

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

**Appellants' Joint Motion
to Strike Sur-Response Brief of the Receiver**

The two undersigned counsel represent three appellant groups in this appeal: the Property Intervenor Appellants;¹ the Bank Account Intervenor Appellants² (together, the “Intervenor Appellants”); and the Defendant Appellants;³ (collectively, “appellants”).

“The rules of appellate procedure do not permit a sur-reply.” *In re Jordan*

¹ WC 4th and Rio Grande, LP and WC 4th and Colorado, LP.

² Great Value Storage, LLC and World Class Capital Group, LLC.

³ 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; and WC Subsidiary Services, LLC.

Foster Constr. LLC, No. 08-22-00201, 2023 WL 2366610, at *7 (Tex. App.—El Paso Mar. 6, 2023, no pet.) (orig. proceeding) (mem. op.) (citation omitted) (striking a sur-reply brief because “O’Brien did not seek leave of the Court to file its sur-reply brief either before filing or contemporaneously.”); *see also In re KFC USA, Inc.*, No. 05-98-01116-CV, 1998 WL 427284, at *1 (Tex. App.—Dallas July 30, 1998, no pet.) (orig. proceeding) (mem. op.) (same); *In re Reiss*, No. 05-21-00600-CV, 2022 WL 500023, at *1 (Tex. App.—Dallas Feb. 18, 2022, no pet.) (orig. proceeding) (mem. op.) (same); *In re Estate of Washington*, 289 S.W.3d 362, 370 (Tex. App.—Texarkana 2009, pet. denied) (stating that sur-replies are permitted at court discretion, not by the Texas Rules of Appellate Procedure).

In spite of this, the Receiver failed to move for leave before filing a 6,830 word Sur-Response Brief. *See Receiver’s Sur-Response Br.* (May 22, 2024) at 27. Neither the Texas Rules nor this Court authorized the Receiver to file this brief, and his 6,830 additional words of briefing pushed him well beyond the overall word limit.⁴ Because the Receiver was not authorized to file a Sur-Response and because his Sur-Response is approximately 3,000 words over-length in any event, this Court should strike it.

Moreover, as this Court knows, it is a long-standing custom that the party with

⁴ Each of the Receiver’s two Response Briefs were over 11,500 words long themselves. *See Receiver’s Response Br. to Intervenor Appellants’ Br.* (Mar. 25, 2024) at 50; *Receiver’s Response Br. to Defendant Appellants’ Br.* (Mar. 25, 2024) at 43. The Receiver was limited to 27,000 words across “all briefs” under TEX. R. APP. P. 9.4(i)(2)(B), and his Sur-Response puts him at approximately 30,000 words. *See Receiver’s Sur-Response Br.* (May 22, 2024) at 27.

the burden of persuasion (here, the appellants) is almost always entitled to have the last word. For instance, appellants typically get to make the final rebuttal at oral argument, and they file a reply brief after the appellee's response brief. Indeed, this tradition explains why the Texas Rules of Appellate Procedure do not provide for sur-replies.

Finally, the Receiver's conduct is inequitable on at least two fronts:

First, the Receiver has already made numerous lengthy filings in this Court. In addition to his Response Briefs (over 23,000 words combined), the Receiver also filed a Motion to Dismiss on September 10, 2023 (~11,500 words), a Response on September 19, 2023 (1,156 words), another Response on December 20, 2023 (1,299 words), a Sur-Reply on December 21, 2023 (752 words), and a second Motion to Dismiss on March 13, 2024 (1,695 words). Across all these filings, the Receiver has submitted briefing spanning almost 40,000 words, *not counting his 6,830 word Sur-Response*. As such, his filings far exceed the 27,000 total word limit for a party's substantive briefing under Texas Rule of Appellate Procedure 9.4(i)(2)(B), whether his shorter motion filings are technically counted as briefs or not.

Second, the Receiver has claimed an entitlement to reimbursement of all of his costs and fees related to ongoing litigation—including for his filings in this appeal and regardless of whether they are proper or authorized. The Receiver thus has no incentive to cease making lengthy improper filings absent some restriction by this Court.

Prayer

For the foregoing reasons, appellants respectfully request that this Court grant

their motion to strike the Receiver's improper Sur-Response. Appellants also request all such other relief to which they may be justly entitled.

Respectfully submitted,

/s/ Jeremy Gaston

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CERTIFICATE OF CONFERENCE

On May 29, 2024, I conferred by email with counsel for the Receiver and counsel for appellee Princeton Capital Corporation. Counsel for the Receiver indicated that the Receiver was opposed to this motion. Counsel for appellee had not responded as of the time of filing.

/s/ Jeremy Gaston

Jeremy Gaston

CERTIFICATE OF SERVICE

I certify that on May 29, 2024, a true and correct copy of the foregoing instrument was served by e-filing/e-service on the following counsel:

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Filing Code Description: Motion

Filing Description: Appellants' Joint Motion to Strike Sur-Response Brief of the Receiver

Status as of 5/30/2024 7:56 AM CST

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