total resulting harm from the Receiver's actions exceeding many millions of dollars.

Together, these ten third-party entities ("the Intervenors") sought to intervene in the district court to remedy what had happened, including by seeking discovery regarding the Receiver's actions, and declaratory relief to void or otherwise assist in unwinding the Receiver's actions and remediating the harm caused thereby.

Instead, the district court signed an order – drafted by the Receiver and authorizing a payment to him of $2.84 million – which denied without explanation all of the Intervenors' pleas in intervention and related requests for relief.

As explained herein, the district court's denial was an abuse of discretion because third parties are entitled to intervene in post-judgment turnover proceedings to protect their property and related legal rights. And the denial was also a violation of state and federal due process rights because no motion to strike the Intervenors'

live pleas in intervention had been noticed for hearing or a submission date before they were dismissed.

FACTUAL & PROCEDURAL HISTORY[5]

A. Princeton obtains a $9.9 million judgment against GVS and WCCG. The judgment is affirmed on appeal.

On March 14, 2019, plaintiff/appellee Princeton Capital Corporation ("Princeton") filed suit against defendants/appellants Great Value Storage LLC ("GVS") and World Class Capital Group LLC ("WCCG").[6] Princeton also sued Natin Paul ("Paul"), who is no longer a party.[7]

Princeton's suit concerned amounts allegedly owned under certain promissory notes, and included claims of breach of contract, unjust enrichment, money had and received, fraudulent transfer, and vicarious liability.[8]

On January 22, 2021, the district court granted summary judgment as to Princeton's breach of contract claim against GVS and WCCG.[9] Then, on March 4, 2021, the court signed a judgment in favor of Princeton and against GVS and WCCG

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[5] Factual citations labeled "[plea]" are references to allegations in one or more of the Intervenors' pleas in intervention. Because there was no hearing (evidentiary or otherwise) on their pleas, it is the Intervenors' position that their allegations must be taken as true in reviewing the district court's denial of their pleas. *See Lee v. Galena-Signal Oil Co. of Pennsylvania*, 8 S.W.2d 1051, 1054 (Tex. App.—Galveston 1928, no writ) (allegations in pleas in intervention must be taken as true on demurrer).

[6] CR13-23 (Princeton's original petition).

[7] On November 8, 2022, Princeton nonsuited its claims against Paul with prejudice. CR13072-73 ¶ 13 [plea].

[8] CR13-23 (Princeton's original petition).

[9] CR13072 ¶ 10 [plea].

in the amount of $9,910,601.34.[10]

The judgment became final when, on March 9, 2021, the court severed Princeton's remaining claims, including all claims against Paul (which were subsequently non-suited),[11] and assigned them a different cause number.[12]

Critically, none of the Intervenors was ever sued, made party to, or participated in this lawsuit before judgment. Nor had the district court purported to make any alter-ego or piercing-the-corporate-veil findings against any of them (so as to find that any was an alter ego of GVS or WCCG) or that any had received any allegedly-fraudulent transfer from them. (Nor were such claims ever asserted by Princeton against any Intervenor.)

Instead, as discussed below, the Intervenors – which consist of four limited partnerships (LPs) and six limited liability companies (LLCs) – are wholly separate legal entities with their own identities, property, and rights. Indeed, neither the LPs' partners or the LLCs' members even included GVS or WCCG.[13]

GVS and WCCG appealed the judgment, and on April 20, 2023, this Court affirmed. This Court also affirmed the district court's decision to appoint a receiver to aid in collecting the judgment (as discussed in the next section).[14]

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[10] CR13072 ¶ 11 [plea].

[11] *Supra* p.2 n.7.

[12] CR13072 ¶ 12 [plea].

[13] *Infra* p.7.

[14] *Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 WL

On July 27, 2023, this Court denied rehearing.

On November 29, 2023, GVS and WCCG filed a petition for review with the Supreme Court of Texas (No. 23-0722). The Court requesting a response on February 2, 2024, and the petition remains pending.

B. While the case is on appeal, the district court appoints a Receiver to assist in collecting the $9.9 million judgment.

After the appeal was initially docketed, Princeton sought to collect on its judgment against GVS and WCCG.[15] To assist with that, the district court appointed Seth Kretzer on September 8, 2021, as a receiver ("the Receiver") under the Texas turnover statute.[16] App.2 [CR61-69] ("Receivership Order"). During the appeal, this Court initially stayed that order (October 26, 2021) but lifted it a few weeks later (November 18, 2021).[17]

The Receivership Order broadly provided the Receiver with authority to take possession of and sell non-exempt property of the judgment debtors, including their real property and financial accounts.[18] In addition, it provided 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

3010773, at *1 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, pet. filed) (mem. op.).

[15] CR13072-73 ¶ 13 [plea].

[16] TEX. CIV. PRAC. & REM. CODE § 31.002.

[17] CR82; CR13394.

[18] *See* Receivership Order at CR61-62; *id*. at CR68 (authorizing Receiver "to obtain all bank accounts and records and invest [*sic*] accounts and records held by Great Value Storage LLC or World Class Capital Group LLC from any financial institution").

> Liability Company as the Receiver shall think appropriate."

Receivership Order at CR68.

Importantly, the only "judgment debtors" under the judgment were GVS and WCCG. Put another way, the Intervenors did not owe any part of the judgment to Princeton: they were not sued, they were not judgment debtors, they were not named in the judgment, they were not claimed to be – let alone found to be – alter egos of the judgment debtors or the recipient of fraudulently-transferred property, and no corporate veils were pierced. Indeed, as shown below, they are entities whose legal identities are entirely separate from that of the judgment debtors.

C. The Receiver seizes control of real property, financial accounts, and legal rights belonging to third parties (the Intervenors). The Intervenors are limited partnerships and limited liability companies that are legally distinct from GVS and WCCG.

1. The Intervenors consist of the Property Intervenors and the Bank Account Intervenors, all legally distinct from each other and from GVS and WCCG.

The Intervenors consist of ten legal entities. Six are limited liability companies (LLCs) and four are limited partnerships (LPs). They can be divided into two groups: the Property Intervenors (two of the LPs) and the Bank Account Intervenors (the other two LPs and the six LLCs).

The Property Intervenors are "Rio Grande" (formally known as WC 4th and Rio Grande, LP) and "Colorado" (formally known as WC 4th and Colorado, LP). They are called the "Property" intervenors because, among other things, they owned highly-valued real property that, among other of their legal and property rights, is at

stake here. The other eight Intervenors are called the "Bank Account" Intervenors because, among other things, they had hundreds of thousands of dollars in bank account that are at stake.

The following are the legal names of the ten Intervenors. As can be seen, each is facially distinct not only from the rest but also from the judgment debtors Great Value Storage, LLC and World Class Capital Group, LLC:

The Property Intervenors:

WC 4th and Rio Grande, LP

WC 4th and Colorado, LP

The Bank Account Intervenors:

World Class Holdings, LLC

World Class Holding Company, LLC

WC 707 Cesar Chavez, LLC

WC Galleria Oaks Center, LLC

WC Parmer 93, LP

WC Paradise Cove Marina, LP

WC MRP Independence Center, LLC

WC Subsidiary Services, LLC

As emphasized above, no Intervenor was sued by Princeton, or made a party to the litigation, or named in the judgment as a judgment debtor, or found by the district court to be an alter ego of, or fraudulent transfer recipient from, a judgment debtor.

Further, neither judgment debtor was a partner or member of any Intervenor (this detail ultimately shows how the Receiver's actions went beyond parts of the Receivership Order that were *already* contrary to Texas law):[19]

a. The Property Intervenors (Rio Grande and Colorado)

Rio Grande is a Texas limited partnership formed on September 12, 2011.[20] Neither its general partner nor its limited partners are one of the judgment debtors. Rather, its general partner is "WC 4th and Rio Grande GP, LLC," which holds a 25% interest in the partnership, and its three limited partners own the other 75%: "Sangreal Investments, LLC," "Flash Property Management, LLC," and "Independence Holdings I, LLC."[21]

Colorado is a Texas limited partnership that was formed on June 6, 2011.[22] Colorado's general partner is "WC 4th and Colorado GP, LLC," which holds a 25% interest in the partnership, while its two limited partners own the other 75%: "Sangreal Investments, LLC" and "Independence Holdings I, LLC."[23]

b. The Bank Account Intervenors

As noted above, the Bank Account Intervenors include two LPs and six LLCs. Neither of the judgment debtors (GVS and WCCG) was a member or partner of any

[19] *Infra* pp. 37-38.

[20] CR13250.

[21] CR13307.

[22] CR13322.

[23] CR13325-26.

of these eight LPs and LLCs.[24]

2. The Receiver seized funds from the Bank Account Intervenors' accounts.

During his receivership, the Receiver has seized or otherwise taken control of funds totaling over $428,000 from the Bank Account Intervenors' bank accounts.[25] The exact amount remains unknown because the Receiver has refused to provide an accounting of the seizures.

Notably, despite seizing such substantial amounts, the Receiver never distributed any of it to judgment creditor Princeton. Indeed, the Receiver apparently never distributed *anything* to Princeton that he collected during his receivership.[26]

3. The Receiver seized control of the Property Intervenors' real property and related legal rights, including their claims to over $1 million held in trust.

During the first appeal, the Property Intervenors (Rio Grande and Colorado) were involved in litigation regarding real property they owned. However, beginning the very day this Court lifted its initial stay of the receivership, the Receiver began asserting control over this litigation and transferring (or effectuating the transfer of) the Property Intervenors' property and other rights to third parties.

In particular, as delineated below, the Receiver appeared in the litigation and

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[24] CR13737-39.

[25] CR13073-74 ¶¶ 15-16 [plea]. The amount seized includes more than $330,000 from World Class Holdings, LLC; more than $54,000 from WC MRP Independence Center, LLC; and more than $40,000 from WC Paradise Cove Marina, LP. *Id*.

[26] CR13493 (statement by Receiver indicating all collections remained in an IOLTA, apart from legal fees and expenses paid to others); CR2801 (September 20, 2022, statement by Princeton's counsel that nothing collected by the Receiver had been distributed to Princeton).

claimed to be the Property Intervenors' new attorney. He then proceeded to: (1) have their claims dismissed; (2) enable the distribution to third parties of over $1 million of funds held in trust that the Property Intervenors had claims to; and (3) directly transferred Rio Grande's multi-million-dollar real property to a third party.

Critically, nothing in the Receivership Order purported to grant the Receiver authority to appear on behalf of either Property Intervenor in their lawsuits, let alone settle those suits or dismiss the Property Intervenors' claims, counterclaims, and defenses, or authorize the release of funds held in trust. Nor did the Receiver separately seek to obtain authorization from the district court to do any of this. Nor did judgment creditor Princeton receive any property or funds as a result of the Receiver's actions.[27]

a. The Receiver seized control of Colorado's litigation, dismissed Colorado's legal claims, and effectuated a release to a third party of over $1 million in funds held in trust and claimed by Colorado.

(i) *CTS Sues Colorado.*—Colorado owned real property in downtown Austin.[28] On or about May 1, 2020, an outside party (CTS) purchased the note on Colorado's property.[29] On May 22, 2020, CTS filed suit against Colorado relating to the note and the property.[30] On June 1, 2020, Colorado filed counterclaims against

[27] *Id.*

[28] CR13057 ¶ 5 [plea].

[29] CR13057 ¶ 6 [plea]. CTS is Colorado Third Street, LLC and is unrelated to Colorado.

[30] CR13554; *see also* CR2345 ¶ 7 [plea]; CR2355. The suit is *Colorado Third Street, LLC v. WC 4th and Colorado, LP*, No. D-l-GN-20-002781 (261st Jud. Dist. Ct., Travis Cty., Tex.).

CTS.[31]

On the day this Court lifted the receivership stay (November 18, 2021), the Receiver filed a notice of appearance in CTS's action against Colorado and claimed to be acting on behalf of – and replacing "prior" counsel for – Colorado.[32] Minutes later, he filed a motion (signed by him, purportedly on Colorado's behalf), asking that court to release Colorado's $25,000 bond to CTS.[33]

On November 24, 2021, Colorado's actual counsel (Brian Elliott) objected to the Receiver's appearance on behalf of Colorado.[34] Even so, on December 10, 2021, the court granted the Receiver's motion and ordered the release of these funds (which had been held in trust in the court registry) to CTS.[35]

On March 18, 2022, the Receiver moved the court to dismiss all asserted claims with prejudice (which included Colorado's counterclaims and defenses),

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[31] CR13562; *see also* CR2346 ¶ 8; CR2362. On July 6, 2021, CTS transferred the subject property to itself by an improper foreclosure sale. *See* CR2347 ¶¶ 14, 16 [plea]; CR2465 (describing improprieties).

[32] CR13576; *see also* CR2346 ¶ 9 [plea], CR2449. The Receiver also said he was appearing on behalf of WCCG (who was not a party to the lawsuit) and made the unsupported and invalid claim that Colorado was a subsidiary of WCCG. *Compare* CR13576 (Receiver's unsupported claim), *with* CR13381 ¶¶ 5-7 (sworn statement that Colorado is not a subsidiary of WCCG).

[33] CR13580. The motion was submitted as a "Joint Motion" with CTS.

[34] CR13585 (motion to show authority).

[35] The order was styled as "Agreed" and signed by the Receiver as the receiver for Colorado's (alleged) corporate owner. CR13598. The order directed that Colorado's $25,000 cash bond that was security for a TRO "be immediately released" to CTS from the court registry.

ostensibly because Colorado and CTS had settled all claims.[36]

On August 18, 2022, the court granted that motion and entered an order dismissing Colorado's claims with prejudice (and rejecting the objection to the Receiver raised by Colorado's actual counsel).[37]

Colorado appealed.[38] That appeal is briefed and pending in the Fourteenth Court of Appeals having been transferred from the Third Court of Appeals.[39]

(ii) *CTS Sued the Guarantors.*—On August 17, 2020, CTS filed a separate suit against the guarantors of Colorado's note.[40] On July 2, 2021, Colorado intervened in that suit to assert its rights.[41]

On November 18, 2021, the day this Court lifted the stay of the receivership, the Receiver filed a notice of appearance in the suit, again asserting that he was acting on behalf of, and replacing "prior" counsel for, Colorado.[42]

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[36] CR13602; *see also* CR2346 ¶¶ 10-11 [plea]; CR2453 (stating that "[t]he parties have resolved all claims asserted in this case"). The motion was submitted as an "Agreed Joint Motion" with CTS. Notably, the Receiver has never disclosed to Colorado the terms of his purported agreement on behalf of Colorado to "resolve[] all claims" between it and CTS.

[37] CR13606. The order was styled as an "Agreed" order and was signed by the Receiver purportedly on Colorado's behalf. CR13606-07.

[38] CR13608.

[39] The transfer occurred on October 24, 2022.

[40] CR136189; CR2347 ¶ 15 [plea]; CR2456. The suit is *Colorado Third Street, LLC v. Natin Paul and World Class Capital Group, LLC*, No. D-1-GN-20-004259 (126th Jud. Dist. Ct., Travis Cty., Tex.).

[41] CR13628; *see also* CR2347 ¶ 16 [plea]; CR2465.

[42] CR13632; *see also* CR2348 ¶ 17 [plea]; CR2653. As above (*supra* p.10 n.32), the Receiver also said he was appearing on behalf of WCCG and made the unsupported

Later that day, the Receiver filed a motion on Colorado's behalf, claiming that he had agreed on Colorado's behalf to settle Colorado's claims and release to CTS nearly $1 million of funds held in trust that were the subject of Colorado's claims.[43] (As above, the Receiver sought distribution of funds to CTS, not Princeton.)

On December 8, 2021, the court granted the Receiver's motion and ordered the release of the funds to CTS.[44]

On March 18, 2022, the Receiver moved the court to dismiss Colorado's intervention and claims.[45] On March 21, 2022, the court granted the motion, dismissing Colorado's claims with prejudice.[46]

On April 18, 2022, Colorado's actual counsel (Manfred Sternberg) objected to the Receiver taking legal action on Colorado's behalf and moved to vacate the dismissal.[47] Thereafter, he also filed a motion for new trial.[48]

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and invalid claim that Colorado was a subsidiary of WCCG. *Compare* CR13632 (Receiver's unsupported claim), *with* CR13381 ¶¶ 5-7 (sworn statement that Colorado is not a subsidiary of WCCG).

[43] CR13636; *see also* CR2348 ¶ 18 [plea]; CR2656. The motion was styled as a "Joint Motion" with CTS.

[44] The order directed the release of the IOLTA funds to CTS and was signed as "Agreed" by the Receiver as the receiver for Colorado's (alleged) corporate owner. CR13648-50.

[45] CR13652; *see also* CR2348 ¶ 19; CR2666. The motion was styled as a "Joint Motion" with CTS.

[46] CR13658.

[47] CR13663.

[48] CR13696 (October 19, 2022).

On November 21, 2022, the court denied the motion for new trial,[49] and Colorado appealed.[50] That appeal is briefed and pending before the Third Court of Appeals.

b. The Receiver seized control of Rio Grande's litigation, dismissed its legal claims, and transferred its real property to a third party.

On November 18, 2021 – again, the same day this Court lifted the receivership stay – the Receiver executed and recorded a Warranty Deed. The deed purported to transfer Rio Grande's valuable property in downtown Austin to a third party (*i.e.*, *not* to judgment creditor Princeton).[51]

That same day, the Receiver filed a notice of appearance in litigation relating to Rio Grande's property.[52] In his notice, he claimed to be appearing on behalf of Rio Grande and replacing its "prior" counsel.[53] On November 24, 2021, Rio Grande's actual counsel (Brian Elliott) objected.[54]

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[49] CR13707.

[50] CR13710. The judgment was appealable because the court severed the claims related to Colorado based on a joint motion to sever (signed by the Receiver purportedly on behalf of Colorado). CR13673 (motion dated August 12, 2022); CR13688 (order dated September 22, 2022).

[51] CR13499-500; *see also* CR2061 ¶ 5 [plea]; CR2067.

[52] CR2076. The suit is *WC 4th and Rio Grande, LP v. La Zona Rio, LLC*, No. D-l-GN-20-007177 (345th Jud. Dist. Ct., Travis Cty., Tex.).

[53] CR13507; *see also* CR2061 ¶ 6 [plea]; CR2076. The Receiver also said he was appearing on behalf of WCCG (who was not a party to the suit) and made the unsupported and invalid claim that Rio Grande was a subsidiary of WCCG. *Compare* CR13576 (Receiver's unsupported claim), *with* CR13314 ¶ 4 (sworn statement that WCCG is not an owner of Rio Grande).

[54] CR13512.

The Receiver then moved to dismiss Rio Grande's claims with prejudice,[55] which the court granted on December 20, 2021, by an "Agreed Order" (signed by the Receiver purportedly on behalf of Rio Grande).[56]

On January 19, 2022, Rio Grande's actual counsel moved the court to reinstate Rio Grande's claims or grant a new trial.[57] That motion was overruled by operation of law, and Rio Grande appealed.[58] Its appeal was transferred to the Eighth Court of Appeals.

That Court subsequently denounced the Receiver's actions, ruling that the Receiver had no authority on the record before the Court to transfer Rio Grande's property, replace Rio Grande's attorney, or settle Rio Grande's lawsuit.[59]

In particular, the Court held that the Receivership Order could not have legally authorized the Receiver to take possession of Rio Grande's causes of action or its real property:

> "The record reflects that Rio Grande, LP is a partnership with at least two other partners that possess a substantial interest in the partnership. Absent evidence that the two other partners are themselves connected to WCCG, the Receivership Order could not have authorized Kretzer [the Receiver] to 'take possession' of the partnership's cause of action or any of its property as part of its collection

[55] CR13524; *see also* CR2062 ¶ 7; CR2080. The motion was styled as a "Joint Motion" with defendant La Zona Rio, LLC. CR13525.

[56] CR13531.

[57] CR13535.

[58] CR13549-52.

[59] *See WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, 677 S.W.3d 136 (Tex. App.—El Paso 2023, no pet.).

efforts to satisfy WCCG's debt."[60]

The Court also concluded that that the Receiver did not have authority to manage, operate, or transact Rio Grande's assets or business:

> "Even if we were to conclude that WCCG had a membership interest in Rio Grande GP, LLC, there is nothing in this record on which the trial court could have relied to conclude Kretzer [the Receiver] had the authority as general partner of Rio Grande, LP to manage, operate, and even transact the partnership's assets under the guise of collecting on the general partner's debt."[61]

And the Court reiterated its conclusions in a related appeal decided that same day:

> "[E]ven if Rio Grande, LP's general partner was affiliated with WCCG, a judgment creditor of an individual partner has no right to obtain possession of or otherwise exercise 'legal or equitable remedies' with respect to a limited partnership's property when collecting on that judgment."[62]

D. The Intervenors attempt to intervene in the present case to hold the Receiver accountable. The district court denies intervention with no stated reason.

Because of the Receiver's actions and resulting harms, the Intervenors sought to intervene in the current lawsuit. In particular, between October 2022 and April 2023, the Intervenors filed original and amended pleas in intervention, with all

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[60] *Id*. at 147.

[61] *Id*. at 148.

[62] *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00225-CV, 2023 WL 3672025, at *2 (Tex. App.—El Paso May 25, 2023, no pet.) (mem. op.) (quoting TEX. BUS. ORGS. CODE § 153.256(f))).

Intervenors filing their most current ("live") pleas on April 21, 2023.[63]

The pleas detailed the events above and sought declaratory and other relief regarding the Receiver's actions, including discovery of everything he exactly had done.[64]

For example, the Intervenors' pleas requested discovery as to what the Receiver had done with the Intervenors' bank accounts, funds, and property, including the undisclosed settlement agreements he entered on the purported behalf

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[63] On October 31, 2022, one Property Intervenor (Rio Grande) filed its original plea in intervention. CR2060-93.

On November 1, 2022, one Bank Account Intervenor (World Class Holdings, LLC) filed its original and first-amended plea in intervention. CR2094-100 (original); CR2101-07 (first-amended).

On November 29, 2022, the other Property Intervenor (Colorado) filed its original plea in intervention. CR2344-669.

On January 10, 2023, and again on April 21, 2023, World Class Holdings, LLC, now joined by other Bank Account Intervenors, filed amended pleas. CR3849-62 (second-amended); CR3867-80 (third-amended); CR13070-86 (fourth-amended).

Also on April 21, 2023, the two Property Intervenors filed amended pleas. CR13045-55 (Rio Grande); CR13056-83 (Colorado). Because the exhibits to these filings were duplicative of their prior filings, only the bodies of the amended pleas are in the record.

[64] Under the Uniform Declaratory Judgments Act, "[a] person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." TEX. CIV. PRAC. & REM. CODE § 37.004(a). The UDJA's scope is broadly construed. *See Nw. Indep. Sch. Dist. v. Carroll Indep. Sch. Dist.*, 441 S.W.3d 684, 691 (Tex. App.—Fort Worth 2014, pet. denied) (rejecting argument that declaration concerning school district's rights under commissioners' court order or judgment fell outside the UDJA's scope: "[The Act] applies when, as here, a school district seeks to resolve a controversy regarding a judgment or order issued by a commissioners court even though the words 'judgment' and 'order' are not contained within the specific enumerations listed in the Act.").

of the Property Intervenors.[65]

Then, during subsequent district court proceedings, the Bank Account Intervenors served the Receiver with a subpoena to appear at a deposition and produce documents related to his actions against them.[66] In this face of his refusal, they moved to compel his compliance,[67] and the Property Intervenors did the same.[68]

The Intervenors' pleas also included formal petitions for declaratory relief. Their petitions sought declarations that (1) certain of the Receiver's actions that affected them or their property were void (*e.g.*, his conveyance of real property to a third party, his actions purportedly taken as their legal counsel, his seizure of their bank accounts); that (2) portions of the Receivership Order itself were void (*e.g.*, that portion authorizing the Receiver to take control of LLCs that weren't judgment debtors); and that (3) the Intervenors' legal rights, including state and federal due process rights, had been violated through the turnover proceedings, including by the Receiver's actions.[69]

On February 23, 2023, the Receiver filed a motion to strike the Intervenors' then-current pleas in intervention.[70] Among other things, he claimed that: his actions

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[65] CR13052; CR13066; CR13081.

[66] CR3961, 3972-79.

[67] CR3958, 3968.

[68] CR3997, 4004, 4008, 4022; CR4107, 4117, 4121.

[69] CR13051-52; CR13065-66; CR13080-81.

[70] CR4179-96.

were beyond challenge because he had immunity; the Intervenors were controlled by the judgment debtors; and the Intervenors allegedly held fraudulently-transferred funds.[71]

The Receiver separately argued there was no jurisdiction for intervention because: intervention proceedings would be outside the scope of remand from the first appeal; the judgment had already been paid and satisfied;[72] and, with respect to the Property Intervenors, that they had needed, but failed to get, permission to intervene from the courts handling the appeals discussed above.[73]

Notably, neither the Receiver nor district court ever issued any formal notice of a hearing or submission date for this motion to strike (*i.e.*, as required by the applicable procedural rules to trigger any other party's response deadline).[74] Nor did

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[71] CR4183-84; CR4184-86, 4187-88; CR4189-95.

[72] CR4181-82; CR4182-83.

[73] CR4186-87.

[74] Harris County Local Rule 3.3.3. In April 2023, the Receiver did send a letter to the district court and asked "by submission" for the court to sign an omnibus order denying every pending request for relief made by every other party, including intervention. CR13087. However, the letter did not reference any motion to strike any of the Intervenors' live (or prior) pleas in intervention, nor state any date for any purported "submission" of his attached proposed order. On May 1, 2023, the Intervenors and defendants filed joint objections to the proposed order. CR13133-37. Therein, the Intervenors specifically objected that any denial or dismissal of their pleas in intervention and associated requests for declaratory and other relief would violate state procedural rules as well as their due process rights under the state and federal constitutions because, among other reasons, there had been neither notice nor hearing compliant with those rules to support denial or dismissal. CR13126 ¶¶ 3-4, 13137 ¶¶ 21-22 (citing state and federal constitutional Due Process Clauses; TEX. R. CIV. P. 91a, 166a; and TEX. CIV. PRAC. & REM. CODE § 27.003(d)). The Intervenors reiterated their state and federal due process objections in their motions for new trial. CR13716-20, 13732; CR13774-77, 13783.

the Receiver ever move to strike the Intervenors' later pleas in intervention (*i.e.*, their currently live pleas), including their associated requests for declaratory and other relief.

The district court *did* hold one hearing (on March 2, 2023) regarding the motion to compel (noted above) filed by the Bank Account Intervenors.[75] Therein, counsel for the Bank Account Intervenors generally explained that the Receiver had confiscated funds from their bank accounts without due process and, in turn, they sought intervention to get discovery from him as well as their money back.[76]

Notably, although the hearing had been confirmed by the Receiver himself to solely be a hearing on the Bank Account Intervenors' motion to compel – *i.e.*, it was not a hearing on any motion to strike any plea in intervention – the district court did make the following statement which foreshadowed what was to come:

> "[I]f I . . . say that this [case] is resolved and shut it down, you do have appellate rights because now you have presented this intervener [*sic*] argument and they can tell you what the law is if I get it wrong."[77]

Counsel for the Bank Account Intervenors responded that such a ruling would "violate[] [the Bank Account Intervenors'] due process rights."[78]

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[75] CR4176 (confirmation from Receiver that only matter set for hearing was the Bank Account Intervenors' motion to compel and related opposition to the Receiver's motion to quash); RR1-94 (hearing on motion).

[76] *E.g.*, RR7-8, 21, 33-34, 68, 79.

[77] RR90.

[78] RR90.

The district court replied, "I understand, which the Court of Appeals could re-address."[79]

Shortly thereafter, the March 2, 2023, hearing concluded with no rulings.

Nor did any rulings issue later that month or the next. Then, on May 15, 2023, the Bank Account Intervenors requested by letter for the Court to hold an in-person status conference:

> "It is now over one year since third party Bank Intervenors' property was seized by the Receiver in March 2022, and our clients wish to re urge this Court to timely consider and rule upon Bank Intervenors' pending Motion to Compel to obtain an accounting from the Receiver and begin the process of having their unlawfully seized property returned to them."[80]

But the district court did not set a status conference. Instead, some months later, on August 2, 2023, the court signed an omnibus order that, without explanation, "denied and dismissed" all "pending pleas in interventions, motions, objections, subpoenas, and discovery requests."[81]

Given the specificity of the statement, it is undeniable that the order was meant

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[79] RR90-91.

[80] CR13155-57.

[81] App. 1 [SuppCR3-7] (footnote reference omitted). The order also stated "all relief not herein granted is hereby DENIED." App.1 [SuppCR7]. On August 4, 2023, the court clerk emailed the order to counsel for some parties, but it apparently was not filed until September 20, 2023. CR13801. On August 7, 2023, the Property Intervenors filed a summary judgment motion regarding their claims ("MSJ"). CR13199. Given the district court's denial of intervention, their MSJ was not heard but was incorporated by reference into their motion for new trial. CR13774.

to deny the Intervenors' pleas in intervention and associated requests for relief. However, with respect to the Intervenors' due process argument (*infra* Part II.A.),[82] it should be reiterated that the denial was issued without the Receiver or district court previously noticing any hearing or submission date on any motion to strike filed against any of the Intervenors' live pleas.[83] Nor does the order mention, let alone purport to grant, any motion to strike.[84]

In addition, neither the Receiver nor any other party had filed any Rule 91a motion to dismiss, or Rule 166a motion for summary judgment, seeking dismissal of, or judgment against, any of the Intervenors' petitions for declaratory and other relief included in their pleas, let alone any notice of hearing or submission date regarding such a motion (since none existed).

Instead, the court's issuance of the order was an apparent response to a letter the Receiver sent the court a few days before.[85] That letter told the court that "only one order needs to be completed to bring this cause number to final conclusion—authorize payment of the Receiver's fee pursuant to this Court's Receivership

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[82] The Intervenors lodged due process objections by written filings before and after what was said at the March 2, 2023, hearing. *Supra* p.18 & n.74.

[83] In addition, although the order expressly denied all outstanding "motions, objections, subpoenas, and discovery requests," the court never heard the Property Intervenors' motions to compel, despite multiple requests for a hearing. CR13762-64.

[84] It says the court considered the Receiver's "motions," but in context that's just the two Receiver motions the order granted: his motions for a fee and his motion for more time to submit a fee application. App.1 [SuppCR3].

[85] The letter was dated June 28, 2023, but e-filed July 28, 2023. CR13189; CR13191.

Order[.]"[86] The letter attached a proposed order and requested that the Court enter it.[87]

The Receiver's proposed order authorized a $2.84 million fee payment to himself (as requested by his cover letter), but it also did a whole lot more that wasn't mentioned in the letter: namely, it purported to deny all outstanding requests for relief from all other parties, including the Intervenors' pleas in intervention and associated requests for declaratory and other relief.[88]

Days later, the Receiver's proposed order became the district court's signed order, was a direct copy of the proposed order (apart from the stamped correction of a date and interlineated note that rehearing had been denied in the first appeal).[89]

On August 31, 2023, the Bank Account Intervenors and Property Intervenors filed motions for new trial.[90] The same day, they also filed notices of appeal.[91]

On September 10, 2023, the Receiver filed with this Court a motion to dismiss the appeal for lack of jurisdiction ("MTD"), which this Court indicated it would carry with the case (by order dated January 4, 2024).

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[86] CR13189.

[87] CR13189. The letter asked for entry of the order "by submission" but gave no submission date. *Id.* The order was the same as what he sent the court in April 2023. *Supra* p.18 n.74.

[88] CR13196.

[89] App.1 [SuppCR3, 4].

[90] CR13715-42; CR13773-93.

[91] CR13816-20; CR13811-15.

SUMMARY OF ARGUMENT

1. Under the Texas turnover statute, a district court can appoint a receiver to aid in collecting a judgment. But a receiver's powers are limited to the powers the court has in fact delegated. And the court itself is limited, both in terms of the powers it has by statute and by the scope of powers it is permitted to delegate in the first place. In addition, the procedures by which a court (or court-appointed receiver) can deprive a third-party of legal rights, including property rights, are further limited by the due process protections of the state and federal constitutions.

Under these principles, as explained herein, the Receiver had no lawful authority to seize, transfer, or control the funds, financial accounts, and real property of the Intervenors. Nor did he have lawful authority to appear as their litigation counsel, or enter still-undisclosed settlement agreements with third parties, or agree to the dismissal of legal claims or the release of related funds held in trust. And this is because:

None of the Intervenors was a party to the underlying litigation, none was a judgment debtor, and none was named in the judgment or Receivership Order. And none was found by the district court to be an alter ego of a judgment debtor or recipient of an alleged fraudulent transfer. Nor was the Receiver authorized to make any alter-ego or fraudulent-transfer findings on his own—nor *could* he have been authorized, even in theory. Nor was the scope of the Receiver's actions against the Intervenors even within the scope of the Receivership Order in the first place.

Rather, each Intervenor is a separate legal entity, not only from one another but also from each of the judgment debtors. Moreover, even when a judgment debtor has been shown to be a *partner* of a third-party limited partnership or a *member* of a third-party limited liability company (although neither was the case here), a court still cannot order – and a receiver cannot carry out – the seizure and control of that third party's real or personal property, or business operations, or litigation.

Yet that is exactly what occurred here. And it was a straight-up violation of the Receivership Order, state turnover law, and state and federal due process rights.

2. Because Intervenors presented a *prima facie* case for intervention – specifically, that their legal rights, including property rights, were directly harmed by the Receiver through facially unlawful actions – it was an abuse of discretion for the court overseeing the receivership to deny intervention, as well as a violation of state and federal due process protections given the absence of required notice of any hearing or submission date on such issues.

Instead, the district court should have permitted intervention and ultimately issued all such declaratory and other relief needed to remedy the harms wrongfully caused by the Receiver and make the Intervenors whole (*e.g.*, ordering him to respond to discovery requests; voiding his *ultra vires* actions and related legal instruments and transactions; requiring him to return funds; and awarding damages, attorney's fees, costs, and interest as permitted by law).

3. Across his filings below and in this Court, the Receiver has made

jurisdictional arguments in an effort to prevent his actions from examination. But jurisdiction is present both here and below:

Third parties are entitled to intervene in post-judgment turnover proceedings to protect their rights, and they are properly challenging the Receiver's actions, not the underlying judgment. Nor is this a prohibited "collateral" attack because it's in the same court and civil action where the Receiver was appointed.

The fact that the underlying judgment was affirmed on appeal and remanded on issues unrelated to the Intervenors does not moot their claims. The Intervenors weren't parties to the appeal, the appeal doesn't resolve their issues, and the district court has independent jurisdiction over the Receiver and his actions.

Nor have the Intervenors' claims been "released" anywhere (nor is that even a jurisdictional argument), and the fact that other state courts are also reviewing the Receiver's wrongdoing does not deprive this Court of appellate jurisdiction on any issue. Finally, the Receiver has no immunity for actions that are unauthorized or unlawful as clearly presented by the Intervenors' pleas.

For these reasons, the district court can hold the Receiver accountable for seizing and taking control of the Intervenors' property and legal rights in violation of state and federal law,[92] and that court's denial of Intervention should be reversed.

[92] The Receiver also says one Intervenor had to file for bankruptcy and others lack business charters, but none of that presents any jurisdictional issue (and only one currently lacks an up-to-date charter). *Infra* pp.54-55.

ARGUMENT

I. Legal Standards

A. In turnover proceedings, a receiver cannot seize control of property owned by third parties, nor can he seize control of third-party business operations.

1. The turnover statute assists judgment creditors in collecting property owned by judgment debtors.

In general terms, a turnover statute is a procedural mechanism that helps judgment creditors reach assets of judgment debtors that otherwise may be "difficult to attach or levy on by ordinary legal process."[93]

The current Texas turnover statute lets a court "order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control . . . to a designated sheriff or constable for execution."[94] And a court may also "appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment."[95]

2. Under the turnover statute, "property" means property owned directly by the judgment debtor.

When the statute mentions "property," it is referring to property directly owned by the debtor. Indeed, the existence of debtor-owned property is a "threshold

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[93] *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 224 (Tex. 1991); TEX. CIV. PRAC. & REM. CODE § 31.002.

[94] TEX. CIV. PRAC. & REM. CODE § 31.002(b)(1).

[95] TEX. CIV. PRAC. & REM. CODE § 31.002(b)(3).

requirement."[96] More specifically, with respect to the key statutory phrase – "***property*** that is in the debtor's possession or is subject to the debtor's control"[97] – the term "property" does not mean just anyone's property; it means *property owned directly by the judgment debtor*, and that's because the scope of the statute is limited, in the first place, to recovering property actually owned by the judgment debtor:

> " '[A] court may order turnover of non-exempt property that is in the debtor's possession or subject to the debtor's control ***only when the judgment debtor owns (has title to) the property in the first place***. [. . . But when the judgment debtor] does not own the property at issue, his alleged possession or control of the property would not be enough to allow turnover of the [corporations'] assets unless there had been a prior legal adjudication which pierced the two corporations' corporate veils.' "[98]

In other words, as a matter of Texas law, the Receiver here could only collect assets *directly owned* by the judgment debtors.

As a result, property owned by a third party (*i.e.*, a party who is not a judgment debtor) does not become subject to turnover simply because a judgment debtor

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[96] *See Benavides v. White*, No. 05-21-01148-CV, 2023 WL 415962, at *4 (Tex. App.—Dallas Jan. 26, 2023, no pet.) (mem. op.) (internal quotation marks omitted).

[97] TEX. CIV. PRAC. & REM. CODE § 31.002(b)(1) (emphasis added).

[98] *Benavides*, 2023 WL 415962, at *4 (quoting *Maiz v. Virani*, 311 F.3d 334, 343 (5th Cir. 2002)) (emphasis and first alteration added; second alteration added in *Benavides*); *accord Lesikar v. Moon*, No. 01-12-00406-CV, 2014 WL 4374117, at *16 (Tex. App.—Houston [1st Dist.] Sept. 4, 2014, pet. denied) (mem. op. on reh'g) ("[W]hether property is subject to the debtor's control after its purported transfer to a third party—the crux of a fraudulent transfer claim—is outside the [district] court's jurisdiction."); *id*. at *15 (citing *Maiz* for the proposition that the "turnover statute may not be used to adjudicate substantive property rights of two non-judgment-debtor corporations without prior judicial determination piercing corporate veils").

might, for some reason, hold or control it. As quoted above, a judgment debtor's alleged "possession or control" of property is "not . . . enough." The judgment debtor must directly own it.

3. The property of a limited partnership or limited liability company is <u>not</u> the property of its partners or members.

The assets of a limited partnership (LP) or limited liability company (LLC) do not belong to the entity's partners or members.[99] The turnover statute thus cannot authorize the turnover of LP or LLC property to a judgment creditor, even where the judgment debtor is a member or partner of the entity.[100] Again, even if the judgment debtor directly owns or controls the entity—and thus might very well possess or, as a practical matter, "control" that entity's property—it is simply "not enough," as referenced above, to permit turnover of such property to a judgment creditor.

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[99] *See* TEX. BUS. ORGS. CODE § 101.106(b) ("A member of a limited liability company . . . does not have an interest in any specific property of the company."); TEX. BUS. ORGS. CODE § 154.001(c) ("A [general or limited] partner is not a co-owner of partnership property."); TEX. BUS. ORGS. CODE § 152.101 ("[In a general partnership,] [p]artnership property is not property of the partners. A partner or a partner's spouse does not have an interest in partnership property."); *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, 677 S.W.3d 136, 146 (Tex. App.—El Paso 2023, no pet.) ("A partnership's assets belong to the partnership itself, not to the individual partners.").

[100] "A creditor of a [member or partner] or of any other owner of a [membership or partnership] interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the [limited liability company or limited partnership]." *See* TEX. BUS. ORGS. CODE §§ 101.112(f) (LLCs), 153.256(d) (LPs); *see also In Re Prodigy Servs., LLC*, No. 14-14-00248-CV, 2014 WL 2936928, at *5 (Tex. App.—Houston [14th Dist.] June 26, 2014, no pet.) (mem. op.) (discussing §§ 101.006, 101.112, 152.101, 153.256).

4. A court cannot authorize a receiver to seize control of the property or business operations of a third-party partnership or limited liability company, even if the judgment debtor owns or controls that entity.

A court cannot subject the assets or business operations of a third-party LP or LLC to a turnover order or receiver, and purporting to do so is an abuse of discretion as a matter of law, even if the judgment debtor owns or controls that third party.[101]

* * *

Now, the several limitations described above are substantial, but they don't leave a judgment creditor with no remedy in situations where a judgment debtor is a member or partner of an LP or LLC. However, the only remedy is a "charging order":

A charging order is a lien on a judgment debtor's partnership or membership interest.[102] For turnover purposes, such an "interest" is essentially the right to receive whatever capital or profit distributions might be issued to that interest.[103]

The turnover statute expressly makes a charging order the "exclusive" remedy by which a judgment creditor of an LP partner or LLC member can satisfy a

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[101] *See Pajooh v. Royal W. Investments LLC, Series E*, 518 S.W.3d 557, 565-67 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

[102] TEX. BUS. ORGS. CODE §§ 101.112(c), 153.256(c).

[103] TEX. BUS. ORGS. CODE § 1.002(68) (a "partnership interest" is "a partner's interest in a partnership," including "the partner's share of profits and losses or similar items and the right to receive distributions"); TEX. BUS. ORGS. CODE § 1.002(54) (defining "membership interest" as "a member's interest in an entity" which includes, for LLCs, "a member's share of profits and losses or similar items and the right to receive distributions, but does not include a member's right to participate in management.").

judgment from the judgment debtor's LP or LLC membership interest.[104]

Importantly, however, a charging order "does not entitle a creditor to participate in the partnership or to compel a distribution of profits."[105] Rather, if a court appoints a receiver and issues a charging order, the actions of the receiver are strictly limited to "monitor[ing] partnership distributions [to] effectuate [the] charging order."[106]

5. Although the property of a debtor's alter ego might be classified as debtor property, obtaining a finding binding against the alter ego and its property requires separate legal proceedings against the alleged alter ego.

Turnover proceedings are "purely procedural," which means they cannot be used to adjudicate substantive rights. More specifically, the purely procedural nature of the Texas turnover statute means that: (a) the substantive rights of the judgment debtor cannot be adjudicated during turnover proceedings (*i.e.*, beyond those already adjudicated by the underlying judgment);[107] and (b) the substantive rights of third parties (*i.e.*, non-parties to the judgment) cannot be adjudicated either.[108]

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[104] TEX. BUS. ORGS. CODE §§ 101.112(d), 153.256(d).

[105] *Pajooh*, 518 S.W.3d at 563; *accord WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, 677 S.W.3d 136, 147 n.9 (Tex. App.—El Paso 2023, no pet.) (charging order "does not entitle a creditor to participate in the partnership or compel distribution of profits").

[106] *Pajooh*, 518 S.W.3d at 567.

[107] *Custom Corps., Inc. v. Sec. Storage, Inc.*, 207 S.W.3d 835, 839 (Tex. App.—Houston [14th Dist.] 2006, no pet.) ("[P]ost-judgment orders may not require performance of obligations in addition to the obligations imposed by the final judgment.") (internal quotation marks omitted).

[108] *Diaz v. SMS Fin. Cap, LLC*, No. 05-21-00696-CV, 2023 WL 5604236, at *4 (Tex. App.—Dallas Aug. 30, 2023, no pet.) (mem. op.) ("Turnover proceedings are limited to their 'purely procedural nature'; the turnover statute may not be used 'to determine parties' and non-judgment debtors' substantive rights." (quoting *Alexander Dubose*

As a result, a judgment creditor cannot use turnover proceedings to try to establish that a third party is an alter ego of, or recipient of a fraudulent transfer from, a judgment debtor, even if the judgment creditor obtained jurisdiction over that third party through a separate lawsuit:

> "[T]he turnover statute cannot be used to determine a party's substantive rights or the property rights of third parties. . . . Nor does the turnover statute create a right in the judgment creditors and debtors to initiate and incorporate in the proceedings an entirely different lawsuit against a third party who is not a part of the original judgment. . . . Finally, the turnover statute cannot be used to make an alter ego determination which would subject a non-judgment debtor to a turnover procedure."[109]

Nor can a judgment creditor simply claim – as the Receiver has[110] – that a group of companies can somehow be treated as one under some "single business enterprise" theory. The Supreme Court expressly rejected that notion in 2008.[111]

All of the above is important for two reasons. First, it explains why the district court *couldn't* (and notably *didn't*) make any alter-ego or fraudulent-transfer

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Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P., 540 S.W.3d 577, 583 (Tex. 2018)).

[109] *B.Z.B., Inc. v. Clark*, 273 S.W.3d 899, 904 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Nor can a party be added for other reasons: "[A] turnover order cannot be used to obtain personal jurisdiction over a party—the party must already be within the trial court's jurisdiction." *Tomlinson v. Khoury*, 624 S.W.3d 601, 607 (Tex. App.—Houston [1st Dist.] 2020, pet. denied).

[110] CR7213.

[111] *SSP Partners v. Gladstone Invs. (USA) Corp.*, 275 S.W.3d 444, 454-56 (Tex. 2008) ("[W]e hold that the single business enterprise liability theory . . . will not support the imposition of one corporation's obligations on another.").

findings. Second, it shows why the Receiver could not make – let alone act on – such findings as he purported to.

6. In turnover proceedings, a receiver can't act beyond what the district court authorizes, let alone beyond what it is allowed to delegate or authorize.

In the turnover context, a receiver's powers are necessarily and obviously limited. He obviously can't do more than what the district court has authorized him to do. And he obviously can't do what the court itself couldn't do (*e.g.*, anything violating the turnover limitations described above). And he obviously can't do what a court wouldn't be permitted to delegate to a receiver in the first place (*e.g.*, even in circumstances where a court has the power to adjudicate substantive legal rights, the court can't delegate such *judicial* power to a receiver).[112]

B. A third party is entitled to intervene in post-judgment turnover proceedings to protect its legal rights, including real and personal property rights.

Generally speaking, a third party has the right to intervene in <u>any</u> action if that party could have brought any portion of the action in its own name—or defeated any

[112] *See Congleton v. Shoemaker*, No. 09-11-00453-CV, 2012 WL 1249406, at *2-3 (Tex. App.—Beaumont Apr. 12, 2012, pet. denied) (mem. op.) ("The receiver derives his authority from the trial court and has only those powers that the appointing court may confer upon him." (citing *Knox v. Damascus Corp.*, 200 S.W.2d 656, 659 (Tex. App.—Galveston 1947, no writ))); *Congleton*, 2012 WL 1249406, at *2 ("The trial court cannot confer the exercise of non-delegable judicial discretion and power to the receiver." (citing *Seagraves v. Green*, 288 S.W. 417, 424 (Tex. 1926))); *Congleton*, 2012 WL 1249406, at *2-3 ("A receiver has no constitutional authority to adjudicate parties' rights." (citing *Seagraves*, 288 S.W. at 424)); *Blount v. Hibernia Nat'l Bank*, No. 05-90-01407-CV, 1991 WL 237824, at *5 (Tex. App.—Dallas Oct. 23, 1991, no writ) (not designated for publication) ("The receiver's powers should be limited to those necessary to fulfill the duties set out in the turnover statute.").

portion of it if brought against it—and if it asserts a legal or equitable interest.[113]

In the post-judgment context, this general principle means that a third-party is entitled to intervene in turnover proceedings to protect its interest in property that is (or is claimed to be) the subject of a turnover order.[114]

A district court's denial of intervention is reviewed for abuse of discretion,[115] including when intervention is necessary (or even just "almost" necessary) to protect the intervenor's rights and intervention wouldn't excessively complicate the case. It is also an abuse of discretion if there is no motion to strike.[116]

C. Under state and federal law, a party is entitled to reasonable notice of legal determinations and a meaningful opportunity to be heard.

The state and federal constitutions broadly protect legal rights ("life, liberty,

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[113] *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657-58 (Tex. 1990).

[114] *See M&E Endeavours LLC v. Air Voice Wireless LLC*, No. 01-18-00852-CV, 2020 WL 5047902, at *8 (Tex. App.—Houston [1st Dist.] Aug. 27, 2020, no pet.) (mem. op.) (" 'Intervention is a recognized option for a non-party seeking to protect its interest in property that is the subject of a turnover motion' or order." (quoting *Mitchell v. Turbine Res., Ltd.*, 523 S.W.3d 189, 200 (Tex. App.—Houston 14th Dist. 2017, pet. denied))); *Lerma v. Forbes*, 166 S.W.3d 889, 893 (Tex. App.—El Paso 2005, pet. denied) ("post-judgment intervention is allowed" where intervenor "seeks to protect his or her own interest in the post-judgment proceedings" even though intervenor "has no complaint with the merits of the judgment obtained in the underlying lawsuit"); *Breazeale v. Casteel*, 4 S.W.3d 434, 436-37 (Tex. App.—Austin 1999, pet. denied) (holding there was no basis "to prohibit post-judgment intervention where . . . the intervenor merely seeks to protect his interest in property that is the subject of a turnover motion"); TEX. R. CIV. P. 60 ("Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.").

[115] *Guaranty Federal Savings Bank,* 793 S.W.2d at 657-58.

[116] *Id.*

property") against deprivation absent due process of law.[117] Due process requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action" and an opportunity to be heard and "present their objections," where such opportunity is "granted at a meaningful time and in a meaningful manner."[118]

The Supreme Court of Texas stated and applied these standards in a 2023 case. Therein, the Court held that a non-movant's state and federal due process rights were violated when a Texas court granted summary judgment on "submission" after the originally-noticed hearing was canceled and no new notice of hearing or submission was issued as to that summary judgment motion.[119]

II. The district court abused its discretion and denied due process by dismissing the Intervenors' pleas and related requests for relief with no stated reason and absent the required notice and hearing.

A. The Intervenors were entitled to intervene in post-judgment proceedings because the Receiver's actions harmed their legal rights, including real and personal property rights.

The Intervenors were not parties to this lawsuit, were not judgment debtors, were not named in the judgment or Receivership Order, and were never found by the district court to be alter egos of, or recipients of fraudulent transfers from, either

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[117] TEX. CONST. art. 1 § 19 ("No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by due course of the law of the land."); U.S. CONST. amend. 14 § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .").

[118] *B. Gregg Price, P.C. v. Series 1 - Virage Master LP*, 661 S.W.3d 419, 422-23 (Tex. 2023) (internal quotation marks omitted).

[119] *Id.*

judgment debtor. Nevertheless, the Receiver deprived them of real property, personal property, and legal rights worth millions of dollars. The Intervenors have thus demonstrated an interest permitting intervention in the post-judgment turnover proceedings.

B. The district court had no basis, and gave no basis, for denying intervention, nor did it provide the required due process.

The Intervenors presented *prima facie* claims for intervention, as well as for declaratory and other relief.[120] In particular, their pleas presented claims that, among other things, the Receiver wrongly caused the loss of property and legal claims, including real property worth millions and funds held in trust that exceeded $1 million (as to the Property Intervenors) and that he separately stole hundreds of thousands of dollars (from the Bank Account Intervenors).[121] These claims should have been allowed to proceed past the pleading stage, be developed through discovery, and then adjudicated on their merits.

Instead, the district court simply denied all of the Intervenor's pleas and associated requests for declaratory and other relief, including discovery, with no stated grounds. This was an abuse of discretion because the Intervenors had established substantial grounds for intervention under the authorities cited above and because the court's denial was made "without reference to any guiding rules and

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[120] *Lee v. Galena-Signal Oil Co. of Pennsylvania*, 8 S.W.2d 1051, 1054 (Tex. App.—Galveston 1928, no writ) (plea-in-intervention allegations taken as true on demurrer).

[121] *Supra* pp. 8-15.

principles."[122] It was also an abuse of discretion since no motion to strike the Intervenors' live pleas in intervention had even been filed.[123]

To be sure, the Receiver had filed a motion to strike the earlier pleas, but no notice of any hearing or submission date for that motion was ever given by the district court or the Receiver,[124] and so in addition to being an abuse of discretion, the district court's denial also violated state and federal due process protections.[125]

In particular, in the absence of any formal notice of a hearing or submission date on the Receiver's original motion to strike, the Intervenors had no notice of any date by which any response would be due, including no notice of any potential need to submit, or request additional time to discover, any particular supporting evidence (assuming any would be required).

Further, in the absence of any motion directed at their actual live pleas, the

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[122] *Supra* pp. 20, 32-33; *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007) (defining "abuse of discretion" to include situations where court "act[s] without reference to any guiding rules and principles, such that its ruling [is] arbitrary or unreasonable").

[123] *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990) (denial of intervention is abuse of discretion absent motion to strike).

[124] As noted above, the Receiver previously sent two letters to the district court, asking it to sign a proposed omnibus order that would deny every outstanding request for relief made by every other party. But neither was styled as a formal notice of hearing or submission date as to any particular motion, let alone as to any of the Intervenors' live pleas in intervention; nor did either purport to set a submission or hearing date for any purpose. *Supra* p.18 n.74; *id*. p.22 n.87.

[125] *B. Gregg Price*, 661 S.W.3d at 422-23 (due process denied when court granted summary judgment motion absent notice of submission or hearing).

Intervenors had no notice of any different or additional possible challenges to them.

In addition, as detailed in the text and notes above, the Intervenors raised these due process issues to the district court – in written objections, in open court, and in their motions for new trial[126]– and so the court very well could have remedied the lack of due process (by, *e.g.*, simply granting them a new trial), and it was a further abuse of discretion not to do so.[127]

Finally, although no showing of harmful error is required, it is abundantly clear that denial was harmful. And that's because the Intervenors' pleas, motions for new trial, and all incorporated filings show that the district court and the Receiver exceeded the boundaries of Texas procedural and substantive law in ways that deprived them of substantial legal rights, including property rights.[128]

For example, apart from the due process issues noted above, the district court's Receivership Order *on its face* exceeded statutory authority by authorizing the Receiver to seize any LLC membership interests where GVS or WCCG was a member and to then sell, manage, or operate the LLC however the Receiver saw fit.

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[126] *Supra* p.18 & n.74.

[127] *B. Gregg Price*, 661 S.W.3d at 425 (denial of new trial motion was abuse of discretion when summary judgment was granted without notice of hearing); CR13717-720; CR13775-77.

[128] *Supra* pp.8-15, 20 n.81. Indeed, although evidentiary support for the Intervenors' pleas and claims should not be at issue – since the Intervenors never had the required notice and opportunity to develop them and defend against dismissal – the evidence that was adduced was substantial, and any dismissal on evidentiary grounds would have been against the overwhelming weight of the evidence so as to entitle the Intervenors to a new trial for that reason as well. CR13721-32; CR13778-83.

But neither a court nor its receiver can seize and control the property or business operations of LPs or LLCs that aren't judgment debtors. That's black letter law, as explained above and separately confirmed in 2023 by the Eighth Court of Appeals *with respect to the very Receiver at issue here*.[129]

Likewise, even more recently, the Fourteenth Court of Appeals held that a district court abused its discretion by issuing a receivership order *with an operative provision identical to the Receivership Order here*.[130]

And insofar as the Receiver purported to act under color of law as to this invalid provision, his actions would be doubly wrongful because the judgment debtors aren't even partners or members of the Intervenors in the first place.[131]

The Receiver seems to think he had power over the Intervenors because he could simply determine unilaterally that they were alter egos of the judgment debtors or had received fraudulent transfers from them. In turn, he ostensibly could do whatever he wanted, including seize and take control of the Intervenors' real

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[129] *Supra* pp. 14-15.

[130] *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. filed) (mem. op.). The *Bran* order was identical to the one here insofar as both authorized a receiver to "seize the membership interest of any limited liability company" in which a judgment debtor was a member and "to sell, manage, and operate the limited liability company as the Receiver shall think appropriate." *Id.* at *3. Consistent with everything herein, the appellate court held that the district court abused its discretion by making the order "applicable to a membership interest in a limited liability company owned by one of the [judgment debtors]" since a charging order was the "exclusive remedy" through which judgment creditors can satisfy a judgment from "a membership interest owned by one of the [judgment debtors] in a limited liability company." *Id.* at *8.

[131] *Supra* pp. 7, 14.

property, personal property, and other legal rights as described herein.[132]

In other words, the Receiver believed he was above the law and therefore could serve as judge, jury, and executioner. But he had no such powers:

- No alter ego findings or fraudulent-transfer findings were made by the district court pre- or post-judgment.
- Nor could such findings have been made: the turnover statute is purely procedural and the Intervenors were non-parties.[133]
- Nor could the power to make such findings (even if such power existed) be delegated by a court to a receiver.[134]
- Nor did the Receivership Order even purport to do so.[135]

The Receiver *did* have a route he could have tried to follow given his apparent beliefs. In particular, after a judgment is final, if there is a colorable basis to say a third party is an alter ego of, or recipient of a fraudulent transfer from, a judgment debtor, one might seek a trial on the merits in an entirely separate legal proceeding

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[132] *Supra* pp. 8-15.

[133] *Fuentes v. Zaragoza*, 555 S.W.3d 141, 167 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (court violated due process by declaring that intervenors were alter egos); *In re Smith*, 192 S.W.3d 564, 568 (Tex. 2006) (post-judgment alter-ego finding could be used against judgment debtor for supersedeas purposes but *not* for substantive purposes against third party).

[134] *Supra* pp.6, 32 & n.112.

[135] The Receiver will claim he had "derived" judicial immunity. But there is no such immunity for actions outside delegated authority, and there no judicial immunity to start with for actions "obviously" outside judicial power. *See Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995).

in a court having jurisdiction over all affected parties.[136]

But the Receiver made no attempt to do so. Perhaps he knew in advance there was no chance of success for that and, as a result, proceeded as he did, thinking it easier to ask forgiveness than permission. But no permission for this could have been given, and this Court should not forgive such wrongful behavior.

III. The Receiver's motion to dismiss for lack of jurisdiction should be denied.

In an effort to prevent judicial examination of his actions, the Receiver has filed a motion to dismiss this appeal for lack of jurisdiction. In addition, he raised some additional arguments in the district court and classified them as jurisdictional. As next shown, none provides any jurisdictional basis to deny appellate review or any basis to deny intervention.

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[136] *See In re Smith*, 192 S.W.3d at 568 ("A judgment may not be amended to include an alter ego that was not named in the suit."); *id*. ("[A]n alter ego finding in a post-judgment net worth proceeding may not be used to enforce the judgment against the unnamed [*i.e*., non-party] alter ego or any other nonjudgment debtor[.]"); *Bollore S.A. v. Imp. Warehouse, Inc*., 448 F.3d 317, 324 (5th Cir. 2006) ("[A] court may not . . . use the turnover statute to adjudicate the rights and seize the assets of a third party who might not otherwise be amenable to jurisdiction in that court."); *Maiz v. Virani*, 311 F.3d 334, 336 (5th Cir. 2002) ("[T]he Texas turnover statute cannot be utilized to adjudicate the substantive property rights of the two non-judgment debtor corporations in this case without a prior judicial determination which pierces their corporate veils."); *cf. United Bank Metro v. Plains Overseas Group, Inc*., 670 S.W.2d 281, 284 (Tex. App.—Houston [1st Dist.] 1983, no writ) (former statute not meant to facilitate property collection "from those unnamed in the prior suit, but now asserted to be engaged in a fraudulent conspiracy against judgment creditors"); *id*. at 283 (dismissing notion that judgment creditor could "skip the trial on the merits" on alter ego issue).

A. The district court and this Court have jurisdiction because the Intervenors' dispute with the Receiver presents a justiciable controversy within the district court's receivership jurisdiction (which is independent of the first appeal, which itself did not involve the Intervenors).

In terms of appellate jurisdiction, including an appellant's standing, the Receiver states that "[t]he 'ultimate inquiry is whether the appellant possesses a justiciable interest in obtaining relief from the lower court's judgment' " and that "appellate standing requires party's own interests prejudiced by alleged error."[137]

Such a justiciable interest is exactly what Intervenors have here with respect to the order that is the subject of this appeal – the district court's denial of their pleas in intervention and associated requests for relief – and so there can be no serious question as to this Court's appellate jurisdiction.

The Receiver nonetheless says there is no appellate jurisdiction because there is no "appellee." In particular, he says the named appellee (Princeton) settled with defendants in 2022 and no longer has an interest in the dispute.[138] In making this argument, the Receiver specifically claims he is neither an appellant nor appellee.[139]

But there is obviously a case and controversy between Intervenors and the Receiver: the Intervenors want to intervene, get discovery, and hold the Receiver accountable. In opposition to this, the Receiver wants to block intervention, avoid

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[137] Receiver's Motion to Dismiss ("MTD") at 10 & n.38 (quoting *Nephrology Leaders & Assocs. v. Am. Renal Assocs. LLC*, 573 S.W.3d 912, 914 (Tex. App.—Houston [1st Dist.] 2019, no pet.)).

[138] MTD at 2, 12-13, 15, 27-29.

[139] MTD at 29.

discovery, and escape liability. The Intervenors wish for the district court's order reversed; the Receiver wants it affirmed. The Receiver is thus an "appellee" whether he accepts that label or not.[140]

The Receiver says this appeal is an impermissible second motion for rehearing of this Court's decision in the first appeal.[141] As a threshold matter, Intervenors were not parties to the first appeal (which, as to the district court's original judgment, was docketed before the Receiver was appointed), nor did the Intervenors have a right to participate in the appeal of judgment or the order appointing the Receiver.[142] Nor are Intervenors even challenging the judgment or appointment of a receiver, the issues decided in the first appeal.

Rather, the Intervenors' pleas concern turnover and receivership proceedings that—although certainly "arising from or related to" the district court's judgment and decision to appoint a receiver—are nonetheless jurisdictionally independent. And that's because a district court has jurisdiction to handle post-judgment proceedings regardless of whether it has power over the judgment itself. In particular

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[140] More generally, as a compensated court agent, the Receiver in substance ***is*** a party with standing to prosecute/defend his interests on appeal. *See Moore as Next Friend to Moore v. Tangipahoa Parish Sch. Bd.*, 912 F.3d 247, 250 (5th Cir. 2018) (federal standing); *In re Abbott*, 601 S.W.3d 802, 807 (Tex. 2020) (orig. proceeding) (per curiam) (Texas standing parallels federal); BLACK'S LAW DICTIONARY (11th ed. 2019) (defining appellee as party wanting affirmance).

[141] MTD at 32.

[142] For example, there is no appellate procedure rule entitling a party to intervene, apart from letting the State participate in certified question proceedings. *See* TEX. R. APP. P. 58.8, 74.7.

a district court has jurisdiction over turnover/receivership proceedings both during and after any appeal.[143] Indeed, even after a judgment has been entered, appealed, and affirmed, and even after the receiver has been ***discharged***, a district court ***still*** has jurisdiction to reinstate that receiver, including to resolve claims against it.[144]

Accordingly, the district court's denial of the Intervenors' pleas was appealable by all interested parties, and certainly including Intervenors, even though the order was entered post-judgment and post-appeal.[145]

B. The Receiver's other arguments lack merit, reflect non-jurisdictional complaints, or both.

1. The Intervenors are not "too late": third parties are entitled to intervene post-judgment to protect their legal rights.

The Receiver says that "a plea in intervention comes too late if filed after judgment and may not be considered unless and until the judgment has been set aside."[146] Although that rule may apply in many situations, it has no application in

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[143] *See Alexander Dubose Jefferson & Townsend*, 540 S.W.3d at 581 ("Unlike plenary power, which generally only lasts for thirty days after final judgment, a trial court's post-judgment enforcement powers can last until the judgment is satisfied." (footnote and internal quotation marks omitted)); *Hill v. Hill*, 460 S.W.3d 751, 763 (Tex. App.—Dallas 2015, pet. denied) ("Texas has long recognized the independent and ongoing nature of receivership proceedings."); *id.* (district court has discretion to maintain receivership "long after judgment in [the] main case became final"); *id.* (district court has jurisdiction to appoint receiver "even while the main case is on appeal" and then for windup even if "vacated on appeal").

[144] *Hill*, 460 S.W.3d at 763.

[145] A related explanation for this conclusion is that turnover/receivership proceedings are not governed by the "one final judgment" rule. *Hill*, 460 S.W.3d at 763; *accord Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995).

[146] MTD at 34 (internal quotation marks omitted).

turnover proceedings when a third party is seeking to protect its property rights.[147]

2. The Intervenors aren't attacking the underlying judgment; they are attacking the Receiver's actions.

Despite initially claiming that post-judgment intervention is "too late," the Receiver ultimately acknowledges it in the turnover context.[148] But he says it still isn't allowed where an intervenor seeks to attack the *judgment*. That argument does not work here, however, because Intervenors are not attacking the judgment; they are attacking the Receiver's post-judgment actions.

The Receiver tries to get around this by equating "judgment" with "order appointing receiver," but no case recognizing post-judgment intervention in turnover proceedings says that receivership orders – as distinct from the underlying judgment – are somehow immune from challenge by an intervenor once the Receiver's actions have harmed the intervenor and forced it to seek intervention.

3. This is not a "collateral" attack: the Intervenors are challenging the Receiver's actions in the same action and court where he was appointed.

The Receiver says that Texas courts "have routinely rejected collateral attacks on receivership orders."[149] But an impermissible "collateral attack" on a receivership order means one made in a subsequent, separate lawsuit, as shown by the four cases

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[147] *Supra* p.40 & n.136.

[148] MTD at 35 (citing *Breazeale v. Casteel*, 4 S.W.3d 434 (Tex. App.—Austin 1999, pet. denied)).

[149] MTD at 39 n.135.

he cites.[150] Here, however, the Intervenors have appealed the denial of intervention in the same suit as the one appointing the Receiver.[151]

Of course, whether called a "collateral" attack or not, Intervenors' challenge is proper because the Intervenors were not parties to the original proceeding and, as a result, the district court undeniably had no jurisdiction over them. In turn, its order was wholly void as to them and can be attacked directly or collaterally.[152]

4. This Court's affirmance of the original judgment and appointment of a receiver does not resolve the Intervenors' pleas and claims for relief.

The Receiver argued that this Court's affirmance of the receivership order barred any later intervention based on "law of the case" and *res judicata*.[153] But as explained above, Intervenors were not, and had no right to be, parties to the first appeal, nor are Intervenors challenging the original judgment or appointment of a

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[150] *See* MTD at 39 & n.135 (citing *Davis v. West*, 317 S.W.3d 301 (Tex. App.—Houston [1st Dist.] 2009, no pet.); *Sun Tec Computer, Inc. v. Recovar Group, LLC*, No. 05-14-00257-CV, 2015 WL 5099191 (Tex. App.—Dallas Aug. 31, 2015, no pet.) (mem. op.); *1st & Trinity Super Majority, LLC v. Milligan*, 657 S.W.3d 349 (Tex. App.—El Paso 2022, no pet.) (citing *Browning v. Prostok*, 165 S.W.3d 336 (Tex. 2005))).

[151] In addition, as stated, Intervenors' primary challenges are to the Receiver's actions, not the order appointing him, and such challenges are not a collateral attack on any order, regardless of where pending.

[152] *See In re D.S.*, 602 S.W.3d 504, 512 (Tex. 2020) (judgment can be collaterally attacked as void when it is "apparent" court had no jurisdiction over the parties); *see also Tomlinson v. Khoury*, 624 S.W.3d 601, 605 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) (post-judgment turnover order void when it invalidated trust not before the trial court).

[153] *E.g.*, MTD at 2-3.

receiver. Intervenors are challenging the Receiver's post-appointment actions.[154]

To be sure, purely legal issues decided by any appellate court would ordinarily be binding on third parties simply as a matter of *stare decisis*. But unlike that principle, the doctrines of *res judicata* and law of the case do not automatically apply to non-parties, nor would they apply here, for the issues raised by the Intervenors were not decided in the first appeal (nor were they issues any party or non-party had reason to raise when it was docketed).

More fundamentally, although the Intervenors *can* show that the district court's Receivership Order is contrary to law (at least in part), as discussed above, the Intervenors' primary claims against the Receiver succeed whether that order is infirm or not. And that's because so many of the Receiver's actions simply went beyond what the Receivership Order even purported to permit. Thus, even if Intervenors were somehow limited to challenging the Receiver's *actions* (rather than particulars of the Receivership Order), it would still be a dispute within the scope of the district court's turnover/receivership jurisdiction,[155] and that court's denial of intervention would in turn be within this Court's appellate jurisdiction.

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[154] Nor would Intervenors have had reason, even if permitted, to assert such challenges when the judgment and Receivership Order issued: they weren't named therein, weren't parties to the proceedings, and had no reason to suspect an appointed receiver would deprive them of rights under color of law.

[155] *Supra* p.43 n.143.

5. The district court's jurisdiction to effectuate this Court's mandate on remand from the first appeal is distinct from its jurisdiction over the Receiver.

In the district court and to an extent in his motion to dismiss, the Receiver has argued that the district court couldn't consider the Intervenors' intervention because it was beyond the scope of this Court's remand from the first appeal.[156] But as explained above, a district court's jurisdiction over turnover and receivership proceedings is separate from and independent of its plenary jurisdiction over the judgment. Thus, while the scope of the district court's jurisdiction over a judgment on remand may be circumscribed (*i.e.*, as a matter of rulings governing appellate mandates), the court's independent jurisdiction over post-judgment turnover or receivership proceedings is not thereby lost or lessened, nor has the Receiver cited any authority for that.

6. The fact that other courts are considering some of the same issues regarding this Receiver does not deprive this Court of jurisdiction.

Below, the Receiver claimed that the Property Intervenors cannot intervene because they have raised similar issues regarding the Receiver's actions in litigation that is pending on appeal in other state courts (as described above at pages 9-15).[157] In particular, the Receiver claimed that those courts have "exclusive" jurisdiction over the Property Intervenors.[158]

The Receiver did not repeat this argument in his motion to dismiss, but it

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[156] CR4181; MTD at 37-38

[157] CR4186-87.

[158] *Id*.

should be rejected if he does because there is no authority for it. Indeed, when the Receiver raised it below, he cited nothing that supported the idea.

To be sure, this is not to say whether a given court should or should not give deference or preclusive effect to another court's determination of a legal or factual issue regarding the Receiver's actions, just that such potential comity or preclusion issues are not jurisdictional.[159]

7. If the Receiver wrongfully seized control over the Intervenors' property and other legal rights, the district court can hold him accountable.

The Receiver contends that Intervenors "cannot seek coercive or declaratory relief against Receiver for return of funds."[160] But why not? If the Receiver seized or otherwise caused the wrongful loss of money, real property, or the legal rights of third parties, doesn't he have to give it back or otherwise remedy that harm? By what principle does he get a free pass?

To be sure, the Receiver has claimed immunity (discussed below), but setting that aside for the moment, the authority he cites in support of the idea that Intervenors can't seek relief (*Bullock* and *Morales*) do not support his point.

In *Bullock*,[161] the plaintiff sought an injunction to prevent a judicial candidate from being listed on a ballot based on a lack of qualifications. By the time the case

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[159] *Hassell Constr. Co. Inc. v. Springwoods Realty Co.*, No. 01-17-00822-CV, 2023 WL 2377488, at *12 (Tex. App.—Houston [1st Dist.] Mar. 7, 2023, pet. filed) (mem. op.) (*res judicata* and collateral estoppel aren't jurisdictional pleas).

[160] MTD at 36.

[161] *State ex rel. McKie v. Bullock*, 491 S.W.2d 659, 660 (Tex. 1973) (per curiam).

was at the Supreme Court, the candidate had already been put on the ballot and elected. As a result, the injunction the plaintiff sought – an order enjoining the county clerk from putting the candidate on the ballot – was moot given all that had happened. In turn, this mooted the associated declaratory relief the plaintiff sought (a declaration the candidate was unqualified).[162]

Bullock thus presents an example where, given intervening events, a situation was reached where the only legal question remaining – "Was this person qualified for office?" – had no independent legal significance.

By contrast, numerous of the Intervenors' requests for declaratory relief have independent legal significance, such as their requests for declarations that certain legal instruments were entirely void (including portions of the Receivership Order and the Warranty Deed transferring Rio Grande's property), and that certain of the Receiver's legal actions were also void and/or wrongful (including those taken on behalf of the Property Intervenors and those taken in seizing the Bank Account Intervenors' funds).

Moreover, all declarations requested by Intervenors would support further equitable and legal relief within the scope of the Intervenors' petitions, including coercive/injunctive relief (*e.g.*, disclosure by the Receiver of all legal instruments and other documents and communications concerning his actions vis-à-vis the

[162] The Court indicated that the qualification issue could have been a subject for judicial determination in another context (*e.g.*, a *quo warranto* suit to remove the official), but the *Bullock* plaintiff just sought the moot injunction.

Intervenors' property and legal rights; and, ultimately, his return of all seized funds and other property), as well as monetary relief (*e.g.*, damages, attorney's fees, interests, and costs).[163]

As to *Morales*, the Receiver cites it for the proposition that a suit solely seeking declaratory relief is outside "the jurisdiction of a Texas court sitting in equity."[164] But that is not *Morales*'s precise holding. Rather, *Morales* held that a court sitting in equity cannot pass on the constitutionality of a penal statute unless vested property rights are at issue. But that is inapplicable here: (1) the Intervenors' challenge is not to a penal statute;[165] (2) the Intervenors have pleaded for all available relief, not just equitable relief, and (3) the Intervenors' vested property rights *are* at issue.

8. The Receiver has no immunity for wrongful actions outside the scope of the Receivership Order or obviously beyond judicial power.

In the district court, the Receiver argued that intervention was "prohibited" because he had derived judicial immunity for his actions.[166] Here, he has not yet

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[163] Intervenors sought some of this relief by requests for discovery orders, attorneys' fees, and costs, while the rest is within their general prayers for all relief to which they are entitled. CR13052; CR13066; CR13082; *see Khalaf v. Williams*, 814 S.W.2d 854, 858 (Tex. App.—Houston [1st Dist.] 1991, no writ) ("A prayer for general relief will support any relief raised by the evidence and consistent with the allegations in the petition.").

[164] MTD at 37 (quoting *State v. Morales*, 869 S.W.2d 941, 943 (Tex. 1994)).

[165] This was a key distinction in *Morales* given the Texas Constitution's division between civil and criminal courts.

[166] CR4181.

raised any immunity argument. But assuming he might, it is worth explaining why it is a red herring.

In particular, claims of judicial immunity, which necessarily include more-limited claims of derived judicial immunity, are affirmative defenses.[167] As such, they provide no basis to deny or dismiss a plea in intervention and associated claims for relief *on the pleadings*, apart from the potential but limited context where Rule 91a might permit dismissal (*i.e.*, if a pleading establishes the affirmative defense as a matter of law).[168] And this is relevant for two reasons:

First, in the district court, the Receiver filed no Rule 91a motion against the Intervenors' pleas in intervention or petitions for declaratory and other relief.

Second, no such motion would have been successful, for the Intervenors have alleged that the Receiver acted beyond the boundaries of the Receivership Order, which would defeat a claim of derived judicial immunity or related jurisdictional plea.[169] Indeed, as shown above, parts of the order were so obviously outside the boundaries of Texas law as to negate even absolute judicial immunity.[170]

In sum, although an affirmative defense of derived immunity might ultimately

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[167] *West v. Robinson*, 486 S.W.3d 669, 673 (Tex. App.—Amarillo 2016, pet. denied); *Hassell Construction*, 2023 WL 2377488, at *12.

[168] *Reynolds v. Quantlab Trading Partners US, LP*, 608 S.W.3d 549, 556 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

[169] *See Clements v. Barnes*, 834 S.W.2d 45, 46 (Tex. 1992) (derived judicial immunity does not cover actions "outside the scope" of delegated authority or in "clear absence" of appointed-officer's jurisdiction); TEX. CIV. PRAC. & REM. CODE § 64.052.

[170] *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995).

provide a basis for rejecting a plea in intervention or associated claim for declaratory or other relief on the merits, it is no basis at this stage to deny intervention on the pleadings or dismiss on any jurisdictional ground.

9. A bankruptcy agreement between Princeton and third parties did not release, let alone moot, the Intervenors' claims against the Receiver.

The Receiver says that (1) Princeton, GVS, and WCCG "settled" in 2022; that (2) Princeton released all claims it had against Paul (and companies he owns or controls) and vice versa;[171] and, as a result, that (3) the Intervenors are jurisdictionally precluded from pursuing their claims against him for wrongfully seizing and asserting control over their money, real personal property, and legal rights.[172] The Receiver is wrong:

(1) The only "settlement agreement" he references (a bankruptcy sale and assignment agreement) is not an agreement between Princeton, GVS, and WCCG in the first place. Indeed, it specifically excluded GVS and WCCG.[173]

(2) The scope of any release given to Princeton in the referenced agreement is irrelevant as to the Intervenors because their claims are not claims against Princeton. They are claims against the Receiver.[174]

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[171] MTD at 2, 15, 37-38.

[172] "Release" is an affirmative defense that doesn't negate jurisdiction. *Hassell Construction,* 2023 WL 2377488, at *12.

[173] CR12592.

[174] Again, claims against the Receiver arise-from/relate-to the judgment in the sense that otherwise there would have been no receiver. But that does not make claims against

(3) Even if any release in that agreement were relevant, it certainly did not release the Intervenors' claims against the Receiver because the releases therein didn't release *anyone*'s claims against the Receiver. Rather, where the agreement includes a release, the release expressly carves out "any present or future claim, appeal or litigation" against "the Receiver or its agents, attorney, or representatives."[175]

Thus, the Intervenors' claims against the Receiver couldn't have been released by that agreement, even in theory.

The Receiver's related allegation that the interventions are "moot" because the judgment was settled/satisfied/released is both wrong and nonsensical. It is wrong (because the referenced agreement did not release the judgment; it assigned it to another party) and it is nonsensical because the settlement/satisfaction/release of a judgment is entirely independent of any wrongdoing of a subsequently-appointed receiver.

Indeed, imagine if the judgment here had simply been paid and released immediately after the Receiver was appointed, yet the Receiver nevertheless went

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him "derivative" such that they would disappear on satisfaction of the judgment (or any party's release of claims underlying it). Rather, the Intervenors' claims against the Receiver are distinct from the judgment and its underlying claims: the Intervenors claim the Receiver acted against their interests in an unlawful and *ultra vires* manner vis-à-vis the Receivership Order and Texas law, which is unrelated to the merits of any claim underlying the judgment.

[175] CR12587-88 ¶¶ 6, 8. Even if such claims hadn't been specifically excluded, they aren't specifically "mentioned" anywhere as released claims, as needed for an effective release. *See Mem'l Med. Ctr. of E. Tex. v. Keszler*, 943 S.W.2d 433, 434 (Tex. 1997).

along and seized money and property from third parties. Do those third parties have no remedy because of the fortuity that the judgment was satisfied before the Receiver embarked on unlawful activities? Of course not.

10. Although one Intervenor has filed for bankruptcy, there is no automatic stay because this suit was not instituted as an action "against" it.

In a September 20, 2023, supplemental filing, the Receiver says (at page 2) that WC Paradise Cove Marina, LP ("Paradise Cove") – one of the Bank Account Intervenors – is in bankruptcy. This is correct, but the Bankruptcy Code's automatic stay does not apply to appellate proceedings unless the underlying action was brought "against" the debtor.[176] Here, no action below was brought against Paradise Cove; rather, Paradise Cove affirmatively sought to intervene and obtain relief. Thus, its bankruptcy does not affect this Court's jurisdiction.[177]

11. One Intervenor lacks a current charter, but that is not a jurisdictional defect.

After mentioning Paradise Cove, the Receiver also says three Intervenors (Rio Grande, Colorado, and WC Parmer 93, LP) have forfeited their corporate charters. Such forfeiture is not a jurisdictional defect, however.[178] In addition, two have

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[176] *Accord Star-Tel, Inc. v. Nacogdoches Telecommunications, Inc*., 755 S.W.2d 146, 150 (Tex. App.—Houston [1st Dist.] 1988, no writ) ("[11 U.S.C. § 362] has been interpreted as staying all appeals of proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or appellee.").

[177] Even when a stay affects one party, it is not thereby applicable to co-parties. *See Wedgeworth v. Fibreboard Corp*., 706 F.2d 541, 544 (5th Cir. 1983) ("[T]he protections of § 362 neither apply to co-defendants nor preclude severance.").

[178] *See Manning v. Enbridge Pipelines (E. Tex.) L.P.*, 345 S.W.3d 718, 723 (Tex. App.—Beaumont 2011, pet. denied) ("A forfeiture does not deprive the court of jurisdiction.")

corrected the issue.[179]

CONCLUSION

For the foregoing reasons, Intervenors request that the Court deny the Receiver's motion to dismiss for lack of jurisdiction, reverse the district court's denial of their pleas in intervention, vacate its denial of their associated requests for relief (which depended on intervention), including their declaratory judgment petitions, discovery requests, subpoenas, and motions to compel, and remand for further proceedings consistent with this Court's opinion.

The Intervenors also request all such other and further relief to which they may be entitled.

Respectfully submitted,

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Counsel for Intervenors

[179] According to the Texas Secretary of State, Rio Grande and Colorado are "in existence." *See* App.3 (counsel affidavit regarding charter status). This may also be confirmed through the department's website (www.sos.state.tx.us) and is appropriate for judicial notice, which Intervenors request. *See Office of Pub. Util. Counsel v. Pub. Util. Comm'n*, 878 S.W.2d 598, 600 (Tex. 1994) (per curiam) ("[For] judicial notice, a fact must be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Judicial notice is mandatory if requested by a party and [the court is] supplied with the necessary information." (internal quotation marks and citation omitted; first alteration added)).

CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure because this brief contains 14,996 words based on computer word count, excluding parts exempted by Rule 9.4(i)(1).

/s/ Jeremy Gaston
Jeremy Gaston

CERTIFICATE OF SERVICE

I certify that on February 7, 2024, a true and correct copy of the foregoing instrument was served by e-service on the following counsel:

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No. 01-23-00618-CV

In the Court of Appeals
For the First Judicial District of Texas
Houston, Texas

Great Value Storage, LLC and World Class Capital Group, LLC,
Defendants/Appellants

v.

Princeton Capital Corporation,
Plaintiff/Appellee

On Appeal from the 165th Judicial District Court
Harris County, Texas
Cause No. 2019-18855
Honorable Ursula A. Hall presiding

APPENDIX TO BRIEF OF INTERVENORS

1. Order Denying Pleas in Intervention (08/02/23) [SuppCR3-7]
2. Order Appointing Receiver (09/08/21) [CR61-69]
3. Affidavit re: Charter Status of Rio Grande and Colorado

Tab One

Cause No. 2019-18855

PRINCETON CAPITAL CORPORATION, *Plaintiff*,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
GREAT VALUE STORAGE, LLC, and WORLD CLASS CAPITAL GROUP, LLC, *Defendants.*	§	165TH JUDICIAL DISTRICT

ORDER

After careful consideration of the Receiver's report, motions, supporting exhibits, and responses by the Defendants, the Court concludes the following order should issue. The Court takes judicial notice of its file in this cause. It is, therefore,

ORDERED that *Receiver's Motion for Extension of Time to File Report and Application for Receivership Fees* is GRANTED. The Court extends the period for Receiver to file his report and motion for receivership fees to October 31, **2023** which Receiver satisfied by timely filing. It is, further,

ORDERED that Receiver's Report is approved. The Court concludes that the Receiver's diligent efforts and litigation resulted in full payment to Princeton Capital of $11,372,698.89 and full satisfaction and extinguishment of this Court's March 4, 2021 judgment (the "Judgment"), plus Princeton Capital's related post-judgment interest, legal fees, and expenses. The Court concludes that the Defendants would not have paid this amount to Princeton Capital but for the efforts and litigation of the Receiver. It is, further,

ORDERED that *Receiver's Motion for Award of Receivership Fees* is GRANTED. The Court has reviewed the terms of the order approving the appointment of the Receiver entered by

this Court on September 8, 2021 ("Receivership Order), the various decisions by the First Court of Appeals relating to the Receivership Order and Judgment, most recently affirming the Receivership Order and Judgment in its April 20, 2023 opinion, and its July 27, 2023 denial of rehearing, taken judicial notice of the Court's file in this cause, and reviewed the exhibits filed by Receiver in support of his motion, which are hereby admitted. The Court notes that Mr. Kretzer accepted appointment and filed his oath on the terms as set forth in the Receivership Order. Mr. Kretzer and his law firm accepted considerable risk in accepting and pursuing his duties as Receiver. Mr. Kretzer and his law firm carried out his duties appropriately and within the authority granted to him by this Court and in the Receivership Order. The Court finds Mr. Kretzer's advocacy, effort and representation were proper, reasonable, and effective under the circumstances of this case. Based upon the foregoing, payment of a 25% fee constitutes a reasonable and necessary fee for the Receiver and is consistent with similar awards by other courts for receivers. It is, further,

ORDERED, pursuant to the Receivership Order, the Court finds that Receiver is entitled to receivership fees equal to 25% of $11,372,698.89, which is the amount of $2,843,174.70 ("Fee Award"). Sufficient funds to pay this amount are presently held on reserve under the control of the U.S. Bankruptcy Court, Northern District of Texas, in *In re GVS Texas Holdings I, et al,* Case No. 21-31121 (the "GVS Case"). The Receiver is authorized to submit this Order to the court in the GVS Case to obtain payment of the Fee Award. It is, further,

ORDERED that Receiver's expenses through the date of this Order are approved as reasonable and necessary. It is, further,

ORDERED that Receiver is entitled to recovery and reimbursement of any additional litigation expenses incurred to: (1) effectuate the terms of this Order; (2) submit this Order to

the Court in the GVS Case; (3) take any other steps necessary to obtain payment in full of the Fee Award and related expenses; (4) respond to or dismiss any actions or appeals asserted against him, or his law firm or counsel, in state or federal court in connection with his actions as the Receiver, without further order of this Court; and (5) submit subsequent requests to the Court in the GVS Case for reimbursement of such expenses. It is, further,

ORDERED that Mr. Kretzer shall continue as Receiver until the purposes of this Order are completed, including final conclusion of all litigation against or involving Receiver, payment in full to the Receiver of the Fee Award and expenses related thereto, as well as payment of all other expenses that may become due and owing after the entry of this Order, including, but not limited to the cost of filing notice in all pending cases in which the Receiver has been sued, with a copy of this Order, that the receivership is terminating as set forth herein. Receiver is authorized to respond, dismiss or non-suit lawsuits, claims, or appeals filed against him, or his law firm or counsel, or relating to his actions as Receiver, as he determines appropriate and necessary. After the purposes of this Order are effectuated, and he is paid in full, and all litigation against or involving Receiver is finally concluded, the Receiver will then notify this Court and request closure of the receivership. It is, further,

ORDERED that all pending pleas in intervention,[1] motions, objections, subpoenas, and discovery requests,[2] are hereby denied and dismissed.

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[1] The pleas in Intervention include: (1) January 10, 2023, "Third Amended Plea in Intervention and Motion to Void Actions of Receiver," purportedly on behalf of 8 Nate Paul-controlled companies: World Class Holdings, LLC, World Class Holding Company, LLC, WC 707 Cesar Chavez, LLC, WC Galleria Oaks, LLC, WC Parmer 93, LP, WC Paradise Cove Marina, LP, WC MRP Independence Center, LLC, and WC Subsidiary Services, LLC, amended April 21, 2023 as "Third Amended Plea in Intervention and Motion to Void Actions of Receiver;" (2) November 29, 2022, "WC 4th and Colorado, LP's Plea in Intervention and Motion to Void Actions of Receiver, amended April 21, 2023 as "WC 4th and Colorado, LP's Amended Plea in Intervention and Motion to Void Actions of Receiver;" (3) November 1, 2022, "First Amended Plea in Intervention," purportedly on behalf of Nate Paul-controlled entity, World Class Holdings, LLC; and (4) October 31, 2022, "WC 4th and Rio Grande, LP's Plea in Intervention," purportedly on behalf of WC 4th and Rio Grande, LP, amended April 21, 2023 as "WC 4th and Rio Grande, LP's Amended Plea in Intervention and Motion to Void Actions of Receiver."

[2] The subpoenas and discovery requests include: (1) November 3, 2022 *Notice of Intention to Take Deposition with Subpoena Duces Tecum* of Mr. Kretzer, Receiver, purportedly by Defendants and Mr. Paul; (2) November 3, 2022 *Notice of Intention to Take Deposition by Written Questions with Subpoena Duces Tecum of La Zona Rio, LLC,* purportedly by Defendants and Mr. Paul; (3) November 3, 2022 *Notice of Intention to Take Deposition by Written Questions with Subpoena Duces Tecum of Colorado Third Street, LLC,* purportedly by Defendants and Mr. Paul, purportedly by Defendants and Mr. Paul; (4) November 3, 2022 *Notice of Intention to Take Deposition of Timber Culebra, LLC, With Production of Documents*, purportedly by Defendants; (5) November 3, 2022 *Notice of Intention to Take Deposition with Subpoena Duces Tecum of Mr. Bryan Hardeman*, purportedly by Defendants; (6) November 3, 2022 *Notice of Intention to Take Deposition with Subpoena Duces Tecum of Mr. William Hardeman*, purportedly by Defendants; (7) November 3, 2022 *Notice of Intention to Take Deposition with Subpoena Duces Tecum of Mr. Mark Riley*, purportedly by Defendants; (8) November 3, 2022 *Notice of Intention to Take Deposition with Subpoena Duces Tecum of Mr. Justin Bayne*, purportedly by Defendants; (9) November 7, 2022 *Notice of Intention to Take Deposition by Written Questions of Mr. Kretzer, Receiver,* purportedly by Defendants; (10) November 7, 2022 *Subpoena Duces Tecum to Mr. Seth Kretzer, Receiver*, purportedly by Defendants; (11) November 7, 2022 *Notice of Intention to Take Deposition by Written Questions of Colorado Third Street, LLC, Mr. Justin Bayne,* purportedly by Defendants; (12) November 7, 2022 *Subpoena Duces Tecum to Colorado Third Street, LLC, Mr. Justin Bayne,* purportedly by Defendants; (13) November 7, 2022 *Notice of Intention to Take Deposition by Written Questions of La Zona Rio, LLC, Mr. Justin Bayne*, purportedly by Defendants; (14) November 7, 2022 *Subpoena Duces Tecum to La Zona Rio, LLC, Mr. Justin Bayne*, purportedly by Defendants; (15) November 21, 2022 *Notice of Intention to Take Deposition by Written Questions of Colorado Third Street, LLC and Subpoena Duces Tecum, Mr. Justin Bayne,* purportedly by Defendants; (16) November 21, 2022 *Notice of Intention to Take Deposition by Written Questions of La Zona Rio, LLC and Subpoena Duces Tecum, Mr. Justin Bayne,* purportedly by Defendants; (17) *Deposition Subpoena to Mr. Kretzer*, purportedly by WC 4th and Colorado, LP, dated January 26, 2023; (18) *Deposition Subpoena to Kretzer & Volberding, P.C.*, purportedly by WC 4th and Rio Grande, LP, dated January 26, 2023, (19) *Deposition Subpoena to Mr. Kretzer*, purportedly by Defendant Entities, dated January 24, 2023;1 (20) *Deposition Subpoena to Kretzer & Volberding, P.C.*, purportedly by WC 4th and Colorado, LP, dated January 26, 2023; (21) *Deposition Subpoena to Mr. Kretzer*, purportedly by WC 4th and Rio Grande, LP, dated February 1, 2023.

It is, further,

ORDERED that all relief not herein granted is hereby DENIED.

Signed _____.

Signed:
8/2/2023 Ursula Hall

HON. JUDGE URSULA A. HALL
165th District Court
Harris County, Texas

Tab Two

CAUSE NO. 2019-18855

PRINCETON CAPITAL CORPORATION, *Plaintiff*,	§	IN THE DISTRICT COURT
v.	§	
GREAT VALUE STORAGE LLC, WORLD CLASS CAPITAL GROUP LLC, AND NATIN PAUL	§	HARRIS COUNTY, TEXAS
Defendants.	§	165th JUDICIAL DISTRICT

ORDER APPOINTING RECEIVER AND COMPELLING DISCOVERY

SEP CAME ON to be heard the Motion for Post-Judgment Receivership of Princeton Capital Corporation ("Applicant"); whereupon, the Court, after a review of the papers herein on file, became of the opinion that a Receiver should be appointed to take possession of and sell the leviable assets of Great Value Storage LLC and World Class Capital Group LLC ("Judgment Debtors").

Based on the pleadings, the evidence and the argument of counsel, the Court finds that the Judgment Debtors own non-exempt property and that there exists an unpaid final judgment against them. Notwithstanding any contrary language herein, this order does not compel turn over of Judgment Debtors' homestead, or checks for current wages or other exempt property.

IT IS THEREFORE, ORDERED, ADJUDGED, and DECREED by this Court that Mr. Seth Kretzer, 440 Louisiana Street, Suite 1440, Houston, Texas 770022, (713) 775-3050, is hereby appointed Receiver in this case pursuant to the Texas Turnover Statute with the power and authority to take possession of and sell all leviable property of Judgment Debtors, including, but not limited to the following non-exempt property: (1) all documents

or records, including financial records, related to such property that is in the actual or constructive possession or control of the Judgment Debtors; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action or choses of action; (9) contract rights, whether present or future; and (10) accounts receivable; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Judgment Debtors are **ORDERED** to turnover to the Receiver within ten (10) days from the Judgment Debtors' receipt of a copy of this Order: 1) the documents listed below, together with all documents and financial records which may be requested by the Receiver; 2) all checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of the Judgment Debtors:

> Any and all records, as hereinafter described, concerning affairs of the Judgment Debtors; unless otherwise noted, for the period January 1, 2018 through the present:
>
> 1. Monthly statements for every financial institution account in which Great Value Storage LLC or World Class Capital Group LLC has been a signatory or owner since January 1, 2018;
>
> 2. Cancelled checks and wire transfers for every financial institution account in which Great Value Storage LLC or World Class Capital Group LLC. has been a signatory or owner since January 1, 2018;
>
> 3. Copies of the articles of incorporation, Secretary of State charters, operating agreements, membership agreements, and all documents of creation and ownership of any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

4. Federal income and state franchise tax returns for Great Value Storage LLC and World Class Capital Group LLC. and any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

5. All motor vehicle Certificates of Title owned or leased by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2019;

6. Stock certificates and bonds owned by Great Value Storage LLC or World Class Capital Group LLC., and any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

7. Promissory notes owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

8. Bills of sale owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

9. Real property deeds and deeds of trust (regardless of date), owned or interest held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

10. Business journals, ledgers, accounts payable and receivable files belonging to Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional

corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

11. Pledges, security agreements and copies of financial statements owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

12. State sales tax reports filed by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

13. Any other record or document evidencing any ownership to real or personal property or to any debt owed or money had (regardless of date) owned or interest held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

14. All personal property returns filed with any taxing authority, including but not limited to any Central Appraisal District, filed by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

15. All documents listing or summarizing property owned by or held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018; and

16. Credit applications and other documents stating Great Value Storage LLC or World Class Capital Group LLC's financial condition since January 1, 2018.

Judgment Debtors, Great Value Storage LLC and World Class Capital Group LLC are **ORDERED** 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. Judgment Debtors are **ORDERED** to continue, until the Judgment in this cause is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, and contracts within three (3) days from the Judgment Debtors' receipt and possession of such property, if, as and when Judgment Debtors becomes in receipt and possession of any such property. Paychecks for current wages are exempt from this order.

In light of the refusal of Judgment Debtors to pay the judgment, the Receiver is authorized to provide notice of this order, or any discovery requests, or any other document or motion, to Judgment Debtors, by delivering such notice and order and discovery requests in any of the following manner: (1) to the Judgment Debtors' home addresses by first-class U.S. Mail, without requiring signature or restricted delivery; (2) to Judgment Debtors' attorney, by fax, U.S. Mail or email, unless he or she indicates that he or she no longer represent the Judgment Debtors, or (3) by email to the Judgment Debtors' email address.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Judgment Debtors' property, to: 1) collect all accounts receivable of Judgment Debtors and all rents due to the Judgment Debtors from any tenant; 2) to change locks to all premises at which any property is

situated; 3) direct the delivery of the Judgment Debtors' mail and the mail of any business of the Judgment Debtors to the Receiver's address and open all mail directed to the Judgment Debtors and any business of the Judgment Debtors; 4) endorse and cash all checks and negotiable instruments payable to the Judgment Debtors, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Judgment Debtors; 6) hire any person or company to move and store the property of the Judgment Debtors; 7) (but not the obligation) to insure any property belonging to the Judgment Debtors; 8) obtain from any financial institution, bank, credit union, credit bureau, savings and loan, title company, or any other third party, any financial records belonging to or pertaining to the Judgment Debtors; 9) obtain from any Texas state agency or official, Texas county agency or official, or Texas municipality or official, any government records belonging to or pertaining to the Judgment Debtors, including financial and personal identifying information; 10) obtain from any landlord, building owner or building manager where the Judgment Debtors or the Judgment Debtors' business is a tenant copies of the Judgment Debtors' lease, lease application, credit application, payment history and copies of the Judgment Debtors' checks for rent or other payments; 11) hire any person or company necessary to accomplish any right or power under this Order; 12) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of the Judgment Debtors may be situated, and to review and obtain copies of all documents related to same, and 13) file any lawsuit necessary to seize or recover any non-exempt assets from any third parties who have acquired possession or control.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from the Judgment Debtors' attorney all files, correspondence, emails, records, papers and documents, whether paper or electronic, pertaining to Great Value Storage LLC and World Class Capital Group LLC's ownership of any property or legal interest, or any negotiation of the purchase, sale, acquisition or creation of any property or legal interest. This order does not compel to provide any documents protected by the attorney-client privilege.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner, AT&T, Verizon, Sprint, Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) compelling the production of any information regarding the Judgment Debtors' payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order specifically serves as the court order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

In addition, the Receiver shall have the authority to cooperate with and provide assistance to, as he deems best, to any law enforcement officer, official or grand jury to provide information or documents pertaining to any possible criminal act committed by Great Value Storage LLC or World Class Capital Group LLC.

Further, the Receiver is authorized to seize all assets of which Great Value Storage LLC or World Class Capital Group LLC is beneficiary of any trust for which no valid spendthrift provision applies. Any trustee holding money or property for the benefit of Great Value Storage LLC or World Class Capital Group LLC is ordered to turn such money or property over to the Receiver upon request by the Receiver or to deposit said funds into the Court's registry. Any financial institution holding money or property for any trustee for the benefit of Great Value Storage LLC or World Class Capital Group LLC is ordered to turn such money or property over to the Receiver upon request by the Receiver or to deposit said funds into the Court's registry.

In addition, 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. In addition, the Receiver is authorized to obtain all bank accounts and records and invest accounts and records held by Great Value Storage LLC or World Class Capital Group LLC from any financial institution.

Princeton is awarded judgment over and against Great Value Storage LLC or World Class Capital Group LLC for the amount of $2,400.00 for reasonable and necessary legal fees for this motion, and shall pay $1,000.00 of that amount to the Receiver for preparation.

Any Sheriff or Constable, and their deputies, and any other peace officer, are hereby directed and ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder and prevent any person from interfering with the Receiver in taking control and possession of the property of the Judgment Debtors, without the necessity of a

Writ of Execution. The Receiver is authorized to direct any Constable or Sheriff to seize and sell property under a Writ of Execution.

The Court authorizes and orders any Sheriff or Constable, and their deputies, and any other peace officer, to break and open any locks or gates erected by the Debtor as necessary to assist the Receiver and carry out this order.

In light of the circumstances of this case, the Court sets the bond at $50.00.

The Receiver's fee is twenty-five percent (25%) of all gross proceeds coming into his possession, not to exceed twenty-five percent of the balance due on the judgment, plus any out-of-pocket expenses incurred by the Receiver in his scope as a receiver in this case. The Court finds this a fair, reasonable and necessary fee for the Receiver and the Receiver if further directed and authorized to pay Creditors' attorney as Trustee for the Creditors the remaining seventy-five percent (75%) of all proceeds coming into Receiver's possession, with adjustment for Receiver's expenses as necessary. All Receiver's fees will be taxed as costs against the Debtor, which means that the Receiver is authorized to seek and recover 125% of the judgment plus expenses. All payments made by the Receiver to the Judgment Creditor shall be applied to the Judgment as a credit towards the balance of the Judgment.

The Receiver is further ordered to take the oath of his office.

SIGNED _____.

Signed:
9/8/2021 Ursula Hall

HON. JUDGE URSULA HALL
165th District Court
Harris County, Texas

Tab Three

No. 01-23-00618-CV

In the Court of Appeals
For the First Judicial District of Texas
Houston, Texas

Great Value Storage, LLC and World Class Capital Group, LLC,
Appellants

v.

Princeton Capital Corporation,
Appellee

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

Affidavit of Jeremy Gaston

STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, personally appeared Jeremy Gaston, who upon his oath deposed and stated:

1. "My name is Jeremy Gaston. I am over the age of 18, a resident of the State of Texas, and an attorney licensed to practice law in the State of Texas since 1999.

2. I am counsel for Intervenors in this appeal. I have attached this affidavit as Tab Three to the Appendix to Intervenors' opening brief.

3. Attached to this affidavit (and stamped by me as 'Exhibit A' and

'Exhibit B') are true and correct copies of documents I created by printing the output screens I obtained on January 31, 2024, from the Texas Secretary of State through its website (www.sos.state.tx.us) via an entity search I conducted using the website's Business Services portal (*a.k.a.*, SOSDirect) to retrieve the associated records for two of the Intervenors: **WC 4th and Rio Grande, LP** and **WC 4th and Colorado, LP**.

4. As can be seen, these records indicate that the two entities are presently classified by the Texas Secretary of State as having an 'Entity Status' of 'In existence.'

4. The facts stated in the foregoing plea are true, correct, and within my personal knowledge. Further affiant sayeth not."

Jeremy Gaston

Subscribed and sworn before me by Jeremy Gaston on February 7, 2024.

MARIA T. MARTINEZ
My Notary ID # 4466072
Expires July 9, 2024

Notary Public, State of Texas

Exhibit A

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

direct.sos.state.tx.us/corp_inquiry/corp_inquiry-entity.asp

Texas Secretary of State
Jane Nelson

- UCC
- Business Organizations
- Trademarks
- Notary
- Account
- Help/Fees
- Briefcase
- Logout

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	801478213	**Entity Type:**	Domestic Limited Partnership (LP)
Original Date of Filing:	September 12, 2011	**Entity Status:**	In existence
Formation Date:	N/A		
Tax ID:	32045059113	**FEIN:**	
Duration:	Perpetual		

Name:	WC 4th and Rio Grande, LP
Address:	1122 S. Capital of Tx. Hwy. Ste. 300 Austin, TX 78746 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS

Name	Address	Inactive Date
C T Corporation System	1999 Bryan St., Ste. 900 Dallas, TX 75201-3136 USA	

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

- SOSDirect - Business Filings
- Business Copies and Certificates
- Uniform Commercial Code
- Texas Businesses Against Trafficking
- Texas.gov

- VoteTexas.gov - Voter Information
- Register to Vote & Voter I.D.
- Website Policies
- Open Records
- Contact us

- Texas Homeland Security
- Where the Money Goes
- Fraud Reporting
- Texas Veterans Portal

Exhibit B

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

direct.sos.state.tx.us/corp_inquiry/corp_inquiry-entity.asp

Texas Secretary of State
Jane Nelson

- UCC
- Business Organizations
- Trademarks
- Notary
- Account
- Help/Fees
- Briefcase
- Logout

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	801434943	**Entity Type:**	Domestic Limited Partnership (LP)
Original Date of Filing:	June 6, 2011	**Entity Status:**	In existence
Formation Date:	N/A		
Tax ID:	32044399403	**FEIN:**	
Duration:	Perpetual		

Name:	WC 4th and Colorado, LP
Address:	1122 S. Capital of Texas Hwy Ste 300 Austin, TX 78746 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS

Name	Address	Inactive Date
C T Corporation System	1999 Bryan St., Ste. 900 Dallas, TX 75201-3136 USA	

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- Texas Veterans Portal

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeremy Gaston
Bar No. 24012685
jgaston@hcgllp.com
Envelope ID: 84267215
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Brief and Appendix of Intervenors
Status as of 2/7/2024 4:41 PM CST

Associated Case Party: Seth Kretzer, Receiver

Name	BarNumber	Email	TimestampSubmitted	Status
Seth Kretzer		seth@kretzerfirm.com	2/7/2024 4:31:03 PM	SENT
James Volberding		jamesvolberding@gmail.com	2/7/2024 4:31:03 PM	SENT
Ann Kennon		akennonassistant@gmail.com	2/7/2024 4:31:03 PM	SENT

Associated Case Party: World Class Capital Group, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Greg R.Wehrer		greg.wehrer@squirepb.com	2/7/2024 4:31:03 PM	SENT
Amanda DoddsPrice		amanda.price@squirepb.com	2/7/2024 4:31:03 PM	SENT
Trevor Kehrer		trevor.kehrer@squirepb.com	2/7/2024 4:31:03 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Abigail Noebels	24083578	anoebels@susmangodfrey.com	2/7/2024 4:31:03 PM	SENT
Greg Wehrer		greg.wehrer@squirepb.com	2/7/2024 4:31:03 PM	SENT
Manfred Sternberg		Manfred@msternberg.com	2/7/2024 4:31:03 PM	SENT
Brian Elliott		brian@scalefirm.com	2/7/2024 4:31:03 PM	SENT
Amanda Prince		amanda.price@squirepb.com	2/7/2024 4:31:03 PM	SENT
Jeremy Gaston		jgaston@hcgllp.com	2/7/2024 4:31:03 PM	SENT