

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JMJ FINANCIAL GROUP,

Plaintiff and Respondent,

v.

THOMAS HEWKO et al.,

Defendants and Appellants.

G046708

(Super. Ct. No. 30-2011-00510117)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed.

Thomas Hewko and Denise Honc, in pro. per., for Defendants and Appellants.

Law Office of Julian Bach and Julian Bach for Plaintiff and Respondent.

\* \* \*

Plaintiff and respondent JMJ Financial Group<sup>1</sup> commenced foreclosure proceedings with respect to the multi-unit rental property of defendant and appellant Thomas Hewko. Hewko sought the assistance of defendants Denise Honc, Boyan Panajotov, and notary public Rita P. Thomas to gum up the works and delay the foreclosure. Hewko claims to have tendered payment of all sums due on his loan by delivering to JMJ Financial Group a “private registered setoff bond” in the amount of \$1,150,000, issued by himself as underwriter, for the credit of JMJ Financial Group, and payable to the order of the United States Treasury, which was authorized to demand payment by presentment to Secretary of the Treasury Timothy F. Geithner. Hewko and the other defendants, via their respective participation, signed, notarized and/or recorded, a variety of other documents including a reconveyance of all interests under the deed of trust of JMJ Financial Group.

JMJ Financial Group filed a lawsuit and obtained the appointment of a receiver with respect to Hewko’s property. Hewko and Honc, each appearing in propria persona, appeal from the order appointing a receiver and from an order denying a motion for reconsideration.<sup>2</sup> They have failed to meet their burden to show that the court erred in granting the application to appoint a receiver. In addition, because they have failed to provide any argument in support of their appeal from the order denying the motion for reconsideration, they have abandoned any challenge to that order. We affirm.

---

<sup>1</sup> Some of the documents in the record refer to JMJ Funding Group rather than JMJ Financial Group. We do not know the relationship between these two entities.

<sup>2</sup> Honc joined Hewko in the filing of various documents in the trial court, including the motion for reconsideration, although it is unclear why the appointment of a receiver should affect her.

I  
FACTS

*A. Introduction:*

Hewko and Honc have filed a limited record on appeal. The clerk’s transcript does not contain a copy of the complaint, a copy of the application to appoint a receiver, or for that matter, a copy of any pleading whatsoever filed by JMJ Financial Group. Furthermore, Hewko and Honc provide extraordinarily few record references in their brief.

“[T]he failure to provide citation to the record is a violation of California Rules of Court, rule [8.204(a)]. A violation of the rules of court may result in the striking of the offending document, the waiver of the arguments made therein, the imposition of fines and/or the dismissal of the appeal. [Citations.] In addition, it is [a party’s] duty to point out portions of the record that support the position taken on appeal. The appellate court is not required to search the record on its own seeking error. Again, any point raised that lacks citation may, in this court’s discretion, be deemed waived. [Citation.]”  
*(Del Real v. City of Riverside (2002) 95 Cal.App.4th 761, 768.)*

Because of the limited record on appeal, and Hewko and Honc’s limited record references, we provide below a synopsis of each party’s representations concerning the facts. We do not accept any of these representations as true, but we consider the representations to enable us to better understand each party’s position. Also, while we are not required to scour the record on our own, we have nonetheless chosen to take a look at it and see what support it may contain for the arguments that Hewko and Honc raise. Having done so, we also note below certain documents of interest that we located in the clerk’s transcript.

*B. Appellants' Representations:*

The following representations are contained in the opening brief of Hewko and Honc:

Hewko owns a multi-unit rental property located on Shalimar Drive in Costa Mesa. It is subject to a deed of trust in favor of JMJ Financial Group. JMJ Financial Group claims to be owed \$388,288.54. The property value is about \$800,000, so Hewko has about \$400,000 in equity in the property.

Hewko tendered the entire amount owing to JMJ Financial Group. JMJ Financial Group received and “kept” the tender, but failed to adjust its books and records to reflect a zero balance due under the loan and failed to execute a reconveyance. Even though the tender had the effect of extinguishing the lien of the deed of trust, the court appointed a receiver to collect the rents on the property.

*C. Respondent's Representations:*

The following representations are contained in the respondent's brief of JMJ Financial Group:

Hewko borrowed \$344,000 from JMJ Financial Group, secured by a deed of trust against Hewko's multi-unit residential property located on Shalimar Drive in Costa Mesa. JMJ Financial Group commenced foreclosure proceedings, but Hewko filed for bankruptcy, and obtained a stay of the foreclosure proceedings. While the stay was in effect, “Honc, who is not a party to the loan transaction . . . but is rather an officious intermeddler who along with her other cohorts seeks out borrowers with distressed real estate, began recording false and fraudulent documents against the subject property.”

Those fraudulent documents included a modification of deed of trust, an assignment of deed of trust, a full reconveyance, and a notice of rescission of declaration of default and demand for sale. Panajotov, who executed certain of the documents, has

never been employed by, has never been affiliated with, and has never been authorized to sign any documents on behalf of, either JMJ Financial Group or RESS Financial, a company identified in Panajotov's documentation as an agent for the beneficiary and trustee under the deed of trust. Likewise, Honc was not authorized to sign any documents on behalf of JMJ Financial Group and, in particular, was not authorized to reconvey the deed of trust.

After the bankruptcy proceedings were dismissed, JMJ Financial Group filed a first amended complaint against Hewko, Honc, and others, for: (1) slander of title; (2) fraud; (3) cancellation of written instruments; (4) breach of statutory duties by a notary public; (5) judicial foreclosure; (6) specific performance of deed of trust; (7) injunctive relief; and (8) declaratory relief.

The court granted JMJ Financial Group's application for the appointment of a receiver and denied the motion for reconsideration filed by Hewko and Honc.

*D. Clerk's Transcript—Appellants' Exhibits:*

Honc filed a "NOTICE TO INCLUDE AND AUGMENT THE RECORD" in the trial court. Copies of the following documents, among others, were attached as exhibits:

1. A "PRIVATE REGISTERED SETOFF BOND" in the amount of \$1,150,000, reflecting an issue date of July 14, 2011. It is payable to the order of the United States Treasury, for credit to JMJ Financial Group, Inc., through Thomas Michael Hewko, as principal and creditor. The bond is signed by "Thomas Michael Hewko, Principal/Underwriter."

According to the terms of the document, the United States Treasury, as payee, "may demand payment of all or any portion hereof at its discretion by posting the payment to the Private Offset Account" of Hewko "and transferring the obligation by

TT&L or presentment to” Secretary of the Treasury Timothy F. Geithner. No later than one business day after presentment, the United States Treasury as payee shall “post the full or partial value of this bond to satisfy . . . any and all . . . debts . . . attributed to the Account Holders and Accounts above-noted.” The two accounts referenced at the top of the bond are the account of JMJ Financial Group, Inc. and the private offset account of Hewko.

2. A “NOTICE OF TENDER FOR SETOFF” dated July 14, 2011 from Hewko to JMJ Financial Group, Inc. and RESS Financial Corp. Hewko claimed to have tendered a “setoff” and requested that his account be adjusted to zero, “to reflect the ledgering of said TENDER.”

3. A July 7, 2011 letter from JMJ Funding Group, Inc., demanding \$381,026.86 by July 28, 2011 for payoff of the loan. The following words were stamped across the face of the demand: “ACCEPTED FOR VALUE — RETURNED FOR VALUE EXEMPT FROM LEVY — PREPAID COMMON STOCK DISCHARGE ALL PRESENTATIONS AND RELATED FEES ADJUST THE BALANCE TO ZERO PRIVATE PREPAID TREASURY EXEMPTION # 555041809 AND CHARGE THE SAME TO THOMAS M. HEWKO 555-04-1809.” Below this wording was the signature of Hewko, and the date July 14, 2011.

4. A July 14, 2011 “REQUEST REGARDING A STATEMENT OF ACCOUNT” from Hewko to JMJ Funding Group, Inc. and RESS Financial Corp. requesting they correct his statement of account to show a zero balance.

5. An August 2, 2011 “NOTICE OF FAULT IN DISHONOR” whereby Hewko claimed that because Thomas, on his behalf, had tendered the “PRIVATE REGISTERED SETOFF BOND” to JMJ Financial Group, Inc., and JMJ Financial Group, Inc. had neither protested nor honored the tender, the bond had been deemed dishonored, the debt had been discharged, and “a confession of judgment on the merits

[was] warranted.” Hewko’s signature on the notice was notarized by Thomas.

6. An August 15, 2011 “NOTICE OF DEFAULT IN DISHONOR CONSENT TO JUDGMENT” in which Hewko claimed that JMJ Financial Group, Inc.’s “failure to perform by the terms of the Presentment constitute[d] [its] acceptance and approval of the granting and conveying of a Full Power of Attorney to [him] to perform the duties of [JMJ Financial Group, Inc.] stipulated therein.” He also claimed the failure to perform constituted JMJ Financial Group, Inc.’s “agreement to the stipulated aggregate amount of unpaid obligations being Zero . . . .” Hewko’s signature on the document was again notarized by Thomas.

7. A “NOTARY CERTIFICATION OF NON-RESPONSE/NON-PERFORMANCE,” dated August 15, 2011, executed by Thomas and bearing her notarial seal. In that document Thomas declared, inter alia, that: (1) she had presented the “PRIVATE REGISTERED SETOFF BOND,” the “Request Regarding a Statement of Account,” and the “NOTICE OF FAULT IN DISHONOR” upon JMJ Financial Group, Inc.; (2) JMJ Financial Group, Inc. had refused to adjust Hewko’s statement of account through “non-response/non-performance;” and (3) she thereupon “[did] publicly and solemnly certify the dishonor as against all parties it [might] concern . . . .”

8. A special power of attorney, dated August 16, 2011 and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415433. By that special power of attorney, Hewko appointed Panajotov his attorney in fact, empowered to take certain acts with respect to the property on Shalimar in Costa Mesa. The power of attorney was notarized by Thomas.

9. A modification of deed of trust, executed on August 16, 2011 by Panajotov purportedly on behalf of JMJ Financial Group, Inc. and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415541. The document recited that the \$344,000 promissory

note, payable by Hewko to JMJ Funding Group, Inc. and secured by a deed of trust against the Shalimar property was thereby modified to reflect a zero balance. The document was notarized by Thomas.

10. An assignment of deed of trust dated August 16, 2011 and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415542. Pursuant to that document, Panajotov, purportedly on behalf of JMJ Financial Group, did assign to Honc the beneficial interest under a certain deed of trust executed by Hewko in favor of JMJ Financial Group and recorded against the property on Shalimar in Costa Mesa. The assignment was notarized by Thomas.

11. A substitution of trustee, dated August 16, 2011 and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415543. By that document, Panajotov, purportedly on behalf of JMJ Financial Group, Inc. did substitute Honc as trustee under JMJ Financial Group, Inc.'s deed of trust. The document was notarized by Thomas.

12. A full reconveyance, dated August 16, 2011 and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415544. By that document, Honc, as substitute trustee of JMJ Financial Group, Inc.'s deed of trust against the Shalimar property in Costa Mesa, reconveyed all right, title and interest of the trustee under that deed of trust. The document was notarized by Thomas.

13. A notice of rescission of declaration of default and demand for sale, dated August 16, 2011 and recorded in the official records of the Orange County, California Clerk-Recorder on August 23, 2011, as instrument No. 2011000415931. By that document, Panajotov, purportedly on behalf of RESS Financial Corporation, rescinded a declaration of default and demand for sale previously recorded with respect to the deed of trust of JMJ Financial Group. The document was notarized by Thomas.

14. A “CERTIFICATE OF ADMINISTRATIVE JUDGMENT” dated September 2, 2011, signed by Thomas and bearing her notarial seal. In that certificate, Thomas declared that she had, at the request of Hewko, presented a “NOTICE OF DEFAULT IN DISHONOR, CONSENT TO JUDGMENT” to JMJ Financial Group, Inc., which contained a request for consent to administrative judgment, that a reasonable time had lapsed without response, and that she did therefore “publicly and solemnly certify the consent of all parties” to an administrative judgment. She further declared that she had sent a notice of administrative judgment to JMJ Financial Group, Inc. on September 2, 2011.

*E. Clerk’s Transcript—Orders:*

The clerk’s transcript also contains a copy of a minute order dated January 30, 2012. It indicates that the plaintiff is JMJ Financial Group and that defendants include Hewko, Honc and Panajotov.

The court granted the request of JMJ Financial Group for the appointment of a receiver. The minute order recited that the deed of trust executed by Hewko provided that upon default, JMJ Financial Group was entitled to the appointment of a receiver and the collection of rents. It further stated that JMJ Financial Group had provided the declaration of its principal, who declared that a default had taken place in November 2010, so the appointment of a receiver was proper.

The clerk’s transcript also contains a copy of an order confirming the appointment of a receiver, filed on February 6, 2012 and identifying Andrew R. Zimbaldi as the receiver. It also contains a motion for reconsideration filed by Hewko and Honc and a copy of an order denying that motion.

## II DISCUSSION

### *A. Overview:*

Hewko and Honc raise issues under the following topic headings: (1) the trial court lacked subject matter jurisdiction to rule on the application for the appointment of a receiver; (2) the court erred in making its determination without reviewing certified documents, holding oral argument, or making preliminary findings ; (3) the court failed to address preliminary elements and factors; (4) JMJ Financial Group failed to make the necessary evidentiary showing for the appointment of a receiver; (5) the court failed to make necessary findings; (6) the court made determinations without a constitutionally required fair hearing; and (7) the judge should have recused himself.

To the extent that Hewko and Honc may raise additional issues without separate topic headings or subheadings, we do not consider them. Rather, we “disregard arguments that do not comply with California Rules of Court, rule [8.204(a)(1)(B)], which requires separate headings for each point. [Citations.]” (*Akins v. State of California* (1998) 61 Cal.App.4th 1, 17, fn. 9.)

### *B. Lack of Subject Matter Jurisdiction:*

Hewko and Honc allege that the order appointing the receiver was obtained through a fraud upon the court. They explain that JMJ Financial Group falsely represented that the loan was outstanding, even though Hewko had tendered the “private registered setoff bond.” JMJ Financial Group represents that Hewko’s loan documents require the loan to be paid “in U.S. dollars, payable to ‘JMJ Financial Group,’” not via the tender of a purported bond. However, Hewko and Honc maintain that when the “private registered setoff bond” was tendered to JMJ Financial Group, the loan was deemed satisfied in full. They further argue that the tender extinguished the deed of trust

and the court had no power “to execute the terms of a dead document.”

Clearly, the parties disagree as to whether the tender eradicated the debt. However, the issue Hewko and Honc frame on appeal is whether the court had jurisdiction in this matter. None of the authorities they cite show that the court did not have jurisdiction. (See *Long v. Shorebank Development Corp.* (7th Cir. 1999) 182 F.3d 548 [federal court jurisdiction over state law claims]; *Lubben v. Selective Service System Local Bd. No. 27* (1st Cir. 1972) 453 F.2d 645 [federal court jurisdiction to enjoin induction into armed services]; *Winnett v. Roberts* (1986) 179 Cal.App.3d 909, 922 [tender of amount due extinguishes lien]; *Lichty v. Whitney* (1947) 80 Cal.App.2d 696, 702 [tender of amount owing under trust deed extinguishes security]; Code Civ. Proc., § 1008 [motion for reconsideration]; Code Civ. Proc., § 2074 [offer to pay equivalent to tender of money]; Code Civ. Proc., § 2076 [failure to object to tender constitutes waiver]; Civ. Code, § 2924c [cure of default]; Cal. U. Com. Code, § 3603 [effect of tender of payment].) Hewko and Honc have not met their burden to show error on this point.

*C. Decision Without Reviewing Certified Documents, Holding Oral Argument, or Making Preliminary Findings:*

Hewko and Honc also argue that the court erred in deciding “the issue of ownership of title to the subject property without the supporting certified documents and without oral argument; then the court failed to make preliminary findings that as a matter of law should have caused a denial of the motion to appoint a receivership.” (Capitalization, boldface and underscoring omitted.) Having failed to support their argument with either citations to the record or legal authority, their argument on these points is deemed waived. (*Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 109.)

Under the same topic heading, although apparently on a different point, Hewko and Honc assert that before the court may grant an application for the

appointment of a receiver, it must inquire into the validity of the moving party's contentions. They also contend that JMJ Financial Group, in seeking the appointment of a receiver, fraudulently concealed from the court the fact that the debt had been extinguished upon tender of the "private registered setoff bond." Their only citation to legal authority, Code of Civil Procedure section 529, subdivision (a), does not address the requirements for the appointment of a receiver, or the effect of either fraudulent concealment or the extinction of a debt, just as it does not address whether the court must review "certified documents," hold oral argument, or make preliminary findings. The statute only pertains to undertakings in connection with the issuance of an injunction.

*D. Failure to Address Preliminary Elements and Factors:*

In a related argument, Hewko and Honc contend that the court erred in failing to "adequately address the preliminary elements and factors for receivership." (Capitalization, boldface and underscoring omitted.) They state that a receiver may only be appointed in accordance with Code of Civil Procedure section 564.

We observe that Code of Civil Procedure section 564, subdivision (b)(2) permits the appointment of a receiver "[i]n an action by a secured lender for the foreclosure of a deed of trust . . . where it appears that the property is in danger of being . . . materially injured, or that the condition of the deed of trust . . . has not been performed, and that the property is probably insufficient to discharge the deed of trust . . . debt." Section 564, subdivision (b)(9) authorizes the appointment of a receiver "[i]n all other cases where necessary to preserve the property or rights of any party." Section 564, subdivision (b)(11) permits the appointment of a receiver "[i]n an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust . . . ." The minute order in the matter before us cites section 564, subdivision (b)(9) as the authority upon which it relied.

Hewko and Honc contend it was “illegal” to appoint a receiver because the validity of the debt had not been determined. However, they cite no legal authority in support of this point. Consequently, their argument is deemed waived. (*Roden v. AmerisourceBergen Corp.* (2010) 186 Cal.App.4th 620, 648-649.)

They also say the court, in equity, should not have appointed a receiver. They cite “Code of Civil Procedure section 564(7)” in support of this argument. However, there is no “Code of Civil Procedure section 564(7).” We assume Hewko and Honc mean to refer to section 564, subdivision (b)(7), which permits the appointment of a receiver in an unlawful detainer action. However, the underlying case is not an unlawful detainer action and the court did not rely on subdivision (b)(7) in any event.

*E. Lack of Evidentiary Showing:*

Similarly, Hewko and Honc assert that JMJ Financial Group did not submit the evidence necessary to support the appointment of a receiver. They claim that the appointment of a receiver is a drastic remedy that should only be considered as a last resort, and that a receiver should not be appointed where the appointment would do more harm than good. They claim that JMJ Financial Group had an adequate remedy without resort to a receivership since there was adequate equity in the property to protect it, and that the court failed to consider whether there was an alternative remedy. However, Hewko and Honc cite no portion of the record showing the amount of equity in the property and, thus, whether there was an adequate alternative remedy.

Hewko and Honc also claim that, given what they characterize as exorbitant receiver fees, the appointment did more harm than good. However, they cite no portion of the record containing evidence about either the amount of the collections or the amount of the receivership fees. Consequently, they have not shown that the appointment of the receiver did more harm than good. Anyway, whether the receiver

performed well after the fact is not germane to the issue of whether the JMJ Financial Group provided the evidence necessary to support the appointment of a receiver in the first place.

They also contend that a receiver may only be appointed when it is in the best interests of each of the parties, citing Code of Civil Procedure section 708.620. That statute provides: “The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.” As is apparent, section 708.620 applies in the context of the enforcement of a money judgment. However, we are not concerned with the enforcement of a money judgment here, and the court did not rely on section 708.620 in appointing the receiver. It relied on Code of Civil Procedure section 564. Consequently, the citation to Code of Civil Procedure section 708.620 is unavailing.

*F. Failure to Make Findings:*

Next, Hewko and Honc argue that the court erred when, over their objections, it failed “to make findings of essential elements of a claim to establish a basis for determination of its ruling.” (Capitalization and boldface omitted.) However, they provide no citation to the record to show either that they requested the court to make findings or that the court failed to make findings. Consequently, their argument on the point is waived. “[W]e need not address any argument that is unsupported by record references. [Citation.]” (*Roden v. AmerisourceBergen Corp.*, *supra*, 186 Cal.App.4th at p. 634.)

*G. Denial of Constitutional Right to Fair Hearing:*

On another point, Hewko and Honc assert that they had a due process right to a fair hearing, including the right to produce evidence and cross-examine witnesses. However, they fail to cite any portion of the record to show that they were denied those rights. Consequently, their argument on those points is deemed waived. (*Roden v. AmerisourceBergen Corp.*, *supra*, 186 Cal.App.4th at p. 634.)

Hewko and Honc further contend that “[o]n January 30, 2102, Judge Gregory H. Lewis refused to hear and denied all motions and objections from defendant and his agents.” This argument also is unsupported by citations to the record and thus deemed waived. (*Roden v. AmerisourceBergen Corp.*, *supra*, 186 Cal.App.4th at p. 634.)

*H. Recusal:*

Finally, Hewko and Honc claim the judge must have been biased against them. They say a judge must disqualify himself when an objective observer would reasonably question whether the judge was impartial. However, they do not state that they made a motion to disqualify the judge and they cite no portion of the record to support the assertion that the judge was biased. Their argument is waived for failure to cite the record. (*Roden v. AmerisourceBergen Corp.*, *supra*, 186 Cal.App.4th at p. 634.)

*I. Motion for Reconsideration:*

Although the notice of appeal indicates that Hewko and Honc appeal from both the order appointing a receiver and the order denying their motion for reconsideration, they make no argument concerning the denial of the motion for reconsideration. Consequently, they are deemed to have abandoned any challenge to the order denying the motion for reconsideration. (*G.R. v. Intelligator* (2010) 185 Cal.App.4th 606, 610, fn. 1.)

*J. Conclusion:*

On appeal, we presume that the order of the trial court is correct. (*Virtanen v. O'Connell* (2006) 140 Cal.App.4th 688, 709.) It is the appellants' burden to show error. (*Id.* at p. 710.) Here, Hewko and Honc have failed to meet their burden. The record they present only shows, if anything, that they deployed a preposterous mass of highly suspect paperwork to gum up the record in an effort to stave off foreclosure. This case has all the earmarks of a matter that merits further review by the proper authorities.

III

DISPOSITION

The orders are affirmed. JMJ Financial Group shall recover its costs on appeal. The clerk of this court is directed to provide copies of this opinion to the district attorney, the United States Attorney and the California Secretary of State.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.