FILED
24-0817
2/5/2025 11:18 AM
tex-97006731
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 24-0817

IN THE SUPREME COURT OF TEXAS

COLORADO THIRD STREET, LLC,

Petitioner,

v.

WC 4TH AND COLORADO, LP,

Respondent.

On Petition for Review from the
Third Court of Appeals, Austin, Texas
No. 03-22-00781-CV

RESPONSE TO PETITION FOR REVIEW

BURFORD PERRY, LLP
Brent C. Perry
State Bar No. 15799650
bperry@burfordperry.com
Zachary R. Carlson
State Bar No. 24116165
zcarlson@burfordperry.com
909 Fannin Street, Suite #2630
Houston, Texas 77010
Telephone: (713) 401-9790
Facsimile: (713) 993-7739

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT REGARDING PARTY REFERENCES

To be consistent with the petition, Respondent refers to Petitioner Colorado Third Street, LLC as "Colorado Third" and Respondent WC 4th and Colorado, LP as "WC 4th." Respondent, however, refers to World Class Capital Group, LLC as "WCCG." The term "World Class" has been used in other opinions to refer collectively to a group of entities with "WC" or "World Class" as part of the entity name. The "Receiver" is the turnover receiver appointed in Cause No. 2019-18855; *Princeton Capital Corp. v. Great Value Storage LLC and World Class Capital Group, LLC*; in the 165th Judicial District of Harris County, Texas, who appeared in the underlying Travis County District Court proceeding.

STATEMENT OF THE CASE

Nature of the Case:

In the underlying case, a noteholder (Colorado Third) sued the guarantors of a note. The borrower (WC 4th) on that note intervened in the suit and asserted claims against the noteholder. A turnover receiver appointed in a separate proceeding not involving the borrower or the noteholder appeared and claimed to represent the borrower and to control its claims. The trial court dismissed the borrower's claims against the noteholder and released funds to the noteholder.

Course of Proceedings:

Petitioner and noteholder Colorado Third filed suit in August 2020 against Nate Paul and WCCG as guarantors on a note. CR 8–15. WC 4th, which owned the property secured by the note, intervened and asserted claims for wrongful foreclosure. CR 1639–60.

On November 18, 2021, the Receiver appeared claiming to represent and control WC 4th and displace its counsel. CR 1887–90. The receiver joined with Colorado Third to file a Joint Motion to Release Funds ($981,763.53) to Colorado Third as part of a claimed settlement. CR 1873–76. On December 8, 2021, the trial court signed the order releasing the disputed funds to Colorado Third. CR 1907–08.

On March 18, 2022, the Receiver and Colorado Third filed an Agreed Joint Partial Motion to Dismiss Certain Claims with Prejudice claiming to settle all claims between the parties to this appeal. CR 1939–1941. The trial court signed the dismissal order on March 21. CR 1944–45.

Appellants WCCG and WC 4th filed their Motion to Vacate Agreed Orders and Motion to Show Authority (as to the Receiver) on April 18. CR 1952–60. The receiver and Colorado Third on August 18 filed a Joint Motion to Sever all the claims dismissed by the March 21 Order. CR 2575–81. The trial court on September 20, 2022 signed the Order Granting Joint Motion to Sever. CR 2654–58. Appellants on October 19 filed their Motion for New Trial. CR 2666–75.

Trial Court Disposition:

The trial court on November 21 signed an Order Denying Motion for New Trial. CR 3038. Appellants filed a Notice of Appeal on December 7, 2022.

Court of Appeals Disposition:

Appellant WCCG was dismissed from the appeal without opposition during the appeal. The court of appeals held that WC 4th's challenge to the Receiver's authority was not an impermissible attack on the receivership order issued in a turnover proceeding by a Harris County court. The appellate court reversed the trial court's three challenged orders granting the parties' "joint" motions to (a) release funds, (b) dismiss claims with prejudice, and (c) sever the dismissed claims, and remanded the cause for further proceedings consistent with its opinion. *WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 03-22-00781-CV, 2024 WL 3841676, at *8 (Tex. App.—Austin Aug. 15, 2024, pet. filed)

STATEMENT OF JURISDICTION

The petition for review effectively asks for an advisory opinion as to "where and how third parties claiming an interest in property subject to a receivership order" should bring their challenges to the turnover receiver's authority. Colorado Third does not have standing to raise this issue here, and did not raise it on appeal. The separation of powers provision in the Texas constitution prohibits courts from issuing advisory opinions. Tex. Const. art. 2, § 1. An opinion issued in a case brought by a party without standing is advisory where a judgment would address a hypothetical injury. This Court, therefore, lacks jurisdiction as to this issue.

The matter of law raised by the petition is whether the trial court impermissibly allowed the respondent to challenge the authority of the receiver and certain provisions in the receivership order in the trial court. As explained below, three appellate courts in four related appeals have similarly decided this issue. There is no conflict among the appellate courts and the law is well-settled. The petitioner does not demonstrate that this petition presents a question of law that is important to the jurisprudence of the state. Tex. Gov't Code § 22.001(a).

No. 24-0817

IN THE SUPREME COURT OF TEXAS

COLORADO THIRD STREET, LLC,
Petitioner,
v.
WC 4TH AND COLORADO, LP,
Respondent.

RESPONSE TO PETITION FOR REVIEW

Respondent WC 4th and Colorado, LP responds to the Petition for Review filed by Petitioner Colorado Third Street, LLC and asks this Court to deny the petition.

I. STATEMENT REGARDING RELATED CASES

There are four appeals, including this one, involving the same issues, counsel, and Receiver as this appeal, all similarly decided. The opposing parties in all these matters are generally associated with their principals Nate Paul and Bryan Hardeman. Two appeals in the Eighth Court of Appeals are now final: *WC 4th & Rio Grande, LP v. La Zona Rio*, LLC, No. 08-22-00073-CV, 2024 WL 1138568 (Tex. App.—El Paso Mar. 15, 2024, no pet.); and *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2024 WL 1138568 (Tex. App.—El Paso Mar. 15,

2024, no pet.) ("La Zona Rio appeals"). An opinion was issued in the third appeal similar to the opinions in the La Zona Rio appeals, but the Fourteenth Court of Appeals has not ruled on Colorado Third's motion for rehearing. See *WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 14-22-00764-CV, 2024 WL 3892892 (Tex. App.—Houston [14th Dist.] Aug. 22, 2024, no pet.).

The receivership order arises from a turnover proceeding in a Harris County District Court. The judgment debtors in that proceeding filed a direct appeal challenging certain provisions in the receivership order, but the First Court of Appeals held that the judgment debtors waived their objections in the trial court. *Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 WL 3010773, at *15 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet.), review granted, opinion vacated (Mar. 8, 2024) (the "Princeton suit"). This Court granted review in that appeal, dismissed the case as moot, and vacated the judgment and opinion of the court of appeals. No. 23-0722. The First Court, in any case, did not provide any guidance as to the receivership order to the appellate courts in the four related appeals.

II. THE COURT SHOULD DENY REVIEW

Colorado Third implores this Court to grant review and correct the appellate court's purported error in allowing WC 4th to challenge the Receiver's authority in the underlying Travis County proceeding. The petition raises two issues, with the focus decidedly on the second issue:

> (1) May a non-judgment debtor—as a stranger to the receivership order—challenge that order and its application in a separate proceeding when a receiver appears claiming to displace the non-judgment debtor's counsel and to control its claims?
>
> (2) Must the non-judgment debtor pursue its challenges to the receivership order and to the receiver's authority in the court that appointed the receiver?

Colorado Third argues that any party challenging a turnover receiver's authority or that receiver's appointment order must intervene in the proceeding in which the turnover receiver was appointed. It is an unworkable, legally impossible "solution" for a nonexistent problem. What is unclear is how Colorado Third has standing to argue that WC 4th's challenge to the receivership order and the Receiver's authority must be lodged in a court other than the instant Travis County court. Colorado Third brought the underlying suit in Travis County, did not oppose WC 4th's intervention, and joined with the Receiver to resolve this suit against WC 4th's claims and defenses in the Travis County court.

WC 4th, in the instant matter, is an intervenor asserting claims against Colorado Third in a Travis County proceeding. The underlying issues are unrelated to the Harris County proceeding in which the Receiver was appointed. The Harris County court issued the receivership order on September 8, 2021. The judgment debtors filed their Notice of Appeal on September 21. The Receiver filed his Notice of Appearance in this proceeding as counsel for WCCG and WC 4th almost two months later on November 18.[1] CR 1887. There is no procedural mechanism by which WC 4th could "intervene" in the Harris County court's turnover proceeding to challenge either the Receiver's authority in the Travis County proceeding or the receivership order, when that order is already the subject of a direct appeal.

Colorado Third's argument is crafted around a suggestion that this Court could have, but did not, address the appropriate procedural mechanism for resolving competing claims to property in a turnover proceeding in *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577 (Tex. 2018).

---

[1] The appellate court incorrectly states his appearance was "[a]bout a week after being appointed receiver…" *WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 03-22-00781-CV, 2024 WL 3841676, at *2 (Tex. App.—Austin Aug. 15, 2024, pet. filed).

The first obstacle to filling in that perceived gap here is that in this case, unlike *Alexander Dubose*, a judgment creditor and a third party are not making competing claims to judgment debtor's property. Colorado Third and WC 4th are involved in litigation arising from Colorado Third's foreclosure on WC 4th's real property. No one contends that WC 4th's property belonged to judgment debtor WCCG. The Receiver contends that WCCG had an interest in the property, but the appellate court found no evidence in the record to support this contention. Colorado Third did not challenge that holding in its petition.

The Receiver's actions were based on his unsupported allegation that WCCG has an ownership interest in WC 4th, allegedly justifying his control of WC 4th's representation and its claims. All WC 4th sought to accomplish by its challenge to his claimed authority was to control its own fate in the Travis County proceeding. There is no contest as to any judgment creditor's claim to a judgment debtor's property.

The second problem: the issue in *Alexander Dubose* was whether a trial court post judgment order was a final, appealable order, and was not about the appropriate mechanism for resolving competing claims to specific property. The turnover statute provides a procedural device to

assist judgment creditors in satisfying their judgment debts. The turnover statute may not be used to determine non-judgment debtors' substantive rights. Those substantive rights may only be determined in a "separate proceeding" apart from the turnover proceeding.

The Receiver appeared in the Travis County District Court and, based on the receivership order, claimed authority to displace WC 4th's counsel and dismiss its claims. The Travis County court is a "separate proceeding" in which to determine WC 4th's substantive rights with respect to the Receiver and the receivership order. The Harris County turnover proceeding is not. It defies common sense to force WC 4th to challenge the Receiver in the Harris County court—which employed a "purely procedural device" in appointing the Receiver—when the Receiver made his authority an issue in the Travis County court.

Colorado Third and the Receiver filed the Joint Motion to Release Funds on the same day that the Receiver filed his Notice of Appearance. CR 1873 and 1887. The motion announced that "the Parties resolved all claims asserted in this case, as between themselves." There is no reason why Colorado Third and the Receiver can ask the Travis County court to sign off on their disposition of WC 4th's substantive rights, but WC 4th

must initiate separate proceedings in Harris County to defend those same rights. The Court should deny review.

III. STATEMENT OF FACTS

The Receiver was appointed under the Texas Turnover Statute by a Harris County court in the Princeton suit to collect a judgment for non-party Princeton Capital Corporation against WCCG and Great Value Storage, LLC ("GVS"). In this appeal, WC 4th raised the issue of whether the Receiver had authority—either pursuant to his appointment order or Texas law—to appear for WC 4th in the underlying Travis County lawsuit. WC 4th is a single-purpose real estate entity that owned valuable commercial property in downtown Austin, and WCCG does not own an interest in or control WC 4th.

A. There are parallel suits and appeals between WC 4th (as property owner) and Colorado Third (as noteholder).

The original suit between WC 4th and Colorado Third is Cause No. D-1-GN-20-002781; *Colorado Third Street, LLC v. WC 4th and Colorado, LP*; in the 261st Judicial District Court of Travis County, Texas. The final judgment in that suit is on appeal in the Fourteenth Court of Appeals.[2]

[2] That appeal was originally designated in this Court as No. 03-22-00575-CV and was transferred to the Fourteenth Court pursuant to Misc. Docket No. 22-9083 in the Supreme Court.

Colorado Third filed the underlying suit on August 17, 2020 against Nate Paul and WCCG as guarantors on WC 4th's note securing its real property. CR 8–15. Paul and WCCG asserted counterclaims arising from the attempted foreclosure on the property. CR 223–42. WC 4th, as property owner, intervened and in October 2021 filed its amended petition asserting claims for wrongful foreclosure. CR 1639–60.

B. The Receiver was appointed in September 2021 by a Harris County court pursuant to the Texas Turnover Statute to collect a judgment against WCCG and GVS, neither of which are parties to this action.

The Harris County court appointed the Receiver as a turnover receiver to take possession of and sell assets of GVS and WCCG to satisfy an judgment against them. CR 1962. The court appointed him pursuant to the Texas Turnover Statute (Tex. Civ. Prac. & Rem. Code § 31.002). *Id*. The receivership order does not authorize the receiver to replace counsel for any limited partnership based on its relation, if any, to WCCG. CR 1962–70. The Harris County court did not and—as a matter of law—could not authorize the receiver to dispose of the assets of any limited partnership in which WCCG has an interest, if any. *Id*.

The Receiver filed a Notice of Appearance in this action on November 18, 2021, appearing as "counsel of record for *World Class*

Capital Group, LLC and its subsidiary *WC 4TH and Colorado, L.P.*" CR 1887–88. He stated that he was replacing "prior counsel of record for *WC 4TH and Colorado, L.P.*"

C. The Receiver moved without authority to concede WC 4th's claims to $982,000 and to dismiss its claims against Colorado Third with prejudice.

The Receiver immediately filed: (1) Notice of Appearance (CR 1887–88); and (2) Joint Motion to Release Funds (CR 1873–75). The motion identified the Receiver's law firm as "Attorney for Defendant WC 4th and Colorado, LP." CR 1875. The Receiver's claimed basis for his authority was as "Receiver for *World Class Capital Group, LLC*." CR 1887. The trial court signed the Order Granting Joint Motion to Release Funds on December 8, 2021 without a hearing. CR 1907–08.[3]

Then the Receiver and Colorado Third filed an Agreed Joint Partial Motion to Dismiss Certain Claims with Prejudice on March 18, 2022. CR 1939–41. The motion represented that the Receiver and Colorado Third agreed to dismiss with prejudice all WC 4th's claims against Colorado

[3] The first act of the Receiver—whose sole duty was to act for the judgment creditor in the Harris County court to secure funds to pay the judgment—was to *give away* almost $1 million to which WC 4th had a claim. See CR 1962. Because the settlement has not been disclosed, its additional terms are not known.

Third and other defendants.[4] The trial court without a hearing (because the joint motion was submitted on the agreed order docket pursuant to Travis County Local Rule 7.2) signed the Agreed Order Granting Joint Partial Motion to Dismiss Certain Claims with Prejudice on March 21. CR 1944–47. The Receiver in approving the motion, signed as "Receiver for … WC 4th and Colorado, LP."

WC 4th challenged the Receiver's authority by a motion filed on April 18, 2022, arguing that the receiver lacked authority to retain counsel for or act for WC 4th in the lawsuit and moving to vacate the two orders as to the release of funds and dismissal of claims. CR 1952–60. In responding to the motion, the Receiver filed the Agreement of Limited Partnership of WC 4th and Colorado, LP, confirming that WCCG did not have an ownership interest in WC 4th. CR 2293.

On August 12, 2022, the receiver and Colorado Third filed a Joint Motion to Sever into a separate lawsuit all claims except those between Colorado Third and Nate Paul. CR 2575–81. In responding to this motion, WC 4th again argued that the receiver lacked authority under the

[4] The motion was intended to leave as "the only remaining claims in this case … the claims asserted by and between Colorado Third Street, LLC and Natin Paul."

receivership order to displace counsel for WC 4th and act on its behalf—and against its interests. CR 2610–18. The trial court, without noting WC 4th's opposition to the motion and challenge to the receiver's authority, granted the motion. CR 2654–58.

Because the severance order (CR 2654) rendered the dismissal order (CR 1944) a final order as to the claims dismissed, WC 4th filed a Motion for New Trial (CR 2666–75) on October 19 again raising the Receiver's lack of authority under the receivership order. The trial court on November 21 signed the Order Denying Motion for New Trial. CR 3038–3039. WC 4th timely appealed on December 7, 2022. CR 3506–08.[5]

IV. SUMMARY OF ARGUMENT

WC 4th made two basic arguments in the trial court against the Receiver's appearance, settlement, and dismissal of its claims: (1) the receivership order, even if lawful, did not give the Receiver the authority he exercised against WC 4th; and (2) a judgment creditor is limited by Texas law to a charging order against judgment debtor's interest in a

[5] WCCG initially was an appellant but moved for dismissal without opposition. The appellate court granted the motion by the Order dated July 12, 2023. In the trial court, Colorado Third dismissed with prejudice all claims against WCCG. CR 1944–1947. WCCG, consequently, had no issues to raise on appeal to avoid liability to Colorado Third.

limited partnership, and the receivership order is limited by that statute. See Tex. Bus. Org. Code § 153.256.

What Colorado Third argues in its petition appears to be: (1) WC 4th's legal challenge to the receivership order was an impermissible collateral attack on the Harris County court's judgment; and (2) in any case, a challenge to a turnover receiver's authority (whether by collateral attack or otherwise) should be lodged in the court appointing the receiver. Petition at 9–10.

Three appellate courts in four related appeals have written on whether the non-judgment debtors' challenge to the receivership order constituted an impermissible collateral attack on the Harris County court's judgment. All rejected this argument. The Eighth Court of Appeals rejected it when made by La Zona Rio:

> As a third-party stranger to the turnover proceedings and Princeton Lawsuit, Rio Grande, LP has a right to challenge Kretzer's attempts to enforce the Receivership Order against it and to have its substantive rights adjudicated prior to the enforcement.

WC 4th & Rio Grande, LP, 2024 WL 1138568, at *12. In this appeal, the Third Court expressly stated that it found the Eighth Court's analysis persuasive and relied on it without further analysis. 2024 WL 3841676,

at *3 n.2. WC 4th, like Rio Grande, LP, was a stranger to the turnover proceedings. The appellate court did not err in permitting WC 4th's collateral attack on the receivership order in the Travis County court.

Colorado Third's second proposition—that the receiver's actions and the receivership order must be challenged in the appointing court—has no basis in law or logic. Nor does Colorado Third have standing to raise this issue, as it has no injury from or interest in any controversy between WC 4th and the Receiver. The Court should deny the petition.

V. ARGUMENT

A. There is no legal or logical basis for requiring a non-judgment debtor and stranger to a turnover proceeding to challenge the receiver's authority within that proceeding.

Colorado Third declares, without any justification, "Challenges to a receivership order can, *and must*, be addressed in the court that issued the turnover order." Colorado Third does not explain its interest, if any, in determining the proper forum for resolving a controversy between WC 4th and the Receiver as to the Receiver's authority. Absent an interest, Colorado Third lacks standing to raise this issue.

Colorado Third cites footnote 37 in *Alexander Dubose*, 540 S.W.3d at 584 in support of its proposition. The footnote, however, collects cases

reflecting this Court's proposition that courts are "troubled" by the extent to which a turnover order, as a purely procedural mechanism, can affect the rights of non-judgment debtors. Footnote 37 has no guidance as to the forum in which those rights *must be* addressed. There is no logical basis for holding that the trial court here abused its discretion by deciding issues between WC 4th and the Receiver as to the Receiver's authority and the receivership order.

Colorado Third expresses concern that multiple appellate courts reviewing "the same issues concerning the same Receivership Order and the Receiver's authority" could lead to inconsistent results. Petition at 12. That did not happen in the four La Zona Rio and Colorado Third appeals before three appellate courts.[6]

The issues in this appeal raised in WC 4th's collateral attack are substantive, not procedural. Sending WC 4th to the Harris County court, as a procedural requirement, would not result in conservation of judicial resources and would not serve any substantive purpose. It would only

[6] In fact, the Fourteenth Court of Appeals also reviewed the "same Receivership Order and the [same] Receiver's authority" in an appeal with a different judgment debtor. The court there reached the same result with regard to statutory limits on the receiver's authority and the unlawful provisions in the identical receivership order. *See Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. denied).

shift the judicial resources being spent from one court to another. WC 4th is a stranger to the turnover proceeding and a proper party in the Travis County suit. The Travis County court and Third Court of Appeals are acceptable and proper forums for resolving those issues.

B. The appellate court correctly held that WC 4th's challenges to the receivership order do not constitute an impermissible collateral attack on the order.

Colorado Third's "collateral attack" argument is oddly superficial for this critical issue, as the only substantive legal issue raised in the petition is whether WC 4th could collaterally challenge the receivership order. The Third Court relegated its rejection of Colorado Third's "impermissible collateral attack" argument to a footnote. 2024 WL 3841676, at *3 n.2. The appellate court expressly relied on the Eighth Court's analysis as the basis of its rejection: "[W]e need not address such argument in detail, as we find persuasive our sister court's thorough analysis and determination in a similar case involving related parties in similar circumstances …." *Id*. The La Zona Rio and Colorado Third cases involved the same counsel, issues, Receiver, and principals.

Colorado Third cites *1st & Trinity Super Majority, LLC v. Milligan*, 657 S.W.3d 349, 364–65 (Tex. App.—El Paso 2022, no pet.), in support of

its "improper collateral attack" argument. Petition at 15. But the Eighth Court *expressly* distinguished that case from the La Zona Rio case: "La Zona Rio's reliance on [*1st & Trinity Super Majority*] is misplaced because Rio Grande, LP was neither the judgment debtor in the turnover proceedings nor a party to the Princeton Lawsuit." *WC 4th & Rio Grande, LP*, 2024 WL 1138568, at *12. Colorado Third's reliance on *1st & Trinity Super Majority*, like La Zona Rio's, is misplaced, and its legal analysis misunderstands the legal standard for permissible collateral attacks.

WC 4th was neither the judgment debtor in the turnover proceedings nor a party to the Princeton lawsuit. This much is undisputed. The Third Court stated the well-established standard for permissible collateral attacks in *Wagner v. D'Lorm*, 315 S.W.3d 188, 192 (Tex. App.—Austin 2010, no pet.):

> A judgment is void, and thus may be collaterally attacked, if the rendering court had "no jurisdiction over a party or his property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act as a court."

Id., *quoting Austin Indep. Sch. Dist. v. Sierra Club*, 495 S.W.2d 878, 881 (Tex.1973). Colorado Third cites this standard (Petition at 14) but misunderstands it.

The issue is not whether the Harris County court *could have* personal jurisdiction over WC 4th or its property, but whether it *did have* jurisdiction. "Or" as a conjunction indicates four alternative bases, any one of which is sufficient, for a party to challenge a judgment as being void. The Third Court, again citing this Court's precedent, further stated:

> For a court to have personal jurisdiction over the defendant, the defendant must be amenable to the jurisdiction of the court and the plaintiff must have invoked that jurisdiction by valid service of process on the defendant.

Id., *citing Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 200 (Tex.1985) (analyzing both amenability to jurisdiction and valid service of process). The receivership order—as a judgment—is void as to WC 4th because the Harris County court did not have jurisdiction over WC 4th or its property when issuing the receivership order, as WC 4th was not served with process in the Princeton suit.

Colorado Third argues:

> WC 4th made no such allegations regarding the [jurisdiction or capacity of] the Harris County Court. [record citations omitted]. Instead, WC 4th attacked the authority given to the Receiver in Harris County and the validity of the Receivership Order itself.

Petition at 14. WC 4th, if it had the burden to establish a negative, alleged in its Motion for New Trial that it "is not one of the judgment

debtors in the Princeton suit." CR 2670. Because the Harris County court did not have jurisdiction over WC 4th, the receivership order is void as to WC 4th. It may, therefore, challenge the Receiver's authority and the receivership order as applied to WC 4th in the Travis County suit.

C. The law is clear that a court cannot adjudicate the substantive rights of non-parties, whether in turnover proceedings or otherwise.

Colorado Third asks this Court to clarify the law "so that parties know the proper court in which to lodge their challenges." Petition at 16. With regard to the issues in this case and the related appeals, no court has suggested, and no precedent requires, that WC 4th or Rio Grande, LP must lodge its challenge to the Receiver's authority anywhere other than the court in which the Receiver was acting. Again, *Alexander Dubose* was about finality, not about the appropriate forum for resolving competing claims to specific property.

Returning to *Wagner*, 315 S.W.3d at 192, the court there also held that a judgment may be collaterally attacked because of "fundamental error." The Harris County court in the turnover proceedings cannot adjudicate the rights of WC 4th because WC 4th was not a party to that proceeding. "In no case shall judgment be rendered against any

defendant unless upon service, or acceptance or waiver of process, or upon an appearance." *Mapco, Inc. v. Carter*, 817 S.W.2d 686, 687 (Tex. 1991), *citing* Tex. R. Civ. P. 124. Entering a judgment while lacking jurisdiction over a party whose substantive rights are affected by the judgment is a fundamental error. *Id*.

The Texas charging order statute—Tex. Bus. Org. Code § 153.256—makes equally clear that the exclusive remedy for a judgment creditor or receiver seeking to satisfy a judgment is a charging order against a judgment debtor's interest in a limited partnership. The four related appeals are consistent on this point. The appellate court here held that the record contains no evidence that WCCG had any interest in WC 4th. 2024 WL 3841676, at *7. But even if WCCG had an interest, the receiver would be limited to a charging order against WCCG's share of the profits and its right to receive distributions. *Id*. Again relying on the Eighth Court's reasoning, the appellate court held:

> the provision in the receivership order requiring [WCCG] to turn over any interests it had in a partnership did not give [the Receiver] the right to take possession of the partnership's assets, which he effectively did by taking control of WC 4th's lawsuit.

Id. The law underpinning this holding is clear.

D. Colorado Third lacks standing to contend that WC 4th must intervene in the Princeton turnover proceeding in order to assert its challenge to the Receiver's authority or actions in the Travis County proceeding.

Colorado Third appears to argue that because WC 4th could conceivably intervene in the Princeton receivership proceeding and lodged its complaints about the receivership order there, this Court should hold that it was wrong not to do so. Petition at 18. This would entail finding that the trial court abused its discretion by allowing WC 4th to challenge the Receiver's actions in the Travis County court. Colorado Third did not raise this issue on appeal.

Nor does Colorado Third have standing to raise the issue. Asking the Court "to articulate the appropriate mechanism for resolving competing claims to property sought in a turnover proceeding" (Petition at 18) is close to, if not wholly, asking for an advisory opinion. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Colorado Third articulates no interest whatsoever in the turnover proceedings in the Princeton suit or to WC 4th's challenge to the Receiver's authority. Colorado Third's claimed interest in that issue is at best hypothetical:

> An opinion issued in a case brought by a party without standing is advisory because rather than remedying an actual or imminent harm, the judgment addresses only a hypothetical injury.

Id. This issue is important because courts do not decide hypothetical claims. Whether WC 4th or the Receiver controls WC 4th and its claims is not a controversy in which Colorado Third has a cognizable injury or interest.

PRAYER

Respondent WC 4th and Colorado, LP prays that the Court deny the petition for review and grant it any other and further relief to which it is entitled.

Respectfully submitted,

BURFORD PERRY, LLP

/s/ Brent C. Perry
Brent C. Perry
State Bar No. 15799650
bperry@burfordperry.com
Zachary R. Carlson
State Bar No. 24116165
zcarlson@burfordperry.com
909 Fannin Street, Suite #2630
Houston, Texas 77010
Telephone: (713) 401-9790
Facsimile: (713) 993-7739

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

As required by Tex. R. App. P. 9.4(i)(2)(D) and (3), I certify that the number of words in this document is 4,366. I relied on the computer program used to prepare the document for the word count.

/s/ Brent C. Perry
Brent C. Perry

CERTIFICATE OF SERVICE

On February 5, 2025, I served this Response to Petition for Review on all counsel of record via the Court's electronic filing system.

/s/ Brent C. Perry
Brent C. Perry

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:

Brent Perry on behalf of Brent Perry
Bar No. 15799650
bperry@burfordperry.com
Envelope ID: 97006731
Filing Code Description: Response to Petition
Filing Description: Petitioner's Response to Petition for Review
Status as of 2/5/2025 11:48 AM CST

Associated Case Party: Colorado Third Street, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Warren Harris	9108080	warren.harris@bracewell.com	2/5/2025 11:18:50 AM	SENT
W. Stephen Benesh	99	steve.benesh@bracewell.com	2/5/2025 11:18:50 AM	SENT
Tracy Temple	793446	tracy.temple@bracewell.com	2/5/2025 11:18:50 AM	SENT
Christopher Dodson	24050519	chris.dodson@whitecase.com	2/5/2025 11:18:50 AM	SENT
Jeremy Dunbar	24099810	jeremydunbar27@gmail.com	2/5/2025 11:18:50 AM	SENT
Jeremy Dunbar		Jeremy.Dunbar@whitecase.com	2/5/2025 11:18:50 AM	SENT

Associated Case Party: WC 4th and Colorado, LP

Name	BarNumber	Email	TimestampSubmitted	Status
Brent Perry	15799650	bperry@burfordperry.com	2/5/2025 11:18:50 AM	SENT
Zachary Carlson	24116165	zcarlson@burfordperry.com	2/5/2025 11:18:50 AM	SENT