No. 14-22-00764-CV

IN THE FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS

WC 4TH AND COLORADO, LP,

Appellant,

v.

COLORADO THIRD STREET, LLC,

Appellee.

On Appeal from the 261st District Court of Travis County, Texas
Cause No. D-1-GN-20-002781

APPELLEE'S REPLY IN SUPPORT OF MOTION FOR REHEARING

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INTRODUCTION

Despite its attempts, Appellant WC 4th cannot cure the errors in the Court's Opinion. Only the Court can do that and it should. The sole case the Court relied on in endorsing WC 4th's collateral attack does not make it permissible. And WC 4th now concedes case-dispositive facts that the Court relied on in reaching its substantive holding. The Court should grant Colorado Third's Motion for Rehearing and affirm.

ARGUMENT

I. The Court's Collateral Attack Holding is Irreconcilable with Texas Law.

WC 4th concedes that it seeks to "collaterally attack the Receivership Order in this proceeding and to challenge the provisions of that order," Resp. at 4, but it contends the Court's holding endorsing its attack is proper because it "is consistent" with the Eighth Court's opinion in *WC 4th and Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00073, 2024 WL 1138568 (Tex. App.—El Paso Mar. 15, 2024, no pet.). WC 4th's attempt to square the Court's Opinion with *La Zona Rio* falls flat.

WC 4th contends the *La Zona Rio* court "did not … hold that the collateral attack was permissible as a matter of due process" but rather applied "the well-settled principle that … 'when there is a dispute over property ownership, a third party must be given the opportunity to have its substantive rights adjudicated in a separate

proceeding.'"[1] Resp. at 3-4 (quoting *La Zona Rio*, 2024 WL 1138768, at *9). This is puzzling given that the *La Zona Rio* court expressly used the words "due process." *See La Zona Rio*, 2024 WL 1138568, at *7 ("Rio Grande, LP Has a Due Process Right to Challenge [the Receiver's] Authority"). The *La Zona Rio* holding was based on concerns that the trial court did not hold a hearing to give the appellant "the opportunity to have its substantive rights adjudicated before allowing [the Receiver] to enforce the Receivership Order against it." *Id.* at *17. The existence of a hearing is not at issue here. *See* Op. at 3.

Nevertheless, WC 4th selectively quotes the *La Zona Rio* opinion, Resp. at 6, and argues that WC 4th's purported status as a "third-party stranger … to the Princeton lawsuit … permits it to … challenge the provisions of [the Receivership Order]" here. Resp. at 4. But WC 4th's quotation highlights the problem with the Opinion and *La Zona Rio*. A party's mere status as a "third-party stranger" to a judgment does not permit it to collaterally attack the judgment. *See, e.g.*, *Austin Indep. Sch. Dist. v. Sierra Club*, 495 S.W.2d 878, 882 (Tex. 1973).

[1] Whether a third party is entitled to an opportunity "to have its substantive rights adjudicated in a … proceeding" *separate* from the post-judgment turnover proceeding is not "well-settled," and WC 4th mischaracterizes the law. *See Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 584-85, 586 (Tex. 2018) (per curiam) (declining to "delineate the appropriate mechanism for resolving competing substantive claims to property sought in a turnover proceeding"); *see also Barrera v. State*, 130 S.W.3d 253, 259-60 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

Moreover, as here, the Receiver's authority in *La Zona Rio* arose from three separate provisions of the Receivership Order. *See* 2024 WL 11385658, at *13-16. The Eighth Court's analysis focused on the language of the provisions and its ultimate decision was based on the state of the record in that case. *Id.* While the *La Zona Rio* court interpreted the word "interests"—used in *one* of the three provisions requiring the turnover of the judgment debtor's "interests … in any partnership or limited liability company"—as referring to profit and distribution rights pursuant to a charging order,[2] *see id.* at *13-14, the *La Zona Rio* court did not, as this Court did, declare that, no matter what authority the order expressly granted, "[a] charging order is the receiver's exclusive remedy." Op. at 8-10; Mot. at 4-7. Any collateral challenges to the scope of the Receivership Order should be brought in the court that issued it.[3] This Court endorsed an impermissible collateral attack on the Receivership Order's validity.

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[2] WC 4th asserts that the *Colorado Third Street* opinion "stated that the challenged provisions of the Receivership Order were limited by the charging order statutes," Resp. at 7, but the Third Court's analysis closely followed the *La Zona Rio* approach (not taken by this Court) of interpreting and applying the Receivership Order's provisions. *See WC 4th and Colo., LP . v. Colo. Third St., LLC*, No. 03-22-00781-CV, 2024 WL 3841676, at *7-8 (Tex. App.—Austin Aug. 15, 2024, pet. filed).

[3] WC 4th argues that its substantive rights include "the right to enforce the statutory limits on the receiver's rights[.]" Resp. at 7. This is a classic collateral attack on the scope or validity of the Receivership Order. *See Austin Indep. Sch. Dist.*, 495 S.W.2d at 882 (challenge claiming there was no "statutory authority for the District to condemn public land" or Council to enter stipulations was an improper collateral attack).

WC 4th's assertion that it is a "third-party stranger" to the *Princeton* proceedings is also wrong. WC 4th admits that it intervened in those proceedings, seeking the same relief it seeks here by "asking the Harris County District Court to void the actions of the receiver regarding WC 4th's assets." Resp. at 8. And despite its characterization of the pending *Princeton* direct appeal as "challenging the trial court's August 2, 2023 Order approving the receiver's fees," WC 4th is actively seeking the same relief on direct appeal that it seeks here.[4] WC 4th's other appeal in the *Princeton* proceeding—where it should be—is currently pending. No. 01-23-00618.

This lawsuit is not the proper place to challenge the validity of the Receivership Order. WC 4th's collateral challenge to the Receivership Order's validity is improper, and the Court's endorsement of it disregards Texas law. *See Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005); ("A collateral attack is an attempt to avoid the binding force of a judgment…instituted…to obtain some specific relief which the judgment currently stands as a bar against.").

[4] *See* No. 01-23-00618, Feb. 7, 2024, Br. of Intervenors, at 23 (appealing denial of WC 4th's intervention, arguing that the Receiver did not "have the lawful authority to appear as [WC 4th's] litigation counsel" "or agree to the dismissal of [WC 4th's] legal claims or the release of related funds held in trust" in this case); 29 (arguing the Receiver lacked authority in this case because "[t]he turnover statute expressly makes a charging order the 'exclusive remedy' by which a judgment creditor of an LP partner or LLC member can satisfy a judgment from the judgment debtor's LP or LLC membership interest").

II. The Court Erred in Holding that a Charging Order was the Receiver's Exclusive Remedy.

Even if the Court's collateral review of the legal validity of the Receivership Order's provisions is procedurally proper, the Court's substantive conclusion that a "charging order is the [R]eceiver's exclusive remedy" is erroneous. Op. at 10. The Court recognized in its Opinion—as it has in other cases—that its charging order exclusivity rule should not apply when the purpose of the "charging order procedure" (*i.e.*, "to prevent a judgment creditor's disruption of an entity's business by forcing an execution sale of the partner's or member's entity interest to satisfy a debt of the individual partner or member") is not at issue. Op. at 8-9; *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 757 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840, at *8-9 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (mem. op.).

WC 4th has now conceded that it was not an operating business during the relevant period, so its "business" could not possibly have been disrupted by the Receiver's actions. Resp. at 10 n.6.[5] Because the *Heckert* exception should have applied under these facts, the Court's misinterpretation of the record on this point justifies rehearing.

[5] WC 4th blames "this litigation" for its inability to "operate the real estate," Resp. at 10, but nothing in the record supports that new assertion, and the record conclusively establishes that WC 4th lost its sole asset to foreclosure prior to the Receiver's actions. *See* Mot. at 12.

And WC 4th does not even address the error in the Court's alternative ground for its substantive holding: that "WC 4th consists of third-party partners seemingly unrelated to Nate Paul." Op. at 9. As explained in the Motion and dissenting opinion, that finding is facially speculative, unsupported by the record, and even if true, lacking in record evidence of disruption to those alleged partners' interests by the Receiver's actions. *See* Dissent at 3; Mot. at 13-14. The Court erred in failing to defer to the trial court on this issue. *See Bosch v. Harris Cnty.*, No. 14-13-001125-CV, 2015 WL 971317, at *3 (Tex. App.—Houston [14th Dist.] Feb. 26, 2015, no pet.) (mem. op.).

PRAYER

For these reasons, Appellee Colorado Third Street, LLC respectfully requests that the Court grant its Motion for Rehearing and affirm the trial court's Order Denying Defendant's Motion to Show Authority and Granting Receiver's Joint Motion to Dismiss with Prejudice. Colorado Third Street, LLC also requests any other relief to which it is entitled.

Respectfully submitted,

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This reply consists of 1,545 words, excluding the parts exempted by TEX. R. APP. P. 9.4(i)(1).

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