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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

REPLY BRIEF OF THE INTERVENOR APPELLANTS*

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**The names of the ten Intervenor Appellants are listed on page 28.*

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INTRODUCTION

After the Receiver wrongfully seized control of their funds, real property, and legal claims, the Intervenors sought to intervene. But the district court denied intervention without notice or hearing and with no stated reason.

The Receiver contends that the Intervenors have no justiciable interest, which is meritless given the millions of dollars in harm they suffered. He also says the case is moot because the underlying judgment was satisfied, which is equally meritless because the subject matter of this appeal arises from the district court's jurisdiction over turnover proceedings, which is jurisdictionally independent of the judgment.

The Receiver claims the Intervenors strategically delayed in intervening. He never claimed that below, nor did the district court give that as a reason to deny intervention. Again, it gave no reason. Nor was intervention untimely: the Receiver himself said that claims against him should be abated until the prior appeal in this matter was resolved, and the Intervenors filed their pleas more than a year earlier.

The Receiver otherwise tries to justify his conduct by equating the Intervenors with other entities and individuals and claiming they were part of a fraudulent scheme. But such claims are both unsupported and improper, as recently confirmed by another court of appeals.[1] Finally, the Receiver even says his theft of funds was somehow "impossible," which is simply and self-evidently false.

[1] *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2024 WL 1138568, at *15-17 (Tex. App.—El Paso Mar. 15, 2024, no pet. h.) (mem. op.).

For these reasons and those detailed herein, the district court's denial of intervention should be reversed.

ARGUMENT

I. The Receiver wrongfully seized control of the Intervenors' property and legal claims.

As stated in their pleas in intervention, the Receiver seized funds and real property belong to the Intervenors that were worth millions of dollars. He also purported to act as attorney of record for two of them, settling their valuable legal claims for undisclosed amounts, apparently keeping all proceeds, then seeking their dismissal with prejudice. Brief 5-15.[2]

Some of his unauthorized efforts have already been reversed on appeal,[3] but he nevertheless contends he did absolutely nothing wrong because: (a) taking money from the Intervenors' bank accounts was impossible (and/or the banks are absent but necessary parties); and (b) he was somehow permitted to seize control of the Intervenors' funds, real property, and legal claims because: (i) they were part of a scheme to strip the judgment debtors of assets; (ii) other courts have said it was okay; (iii) Texas law permits seizure of LLC membership interests (and/or the Intervenors waived any contrary claim); and (iv) he has immunity.

None of these arguments provides any support for his actions:

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[2] Citations of this form are to the Intervenors' opening brief.

[3] *La Zona Rio*, *supra* note 1, at *17.

A. The Receiver had no authority to assert control over the Intervenors' property or legal claims, nor any immunity for such obviously unlawful actions.

1. The Receiver had no authority to assert control over the Intervenors' property or legal claims.

The Intervenors consist of six LLCs and four LPs. As such, they are legal entities distinct from each other and from the judgment debtors. And neither judgment debtor is a member or partner of any Intervenor. Brief 5-8.

Given this legal separateness, the only way a judgment against either judgment debtor could, even in theory, be used to support a turnover order against any asset of any Intervenor would have been if the Intervenor had been made a party to the case before judgment and the judgment incorporated findings permitting seizure of their assets (via, *e.g.*, alter-ego, veil-piercing, or fraudulent-transfer findings). This is a consequence of the numerous substantive limitations on the scope of the turnover statute. Brief 26-32.

But here, the Intervenors were *not* parties before judgment and *no* alter-ego/veil-piercing/fraudulent-transfer findings were made (before *or* after judgment), nor even sought against them. Nor did the district court's turnover order mention any Intervenor by name or otherwise.[4] Brief 3, 5, 34-35.

The Receiver ignores all of this and instead spends much of two briefs trying to establish from the ground up that some kind of veil-piercing, alter-ego, or

[4] The order generically referenced entities where the judgment debtors were members, but that did not include the Intervenors. Brief 4-5.

fraudulent-transfer liability is warranted due to alleged actions by non-parties to the judgment, primarily Nate Paul.

As a threshold matter, the Receiver's attempts are irrelevant to the Intervenors' appeal. For even if there had been pre- or post-judgment alter-ego/veil-piercing/fraudulent-transfer findings *and* a turnover order that named any Intervenor and otherwise appeared facially valid, that *still* would not justify denial of intervention. For even then, as non-parties, the Intervenors would be entitled to intervene and seek, among other things, an order quashing findings made in their absence. Again, these are consequences of multiple substantive limitations on turnover proceedings (Brief 26-28, 30-32), which the Receiver does not dispute,[5] plus the Intervenors' right to intervene under Rule 60 (Brief 32-33), which the Receiver does try to dispute (but which is refuted herein).

Moreover, denial of intervention here was even more egregious than in the above hypothetical because no findings supporting any aspect of the Receiver's story were ever made by the district court.

The Receiver barrels past that, stating (at 2)[6] that "[f]ollowing thorough review of bank statements, transaction documents, transcripts, and pleadings, [the] Receiver determined that [Nate] Paul and his organization misappropriated tens of

[5] The Receiver *does* dispute (at 46) that charging orders are an exclusive remedy vis-à-vis a judgment debtor's interests in an LLC or LP, which we address *infra* (Part I.A.2). But the impropriety of court findings against non-parties does not turn on that.

[6] Parentheticals of this form reference the Receiver's response to the Intervenors' brief.

millions of dollars of cash and real estate." The Receiver may believe himself qualified to make such findings, but it would be beyond all reason for him to think it was legitimate. The Receiver had no such authority, nor could such judicial power be delegated to him even in theory.[7] The Receiver's "facts" are thus not only irrelevant but improper for him to even present.[8]

Instead, as to the Intervenors, the relevant facts are just those alleged in their pleas in intervention and related filings. And they 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.

All that said, even the picture the Receiver tries to paint does not show what he thinks it shows. For example, the Receiver claims (at 2-9) that the Intervenors were members of a "single unitary operation," as defined by the state tax code, and that they, along with others, were "affiliated" entities. But corporate affiliation (as by common control or ownership), and the use of distinct entities for distinct aspects of related business operations, are legitimate means for managing commercial endeavors and business risk. Texas law is black and white that such uses of corporate

[7] Brief 32 & n.112.

[8] Further, even where an evidentiary record resulted in judicial findings of this type, that still would not support denial of intervention on the pleadings, let alone without notice, hearing, reason, or any opportunity or ability to contest them via discovery and other litigation processes. Brief 33-34, 36-37.

forms and business associations does not create alter-ego or veil-piercing liability.[9]

Even so, the Receiver says (at 3) that some of the Intervenors "are mere shells that conduct no legitimate commercial business." But the Receiver cites nothing in support, and the record establishes that all members and partners of the Intervenors were entities other than either judgment debtor or Nate Paul (which would be irrelevant in any case since he was not a judgment debtor). Brief 7-8.

In short, the Receiver's position rests entirely on his own notion that he was independently empowered to determine if someone had absconded with any judgment debtor's assets and, if he decided as such, then he alone – again, according to himself – was further authorized to "make up for that" by seizing control of assets and operations of entirely distinct legal entities that were neither owned nor controlled by the judgment debtors (nor judgment debtors themselves), so long as any alleged corporate affiliation existed amongst them.

But he wasn't so authorized. And he could not have been so authorized. His acts of theft and legal usurpation as presented in the Intervenors' pleas were thus entirely illegal and, having been taken under purported color of law, egregiously so.

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[9] *See PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 175 (Tex. 2007) (stock ownership, duplication of directors/officers, or exercise of control provided by stock ownership are not grounds to treat subsidiary as alter ego of parent); *TMX Fin. Holdings, Inc. v. Wellshire Fin. Services, LLC*, 515 S.W.3d 1, 9 (Tex. App.—Houston [1st Dist.] 2016, pet. dism'd) (same as to subsidiary's presence in corporate family); *SSP Partners v. Gladstone Invs. (USA) Corp.*, 275 S.W.3d 444, 454-56 (Tex. 2008) ("[T]he single business enterprise liability theory . . . will not support the imposition of one corporation's obligations on another.").

2. An LLC membership interest cannot be seized to satisfy a monetary judgment.

Under Texas law, a charging order is the *exclusive* means for satisfying a monetary judgment with respect to a debtor's interest in an LLC or LP. Brief 29-30 & n.104 (citing TEX. BUS. ORG. CODE §§ 101.112(d), 153.256(d)). Thus, even if the Receivership Order had purported to reach any membership or partnership interest of any Intervenors (which it didn't), the most it could have lawfully authorized was a charging order against future distributions made to that interest.

This means the 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.

The Receiver argues (at 46) that there might be an exception to this charging order limitation. Of course, that would be irrelevant here (since the judgment debtors weren't members/partners of the Intervenors in the first place), but even if they had been, the authority he cites – *Jiao v. Xu*, 28 F.4th 591 (5th Cir. 2022) – does not support his position.

In particular, in *Jiao*, the Fifth Circuit affirmed a turnover order that required a judgment debtor to turn over part of an LLC membership interest. But in *Jiao*, the subject matter of the underlying dispute was the debtor's membership interest in the LLC. Specifically, the parties disputed whether the judgment debtor had paid for all

of the membership interests he held. The district court determined he had not, and so he had to give back the interests he had not paid for. *Id*. at 596-97.

Apart from being an unremarkable example of specific performance, that remedy was no exception to § 101.112(d). And that's because § 101.112(d) only covers situations where the judgment debtor is the rightful owner of the membership interest at issue: "The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the ***judgment debtor's*** membership interest." (emphasis added)). But when a court determines the judgment debtor was not the rightful owner of the membership interest (*e.g*., because they haven't paid for it, as in *Jiao*), then ordering its turnover does not even implicate § 101.112(d) to start with.

Jiao reached the same result, albeit on even narrower grounds, specifically holding that § 101.112(d) doesn't prevent turnover of an LLC interest if the judgment creditor is the same LLC whose interest is being turned over and an "explicit" award of the membership interest was "part of the judgment" itself (a standard some Texas courts have endorsed on the grounds that such circumstances obviously do not affect the business operations of the LLC – since the LLC *is* the judgment creditor – the animating concern of § 101.112(d) in the first place).[10]

As can be seen, neither way of looking at these situations provides any basis to think the turnover statute lets a receiver seize a judgment debtor's LLC/LP interest

[10] *Jiao*, 28 F.4th at 600.

whose ownership was unaffected by the judgment – let alone seize the underlying assets or legal rights of the LLC/LP (which do not even belong to individual owners, *see* Brief 28) – as the Receivership Order purported to do here.[11] Consistently, the Fourteenth Court of Appeals invalidated a turnover order identical in this respect. Brief 38 & n.130 (citing *Bran*).[12]

The Receiver says (at 46-47) *Bran* doesn't count because the affected party objected to the turnover order whereas the Intervenors did not. Of course, the reason they did not is because they were not parties to the Receivership Order, nor were they parties to the appeal of it, nor would they have had reason – even as parties – to challenge it on *that* ground since it did not purport to reach *them*.[13] And the consequence of that last point is worth reiterating: since the Receivership Order didn't purport to reach them in the first place, the Receiver had no basis to do anything relating to their membership/partnership interests irrespective of § 101.112(d).[14]

Finally, any issue concerning the scope or relevance of § 101.112(d) would at most present a merits issue in resolving the Intervenors' substantive claims, not a

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[11] Brief 4-5. The Receiver says (at 45-46) that Texas law does not "clearly" restrict receivers to charging order when assets are held by "wholly owned or controlled sham subsidiaries." But there have been no such findings, and the Receiver had no power to make them up.

[12] *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421, at *1 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. filed) (mem. op.).

[13] Nor did the Receiver take action against them until months after the appeal began.

[14] In addition, turnover receivers have no lawful ability to assert control over third-party assets or legal claims, so any contrary turnover order would be obviously illegal and provide no immunity. Brief 26-32.

basis to deny intervention.

3. The Receiver has no immunity for acts outside the scope of the Receivership Order or otherwise obviously unlawful.

The Receiver says (at 43-44) he has immunity from the Intervenors' interventions and discovery requests and so they were properly denied.

But the district court gave no reason for its denial, nor would immunity have been a valid reason. At best it's an affirmative defense (Brief 51), not grounds for denial on the pleadings, let alone without notice and hearing.

Nor would the Receiver have any valid immunity claim for actions outside the scope of the Receivership Order or obviously outside the power of the district court to authorize in the first place.[15]

The Receiver says (at 43-44) that "[i]n 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."

The Receiver attributes this broad quote to the Supreme Court. In fact, it's from a 1994 intermediate decision,[16] and that matters because the Supreme Court later held in 2002 that immunity for court officials is neither a given nor an "across the board" concept. Rather, the scope of any immunity depends on the specific kind of task the officer was delegated to perform and, most importantly, whether the task

[15] Brief 39 & n.135.

[16] *See Byrd v. Woodruff*, 891 S.W.2d 689, 707 (Tex. App.—Dallas 1994, writ dism'd).

required exercise of discretionary decision-making functionally equivalent to that of a judge. *See Dallas Cnty. v. Halsey*, 87 S.W.3d 552, 553 (Tex. 2002).

Thus, receivers are not entitled to immunity in the first place – even as to tasks within their delegated authority – insofar as those tasks do not involve discretionary decision-making functionally equivalent that a judge. And this would be a critical point here since turnover receivers possess few, if any, powers having any range of discretion conceivably relevant here. They basically can receive and sell property, then hand over the proceeds.[17]

All that said, the present situation doesn't even raise any "scope of immunity" issue because the Receiver has been alleged to have gone well beyond the scope of what the Receivership Order even purported to delegate. The Receiver thus has no immunity from liability as to resulting harms.[18]

4. The one "contrary" finding the Receiver cites was vacated on appeal.

The Receiver says (at 37) that the Property Intervenors' challenges to his unauthorized settlements failed in Travis County before a "myriad" of trial courts. Yet the only ruling he cites was reversed on appeal, with the Eighth Court of Appeals specifically holding in March of this year that the Travis County trial court abused its discretion in connection with the question of the Receiver's authority because,

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[17] TEX. CIV. PRAC. & REM. CODE § 31.002(c). By contrast, a Chapter 64 receiver can have other powers, such as the ability to "compromise demands" or "perform other acts in regard to the property as authorized by the court." *Id.* § 64.031.

[18] The Receiver says (at 43) immunity extends to discovery, but that would only cover claims with immunity.

among other reasons, the record "[did] not support an implied finding that [the Receiver] had the authority to act on Rio Grande, LP's behalf in the La Zona Rio Lawsuit . . . ."[19]

Indeed, this directly applicable result in the Eighth Court of Appeals has painted the Receiver into such a corner that he has resorted to truly frivolous arguments, including his claim (at 47-49) that the Property Intervenors defaulted here by not filing a brief. But he knows full well that the Intervenors' brief (filed on February 7, 2024) was filed on behalf of all ten Intervenors, including the Property Intervenors. *See* Brief ii-iii (Identity of Parties and Counsel, defining the "Intervenors"), 55 (submission and signature of counsel on behalf of the "Intervenors").[20]

B. The Receiver cannot blame the banks, or their absence, for his wrongful seizure of funds.

The Receiver says (at 35) he "could hardly 'take' any money from banks" or " 'force' [them] to remit funds"; rather, that would somehow be a "factual impossibility" because all he did was "sen[d] letters to banks" who gave money to

[19] *La Zona Rio*, *supra* note 1, at *17. Other trial court decisions (Brief 9-13) remain on appeal. Of course, even if the Receiver said a dozen courts endorsed what he did, it wouldn't justify denial of intervention on the *pleadings*, let alone without notice and hearing. Rather, the Intervenors would be entitled to litigate the merits of any defense the Receiver claimed regarding that.

[20] On March 8, 2024, the Clerk's office issued a late-brief notice as to the Property Intervenors, perhaps not realizing they were a subset of the Intervenors. The undersigned called and explained this (and also submitted written confirmation on March 11, 2024), and the Clerk's office withdrew its notice on March 13, 2024.

him based on their "independent[]" legal investigation.

This is like saying someone who successfully passes a bad check didn't really steal money because the theft was by deception rather than force. And deception is exactly what occurred here (assuming that, as the Receiver himself suggests, he obtained the Intervenors' money simply by requesting it from the banks on the grounds that he had some legal right to it). This was deception because nothing in the Receivership Order purported to let him take funds of any Intervenor.

Now, the Receiver may be suggesting that he didn't ask for the Intervenors' money specifically and, in turn, if that's whose money the banks gave him, it was their fault not his.[21] But that doesn't get him anywhere either. If the money was the Intervenors' money, and if the Receiver obtained it, he certainly could be ordered to give it back whether it was his fault, the banks' fault, or even just a mistake.

And even more fundamentally, the question here isn't even whether he got their money (factually); the question is whether the Intervenors should have been permitted to intervene based on such allegations, and the answer to that does not itself turn on what happened or even why. Rather, answers to those questions should have been permitted to be determined through litigation and discovery.

[21] The Receiver says (at 35) the banks "independently determined . . . these accounts were controlled by judgment debtors." By this, he may mean he generically asked for funds in accounts controlled by "the judgment debtors." But the turnover statute only reaches debtor property, not third-party property (even if possessed/controlled by a debtor). Brief 26-28. For example, a brokerage might possess and control customer assets worth millions of dollars in managed investment accounts, but it couldn't lawfully be ordered to turn those over to satisfy a judgment against itself.

The Receiver otherwise says (at 36) that the banks are Rule 39 necessary parties. Of course, if that were so, their absence would not justify denial of intervention;[22] at most, it might have resulted in an order to join them (*i.e.*, if the issue had been raised). But the issue was not raised or decided below and thus was waived.[23] Nor does the Receiver even try to explain how any bank's presence was necessary if, as he also says, they are immune from liability.[24]

That said, the statutory provision he cites regarding immunity – Texas Finance Code § 59.008(c) – does not itself provide any 'automatic' immunity for "releasing depositor money to receivers pursuant to court order" as he suggests. Rather, to avoid liability, a bank would have to establish, at a minimum, that its release of funds was in response to a "claim against **the customer**" (emphasis added) under § 59.001(2). And the Receiver does not address this important qualification, likely because there never was any court order permitting the seizure of any funds held in the name of (or on behalf of) any Intervenor.[25] In other words, there was no "claim" against any "customer" to even invoke § 59.008(c).

[22] Nor did the district court purport to do so.

[23] *In re Hall*, 433 S.W.3d 203, 211-12 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (orig. proceeding) ("necessary party" complaint waived absent verified objection).

[24] The Receiver even says (at 36) that the banks can't be sued, but cites nothing establishing immunity from suit (versus immunity from liability).

[25] TEX. FIN. CODE § 59.001(2) (limiting "[c]laim[s] against a customer" to accounts "in the name of the customer" or for their substantive benefit).

II. The Intervenors were entitled to intervene because they were third parties seeking to protect their legal rights.

The Receiver says the Intervenors had no right to intervene because: (a) the case was moot; (b) the Intervenors have no justiciable interest of their own; (c) they were trying to challenge the judgment; (d) their interventions were untimely; and (e) they had unclean hands. None of these arguments supports denial of intervention:

A. The mootness of the judgment debtors' prior appeal did not eliminate the district court's separate jurisdiction over turnover proceedings.

The Receiver says (at 22) intervention was improper because the case became moot during the pendency of the judgment debtors' prior appeal of the judgment. But even assuming that appeal became moot during its pendency,[26] the Intervenors' basis for intervention here arose from events that occurred after that appeal was initiated and, more importantly, arose within the scope of the district court's separate jurisdiction over turnover proceedings. *See* Intervenor's Brief at 42-43 & nn.143-44 (collecting cases).

But the Receiver just ignores this point (and the authorities supporting it), instead arguing (at 39) that the interventions were "invalid" because intervention is "not permitted post-judgment when the judgment has been satisfied." The Receiver cites nothing in support of that idea, and since it is contrary to all previously-cited authorities, it must be rejected.

[26] For this, the Receiver cites (at 22) the Supreme Court's vacatur of the prior appeal as moot. That ruling is binding on this Court, but it is not law of the case as to the Intervenors (they were not parties to the appeal), and Intervenors reserve the right to challenge it as necessary in the Supreme Court.

The Receiver's view also makes no sense, even from the Receiver's perspective. Indeed, if the Receiver were right that satisfaction of a judgment somehow caused a district court's jurisdiction to entirely vanish, that would mean the court also would lose jurisdiction to consider and decide any fee request by a receiver. But the Receiver certainly is not advocating that, and that's because a district court's turnover jurisdiction doesn't simply vanish: a district court always retains jurisdiction over its appointed receiver and associated turnover proceedings until, at a bare minimum, they are concluded and the receiver discharged.

The Receiver says (at 33, 43) that, if intervention were permitted after a judgment was satisfied, then parties could "start[] all over" by making the receiver a "proxy" for the plaintiff; "litigation would never end;" and judgment finality would be thwarted. This is an unsupported parade of horribles: the interventions here did not call into question the judgment's finality, nor make the Receiver a proxy for any other party, nor let any party "start over." It solely sought to hold the Receiver accountable for numerous improper actions against third parties.

Fortunately, situations where intervention is needed post-judgment as a result of receiver misconduct appear to be rare. Nor is there any reason that would change, unless receivers were simply permitted to avoid accountability for wrongful acts against third parties, as the Receiver seeks here.

B. The Intervenors have a justiciable interest given the harm they allege was caused by the Receiver's actions.

The Receiver says (at 32) that the Intervenors have "no justiciable interest at

stake." But the harm they have alleged to their legal rights, including both real and personal property rights, along with the district court's denial of intervention, self-evidently demonstrated justiciable interests with respect to both district court and appellate jurisdiction. Again, the Intervenors were not parties to the 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, anyone. Nevertheless, according to their pleas in intervention, the Receiver deprived them of real and personal property, and legal rights, together worth millions. In such situations, multiple cases expressly permit third parties to intervene in post-judgment turnover proceedings. Brief 32-33 & nn.113-14 (collecting cases).

The Receiver says (at 32) the Intervenors did not provide adequate legal support for a justiciable interest. In fact, the Intervenors: (1) explained the harms suffered to their legal rights, including property rights, at the hands of the Receiver; (2) contended they had an "interest permitting intervention" and were "entitled to intervene in post-judgment proceedings because the Receiver's actions harmed their legal rights, including real and personal property rights"; and (3) cited supporting authority (specifically referenced above) permitting post-judgment intervention in turnover proceedings to protect property rights.[27] Brief 5-15 (factual allegations

[27] The Intervenors submit this is enough to establish trial and appellate jurisdiction, but that is also established by the district court's denial of intervention without due process

showing harm to property and related rights), 32-33 (legal authority for third-party post-judgment intervention), 33-34 (legal conclusion of possessing an interest supporting intervention). This is a fully supported legal argument proving the existence of a justiciable interest given the cited authority (indeed, all of those cases would be wrong if such a situation did not establish a justiciable interest).[28]

The Receiver otherwise tries to deny that the Intervenors have a justiciable interest by erecting a strawman argument. Specifically, he says (at 32, 35, 38) that the Intervenors are trying to reduce his fees but have no interest in his fee award.

This is a strawman because the 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.

Nevertheless, to distract from the Intervenors' obvious justiciable interests, the Receiver says (at 32, 38) that "the Intervenors feel very strongly that the receiver fees should be set at zero" and that the Intervenors "are asking this Court to reduce receiver fees" and even that this appeal just "concern[s] the receiver fees." Again, with respect to the Intervenors, this appeal has nothing to do with the Receiver's

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(Brief 15-22, 35-40), including because the Intervenors were always entitled to that, even in defending jurisdictional challenges.

[28] The Receiver says (at 32 n.60) "generalized grievance[s]" are insufficient, but the ones here are specific and substantial.

fees.[29]

C. The Intervenors' claims against the Receiver were not released.

The Receiver says (at 23-25) the Intervenors' claims against him were released in a settlement agreement. But that argument fails for two reasons:

First, the Receiver was neither a party to the cited settlement (indeed, he strenuously objected to it),[30] nor a released party, and its release provisions expressly excluded all parties' claims against the Receiver. We previously stressed this point (Brief 53 & n.175), yet it is entirely ignored by the Receiver.

Second, the Intervenors' claims against the Receiver are not claims by the judgment debtors against Princeton (or vice versa) or claims involving non-judgment debtor Nate Paul (or any company he owns or controls). They are claims of the Intervenors against the Receiver who, as a turnover receiver, never stood in the shoes of the judgment debtors (the Defendant Appellants), or the judgment creditor (Princeton), or Nate Paul.[31] Thus, the Intervenors' claims against the Receiver would not have been in the scope of any release, even absent the cited carve-out.[32]

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[29] Indeed, nothing 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.

[30] Defendant Appellants' Brief at 6-7.

[31] Rather, as the Receiver explains (at 33), he was appointed as an agent of the court (although the Intervenors' claims arise from acts beyond the scope of his agency).

[32] The Receiver suggests (at 25) the Intervenors' claims are "derivative" claims. But the Intervenors' claims have always been direct claims against the Receiver based on actions

D. The Intervenors' pleas were neither untimely, nor found or claimed to be.

The Receiver says (at 21) that the district court dismissed the Intervenors' pleas in interventions and discovery requests as "untimely." The Receiver cites nothing in support and there is nothing: the court gave no reason for dismissal. Nor did the Receiver's motion to strike the Intervenors' pleas in intervention allege any kind of undue delay. He alleges that now (at 40-42), but points to no deadline, express or implied, to even measure timeliness.[33] Nor does he make, let alone support, any claim of prejudice to him or anyone else based on timing.

The Receiver complains (at 40-41) that one of the Intervenors purportedly decided – allegedly as a matter of "gamesmanship" – to wait to intervene here until everything was "over." Yet in making this argument, the Receiver entirely fails to mention that any alleged delay was in direct response to his own pleadings, which characterized the initial litigation against him as a collateral attack on the Receivership Order that must be abated during the appeal of that order (or otherwise

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he took against them that harmed them directly. Similarly, they are made entirely on their own behalf, not that of Princeton, the judgment debtors, or any other entity. Thus, they are not "derivative" claims. *See* BLACK'S LAW DICTIONARY (11 ed. 2019) (defining derivative suits as those "arising from an injury to another person, such as a husband's action for loss of consortium arising from an injury to his wife caused by a third person" or "by a beneficiary of a fiduciary to enforce a right belonging to the fiduciary[, such as] a suit asserted by a shareholder on the corporation's behalf against a third party").

[33] The cases he cites (at 41-42 & nn.76-78) involve situations where parties waited years after learning of any need to intervene or else intervened when it would delay existing parties' ability to reach judgment, neither of which occurred here.

dismissed).[34] Certainly, having taking the position that such claims were effectively unripe before resolution of that appeal, he cannot be heard to complain that any Intervenor "waited" too long: they all intervened months before this Court's decision in the prior appeal and over a year before the Supreme Court's decision.[35]

E. The Intervenors' pleas are not barred by "unclean hands."

The Receiver says (at 44-45) that the Intervenors are barred from intervening because, according to him, they disrespected the district court by not complying with discovery orders and turnover orders and thus have "unclean hands." The Receiver cites no evidence that any Intervenor did any such thing, nor can he attribute to the Intervenors acts he alleges were committed by others.

Nor did the Receiver assert this below as reason to deny intervention. Nor did the district court purport to deny intervention on that basis. Nor has the Receiver cited any authority that the equitable unclean hands doctrine could be grounds to simply deny, as a threshold matter, a party's legal right to intervene.

F. The Intervenors are not challenging the judgment or receiver appointment.

The Receiver acknowledges (at 39) that parties can intervene post-judgment

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[34] *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). This Court may take notice of these pleadings. *Freedom Comms., Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012).

[35] CR2060-93 (Oct. 31, 2022); CR2094-100 (Nov. 1, 2022); CR2344-669 (Nov. 29, 2022); CR3849-62 (Jan. 10, 2023). The Receiver is also wrong to say (at 42) these interventions were initiated "long after the subject of the receivership has been resolved." That "subject" included anything of value he obtained, which remains unresolved given all outstanding third-party claims.

to protect property rights if they do not "attack the substance of the judgment itself." He then says (*id*.) that "these pleas in intervention expressly attacked the substance of the Receivership Order." But as previously explained, the Receivership Order is not the judgment (Brief 25), nor did the Intervenors even need to attack that Order since the Receiver's actions which are at issue exceeded any ostensible authority he had under it. Brief 45 n.151.

The Receiver says (at 40) that the Intervenors aren't seeking to protect their "independent" property because they are owned or controlled by one of the judgment debtors (WCCG). But the Receiver has no evidence WCCG owns or controls any Intervenor, and the record evidence shows WCCG is not a member or partner of any Intervenor. Brief 7-8.

More fundamentally, a turnover receiver has no power to seize property owned by non-judgment debtors, nor take over an LLC or LP, even where a judgment debtor is their owner. Brief 26-28. Thus, even if WCCG directly owned or controlled any Intervenor, that would not make the Intervenor or its property a component of any "receivership estate" as the Receiver claims (at 40).

The Receiver says (at 39) that the Intervenors are trying to obtain adjudication of substantive rights and that this is impermissible in turnover proceedings. Of course, that rule is precisely what should have prevented what happened here from happening, where the Receiver took it upon himself to improperly make substantive adjudications. Having broken the rule, he cannot be permitted to invoke it as a shield:

his wrongful actions are what forced Intervenors to come to court to protect their substantive rights.

III. The Intervenors properly used intervention to challenge the Receiver's actions.

A. Parties can intervene without "resembling or "aligning" with another party.

The Receiver says (at 22) that the Intervenors: (1) do not "resemble" the plaintiff or "align" with the defendants; and that (2) if the Intervenors wanted to "resemble" the plaintiff, they needed to "get in" before the plaintiff (Princeton) "got out." But point (1) makes no sense: the Intervenors' dispute is with the Receiver, not the existing parties, thus there is no reason for them to resemble or align with them.[36] And point (2) is just another way for the Receiver to say that the Intervenors cannot intervene after the judgment was satisfied, which was addressed above.

B. The Receiver is a party or quasi-party adverse to the Intervenors.

The Receiver says (at 1, 20, 37) he is not a party. Yet both the Intervenors and the Defendant Appellants cited substantial authority indicating that receivers can be treated as parties in proceedings where they have been appointed. Brief 41-42 & n.140; Defendant Appellants' Brief at 30-33 & n.12.

In response, the Receiver addressed none of that and, at one point, even begrudgingly acknowledged (at 38) the possibility that parties affected by "improper actions taken by a receiver" may in fact be "entitled to judicially challenge" such

[36] The Receiver suggests otherwise (at 34) since intervenors in many cases may be seeking the same relief as the plaintiff. But there is no reason to insist on that where intervenors appear post-judgment to protect their own rights.

actions.[37] The Receiver says (*id.*) that this is limited to affected parties who are *already* parties (*i.e.*, non-intervenors). But if existing parties can challenge wrongful actions of the Receiver, that confirms he is substantively a party for such challenges, and there is no reason to exclude intervenors since they otherwise are considered parties for "all purposes."[38]

The Receiver says (at 33) he does not "seem to qualify" as a "person a claim is brought against" because he is a court agent.[39] But the allegations here are that he acted outside the scope of any permissible agency.

The Receiver says this case became moot, citing (at 22) the Supreme Court's vacatur of the appellate decision in the prior appeal. But on its face, the Supreme Court's action was solely a ruling on the jurisdictional status of a specific interlocutory appeal; the Court did not issue any jurisdictional ruling as to the overall case, let alone as to separate turnover proceedings involving third-parties not present in the appeal, nor did it opine on the party/non-party status of receivers, either in general or as it pertained to that prior appeal.

The Receiver has tried to claim otherwise, ostensibly because the plaintiff and

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[37] The Receiver (at 38) phrased this as a rhetorical question then answered it "Perhaps."

[38] *Triple P.G. Sand Dev., LLC v. Del Pino*, 649 S.W.3d 682, 698 (Tex. App.—Houston [1st Dist.] 2022, no pet.). 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.

[39] The Receiver says (at 37) he was not a party in *La Zona Rio*, *supra* pp. 11-12, but that would not determine anything here (and he *did* appear there and file a 497-page motion to dismiss).

defendants had asked the Supreme Court to appoint the Receiver as a respondent to defend the court of appeals' judgment.[40] But the Supreme Court's vacatur of the judgment meant there was no judgment to defend. As such, the parties' request for the Court to appoint the Receiver to defend the judgment was itself moot. The Supreme Court's implicit denial of that request is thus no holding as to who was or wasn't a party for any particular purpose.

C. The Receiver was properly served (or waived service); service also was unnecessary as to much of the relief requested by the Intervenors.

For the first time on appeal, the Receiver says (at 19-20, 32-33) he wasn't properly sued by the Intervenors, specifically because he wasn't served with process or under Rule 21a. In fact, he not only was served under Rule 21a, but he waived service by multiple general appearances; in addition, service was unnecessary for certain relief the Intervenors requested:

1. The Receiver was properly served under Rule 21a.

Even if the Receiver required service like a private litigant for any particular purpose, that was accomplished when the Intervenors filed their pleas in intervention: they directly served the Receiver via electronic service, which is permitted for interventions as to any "person[] who [had] already appeared."[41] And the Receiver had already appeared, beginning with his filing that accepted the court's

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[40] Receiver's Second Motion to Dismiss 4-5.

[41] CR2084, 2099, 2353, 3861; TEX. R. CIV. P. 21a(a)(1), (b)(3), (e); *Baker v. Monsanto Co.*, 111 S.W.3d 158, 160 (Tex. 2003) (for interventions, Rule 21a controls service for those who already appeared).

appointment and submitted his oath. CR70 (September 21, 2021).

The Receiver says (at 33) that "by definition" he "never 'appeared' in this case because he was appointed by the very state district judge presiding in the case where the interventions got filed." But that's exactly backwards: because the Receiver undertook the appointment through a filed acceptance and oath, he affirmatively and voluntarily appeared.

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

After the Intervenors' initial pleas were filed, the Receiver filed a motion to strike their interventions. CR4199-216.[42] The Receiver also affirmatively sought to quash the Intervenors' discovery requests. CR3897-904; CR12002-19. These filings were affirmative requests for judicial relief and thus constituted additional general appearances, again eliminating any theoretical need for service of citation.[43]

The Receiver contends (at 20) that "[a] party who becomes aware of the proceedings without proper service of process has no duty to participate in them." But all questions of service aside, he *did* participate – and extensively so – which waives any objection.

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[42] The Receiver's motion was previously cited as "CR4179-200." Brief xi, 17. That part of the clerk's record was renumbered after it was first filed, however, and the renumbered cite is CR4199-220.

[43] *See Baker*, 111 S.W.3d at 160 (an intervenor can seek relief from party without service if party makes "subsequent appearance"); *In re D.M.B.*, 467 S.W.3d 100, 103 (Tex. App.—San Antonio 2015, pet. denied) ("request for affirmative action constitutes a general appearance"). Even a simple hearsay objection suffices. *Id*.

3. The district court had no discretion to deny intervention for lack of service on the Receiver because the Intervenors sought relief that did not require it.

The Intervenors are obviously adverse to the Receiver, and they also clearly pleaded for relief broad enough to encompass remedies that, if granted, would create rights in their favor against the Receiver (such as a damages award). Brief 49-50 & n.163. And for purposes of this appeal, the Intervenors will assume that an enforceable damages award against the Receiver himself would require compliance with service-of-process rules applicable to private parties. But not all of the relief requested by Intervenors would require such compliance. And that's because the district court already had jurisdiction over the Receiver. Thus, insofar as the Intervenors sought relief within the scope of *that* jurisdiction, the district court could issue it whether they served the Receiver in any fashion or not.

For example, suppose a receiver collected $1,000,000 and reported it to the appointing court. That court could certainly order him to deposit it in the court's registry, and he could not resist the order on the grounds that it resulted from a request to the court by a party who never served the receiver. For even if the *reason* underlying a court's order traced back to an intervenor who showed up and said their money had been stolen, that does not imbue the receiver with any special right to just defy a court order within the scope of the court's authority over him.[44]

And here, the court's inherent authority over the Receiver would have

[44] CR70 (Receiver's oath, stating he would "obey the orders of the Court").

permitted it to have issued substantial relief in favor of the Intervenors within the scope of their broad prayer, including declarations regarding the Receiver's authority as to past actions, orders requiring him to produce particular materials or information, orders enjoining him from dissipating funds, etc. Any lack of service against him personally would not be grounds to entirely deny intervention, let alone as to such relief.

CONCLUSION

For these reasons and those previously presented, Intervenors request the relief sought in their opening brief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of Rule 9.4(i)(2)(C) of the Texas Rules of Appellate Procedure because this brief contains 7,494 words based on computer word count, excluding parts exempted by Rule 9.4(i)(1).

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