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No. 01-23-00618-CV

In the First Court of Appeals
Houston, Texas

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

v.

PRINCETON CAPITAL CORPORATION,
Appellee.

Appeal from Cause No. 2019-18855
165th District Court of Harris County, Texas
Hon. Ursula Hall, Presiding

SUR-RESPONSE BRIEF OF THE RECEIVER TO APPELLANTS' REPLY BRIEFS

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INTRODUCTION

This sur-reply is necessitated to object to new issues being raised for the first time in the reply brief in violation of TEX. R. APP. P. 38.3.

Receiver is filing one sur-reply to both sets of Appellants' briefs because these variegated groups of shell companies have abandoned all pretense that they are separate from each other. More specifically, Judgment Debtors' opening brief makes repeated arguments about "Intervenor Appellants' Due Process challenge" [Judgment Debtor Br. at 6] and makes arguments about collections from companies in which it claims not to have any interest. [Judgment Debtors' Br. at 7] ("collection from non-judgment debtors was completely improper")].

I. NEW ARGUMENTS CANNOT BE RAISED IN A REPLY BRIEF UNDER TEX. R. APP. P. 38.3

A. The "New" Argument As To Service/Appearance Found For The First Time In The Reply Brief

In their reply brief, Intervenors present a brand-new argument for the first time:

> The Receiver waived service by making a general appearance (before intervention) and by later filing a motion to strike the interventions.

Reply Br. at 26.

Intervenors expound slightly on this argument in their footnote 38:

> If "intervention is successfully challenged by another party," the intervenor is no longer a party (id.), but that would also make the Receiver a "party" since he challenged intervention.

For their part, GVS and WCCG try to sneak in a new argument, too, nowhere found on pages 5-7 of their opening brief [filed February 7, 2024] discussing the Bankruptcy in Northern District of Texas: now, for the first time, they argue that the judicial admissions by their attorneys in Bankruptcy Court were little pranks that Judge Hall could not catalyze in her discretion to determine receiver fee.

Perhaps one reason why these arguments were nowhere to be found in their opening briefs in this Court is that it these arguments were not advanced in the trial court, either. In that sense, this Court has unfortunate previous experience with procedural defaults perpetrated by these same appellants:

> Because Great Value and WCCG did not make the same argument on appeal that it made in the trial court, this issue is waived. *See* TEX. R. APP. P. 33.1(a); *Amerjin Co*., 2020 Tex. App. LEXIS 2651, 2020 WL 1522823, at *11.[1]

But however nefarious or benign their reasons for doing so, this Court cannot consider arguments presented for the first time in a reply brief under this Court's precedents:

> An issue raised for the first time in a reply brief is ordinarily waived and need not be considered by this Court.[2]

B. The "New" Argument Is Contrary To Those Presented in The Opening Brief

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[1] *Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 Tex. App. LEXIS 2537, *20-21 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023), dism'd as moot, 2024 Tex. LEXIS 216 (Tex. 2024).

[2] *McAlester Fuel Co. v. Smith Int'l, Inc.*, 257 S.W.3d 732, 737 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

In their opening briefs, there was quite simply no argument that the receiver ever "waived service" or made a "general appearance" in the 2019-18855 matter, much less that the act of challenging unlawful interventions transmogrified a court appointed receiver into "a party". In the most straightforward analysis of a word search in PDF, the word "service" appears exactly once in their opening brief: the "certificate of service" line on page 57.

> In both form and substance, their opening brief's argument was both one-dimensional and 180 degrees opposite from that stated in the Reply: they contended that a receiver is inherently a party to a case in which he appointed: More generally, as a compensated court agent, the Receiver in substance is a party with standing to prosecute/defend his interests on appeal.

Opening Br. at 42, n. 140 (emphasis in original).

The second set of contentions in the opening brief was dedicated to the proposition that the trial reversibly erred in striking their petitions *sua sponte*- or at least without requisite notice:

> [T][he 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.

Intervenor's Br. at 1-2.

> [N]either 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). Nor did 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.

Intervenor's Br. at 18-19.

Receiver contends that is a little hard to see how the contentions in the opening brief ['Receiver did not file enough motions to strike the interventions for our satisfaction'; 'we did not get enough notice'] is at all similar to the 'new' argument that Receiver waived citation and service and filed a "general appearance."

C. In Texas, Appellants Cannot Posit New Arguments in A Reply Brief

This is all a very big problem for the appellants, because "[a]rguments raised for the first time in a reply brief are also waived."[3] "Ordinarily, pursuant to Rule 38.3 of the Texas Rules of Appellate Procedure, a party cannot raise a new issue for the first time in a reply brief. TEX. R. APP. P. 38.3."[4]

D. The 'New' Argument Is Obviously An Attempted Workaround of The Texas Supreme Court's Order On March 8

After this Court denied rehearing in July 2023, judgment debtors/appellants decided to take a flier in the Texas Supreme Court with a petition for review. When the Texas Supreme ordered Princeton file a response, this long-settled judgment creditor balked and immediately filed a joint motion declaring itself "unable" to do so, having declined to disclose the pending litigation cases in either court in their successive

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[3] *Thomas v. Meritage Homes of Tex. LLC*, No. 01-15-00863-CV, 2017 Tex. App. LEXIS 4179, *6 (Tex. App.—Houston [1st Dist.] May 9, 2017, no pet.); *see also Anderson Producing Inc. v. Koch Oil Co*., 929 S.W.2d 416, 424 (Tex.1996) (court declined to consider issue first raised in reply brief).

[4] *Law Offices of Lin & Assocs. v. Deng*, No. 14-07-00729-CV, 2009 Tex. App. LEXIS 62, *5 (Tex. App.—Houston [14th Dist.] Jan. 8, 2009, no pet.).

public securities regulatory filings. So, judgment debtors/appellants came up with a new contention:

> The Petition for Review is solely focused on the lawfulness of the order appointing the Receiver. He is not only an interested party in this dispute—he is *the* interested party.

Amended Reply filed in Texas Supreme Court on February 14, 2024, at 10 (emphasis in original).

This argument did not turn out well for them; the Texas Supreme Court vacated this Court's April 2023 as lacking jurisdiction.

But the appellate briefs filed in this Court in February 2024 had been filed long before the vacatur, and the Intervenors really do need to pretend that they are separate from the judgment debtors. So, they came up with a new argument in this Court: rather than "he is the interested party" now Receiver had to have actually done something to 'become' a party. Intervenors went back, looked at the record again, and decided to sneak in a new argument that was simply nowhere found in the opening brief [because their position at the time was the complete opposite].

While clever, this is precisely what TEX. R. APP. P. 38.3 forbids.

II. HOW DO SUCH BANKRUPT/DEFUNCT/IMPECUNIOUS COMPANIES ASCRIBE SO MUCH DAMAGE TO RECEIVER'S ACTIONS UNDER THE TURNOVER ORDER?

Phoenix Lending decomposed back to its ashes as quickly as it arose. The so-called 'assignee' does not find its name mentioned even once in the Intervenor's reply

brief. Nor does any appellant volunteer any case that a reviewing court retains jurisdiction when the plaintiff/judgment creditor disclaims any interest in the judgment or the appeal- and has informed this Court that it refuses to file any response brief whatsoever to a case in which it is named as a party.

For two companies that have always claimed to have zero money or assets, Judgment Debtors' reply brief sure do claim a lot of financial injuries at the hand of Receiver. For 'broke' entities, there sure are a lot of hired (and very expensive) lawyers signing their briefs.

It is a little hard not to notice that the same law firms who represented these companies and their shell subsidiaries in the United States Bankruptcy Court- and who asked the Northern District of Texas to sign orders specifically relegating receiver's fees to be paid from a reserve- are now arguing that the fund should not be used for that named purpose. Presumably because they find the statements their attorneys inconvenient in 2024, the Judgment Debtors' brief needs this Court to discard the statements repeatedly made on the record in that Bankruptcy Court in 2022 by other lawyers at their same law firm, SQUIRE PATTON BOGGS[5] about the receiver's fee being 25% of the $11.3 million recovered to be paid from the reserve.

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[5] Reply Brief, p. 24. ("He also presents arguments of counsel as though they are competent evidence supporting the reasonableness of his fees."). Query how these lawyers at SQUIRE PATTON BOGGS will react if the presiding Bankruptcy Judge were to ask them if they made false statements on the record in support of a 9019 Settlement Motion? This is basically what Judgment Debtors are now telling this Court that their law firm did in the Northern District of Texas.

The best that can be said about the reply briefs are that they finally abandon the charade that there is a plaintiff left in this case, that the issues involving the parties are anything but moot, or that there is a live judgment left to be collected. Intervenor's Section II.A. is, by its own title, addressed to "The mootness of the judgment debtors' prior appeal…", its footnote 26 concedes that the Texas Supreme Court's "ruling is binding on this Court.", [Reply Br. at 15], and on page 25, the Intervenors concede "the Supreme Court's vacatur of the judgment meant there was no judgment to defend." In this sense, the Intervenors' reply seems to candidly walk back its contention in its opening brief that "the referenced agreement did not release the judgment; it assigned it to another party." [I.e., the vaporous 'Phoenix']. [Intervenor's Br. at 53].

Unfortunately, even having conceded that the plaintiff [Princeton] is long gone, and that there is no judgment left to collect, Intervenors insist that "Intervenors' dispute is with the Receiver, not the existing parties." [Reply Br. at 23]. But "[a]s the trial court's agent, the receiver is subject to the trial court's authority and orders in all things pertaining to the receivership."[6]

In other words, what both sets of appellants really mean is: "Intervenors' dispute is with '[the 165th District Court of Harris County]". Mr. Paul's problem is that the turnover order he passionately disliked was affirmed by this Court in April 2023[7], and

[6] *M&E Endeavours LLC v. Air Voice Wireless LLC*, Nos. 01-18-00852-CV, 01-19-00180-CV, 2020 Tex. App. LEXIS 6906, *13 (Tex. App.—Houston [1st Dist.] Aug. 27, 2020, no pet.)
[7] *Great Value Storage, LLC v. Princeton Capital Corp*., No. 01-21-00284-CV, 2023 Tex. App. LEXIS 2537 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023), dism'd as moot, 2024 Tex. LEXIS 216 (Tex. 2024).

that appellate disposition was retroactively dismissed by the Texas Supreme Court on March 8, 2024[8]. While Mr. Paul's companies may genuinely feel that they have an enduring "dispute" with the 165th District Court of Harris County, there is simply no legal mechanism under the law for them to keep relitigating a court order that has been affirmed repeatedly.

III. In Texas's Eighth Court of Appeals, Paul's Companies Argued Eloquently And Emphatically That "A Receiver Is Not A Party"

By all accounts, both sets of Appellants want this Court to place a heavy emphasis on two (companion) opinions which issued March 15, 2024 from Texas's Eighth Court of Appeals.[9]

Receiver is not clear why any appellants exhibit triumphalism about these two opinions. As an initial matter, the Eighth Court of Appeals called the appellant out for misrepresenting when Receiver Kretzer took actions in Travis County viz-a-viz when this Court's stay was in effect for the setting of a supersedes bond that never came to be:

> Rio Grande, LP contends that the stay was still in place when Kretzer entered his appearance in the lawsuit. However, given the timing as delineated above, we conclude that this contention is without merit.[10]

[8] *Great Value Storage, LLC v. Princeton Capital Corp*., No. 23-0722, 2024 Tex. LEXIS 216 (Mar. 8, 2024).
9 Intervenors' rely brief's footnote 1 offers the citation, footnote 3 immediately refers back to it, and they talk about it again on pages 12 and 24. Judgment debtors talk about this appellate case for most of pages 6-9.
[10] *WC 4th v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2024 Tex. App. LEXIS 1905, *6 n.5 (Tex. App.—El Paso Mar. 15, 2024, no pet. h.).

Next, all that the Eighth Court of Appeals did was provide for a limited remand to the state district judge in Travis County to take additional evidence as to the ownership structure of the subset of Paul's companies at issue.

> [W]e reverse the trial court's order granting the motion to dismiss Rio Grande, LP's lawsuit and remand for further proceedings to give Rio Grande, LP that opportunity.[11]

> We therefore reverse the trial court's decision to dismiss Rio Grande, LP's lawsuit and remand the matter to the trial court to reconsider its decision, taking into consideration the factors set forth herein and in our opinion in Cause No. 22-08-00073-CV.[12]

To be clear, no new evidentiary hearing has yet been scheduled in Travis County. It is hard to see how Appellants demonstrate abuse of discretion by Judge Hall in August 2023 based on the outcome of a hearing that might be held at some point in the year 2025 in a Travis County District Court.

For whatever reason, Intervenors urge this Court to ascribe these March 2024 opinions great weight in its analysis. If that is really what the hang their hat on, this Court should take note of the arguments made to the Eighth Court of Appeals about the status of a receiver never becoming that of "party":

> In any event, the Receiver has no role as a party in this appeal. A receiver is indifferent between the parties to a cause and, therefore, lacks standing to appeal a trial court's ruling regarding the establishment of or even the vacation of a receivership. *Wiley v. Sclafani*, 943 S.W.2d 107, 110 (Tex. App.-Houston [1st Dist.] 1997, no writ). A receiver, by inference, lacks a cognizable interest in this appeal even if this appeal challenges the terms or scope of the receiver's appointment.

[11] *Id*. at *44.
[12] *WC v. La Zona Rio, LLC*, No. 08-22-00225-CV, 2024 Tex. App. LEXIS 1903, *13 (Tex. App.—El Paso Mar. 15, 2024, no pet. h.).

> *Id.* The receiver was not a party of record at the time of his appointment and did not have any interests in privity with one of the parties. By statutory definition and by necessity, a receiver is both a non-party and disinterested in the outcome of the case. *Estate of Hoskins*, 501 S.W.3d 295, 313 (Tex. App.-Corpus Christi-Edinburg 2016, no pet.).
>
> Being an "officer of the court"-as the receiver has argued in other courts that he is-has nothing to do with being a party to this appeal. As noted by the First Court of Appeals, receivers are "disinterested," that is, lack a cognizable interest in the outcome of the dispute. *M&E Endeavours LLC v. Air Voice Wireless LLC*, No. 01-18-00852-CV, 2020 WL 5047902, at *5 (Tex. App.-Houston [1st Dist.] Aug. 27, 2020, no pet.). As such, the receiver has no role in this appeal and no standing to file his Rule 42.1 motion, which the parties have previously briefed.[13]

In other words, it is a little hard to take seriously the Intervenors' contention on page 24 of their reply that "if existing parties can challenge wrongful actions of the Receiver, that confirms he is substantively a party for such challenges…" when they made the exact opposite contention in their brief to the Eighth Court of Appeals-which they hold up in this court as a jurisprudential Polaris.

Receiver contends that if there is any point to take away from the Eighth Court of Appeals' opinions, it is that receiver does not hold any property rights of any Intervenor- nor is he directing litigation brought by any Intervenor. To wit, the litigation between Paul's entities and La Zona Rio [including a quiet title action] is pending in the Eighth Court of Appeals, and the evidentiary hearing that may be scheduled in Travis County at some future point in time is their opportunity to try to win a different ruling than they did in 2022.

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[13] This brief is available at: 2022 WL 17370248, *35.

But Receiver simply holds no real property of any Intervenor.

IV. THE INTERVENORS HARDLY "SPRANG" INTO ACTION

The Intervenors explain:

> [T]he existence of the Intervenors' justiciable interest does not depend in any fashion on the Receiver's fee award, let alone whether the Intervenors do or do not have an interest in it. Rather, the Intervenors' justiciable interest independently sprang into existence when, among other things, he seized control of their property and litigation.

Reply Br. at 18.

It seems fairly obvious that Receiver does not possess any property; the Intervenors are so 'in control' of their "litigation" that they spend about 1/3 of their brief extolling their self-exclaimed victory in the Eighth Court of Appeals.

But it is hard to conclude that Intervenors "sprang" anywhere for more than a year before Princeton cashed its settlement check. The Eighth Court of Appeals made the same observation:

> Rio Grande, LP acknowledges that it did file an intervention in the turnover proceeding but did so ***over a year after the trial court allowed Kretzer to act on its behalf*** in the La Zona Rio Lawsuit.[14]

Intervenors' Reply brief never really tells us why they waited over a year to intervene until after Princeton's settlement check cleared. One honest answer might be

[14] *WC 4th v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2024 Tex. App. LEXIS 1905, * 24 n.19 (Tex. App.—El Paso Mar. 15, 2024, no pet. h) (emphasis added).

'we wanted to take a flier with any court in the state other than the one who appointed the receiver.'[15]

> I know what she's going to do so ***I'm going to drop this*** because I don't want to get thrown out and then they'll be arguing *res judicata*. ***I'm just going to intervene in the case when it's all over*** and I'm going to get my money back.

[RR.34] (emphasis added).

V. STANDING/REDRESSABILITY: WHAT DO THE INTERVENORS ACTUALLY WANT RECEIVER TO DO FOR THEM?

In footnote 29 on page 19, Intervenors make an interesting concession that they have 'no interest' in the Receiver's fees award- but conveniently reserve the right to press such an argument in a different forum at a future point in time:

> [N]othing in their brief said anything about his fees, other than noting their amount. Brief 1. To be clear, this isn't to say the Intervenors lack any present or future interest relating to his fees; ***it's just not at issue here***. If a fee award ultimately were affirmed, however, they may seek imposition of a constructive trust and/or injunction to prevent dissipation.

(emphasis added).

The concession "it's just not an issue here" seems to definitively establish that these Intervenors have no redressable injury because- as they explain candidly-they do not want this Court to do anything for them in this regard.[16] And the Intervenors do

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[15] RR.32-33. Mr. Sternberg: "We made that argument to others that it's void. ***They were like, well, we're going to let Judge Hall interpret her own order and receiver so they all defer to you.*** Lucky you. Judge Hall: Indeed." (emphasis added).

[16] *Franklin v. Massachusetts*, 505 U.S. 788, 825 (1992) ("[r]edressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." (Scalia, J., concurring in part and concurring in judgment) (emphasis in original).

not exactly commend their standing contentions by arguing that "they may seek" relief in some future lawsuit because a judgment's "possible, indirect benefit in a future lawsuit"[17] does not predicate standing.

A big problem with the Intervenors' generalized umbrage with aspects of the receivership (apart from the receiver fees) is that the receiver fees were the only thing left for the 165th District Court to decide at the time of the intervention. This is not a tendentious statement by the Receiver; Justice Kelly's September 22, 2022 order was clear:

> We abate this appeal and remand this case to the trial court to allow the parties to effectuate, if possible, the parties' settlement agreement and to wind down the receivership, as necessary.

"Standing is determined at the time suit is filed in the trial court."[18] And for whatever reason, the Intervenors stood supine until weeks after the settlement was approved by the Northern District of Texas Bankruptcy before filing any intervention.

Nor do the Intervenors help explain their 'redressable injury' incident to 'illegalities' they alone perceive in the trial court's order:

> [T]he Order could not have lawfully authorized the Receiver to seize control of the Intervenor's assets or legal claims, as by taking control of their bank accounts, seizing the funds therein, or compromising their litigation claims by purporting to be their attorney, all of which were illegal actions against the Intervenors as detailed in their pleas.

Reply Br. at 7.

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[17] *United States v. Juvenile Male*, 564 U.S. 932, 937, 131 S.Ct. 2860, 180 L.Ed.2d 811 (2011) (per curiam).
[18] *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 m.9 (Tex. 1993).

The jurisdictional problem is this: 1) the Receiver did what the turnover order told him to do; 2) Receiver could not disregard the turnover order; 3) the turnover order was affirmed entirely by this Court; and 4) the February 7 'joint motion' filed by the judgment debtors and Princeton in the Texas Supreme Court backfired on them when the Panel Opinion was vacated on jurisdictional grounds. In other words, the Receiver is a court-appointee acting pursuant to an order that Mr. Paul's companies vehemently dislike, but that has been repeatedly affirmed by Texas courts. As angry as Intervenors may genuinely feel about these government actions, there is simply no jurisdiction for them to sue receiver for doing what the turnover order directed.[19]

VI. STANDING: JUDGMENT DEBTORS ARE ACTUALLY ASKING [WITH A STRAIGHT FACE] TO ASSUME THE OBLIGATION TO PAY RECEIVER FEES THAT THEIR SAME LAW FIRM ASKED BE SET ASIDE TO PAY RECEIVER FEES

If it was hard to see how companies with a sworn negative net worth can claim they have been injured to the tune of millions of dollars by Receiver's actions, it is really hard to see how these same companies can demand they be glued to the obligation to pay Receiver fees that their own lawyers asked to be paid from funds in a Bankruptcy reserve in their 9019 Motion to Approve Settlement. As best as Receiver understands this argument, the Appellants want to assume a future [highly speculative, completely

[19] *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 7 (Tex. 2011) ("[A] citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts.") and n.12 ("Federal law is in accord. *Allen v. Wright*, 468 U.S. 737, 754, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984) ("This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction…).

undeterminable, and exceedingly unlikely] 'surplus liability' to manufacture standing to continue to prosecute this appeal.

Texas law does not allow for speculative future injuries to predicate standing. "For standing, a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical.".[20]

Regardless, Appellants actually argue in this Court that they are the ones responsible for making a payment from their own pockets:

> As the judgment debtors, Defendant Appellants are responsible for paying the Receiver's lawful fees under settled Texas law.

Reply Br. at 16.

But what about Judge Hall's August 2023 order saying that the Receiver fees are to be paid from the Bankruptcy Reserve, instead of the judgment debtors? Oh no, the judgment debtors demand to invalidate this order so they can keep this liability for themselves to manufacture a justiciable interest where none actually exists:

> The Receiver argues that there is no injury because his fees will purportedly be paid from a fund in a bankruptcy court. But the trial court had no authority or jurisdiction to order the Fee Award to be paid from those funds. And even if it did, Defendant Appellants are still injured because the trial court did not eliminate or abate their fee liability.

Reply Br. at 2.

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[20] *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) (citations omitted).

Yet in another section of the reply brief, judgment debtors concede that they are not parties to the bankruptcy case in which the reserve fund for the receiver fees was established:

> The trial court has no authority or jurisdiction over the bankruptcy court or the parties to that proceeding, which *do not* include Defendant Appellants.

Reply Br. at 15 (emphasis in original).

Receiver contends that Appellants basically obliterate their own argument. Since the judgment debtors are not 'included' in the Bankruptcy Order, it is fairly tautologic that they will not receive any amount left in the reserve after receiver fees are paid. Trying a different tack, Appellants ask this Court to hypothesize some future successive fees award that would exceed the balance in the reserve:

> ***[T]he Receiver's expenses may exceed the funds in the bankruptcy court,*** and until this appeal is over, the Final Order is not a "final, non- appealable order."

Reply Br. at 17 (emphasis added).

If that is really their concern, there is a very easy solution: they could simply stop litigating against the Receiver's fees that was approved years ago. Or, there is another solution: if they don't want to stop litigating, they can simply tap the million-dollar indemnity that they gave to Princeton, also on reserve in the Bankruptcy Court for the Northern District of Texas. Either way, they cannot manufacture a justiciable interest by hypothesizing future receivership expenses in excess of the millions of dollars on reserve in the Bankruptcy Court.

Just last week, the Texas Supreme Court reversed a Houston court of appeals when a lawyer took totally opposite positions in different forums at different times to gain a litigation edge: "We therefore have no occasion to resolve the *correctness* of Fleming's current position—correct or not, he is estopped from asserting it". [21]

Frankly, "judicial estoppel" will not be the first thing they think to say if United States Bankruptcy Judge Larsen of the Northern District of Texas asks which set of lawyers from SQUIRE PATTON BOGGS was telling her the truth on the record when they inveighed upon her to approve the 9019 settlement with Princeton with the condition that the case would be closed on her docket once Receiver Kretzer is paid from the reserve- and which set of lawyers from that firm was pranking her to get their urged settlement across the finish line.

VII. A RECEIVER CANNOT "APPEAR" WHEN HE FILES HIS OATH ANY MORE THAN A JUDGE "APPEARS" WHEN SHE TAKES HER OATH AFTER ELECTION OR APPOINTMENT TO OFFICE

[21] *Fleming v. Wilson*, No. 22-0166, 2024 Tex. LEXIS 367, *(16-17 (May 17, 2024) (emphasis in original).

For over a century, Texas law has held that a Receiver is definitionally not "a party" to a case in which he is appointed.[22] Indeed, Paul's companies made this argument both to this Court- and the Eighth Court of Appeals. But Intervenors' explanation for how to get around this legal parameter is anchored in the receiver having filed his oath:

> [B]ecause the Receiver undertook the appointment through a filed acceptance and oath, he affirmatively and voluntarily appeared.

Reply Br. at 26.

Please note that there is not a single case cited for this proposition. While online docket sheets do not quite extend back to the years 1938 and 1916, presumably those long-dead receivers also filed oaths in their time.

A receiver is a mere agent of his appointing judge. The judge also files an oath upon taking office, but is not susceptible to suit unless he or she acts outside of all jurisdiction. "Judges are afforded immunity from suit for their judicial conduct."[23] "In Texas, judicial immunity applies to officers of the court who are integral parts of the judicial process, such as court clerks, law clerks, bailiffs, constables issuing writs, **court-appointed receivers** and trustees."[24]

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[22] *Anderson & Kerr Drilling Co. v. Bruhlmeyer*, 115 S.W.2d 1212, 1216 (Tex. Civ. App. 1938) ("A 'receiver' is defined as an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation…".) (citing and quoting *Kokernot v. Roos*, 189 S.W. 505, 508 (Tex. Civ. App.—San Antonio 1916, no writ)).
[23] *James v. Underwood*, 438 S.W.3d 704, 709 (Tex. App.—Houston [1st Dist.] 2014, no pet.).
[24] *Byrd v. Woodruff*, 891 S.W.2d 689, 707 (Tex.App.--Dallas 1994, writ denied).

Intervenors scoff at "any theoretical need for service of citation." [Reply Br. at 26] and yet graciously agree to "assume that an enforceable damages award against the Receiver himself would require compliance with service-of-process rules applicable to private parties." [Reply Br. at 27]. But the issue not one of defective service; no Intervenor ever requested a citation to begin with.[25] Intervenors are correct that "an intervenor can seek relief from a party without service if party makes a 'subsequent appearance'" [Reply Br. at 26] but a receiver is definitionally not "a party" nor did he ever make "an appearance."

Under Texas law, the concept of 'general appearance' is confined under its first element to entry by "a party":

> ***A party*** enters a general appearance when it (1) invokes the judgment of the court on any question other than the court's jurisdiction, (2) recognizes by its acts that an action is properly pending, or (3) seeks affirmative action from the court.[26]

Nor did receiver ever acknowledge that the Interventions were "properly pending"; the nub of his motions to strike and to quash discovery were that these putative Intervenors were asking the district court to act outside the confines of Justice Kelly's September 2022 remand order.

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[25] *Goss v. Sillmon*, 570 S.W.3d 319, 322 (Tex. App.—Houston [1st Dist.] 2018, no pet.) ("The citation is not a trivial document. Its purpose is to give the court proper jurisdiction over the parties, satisfy due process, and notify the defendant she has been sued so that she may appear and defend herself.").

[26] *Exito Electronics Co. v. Trejo*, 142 S.W.3d 302, 304–05 (Tex.2004) (per curiam) (emphasis added).

Footnote 34 is especially misleading. "See Receiver's Verified Answer and Plea in Abatement at 4 ¶ 13 (stating that claims against him by World Class Holdings must be abated given "dominant jurisdiction" of then-pending appeal), *World Class Holdings, LLC v. Seth Kretzer*, No. 2022-16833 (125th Jud. Dist. Ct., Harris Cty., Tex., Mar. 21, 2022). That 'answer' was filed alongside a 91(a) motion to dismiss on grounds of derived judicial immunity; the motion remains pending with Judge Hall. In other words, having failed to get around derived immunity in a case where they did sue and serve the receiver, Paul's companies cannot 'intervene' into the case where receiver was appointed and disregard legal requirements of service and citation that [inconveniently from their perspective] get in the way of their lust for revenge at the staggering success of this receivership.

VIII. The Intervenors Are Largely Bankrupt And Defunct Front Companies Controlled By Judgment Debtors Lobbing Collateral Attacks On A Receivership Order That Their Same Set of Lawyers Procedurally Defaulted

The Intervenors show no lack of hubris comparing themselves to the most prominent public companies in the world:

> [T]hey present a situation that is legally no different than if Apple, Google, and Microsoft had come to court, alleged the Receiver took control of their property and legal claims, and then their intervention and related discovery requests were denied without notice, hearing, or explanation.

Reply Br. at 5.

However strained the comparison with these corporate titans, the reality is that in September 2021, Receiver was tasked with monetizing a *custodia legis* estate that, by all accounts, owned or had been drained of capacious real estate company assets. "Nate Paul is the sole owner of all four companies through his real estate holding company, World Class Capital Group."[27]

Klinek v. LuxeYard, Inc. is a doctrinal case from the Fourteenth Court of Appeals citing the Panel Opinion in *Princeton* before the Supreme Court's expiration on March 8.[28] At 839-840, the Fourteenth Court of Appeals listed a litany of Texas cases allowing post-judgment seizure of membership interests in limited liability entities. It is a little hard to see how the turnover order of the 165th District Court perpetrated some great injustice when numerous courts across the state have allowed this precise form of relief. It is even harder to see how the Receiver bears some vague 'liability' for carrying out his instructions under Judge Hall's repeatedly re-affirmed court order.

The "unclean hands" argument redounds to the fact that neither judgment debtor complied with their discovery obligations- either to Princeton or to the receiver under the turnover order.

IX. MR. PAUL EMBEZZLED FROM JUDGMENT DEBTORS AND THEN MADE HIS PERSONAL TESTIMONY AN ISSUE BY SUBMITTING HIS AFFIDAVITS REGARDING NET WORTH

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[27] *900 Cesar Chavez, LLC v. ATX Lender 5, LLC*, No. 07-21-00236-CV, 2022 Tex. App. LEXIS 6122, *2 (Tex. App.—Amarillo Aug. 19, 2022, pet. denied).

[28] 672 S.W.3d 830, 838 (Tex. App.—Houston [14th Dist.] 2023, no pet. h.)

Judgment Debtor's Reply is mistaken that Receiver mounted any "launchpad for a diatribe against Nate Paul." [Reply Br. at 25]. While Paul is not a named judgment debtor, the discovery obtained by receiver straightforwardly established that Paul had embezzled from the named judgment debtors.

As a court-officer, Receiver could not- and did not- lay supine on this information. This fraud was the basis of the adversary suit that Receiver filed in the Northern District Bankruptcy Court. It is for this reason that the request found on the reply brief's page 5 ("Appellants respectfully submit that this Court must disregard the Receiver's allegations about Nate Paul—none of which have been properly made, supported, or adjudicated") is simply incorrect. Mr. Paul has been criminally convicted in Texas court for perjury about financial entities he controls.[29]

And Receiver is hardly the only one to reach informed professional conclusions about the ""Nate Paul Organization," the "Nate Paul Defendants," or the "Nate Paul Entities."" [Reply Br. p. 4]. Mr. Paul's superseding federal criminal indictment in the Western District of Texas added a conspiracy count to his wire fraud charges concerning "World Class companies".[30] Quite atypically in federal criminal

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[29] *In re Paul*, No. 23-0253, 67 Tex. Sup. Ct. J. 470, 2024 Tex. LEXIS 225 (Mar. 15, 2024) (affirming the habeas/mandamus ruling of the Third Court of Appeals in *In re Paul*, No. 03-23-00160-CV, 2023 Tex. App. LEXIS 1740 (Tex. App.—Austin Mar. 14, 2023).

[30] Peter McGuire, *Investor Connected To AG Paxton Pleads Not Guilty To Fraud* ("Prosecutors said Paul violated limited partnership agreements by using the money to support his World Class companies between 2011 and 2019. The investor filed periodic false reports with his partners that hid the amount of money World Class owed the partnerships or their earnings, according to prosecutors."). [November 16, 2923] available at: https://www.law360.com/articles/1767351/investor-connected-to-ag-paxton-pleads-not-guilty-to-fraud

prosecutions, the United States Attorney's Office has filed its 404(b) notice under seal.[31] It is for this reason that we cannot know for sure yet whether the affidavits filed in this Court by Mr. Paul swearing that judgment debtors owned nothing but old furniture will be offered as prior-bad-act evidence at the upcoming trial. In all fairness to Mr. Paul, the affidavit he filed in this Court might well be offered as intrinsic evidence, instead.[32]

The point to take away is that Receiver cast no personal aspersions on Mr. Paul; Mr. Paul simply interjected himself into the receivership proceedings by 1) filing his false net worth affidavit and 2) structuring the Princeton settlement with Phoenix Lending, "a newly formed Natin Paul related company" and signing it on behalf of "all companies he owns or controls."

X. JUDGMENT DEBTORS CANNOT CLAIM INJURY FOR THINGS DONE TO ASSETS THEY CLAIM NOT TO OWN OR CONTROL

At the outset in the year 2021, Appellants sponsored evidence that Judgment Debtors owned nothing but old furniture. Having self-declared their impecuniousness, it is a little hard to see how these same entities can predicate the core grievance of their appeal in the year 2024: "the trial court rubber-stamped the Receiver's improper appropriation of $2.53 million from non-judgment debtors." [Reply Br. at 14, n.3.].

> To establish standing in Texas, a plaintiff must allege 'a concrete injury . . . and a real controversy between the parties that will be resolved by the court.' *Id.* at

[31] *United States v. Paul*, 1:23-cr-100 (Doc. No. 74) [May 1, 2024].

[32] *See United States v. Sumlin*, 489 F. 3d 683, 689 (5th Cir. 2007) ("Rule 404(b) only applies to limit the admissibility of evidence of extrinsic acts. Intrinsic evidence, on the other hand, is generally admissible so that the jury may evaluate all the circumstances under which the defendant acted.") (internal cites and quotation marks omitted)

> 154. Specifically, the plaintiff must allege a threatened or actual injury—it may not be hypothetical. *See Forth,* 204 S.W.3d at 796.[33]

If Judgment Debtors are to be taken at their word that they had no ownership interests in any LLCs, it is not easy to see how these debtors suffered harm by way of anything done to those assets.

CONCLUSION

Intervenors cannot point to a single case in Texas history that allows a court to retain jurisdiction after the plaintiff/judgment creditor has disclaimed any further interest in the case. If there were any doubt on this score, the Texas Supreme Court rejected the parties' joint attempt to dub the receiver a "respondent" or "real party in interest" in its March 2024 ruling.

A receiver is not "a party" to the receivership case; Intervenor argued that proposition in this Court and in the Eighth Court of Appeals before they decided to do somersaults in this Court. Nor does a receiver become "a party" when he files his oath for the same reason a judge does not become "a party" when he or she takes the oath of office.

A 'general appearance' is limited in the first instance to filings made by "a party." Receiver never 'appeared' or did anything other than to point out to his appointing

[33] *Farmers Tex. Cty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 241 (Tex. 2020).

judge that the interventions were taken subsequent to, and contrary to, Justice Kelly's September 2022 remand order.

No case in Texas history has cognized a challenge to Receiver fees after the judgment creditor has declared itself 'fully funded', disclaimed any interest in the case, and refused to file any brief in the reviewing court of appeals. Receivers are not "parties" to the cases where they are appointed. Even if a Receiver could be characterized as a "real party in interest" with respect to an appellate challenge to the fees order, this only applies if the judgment debtor is actually the one paying the fees to the court-appointee.[34] WCCG and GVS concede they do not bear such a burden; they just want this Court to pretend that they do in order to manufacture a justiciable interest.

Princeton's receivership was a phenomenal success; it has repeatedly declared it "final settlement" to the S.E.C.

Judgment debtors' same law firm, SQUIRE PATTON BOGGS, commended the "25% fee of the $11.3 million collected" against a reserve containing $1 million more than that in support of its 9019 motion. As to Judgment Debtors' argument that these lawyers were basically faffing the Bankruptcy Judge on the record, that will likely make for interesting colloquy with the judge at the Northern District of Texas in the near

[34] "A presiding judge's determination of fee awards pursuant to the CJA is a non-judicial, non-appealable administrative order." *Marcum LLP v. United States*, 112 Fed. Cl. 167, 177 (2013). Just as the opposing party [Government] is not the one to pay fees awarded to an appointed lawyer, no appellant in this case is going to be the one to pay the appointed receiver fees. Hence, there is no appellate jurisdiction.

future. But Judge Hall was well within her discretion to consider these judicial admissions as evidence of reasonableness.[35]

Respectfully submitted this 22nd day of May 2024.

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35 As the Supreme Court recognized in a similar context, "the determination of fees 'should not result in a second major litigation.' . . . We can hardly think of a sphere of judicial decision-making in which appellate micromanagement has less to recommend it." *Fox v. Vice*, 5131 S. Ct. 2205, 2216 (2011) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983)).

CERTIFICATE OF COMPLIANCE

I certify that this document is written in 14-point font and contains 6,830 words.

/s/ *Dana E. Lipp*

____

DANA E. LIPP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been delivered this 22nd day of May 2024 to:

All Counsel of Record by the following means:

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