Reversed and Remanded and Memorandum Opinion filed August 24, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00479-CV

CHRISTOPHER BRAN, CBMJ INVESTMENTS & DEVELOPMENT, LLC, MONTROSE MULTIFAMILY II HOLDINGS, LLC, AND URBANONE PROPERTIES, LLC, Appellants

V.

SPECTRUM MH, LLC AND SPECTRUM MHU, LLC, Appellees

On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2020-20587

M E M O R A N D U M O P I N I O N

In this appeal, judgment debtors challenge the trial court's order appointing a receiver under section 31.002(b) of the Civil Practice and Remedies Code. Because a charging order is the exclusive remedy by which the judgment creditors may satisfy their judgment out of a membership interest owned by one of the judgment debtors in a limited liability company, the trial court abused its discretion to the extent that it made the order applicable to a membership interest in a limited

liability company owned by one of the judgment debtors. Because evidence in the record shows that the judgment debtors own certain assets, we conclude that the trial court did not err in granting the receivership order as to these assets. Because the evidence does not show that the judgment debtor owned any other property, we conclude the trial court abused its discretion in granting the receivership order as to any other assets. We reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

In June 2021 an arbitrator issued an award in an arbitration between Appellees Spectrum MH, LLC, and Spectrum MHU, LLC (the "Spectrum Parties") and appellants Christopher Bran, CBMJ Investments & Development, LLC, Montrose Multifamily II Holdings, LLC, and UrbanOne Properties, LLC (the "Bran Parties"). The arbitrator determined that the Bran Parties are jointly and severally liable to the Spectrum Parties for $1,463,324.26 in compensatory damages, plus interest thereon, attorney's fees, and expenses. In the award, the arbitrator also found that a total of $1,465,049.26 was transferred out of a bank account of non-party Montrose Multifamily Members III, LLC ("MMM3 Bank Account") "to persons or entities under the control of Respondent Bran, who could not explain the purpose of such transfers other than to point to [Bran's] husband as having the detailed information concerning such transfers, and promising to provide that information before the conclusion of the live evidence presentation but [he] failed to do so by the conclusion of the live evidence presentation." The arbitrator ordered the Bran Parties to "restore all of the $1,465,049.26 transferred out of the [MMM3 Bank Account] without [the Spectrum Parties'] authority, as reflected in Claimant's Exhibit 42 (the "Unauthorized Transfers"), by directing the signatories on the recipients' accounts and/or any subsequent transferees to initiate a wire transfer at their own expense to return all of these funds to the [MMM3

Bank Account]." The arbitrator stated that if the Bran Parties failed to restore the Unauthorized Transfers to the MMM3 Bank Account within sixty days of the date of the arbitration award, the Bran Parties would be jointly and severally liable for paying the Spectrum Parties $1,465,049.26 less the total of Unauthorized Transfers that have been successfully restored to the MMM3 Bank Account.[1] The arbitrator also granted the Spectrum Parties permanent injunctive relief.

In July 2021 the trial court granted the Spectrum Parties' motion to confirm the arbitration award and rendered a final judgment in accordance with and conforming to the award ("Judgment"). No party appealed from the Judgment. In neither the arbitration award, the Judgment, nor any other order in our record is there a finding that a fraudulent transfer occurred or that a corporate veil should be pierced.

In January 2022, the Spectrum Parties filed an Application for Post-Judgment Turnover Order and Appointment of a Receiver ("Application") asserting: (1) the Spectrum Parties own the Judgment that has gone is unpaid; (2) since the date the Judgment was entered, the Spectrum Parties have abstracted the Judgment and made good faith efforts to collect on the Judgment; (3) the Bran Parties have not submitted any payment to the Spectrum Parties towards the Judgment, and the Spectrum Parties' collection efforts have not prevailed; (4) the Spectrum Parties have good faith reasons to believe that the Bran Parties own non-exempt rights to present or future property, like bank accounts; (5) Bran has submitted personal financial statements reflecting assets of $27.9 million, "including real estate assets held in partnerships of $26.6 million which to the knowledge of [the Spectrum Parties] includes interests in [twelve entities named in

[1] The Spectrum Parties contend that the Bran Parties are liable for this additional amount, thus impliedly alleging that the Bran Parties did not restore any of the Unauthorized Transfers within sixty days.

the application], all of which own real estate in Houston"; (6) the Bran Parties also own an interest in Montrose Multifamily Members III, LLC ("MMM3") but that entity is now controlled by the Spectrum Parties; (7) the appointment of a receiver is necessary to aid in collecting on the Judgment; (8) under section 31.002(b) of the Civil Practice and Remedies Code, the Spectrum Parties asked the trial court to order the Bran Parties to turn over all nonexempt property in their possession or subject to their control, together with all documents related to the property, and to appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the Spectrum Parties to the extent required to satisfy the Judgment, including the fees and costs of the receiver; (9) the Spectrum Parties believe that the Bran Parties own or have rights to non-exempt personal property, but the Spectrum Parties need the assistance of a receiver to discover, seize, administer, and sell the assets; and (10) the non-exempt property of which the Spectrum Parties are aware that shall be seized by the receiver is believed to be located in various bank accounts that are held by persons or entities that are under the control of Bran. The only evidence attached to the application was the Judgment.

The Bran Parties opposed the Application and asserted that the Spectrum Parties had offered no evidence that the property the Spectrum Parties asked to be turned over belongs to the Bran Parties. The Bran Parties also argued that, to the extent the Spectrum Parties sought access to bank accounts in which entities or persons other than the Bran Parties have an interest, turnover proceedings cannot be used to determine the parties' substantive rights or be applied to parties who are not judgment debtors. The Bran Parties also maintained that the appointment of a receiver was unnecessary and unreasonable because the Spectrum Parties could collect on the entire Judgment, given that (1) Spectrum MH, LLC is the manager

of MMM3 and has complete management and control over three properties owned by MMM3 ("Three Properties"); (2) according to the Bran Parties the Three Properties are valued at a minimum of $29 million; (3) Bran owns a 76% interest in MMM3;[2] and (4) the Spectrum Parties may be made whole by "obtaining a certain percentage of Bran's membership interests [in MMM3] proportionate to the value of [the Judgment]." The Bran Parties attached to their response a declaration in which Bran stated as follows: (1) Bran is President of appellant CBMJ Investments & Development, LLC ("CBMJ"), President of appellant UrbanOne Properties, LLC ("UrbanOne"), and Manager of appellant Montrose Multifamily II Holdings, LLC ("MMH2"); (2) Bran attached an appraisal report with a valuation opinion by a real estate appraiser for each of the Three Properties; (3) Bran holds a 76% interest in MMM3;[3] and (4) as of the date of the declaration, the Three Properties "are likely valued at around $31 million."

The Spectrum Parties filed a reply in which they contended that (1) the trial court had the power to issue a turnover order and appoint a receiver under section 31.002 of the Civil Practice and Remedies Code; (2) all that is required to support the issuance of a turnover order by the trial court is evidence that the Bran Parties possess non-exempt assets available to satisfy the Judgment, and the Spectrum Parties have submitted such evidence; and (3) in connection with Bran soliciting the investment by the Spectrum Parties, Bran entered into guarantee agreements pursuant to which he supplied personal financial statements representing he had assets of over $23 million, as shown by the declaration of Shawn Shivalkar.

Before the hearing on the Application, the Spectrum Parties filed various

[2] Other evidence in the record shows that Montrose Multifamily II Holdings, LLC, not Bran, owns a 76.24% interest in Bran Spectrum Houston, LLC, not in MMM3 and that Bran Spectrum Houston, LLC owns a 100% interest in MMM3.

[3] *See* footnote 2 above.

exhibits with the trial court clerk to be used at the hearing. On May 19, 2022, the trial court conducted a hearing on the Application. No testimony was given during the hearing. The Spectrum Parties asserted that they had a good faith belief that the Bran Parties own non-exempt rights to present or future property, such as bank accounts. The Spectrum Parties also contended that Bran owned interests in various real estate limited liability companies. The Bran Parties asserted that the Spectrum Parties should pursue a charging order as to the Bran Parties' interests in limited liability companies. The Spectrum Parties asserted that the 76% interest in MMM3 currently has no value. The Bran Parties disagreed with this assertion. The Bran Parties agreed that they had not turned over any of their assets to the Spectrum Parties since the trial court rendered the Judgment. The Bran Parties asserted that the Spectrum Parties had not conducted any post-judgment discovery. At the end of the hearing the trial court granted the Application.

On June 11, 2022, the trial court signed an Order Requiring Turnover and Appointing Receiver ("Order") in which the trial court found that the Bran Parties own non-exempt property and that there exists an unpaid final judgment against them. The trial court also appointed Seth Kretzer ("Receiver") as receiver in this case under section 31.002 of the Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (West, Westlaw through 2023 R.S.). The trial court stated that the Receiver has the power to take possession of and sell all leviable property of the Bran Parties, including but not limited to the following non-exempt property: "(1) all documents or records, including financial records, related to such property that is in the actual or constructive possession or control of the [Bran Parties]; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities including, without limitation, interests in partnerships and limited liability

companies; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action or choses of action; (9) contract rights, whether present or future; and (10) accounts receivable; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order." The trial court ordered the Bran Parties to turn over to the Receiver all checks, cash, securities, promissory notes, documents of title, and contracts owned by or in the name of the Bran Parties. The trial court further ordered the Bran Parties to turn over to the Receiver all of the following documents as to any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which the Judgment Debtors currently hold or have held an interest since January 1, 2018: (1) all documents of creation and ownership, (2) federal income tax and state franchise tax returns, (3) all motor vehicle certificates of title, (4) stock certificates and bonds, (5) promissory notes, (6) bills of sale, (7) real property deeds and deeds of trust, (8) business journals, ledgers, accounts payable and receivables files, (9) pledges, security agreements, and copies of financial statements, and (10) any other record or document evidencing any ownership of real or personal property or any debt owed or money had.

The trial court ordered the Bran Parties to "identify and turn over to the Receiver all interests of the [Bran Parties] in any business or venture, including limited liability companies and limited partnerships, and all agreements, stock certificates and other documents pertaining to the [Bran Parties'] ownership in the business or venture." In the Order the trial court authorized the Receiver (1) to seize the membership interest of any limited liability company in which the Bran Parties are a member, and to sell, manage, and operate the limited liability

company as the Receiver shall think appropriate; and (2) "to obtain all bank accounts and records and invest accounts [sic] and records held by [the Bran Parties] from any financial institution." The Bran Parties timely perfected this appeal from the Order.

The Receiver obtained from Independent Bank $6,314.04 that had been in UrbanOne's account at Independent Bank and $5,259.30 that had been in CBMJ's account at Independent Bank. The Receiver also obtained from the Bank $38,269.24 from an account that a bank officer described as belonging to "Montrose Houston Multifamily TX II, LLC." The Bran Parties contend that this account belongs to the entity named by the bank officer, which is not a judgment debtor in today's case. The Spectrum Parties contend that these funds were from the account of MMH2, a judgment debtor. The receiver also obtained various amounts from twelve other bank accounts at Independent Bank that do not belong to any of the Bran Parties. Seven of these entities later filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. After the bankruptcy judge in that case ordered him to do so, the Receiver remitted the funds from these seven accounts into the registry of the bankruptcy court.

On appeal the Bran Parties filed an emergency motion to stay the Order. This court granted the motion in part and stayed the Order's authorization of sales and other alienations of turned-over property and other assets by the receiver. Except to this extent, this court denied the motion to stay.

II. ISSUES AND ANALYSIS

A. Is a charging order the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of any membership interest in a limited liability company owned by one of the Bran Parties?

The evidence before the trial court showed that Bran conducted business

using various limited liability companies and that Bran owned interests in one or more limited liability companies. On appeal the Bran Parties argue that to the extent they own an interest in another entity, the Spectrum Parties are entitled only to a charging order. The Bran Parties contend that a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest. Section 101.112 of the Business Organizations Code provides in its entirety as follows:

> (a) On application by a judgment creditor of a member of a limited liability company or of any other owner of a membership interest in a limited liability company, a court having jurisdiction may charge the membership interest of the judgment debtor to satisfy the judgment.
>
> (b) If a court charges a membership interest with payment of a judgment as provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the membership interest.
>
> (c) A charging order constitutes a lien on the judgment debtor's membership interest. The charging order lien may not be foreclosed on under this code or any other law.
>
> **(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest.**
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> (e) This section may not be construed to deprive a member of a limited liability company or any other owner of a membership interest in a limited liability company of the benefit of any exemption laws applicable to the membership interest of the member or owner.
>
> (f) A creditor of a member or of any other owner of a membership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.[4]

[4] Effective September 1, 2023, to clarify existing law, the legislature added the following language as subsection (g) of section 101.112: "This section applies to both single-member

Tex. Bus. Organs. Code Ann. § 101.112 (West, Westlaw through 2021 R.S.) (emphasis added).[5]

In pertinent part, section 31.002 of the Civil Practice and Remedies Code provides:

> (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction, including a justice court, through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.
>
> (b) The court may:
>
> (1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;
>
> (2) otherwise apply the property to the satisfaction of the judgment; or
>
> (3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (West, Westlaw through 2023 R.S.).

In construing a statute, our objective is to determine and give effect to the Legislature's intent. *See Nat'l Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000). If possible, we must ascertain that intent from the language the

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limited liability companies and multiple-member limited liability companies." *See* Act of May 24, 2023, 88th Leg., R.S., ch. 972, 2023 Tex. Sess. Law Serv. Ch. 972.

[5] In section 101.112, "limited liability company" means a Texas limited liability company. *See* Tex. Bus. Organs. Code Ann. § 101.001(3) (West, Westlaw through 2021 R.S.). Substantially similar exclusive-remedy statutes apply to Texas limited partnerships and Delaware limited liability companies. *See* Tex. Bus. Organs. Code Ann. § 153.256 (West, Westlaw through 2023 R.S.); 6 Del. Code Ann. § 18-703; *XRI Invest. Holdings v. Holifield*, 283 A.3d 581, 598 (Del. Ch. Ct. 2022).

Legislature used in the statute and not look to extraneous matters for an intent the statute does not state. *Id*. If the meaning of the statutory language is unambiguous, we adopt the interpretation supported by the plain meaning of the provision's words. *St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). We must not engage in forced or strained construction; instead, we must yield to the plain sense of the words the Legislature chose. *See id*.

> Government Code section 311.026 reads in its entirety as follows:
>
> (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.
>
> (b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Tex. Gov't Code Ann. § 311.026 (West, Westlaw through 2023 R.S.).

The charging order was developed to prevent a judgment creditor's disruption of an entity's business by forcing an execution sale of the partner's or member's entity interest to satisfy a debt of the individual partner or member. *See Klinek v. Luxeyard, Inc.*, No. 14-22-00547-CV, —S.W.3d—,—, 2023 WL 4497063, at *5 (Tex. App.—Houston [14th Dist.] July 13, 2013, no pet. h). A judgment creditor of a member of a limited liability company or of any other owner of a membership interest in a limited liability company may enforce a judgment against the judgment debtor by requesting a charging order against the judgment debtor's membership interest. *See* Tex. Bus. Organs. Code Ann. § 101.112(a); *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 757 (Tex. App.—Houston [14th Dist.] 2017, no pet.). The Spectrum Parties applied for a charging order against interests that the Bran Parties allegedly hold in various limited liability

companies, but the record does not reflect that the trial court has ruled on that application. If a court charges a membership interest with payment of a judgment as provided by section 101.112(a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the membership interest. *See* Tex. Bus. Organs. Code Ann. § 101.112(b); *Gillet*, 523 S.W.3d at 757. Under the unambiguous language of section 101.112, the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Klinek*, 2023 WL 4497063, at *6; *Gillet*, 523 S.W.3d at 757. This court has held that there is an exception to this exclusivity in a case in which (1) the judgment creditor seeking turnover of the membership interest is the very same limited liability company from which the membership interest derives, and (2) the judgment being satisfied explicitly awards the membership interest itself from one party to the other. *See Klinek*, 2023 WL 4497063, at *6; *Gillet*, 523 S.W.3d at 757–58. This exception adopted by binding precedent does not apply under the facts of today's case. *See id*. We conclude that, under the plain text of section 101.112, the entry of a charging order is the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of a membership interest owned by one of the Bran Parties in a limited liability company. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Klinek*, 2023 WL 4497063, at *6; *Gillet*, 523 S.W.3d at 757–58.

Section 31.002 of the Civil Practice and Remedies Code provides that a trial court may appoint a receiver with the authority to take possession of a judgment debtor's nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. Tex. Civ. Prac. & Rem. Code Ann. § 31.002(b). This statute could be reconciled with section 101.112 by construing

section 31.002 to apply generally to nonexempt property unless another statute provides for an exclusive remedy. Even if there were an irreconcilable conflict between these statutes, section 31.002 is a general provision that is not the later enactment. *See* Tex. Bus. Organs. Code Ann. § 101.112; Tex. Civ. Prac. & Rem. Code Ann. § 31.002(b). Therefore, section 101.112, the special provision, prevails as an exception to section 31.002, the general provision. *See* Tex. Gov't Code Ann. § 311.026; *In re Allcat Claims Serv., Inc.*, 356 S.W.3d 455, 471 (Tex. 2011); *Sowell Int'l Interests, LP*, 416 S.W.3d 593, 599–600 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

The Spectrum Parties argue that a charging order is not the exclusive remedy by which they may satisfy the Judgment out of a membership interest owned by one of the Bran Parties. They contend that section 101.106(a) of the Business Organizations Code shows that a membership interest in a limited liability company constitutes a form of non-exempt intangible personal property and is therefore properly a component of the receivership estate. Section 101.106(a) provides that "A membership interest in a limited liability company is personal property." Tex. Bus. Organs. Code Ann. § 101.106(a) (West, Westlaw through 2023 R.S.). But the status of a membership interest as personal property does not address the exclusive-remedy issue or in any way conflict with section 101.112. *See id.*; Tex. Bus. Organs. Code Ann. § 101.112.

The Spectrum Parties also assert that although membership interests in a limited liability company may be seized by a judgment creditor exclusively by a charging order, section 101.112 does not mention receivers and therefore allows courts to give receivers the authority to seize and control these membership interests, especially in single-member limited liability companies. This argument fails based on the text of these two statutes. Section 31.002 provides a remedy by

which a judgment creditor may satisfy a judgment through the action of a receiver appointed by a court at the judgment creditor's request. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002(b). Section 101.112 provides that a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Klinek*, 2023 WL 4497063, at *6; *Gillet*, 523 S.W.3d at 757. Thus, if a court appoints a receiver under section 31.002 to take possession of a judgment debtor's membership interest in a limited liability company, sell it, and pay the proceeds to the judgment creditor to satisfy the judgment, the court provides the judgment creditor with a remedy other than the exclusive remedy of a charging order under section 101.112. *See* Tex. Bus. Organs. Code Ann. § 101.112; Tex. Civ. Prac. & Rem. Code Ann. § 31.002(b). The Spectrum Parties' suggestion that the exclusive remedy language in section 101.112(d) should not apply to single-member limited liability companies is contrary to the plain text of section 101.112 which makes no distinction between single-member and multiple-member limited liability companies. *See* Tex. Bus. Organs. Code Ann. § 101.112. In addition, in a recently enacted statute that takes effect on September 1, 2023, the Texas Legislature clarified that the current version of section 101.112 applies to both single-member and multiple-member limited liability companies. *See* Act of May 24, 2023, 88th Leg., R.S., ch. 972, 2023 Tex. Sess. Law Serv. Ch. 972 (adding subsection (g), which states that "This section applies to both single-member limited liability companies and multiple-member limited liability companies," to "clarify existing law").

The Spectrum Parties also contend that section 6.155 of the Business Organizations Code shows that a court may appoint a receiver under section 31.002(b) to seize a judgment debtor's membership interest in a limited liability

company. *See* Tex. Bus. Organs. Code Ann. § 6.155 (West, Westlaw through 2023 R.S.). This statute provides that "(a) [a] receiver may vote an ownership interest standing in the name of the receiver" and "(b) A receiver may vote an ownership interest held by or under the control of the receiver without transferring the interest into the receiver's name if the court appointing the receiver authorizes the receiver to vote the interest." *Id*. The statute does not state that it is addressing a receiver appointed under section 31.002 or that a judgment creditor may satisfy a judgment out of the judgment debtor's ownership interest by having a receiver appointed to take possession of the ownership interest. *See id*. Courts may appoint receivers under equitable principles or under various statutes other than section 31.002; therefore, section 6.155 does not conflict with the plain text of section 101.112. *See* Tex. Bus. Organs. Code Ann. §§ 6.155, 101.112.

Under the unambiguous language of section 101.112, the entry of a charging order is the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of a membership interest owned by one of the Bran Parties in a limited liability company. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Klinek*, 2023 WL 4497063, at *6; *Gillet*, 523 S.W.3d at 757–58. To the extent the trial court made the Order applicable to a membership interest in a limited liability company owned by one of the Bran Parties, the trial court abused its discretion. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Klinek*, 2023 WL 4497063, at *6.

B. Did the Spectrum Parties prove that the Bran Parties owned any property?

Under their first issue, the Bran Parties argue that the trial court abused its discretion by signing the Order without any evidence that the Bran Parties currently own any of the assets subject to the Order. We review a trial court's order requiring turnover and appointing a receiver for an abuse of discretion. *See Hamilton Metals, Inc. v. Global Metal Servs., Ltd.*, 597 S.W.3d 870, 878 (Tex.

App.—Houston [14th Dist.] 2019, pet. denied). The trial court abuses its discretion if it acts in an unreasonable or arbitrary manner. *Id*. A trial court's issuance of a turnover order, even if predicated on an erroneous conclusion of law, will not be reversed for abuse of discretion if the order can be sustained for any reason. *Id*.

A judgment creditor may pursue turnover relief against a judgment debtor if the debtor owns property not exempt from attachment, execution, or seizure for the satisfaction of liabilities. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002(a). To get turnover relief, the judgment creditor must carry the burden of proving that the judgment debtor owns property that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities. *See id.*; *Hamilton Metals*, 597 S.W.3d at 878. Simply filing an application or motion for turnover relief does not suffice; rather, the judgment creditor must submit evidence establishing these elements. *See Shultz v. Fifth Judicial District Court of Appeals at Dallas*, 810 S.W.2d 738, 740 (Tex. 1991), *abrogated on other grounds by*, *In re Sheshtawy*, 154 S.W.3d 114, 124–25 (Tex. 2004); *Hamilton Metals*, 597 S.W.3d at 878. Although the judgment creditor has the burden to prove that the judgment debtor owns property, once the judgment creditor submits proof identifying property owned by the judgment debtor, the burden shifts to the judgment debtor to prove that the identified property is exempt. *Klinek*, 2023 WL 4497063, at *3. Texas courts do not apply section 31.002 of the Civil Practice and Remedies Code to non-judgment debtors. *B.Z.B., Inc. v. Clark*, 273 S.W.3d 899, 904 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In addition, the turnover statute cannot be used to determine a party's substantive rights or the property rights of third parties. *Id*.

Under section 31.002(b), the trial court may order the judgment debtor to turn over non-exempt property to a designated sheriff or constable for execution, may otherwise apply the property to satisfy the judgment, or may appoint a

receiver with the authority to take possession of the non-exempt property, to sell it, and to pay the proceeds to the judgment creditor to satisfy the judgment. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002(b). A court may render or enforce an order under section 31.002 that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover. Tex. Civ. Prac. & Rem. Code Ann. § 31.002(h); *Hamilton Metals*, 597 S.W.3d at 878. Moreover, while there must be some evidence that the judgment debtor has non-exempt property, section 31.002 does not specify, or restrict, the manner in which evidence may be received for a trial court to determine whether the conditions of section 31.002(a) exist, nor does the statute require that such evidence be in any particular form, that the evidence be at any particular level of specificity, or that the evidence reach any particular quantum before the court may grant aid under section 31.002. *See Hamilton Metals*, 597 S.W.3d at 878–79. The lack of evidence supporting a turnover order does not automatically invalidate the order, but is a relevant consideration in determining if the trial court abused its discretion in issuing the order. *Id*. at 879. Even so, under binding precedent from this court, a trial court abuses its discretion if the court grants turnover relief and appoints a receiver under section 31.002(b) as to property without any evidence that the judgment debtor owns that property. *See Gillet*, 523 S.W.3d at 754–57; *Hamilton Metals*, 597 S.W.3d at 879. This court has applied an exception to this rule in a case in which the judgment creditor was unsuccessful in its attempts to learn through post-judgment discovery what assets the judgment debtor owned because the judgment debtor refused to respond to post-judgment discovery served on him by the judgment creditor, even after the trial court found the judgment debtor to be in contempt of the court's order compelling him to respond to the post-judgment discovery. *Klinek*, 2023 WL 4497063, at *6–7.

During the hearing on the Application, the trial court stated that it was

admitting certain of the Spectrum Parties' exhibits and that it was not admitting a few exhibits. The trial court did not address whether it was admitting some of the exhibits. But at the end of the hearing, the trial court stated that it had reviewed "the documents" before the hearing and that after reviewing "the documents" and hearing the arguments of counsel, the trial court decided to grant the Application. We conclude that the trial court granted the Application based on all the evidence before the court at the hearing and examine the evidence to see if there was any evidence of property owned by one or more of the Bran Parties.

The only evidence attached to the Application was the Judgment, which does not show any property owned by any of the Bran Parties. The Bran Parties attached to their response Bran's declaration and the declaration of Andrew Baker. The only evidence in these declarations regarding any property owned by one of the Bran Parties is Bran's statement that he owns a 76% interest in MMM3. The only evidence attached by the Spectrum Parties to their reply was the declaration of Shawn Shivalkar, in which he stated that (1) in connection with Bran's execution of two guaranty agreements in 2018, Bran submitted a "Statement of Financial Condition," in which Bran declared that he had assets of over $23 million; and (2) bank accounts were listed at Independent Bank, BBVA Compass, and Rabobank totaling $470,348. Shivalkar stated that Bran's "Statement of Financial Condition" was attached to his declaration, but no document was attached to the declaration of Shivalkar that was filed in the trial court. As to the exhibits that the Spectrum Parties filed with the trial court clerk before the hearing, these exhibits contain evidence that each of the Bran Parties owns a bank account at Independent Bank[6]

[6] Exhibits A-31, A-33, and A-33 contain bank statements for the MMM3 Bank Account at Independent Bank for 2019 through January 2021. Although MMM3 is not a judgment debtor, these statements show that the Bran Parties have bank accounts at Independent Bank. In addition, Exhibit A-42, containing summaries of transfers made from the MMM3 Bank Account, contains information showing that Bran and CBMJ have accounts at Independent Bank.

and evidence that some of the Bran Parties own interests in various entities, as to which a charging order is the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of that interest under the analysis in section II.A above. *See* Tex. Bus. Organs. Code Ann. § 101.112; *Gillet*, 523 S.W.3d at 757–58. In sum, other than ownership interests as to which the trial court abused its discretion in making them subject to the Order, there was evidence before the trial court that the Bran Parties owned the following property: (1) bank accounts at Independent Bank, BBVA Compass, and Rabobank owned by Bran; and (2) bank accounts at Independent Bank owned by CBMJ, UrbanOne, and MMM2. We refer to each of the foregoing bank accounts collectively as the "Bank Accounts."

The Spectrum Parties point to $50 in cash that the Bran Parties deposited in the registry of the trial court on June 30, 2022, as an asset of the Bran Parties. But this deposit occurred after the trial court signed the Order, and there was no evidence before the trial court regarding this $50 when the trial court signed the Order. Therefore, we may not consider this document in reviewing the Order. *See Hamilton Metals*, 597 S.W.3d at 880–83; *Ginn v. Pierce*, 595 S.W.3d 762, 766 (Tex. App.—Houston [14th Dist.] 2019, pet. denied). The Spectrum Parties also contend that there is evidence of property owned by one or more of the Bran Parties in a July 11, 2022 letter from Independent Bank and in the transcript of a deposition of Bran taken on August 18, 2022. Again, these documents had not yet been created when the trial court signed the Order. The Spectrum Parties also assert that Bran's companies have a currently operating website and that because this website "is created uniquely," the website constitutes copyrighted intellectual property, which can be valuable property. No evidence about this website or the July 11, 2022 letter or the August 18, 2022 deposition testimony was before the trial court when it signed the Order. Therefore, we may not consider these

documents or the existence of the website in reviewing the Order. *See Hamilton Metals*, 597 S.W.3d at 880–83; *Ginn*, 595 S.W.3d at 766.

The evidence before the trial court when it signed the Order was sufficient to show that Bran had an ownership interest in bank accounts at Independent Bank, BBVA Compass, and Rabobank and that each of the other Bran Parties had an ownership interest in a bank account at Independent Bank. The trial court did not abuse its discretion by granting relief under section 31.002(b) as to the Bran Parties' respective ownership interests in the Bank Accounts. *See Hamilton Metals*, 597 S.W.3d at 880–83; *Gillet*, 523 S.W.3d at 756. To the extent that the trial court granted relief under section 31.002(b) as to any other property, the order lacks supporting evidence. *See Hamilton Metals*, 597 S.W.3d at 883; *Gillet*, 523 S.W.3d at 757; *Great N. Energy v. Circle Ridge Prod., Inc*., No. 06-16-00029-CV, 2016 WL 7912458, at *11 n.16 (Tex. App.—Texarkana Sept. 28, 2016, no pet.); *Stanley v. Reef Sec., Inc*., 314 S.W.3d 659, 666–67 (Tex. App.—Dallas 2010, no pet.). When the trial court signed the Order, the Spectrum Parties had not conducted any post-judgment discovery, so the exception based on refusal to respond to post-judgment discovery does not apply. *Klinek*, 2023 WL 4497063, at *6–7. Under the applicable standard of review, we conclude that the trial court abused its discretion in signing the Order to the extent the Order applies to property other than the Bran Parties' respective ownership interests in the Bank Accounts, and we sustain the first issue to this extent. *See Hamilton Metals*, 597 S.W.3d at 883; *Gillet*, 523 S.W.3d at 757; *Great N. Energy*, 2016 WL 7912458, at *11 n.16; *Stanley*, 314 S.W.3d at 666–67. We overrule the remainder of the first issue.

The Order is eight pages long and contains various detailed provisions. The record does not reflect all the actions that have occurred vis-à-vis the receivership since the receiver filed his oath. Under these circumstances, we conclude that a

remand is necessary for further proceedings, and so we do not render judgment. *See* Tex. R. App. P. 43.3; *Hamilton Metals*, 597 S.W.3d at 883. We reverse the Order and remand with instructions to the trial court to issue a new order that applies only to the ownership interests of any of the Bran Parties in any of the Bank Accounts. *See Hamilton Metals*, 597 S.W.3d at 883; *Gillet*, 523 S.W.3d at 757; *Great N. Energy*, 2016 WL 7912458, at *11; *Stanley*, 314 S.W.3d at 666–67.

C. Is the Bran Parties' second issue moot?

Under their second issue the Bran Parties argue that the Order is overbroad because it allows the Receiver to seize property owned by third-party entities that are not judgment debtors under the Judgment. The Spectrum Parties argue that this issue is moot because the Receiver remitted into the registry of the bankruptcy court the funds he obtained from the bank accounts of seven third parties. But this court is reviewing the Order issued under section 31.002, not an order addressing the Receiver's conduct. This court determines whether the Order is overbroad based on the language of the Order. *See Ginn*, 595 S.W.3d at 766; *In re M&O Homebuilders, Inc.*, 516 S.W.3d 101, 108 (Tex. App.—Houston [1st Dist.] 2017, orig. proceeding). The Receiver's sending funds obtained from third-party bank accounts to the registry of the bankruptcy court does not change the language of the Order and does not moot the second issue. *See Ginn*, 595 S.W.3d at 766; *In re M&O Homebuilders, Inc.*, 516 S.W.3d at 108.

Nonetheless, we conclude that the second issue is moot for a different reason. As a result of this court's ruling on the first issue, we are reversing the Order and remanding with instructions to the trial court to issue a new order that applies only to the ownership interests of any of the Bran Parties in any of the Bank Accounts. Thus, we have already determined that on remand the trial court will be issuing a new order limited to the Bran Parties' ownerships interests in the

Bank Accounts and not covering any ownership interests of third parties. The Bran Parties would not be entitled to any greater relief if we were to sustain the second issue. *See Ginn*, 595 S.W.3d at 766 (stating that an appellate court's review of the merits of a trial court's ruling is limited to the record in the trial court when the trial court ruled, and the appellate court does not consider events that occurred after the trial court's ruling). Thus, we conclude that the second issue is moot. *See Abira Med. Laboratories, LLC v. St. Jude Med. SC, Inc.*, No. 14-17-00849-CV, 2018 WL 3911084, at *2 (Tex. App.—Houston [14th Dist.] Aug. 16, 2018, no pet.) (holding that appellate issues were moot based on relief already granted by the court) (mem. op.); *Coastal Terminal Operators v. Essex Crane Rental Corp.*, No. 14–02–00627–CV, 2004 WL 1795355, at *4 (Tex. App.—Houston [14th Dist.] Aug. 12, 2004, pet. denied) (same as *Abira*) (mem. op.).

III. CONCLUSION

The entry of a charging order is the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of a membership interest owned by one of the Bran Parties in a limited liability company. Thus, the trial court abused its discretion to the extent that it made the Order applicable to a membership interest in a limited liability company owned by one of the Bran Parties. The trial court abused its discretion in signing the Order to the extent the Order applies to property other than the Bran Parties' respective ownership interests in the Bank Accounts. We reverse the Order and remand with instructions to the trial court to issue a new order that applies only to the ownership interests of any of the Bran Parties in any of the Bank Accounts.

/s/ Randy Wilson
Justice

Panel consists of Chief Justice Christopher and Justices Poissant and Wilson.