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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CITY OF WHITTIER,

Plaintiff and Respondent,

v.

SOUTHLAND DISPLAY COMPANY, et al.

Defendants and Appellants.

MARK S. ADAMS,

Receiver and Respondent.

B250819

(Los Angeles County
Super. Ct. No. VS021242)

APPEAL from orders of the Superior Court of Los Angeles County, Thomas McKnew, Jr., Judge. Affirmed.

John L. Dodd & Associates and John L. Dodd; The Stone Law Firm and Elliott H. Stone, for Defendants and Appellants.

Jones & Mayer, Dean J. Pucci, Krista Macnevin Jee and Baron J. Bettenhausen, for Plaintiff and Respondent.

California Receivership Group, Mark S. Adams and Andrew F. Adams for Court appointed Receiver and Respondent.

Defendant Stephen Claro, acting on behalf of himself and his two companies Southland Display and Village Inn, entered into a stipulation with the City of Whittier to appoint a receiver under Health and Safety Code Section 17980.7 to abate code violations at an apartment complex. After attempting to obtain approval for a rehabilitation plan, the receiver requested permission to sell the property to avoid a foreclosure. The court granted the request and defendants appealed the order. During the pendency of the appeal, the receiver requested orders directing the defendants to jointly and severally pay approximately \$500,000 for the costs of the receivership. Defendants opposed the request, arguing the court had no authority to order them to pay the costs directly. Defendants also filed a motion to remove the receiver asserting that he had wasted funds and failed to abate the conditions at the property. The trial court denied the motion to remove the receiver and ordered defendants to pay the costs of the receivership. Defendants appealed each of the orders.

In this consolidated appeal, defendants argue the trial court abused its discretion in authorizing the sale of the property, denying the motion to terminate the receivership and holding them directly liable for the receivership costs. We dismiss defendants' appeal of the order denying their motion to terminate the receiver for lack of appealability; we affirm the remaining orders.

FACTUAL AND PROCEDURAL BACKGROUND

A. Appointment of the Receiver

Stephen Claro is the president and sole proprietor of Southland Display Company and Village Inn, LLC. In 2006, Claro purchased an apartment building located in Whittier, California for \$2.2 million. Southland Display was named the title owner of the property. Southland later transferred the property to Village Inn through a quitclaim deed that was executed in January of 2010 and recorded in July of 2010.

In October of 2010, building inspectors for the City of Whittier received a referral alleging that unpermitted construction activities were occurring on the property. On November 2, 2010, Whittier building official Brian Lee and planning manager Don

Dooley inspected the property and discovered substantial unpermitted work. They observed numerous code violations, including, in part “exposed electrical work”; “unsanitary waste improvements”; “large areas of stucco that were detached from the wall”; and “non-permitted modifications to the water supply system.”

Two days later, Lee and Dooley returned to the property with Whittier building inspector Mike Moser and other city officials to evaluate the “safety and livability of the structure.” During this “joint department inspection,” Whittier officials discovered numerous additional substandard conditions, including an unpermitted addition to the property, “significant water damage”, substantial roofing problems and lack of heating. The inspectors concluded that the conditions at the property violated six sections of the Whittier Municipal Code, approximately 30 sections of the California Building Code and multiple sections of the California Mechanical Code and the California Plumbing Code. Lee, Moser and other city officials believed the conditions posed “an imminent threat to health and safety.”

On November 19, 2010, Whittier posted a “notice to abate” pursuant to Health and Safety Code section 17980.6¹ directing the owner of the property to remedy the illegal conditions. Shortly after the notice was posted, Claro met with Whittier attorney Dean Pucci and agreed to sign a declaration stipulating to the appointment of a receiver to remedy the conditions at the property. In his declaration, Claro acknowledged he was the “sole owner” of the property and “president” of both Southland and Village Inn. Claro also admitted he was “aware of the violations present on the [p]roperty” and agreed that they posed “threats” to the public. Claro explained that he currently “lack[ed] the ability or resources to immediately redress the City’s emergency concerns,” and therefore agreed it was in “both parties’ best interests to have a neutral court officer, the Receiver, put in place to mediate between the parties and to neutrally assess all options as they related to abatement of the substandard conditions present at the property.” Claro further asserted that he had not been threatened or promised anything to secure his statement.

¹ Unless otherwise indicated, further statutory citations are to the Health and Safety Code.

Two days after Claro signed his declaration, Whittier filed an emergency petition against Claro, Southland and Village Inn (collectively defendants) for an “order to abate the substandard” conditions and “to appoint a receiver.” The petition summarized the violations Whittier had discovered during the November inspections and the notice it had provided to the defendants. The petition alleged the conditions posed “an immediate threat to . . . health and safety” and requested that the court appoint a receiver pursuant to section 17980.7. In support of the petition, Whittier filed Claro’s declaration stipulating to the receivership and several declarations from city officials who had participated in the property inspections and prepared the notice of abatement.

On December 2, 2012, the court granted Whittier’s application for a receiver, noting that the defendants had admitted the conditions at the property “violated the . . . Health and Safety Code [and the] Whittier Municipal Code.” The court’s order stated that, under Health and Safety Code sections 17981 and 17980.7, it was authorized to appoint a receiver and grant other “temporary relief pending final disposition of the City’s petition.” The court explained that it believed a receiver was appropriate due to “the complexity and amount of work necessary to abate [the conditions on the property].”

The order named Mark Adams as receiver and directed him to “correct all of the existing violations now existing upon the property and to see to it that the violations do not reoccur.” The order authorized Adams to “manage and control the property”; “secure a cost estimate and construction plan . . . for the repairs necessary to correct conditions cited in the Notice of Violation”; “enter into a contract to conduct the repairs”; “borrow funds to pay for the repairs . . . and . . . any [tenant] relocation benefits”; and secure debts for repairs “with a recorded lien on the property.” The order also authorized Adams to immediately issue a receiver certificate in the amount of \$50,000 to perform “emergency actions.” Adams was directed to seek court approval for any additional funding requests.

B. The Receiver's Initial Steps to Rehabilitate the Property and the Defendants' Bankruptcy Action

On December 31, 2010, Adams submitted a "Second Receiver's Report" stating that he had conducted additional inspections of the building. A structural engineer had concluded the exterior of the building was "severely compromised" and that the structure could collapse in an earthquake. A plumber discovered "raw sewage [was] leaking out of at least two pipes under the building." As a result of these and other conditions on the property, Adams relocated the buildings tenants on an emergency basis. Adams also reported that he had retained a contractor named "JMC" to develop a rehabilitation plan and cost estimate.

On January 2, 2011, one month after the court had appointed the receiver, defendants filed a motion to terminate the receivership arguing that Adams had been appointed without providing Claro an opportunity to "oppose the . . . application with facts." In a supporting declaration, Claro asserted that he had stipulated to the receivership without the benefit of counsel and that Whittier's attorney had assured him the receivership was only temporary. Claro's motion asserted that the code violations at property could be "easily taken care of . . . within a few months" and that he was currently attempting to secure a loan for the repairs. Claro argued that the court should stay the proceedings and allow him to negotiate a consent decree addressing the necessary repairs. The parties agreed to delay the hearing on the motion to terminate the receivership until April of 2011.

On April 1, 2011, Adams issued a third receiver's report stating that he had been working through "various issues relating to re-use of this building." Adams reported that he had tried to negotiate an agreement with Whittier College to lease the rehabilitated apartment for use as student housing. Although the negotiations were unsuccessful, Adams believed the best use of the building was to convert the now-vacant apartments into student housing for Whittier College. Adams requested approval to "develop and implement a plan" to convert the building into student apartments and provided a bid from "JMC" for the work, which was approximately \$965,000. Adams also requested

authority to issue a receiver certificate to finance the construction, secured by a deed of trust to the property.

Defendants filed a “response” to the third report asserting there was no reason to continue the receivership because the building was now vacant and therefore did not present any risk to public safety. Defendants also objected to Adams’s plan to transform the property into student apartments, claiming that they were currently developing an alternative plan to demolish the building and erect a new structure. Defendants requested that the court terminate the receivership and allow the development of the property to “be handled through normal City Planning, zoning, and building agencies.”

Prior to the hearing on Adams’s third report, the defendants filed a federal bankruptcy action that immediately stayed the state receivership proceedings. In May of 2011, Adams filed a fourth report stating that the receivership was incurring significant costs as a result of “legal uncertainty caused by the bankruptcy filing.” Adams reported the property, now sitting vacant, had become the target of repeated burglaries and other criminal activity.

In his fifth and sixth reports filed in June of 2011, Adams reported that the bankruptcy court had ruled that Whittier’s health and safety receiver action was exempt from the bankruptcy stay provisions set forth in 11 U.S.C § 362. Adams’s reports also responded to the defendants’ concerns about his development plans, explaining that “the proposed re-use [to student housing] was recommended because no lender in the state would make a construction loan on this building without a clearly articulated plan on how the loan was going to be repaid.” In an effort to accommodate the defendants’ concerns, Adams had obtained a second construction bid that “delete[d] any plan for the future reuse of the property [as student housing]” and “simply focus[ed] on the health and safety repairs that are need[ed] to correct the existing problems.” Adams stated that this new bid was \$864,000 and asked the court for permission to seek a receiver certificate against the property up to that amount.

Defendants filed a response to the sixth report reasserting their request to terminate the receivership based on the fact that the property was now vacant. Defendants argued that Adams's development plan was a waste of money and opposed the application for a lien against the property to obtain construction financing. Defendants also reiterated their belief that the court should remove the receiver and simply issue an order requiring defendants to fix the conditions at the property. Whittier, however, opposed terminating the receivership until the conditions on the property had been fully abated. Whittier noted that the defendants were responsible for the substandard condition of the property, had specifically agreed to the appointment of the receiver and previously represented that they had insufficient funds to fix the property.

On July 11, 2011, the trial court held a status hearing on the receivers' sixth report. Claro voluntarily withdrew his motion to terminate the receivership. The court then approved Adam's sixth report and authorized him to issue a receiver certificate for up to \$864,000. The court also authorized Adams to enter into a construction contract.

In his tenth report, filed in October of 2011, Adams informed the court he had entered into a construction contract with "Miken Construction" totaling \$840,000.² Adams also reported he had experienced problems "[a]rranging the financing for this reconstruction work . . . [because] [t]raditional lenders require a fully developed business plan for the re-use of the property before . . . committing to construction funding." Based on the unfavorable terms offered from other lenders, Adams chose to enter into a lending agreement with a Miken affiliate named DDCFRJ Investments. Adams continued to recommend "[t]argeting th[e] reconstruction to student apartments for Whittier College," which was "supported by the City and . . . ma[d]e the most financial sense."

² Adams explained that he had elected not to hire the original contractor (JMC) because of "unrelated problems" on another recent receivership project.

C. Adams's Attempts to Obtain Approval of his Construction Plan and Secure Additional Financing

In June of 2012, Adams filed his eleventh report, which indicated that little progress had been made on the project since his tenth report in October of 2011. Adams reported that Miken had submitted design plans to Whittier in December of 2011 proposing a “reconfiguration of these units into two bedroom suites targeted towards rental by Whittier College students.” However, in February of 2012, Whittier notified Miken that its proposed design would require amendment to a local zoning plan, which would likely take six to eight months. To avoid these delays, Miken and Adams had elected to withdraw the “two bedroom suite concept” and submit an ““upgrade and rehab plan”” that would essentially retain the current layout of the building and “replace the dilapidated systems such as roof and plumbing.” As of June 2012, Whittier had not decided whether the redesign would require changes to the local zoning plan.

Adams's twelfth report, filed in July of 2012, announced that Whittier had informed Miken the “rehabilitation and upgrade plan” would require local zoning changes. Adams disagreed with the finding and recommended that the court order the city to appear and explain the basis for its decision. In September of 2012, the court authorized Adams to hire a consultant to aid him in obtaining Whittier's approval for the project.

In February of 2013, Adams, the defendants and Whittier entered into a stipulation acknowledging that the permitting process was “proceeding appropriately” and that Whittier would likely issue permits within the month. The stipulation further asserted that construction was expected to begin shortly after the permits were issued and continue for approximately six months.

In March of 2013, Adams filed a fourteenth report announcing that “all regulatory hurdles ha[d] been cleared and the City of Whittier [was] prepared to issue construction permits for the project.” The report further stated, however, that the cost estimate for the project had risen to \$1.1 million and that Adams had already expended \$350,000 in receivership costs. As a result, Adams intended to seek additional borrowing authority.

The fourteenth report also stated that the current receiver certificate would mature on April 1 and that DDCFRJ intended to issue a notice of default unless defendants made provisions for payment. DDCFRJ was willing to delay the foreclosure and provide all of the additional funds necessary to complete the project as long as Miken was permitted full control over the development. The defendants, however, had refused to grant Miken that level of control.

In April of 2013, Adams provided a fifteenth report stating that DDCFRJ had agreed to delay issuing a notice of default on the receiver certificate for up to 90 days if the defendants paid the interest on the loan. Adams also reported, however, that construction had not begun on the now fully-approved project due to financing issues. DDCFRJ continued to insist that it would not finance the remainder of the project unless Miken was given “control . . . and management of the property . . . until the loan [was] repaid.” The defendants continued to reject those conditions. Adams had spoken with several other lenders and did not believe any “other source of . . . financing [was] likely to be found.”

In light of the continuing disagreement between DDCFRJ and defendants, Adams suggested that the court terminate the receivership. Adams asserted that the property was now set “on a path toward correction of its health and safety problems. But at this point this is more development project than a health and safety receivership. [Defendants] would undoubtedly prefer to be relieved of the restrictions imposed by this receivership. And since [Whittier] has no position on who develops, constructs and manages the property, there is no requirement that it be done under this Court’s auspices.”

At a status conference hearing, Whittier objected to Adams’s suggestion that the receivership should be discontinued. The court stated that it would not relieve the receiver and ordered the parties to attempt to work out the financing issues over the next 30 days.

D. Adams's Application for Authority to Sell the Property and the Defendants' Motion to Remove the Receiver

1. Adams's request for authorization to sell the property

In May of 2013, Adams issued a sixteenth report informing the court that the parties had been unable to make any progress regarding the financing issues and that the property should be put up for sale. DDCFRJ remained willing to “finance and build out the project provided that it controls the progress from this point forward. Otherwise it wants its current loan paid off by [defendants].” According to Adams, however, Claro was refusing to “step aside so that the project can be completed but at the same time has not put forward any financing proposal which would allow him or his agents to build out the project. Even if he were able to do so, it is another question whether permits would be issued to [Claro] by the City of Whittier.” Adams informed Claro he was going to request “authority to sell the property to break the impasse caused by this stalemate.”

Adams informed the court he had met with two brokers to list the property for an “as is” sale and recommended that the court authorize him to give the listing to “CBRE.” Adams recommended a “market oriented approach to the sale because . . . it will yield more money than the other alternative of a foreclosure sale.” CBRE had evaluated the property to be worth \$500,000 and recommended listing it at that price. Adams further reported that if the property was sold at that figure, there would be sufficient funds to cover most of the receivership costs, which currently totaled approximately \$505,000.

At a hearing on the sixteenth report, counsel for the lender DDCFRJ informed the court it had planned to initiate foreclosure but agreed to “hold off” after Adams announced he would seek authority to sell the property. Counsel stated that although DDCFRJ preferred to have a “structured standard sale,” it would seek foreclosure if the sale process did not begin in the coming weeks. Whittier expressed concern that selling the property might return the case to “ground zero” with the “new purchaser” and requested that any sale be “tightly worded that we can be assured the abatement would occur.”

Defendants objected to the sale and asserted that the court should appoint a new receiver who might be able to find additional financing options. Defendants also informed the court it was currently in the process of “putting together an alternative plan” for the property. The court authorized Adams to list the property with CBRE, but noted that any purchase offer would require confirmation from the court.

On July 30, 2013, Adams provided a nineteenth report informing the court that CBRE had identified a buyer who was willing to pay \$610,000 for the property in its current condition. The prospective buyer had also agreed to utilize Adams’s previously approved development plan and to use Miken as the contractor. Adams recommended that the court approve the sale, noting that the offer price was \$110,000 more than CBRE’s estimated value of the property.

2. Defendants’ opposition to the property sale and motion to remove the receiver

Two days after Adams submitted his nineteen report seeking permission to sell the property, defendants filed a motion to remove, or in the alternative replace, the receiver. The motion argued that the receivership should be terminated because: (1) the defendants were not provided a reasonable amount of time to address the code violations prior to the initiation of the receivership in 2010; (2) Whittier had “greatly exaggerated” the “damage and significance of Code violations [that were] cited” in the petition for the receiver; (3) Adams was improperly using his “receiver’s reports” as a “substitute for notice motions,” thereby depriving defendants of their due process rights; (4) Adams had wasted significant funds, incurring hundreds of thousands of dollars of debt without abating the substandard conditions on the property. Defendants argued that if the court was not willing to terminate the receivership, it should replace Adams with a different receiver.

In support of the motion, defendants provided a declaration from Brad Avrit, the president of an engineering firm named Wexco. Avrit’s declaration stated that he had conducted an “on-site investigation of the subject property . . . in order to make an independent determination of the subject property’s condition, the extent of any health

and safety violations, and to determine the cost and scope to repair the same.” Avrit concluded that “the extent of the damage and significance of the Code violations cited by [Whittier] employees [in 2010] were exaggerated.” Avrit further asserted that he estimated the “cost to repair as of the date of the [2010] Petition would have been \$275,050. However, due to improper and deficient securing of the property once vacated, the property was significantly vandalized, . . . result[ing] in an increased cost to repair of approximately \$480,400.”

In addition to its motion for removal, defendants filed objections to Adams’s nineteenth report. Defendants argued that the court should not approve the sale of the property because they had never been given a reasonable opportunity to correct the conditions on the property. Defendants asserted that they had developed their own plan of abatement under which a contractor named “JWC Construction” would repair the property for \$616,00. JWC based its construction bid on Avrit’s report on the condition of the property.

Defendants acknowledged they had been unable to find a lender who was willing to finance their proposed construction plan with a lien against the property. They argued, however, that defendant Claro had sufficient resources to finance the project. In support, defendants provided personal account statements showing that Claro held approximately \$1.5 million in cash and had access to a \$600,000 home equity line of credit. Defendants also provided a preapproval letter from a bank stating that it would consider extending a loan of \$1.2 million, with Claro acting as guarantor and secured by a separate piece of property that Claro owned.

3. The trial court’s hearing on the request to sell the property

On August 9, 2013, the court held a hearing on Adams’s request to authorize the sale. Adams argued that the court should reject the defendants’ abatement plan because it came too late in the process. According to Adams, defendants had waited almost two-and-a-half years before offering any sort of abatement plan, which had been presented only on the eve of the proposed sale. Adams also argued that JWC’s “bid” was

insufficiently detailed and excluded many substantial costs, including architectural and engineering services, permits and processing fees. Adams also argued that the defendants had not shown Whittier the plans, there was no evidence that JWC was qualified to perform the work and there was no evidence Whittier would approve the work. In contrast, the plans that the CBRE purchaser had agreed to follow had already been approved by Whittier, thereby enabling construction to commence within “weeks” of the sale. Adams argued that the remainder of the defendants’ arguments, which challenged the original basis for the receivership, were untimely and should have been raised years ago.

Defendants, however, asserted that their evidence showed Whittier had failed to satisfy the conditions necessary to impose a health and safety receivership because they had never given Claro reasonable time to abate the conditions. They further argued that their expert evidence from Brad Avrit demonstrated the conditions at the property had never warranted a receivership. Defendants also argued that Claro’s declaration stipulating to the receivership was ineffective because he had not been advised to seek counsel prior to signing it. Claro, who testified at the hearing, claimed that he had not understood the effect of the stipulation and believed he was required to sign it.

After hearing argument, the court authorized the sale. The court rejected defendants’ argument that Claro’s stipulation was unenforceable or that the original conditions at the property did not justify a receivership: “The fact is that [Claro] agreed to the appointment of a receivership [¶] . . . [¶] I . . . understand the condition of that property at the time the stipulation was entered into, and there was a stipulation, and he was a businessman. I hold him to that standard.” The court also rejected the defendants’ arguments that they had not received adequate time to remedy the violations: “I believe that having signed the stipulation there is no issue regarding notification necessary . . . to make the repairs.” Finally, the court acknowledged the sale would be a financial hardship for Claro: “I intend to allow the sale to go forward. . . . I happen to believe that the owner of the property, Mr. Claro, will be hurt financially by the sale of the property, a

\$914,000-plus debt.^[3] That’s now what it is. . . . That has to be satisfied, the receiver’s fees have to be paid, and after all the expenses paid to the City, [the receiver] and to the lender wherein this debt was incurred. Obviously Claro is going to be hurt financially. That is indeed unfortunate.”

Ten days later the court issued an order permitting Adams to “sign any and all documents including a grant deed, to effectuate the sale” of the property “on the terms described in the nineteenth report.” Defendants appealed the order, staying the sale.

4. The trial court’s hearing on the motion to remove the receiver

On August 19, 2013, the court heard the defendants’ motion to remove the receiver. The court informed the parties that its tentative ruling was to deny the motion, explaining: “[D]efendants had two and a half years to do something, and [they] didn’t. [Claro’s gone through six counsel. . . . [S]ince he has substantial assets, at least \$1.6 million in cash, apparently, and several other properties – he could have stepped up and worked out an arrangement to rehabilitate this property. But instead he . . . agreed to the receivership by stipulation, which he signed. I have . . . not a lot of sympathy with his position.”

Defendants reiterated their belief that Adams had wasted over \$500,000 without abating the conditions on the property. They also argued that Claro had not taken any steps to abate the problems earlier in the proceedings because Adams controlled the property. Defendants also asserted that Adams had acted outside his authority by pursuing an agenda of “redevelopment,” rather than merely abating the conditions at the property.

Adams, however, argued that the record demonstrated Claro had shown no interest in abating the property “until [he] recently filed a very qualified letter of intent from a bank and a very cursory construction estimate from a contractor. . . . That’s the first time

³ The court’s statements regarding a \$914,000 debt appears to reference the total amount Adams had been authorized to borrow. Adams, however, had only actually borrowed about \$450,000.

in two and a half years . . . that [] Claro has made any showing of even an interest in fixing the property.” Adams also argued that he recommended his student housing plan because the only way to obtain financing for the project was to “have a concept for the future plan of this property . . . It’s impossible to . . . get the lien paid without the building being built out.” Finally, Adams argued the defendants were responsible for many of the costs and delays, noting that they had filed a bankruptcy and then voluntarily dismissed the action once the federal court ruled the receivership proceedings would not be subject to a stay. Defendants had also repeatedly moved to terminate the receivership despite the fact that they had initially stipulated to it.

Whittier agreed that the receivership should not be terminated. Whittier contended that all of the defendants’ arguments had been raised and rejected at prior hearings and that the property still needed to be abated.

The court denied the motion to remove the receiver, explaining that their receivership was initiated because Claro had failed to address the conditions on the property and then stipulated that he could not afford to do so. Although the court expressed regret regarding how much money had been spent during the receivership, it found that “many factors . . . caused the delay in getting to where the property now may be . . . sold.” The court further concluded that Claro’s current “abatement plan” was insufficient, explaining that defendants had merely provided a declaration from an “engineer who really didn’t have great construction experience other than as an expert witness” and a heavily-qualified offer from a contractor. The court also found that the property could “go into foreclosure at any time,” which was “a real problem.”

E. Adams’s Requests for Orders Directing Defendants to Pay Outstanding Receiver Fees and the Receiver Certificate

1. Adams’s ex parte request for direct payment of the receivership costs

On August 29, 2013, Adams filed an ex parte request for an order declaring defendants Claro, Southland and Village Inn jointly and severally liability for all receiver fees that had been submitted to the court and not yet been paid, which totaled

approximately \$46,000. Adams also sought an order requiring the defendants to “pay directly to the receivership lender the approximate sum of \$449,282.20 representing principal and accrued interest due on the receivership certificates previously approved by [the] Court.” Adams explained that he had brought the motion on an ex parte basis “because the receivership bank account currently has \$110 in it and has been depleted for some time.”

Adams filed a twenty-fourth report providing additional support for an order requiring defendants to “pay directly” the outstanding receivership costs. Adams argued that Health and Safety Code section 17980.7, subdivision (c)(15) authorized the court to order the owners of the property to pay any unrecovered costs of the receivership. Adams argued that although the subdivision was “brand new” (it had been added in 2012), it merely codified prior case law recognizing that trial courts have broad discretionary authorities to “order an owner to pay the existing costs [of a receivership].” Adams also explained that he could not currently utilize the receivership property to pay off the costs because defendants had appealed the order authorizing the sale.

The court granted the ex parte motion in part, explaining that it was ordering defendants, jointly and severally, to pay Adams approximately \$22,000 for unpaid receiver fees that had accrued prior to June 30, 2013. The court explained Adams had previously submitted all of these fees for the courts approval and defendants had therefore had a prior opportunity to review them. The court further ruled, however, that the defendants should be permitted an opportunity to review the fees accruing after June 30, which had never been previously approved by the court. The court also concluded that the defendants should be permitted additional time to oppose Adams’s request that they pay the receiver certificate. The court set both requests for payment for a regularly noticed motion hearing.

On September 3, 2013, the court entered a written order directing Claro, Southland and Village Inn “jointly and severally to pay to Mark Adams \$22,391 [for]. . . receiver fees due but unpaid through June 2013.” A hearing was scheduled on the additional requests for payment on October 9, 2013.

2. *The court's hearing on payment of receivership certificate and additional receiver fees*

On September 27, 2013, defendants filed an opposition to Adams's request for an order "directing [defendants'] payment of receivership certificate." Defendants argued that the statute Adams had cited in support of his request, section 17980.7, subdivision (c)(15), was passed after the receivership was initiated and was therefore inapplicable. Defendants argued that applying the statute after the initiation of the proceedings would constitute a violation of the ex post facto and due process clauses. Defendants asserted that, in the absence of a statute authorizing the court to order defendants to pay the receivership costs directly, the receiver could only use the property of the receivership itself to pay off the certificate.

Defendants separately argued that neither Claro nor Southland could be ordered to pay the receivership certificate because neither of them were "owners" of the property. Rather, the title documents showed that Village Inn was the sole legal owner. Defendants asserted that because neither Adams nor Whittier had presented any evidence that Claro or Southland qualified as Village Inn's alter ego, they could not be deemed to be co-owners of the property. Defendants presented these same arguments in opposition to Adams's request that they be ordered to pay the remainder of the receiver fees.

At the October 9, 2013 hearing, the court rejected Claro's assertion that he was not an owner of the property. The court noted that Claro had repeatedly identified himself as the owner and offered to use his own money to finance abatement of the property: "He can't have it both ways. The court is holding that he is the owner of the property and that he totally controls and operates Southland Display Company and Village Inn. And he's not going to be able to claim that he does and then claim that he doesn't . . . own[] . . . the property. Too much has been said to establish by his own words that he is."

Adams argued that the court should also treat Southland as an owner because it was the prior title holder and had transferred its interest in the property to Village Inn only after Whittier had initiated the enforcement proceedings. Although defendants' counsel argued that Southland transferred the property several months before the

receivership proceedings were initiated, the court relied on Adams's statements regarding the timing of the transfer.

Adams also argued that if the court did not enter an order requiring defendants to pay the receiver certificate, the lender was likely to initiate foreclosure proceedings.

After the hearing the court issued separate orders directing the defendants to "jointly and severally pay the receiver approximately \$31,000 in additional receiver fees" and to pay "the receivership account . . . the sum of \$449,282" for the amount due on the receivership certificate.

Defendants appealed both orders of payment. The notice of appeal also listed the court's ex parte order of payment dated September 3, 2013 and the court's order denying the motion to remove or replace the receiver.

DISCUSSION

The defendants appeal five orders entered during the receivership proceedings: (1) the August 9, 2013 order authorizing Adams to sell the property; (2) the August 19, 2013 order denying defendants' motion to remove or replace the receiver; (3) the September 3, 2013 ex parte order directing defendants to pay approximately \$22,000 for unpaid receiver fees that had accrued prior to June 30, 2013; (4) the October 9, 2013 order requiring defendants to pay the amount due on the receiver certificate; and (5) the October 9, 2013 order requiring defendants to pay approximately \$31,000 for unpaid receiver fees that had accrued after June 30, 2013.⁴

⁴ The defendants filed two separate appeals in this matter. The first appeal was to the trial court's order authorizing the sale of the property (Case No. B250819). The second appeal was to the remaining four orders (Case No. B252054). On December 17, 2013, we granted the defendants' motion to consolidate the appeals and directed the parties to submit all further materials under Case No. B250819.

A. Appealability

The City of Whittier and Adams (collectively respondents) argue that none of the orders are appealable.⁵ Defendants, however, argue that all of the orders qualify as postjudgment orders appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). Defendants alternatively contend that the order authorizing the sale of the property and the orders directing them to pay the receivership costs are appealable under the “collateral order doctrine.”

1. The orders are not appealable under section 904.1, subdivision (a)(2) because there has been no final judgment

“Code of Civil Procedure section 904.1, subdivision (a) lists appealable judgments and orders.” (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015.) Subdivision (a)(1) authorizes appeals from final judgments. A judgment is generally deemed final “““when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.”””” (*San Joaquin County Dept. of Child Support Services v. Winn* (2008) 163 Cal.App.4th 296, 300.) Section 904.1, subdivision (a)(2) authorizes the appeal of an “order made after a judgment made appealable by paragraph (1).” Thus, subdivision (a)(2) makes appealable “an order made after an appealable judgment.” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651.)

The defendants’ statement of appealability (see Cal. Rule of Court 8.204, subd. (a)(2)(B) [appellant’s opening brief must include a statement that “the judgment appealed from is final, or explain why the order appealed from is appealable”] asserts that each of the five orders at issue here are “appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(2).” The defendants’ statement does not identify any “final

⁵ Respondents initially raised the issue of appealability in two motions to dismiss the appeals that were filed before the defendants had submitted their opening brief. The arguments set forth in the memorandums supporting and opposing the motions to dismiss have been incorporated into the parties’ appellate briefs. We elected to review this jurisdictional issue with the benefit of full briefing and oral argument. This decision addresses all of the issues raised in the respondents’ motions to dismiss.

judgment” that preceded these orders nor does it explain why the orders qualify as appealable postjudgment orders. Instead, the statement merely cites to two cases that addressed the appealability of orders pertaining to receivers who were appointed to execute a prior judgment: *Raff v. Raff* (1964) 61 Cal.2d 514 and *City and County of San Francisco v. Shers* (1995) 38 Cal.App.4th 1831.

In *Raff, supra*, 61 Cal.2d 514, the trial court issued a judgment of dissolution and thereafter appointed a receiver to divide the community property. The husband filed a motion to replace the receiver, which was denied. The California Supreme Court held the order was appealable under subdivision (a)(2)’s predecessor statute (former section 963, subdivision (2)) because the receiver had been appointed “to carry the [dissolution] judgment into effect.” (*Id.* at p. 518.)

In *Shers, supra*, 38 Cal.App.4th 1831, a judgment was entered in favor of the City of San Francisco declaring that the defendant’s property was in violation of the municipal code and needed to be abated. Following judgment, the court appointed a receiver pursuant to Civil Code section 564, subdivision (b)(3) to carry the judgment into effect. The receiver was later forced to resign and the City of San Francisco filed a motion to appoint a successor receiver, which was granted. The defendants appealed, asserting that the order was appealable as a postjudgment order under subdivision (a)(2). San Francisco filed a motion to dismiss the appeal, arguing in part that “the order appointing a successor receiver cannot be a postjudgment order for purposes of section 904.1, subdivision (a)(2), because it was not made after judgment.” (*Id.* at p. 1838, fn. 6.)

The court rejected this argument, explaining that although “the appointment of a receiver is not itself a judgment rendering a subsequent order appealable[,] [citation] the receivership in this case was created under section 564, subdivision (b)(3), which empowers the court to create a receivership ‘[a]fter judgment, to carry the judgment into effect.’ [citation.] Accordingly, this order appointing a successor receiver was made after the . . . judgment that the receivership was created to enforce, i.e., the determination

that the property must be brought to code.” (*Shers, supra*, 38 Cal.App.4th at p. 1838, fn. 6.)⁶

Unlike *Raff* or *Shers*, Adams was not appointed to enforce a preexisting final judgment. Rather, the court’s order granting the application for a receiver makes clear that Adams was appointed under Health and Safety Code sections 17980.7 and 17981 to grant “temporary relief pending final disposition of the City’s petition” to abate the substandard conditions. (See Health and Safety Code, § 17981 [“An enforcement agency which institutes any action or proceeding pursuant to this article may, by verified complaint setting forth the facts, apply to the superior court for an order granting the relief for which the action or proceeding is brought until the entry of a final judgment or order”].) Although an order appointing a receiver is directly appealable under section 904.1, subdivision (a)(7) [authorizing appeal “[f]rom an order appointing a receiver”], defendants have provided no authority suggesting that an order appointing a receiver is itself a final judgment, thereby rendering all subsequent orders regarding the receivership a postjudgment order. Indeed, our courts have rejected that proposition. (*Shers, supra*, 38 Cal.App.4th at p. 1838, fn. 6 [“the appointment of a receiver is not itself a judgment rendering a subsequent order appealable”].)

In sum, the receiver in this case was not appointed to carry a judgment into effect. (See Code of Civil Proc., § 564, subs. (3) &(4) [authorizing court to appoint receiver “[a]fter judgment, to carry the judgment into effect” and “[a]fter judgment, to dispose of the property according to the judgment”].) No final judgment has been rendered in this matter. Accordingly, section 904.1, subdivision (a)(2) is not applicable to any of the five orders listed in defendants’ notices of appeal.

⁶ The court ruled the order was nonappealable for reasons not relevant here.

2. *The court's orders authorizing the sale of the property and directing defendants to pay the receivership costs are appealable under the collateral orders doctrine*

Defendants alternatively argue that the trial court's order authorizing the sale of the property and each of the three orders directing defendants to pay various receivership costs are appealable under the "collateral order doctrine," which is "an exception to the 'one final judgment' rule codified in Code of Civil Procedure section 904.1." (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 369 (*Skelley*).)⁷ Our Supreme Court has explained that "[w]hen a court renders an interlocutory order collateral to the main issue, dispositive of the rights of the parties in relation to the collateral matter, and directing payment of money or performance of an act, direct appeal may be taken. [Citations.] . . . Such a determination is substantially the same as a final judgment in an independent proceeding." (*Ibid.*; see also *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119 [an otherwise interlocutory order is directly appealable "if the order is a final judgment against a party in a collateral proceeding growing out of the action"]; *Fish v. Fish* (1932) 216 Cal. 14, 16 [order setting compensation for receiver's attorney was "in effect a final judgment against a party in a collateral proceeding growing out of the action"].)

Under the test set forth in *Skelley*, an order is appealable if it: (1) finally determines a collateral issue in the case and (2) directs the payment of money or performance of an act by or against the appellant. (*Skelley, supra*, 8 Cal.3d at p. 368.) An issue is collateral if it is "severable . . . from the general subject matter of the litigation." [Citation.] . . . [T]he test is whether an order is 'important and essential to the correct determination of the main issue' [in the case]. If the order is 'a necessary step to

⁷ The defendants have not argued that the trial court's order denying their motion to remove or replace the receiver is appealable under the collateral doctrine. Their sole argument regarding that order is that it is appealable as a postjudgment order under the holdings in *Raff, supra*, 61 Cal.2d 514, and *Shers, supra*, 38 Cal.App.4th 1831. For the reasons explained above, *Raff, Shers* and subdivision (a)(2) do not apply to the orders at issue in this case. Because the defendants have identified no other valid theory of appealability, we dismiss their appeal of the order denying removal or replacement of the receiver.

that end,' it is not collateral.'" (*Steen v. Fremont Cemetery Corp.* (1992) 9 Cal.App.4th 1221, 1227 (*Steen*).

a. The court's order authorizing the sale of the property is an appealable collateral order

Defendants assert that the court's order authorizing Adams to sell the property to a third party constitutes an appealable, collateral order. The Fourth District recently considered this issue in *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 683 (*Horspool*), concluding that such an order is appealable. As in this case, the petitioner in *Horspool* (City of Riverside) "filed a complaint for nuisance abatement and an injunction, and a petition for appointment of a receiver, pursuant to Health and Safety Code section 17980.7." (*Id.* at p. 675.) After unsuccessfully attempting to abate the substandard conditions, the receiver filed an "application for an order approving the sale of the property. The application was made on the ground that the [owner's] actions had made it impossible for the receiver to obtain financing to pay for the rehabilitation of the property." (*Id.* at 677.) The receiver's application reported that the prospective buyer had agreed to "fund the repairs . . . under the oversight of the receiver." (*Ibid.*) The court granted the application and the defendant appealed.

The appellate court concluded that the order was appealable as a collateral order: "Procedurally, the order approving the sale of the property is not appealable because such an order is not included in the list of appealable interlocutory orders found in Code of Civil Procedure section 904.1. . . . However, while not expressly appealable, an interlocutory judgment is nevertheless appealable to the extent that it requires as a collateral matter, the immediate payment of money, or the performance forthwith of an act. [Citations.] Thus, it has been held that an order approving the sale of assets is final and appealable [Citations.]" (*Horspool, supra*, 223 Cal.App.4th at p. 683.)

Under the circumstances of this case, we agree with *Horspool's* conclusion that the order authorizing the receiver to sell defendants' property qualifies as an appealable collateral order. First, the record demonstrates the order was "collateral" because it was neither "essential" nor "necessary" to the correct determination of the main issue in the case: abatement of the substandard conditions on the property. (*Steen, supra*, 9 Cal.App.4th at p. 1227.) Adams requested permission to sell the property because the lender on the receiver certificate had informed him it intended to initiate a foreclosure. Adams informed the court that selling the property at open market was likely to result in a higher sale price than a foreclosure, thereby maximizing the value of the receivership property. The sale therefore did not address the issue of abatement. Indeed, Adams, Whittier and the court all acknowledged that the sale would not end the need for the receivership, which would remain in place until the new owner could demonstrate the property had been or would be successfully abated.

Second, it is clear that the order directed "the performance of an act by or against [the appellant]." (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561.) The order states: "Mark Adams is hereby authorized to sign any and all documents, including a grant deed, to effectuate the sale of [the property] on the terms and in the manner described in [the receiver's nineteenth report]." This "order for the sale of the receivership property . . . is certainly an order 'for the doing of an act against' [the defendants], because, if carried into execution, it will deprive [them] of a portion of the property . . ." (See *Fish, supra*, 216 Cal. at p. 16.)

Although respondents do not dispute that the order compelled "the performance of an act," they assert the order did not involve a collateral issue because the sale of the property was a "step in the process toward abatement." This argument misstates the test. The test is not whether the sale was a "step" toward resolving the main issue in the litigation (which would effectively apply to every order in a case); the test is whether the sale was an "essential" or "necessary" step to properly resolving the main issue. (*Steen, supra*, 9 Cal.App.4th at p. 1227.) As explained above, the sale was neither essential nor necessary to abating the conditions at the property. Rather, the sale was requested to

avoid a foreclosure, thereby preserving the value of the receivership property. Although the sale might ultimately hasten the abatement process, it was not a necessary or essential step in ensuring that abatement occurred.

3. *The orders directing defendants to jointly and severally pay the receivership costs are appealable collateral orders*

The defendants also argue that the three orders directing them to pay a total of over \$500,000 in receivership costs (which includes unpaid receiver fees and the balance on the receiver certificate) qualify as collateral orders. As summarized in *Koshak v. Malek* (2011) 200 Cal.App.4th 1540, our Supreme Court has repeatedly held that “orders requiring payment before a judgment in a receivership proceeding [are] appealable.” (*Id.* at p. 1545 [citing cases].) For example, in *Fish, supra*, 216 Cal. 14, the defendant appealed an order requiring him to pay a receiver’s fees. The receiver sought to dismiss the appeal, arguing that the order was “merely interlocutory in character and therefore nonappealable.” (*Id.* at p. 16.) The Court rejected the argument: “Orders requiring the payment of money by the party complaining . . . are usually regarded as final as against such party and may be appealed from by him.” (*Ibid.*) The Court reached the same conclusion in *Los Angeles v. Los Angeles City Water Company* (1901) 134 Cal. 121, explaining that although a prejudgment order requiring defendants to pay a receiver’s fees was not listed as an appealable order in the predecessor statute to section 904.1, it was nonetheless “well settled” that such an order qualified as an appealable collateral order. (*Id.* at p. 123.) Respondents do not address these authorities, which are dispositive of the issue.

In sum, the trial court’s orders dated August 9, 2013, September 3, 2013 and October 9, 2013, which authorize the sale of the property and direct defendants to pay certain costs of the receivership, are appealable collateral orders. The defendants have failed to demonstrate that the August 19, 2013 order denying defendants’ motion to remove or replace the receiver is appealable. Accordingly, we dismiss the appeal of that order.

B. The Trial Court Did Not Abuse its Discretion in Ordering the Sale of the Property

1. Standard of review

“An order authorizing the receiver to sell substandard structures that pose a substantial health and safety risk is reviewed for abuse of discretion and is afforded considerable deference.” (*Horspool, supra*, 223 Cal.App.4th at p. 683.) “The order authorizing the receiver to [sell the property] rests upon the court’s ‘sound discretion exercised in view of all the surrounding facts and circumstances and in the interest of fairness, justice and the rights of the respective parties. [Citation.] The proper exercise of discretion requires the court to consider all material facts and evidence and to apply legal principles essential to an informed, intelligent, and just decision. [Citation.] Our view of the facts must be in the light most favorable to the order and we must refrain from exercising our judgment retrospectively.’ [Citation.]” (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 931 (*Santa Monica*)). “Reversal is warranted only after concluding the trial court abused its discretion by confirming a fraudulent, unfair, or oppressive sale. [Citation.]” (*Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 274 (*Cal-American Income*); *Santa Monica, supra*, 43 Cal.4th at p. 931 [“Where there is no evidence of fraud, unfairness, or oppression, the court has wide direction in approving the receiver’s proposed actions”].)

2. Defendants have failed to demonstrate the sale price was unfair

Defendants argue that we must reverse the trial court’s order because the proposed sales price was “manifestly unfair.” In support, defendants cite evidence that: (1) they bought the property in 2006 for approximately \$2.2 million; and (2) if sold at the receiver’s proposed price of \$610,000, defendants would only receive \$31,000 after the receiver costs were paid off. Defendants contend that the “virtual total elimination [of their \$2.2 million] investment in this property shocks the conscience as manifestly unfair. . . . This, alone, commands the conclusion the trial court abused its discretion in ordering the sale.”

Although defendants challenge the “fairness of the [proposed] price,” they have presented no evidence indicating that the property is actually worth more than the offered purchase price. The only evidence in the record on this issue suggests that the purchase price is higher than the current estimated value of the property. Adams reported that CBRE, an experienced real estate firm, had valued the property at \$500,000. The offered purchase price of \$610,000 substantially exceeds that estimate.

Defendants also ignore the fact that the court authorized the sale because the lender had announced it intended to initiate a foreclosure. Adams informed the court that the property would likely sell for more at a market sale than it would in foreclosure. In the absence of evidence showing either that a foreclosure was unlikely or that a foreclosure would actually result in a higher sales price than Adams obtained, defendants have failed to demonstrate that the terms of the sale are unfair.

The mere fact that the value of the defendants’ property is now worth substantially less than it was in 2006 does not, standing alone, show that the terms of the sale were unfair. Because defendants have pointed to no evidence that the property was worth more than the sale price, we find no basis for concluding the sale was “manifestly unfair.”

3. The trial court did not abuse its discretion in concluding the receiver established an actual need for the sale

Defendants next contend that the sale was unfair because the receiver presented no evidence establishing that the property needed to be sold. In *Cal-American Income, supra*, 138 Cal.App.3d 268, the court held that, to justify the sale of property, a receiver must “establish actual . . . necessity for the sale [citation] and also . . . demonstrate the sale ha[s] to be consummated at that time.” (*Id.* at p. 275.) To satisfy this burden, the receiver must provide evidence showing “both [that] the property w[ill] be lost to creditors at some future time unless the court order[s] the sale and [that] the sale ha[s] to occur within a specified time to avoid such a loss.” (*Ibid.*) “[E]vidence the property is faced with . . . substantial devaluation could justify an immediate sale to any available purchaser.” (*Id.* at p. 275, fn. 7.)

Defendants assert that, in this case, Adams “established neither a necessity for the sale, nor an urgency requiring the sale in the summer of 2013.” The record shows, however, that Adams only requested the sale after the lender on the receiver certificate informed him it intended to initiate a foreclosure. The lender attended the hearing on the proposed sale and confirmed to the court that it had intended to initiate foreclosure but agreed to “hold off” after Adams announced he would seek authority to sell the property. The lender further stated although it preferred to have a “structured standard sale,” it would seek foreclosure if the sale process did not begin in the coming weeks. These statements support the trial court’s finding that the sale was necessary to avoid the initiation of foreclosure, which might result in the immediate devaluation of the property.

Defendants also assert there was no need for the sale because they provided evidence demonstrating that they “had secured the necessary funds to pay for any renovation.” In opposition to Adams’s request to sell the property, defendants presented a preapproval letter for a \$1.2 million loan to Stephen Claro that would be secured with his separate property. Defendants also provided bank statements showing that Claro possessed more than \$1.5 million in cash and had access to a \$600,000 line of credit. Defendants, however, only presented these materials in support of their assertion that they could finance their own renovation of the property. There is no evidence defendants ever offered to use these resources to pay off the past due receiver certificate, which was the basis for the pending foreclosure. Without an offer to pay off the receiver certificate, the court had to decide whether to authorize the sale of the property or risk foreclosure proceedings. We find no abuse of discretion in the court’s decision to choose the former course.

4. Defendants have failed to establish that the proposed sale was for an improper purpose

Defendants argue that the sale was “also not necessary because it was not in furtherance of the statutorily-required goal of correcting code deficiencies; instead, it was merely intended to facilitate [Whittier’s] improper purpose of redevelopment. . . . It is

improper for the City to require the receiver to pursue any particular goal concerning this property.” Defendants theorize that Adams has acted beyond the scope of his receivership duties by proposing to “redevelop” the property into student housing rather than merely remedying the substandard conditions that gave rise to his appointment. Defendants appear to contend the trial court should not have approved the sale because Adams’s true purpose in selling the property was to pursue this allegedly improper goal of “redevelopment.”

This argument fails for several reasons. First, defendants have cited no evidence supporting their theory that the intent of the sale was to further some improper development scheme. As explained above, the record demonstrates that the purpose of the sale was to avoid foreclosure of the property. The lender confirmed to the court that it would initiate foreclosure if the property was not sold. The receiver’s purportedly improper “development plan”—converting the apartments into student dormitories—did not cause the court to order the sale.

Second, although not directly relevant to the court’s order authorizing the sale, defendants ignore that Adams repeatedly explained to the court why he had proposed converting the property into student housing. In the Sixth Receiver’s Report, which was filed in July of 2011, Adams informed the court that “the proposed re-use [to student housing] was recommended because no lender in the state would make a construction loan on this building without a clearly articulated plan on how the loan was going to be repaid.” Adams reiterated these comments at the hearing on defendants’ motion to terminate the receivership, explaining that he had proposed a development plan because the only way to obtain financing for the project was to “have a concept for the future plan of this property . . . It’s impossible to . . . get the lien paid without the building being built out.” The defendants have cited no evidence that contradicts these statements. Indeed, defendants’ own filings appear to confirm that lenders were unwilling to finance construction that merely abated the substandard conditions on the property. At the hearing on Adams’s request to sell the property the defendants admitted they had been unable to identify any lender who was willing to finance their abatement plan (which

would merely remediate the conditions on the property) using the receivership property as collateral. Instead, they were only to obtain financing by using Claro's separate property as collateral.

Finally, the record belies the defendants' assertion that Adams's proposed sale of the property was not "in furtherance of the statutorily-required goal of correcting code deficiencies." In response to Whittier's concerns that any sale of the property might further delay the abatement process, Adams informed the court that the prospective buyer had actually agreed to carry out the design plans that had been previously approved by Whittier. Adams also stated that the receivership would continue after the sale to assure compliance with those conditions. Thus, the evidence in the record shows that, contrary to the defendants' statements, the sale would in fact further the goal of abatement.⁸

C. The Trial Court Did Not Err in Ordering Stephen Claro and Village Inn to Pay the Receiver's Fees and the Receiver Certificate

Defendants argue that the trial court erred in ordering them to jointly and severally pay to the receiver: (1) approximately \$50,000 in court-approved receiver's fees; and (2) the past due receiver certificate, which totaled approximately \$450,000. Adams explained to the court that although he had initially intended to use the property sale proceeds to pay off these receivership costs, defendants had appealed the order authorizing the sale.

⁸ We also reject defendants' assertion that the court abused its discretion by authorizing the sale based on "an erroneous impression of the facts." Defendants contend the trial court's acknowledgment at the hearing that they would lose "a part of [their] investment" if the sale was approved demonstrates that it did not actually understand the true magnitude of the loss. According to defendants, "[mo]re than part of the investment was being wiped out; 99% was." This argument is frivolous. First, the court's statement is, as a technical matter, factually true: under the terms of the sale, defendants would only lose part of their investment (i.e., less than the whole of their investment). Second, if the defendants truly believed this isolated comment demonstrated the court misunderstood the magnitude of their loss, they had every opportunity to raise the issue at the hearing. Third, the court told the parties it "had read" the defendants' opposition to the application for sale, which included an entire section arguing that the sale should not be approved because Claro would lose almost his entire investment. Accordingly, we must assume that the court did in fact understand exactly how much the defendants would stand to lose.

Adams explained that, as a result, he was seeking an order requiring defendants to pay those costs directly. Adams explained that immediate payment was necessary because the receiver's account contained insufficient funds to pay for day to day operations and because the lender was likely to foreclose if the receiver's certificate was not paid.

Adams argued the court was authorized to enter such orders under section 17980.7, subdivision (c)(15), which states: "Upon the request of a receiver, a court may require the owner of the property to pay all unrecovered costs associated with the receivership in addition to any other remedy authorized by law." Adams asserted that the subdivision, which was added to the Health and Safety Code in 2012, codified pre-existing case law recognizing the court's "equitable" authority to order "an owner to pay the existing costs" of a receivership. The court granted the orders, which direct defendants Stephen Claro, Southland Display and Village Inn to jointly and severally pay the receiver's fees and the receiver certificate.

1. The court had authority to order the owners of the property to pay the receivership costs

Defendants argue that the trial court had no authority to order them to pay the costs of the health and safety receivership because section 17980.7, subdivision (c)(15) was passed in 2012 and therefore "did not exist at the outset of this case." Defendants contend that prior to subdivision (c)(15)'s passage, a receiver was only permitted to recover his costs "through a lien on the [receivership] property." Defendants further assert that applying subdivision (c)(15) "retroactively to the pre-existing receivership" would violate the ex post facto clause and principles of due process.

We need not decide these statutory issues because even if we assume subdivision (c)(15) is inapplicable to these proceedings, the trial court retained inherent authority to impose the costs of the receivership against the defendants. "As a general proposition the costs of a receivership are primarily a charge upon the property in the receiver's possession and are to be paid out of said property. However, this is not an invariable rule. In many cases a direct liability is imposed upon the parties to the action, or upon

some of them, for the remuneration of the receiver. Such direct liability may result from an irregularity in the appointment, insufficiency of the property, agreement of the parties etc.” (*Andrade v. Andrade* (1932) 216 Cal. 108, 110; see also *Ephraim v. Pacific Bank* (1901) 129 Cal. 589, 592; *Stanton v. Pratt* (1941) 18 Cal.2d 599, 603.) “Courts generally are vested with large discretion in determining who shall pay the cost and expenses of receiverships. The court may assess the costs of a receivership against the fund or property in receivership or against the applicant for the receivership, or it may apportion them among the parties, depending upon circumstances.” (*Baldwin v. Baldwin* (1947) 82 Cal.App.2d 851, 856.) “Each case . . . must, of necessity, rest upon its own facts.” (*Ibid.*)⁹

The Fourth District recently reiterated these principles in *City of Chula Vista v. Gutierrez* (2012) 207 Cal.App.4th 681 (*Chula Vista*), which also involved a health and safety receivership established under section 17980.7. The receiver’s final report in *Chula Vista* requested that the court order a lender who had foreclosed on the property during the receivership to pay his costs, which totaled \$40,000. The evidence showed the lender had taken ownership of the property through a foreclosure sale that occurred approximately 18 months after the receivership was initiated. Shortly thereafter, the lender sold the property to a third party. The trial court ordered the lender to pay only \$400, which reflected the amount the receiver had spent during the brief period the lender actually owned the property. The receiver appealed, arguing that the trial court should have ordered the lender to pay the full costs of the receivership.

⁹ In analyzing the court’s authority to impose the costs of receivership on the parties, the receiver’s appellate brief repeatedly cites and discusses an unpublished decision. Although the receiver acknowledges that California Rule of Court 8.1115 precludes citation to unpublished decisions, he asserts that he chose not to follow the rule because he believes the decision he cites in his brief is “important” and may be published in the future. There is no exception in Rule 8.1115 based on an attorney’s subjective beliefs about the importance of an unpublished decision. The receiver’s reliance on the unpublished decision is a clear violation of Rule 8.1115 and we will not consider the portions of the brief that discuss the case. The receiver’s brief also cites a nonpublished decision when discussing the issue of appealability. We will not consider that discussion.

The court began its analysis by summarizing a trial court’s discretionary authority to order payment of receivership costs: “Receivers are entitled to compensation for their own services and the services performed by their attorneys. [Citation.] Generally, the costs of a receivership are paid from the property in the receivership estate. [Citations.] However, courts may also impose the receiver costs on a party who sought the appointment of the receiver or “apportion them among the parties, depending upon circumstances.” [Citation.] ¶ . . . ¶ A court may require one or more parties to pay for receiver fees where the property subject to the receivership is inadequate to compensate the receiver and/or where other equitable circumstances support imposing fees on a party. [Citation]. In considering the appropriate source for the compensation, a relevant factor is whether the party to be charged obtained a benefit from the receiver’s services. [Citation.]” (*Chula Vista, supra*, 207 Cal.App.4th at pp. 685-686.) The court also summarized the applicable standard of review: “Courts are vested with broad discretion in determining who is to pay the expenses of a receivership, and the court’s determination must be upheld in the absence of a clear showing of an abuse of discretion.” (*Id.* at p. 686.)

Applying those principles and standards to the facts before it, the court concluded there had been no “abuse[of] discretion in refusing to make [the lender] responsible for [the receiver’s] fees and costs.” (*Chula Vista, supra*, 207 Cal.App.4th at p. 687.) The court explained that, unlike most cases in which parties had been ordered to pay the receivership costs, the lender had not sought the “appointment of the receiver or create[d] the situation that required the receivership.” (*Id.* at p. 686.) The court also noted that the receiver’s work on the property was completed before the lender took ownership and had consisted solely of ensuring the property remained “vacant and secure.” (*Id.* at p. 687.)

Chula Vista and the other decisions discussed above demonstrate that, separate and apart from any powers granted by section 17980.7, subdivision (c)(15), trial courts have broad discretionary authority to decide how the costs of the receivership should be paid and who should pay them. In this case, several factors support the trial court’s decision to impose the receivership costs directly on the defendants who owned the

property. First, as the owners of the property, the defendants were responsible for creating the situation that required the receivership. In his stipulation, Claro admitted a receiver was necessary because there were substandard conditions on the property that he could not afford to repair. Second, Adams was unable to use the property to pay off the receiver costs because the court's order authorizing the sale of the property had been stayed by the defendants' appeal. Third, Adams established that there was an immediate need for payment of the receivership costs (which included his unpaid fees and the overdue receiver certificate). Adams explained that there were no funds left in the receiver account to pay for day to day operations and that the lender was likely to foreclose if the receiver certificate was not paid. Given the defendants role in bringing about the receivership, the current unavailability of the receivership property and the immediate need of payment, we find no abuse of discretion in the trial court's decision.¹⁰

Defendants disagree with our analysis, arguing that *Chula Vista* impliedly held that, prior to the passage of subdivision (c)(15), health and safety receivers had no authority to assess receivership costs against the parties. Defendants rely on a portion of *Chula Vista* (decided before (c)(15) was passed) addressing the receiver's argument that the trial court was required to hold the lender "directly responsible for receivership fees because it was an 'owner' of the property for purposes of section 17980.7." (*Chula Vista, supra*, 207 Cal.App.4th at p. 688.) The lender admitted it fell within the definition of "owner" set forth in section 17980.7, but argued that nothing in the statute "mandate[d] that the trial court impose] direct liability for the receiver's expenses." (*Ibid.*) The appellate court agreed, concluding there was no language in section 17980.7 that automatically "allow[ed] for the receiver to recover his expenses directly from the owner." (*Ibid.*) The court further noted that it could not read such a requirement into the

¹⁰ Had the circumstances allowed the sale of the property, the receiver's unpaid costs would have diminished the defendants' recovery of proceeds. Payment in advance of the sale leaves the defendants in no different position as they will receive the proceeds of the sale.

statute, explaining: “Any change in the law must come from the Legislature, not the courts.” (*Ibid.*)

Defendants interpret the court’s statements to mean that, before subdivision (c)(15), a trial court had no authority to order the owner of a property to pay the costs of a health and safety receivership. We read the court’s language more narrowly. Considered within the context of the decision as a whole, it is apparent the court merely concluded there was no language in section 17980.7 mandating that the trial court impose costs on the owner of the property. Defendants’ suggestion that the decision impliedly held that a trial court must have statutory authority to order an owner to pay the receiver’s costs is belied by the entire first half of the decision, which explained that trial courts have “broad discretion” to determine who should pay the costs of the receivership (*Chula Vista, supra*, 207 Cal.App.4th at p. 686), that such decisions are reviewed for “abuse of discretion” (*ibid.*) and that, under the circumstance of the case, the trial court had not “abused its discretion.” (*Id.* at p. 687.) If the appellate court actually believed statutory authority was necessary to enter such an order, this entire “abuse of discretion” analysis would be superfluous.

In sum, we conclude that regardless of whether section 17980.7, subdivision (c)(15) applies to this particular case, the trial court had wide discretion to determine whether and against whom to impose the costs of the receivership. We further conclude that the court did not abuse its discretion in concluding there were “equitable

circumstances” here that supported imposing the costs directly on the owners of the property.¹¹

2. *Substantial evidence supports the trial court’s finding that Stephen Claro is an owner of the property; there is no evidence Southland Display is an owner*

Defendants Stephen Claro and Southland Display argue that even if the trial court had authority to order the owners of the property to pay the costs of the receivership, the evidence in this case demonstrates that Village Inn, LLC is the sole owner of the property at issue. Claro and Southland contend that because there is no evidence either of them actually owned the property, the court erred in ordering them to jointly and severally pay the receivership costs.

- a. *The trial court’s finding that Claro was a beneficial owner of the property is supported by substantial evidence*

The trial court considered and rejected Claro’s contention he was not an owner of the property, explaining that Claro’s statements and conduct during the proceedings demonstrated that he was in fact a beneficial owner. Claro argues we must reverse this finding because the title instruments make clear that his company, Village Inn, LLC, is the sole owner of the property. Claro contends that in the absence of evidence demonstrating Village Inn was his “alter ego” (see generally *Doney v. TRW, Inc.* (1995) 33 Cal.App.4th 245, 249 [“Alter ego is essentially a theory of vicarious liability under which the owners of a corporation may be held liable for harm for which the corporation is responsible”]), the legal instrument naming Village Inn as title holder is conclusive on the issue of ownership.

¹¹ Defendants filed a request that we take judicial notice of an analysis of the assembly bill that added section 17980.7, subdivision (c)(15). We deny the request because the legislative history is not material to our analysis. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [denying judicial notice of materials not material to the issues presented].)

Claro overlooks that although the holder of title to property is presumed to be its owner, the presumption is not conclusive. As stated in Evidence Code section 662: “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” Section 662 codifies the common law ““form of title”” presumption under which “the description in a deed as to how title is held is presumed to reflect the actual ownership interests in the property.” (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 184-185 [disapproved on other grounds in *In re Marriage of Valli* (2008) 58 Cal.4th 1396, 1495]; see *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 292 [summarizing history of Evid. Code, § 662].) The statute applies when, as here, “there is no dispute as to where legal title resides but there is question as to where all or part of the *beneficial* title should rest.” (*Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1067, italics in original.) The question “whether . . . the evidence offered to change the ostensible character of the instrument is clear and convincing is a question for the trial court to decide.” (*Beeler v. American Trust Co.* (1944) 24 Cal.2d 1, 7 [referring to common law presumption codified in section 662].) On appeal, we review the trial court’s determination that the section 662 presumption was rebutted for substantial evidence. (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345 (*Ruelas*).)¹²

Under the substantial evidence test, we resolve all conflicts in the evidence in favor of the prevailing party, and we draw all reasonable inferences in a manner that upholds the trial court’s ruling. (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 445.) Substantial evidence is “evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) “The ultimate test is whether it is reasonable for a trier of fact to

¹² As explained in *Ruelas, supra*, 154 Cal.App.4th at p. 604, although Evidence Code section 662 sets forth a “clear and convincing” standard of proof, “the substantial evidence rule that applies on appeal, applies without regard to the standard of proof applicable at trial. ‘The standard of review on appeal remains the same whether the normal “preponderance of the evidence” standard or the higher “clear and convincing evidence” standard applied in the proceedings below. [Citations.]’ [Citation.]”

make the ruling in question in light of the whole record.” (*Id.* at p. 652.) “Moreover, we defer to the trier of fact on issues of credibility. [Citation.] . . . ‘Testimony may be rejected only when it is inherently improbable or incredible, i.e., “unbelievable per se,” physically impossible or “wholly unacceptable to reasonable minds.”’ [Citations.]’ [Citation.]” (*Lenk v. Total–Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

The record contains substantial evidence supporting the trial court’s finding that Claro was a beneficial owner of the property. First, as the trial court noted, at the outset of these proceedings Claro signed a sworn declaration stating that he was the “sole owner” of the property. He later provided additional declarations stating: “I acquired the Property in [2006]”; “I purchased the Subject Property . . . in 2006 for \$2.2 million”; “I have poured nearly a quarter-million dollars in the subject property at the time the abatement petition was filed”; “I have lost approximately \$600,000 in rental income [as a result of the receivership].” A declaration from the manager of the property likewise states that “Mr. Claro purchased the property in 2006.”

Second, the defendants’ briefings to the trial court repeatedly represent that Claro owns and controls the property. (*Franklin v. Appel* (1992) 8 Cal.App.4th 875, 893, fn. 11 [“briefs and argument are . . . reliable indications of a party’s position on the facts as well as the law, and a reviewing court may make use of statements therein as admissions against the party. [Citations.]”]; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 93.) The memorandum filed in support of the motion to remove Adams as a receiver states: “Mr. Claro has been deprived of his property since 2010”; “control of the Property [should] be returned to Mr. Claro”; “control of the property was wrested from him. ” In his opposition to Adams’s application to sell the property, Claro again asserted that he owned the property at issue and emphasized the financial effect such a sale would have on him personally: “[i]f the [receiver] sale were to go through, Mr. Claro would forfeit \$2.2 million. . . . Based upon the sale price in [the receiver’s] report . . . the sale will not return a single dollar to Mr. Claro. On the other hand, given the opportunity to exercise his statutory right to abate his property, Mr. Claro would

retain his property, his investment in that property, and will begin to realize rental income. . . Mr. Claro [should be permitted] to abate his building using his plan . . .”

Third, in an effort to regain control of the property, Claro asserted he was willing and able to use personal assets to pay for the costs of the repairs. In support Claro submitted account statements showing the balance in his personal accounts. He also provided a bank letter pre-approving him for a loan of \$1.2 million. The letter identified Claro as the personal guarantor and identified another building that Claro owned as collateral.

Considered together, Claro’s statements in his declarations and pleadings, along with his offer to personally finance repairs of the property, was sufficient to support the trial court’s finding that the section 662 presumption had been adequately rebutted.

b. The trial court’s finding that Southland Display owned the property during the enforcement proceedings is not supported by substantial evidence

Defendant Southland Display contends that the record contains no evidence demonstrating it owned the property at any time relevant to these proceedings. At the hearing, the trial court explained it was holding Southland jointly and severally liable for the receivership costs because it owned the property when the City of Whittier initiated the enforcement actions that resulted in the receivership. The court further explained that its factual finding on this issue was predicated solely on Adams’s oral representation that Southland had “transferred” the property by quitclaim deed to Village Inn “after the administrative proceeding had already begun.”

The hearing transcript shows that Adams told the court: “based on my recollection of the underlying facts and the abatement file in this case, by the time that . . . transfer took place, the City was already doing an administrative enforcement proceedings against [Claro]. When that failed, turned into this receivership petition in November. [Sic.]” Adams further asserted that because Southland owned the property at the time the proceedings had begun, it should be treated as an owner of the property. (See § 17980.7, subdivision (f) [“The term ‘owner,’ for the purposes of this section, shall include the

owner . . . at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution”).) Defendants’ counsel objected to these factual statements, arguing that Adams’s recollections did not qualify as evidence of “when the proceeding [actually] began.” Counsel further asserted there was no evidence in the record suggesting that the proceedings had begun before November of 2010, which was long after Southland had transferred the property to Village Inn.

The court, however, chose to rely on the receiver’s statements, explaining that Adams had “represented” that “the date . . . the proceedings . . . began . . . preceded the date of the recording [of the quitclaim deed].” At defense counsel’s request, the court then confirmed that it was finding Southland directly liable for the receivership costs based on the “receiver’s representation of the record.”

Neither Adams nor Whittier has identified any evidence in the record supporting the assertion that the proceedings against the defendants were initiated before Southland transferred ownership of the property to Village Inn, in July of 2010. Whittier’s emergency petition for the receiver, filed December 2, 2010, indicates that the city discovered the unlawful conditions at the property during inspections conducted on November 2 and 4, 2010. The petition further states that Whittier issued a notice of abatement to the defendants on November 19, 2010. In the declarations filed in support of the petition, several Whittier officials describe participating in the November 2nd and 4th inspections. One of the declarants states he had been called to the property “weeks prior” to the November 4, 2010 inspection. Respondents have not identified any other statements in the record regarding the initiation of the investigation. Thus, contrary to the representations Adams made at the hearing, the evidence in the record indicates that Whittier’s investigation started no earlier than October 2010, several months after Southland had recorded the quitclaim deed transferring the property to Village Inn.

The hearing transcript leaves no question that the trial court ordered Southland to pay the receivership costs based entirely on Adams's oral representation that the enforcement proceedings had begun before Southland transferred the property to Village Inn. Because this factual representation is not supported by any evidence in the record, we reverse that portion of the trial court's order.¹³

3. *Claro and Village Inn have failed to demonstrate the court erred by ordering them to pay receiver fees on an ex parte basis*

Finally, defendants argue that we must reverse the trial court's ex parte order (dated September 3, 2013) requiring them to jointly and severally pay the receiver \$22,391 for receiver fees that the court had previously approved in prior proceedings. Defendants contend we should reverse the order because neither Adams nor the court identified any justification to "proceed ex parte."

In his application for ex parte relief, Adams requested that the court order Claro and Village Inn to pay him approximately \$46,000 for his previously accrued and unpaid fees. Adams explained that he brought his request on an ex parte basis because there was only \$110 remaining in the receivership bank account, which was insufficient to "pay for any regular, extraordinary or emergency expenses." At the hearing on the ex parte request, which the defendants' counsel attended by phone, the court informed Adams it was only willing to grant ex parte relief for the portion of unpaid fees that had already been submitted to and approved by the court. The court explained it was willing to order the payment of those particular fees ex parte because the defendants had already been provided an opportunity to challenge the fees through the accounting approval process.

¹³ We reject Adams's contention that the trial court was authorized to order Southland to pay for the receivership costs "for the simple fact that [it] was named party to the case." Adams argues it is irrelevant whether Southland was actually an owner of the property because "the trial court could order [Southland] to make payments because [it is a] named part[y] in the receivership matter." Adams cites no authority suggesting that a party can be ordered to pay the receivership costs based solely on the fact it was named as a party in the petition seeking the receivership. While trial courts have broad discretion in assessing the costs of a receivership, the mere fact that an entity's name was included in a pleading is not a reasonable justification for doing so.

The court further explained that it was not willing to approve any fees on an ex parte basis that had not previously been approved by the court.

Although defendants contend the court and Adams failed to provide any justification for proceeding on an ex parte basis, their brief does not address the two bases discussed at the ex parte hearing: (1) the fact that the receiver account had virtually no funds remaining in it; and (2) the fees the court ordered to be paid had previously been approved by the court in separate proceedings. “Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573; see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “This means that an appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record.” (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557.)

By failing to present any argument addressing the reasons the court elected to proceed ex parte, the defendants have failed to demonstrate that the trial court erred in doing so.¹⁴

DISPOSITION

The trial court’s orders dated September 3, 2013 and October 9, 2013 directing defendants to jointly and severally pay receivership fees and the receivership certificate are reversed as to defendant Southland Display; they are affirmed as to defendants Stephen Claro and Village Inn. The trial court’s order dated August 19, 2013 authorizing the sale of the property was proper at the time it was made. However, given the amount

¹⁴ We express no opinion whether the circumstances that the receiver and the court identified are in fact sufficient to justify proceeding ex parte. We hold only that the defendants failed to affirmatively demonstrate error because they did not even address the courts’ reasons for proceeding ex parte.

of time that has passed since that order was made and our subsequent affirmance of the court's orders directing Stephen Claro and Village Inn to pay the receivership costs and certificates directly, we vacate the order and remand to allow the court to determine whether sale of the property is still appropriate. The City of Whittier and receiver Mark Adams shall recover their costs on appeal.¹⁵

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

¹⁵ Several months after the appellate briefing was completed in this matter, defendants brought a motion to dismiss receiver Mark Adams as a party and to strike his brief, arguing that he “has no appellate standing with respect to any of the issues raised on appeal.” Defendants’ motion cites cases holding that receivers generally lack standing to appeal orders denying the appointment of a receiver (*People v. Union Bldg. etc. Assn.* (1899) 127 Cal. 400) or orders resolving conflicting claims between third parties regarding property under the receiver’s control. (*In re Welch* (1895) 106 Cal. 427, 428 (*Welch*)). In this case, however, the receiver has not appealed any order. He has merely filed a respondent’s brief defending the propriety of his conduct throughout the receivership proceedings and defending the court’s orders directing defendants to pay the receivership costs. Defendants cite no authority holding that a receiver is precluded from filing a respondent’s brief in an appeal that accuses him of misconduct and seeks reversal of orders directing payment of the receivership costs. (*Id.* at p. 429 [receivers may participate in appeal “[w]herever an order . . . involves a construction of the proper exercise of [his] duties . . . , wherever it presents a question as to the right or power of the [receiver] . . . , [and] wherever obedience to it might subject him to liability”]; see also *Chula Vista, supra*, 207 Cal.App.4th at p. 684 [receiver’s appeal of order denying request to assess receivership costs against property owner].) We therefore deny the motion, which was untimely in any event insofar as it raised issues that could and should have been addressed in defendants’ opening and reply briefs.