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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WEBB & CAREY, APC

Plaintiff and Respondent,

v.

JAMES W. KEENAN et al.,

Defendants and Appellants.

D059063

(Super. Ct. No. GIC817390)

APPEAL from orders of the Superior Court of San Diego County, Timothy B. Taylor, Judge. Affirmed.

This is the latest incarnation of long running litigation in which plaintiff and respondent Webb & Carey, APC (Webb), formerly the attorneys for defendants and appellants James and Judy Keenan (together, the Keenans), seeks enforcement of million dollar judgments against the Keenans for attorney fees. Those judgments were entered after the 2005 judicial confirmations of the 2001 arbitration awards. Now before us is the appropriateness of the trial court's 2010 orders imposing a receivership upon the

Keenans's assets, in aid of enforcement of those renewed judgments. (Code Civ. Proc., § 564 et seq.; 708.620; all further statutory references are to this code unless noted.)

The Keenans have not been successful in their numerous prior challenges, both at the trial court and on appeal, to the validity of the underlying judgments (the judgments) and their amounts, with associated fees and costs awards.¹ Now, they contend the trial court abused its discretion when it imposed the receivership, because lesser remedies would have sufficed and/or the order is overbroad or not supported by the evidence. They further attempt to avoid the application of the law of the case doctrine by contending that despite their previous losses on the same arguments in the prior appeals, they should be entitled to continue to collaterally attack the judgments, to again allege the arbitrator lacked jurisdiction to conduct the arbitration under a certain type of arbitration rules. (See *Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 434-435 [law of the case doctrine is not inflexible].)²

In response, Webb claims the trial court's postjudgment appointment of the receiver was a "reasonable method to obtain the fair and orderly satisfaction of" the

¹ In *Webb & Carey v. Keenan* (Dec. 29, 2006, D047948) [nonpub. opn.], we affirmed the judgment confirming the arbitration award against James. In related appeals, we also affirmed the judgment confirming the arbitration award against Judy (*Webb & Carey v. Keenan* (Dec. 29, 2006, D045968) [nonpub. opn.]; and dismissed a related appeal challenging the jurisdiction of the arbitrator to make the award. (See *Webb & Carey v. Keenan* (May 15, 2007, D048667) [nonpub. opn.]; no issues different from what was raised in D047948.)

² Our most recent prior opinion in *Webb & Carey v. Keenan* (Aug. 16, 2011, D057430) [nonpub. opn.], affirmed orders that denied the Keenans's requests for relief from judgment and from certain postjudgment costs orders.

Webb judgments, and the Keenans's appeal should be dismissed due to their ongoing noncompliance with numerous trial court orders. (§§ 564, subd. (b)(3) & 708.620.) While this appeal was pending, this court issued a ruling upon several related appellate motions, i.e., Webb's motion to dismiss and motions by both parties to augment the record and/or take judicial notice of pleadings and orders that were filed subsequent to the Keenans's January 14, 2011 notice of appeal. (Evid. Code, § 452, subd. (d).) We denied dismissal, but took judicial notice and augmented the record, as we later explain.

To evaluate the arguments properly before us, we focus upon the legal issues and the record surrounding the specific December 2010 order that is the subject of the notice of appeal. This record demonstrates that the trial court did not err in its interpretation of the applicable statutes and bankruptcy court orders, the evidence supports the orders, and there was no abuse of discretion in imposing the receivership. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Genesis of Judgments

The superior court case file dates back to the original 2001 proceedings for confirming the arbitration award, based on an award of attorney fees for services rendered to the Keenans by Webb during James's bankruptcy case.³ Webb's services at that time were to be compensated by an attorney fees clause that contains several

³ We refer to the Keenans individually by first name for convenience only, not out of disrespect. *In re James W. Keenan dba Data Property Services*, United States Bankruptcy Court, Southern District of California; case number 96-00871-B11, a chapter 11 proceeding filed on January 22, 1996.

provisions that the Keenans disagree with in various ways.⁴ They continue to attempt a collateral attack upon the award of fees (claiming that the agreement provided only for a contingency fee and the contingency [recovery] never occurred; that matter has been determined against them in the prior appeals and seems to be controversial only to the Keenans).⁵

The details of the 2001 arbitration award are well summarized in our prior opinions. Briefly, the Keenans did not attend the arbitration hearing, but the arbitrator found notice had been given and awarded Webb \$516,434.66 for legal services rendered and costs advanced to the Keenans (the award).

Webb sought court confirmation of the award, and numerous motions and counter motions ensued. On January 11, 2005, Webb prevailed on his petition to confirm the award. The court entered judgment for Webb, first, against Judy in the amount of

⁴ In relevant part, the Webb-Keenan fee agreement provided: "[Webb] will be paid on an hourly fee basis. Since the Clients [Keenans] are in need of legal services at a time when they cannot pay the entirety of Webb[']s usual hourly fees as they are incurred due to the Bankruptcy Court proceedings [for Keenan], and Webb agrees to provide the above-described services upon the expectation of being fully paid in the future, *the Clients agree that they shall pay \$100 per hour for the legal services until such time as a recovery is made on the above-referenced claims [third parties], at which time the Clients agree that they shall pay an additional \$250.00 per hour for the legal services rendered to that date from such recovery.* In addition, Webb is hereby assigned 10% of the gross amount of any recovery in the prosecution of your claims." (Italics added, see fn. 5, *post.*)

⁵ The arbitration award was for the *quantum meruit* value of 2,716 hours of work pursuant to the written fee agreement, before Webb withdrew from the Keenans's representation, when both the Keenans and Webb were sued for malicious prosecution by Dorothy Satten. (See *Satten v. Webb* (2002) 99 Cal.App.4th 365.)

\$516,343.66, together with interest in the amount of \$170,494.20 (10 percent yearly from the date of the award; much more now). In a separate December 8, 2005 judgment against James, the same base amount was assessed, with a different interest award (\$219,449.37, at the same 10 percent rate). Additionally, the court awarded Webb prevailing party attorney fees in the amount of \$51,394, plus costs. As explained in our prior opinion: "The judgment against James included the money awarded in the judgment against Judy such that any amount Webb collected on the judgment against Judy would be deducted from the amount of the judgment against James."

The history of Webb's enforcement efforts has been described in prior opinions, and although we need not describe them in detail, they include (a) December 17, 2004 prejudgment attachment orders, (b) June 2, 2006 settlement of an interpleader action, (c) September 23, 2009 renewed judgments against each of the Keenans, now exceeding the amounts of \$1,277,519.55 and \$1,197,515.52. Notice was given by mail on September 25, 2009 of the renewed judgments.

While the Keenans's assets, including partnership interests, were still tied up in bankruptcy, the liquidating trustee was administering the bankruptcy estate. On August 4, 2010, the bankruptcy court (Judge Bowie) issued a "Closure Order" directing the liquidating trustee to release certain listed property to James (the debtor). Release was done in stages, with \$1.03 million cash released September 21, 2010, and the noncash assets (mainly partnership interests in real property partnerships) released in phases through December 2010.

That release of the estate assets was not done without difficulty, and the bankruptcy court heard several motions and held several hearings, some of which Webb attended, about the status of the bankruptcy stay during the release of property phase of the proceedings. Essentially, the bankruptcy court confirmed that upon closure of the estate but before the final decree was issued, the noncash, income-producing assets were to pass directly from the liquidating trustee to the state court receiver, and Webb's state court judgment liens were treated as an expectancy until the bankruptcy matter could be resolved. The August 4, 2010 closure order recited, "The transfer of property of the Estate to the Debtor pursuant to paragraph 6 of this order shall be *free and clear of any lien of [Webb]* and the Trustee shall incur no liability of any kind to Webb on account of such transfer." (Italics added.) The court reserved jurisdiction in the closure order as necessary to resolve disputes in implementing it.⁶

B. Initial Phases of Webb's Applications for Receivership:
August-November 2010

The foundational document of this appeal is the November 30, 2010 order to show cause why a receiver should not be appointed, to enforce the judgments, as they were entered and renewed. It was Webb's fourth such effort, beginning in August 2010, to pursue receivership orders in superior court in anticipation of the transfer of estate

⁶ The bankruptcy court's final decree was entered on March 3, 2011, and both it and the earlier closure order contained language reserving jurisdiction over implementation issues if disputes arose. The Keenans make new arguments in the reply brief that all jurisdiction over all of their assets should have remained in the bankruptcy court during the relevant time period, but these new arguments have no support in the record and need not be addressed, except to the extent necessary in part III, *post*.

property from the liquidating trustee to the Keenans. Webb's first ex parte applications in August 2010 and again in September 2010 were granted (appointing a different receiver, Richard Kipperman), but the orders were vacated due to ongoing concerns about the bankruptcy stay in effect. When the Keenans received the \$1.03 million in cash, they had cashiers' checks drawn up and they paid numerous creditors, not including Webb.

At its third request for appointment of a receiver or other relief, Webb was partially successful, obtaining alternative interim enforcement orders October 29 and November 9 (charging order, assignment order, restraining order and turnover order). (Code Civ. Proc., § 708.310; Corp. Code, § 16502 et seq.) Only a partial payment was recovered (\$42,749, referred to here as \$42,000-plus, levied upon by the sheriff).

At subsequent hearings in superior court, Webb brought third party lien motions to claim that the Keenans should not have paid their current attorneys, Suppa, Trucchi & Henein (ST&H), before paying off Webb, and Webb accused the ST&H firm of conversion, interference with contract and prospective economic advantage, and breach of fiduciary duty. Webb did not prevail on those claims.

C. Current Phase: November and December 2010 Issuance of Receivership Orders

On November 30, 2010, Webb applied ex parte for an order to show cause why a receiver should not be appointed. The court granted the order to appoint Martin Goldberg, and the order contains a schedule describing the Keenans's assets that would become part of the receivership estate, in compliance with the bankruptcy estate release orders. The court empowered the receiver to control and operate the Keenans's individual

and partnership interests, as they were released, and to investigate their assets and liabilities. Among other duties, the receiver was charged with investigating where the \$1.03 million-plus cash distribution to the Keenans had gone in September 2010. The Keenans eventually disclosed those amounts had been paid to other creditors instead of Webb, including family members.

Opposition was received and the matter was heard December 16, 2010. Attorneys were present not only for Webb and the Keenans, but also for the receiver, interested partners of the Keenans, and the bankruptcy liquidating trustee. After argument, the court confirmed the interim order appointing the receiver and referred to the "long running" nature of the case and the Keenans's "long track record of evasion and delay." Other than the recent \$42,000 plus levy by the sheriff, it was undisputed that no portion of the judgment had been paid for several years. The court characterized the receiver as stepping into the shoes of the liquidating trustee from the bankruptcy matter, and made a related finding that no violation of the automatic bankruptcy stay was occurring by establishing the receivership, due to the specific terms of the closure order on file. The court stated that it disagreed with the Keenans's arguments that its preliminary order was overbroad, and rather, it ruled that Webb had established by a preponderance of the evidence that a receivership was necessary. The Keenans had not established that their property was tied up in excess of that which is necessary to pay the judgments.

The court next referred to the Keenans's announced intention to seek extraordinary writs against the receivership orders, and stated that for purposes of efficiency and

finality, the court confirmed the appointment. The receiver posted a \$25,000 bond and was allowed to employ counsel and property management companies for the real property in which the Keenans had partnership interests (residential and commercial developments).⁷

D. Appeal; Motions on Appeal; Ruling

On January 14, 2011, the Keenans filed their notice of appeal. We next outline the state of the record to explain the effect of the rulings we issued upon the appellate motions, as will be further explained in part II, *post*. The Keenans's appellants' appendix includes not only the first set of applications to appoint a receiver (from Aug. and Sept. 2010, which orders were no longer in effect), but also the material from the current application (the Nov. 30, 2010 order to show cause and the resulting confirmation order of Dec. 16, 2010). The appellants' appendix includes a copy of the bankruptcy court final decree, dated March 2, 2011, and provides papers filed from March 2011 through July 2011, concerning the ongoing disputes in this receivership context about priority of attorney liens and claims (between Webb and ST&H), and also efforts being made by the receiver to liquidate some of the Keenans's partnership interests in certain real property (Loma Alta). The Keenans were attempting to obtain financing on the property, both

⁷ This court's clerk's office internal records show that the Keenans brought petitions for writs of mandate to challenge the receivership orders made in December 2010 and May 2011, and they were summarily denied. (*Keenan, et al. v. Superior Court* (Dec. 16, 2010, D058752); *Keenan, et al. v. Superior Court* (June 29, 2011, D059994).) Recently, the May 31, 2011 minute order compelling compliance with the receiver order was separately appealed by the Keenans and the matter is in the briefing stages. (*Webb & Carey v. Keenan, et al.* (D060338).)

individually and in collaboration with the receiver. Their appendix includes the receiver's interim report and inventory for December 2010 and February 2011. Their designated reporters' transcripts start with the November 9, 2010 hearing and go through December 17, 2010.

Likewise, Webb's respondent's appendix includes material from numerous stages of the dispute, starting with its attorney liens filed in 2001-2002, going through the bankruptcy orders, state court attachment orders in 2004, the 2006 interpleader papers, and the 2009 judgment liens. Webb also includes copies of orders and pleadings from the enforcement efforts taking place after the November and December 2010 hearings, such as the May 2011 attorney lien priority disputes, judgment debtor exams, and a June 2011 receiver's report. Also, the record reflects the August 2011 efforts to liquidate certain partnership property (Loma Alta). On September 1, 2011, the trial court issued an order to show cause regarding contempt against the Keenans for violation of court orders, set for hearing on October 7, 2011 (continued to Dec. 2, 2011).

This court already granted Webb's first motion to augment the record, to file his supplemental respondent's appendix, which provides the receiver's interim report from September 2011, and evidence from the Keenans's October 7, 2011 judgment debtor examination, held in connection with the contempt hearing and continued until December 2, 2111.

During record preparation, Webb filed its motion to dismiss, based on the disentitlement doctrine.⁸ We received additional motions from each party to augment the record and/or for judicial notice. Oppositions and responses were filed, and the motions were resolved by this merits panel in an order dated April 20, 2012, prior to the scheduled oral argument date. Briefly, we denied the dismissal motion but granted the Keenans's request to take judicial notice of certain court documents, and granted in part and denied in part the requested augmentations. (See part II, *post*, for further details.)

DISCUSSION

On appeal, we examine the record to determine if the trial court was justified in determining that this postjudgment appointment of a receiver was a "reasonable method to obtain the fair and orderly satisfaction of" Webb's judgments. (§ 708.620; see § 564, subd. (b)(3) [appointment of receiver for enforcement of judgment].) Receivers, under the control of the court, are afforded the "power to . . . to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize." (§ 568.) As the "hand of the court," the receiver aids the court " 'in

⁸ "The disentitlement doctrine is based on the equitable notion that a party to an action cannot seek the assistance of a court while the party "stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]" [Citation.] A formal judgment of contempt, however, is not a prerequisite to exercising our power to dismiss; rather, we may dismiss an appeal where there has been willful disobedience or obstructive tactics.' " (*In re Baby Boy M.* (2006) 141 Cal.App.4th 588, 596; *MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277; *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1683 (*Alioto Fish*)).

preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong.' [Citations.]" (*Marsch v. Williams* (1994) 23 Cal.App.4th 238, 248.)

I

PRINCIPLES OF REVIEW AND GUIDELINES FOR RECEIVERSHIP ORDERS

Review of receivership orders is normally conducted under an abuse of discretion analysis. Appointment of a receiver is an extraordinary measure, and "[t]he appointment of a receiver rests within the discretion of the trial court." (*Gold v. Gold* (2003) 114 Cal.App.4th 791, 807-808 (*Gold*)). "Where there is evidence that the plaintiff has at least a probable right or interest in the property sought to be placed in receivership and that the property is in danger of destruction, removal or misappropriation, the appointment of a receiver will not be disturbed on appeal." (*Sachs v. Killeen* (1958) 165 Cal.App.2d 205, 213.)

Even if arguably, there might have been some abuse of discretion in the appointment of a receiver, an appellant challenging that order must show some prejudice or injury resulted from the appointment. (*Snidow v. Hill* (1948) 84 Cal.App.2d 702, 708.)

In arriving at its ruling, the superior court was required to interpret the bankruptcy court's orders enforcing the applicable statutory stays upon transactions concerning the assets of the estate. (11 U.S.C. § 362.) Determining the effect of those provisions and orders was a resolution of pure questions of law, to which we apply independent review. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 (*Shamrock*

Foods.) "The soundness of the resolution of such a question is examined de novo."

(Ibid.)

In its ruling, the superior court was also required to interpret the statutory provisions in the Code of Civil Procedure that govern receiverships, and the Corporations Code statutory scheme for characterizing partnership interests as transferable and chargeable, upon application of a judgment creditor. (Code Civ. Proc., §§ 708.310, 708.620; Corp. Code, §§ 15907.03, 16502, 16504.) Such rulings of law are subject to independent review, particularly as they have been applied to a given set of facts.

(Shamrock Foods, supra, 24 Cal.4th 415, 432.)

The Keenans contend that Webb, as the judgment creditor, failed to show that in light of the respective interests of the judgment creditor and the judgment debtor, the appointment of a receiver was "a reasonable method to obtain the fair and orderly satisfaction of the judgment." (§ 708.620.) As explained in the Legislative Committee comments to section 708.620, "a receiver may be appointed where a writ of execution would not reach certain property and other remedies appear inadequate." (Legis. Com. com., West's Ann. Code of Civil Procedure (2009 ed.) foll. § 708.620, p. 390.) In *Gold, supra*, 114 Cal.App.4th 791, 796, the court outlined authorities showing that " 'the availability of other remedies does not, in and of itself, preclude the use of a receivership.' " (*Id.* at p. 807.) However, " 'a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. [Citations.]' " (*Ibid.*)

Where, as here, the judgment debtor's main assets are partnership interests, the courts may enter charging orders against the partnership, and may appoint a receiver to enforce such orders. (See §§ 708.310 [charging orders], 708.620.)

As partners, the Keenans (individually or together) possess transferable personal property interests in the partnership, which represent their "share of the profits and losses of the partnership and the partner's right to receive distributions." (Corp. Code, § 16502.) Under Corporation Code sections 16502 and 16504, subdivisions (a) through (c), "A judgment creditor of a partner . . . may ask the court to charge a partner's transferable interest [citations] to satisfy the judgment, and the court may appoint a receiver for the partner's interest. [Citations.] The charging order constitutes a lien on the partner's interest that may be foreclosed at any time or, under specified conditions, redeemed by the partner." (9 Witkin, Summary of Cal. Law (10th ed. 2005) Partnerships, § 40, pp. 614-615.)

To protect all parties involved, the courts are mindful that a foreclosure taking place under those provisions should be structured so that it does not unduly interfere with the partnership's business. (*Hellman v. Anderson* (1991) 233 Cal.App.3d 840, 842.) Under these governing principles for evaluating receivership appointments where partnerships are affected, we next evaluate the appellate arguments in light of the applicable portions of the record as it has been developed in this case.

II

SCOPE OF APPELLATE REVIEW

A. Status of Record: Remaining Disentitlement Argument on Appeal

Normally, "when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered." (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813 (*Reserve Insurance*); *In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Augmentation does not properly function to supplement the record with materials not before the trial court. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) However, taking judicial notice or making factual determinations under section 909 can, in limited circumstances, appropriately supply a court with information about proceedings in the case that postdate the order on appeal. (*Vons, supra*, at p. 444, fn. 3; *Reserve Insurance, supra*, 30 Cal.3d 800, 813 [rule may be flexibly applied, to take into consideration facts presented about the postjudgment insolvency of an insurer, for purposes of interpreting the subject insurance policy].)

Even though appropriate judicial notice of court records does not reflect an acceptance of all the factual matters contained therein, judicial notice is proper to show the existence of official acts, such as the occurrence of court hearings and filings. (*Mangini v. R.J. Reynolds, Inc.* (1994) 7 Cal.4th 1057, 1063-1064; overruled in other part by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) It is not disputed here that extensive litigation concerning efforts toward enforcement of judgment occurred for

many months after the December 2010 receivership order was issued, and both the appendices prepared by the parties and the augmentation materials demonstrate this. For example, the respondent's appendix includes an order to show cause regarding contempt against the Keenans, set for hearing in the trial court on October 7, 2011 (continued to Dec. 2, 2011). Also, the supplemental respondent's appendix includes the receiver's interim report from September 2011, and evidence from the October 7, 2011 judgment debtor examinations.

Those postorder materials have different degrees of relevance to the questions to be resolved (a) on appeal, or (b) regarding the motion to dismiss. Specifically, in ruling upon Webb's motion to dismiss, we allowed the record to be augmented with materials showing the progress of the efforts toward enforcement of judgment, between the December 2010 order on review and the December 2011 contempt proceedings. The augmentation requests were granted in part and denied in part. We also granted related judicial notice requests made in the opposition to Webb's motion to dismiss, but denied the dismissal motion, rejecting its reliance on the disentitlement doctrine. (See fn. 8, *ante*; *In re Baby Boy M.*, *supra*, 141 Cal.App.4th 588, 596.)

To the extent that Webb continues to respond to the Keenans's appeal by arguing the disentitlement doctrine in his respondent's brief, we note that the existing record includes, in the respondent's appendix and in the opposition to the motion to dismiss, documents supporting the Keenans's claims of partial compliance with their obligations under the judgment. The Keenans acknowledge in their reply brief that questions remain

concerning their compliance with court orders, but argue, "the issue is one relating to the quality and extent of the compliance as opposed to the type of 'obdurate defiance of legal processes' which was found in the reported cases wherein the appeal was dismissed."

(See, e.g., *Alioto Fish, supra*, 27 Cal.App.4th 1669, 1684.)

In any case, the record confirms the Keenans have participated, at least minimally, with the receiver's property management efforts and they have not failed to comply with all of the related enforcement orders. The supplemental respondent's appendix and the Keenans's attorney Lee's declaration attach exhibits showing the progress of the contempt citation, some resultant efforts to comply with the receiver (e.g., seeking financing and appearing for judgment debtor exams), and various orders after hearing that resolved the lien priority motions Webb was bringing in the trial court. The Keenans now claim that "over the years," they are entitled to claim about \$693,000 credit against the judgment obligations (based on monies from the 2006 interpleader settlement, the \$42,000-plus recently levied upon by the sheriff, and amounts recently distributed by the receiver to Webb, plus fees and costs). This information is relevant to any remaining appellate claim about the disentitlement doctrine, and we again reject it.

B. Issues Presented and Limited Scope of Inquiry on Appeal

With respect to the substantive issues on appeal alleging abuse of discretion in the appointment of the receiver, we are required to observe the normal rule for consideration of those portions of the record about events that were before the trial court when the order was made, not later events. Unlike in *Reserve Insurance, supra*, 30 Cal.3d 800, 813,

there are no exceptional circumstances that justify a deviation from the usual rule in the appeal before us. Review of this order should not include consideration of postorder events for the purpose of drawing any conclusions about the merits of the subject order, as of the time it was made. (*Vons, supra*, 14 Cal.4th at p. 444, fn. 3.) This approach requires us next to outline which portions of the voluminous record are appropriate for consideration at this juncture.

Any court that rules upon this matter at this stage must be well aware of the contentiousness of this litigation, and the complicated nature of its recent and also its relatively ancient procedural history. At the November 30, 2010 order to show cause hearing, the trial court's comments demonstrated its familiarity with the Keenans's collateral attack claims about why they should not remain bound by the arbitration award, and the court characterized them as "meritless assertion[s]."

The applicable standards of review do not allow this court to reopen previous decisions and rulings that have become final. Simply because the Keenans think that the arbitration award was obtained under "somewhat questionable circumstances" does not deprive it of validity, as both the trial court and the appellate courts have previously determined. We firmly reject the Keenans's claim that the law of the case doctrine is somehow flexible enough to allow them to continue to argue, under a collateral attack theory, that the 2001 arbitration was conducted without jurisdiction over them, simply because they are unhappy that the arbitrator applied the rules of the mediation firm

JAMS, rather than American Arbitration Association rules. (See *Searle, supra*, 38 Cal.3d at pp. 434-435.) Such objections are no longer viable.

Again refusing to reinvent the wheel, we will not consider Webb's arguments that the Keenans were recently in violation of the December 17, 2004 prejudgment attachment orders in this case, or of the June 2006 settlement in the interpleader action. Those matters were fully addressed in our prior opinion upholding the confirmation of the arbitration award, and need not be considered here.

Beginning in September 2010 and through December 2010, the Keenans's bankruptcy estate was distributed to the receivership in several stages, cash and noncash income-producing assets (including partnership interests), and this is confirmed by the various receiver's reports that have been submitted by each side. Webb strenuously takes the position on appeal that when the Keenans, in September 2010, received possession of the cash portion of the bankruptcy estate, they allegedly wrongfully "dissipated" \$1,030,196.49 from the estate, by "fraudulently" conveying it to other creditors "in violation of [Webb's] secured liens."

However, it is not now before us, in review of any clearly presented factual inquiry, whether any particular assets should have been utilized to pay this judgment at any particular time. In this appeal, we are concerned with the validity of the December 2010 orders. Although we are well aware that two previous sets of receivership orders were issued but vacated by the trial court, after bankruptcy court concerns became insurmountable, we need not determine exactly what money should have been paid or

when, as Webb would have us do. It is not productive for Webb to rely on such alleged violations of previous versions of the receivership orders to justify the current order, except to the limited extent that the existence of the orders may provide us with historical background for evaluating the trial court's decision to impose and confirm the receivership in November and December 2010.

We likewise decline to base our evaluation of the December 2010 order upon the portions of the record showing the Keenans paid their current attorneys, ST&H, some \$284,000, even though Webb was claiming superior secured lien interests. It is not now before us whether, as Webb continually claims, ST&H might have been participating in a "fraudulent transfer" or should be individually liable for conversion. (Civ. Code, § 3439.04; *Weiss v. Marcus* (1975) 51 Cal. App.3d 590, 599-600.) At the August 5, 2011 hearing on various issues, including third party claims about whether the Keenans were entitled to pay ST&H over Webb, the court referred to the disentitlement doctrine and questioned whether the Keenans might lose their right to seek to assist in management of partnership property, if they did not cooperate with the receiver in doing so (such as obtaining a loan to raise money). At that time, the trial court was still valiantly striving to implement its previous orders, and the receiver was still attempting to balance the estate's liabilities and income. From an appellate perspective, the later problems that arose do not in any way undermine the issuance of the order in December 2010. These are all side issues at this stage of our review of the December 2010 order.

Thus, it is not disputed that after the bankruptcy court issued its closure order in August 2010, this hard-fought case repeatedly traveled back and forth between bankruptcy court and superior court, and the trial court was constantly confronted with arguments about the status of the bankruptcy stays in effect at any given time, particularly as to the partnership interests. The attorney for the liquidating trustee participated in the proceedings as necessary to ensure coordination with the receiver. The trial court necessarily made legal determinations that interpreted the applicable code sections and the scope of the bankruptcy court orders, and it evaluated the developing set of factual circumstances in an exercise of discretion. We next examine the Keenans's specific challenges to those rulings, based on the relevant portions of the record.

III

RECEIVERSHIP ISSUES

The Keenans raise several types of arguments to challenge the appropriateness of the trial court's exercise of discretion, in light of its resolution of the questions of law and fact then before it. (See *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230 [court's factual findings supporting exercise of discretion must be supported by evidence].)

A. Claims of Procedural Impediments to Order

Before addressing the Keenans's claim that the superior court lacked jurisdiction to proceed because of applicable bankruptcy stays, we first reject their technical claims that any of their significant rights were violated by the manner in which these proceedings

were conducted. They assert a lack of adequate service of the orders, lack of an adequate applicant's or receiver's bond, lack of a continuance pursuant to court rule, and invasion of privacy through tax return production.

Claims of this procedural nature should be reviewed for prejudice: "[T]he presumption in the California Constitution is that the 'improper admission or rejection of evidence . . . or . . . any error as to any matter of procedure,' is subject to harmless error analysis and must have resulted in a 'miscarriage of justice' in order for the judgment to be set aside. (Cal. Const., art. VI, § 13.) Code of Civil Procedure section 475 contains similar language: 'The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of the court, does not affect the substantial rights of the parties.' " (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56-57.)

In these respects, the Keenans have not shown any voidness of the orders resulted, nor that any harmful error occurred. Due to the long running nature of the proceedings, from August to December 2010, during which time the Keenans were always represented by counsel, they cannot show a deprivation of any meaningful opportunity to challenge the orders or to be heard in the proceedings, based on any alleged technical defects in service of the orders, or in the amount of the applicant's or receiver's bonds, or in the denial of an additional continuance at the fourth such receivership application. (See Cal. Rules of Court, rule 3.1176(d) [providing that adverse parties in a receivership application are entitled to one continuance to enable them to oppose the confirmation;

there was extensive opposition filed for each set of these applications]; see rule 3.1178 [bond requirement].) Also, as shown in the augmentation and judicially noticed materials, the trial court required that counsel for the receiver continuously work with counsel for the Keenans to limit the requested disclosure of documents and computer materials, to avoid disclosure of any privileged tax material or family photographs.

Regarding the Keenans's next theory that the bankruptcy stays removed any jurisdiction in the superior court to impose the receivership, the record shows that at all times from the August 3 hearing until the December hearings, the trial court was mindful of the need for coordination between the two courts, in light of the August 4, 2010 closure order and the planned release of properties to the debtor and/or the receiver, and the court took steps to position the receiver to take the transferred property interests from the liquidating trustee. The superior court constantly inquired at the hearings about the liquidating trustee's attorney's views of the appropriate procedures to be followed, with respect to the different types of assets.

After the August 4 closure order was entered, several hearings at the bankruptcy court resulted in some efforts toward clarification by Judge Bowie, about his intentions to release estate property to the debtor in such a way that the receiver would be able to take possession of partnership property. The Keenans are now focusing in upon only a portion of the bankruptcy court's comments and orders, but they fail to place them in context of the entire dispute. That is, when the bankruptcy court originally said that the estate would be released "free and clear" of the interest of Webb, that was done in the

context of treating Webb's state court judgment lien as an expectancy, insofar as the bankruptcy estate was concerned. At later hearings, the bankruptcy court clarified that it had no opposition to seeing the estate assets preserved for creditors (such as Webb), and the court expected the liquidating trustee to work with the receiver in that respect.

Further, in the bankruptcy court's December 1, 2010 order, the same type of language is used, treating Webb's interest as a future expectancy interest that was not property of the bankruptcy estate and was not subject to bankruptcy stay. Once the noncash assets were released to the receiver, some of which did not occur until December 2010, the motion for relief from the bankruptcy stay was granted.

We cannot say that the trial court's interpretation of the bankruptcy court's orders was erroneous. Rather, the trial court was fully aware of the jurisdictional problems and developments, and it followed procedures designed to protect the interests of all concerned, to ensure that all the interested parties, including the liquidating trustee, were allowed to be heard.

Moreover, to the extent that the Keenans newly argue in their reply brief that the August 4, 2010 closure order was ineffective to allow any superior court action on the receivership application or proceedings, until the March 2, 2011 final decree was formalized, that appears to be a new argument that is inconsistent with those raised in the opening brief. In any case, it is not supported by the plain language of the orders. (See fn. 6, *ante*.)

We additionally reject the Keenans's procedural claims that if we should find the receivership orders to be void for lack of jurisdiction, therefore, the later contempt proceedings must have had no legitimate basis. (See *Mitchell v. Superior Court* (1972) 28 Cal.App.3d 759, 764-765 (*Mitchell*) [contempt adjudications void if the order violated was fatally defective].) In the *Mitchell* case, there had been no effective adjudication of the respective rights of partners, and therefore those contempt proceedings were without foundation, because they were based upon a partnership order "so vague as to be unenforceable. As already noted herein, a judgment void on its face for lack of jurisdiction is subject to collateral attack." (*Id.* at p. 765.)

In the case before us, there is no doubt that the Keenans, as the alleged contemnors, already had established, well documented, legitimate interests in the partnership property that was subject to the court orders. Although there was some dispute about the percentage of their interests with respect to some minority partners, the Keenans never claimed that the fact of their interests was in dispute, such that they might have lacked any ability to comply with underlying orders. Also, the trial court provided for proportional charging orders, according to the respective partnership interests. *Mitchell, supra*, 28 Cal.App.3d 759, is therefore distinguishable on its facts.

By the same token, the underlying judgments against the Keenans, and their renewal and cost provisions, have been repeatedly upheld on appeal, and the Keenans cannot now properly rely on another collateral attack nor any fundamental lack of

jurisdiction argument to undermine this receivership order. (*Mitchell, supra*, 28 Cal.App.3d at pp. 764-765.)

B. Substantive Challenges on Appeal

The Keenans' next challenges to the orders generally allege there was a lack of evidentiary support for them, or they were overbroad because of the nature of the main assets, the partnership property.

With respect to an evidentiary basis for imposing the December 2010 receivership orders, the Keenans cannot realistically claim that lesser remedies should have been tried again, or that only "unsupported allegations, innuendo and appeals to prejudice" supported the application. These arguments are undermined by the most recent history of the case, showing that after the first failed receivership orders were vacated (Aug.-Sept. 2010), the trial court followed other procedures set by the codes for imposing certain types of postjudgment charging, assignment, restraining and turnover orders. (Code Civ. Proc., § 708.310; Corp. Code, §§ 15907.03, 16504.)⁹

However, as of November 30, 2010, those charging, assignment, restraining and turnover orders had not accomplished any significant collection of the judgment. The

⁹ Corporations Code section 15907.03, subdivision (a), allows a judgment creditor of a partner to apply to the superior court for an order charging the transferable interest of the judgment debtor "with payment of the unsatisfied amount of the judgment with interest. . . . The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order." Under subdivision (b) of this section, a charging order is treated as a lien on the judgment debtor's transferable interest, that is subject to foreclosure.

court could then legitimately conclude that since only \$42,000-plus had recently been collected under the turnover orders, etc., it was necessary instead to utilize the methods of receivership under sections 564 and 708.620, as "reasonable" remedies toward enforcement of judgment.

The Keenans also claim overbreadth of the orders, on the grounds that the partnership property should not have been seized. However, the November 30 and December 16, 2010 receiver orders properly allowed the receiver to: "12. Accept any and all partnership interests of the Debtors from the bankruptcy estate, upon release by the Liquidating Trustee, including but not limited to cash, partnership records, partnership interests, for application to the judgments subject to further Court Order." The orders do not, by their terms, "apply to the Bankruptcy Court's Liquidating Trustee or any of his estate." The process of releasing the noncash assets, such as the partnership interests, was not completed until December 2010, and the other (minority) partners were kept informed of the events so they could protect their own interests.

When the ex parte request was made November 30, 2010, to impose the receivership, the trial court was fully aware of the ongoing implementation of the August 4, 2010 closure order, and had been hearing from the liquidating trustee's counsel, and all counsel, throughout the proceedings. The Keenans did not show why the receiver would be unable to manage their controlling interests in the partnerships. The orders were in compliance with the statutory schemes, including Corporations Code sections 15907.03 and 16504 and Code of Civil Procedure sections 708.310 and 708.620.

Under the applicable standards, we will not reverse an order appointing a receiver unless there is a clear showing of abuse of discretion. (*Gold, supra*, 114 Cal.App.4th at pp. 807-808.) Based on this record showing that the Keenans's assets were in the process of being transferred from the liquidating trustee, and that lesser remedies had failed, the trial court appropriately analyzed the facts and the applicable legal principles when it exercised its discretion to appoint the receiver and to confirm the appointment. We find no fault with that exercise of discretion.

Finally, to the extent that the Keenans continue to seek modification of the scope of the receivership order, such as in the conclusion to their briefs on appeal, by requesting orders removing certain properties from the receiver's inventory, such matters are more properly directed to the trial court, which is better equipped to evaluate any alleged changed circumstances.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Webb.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.