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No. 24-0817

In the Supreme Court of Texas

COLORADO THIRD STREET, LLC
Petitioner,

v.

WC 4TH AND COLORADO, LP,
Respondent.

On Review from the Third Court of Appeals
No. 03-22-00781-CV

REPLY TO RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

The multiple collateral challenges lodged against the Harris County Court's Receivership Order by WC 4th, World Class and its entities, have undeniably sowed much confusion and expenditure of judicial resources. Three trial courts and a federal bankruptcy court have concluded contrary to three different courts of appeals as to the proper forum for bringing challenges to the Receivership Order issued under the Texas Turnover Statute. *See* Pet.3. This Court has expressly recognized that a lack of clarity exists regarding the permissible scope of turnover proceedings. That lack of clarity has resulted in the court of appeals' holding here that a Travis County district court may sit in judgment and review the merits of the Receivership Order issued by a Harris County district court (even though the Receivership Order was upheld by the First Court of Appeals). The holding violates principles of comity, and the orderly administration of justice related to receiverships and should be reversed.

In its Response, WC 4th asserts that there is no legal or logical basis to require litigants to challenge a receivership order in the court that issued it. The argument overlooks long-standing authority directing second courts not to interfere with another court's receiver or its possession, control, or management of receivership property. WC 4th concedes (as it must) that it has asserted a collateral attack on the Harris County Court's Receivership Order, but claims the attack is permissible. WC

4th is incorrect, because the Receivership Order is not void, and WC 4th's challenges assert only voidable, rather than void, error. WC 4th resorts to a novel standing argument, but Colorado Third of course has standing to defend and protect its settlement agreement. The court of appeals erred in reversing the trial court's orders.

ARGUMENT

I. The Law Regarding the Permissible Scope of Turnover Proceedings is Unsettled and Warrants Review.

Regarding competing claims to property sought in a turnover order and the extent to which a turnover proceeding can affect rights of non-judgment debtors, there is "much confusion." *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 584 (Tex. 2018) (per curiam). This case represents a microcosm of that confusion, involving multiple challenges in multiple courts in parallel on the same issues. *See* Pet.1-3. None of WC 4th's scattershot arguments against review withstand scrutiny.

For example, WC 4th alleges that there "is no procedural mechanism by which WC 4th could 'intervene' in the Harris County court's turnover proceeding . . . when that order is already the subject of a direct appeal." Resp.11. Yet WC 4th has in fact done so, intervening in the turnover proceeding where, on appeal, it makes the same challenges to the Receivership Order that it makes here. *See* Pet.9. Colorado Third cited cases recognizing the right of third parties to intervene in turnover proceedings to protect their interests, Pet.17, and WC 4th makes no effort to address

them. WC 4th's claim that there is no procedural mechanism through intervention rings hollow.

WC 4th next argues that *Alexander Dubose* is irrelevant because this case allegedly does not involve competing claims to a judgment debtor's property. Resp.12. But its own words belie its argument. As WC 4th states, "the Receiver contends that WC 4th's property belonged to judgment debtor [World Class]." *Id.* Colorado Third also contends that World Class owned or controlled a membership interest in WC 4th that the Receiver could seize under the plain language of the Receivership Order. CR. 2883-85, 2381. The court of appeals held that World Class did not have a membership interest in WC 4th, but Colorado Third disputes its holding and has challenged it in its unbriefed issue. *See* Pet.xii. The case most assuredly involves competing claims to a judgment debtor's property.

Lastly, WC 4th quarrels with the notion that non-judgment debtors' substantive rights may be heard in the turnover court and argues that the issue in *Alexander Dubose* merely involved finality. Resp.12-13. It is true that the decision in *Alexander Dubose* turned on the question of finality, but this Court expressly left open the question of "the appropriate mechanism for resolving competing substantive claims to property sought in a turnover application." 540 S.W.3d at 586. Intermediate courts (even after *Alexander Dubose*) have recognized that parties like WC 4th may use intervention as an appropriate mechanism to protect their alleged

rights in the turnover property. *See* Pet.17-18. Indeed, the trial court here, not surprisingly, understood that the only appropriate place for WC 4th's claims was in the Receivership court: "as all of you know, the receiver is an arm of the court. So, if you think this receiver is exceeding his authority, you should go talk to [the Receivership Court]." 2.RR.46; *see also* CR.2448-49 (bankruptcy court rejecting request to act as a reviewing court and declare the Receivership order invalid).

This law must be reconciled with cases holding that substantive rights cannot be adjudicated in a turnover order proceeding and the question of whether intervention is a "novel exception in the turnover proceeding context." *Alexander Dubose*, 540 S.W.3d at 586. Given the confusion and inconsistency in appellate court holdings as expressly recognized by this Court, review is warranted.

II. WC 4th's Collateral Challenge to the Receiver's Authority Outside of the Receivership Proceeding is Impermissible.

A. *The law requires challenges to a receiver's authority to be made in the receivership court for good reason.*

A receiver is an officer of the receivership court and the medium through which the receivership court acts, and a long line of authority restricts a second court's ability to sit in judgment over what is essentially an arm of another court. *See Campbell v. Wood*, 811 S.W.2d 753, 756 (Tex. App.—Houston [1st Dist.] 1991, no pet.); *cf. First S. Properties, Inc. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976) (explaining reasons for rule prohibiting interference with property held in

receivership); Pet.12-13. Not only does WC 4th ignore this authority, it cites no authority, contrary or otherwise, for allowing a court to do so. *See* Resp.20-22.

Instead, WC 4th posits that "no logical basis" exists for requiring it to make its challenges to the receiver's authority in the court that issued the Receivership Order and claims there is no danger of inconsistent results among the courts of appeals by pointing to the La Zona Rio and other Colorado Third Street appeals. Resp.21. But there has been inconsistency with those opinions via the trial and bankruptcy court orders refusing the collateral attacks and the First Court of Appeals opinion affirming the Receivership Order. *See Great Value Storage, LLC v. Princeton Cap. Corp.*, No. 01-21-00284-CV, 2023 WL 3010773 (Tex. App.—Houston [1st. Dist.] Apr. 20, 2023, pet. granted, judgm't vacated w.r.m.).

More importantly, there is a good reason for requiring WC 4th to make its challenges in the Receivership Court and WC 4th entirely ignores it (though the trial courts did not): WC 4th's position places one trial court in appellate review of another. WC 4th provides zero legal authority for this departure from the normal order, and it has provided no reasonable basis for doing so. In short, requiring such challenges to be made in the receivership court makes good sense.

B. ***WC 4th's collateral attack is impermissible.***

WC 4th confesses that it made a "collateral attack on the receivership order." Resp.20. It therefore strains to show the receivership order is "void," Resp.23-24,

because "[o]nly a void judgment may be collaterally attacked," *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005).

Yet the Receivership Order is not void and, therefore, the collateral attack is impermissible. A judgment is void only if the court rendering judgment "had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act." *Id.* WC 4th does not argue any of these grounds. *See* Resp.23-24. Instead, WC 4th challenges the propriety of the Receivership Order and the scope of the Receiver's authority under it. Pet.14-15 (summarizing WC 4th's challenges in trial court); Resp.26 (arguing Receivership Order is erroneous under charging order statute). Those questions are germane only to whether the order was incorrect and voidable. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (per curiam) ("[A] court's action contrary to a statute or statutory equivalent means the action is erroneous or 'voidable,' not that the ordinary appellate or other direct procedures to correct it may be circumvented.").

WC 4th contends that the judgment is merely "void as to WC 4th" because it was not served with process in the *Princeton* suit. Resp.24. But the rule against allowing collateral attacks unless a judgment is itself void applies with equal force to strangers to a judgment. *E.g.*, *Austin Indep. Sch. Dist. v. Sierra Club*, 495 S.W.2d 878, 882 (Tex. 1973) (rejecting collateral attack by third party because judgment

was not void). This must be so, or judgments would be perpetually vulnerable to collateral attacks by third parties—who, by definition, were not within the original court's jurisdiction.

Because the Receivership Order is itself not void, WC 4th's collateral attack is impermissible.

C. *WC 4th's claim that the Harris County Court cannot adjudicate its substantive rights misses the mark.*

According to WC 4th, it is not required to challenge the Receiver's authority in the Receivership Court because (1) the Receivership Court cannot adjudicate its rights, and (2) in any event, the Receivership Court got it wrong by not limiting the Receiver to a charging order under Section 153.256 of the Texas Business Organizations Code. Resp.25-26. These arguments prove Colorado Third's point that WC 4th is making an impermissible collateral attack.

First, WC 4th cites inapposite law addressing judgments rendered against parties who have not been served with process or appeared in the action. Resp.25 (citing *Wagner v. D'Lorm*, 315 S.W.3d 188, 192 (Tex. App.—Austin 2010, no pet.) addressing a default judgment rendered against a party that was not served with process)). The Receivership Order, however, does not render judgment against WC 4th. CR.2755-63. Instead, it authorizes *the Receiver* to seize the *judgment debtor World Class's* membership interest in WC 4th under the Texas Turnover Statute. CR.2762. In doing so, the Receivership Order may indirectly *affect* WC 4th, but the

order does not render judgment against it. If WC 4th disagrees with the Receiver's actions taken pursuant to the Receivership Order, "[i]ntervention is a recognized option for a non-party seeking to protect its interest in property that is the subject of a turnover [order]." *Mitchell v. Turbine Res., Ltd.*, 523 S.W.3d 189, 200 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Yet as this Court pointed out in *Alexander Dubose*, there is confusion about how and to what extent turnover proceedings can affect third party rights, 540 S.W.3d at 584, necessitating this Court's review.

Second, WC 4th claims that the Harris County Court erred by not limiting the Receiver to a charging order against World Class's interest in WC 4th. Resp.26. In doing so, WC 4th is asking the trial court to interpret the provisions of the Harris County Receivership Order and determine them to be in error under the language of Section 153.256 of the Business Organizations Code. This challenge to the correctness of another court's order is a classic impermissible collateral attack. *See Mapco, Inc.*, 795 S.W.2d at 703.

This Court should grant review and confirm that WC 4th's challenges to the Harris County Court's Receivership Order are impermissible collateral attacks that instead must be asserted to the Harris County Court. Such a ruling comports with principles of comity and the orderly adjudication of matters in a receivership. It also avoids the chaos existing in this case, in which a litigant has been allowed to pursue

multiple collateral challenges, making the same arguments at the same time but to several different courts.

D. *WC 4th's new standing argument is meritless.*

Another contention of WC 4th's Response is a new argument that Colorado Third lacks "standing to raise th[e] issue" of whether "the receiver's actions and the receivership order must be challenged in the appointing court." Resp.20; *see also* Resp.10, 20, 27-28. This argument is meritless.

The sole case cited by WC 4th (Resp.27-28) instructs that standing exists if there is "a real controversy between the parties, which . . . will be actually determined by the judicial declaration sought." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (internal quotation marks omitted). The standard is met here. There is undisputedly a controversy about where the Receiver's actions and the Receivership Order must be challenged. *Compare* Pet.11 ("Challenges to a receivership order can, and must, be addressed in the court that issued the turnover order."), *with* Resp.22 ("The Travis County court and Third Court of Appeals are acceptable and proper forums . . . ."). That issue goes to the heart of whether the trial court or court of appeals acted properly. While the trial court correctly rejected WC 4th's attempts to challenge the Receiver's actions in this collateral proceeding, CR.3038, the court of appeals reversed that decision and allowed WC 4th's collateral attack.

WC 4th summarily claims that any controversy is only "between WC 4th and the Receiver," not Colorado Third. Resp.20. But Colorado Third was the counter-party to the settlement agreement with the Receiver and is equally prejudiced by the court of appeals' improper reversal of the agreed orders that effected the settlement. *See Highland Homes Ltd. v. State*, 448 S.W.3d 403, 408 n.17 (Tex. 2014) ("It should go without saying that when a party agrees to one judgment and a materially different one is rendered, the party is personally aggrieved and has standing to complain."). The court of appeals' opinion directly impacts Colorado Third, which has standing to complain about the errors within it. *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 843 (Tex. 2000) ("party whose own interest is prejudiced by an error has standing" to seek appellate review).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This reply in support of petition for review complies with the length limitations of TEX. R. APP. P. 9.3(2)(D) because this petition consists of 2,320 words, excluding the parts of the exempted by TEX. R. APP. P. 9.4(i)(1).

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I certify that a true and correct copy of this Reply in Support of Petition for Review was served on the following via eFileTexas.gov on March 6, 2025:

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