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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

INTERVENOR APPELLANTS' REPLY TO RECEIVER'S SUR-RESPONSE*

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**The ten Intervenor Appellants are listed on page 13. This brief is submitted subject to the Court granting the Intervenor Appellants' pending motion for leave to file it.*

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ABBREVIATIONS

Text	Abbreviation
The Intervenor Appellants	Intervenors
Corrected Brief of Intervenors at page #	Brief #
Response Brief of the Receiver to Brief of the Intervenors at page #	Response #
Reply Brief of the Intervenor Appellants at page #	Reply #
Sur-Response Brief of the Receiver to Appellants' Reply Briefs at page #	Sur-Response #
WC 4th & Rio Grande, LP v. La Zona Rio, LLC, No. 08-22-00073-CV, 2024 WL 1138568, at *# (Tex. App.—El Paso Mar. 15, 2024, no pet.) (sub. mem. op.)	*La Zona Rio *#*
Appellant WC 4th and Rio Grande, LP	Rio Grande

INTRODUCTION

After appellate briefing was completed, the Receiver filed a "sur-response" whose stated purpose was to object to issues allegedly raised for the first time in Intervenors' reply brief.

In fact, the Receiver's sur-response mostly addresses issues raised well before the Intervenors' reply. The only thing truly "new" were arguments directly responsive to ones that the Receiver raised for the first time in his own response brief.

To set the record straight on those issues – and have the last word on the rest, as ordinarily afforded appellants – Intervenors submit this reply, subject to the Court granting their motion for leave to file it.

I. The district court had jurisdiction over the Intervenors' pleas in intervention.

Months after the district court entered its judgment, it appointed the Receiver. The Receiver then proceeded to seize control over millions of dollars of property (including bank accounts, real property, and litigation rights) belonging to Intervenors – ten entities legally distinct from the defendants/judgment-debtors – and, in turn, caused substantial harm to the Intervenors. Brief 2-15. Before the district court wound up the receivership, the Intervenors formally sought to intervene to determine the scope of the Receiver's wrongdoing and ultimately hold him accountable for his actions. Brief 15-20. But the district court denied intervention. Brief 20.

The Receiver's sur-response says there was no jurisdiction for intervention because the plaintiff disclaimed any interest in the judgment and the prior appeal,

and the Supreme Court dismissed that appeal as moot. Sur-Response 6-7, 24-25. In turn, according to the Receiver, the only issue within the scope of remand was determination of his fees and the winding down of the receivership.[1] Sur-Response 13.

The Receiver's "limited scope of remand" and related jurisdictional arguments are neither new nor valid. Instead, as previously explained: (1) the Intervenors were not parties to the first appeal; and (2) the district court's jurisdiction over turnover proceedings (including jurisdiction over the Receiver) is separate from its jurisdiction over the underlying judgment and lasts *at least* through windup of the receivership. Brief 42-43. Nor has the Receiver controverted these basic principles,[2] which confirm both the district court's jurisdiction over Intervenors' pleas in intervention as well as this Court's appellate jurisdiction.

II. As to the Intervenors' pleas, the Receiver is properly treated as a party.

The Receiver is properly treated as a party with respect to the Intervenors' pleas. Brief 41-42 & n.140; Reply 23-24. This is also not a new issue, but the Receiver raises it again, now claiming that the Intervenors' position is contrary to

[1] The Receiver says the Intervenors have conceded there is no plaintiff, that the issues between plaintiff and defendants are moot, and that no live judgment exists to be collected. In fact, the Intervenors explained why that is not so (Brief 53; Reply 15 & n.26), although such issues are not determinative for the reasons given above and before (Brief 42-43).

[2] The Receiver has said there is no case where a court was permitted to retain jurisdiction after the plaintiff disclaimed any interest, but neither the unilateral acts of a party, nor satisfaction of the judgment, would divest a court of its separate jurisdiction over ongoing turnover proceedings or its appointed receiver.

one in a 2022 brief that Rio Grande filed in *La Zona Rio*. Sur-Response 9-10. But there is no inconsistency:

In that case, the Receiver: (1) appeared in the district court; (2) purported to be Rio Grande's attorney; (3) entered a secret settlement compromising Rio Grande's legal claims; and then (4) moved to have them dismissed. The district court then dismissed them despite the Receiver not having established that he had *any* legal authority for what he did. *See* Brief 13-14 & n.51 (citing CR2061).

On appeal, the El Paso court of appeals *agreed* that the record did not support the Receiver's actions. *La Zona Rio* *17. In that context, it was obviously appropriate for Rio Grande to have argued that the Receiver had no business being a party to that case in ***any*** capacity (receiver or otherwise): he was a stranger to the proceedings, neither appointed there as a receiver nor authorized to act on Rio Grande's behalf. Brief 8-9, 13-15. He had no basis to participate there as a party.[3]

Nor is there anything contradictory with a receiver being treated as a party in one case but not another, or even being treated as a party in one case for some purposes but not others. The overarching principle is that a receiver is supposed to be <u>disinterested</u> – and thus should not be treated as a party *as a means of allowing the receiver to favor one side of a dispute*.

By contrast, as previously explained, if a receiver is trying to protect its own

[3] The Receiver also seems to say Intervenors argued in *this* Court that the Receiver is not a party here. Sur-Response 18. But he cites nothing to support that.

interests, then it is permissible to treat them as a party. Brief 42 & n.140. And we say "permissible" simply to highlight that party/quasi-party status is ultimately a benefit for a receiver. Indeed, the alternative would keep the receiver subject to the jurisdiction and orders of the appointing court yet prevent the receiver's participation in any legal proceedings (at least, as a matter of right like a party). And certainly, had the Receiver been entirely precluded in this case from, *e.g.*, moving to strike the interventions, he would be claiming he had a right to participate like a party.

All that said, the El Paso court of appeals in *La Zona Rio* never opined on the Receiver's status as a party or non-party, and so its decision provides no basis even in theory to the limit any Intervenor's arguments here.[4]

III. The Receiver waived any conceivable service of process requirements.

In response to the Intervenors' opening brief, the Receiver claimed he was not properly served with citation in connection with the Intervenors' pleas in intervention. Response 19-20, 32-33. But – and this is important to stress – that was the first time the issue was raised in this litigation. As such, it defies belief the Receiver would complain about the Intervenors responding to *his* new argument in their reply, especially where Texas Rule of Appellate Procedure 38.3 specifically

[4] This is shown by Receiver's cited authority. Sur-Response 17 n.21 (citing *George Fleming & Fleming & Associates, L.L.P. v. Wilson*, No. 22-0166, 2024 WL 2226290, (Tex. May 17, 2024)), which states (at *5) that judicial estoppel requires that the prior court "adopt a position that contradicts the party's current position."

permits an appellant to reply to "any matter" in an appellee's response brief.[5]

And the same is true as to the Receiver's criticism of the Intervenors for not raising service-of-process/general-appearance arguments "in the trial court, either." Sur-Response 2. *That's because he never did*. And outside limited contexts not at issue here (*e.g.*, proving up a default judgment), it was not incumbent on Intervenors to raise service of process issues (though they complied with certificate requirements under Rule 21a, *see* Reply 25 & n.41), let alone where the relevant party's general appearances are clearly apparent on the face of the record, including the Receiver's motion to strike the Intervenors' pleas in intervention, as specifically cited in Intervenors' opening brief.[6] Brief 17 & n.70.[7]

The Receiver says he made no general appearance because only a party can do that. Sur-Response 19, 24. But as explained above and before, he is properly treated as such – and insofar as he wants to protect his rights, he should gladly accept such treatment. That said, if this Court were to conclude that the Receiver is *not* a party in any relevant sense, that still would afford no basis to uphold the district court's denial of intervention. And that's because the Intervenors' pleas in intervention asserted a

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[5] As explained, the Receiver is an appellee because he is seeking to uphold the trial court's denial of intervention. Intervenors' Brief 42. However, if he were found *not* to be an appellee, his filings seeking that relief should be struck or ignored.

[6] The Receiver says he merely "point[ed] out" to the district court that intervention was supposedly contrary to this Court's remand order. Sur-Response 24-25. But the prayer in his motion asked that the Intervenors' pleas be struck. CR4214-15.

[7] The Receiver says he never acknowledged that the pleas were properly pending (Sur-Response 19) but that doesn't matter: his general appearance removed any theoretical need for either service of process or any such acknowledgment.

justiciable interest within the scope of the trial court's jurisdiction irrespective of the Receiver's status as a party. In particular, the Intervenors asserted a justiciable interest with respect to all of their property and legal rights that were unlawfully seized under color of the purported turnover jurisdiction of the district court. Nor did the Receiver need to be treated as a party for the district court to thereafter handle issues regarding the Intervenors' property and rights: the court had direct authority to simply order the Receiver to take any and all relevant actions – *e.g.*, provide an accounting, sit for a deposition, return stolen property, etc. – because, in accepting his appointment, the Receiver submitted to the court's jurisdiction.

The Receiver says his acceptance (through a filed oath) does not count as a general appearance or otherwise have jurisdictional consequences; it just makes him an agent of the court. Sur-Response 18. But whether it counts as a general appearance for party status, it had jurisdictional consequences: by that oath, the Receiver expressly agreed to "obey" all court orders in this case, which empowered the court to issue substantial relief for the Intervenors regardless of the Receiver's party/non-party status or related service issues or requirements. Reply 27-28 & n.44 (CR70).[8]

The Receiver says Intervenors' service-of-process/general-appearance arguments are contrary to their opening brief. Sur-Reply 4-5. Although his contentions are convoluted, his argument seems to be that the Intervenors changed their arguments

[8] The Receiver says judicial oaths do not subject judges to suit unless acting outside their jurisdiction. Sur-Response 18. But the point here is what *his* oath said (although the Receiver did act outside his jurisdiction). Brief 50-52.

regarding the Receiver's party status because the Supreme Court, in dismissing the prior appeal of this matter as moot, also (allegedly) rejected the argument that the Receiver was "the" interested party in *that* appeal. In turn (again, according to the Receiver) this negated Intervenors' original theory as to the Receiver's party status vis-à-vis their interventions, and so they (allegedly) had to come up with a new theory in their reply: namely, that the Receiver "became" an interested party by his actions vis-à-vis the Intervenors rather than having always been "the" interested party. *Id.*

As a threshold matter, the Intervenors have *not* changed their position. Both before and after the Supreme Court's dismissal of the first appeal, Intervenors have taken the position that a receiver can be treated as a party when trying to prosecute/defend his interests in opposition to another party. Brief 41-42 & n.140; Reply 23-25.

Nor did the Supreme Court's dismissal of the first appeal as moot undermine Intervenors' position. Indeed, that dismissal gave no reasons for the mootness determination. The Receiver suggests the dismissal impliedly rejected the idea that a receiver can ever be an interested party (Sur-Response 4-5), but if the Supreme Court decided that the plaintiff and defendants had settled their dispute in such a way that the scope of authority granted to the Receiver became moot as to ***those*** parties (a view consistent with the Court's dismissal) that would suggest nothing about a Receiver's potential party status in other situations, let alone as to Intervenors, who were not parties to that appeal.

IV. The Receiver's actions, as alleged in the Intervenors' pleas, were unlawful, harmful, and outside any immunity.

The Intervenors' pleas in intervention alleged acts by the Receiver that were extraordinary in terms of how unlawful and harmful they were. Brief 8-15. In response, the Receiver tried to justify his actions on the basis of alter-ego/fraudulent-transfer concepts, but those do not help him because he had no authority to make such determinations – let alone as to non-parties – nor did the Receivership Order purport to give such authority to him. Reply 3-6.[9] Now, in his sur-response, the Receiver tries to hide from such wrongdoing by: (a) shifting attention to the Receivership Order; (b) making claims that, true or not, wouldn't excuse or remedy his past acts; and (c) invoking notions of immunity that doesn't exist:

A. The Receivership Order gives no cover to the Receiver.

The Receiver says he "did what the turnover order told him to," "could not disregard [it]," and that it's "hard to see" how it could have "perpetrated some great injustice" when "numerous courts" have "allowed this precise form of relief." Sur-Response 14, 21. He similarly says there is "no jurisdiction" to sue him for "doing what the turnover order directed" and it is "even harder to see how [he] bears some vague 'liability' for carrying out his instructions" in the district court's "repeatedly

[9] Even so, the Receiver continues denying the parties' legal separateness with no valid basis. Sur-Response 1 (claiming Intervenors have "abandoned all pretense that they are separate" from the judgment debtors), 20 (claiming Intervenors are "bankrupt and defunct front companies controlled by judgment debtors" (case changed)); *id.* at 21 & n.27 (claiming Nate Paul is the "sole" owner of unspecified companies and citing a court decision unrelated to any Intervenor).

re-affirmed" order. Sur-Response 14, 21. And he questions how the Intervenors "ascribe so much damage" to his actions under the order. Sur-Response 5.

But with respect to Intervenors, the crushing problem for the Receiver is that his actions went far *beyond* the Receivership Order, and *no* court has endorsed anything like that.[10] Brief 37-39, 51.

That said, the order also was unlawfully broad by permitting direct seizure of a debtor's LLC membership interests (Brief 37-38), something no court has endorsed either (apart from some unusual situations, as when the judgment creditor was the LLC itself). *See generally* Reply 7-9 & n.10.[11]

B. The Receiver cannot excuse his past actions by making allegations about what property he claims to currently hold.

The Receiver says (or insinuates) that he does not currently hold any "property," "real property," or "property right" of any Intervenor, and that he is not "directing litigation" of any Intervenor. Sur-Response 10-11. As a threshold matter, such self-serving statements cannot be credited in this procedural posture. Brief 2

[10] For the Receiver to question how the Intervenors "ascribe so much damage" to his actions "under the turnover order" is a strawman. He acted far beyond it.

[11] The sur-response cites a case consistent with this. *See Klinek v. LuxeYard, Inc.*, 672 S.W.3d 830, 840 (Tex. App.—Houston [14th Dist.] 2023, no pet.) (finding abuse of discretion for turnover order to reach certain LLC interests). *Klinek* cites some cases upholding turnover orders involving LLC interests, but none endorsed a turnover like the one here. One permitted turnover of an LLC interest where the *judgment* awarded it (not the case here). *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 758 (Tex. App.–Houston [14th Dist.] Feb. 23, 2017, no pet.). And one permitted it where it could only affect the judgment debtor (also not the case here). *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840, at *8 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (mem. op.).

n.5. That said, true or not, they would certainly not excuse his past actions or remedy the harm caused by them.

C. The Receiver cannot hide behind the district court.

The Receiver says that, because he is just the district court's agent, the Intervenors can only have a dispute with that court. Sur-Response 7. At the same time, however, he says there is no "legal mechanism" for them to pursue any dispute with that court, ostensibly because its order appointing the Receiver has been repeatedly affirmed. Sur-Response 8. His argument fails three ways: (1) the court's order has not been affirmed in any respect vis-à-vis the Intervenors; (2) the Intervenors' chief complaints concern the Receiver's conduct *outside* the scope of the order; and (3) his status as a court agent does not insulate him liability. Brief 50-52; Reply 10-11.

V. The Intervenors have standing to seek the relief sought in their pleas.

The Receiver says that, because Intervenors are not currently claiming an interest in his fee award, this "definitively establish[es] that these Intervenors have no redressable injury." Sur-Response 12. This makes no sense. The Intervenors' standing is based on harms the Receiver caused them, and the district court can redress that by orders issued against the Receiver. And this is so whether he gets any fees or not. The fact that such orders might ultimately include the imposition of a constructive trust against any fees he may receive does not negate redressability.[12] It

[12] The Receiver suggests a trust would just be a "possible, indirect benefit in a future

may create a bigger pot, but the court can issue a damages award and other forms of relief whether he gets any fees or zero fees. Brief 49-50.

VI. The Intervenors' pleas were timely.

The Receiver has argued that Intervenors delayed in filing their pleas. Response 40-42. In reply, we explained why that argument lacks merit. Reply 20-21. The Receiver re-raises the idea but supports it with nothing of substance. Sur-Response 11-12. Rather, just as before, he suggests one Intervenor nonsuited a separate action against him to pursue a strategy of delay before filing its plea in intervention here,[13] and more generally says Intervenors "never really tell[] us why they waited over a year to intervene." Sur-Response 11.

But the Receiver simply has no grounds to question the timing: he never raised any such issue below. Reply 20. In turn, the Intervenors had no occasion to make any record regarding the sequence and timing of any events, or reasons therefor. That said, Intervenors' timing was reasonable under the circumstances, and there has been no claim – let alone proof – of prejudice. Reply 20-21.[14]

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lawsuit" that cannot support standing. Sur-Response 13. Of course, it need not be a future lawsuit (it can be here), but either way, it's unneeded for standing.

[13] Sur-Response 12 & n.15. Relatedly, he says it was misleading to associate the Intervenor's nonsuit with his invocation in that action of the trial court's dominant jurisdiction *here*, implying that the "real" reason for nonsuiting was to avoid his immunity arguments. Sur-Response 20. This makes no sense because he would (and did) raise such arguments in both places.

[14] The Receiver insinuates the *La Zona Rio* court faulted Rio Grande for the timing of its intervention (Sur-Response 11), but the court's reference to that was not negative. The court was *siding with* Rio Grande, finding it had the right to challenge the Receiver's authority irrespective of intervention. *La Zona Rio* *9 n.19.

VII. In denying intervention, the district court abused its discretion and violated Intervenors' due process rights.

The district court abused its discretion and violated Intervenors' due process rights by denying intervention. Brief 34-40. The Receiver's sur-response does not substantively address the due process issue but does contend that the district court did not abuse its discretion because the propriety of intervention (according to the Receiver) depends on the outcome of a district court hearing in Austin (which he says won't occur until 2025). Sur-Response 9. This is wrong: (1) the Receiver has no legal basis to say that the Austin court has *exclusive* jurisdiction over any questions of his wrongdoing (*see* Brief 47-48); and (2) that specific case just concerns one Intervenor, so it could not even in theory affect all pleas.

Finally, the Receiver says Intervenors cannot be compared to large public companies (Apple/Google/Microsoft). Sur-Response 20-21. But we mentioned them not for comparison. The point is that no one would question their absolute right to intervene in a case where they weren't parties but a receiver nevertheless seized control over their money, real property, and legal rights. The result should be no different here.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief contains 3,355 words based on computer word count, excluding parts exempted by Rule 9.4(i)(1), which is within the 3,400 word limit requested by the Intervenor Appellants in their pending motion for leave to file this brief.

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