Cause No. 01-23-00618-CV

GREAT VALUE STORAGE, LLC and WORLD CLASS CAPITAL GROUP, LLC, *Appellants*, *v.* PRINCETON CAPITAL CORPORATION, *Appellee*,	§ § § § § § § § § § §	IN THE COURT OF APPEALS FIRST DISTRICT OF TEXAS HOUSTON, TEXAS

RECEIVER'S OPPOSITION TO APPELLANTS' JOINT MOTION TO STRIKE SUR-REPLY

TO THE HONORABLE FIRST COURT OF APPEALS:

Comes Now, Seth Kretzer, Receiver, and files this opposition to the Appellants' Joint Motion to Strike Sur-Reply:

I. INTRODUCTION

Former Justice Terry Jennings has explained of a sur-reply brief:

> File. The Rules do not prohibit them, and they were a known practice when the Rules were written.
>
> Strictly limited to new points raised in the Reply Brief that may affect the outcome.

Kevin Dubose, Lauren James, Hon. Terry Jennings, *Appellee's Sur-Reply Briefs*, 2019 ADVANCED CIV. APP. PRAC. 16-III.

II. RECEIVER WAS IMPELLED TO OBJECT TO NEW ARGUMENTS BEING RAISED IN THE REPLY BRIEFS

Receiver contends that his sur-reply brief fits to a 'tee' the desideratum stated in Justice Jenning's article.

Appellants do not dispute that they tried to raise new arguments in their reply briefs - or that this is forbidden by TEX. R. APP. P. 38.3.

For example, the crux of the Intervenors' reply brief was that a receiver's taking of his oath - or the filing of motion to strike so-called 'interventions' violative of Justice Kelly's September 2022 remand order - transformed a receiver into "a party" even though a century of Texas jurisprudence has held that a receiver is categorically excluded from such status.

The sur-reply was necessitated by the fact that neither of these arguments was found in the opening briefs. The obvious implication is that appellants snuck in these new arguments in an attempted work-around of the Supreme Court's March 8 order reversing on jurisdictional grounds. *Great Value Storage, LLC v. Princeton Capital Corp.*, No. 23-0722, 2024 Tex. LEXIS 216 (Mar. 8, 2024).

If Receiver cannot file his sur-reply, how is such a violation of the appellate rules to be lodged in this Court? Appellants real umbrage is not with the filing of a sur-reply, it is that a court-appointee has the temerity to bring rule violations by this skein of costly lawyers to this Court's attention.

III. NOTICE OF SUPPLEMENTAL AUTHORITY: *FLEMING* OPINION

Alternatively, this Court should regard the sur-reply as a notice of supplemental authority. The Texas Supreme Court's opinion in *Fleming v. Wilson*, No. 22-0166, 67 Tex. Sup. Ct. J 753, issued on May 17. Receiver's contention in both this Court and to Judge Hall has always been that Appellants made judicial admissions to Judge Larsen of the Northern District of Texas Bankruptcy Court that the 'receiver's fee is 25% of $11.3 million.' In reversing the Fourteenth Court of Appeals, the *Fleming* opinion makes clear that parties are not allowed to advance contradictory theories in different Texas courts in order to prank one judge or another into issuing a desired ruling.

Amazingly, the motion to strike sur-reply does not deny that one set of lawyers from SQUIRE is telling this Court that another set of lawyers from that firm pranked Bankruptcy Judge Larsen into signing off on their 9019 Settlement Motion. Rather, the only stated outrage is found in the motion's final paragraph where they complain bitterly about time entries that they concede they won't ever be asked to pay from their own money.

IV. CONCLUSION

Receiver's sur-reply was narrowly focused on arguments made for the first time in the reply briefs. The Appellants concede they tried to raise new arguments in their reply briefs- and that the Texas Rules prohibit this. Appellants should not be allowed to front-

run TEX. R. APP. P. 38.3 by getting this Court to strike anything that dares bring rule violations to this Court's attention.

Respectfully submitted this 30th day of May 2024,

DANA E. LIPP
SBN: 24050935
Lipp Legal PLLC
2591 Dallas Pkwy., Ste. 300
Frisco, TX 75034
(214) 612-6380
dlipp@lipplegal.com

COUNSEL FOR RECEIVER KRETZER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been delivered this May 30, 2024 (by court electronic filing only) to all counsel of record in cause 01-23-00618-CV.

/s/ *Dana E. Lipp*

Dana E. Lipp

CERTIFICATE OF WORD COUNT

I hereby certify that this response to motion contains 567 words.

/s/ *Dana E. Lipp*

Dana E. Lipp

Automated Certificate of eService

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

Seth Kretzer
Bar No. 24043764
seth@kretzerfirm.com
Envelope ID: 88243683
Filing Code Description: Response
Filing Description: Response
Status as of 5/30/2024 8:28 AM CST

Associated Case Party: World Class Capital Group, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Greg R.Wehrer		greg.wehrer@squirepb.com	5/30/2024 8:11:42 AM	SENT
Amanda DoddsPrice		amanda.price@squirepb.com	5/30/2024 8:11:42 AM	SENT
Trevor Kehrer		trevor.kehrer@squirepb.com	5/30/2024 8:11:42 AM	SENT

Associated Case Party: Seth Kretzer, Receiver

Name	BarNumber	Email	TimestampSubmitted	Status
Dana Lipp	24050935	dlipp@lipplegal.com	5/30/2024 8:11:42 AM	SENT
Seth Kretzer		seth@kretzerfirm.com	5/30/2024 8:11:42 AM	SENT
James Volberding		jamesvolberding@gmail.com	5/30/2024 8:11:42 AM	SENT
Ann Kennon		akennonassistant@gmail.com	5/30/2024 8:11:42 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Abigail Noebels	24083578	anoebels@susmangodfrey.com	5/30/2024 8:11:42 AM	SENT
Greg Wehrer		greg.wehrer@squirepb.com	5/30/2024 8:11:42 AM	SENT
Manfred Sternberg		Manfred@msternberg.com	5/30/2024 8:11:42 AM	SENT
Brian Elliott		brian@scalefirm.com	5/30/2024 8:11:42 AM	SENT
Amanda Prince		amanda.price@squirepb.com	5/30/2024 8:11:42 AM	SENT
Jeremy Gaston		jgaston@hcgllp.com	5/30/2024 8:11:42 AM	SENT