2014 IL App (1st) 112536-U

FIRST DIVISION
FEBRUARY 9, 2015

No. 1-12-2536

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE CITY OF CHICAGO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 M1 401316
	)	
WIESLAW GIZYNSKI,	)	Honorable
	)	Joseph M. Sconza,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Where receiver was appointed to remove rooftop sign from defendant's property to correct municipal code violation, defendant failed to timely object to appointment of receiver or to the use of contractors as set forth in receiver's feasibility report and thus failed to preserve those issues for appeal. With respect to issues properly preserved, the trial court did not abuse its discretion in approving receiver's accountings for costs and fees related to sign removal, and the trial court did not abuse its discretion in denying defendant's request to take discovery of receiver's contractors.

¶ 2 Defendant-appellant Wieslaw Gizynski appeals from various orders of the circuit court of Cook County, including orders appointing a receiver to remove a rooftop sign from Gizynski's

property, approving the issuance of receiver's certificates for costs and fees incurred in the removal of the sign, and denying Gizynski's requests to seek discovery from the contractors who performed the removal.

¶ 3 BACKGROUND

¶ 4 Gizynski is the beneficial owner of real property at 3430-34 West Henderson (the property) in Chicago. In 2002, the plaintiff-appellee[1] City of Chicago (City) discovered that there was a large (12' by 60') billboard sign on the roof of the property for which Gizynski had failed to obtain a permit. In 2003, the City filed a complaint alleging that the "illegally erected sign on [the] roof" violated section 13-20-550 of the Chicago Municipal Code (the Code), which prohibits a property owner from erecting or owning any sign without a permit from the department of buildings.[2]

¶ 5 Over the next several years, the City and Gizynski litigated and negotiated unsuccessfully to either obtain a proper permit for the sign or remove it from the property. On May 23, 2005, the court ordered Gizynski to "apply for permits to correct the alleged violations" within 60 days and to bring the premises into compliance with the code by November 1, 2005. Gizynski did not do so, and on November 7, 2005, the trial court entered an order finding Gizynski in civil contempt.

[1] Although the City of Chicago is the plaintiff-appellee in this appeal, most of Gizynski's arguments on appeal concern the receiver appointed in this action, CR Realty Advisors, LLC, who has also submitted briefing as a "putative appellee" addressing Gizynski's contentions.

[2] Section 13-20-550 (b) of the Chicago Municipal Code provides: "It shall be the duty of every owner of any real property on which a sign is located to ensure that each sign maintained on the owner's property has a valid permit and is in compliance with the provisions of this section. It shall be a violation of this article for the owner of any real property to have or permit to remain on the property, any sign which does not have a valid permit."

¶ 6 On May 8, 2006, the parties entered an "agreed order of injunction and judgment" to resolve the matter. In that order, the parties stipulated that "[t]he premises contains *** the violations of the Chicago Municipal Code set forth in Plaintiff's Complaint and notice of violations." As the order specified that Gizynski "knowingly and voluntarily stipulates to said facts," Gizynski effectively admitted the existence of the alleged violations. The agreed order further provided that Gizynski was to "obtain all necessary permits" by November 17, 2006, or otherwise he would remove the sign by December 17, 2006.

¶ 7 In November 2006, Gizynski moved for an extension of time, claiming he had hired an engineering firm to bring the sign within compliance; the trial court agreed to extend Gizynski's time to comply by six months, to June 18, 2007. On September 24, 2007, the court granted another extension, ordering Gizynski to obtain a permit or remove the sign by June 30, 2008. The court also ordered that failure to comply with the deadline would result in a $10,000 default fine payable to the City of Chicago. Gizynski failed to comply. On October 21, 2009, the court entered judgment in the amount of $10,000 against Gizynski, while specifying that its prior orders remained in full force and effect.

¶ 8 In January 2010, Gizynski moved for yet another extension of time, claiming he had hired a contractor to remove the sign and was awaiting the City's approval of a permit to remove the sign. On June 28, 2010, the trial court issued a rule to show cause why Gizynski should not be held in contempt. On September 13, 2010, the trial court granted the City leave to file a petition for the appointment of a receiver.

¶ 9 On October 4, 2010, the City filed a petition seeking the appointment of CR Realty Advisors, LLC (CR Realty) as a receiver pursuant to section 11-31-2.1 of the Illinois Municipal

Code. See 65 ILCS 5/11-31-2 (West 2004). The petition requested authorization for the receiver to prepare a feasibility study and to "make any changes necessary to bring the subject property into compliance with the Chicago Building Code." Gizynski did not raise any objections to the City's selection of CR Realty as a potential receiver or raise any other opposition to the petition, despite court appearances on November 15, 2010 and February 14, 2011.

¶ 10 On February 28, 2011, the court granted the City's petition and appointed CR Realty to serve as limited receiver to oversee "removal of the roof sign and supporting structure" at the property. The order directed CR Realty to obtain bids for the sign removal and to report those estimates to the court, specifying that CR Realty's "authority to remove the sign is stayed until further order of court." The order also directed CR Realty to post a surety bond of $100,000. In March 2011, the trial court granted CR Realty's motion for authority to hire the law firm Brown Udell Pomerantz & Delrahim, Ltd. (Brown Udell) as its legal counsel. In the meantime, on March 16, 2011, Gizynski's counsel filed a motion to withdraw.

¶ 11 As instructed by the court, prior to starting any work on the sign removal, CR Realty filed a feasibility report on March 25, 2011. According to the report, CR Realty had contacted three demolition contractors to submit proposals for the removal of the sign. The report included a proposal from a company called Green Demolition to perform the work for $34,500, and a bid from a second company for $49,350. According to CR Realty, a third contractor had responded that it could not perform the work due to the hazards presented by power lines near the property.

¶ 12 CR Realty's feasibility report included a budget for removal of the sign that incorporated the $34,500 proposal from Green Demolition, the lower of the two bids submitted. In addition to that amount, the budget also estimated additional costs including a "General Contractor fee @

10%" of $4,400, as well as permit and insurance costs. The budget also estimated that the receiver and its counsel would incur fees of $17,320. Altogether, CR Realty's feasibility report stated a total budget of $66,600 to remove the sign.

¶ 13 The feasibility report stated that CR Realty had incurred fees and expenses of $5199 in preparing the report, and requested approval to issue a "receiver's certificate" in that amount pursuant to section 11-31-2 of the Illinois Municipal Code.[3] On March 28, the court approved fees of $3,000 for preparation of the feasibility report and authorized the receiver to issue a certificate (certificate no. 1) entitling it to payment in that amount. Subsequently, the court granted authority for a certificate in the amount of $2,199 (certificate no. 2) for the remaining costs of preparing the report.

¶ 14 On March 28, 2011, the court ordered that Gizynski or any other party interested in the property had 21 days to respond to the feasibility report. No party, including Gizynski, submitted a timely opposition to the feasibility report. However, in May 2011, a holder of a mortgage on the subject property, North CRE Venture 2010-2, LLC (North CRE), filed a response claiming that it had obtained an estimate to remove the sign for only $5,800 from another contractor, Heritage Signs Ltd., and that the Green Demolition bid of $34,500 was

[3] Section 11-31-2 of the Illinois Municipal Code provides that a receiver appointed to bring a structure into compliance with the code may recover its costs "by the issuance and sale of notes or receiver's certificates bearing such interest as the court may fix." 65 ILCS 5/11-31-2 (West 2010). Such certificates are "freely transferable and when sold or transferred by the receiver *** shall be a first lien upon the real estate" superior to "all prior existing liens and encumbrances, except taxes." *Id.* In this case, four receiver's certificates were issued: certificates no. 1 and no. 2 correspond to the costs of preparing CR Realty's feasibility report, certificate no. 3 corresponds to the costs of sign removal by independent contractors, and certificate no. 4 corresponds to the receiver's professional and legal fees.

excessive. However, according to subsequent filings by CR Realty, Heritage withdrew its bid shortly thereafter after learning of the hazardous power lines near the property.

¶ 15 On May 23, 2011, the court issued an order authorizing CR Realty "to proceed with the demolition and removal of the roof sign, as set forth in the *** Feasibility Report, including the engagement of a general contractor and Green Demolition." At the same time the court authorized CR Realty to issue a receiver's certificate (certificate no. 3) in the amount of $49,280; this represented the amount specified in the feasibility report for removal of the sign, excluding fees from CR Realty and its counsel. The court ordered CR Realty to separately submit its professional and legal costs after completion of the sign removal.

¶ 16 On June 27, 2011, Gizynski filed an "emergency" motion "to continue the trial date, discharge the receiver and for other relief." Gizynski filed the motion *pro se*, but stated he was attempting to retain an attorney to represent him. In that motion, Gizynski claimed: "Although the City of Chicago has accepted the existing sign and 'Grandfathered' it in, I am still very willing to work with and to cooperate with the City of Chicago in obtaining any necessary permits." Gizynski included a lengthy affidavit in which he stated that the roof sign was already in place when he purchased the property and that the sign was "preserved" under a supposed "Grandfather Clause Law," although he failed to cite any supporting legal authority.

¶ 17 Gizynski claimed he had had "done everything in [his] power" to comply with the municipal code, but that the City had prevented his compliance by alleging "fictional" violations and improperly denying him permits. Gizynski claimed that the City's allegations regarding the sign were "false and made up," and alleged that in March 2010, a City inspector found the building was "up to code" and that the sign was "structurally sound," although he submitted no

documentation of the alleged inspection. Gizynski's motion stated "there is no need for a Receiver" but did not specify any particular objection to CR Realty or the contents of its feasibility report. On June 27, 2011, Gizynski's motion was entered and continued.

¶ 18 On June 30 and July 1, 2011, contractors retained by CR Realty dismantled the rooftop sign and hauled away its components. On July 21, 2011, CR Realty filed a report and interim accounting stating it incurred $49,280 for removal of the sign and requested approval of a receiver's certificate (certificate no. 3) in that amount. As support, CR Realty submitted a work order entered into with a general contractor, Sterling Renaissance, Inc. (Sterling), stating that costs for removal of the billboard shall not exceed $49,280, and a statement that this amount was paid by CR Realty to Sterling. However, CR Realty's submission did not include a breakdown of costs for specific subcontractors, equipment, or other expenses.

¶ 19 On August 1, 2011, CR Realty filed a motion to release the $100,000 surety bond. On the same date, the court heard argument regarding CR Realty's motion for approval of its accounting of $49,280 in removal costs. At that hearing, Gizynski was represented by new counsel, Stuart Kusper. Gizynski opposed CR Realty's motion, arguing that CR Realty failed to provide adequate supporting documentation specifying how the $49,280 had been allocated.

¶ 20 Gizynski further argued that CR Realty's contractors had wrongfully removed the steel that had comprised the roof sign. Gizynski contended that the steel was his private property, that it retained significant value as scrap metal, and that the contractors may have sold the steel to a third party. Gizynski requested leave to serve discovery upon CR Realty to obtain correspondence concerning the bidding process for the sign removal, as well as to assess the value of the steel removed and to discover whether it had been sold. The trial court denied

Gizynski leave to serve discovery, noting that Gizynski "had ample opportunity" earlier in the litigation to have raised his concern about removal of the steel.

¶ 21 Nevertheless, the court concluded that before it could approve CR Realty's accounting of removal costs, it required further documentation regarding the $49,280 paid to Sterling, the general contractor. The court ordered CR Realty to provide a supplemental accounting including "a breakdown of all the costs that the general [contractor] used," including amounts paid to each subcontractor and costs for various aspects of the work, such as equipment, permits, and labor. The court also requested that CR Realty submit a separate accounting detailing its professional fees and its legal fees. At the conclusion of argument, Gizynski (through counsel) agreed to withdraw his June 27, 2011 *pro se* motion seeking to discharge the receiver.

¶ 22 On August 29, 2011, the CR Realty filed its supplemental accounting in support of its request for issuance of receiver's certificate no. 3. That submission included an invoice from Sterling to CR Realty specifying $49,280 in costs for removal of the roof sign, as well as a copy of a check from CR Realty to Sterling in that amount. CR Realty also included an invoice to Sterling from subcontractor Green Demolition in the amount of $34,500, which was the amount of the Green Demolition bid that was disclosed in CR Realty's feasibility report. The Green Demolition invoice included a "schedule of values" allocating $24,500 to demolition and $10,000 for equipment. CR Realty's supplemental submission also included an invoice from another subcontractor reflecting $2,195 in permit processing fees related to the removal work.

¶ 23 On the same date that it submitted its supplemental accounting of contractor fees for certificate no. 3, CR Realty filed an accounting of legal and professional fees totaling $19,756.80, and requested issuance of another receiver's certificate in that amount (certificate no.

4). The accounting for certificate no. 4 included supporting invoices from CR Realty and the Brown Udell law firm including employee's name and billing rates, the dates and hours worked, and description of the tasks performed.

¶ 24 On October 11, 2011, Gizynski filed an opposition to the receiver's supplemental accounting for certificate no. 3, claiming CR Realty had still failed to provide adequate documentation showing that the underlying $49,280 expenses were appropriate. With respect to the $19,756.80 sought in fees from the receiver and its counsel for certificate no. 4, Gizynski likewise asserted that the invoices from CR Realty and its counsel did not demonstrate why such fees were necessary and reasonable.

¶ 25 Gizynski's opposition also claimed he had been injured by the wrongful removal of steel from the rooftop sign and an adjacent scaffold that CR Realty's feasibility study should have recognized the value of scrap metal, and that CR Realty's accounting failed to disclose whether the steel was subsequently sold. On October 18, 2011, CR Realty filed a response to Gizynski's opposition, arguing that removal of the steel was authorized by the court's order and that it lacked any knowledge or control as to whether the steel had been sold after its removal.

¶ 26 On December 5, 2011, the court heard argument on CR Realty's motions to approve its accountings for receiver's certificates no. 3 and no. 4. At that time, Stuart Kusper withdrew as Gizynski's counsel, and Adam Augustynski (who is counsel of record in this appeal) appeared on Gizynski's behalf. Gizynski reiterated his contention that valuable steel had been removed, and requested discovery to determine whether that material had been sold. Gizynski argued that the reasonableness of CR Realty's fees would depend on whether the receiver committed any wrongdoing due to the improper taking of Gizynski's property.

¶ 27 In response, the court (acknowledging that Gizynski's counsel was new to the matter) reviewed the long history of the case, noting there had been "several defaults" and "two consent decrees," "[n]either of which were complied with." The court recalled that after the City first petitioned for a receiver in September 2010, the court waited until February 2011 to appoint CR Realty due to Gizynski's representations that he would obtain a permit or remove the sign himself. Even after appointing CR Realty as receiver, the court noted that it had waited another three months before authorizing the sign removal work to proceed. Rejecting Gizynski's suggestion that removal of the steel was improper, the court stated that it had authorized the receiver "to dispose and remove the sign" and the receiver had "fulfilled the duties as requested." Moreover, the court noted that at no time prior to the removal work had Gizynski raised any argument about the potential value of the steel as scrap metal. In denying Gizynski leave to take discovery regarding the disposition of the scrap metal, the court stated that it approved the receiver's request for $49,280 for the general contractor's fees and certificate no. 3: "It's over. The certificate has been done. The accounting has been approved." The court reiterated: "I am not opening any one of those accountings or certificates that have previously been issued."

¶ 28 Despite denying Gizynski's request to take any discovery regarding the costs underlying receiver's certificate no. 3, the court gave Gizynski leave to file an opposition to CR Realty's separate submission for approval of certificate no. 4, which claimed $19,756.80 in professional and legal fees. Although the court expressly stated that the response should be limited to the request for approval of the fees underlying certificate no. 4, Gizynski submitted a response on January 6, 2012 which challenged *all* fees requested by the receiver on the basis of alleged misconduct by CR Realty and its contractors. Gizynski argued that CR Realty's accounting was

"grossly inadequate and non-specific" and that the $49,280 cost of the sign removal was "excessive." Gizynski complained that the bidding process was not explained, that CR Realty had employed contractors "not listed in the bidding process" and had failed to disclose "that different companies would actually perform all or some of the work at issue." Gizynski contended that CR Realty had not explained why Sterling was chosen as general contractor and questioned whether Sterling "did anything on the project except sign contracts with other parties." Gizynski claimed Sterling "should be sanctioned for bidding on a project which it did not actually perform" and for not disclosing that other contractors would perform the work.

¶ 29 Gizynski's submission again raised the argument that CR Realty was not authorized to remove the valuable steel that made up the sign, and further argued that the court should deny approval of CR Realty's professional and legal fees due to its lack of disclosure in the bidding process and alleged "material irregularities in the process." Gizynski requested that the court revisit numerous issues including whether the sign was "grandfathered," whether the bidding process was adequately disclosed, whether subcontractors were properly selected, and the value of the steel removed from the property.

¶ 30 Also in January 2012, Gizynski—without leave of court, and despite the court's explicit statements that it would not permit discovery—served a subpoena upon Sterling, CR Realty's general contractor. The subpoena included requests for all contracts, bids, and correspondence related to the sign removal work, description of work performed by Sterling employees, a listing of payments made to subcontractors, and information relating to the disposal of steel recovered from the property. Gizynski also demanded Sterling identify its owners and state whether such

individuals were also employees or owners of Green Demolition, CR Realty, or the receiver's legal counsel, the Brown Udell law firm.

¶ 31 CR Realty promptly filed a motion to quash the subpoena which argued that certain responsive materials had already been produced by CR Realty and that the requests were otherwise irrelevant and burdensome. CR Realty included an affidavit from Sterling stating that the company did not receive payment from any purported sale of scrap metal removed from the property. CR Realty also responded on behalf of Sterling that there was no relationship between the ownership of Sterling and that of Green Demolition, CR Realty, or the Brown Udell law firm. Gizynski filed no opposition to the motion to quash.

¶ 32 CR Realty subsequently filed a motion seeking authority to pay off outstanding real estate taxes on Gizynski's property so as to preserve the marketability of the previously issued receiver's certificates. CR Realty explained that, as the outstanding real estate taxes acted as liens on the property superior to the previously issued receiver's certificates, it wished to pay off such taxes in order to maintain its ability to sell the receiver's certificates to third parties pursuant to the Illinois Municipal Code.

¶ 33 In response to CR Realty's motion, in February 2012 Gizynski filed another submission including further accusations of misconduct by CR Realty. With respect to the initial appointment of CR Realty as receiver, Gizynski alleged that "there was no bidding process" and there had been no disclosure as to why CR Realty had been appointed. Gizynski alleged that CR Realty had charged excessive fees and engaged in "self-dealing" through various "interlocking entities," who allegedly sought to obtain an interest in Gizynski's real estate to his detriment. Gizynski again claimed that CR Realty refused to disclose the contractor bidding process, that

the general contractor "did no actual work," and that steel had been wrongfully removed from Gizynski's property. Gizynski argued CR Realty should be denied any fees due to "serious questions of gross overbilling, self-dealing," and "lack of transparency."

¶ 34 The parties next appeared before the court on March 8, 2012. The court granted CR Realty's motion to quash the subpoena served by Gizynski upon Sterling, noting that Gizynski had not requested leave of court to serve that subpoena and that it was "completely improper." With respect to CR Realty's accounting of its professional and attorneys' fees for certificate no. 4, Gizynski argued there was insufficient "backup" to support those fees. Asked by the trial court to specify how the submission was insufficient, Gizynski responded that he was "entitled to an evidentiary hearing" as there was "no proof they did the work." The court disagreed, noting the receiver "filed a detailed summary of the work they did" and that Gizynski had made "no showing of any kind specifically where [the accounting] is anywhere unreasonabl[e] to then move on to a hearing stage." Although Gizynski argued that "self-dealing conflicts" necessitated a hearing, the court responded that this was merely "an allegation" and approved the fees. By written order of March 8, 2012, the court authorized receiver's certificate no. 4 in the amount of $19,756.80, and granted the receiver's motion to quash Gizynski's subpoena. On April 9, 2012, Gizynski filed a motion to reconsider the March 8, 2012 order.

¶ 35 On July 9, 2012, the court heard argument on Gizynski's motion to reconsider its March 8, 2012 order quashing the subpoena and approving CR Realty's professional and attorneys' fees. With respect to the motion to quash, Gizynski argued he was entitled to discovery to obtain further backup documentation regarding payments to subcontractors and to seek information on the potentially improper relationships among various contractors and the receiver, especially as

the general contractor was a "see-through person" who "didn't do any work." Claiming "[t]here's some unusual things going on here with various interlocking entities," Gizynski argued he needed discovery with respect to potential self-dealing by CR Realty. Similarly, as to the initial appointment of CR Realty, Gizynski claimed he needed discovery to determine "how in the world did this private group for profit *** get appointed" as receiver.

¶ 36 The court responded that these arguments were "way after the fact," noting that Gizynski had raised no such objections before CR Realty had been appointed and authorized to perform the work. The court also noted that Gizynski's counsel had entered the case "after the accounting had been approved and [certificate no. 3] was issued" for the contractor costs of $49,280. The court also remarked there was “no evidence" to substantiate Gizynski's claims of self-dealing.

¶ 37 Gizynski also argued he was entitled to an evidentiary hearing with respect to CR Realty's accountings for certificates no. 3 and no. 4, claiming the fees were excessive and there was insufficient proof of the work performed. Gizynski argued that the lack of an evidentiary hearing at which he could conduct "cross-examination of whoever billed the fees" deprived him of the ability to "to defend himself because [he] wasn't allowed to seek objective information." Gizynski thus urged the court to order Sterling’s compliance with the subpoena and requested leave to serve a similar subpoena on Green Demolition.

¶ 38 In response, CR Realty argued there was "no new information presented" on Gizynski’s motion to reconsider, as his arguments had been or could have been made earlier. CR Realty also noted that the March 8, 2012 order, the subject of the motion to reconsider, had approved the $19,756 in fees corresponding to certificate no. 4, but that the accounting of $49,280 in removal costs underlying certificate no. 3 had been previously approved.

¶ 39 In denying the motion to reconsider, the court recited the long procedural history of the case since 2003, including the parties' May 2006 agreement that Gizynski would obtain proper permits for the sign or remove the sign by December 2006, an extension giving Gizynski a new compliance deadline of June 2007, and a subsequent order for compliance by June 20, 2008. The court remarked it was "a disgrace" that this "simple case" had continued for over nine years.

¶ 40 The court further noted that when the City moved to appoint a receiver in late 2010, the court had waited until February 2011 in order to give Gizynski another chance to comply. Even after the appointment, the court further emphasized that it did not authorize the sign removal to proceed until May 2011, over seven months after the City first presented its request for a receiver. Noting that Gizynski had made numerous court appearances over that seven-month period, the court denied the motion to reconsider its March 8, 2012 orders.

¶ 41 Also on July 9, 2012, CR Realty withdrew its motion to pay off the taxes on the subject property. The trial court also granted CR Realty's motion to release the surety bond. As the City confirmed that the removal of the sign had corrected the violation underlying the complaint, the trial court dismissed the case. Gizynski filed a notice of appeal on August 8, 2012.

¶ 42 ANALYSIS

¶ 43 Gizynski's appeal asserts error with respect to each trial court order concerning CR Realty, from the February 28, 2011 order appointing CR Realty as receiver to the April 6, 2012 denial of Gizynski's motion to reconsider. Gizynski's numerous arguments can be summarized as challenges to: (1) whether there was a proper basis for the court to appoint a receiver; (2) whether the specific appointment of CR Realty, as a for-profit entity, was improper; (3) whether CR Realty committed misconduct in the manner in which it selected contractors to perform the

sign removal; (4) whether the court erred in approving CR Realty's accountings for sign removal costs of $49,280 and related professional fees of $19,756.80; and (5) whether the court erred in quashing Gizynski's subpoena and denying his requests to seek discovery from the contractors who performed the sign removal.

¶ 44 Before we reach the merits, we first address CR Realty's argument that we lack jurisdiction to consider any of the alleged errors apart from the July 2012 denial of Gizynski's motion to reconsider the March 8, 2012 order. Specifically, CR Realty argues that Gizynski "waived his right to question prior orders regarding the receivership" from which he could have, but did not, assert an interlocutory appeal pursuant to Illinois Supreme Court Rule 307. As Gizynski did not file any notice of appeal prior to the denial of his motion to reconsider the March 8, 2012 order, CR Realty contends our review is limited to the issues decided in that order, which granted the motion to quash Gizynski's subpoena and approved the issuance of receiver's certificate no. 4 for its professional and legal fees.

¶ 45 CR Realty's argument that we lack jurisdiction to consider any prior orders is incorrect. Illinois Supreme Court Rule 307 specifies the circumstances in which an interlocutory appeal may be taken. The rule provides: "[a]n appeal may be taken to the Appellate Court from an interlocutory order of court" "appointing or refusing to appoint a receiver," as well as from an order "giving or refusing to give other or further powers or property to a receiver *** already appointed." Ill. S. Ct. R. 307(a)(2), (a)(3) (eff. March 20, 2009). Such an appeal "must be perfected within 30 days from the entry of the interlocutory order." Ill. S. Ct. R. 307(a) (eff. March 20, 2009).

¶ 46 However, our supreme court has held that Rule 307 is permissive, rather than mandatory, and thus an appellant does *not* forfeit the ability to challenge otherwise appealable interlocutory orders by waiting to appeal until after a final judgment. See *Salsitz v. Kreiss*, 198 Ill. 2d 1 (2001). In *Salsitz*, plaintiffs sought, after a final order, to appeal from an earlier order denying their motion to stay arbitration. Defendants argued that "[s]ince plaintiffs failed to file an interlocutory appeal, they forfeited their right to contest the arbitrability" issue. *Id.* at 11. Our supreme court recognized that the issue could have been raised in an interlocutory appeal under Rule 307 (a)(1), because an order to stay arbitration "in injunctive in nature." *Id.;* Ill. S. Ct. R. 307(a)(1) (eff. March 20, 2009) (permitting interlocutory appeal from an order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction"). However, our supreme court held that the rule "does not require that a party appeal from an interlocutory order of the circuit court denying a stay of arbitration," but that "the party has the option of waiting until after final judgment has been entered to seek review of the circuit court's interlocutory order." *Salsitz*, 198 Ill. 2d at 11.

¶ 47 The court explained: "Rule 307 plainly states that an appeal 'may' be taken to the appellate court form an interlocutory order of the circuit court. Use of the word 'may' is generally regarded as indicating that action is permissive rather than mandatory." *Id.* at 11-12. Thus, although plaintiffs could have filed an interlocutory appeal regarding arbitrability, "it was not mandatory that they appeal from the interlocutory order. Plaintiffs could await the final judgment *** to seek review of the interlocutory order." Similarly, in this case, due to the "optional nature of Rule 307" recognized in *Salsitz*, (*id.* at 11), Gizynski did not lose his right to appeal prior orders merely by failing to assert an interlocutory appeal, and his decision to wait to

appeal until after the July 9, 2012 final order does not deprive us of jurisdiction to review earlier orders. Rather, as Gizynski filed his notice of appeal within 30 days of the final order, we have jurisdiction. Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

¶ 48 Turning to the merits of Gizynski's arguments, we first address Gizynski's challenge to whether the trial court had a basis to appoint a receiver. Gizynski's appeal argues that the February 28, 2011 order appointing CR Realty as receiver was premised upon building code violations "relating to a sign on a roof which was not alleged to be ready to collapse or even to be improperly installed or to pose any actual danger to anyone" and that the appointment was not supported by "any actual findings other than boilerplate language *** in which the [City] claimed violations relating to the sign." Gizynski argues there was no basis for appointment of a receiver as "there was no actual or imminent danger of issue of health or safety of the public."

¶ 49 The City argues on appeal that Gizynski waived his opportunity to challenge the trial court's appointment of a receiver. The City correctly notes that from the filing of its petition to appoint a receiver in October 2010 to the court's order appointing the receiver in February 2011, Gizynski raised no objection. Moreover, although Gizynski in June 2011 made a *pro se* submission arguing that a receiver was not necessary, Gizynski (after he obtained new counsel) voluntarily withdrew that motion on August 1, 2011.

¶ 50 This court has recognized that "merely objecting is not enough to preserve errors for review" but that "an objection must be timely, meaning contemporaneous with the objectionable conduct." *York v. El-Ganzouri*, 353 Ill. App. 3d 1, 17 (2004). In that decision, we explained the rationale for requiring a "timely" objection: "Where a party fails to make an appropriate objection in the court below, he or she has failed to preserve the question for review, [] the issue

is waived. [Citation.] A primary purpose of the waiver rule is to ensure that the trial court has the opportunity to correct the error. [Citation.] A trial court cannot correct the error and prevent prejudice when the objection is not made as the error occurs. [Citations.]" *Id.* at 10.

¶ 51 In this case, it cannot be said that Gizynski made a timely objection to the appointment of the receiver. As he did not object to the City's petition to appoint CR Realty as receiver, which was pending between October 2010 and February 2011, Gizynski did not give the trial court an opportunity to correct any purported error. Moreover, Gizynski failed to object during the additional three months between the appointment of the receiver and the May 23, 2011 order authorizing CR Realty to proceed with removal of the sign.

¶ 52 Although he filed a *pro se* motion to discharge the receiver on June 21, 2011—nearly a month after the court had authorized CR Realty to proceed with removal—that motion was voluntarily withdrawn on August 1, 2011. Thus, that motion cannot be said to have preserved the issue. See *Commerce Trust Co. v. Air 1st Aviation Companies, Inc.*, 366 Ill. App. 3d 135,137 (2006) ("It is the responsibility of the party filing a motion to request the trial court to rule on the motion, and when no ruling has been made on a motion, it is presumed to have been abandoned absent circumstances indicating otherwise.").

¶ 53 Even in his October 11, 2011 opposition to CR Realty's accounting, Gizynski did not challenge the initial grounds for appointing the receiver but focused on allegations of CR Realty's misconduct. Thus, the record indicates that the first time that Gizynski challenged the appointment of CR Realty as receiver was in February 2012 – approximately one year after appointment of the receiver, and over seven months after the sign had been removed. As

Gizynski did not raise a timely objection to the court's authority to appoint a receiver, we agree with the City that he forfeited this issue for appeal.

¶ 54 Nevertheless, independent of forfeiture, we note that we would not find any error in the court's appointment of a receiver in this case. "Although the appointment of a receiver is generally a harsh remedy, it is an equitable remedy used when in the sound discretion of the trial judge it is needed to [ensure] complete justice. To determine whether or not the appointment of a receiver was reasonable, the particular circumstances surrounding the case must be examined." *City of Chicago v. Westphalen*, 93 Ill. App. 3d 1110, 1126 (1981). In reviewing such discretionary matters, we are mindful that "[a] trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted). *Bangaly v. Baggiani*, 2014 IL App (1st) 123760, ¶126.

¶ 55 The City's petition to appoint a receiver was premised on section 11-31-2(a) of the Illinois Municipal Code, which provides that where a building "fails to conform to the minimum standards of health and safety as set forth in the applicable ordinances of such municipality, and the owner or owners of such building or structure fails *** to cause such property so to conform, the municipality may make application to the circuit court for an injunction requiring compliance with such ordinances or for such other order as the court may deem necessary or appropriate to secure such compliance." 65 ILCS 5/11-31-2(a) (West 2010). The statute contemplates the appointment of a receiver to bring a property into compliance: "If *** the court orders the appointment of a receiver to cause such building or structure to conform, such receiver may use the rents and issues of such property toward maintenance, repair and rehabilitation of the property *** and the court may further authorize the receiver to recover the costs of such

maintenance, repair and rehabilitation by the issuance and sale of notes or receiver's certificates." *Id.*

¶ 56 Our supreme court has recognized that the trial court's power to appoint a receiver to correct a building code violation is not created by statute, but is an inherent equitable power. See *Community Renewal Foundation, Inc. v. Chicago Title & Trust Co.*, 44 Ill. 2d 284, 291 (1970) ("We regard the appointment of a receiver to obtain compliance with the building codes, where because of continuing violations the property has become unsafe and a danger to the community, as within the inherent powers of an equity court."). That decision explained that through section 11-31-2 of the Municipal Code, "[t]he legislature recognized the inherent power of a court of equity to appoint a receiver and from this inferentially stated that a court of equity could reasonably find the appointment of a receiver appropriate *** where property has become unfit for use and dangerous because of continuing building code violations." *Id.* at 290. This court has also recognized that correction of building code violations is a proper basis for appointment of a receiver. See *City of Chicago v. Westphalen*, 93 Ill. App. 3d 1110, 1126 (1981) (finding appointment of receiver was not an abuse of discretion where "because of continuing violations, the defendant's building remained in disrepair and unsafe").

¶ 57 In this case, given the long history of Gizynski's failure to comply with the municipal code and his disregard of court orders, we cannot say the trial court abused its discretion in appointing a receiver. As noted by the trial court, several years passed between the City's complaint in 2003 specifying the Code violation and the appointment of a receiver in 2011 to remedy the violation after Gizynski's failure to do so. Although Gizynski acknowledged that his property was in violation of the Code in a 2006 agreed order, he was unable or unwilling to

correct the violation despite several court-ordered deadlines. In light of Gizynski's persistent non-compliance, we cannot say the trial court abused its equitable discretion to appoint a receiver to accomplish what Gizynski had refused to do for many years.

¶ 58 Gizynski argues that appointment of a receiver was not warranted because there had been no specific finding that the sign created a dangerous condition. Yet, as noted by the City, had Gizynski sought to obtain a permit, he would have been required to submit plans which would allow the City to assess the safety of the sign. Instead, Gizynski refused to provide the City with this information. It is illogical to suggest that the City must prove an unsafe condition where the owner has refused to provide the City with the information necessary to make such an assessment. Rather, it is consistent with the goal of public safety to require owners to either submit such information to the City or face removal of the structure, including by a receiver.

¶ 59 Apart from whether there was sufficient basis to appoint a receiver, Gizynski challenges the selection of CR Realty. Gizynski argues there was no disclosure as to how CR Realty "may have been vetted for competence or may have competed with others or what criteria may have been used by the Circuit Court *** in the appointment after the for-profit entity was suggested without any explanation whatever" by the City.

¶ 60 To the extent Gizynski argues that the approval of CR Realty to serve as receiver was erroneous, it is clear that he made no timely objection. Notably, CR Realty was explicitly identified by the City's petition of October 2010 seeking appointment of a receiver, yet Gizynski raised no objection from that time to the order appointing CR Realty on February 28, 2011. Moreover, after CR Realty filed its feasibility report on March 25, 2011, the trial court allowed the parties 21 days to respond; again, Gizynski filed no response, even after the court authorized

CR Realty to proceed with removal of the sign in May 2011. Thus, Gizynski had ample opportunity to question why the City sought the appointment of CR Realty, as opposed to any other entity, but he failed to do so until long after the receiver had completed its work. As Gizynski failed to provide the trial court an opportunity to correct any purported error in the appointment of CR Realty, he failed to preserve the issue and the point is forfeited.[4]

¶ 61 Likewise, to the extent Gizynski claims error with respect to CR Realty's selection of contractors to perform the sign removal, Gizynski failed to make a timely objection. Gizynski's appeal claims no information was provided as to "whether there was any bidding process" in its selection of contractors and that CR Realty "only obtained one bid." With respect to the $34,500 Green Demolition bid that was eventually approved, Gizynski contends there was no showing that the bid was reasonable and that CR Realty did not explain why "much-lower bids suggested by the lender and [Gizynski] should not have been approved."

¶ 62 Notably, Gizynski's factual assertions are contradicted by the record. Although Gizynski claims that the receiver only obtained one bid, the feasibility report contained two bids and stated that a third contractor had declined to submit a bid after learning about power lines near the property. In addition, although Gizynski asserts the work "could be done eight to ten times less expensively," in reference to North CRE Venture's May 2011 submission of a $5,800 bid from a different contractor, the record reflects that the $5,800 bid was withdrawn shortly

[4] Likewise, Gizynski's claim in his appeal that "the receiver failed to inform [Gizynski] or the Court about its for-profit status until well after the work had been performed" is without merit. Both the City's October 2010 petition and the March 2011 feasibility report identified CR Realty as an "LLC," and neither submission suggested that CR Realty was a non-profit entity. In any case, Gizynski cites no authority suggesting that a for-profit entity may not serve as a receiver.

thereafter. Further, although Gizynski claims he also submitted a less expensive estimate for the work that was "ignored" by the trial court, the record does not reflect that Gizynski ever submitted any bid from an alternative contractor.

¶ 63 In any event, Gizynski failed to make any timely objection to CR Realty's selection of contractors. CR Realty's March 25, 2011 feasibility report recited that it had contacted three companies for bids, including the Green Demolition bid of $34,500, which was the actual amount later paid to that contractor. Thus, to the extent Gizynski believed the receiver's bidding process was inadequate or that the Green Demolition bid was unreasonably high, he could have given the court an opportunity to address such issues by raising them during the three months between the feasibility report and the actual removal of the sign. Gizynski did not raise any objection to the feasibility report, let alone submit any alternative bids. Thus, Gizynski failed to preserve his contentions on appeal that the bidding process was improper or that a cheaper bid could have been obtained.

¶ 64 Similarly, to the extent Gizynski's appeal asserts error in that Sterling, as general contractor, "did not do anything except delegate all of the work" to Green Demolition, Gizynski was on notice of this arrangement since the March 2011 feasibility report. Although the feasibility report did not identify Sterling by name, the sign removal budget submitted with the feasibility report included an entry for "General Contractor Fee @10%" with an estimated cost of $4,400. This general contractor fee was listed separately from the $34,500 allocated to Green Demolition. Thus, Gizynski's suggestion that the receiver failed to disclose that the sign removal would be performed by multiple contractors is erroneous. Three months passed between the March 2011 feasibility report and the actual removal of the sign, yet Gizynski raised no

objection. In addition, the court order of May 23, 2011, over one month before the sign was actually removed, specifically authorized CR Realty "to proceed with the demolition and removal of the roof sign, as set forth in the *** Feasibility Report, *including the engagement of a general contractor and Green Demolition*." (Emphasis added). Thus, Gizynski failed to object in time to give the court an opportunity to address the issue and thus the argument was not preserved. In any case, Gizynski fails to cite any authority suggesting that it is improper for a receiver to use a general contractor and subcontractors in carrying out its appointed duties.

¶ 65 We have concluded that by failing to raise timely objections in the trial court, Gizynski failed to preserve his contentions as to the initial selection of CR Realty, as well as to the bidding process and selection of contractors. Next we address Gizynski's contentions that the trial court should not have approved the receiver's costs and fees. Gizynski's appeal asserts error with respect to the trial court's approval of each of the four receiver's certificates, including the first two certificates that correspond to CR Realty's expenses of $5,199 in preparing the March 2011 feasibility report. However, the record does not indicate that Gizynski ever objected to the issuance of receiver's certificate no. 1 for $3,000 or certificate no. 2 for $2,199. Moreover, Gizynski's briefing on appeal contains no argument addressing the reasonableness of the $5,199 incurred in preparing the feasibility report. Thus, Gizynski failed to preserve any objection to the approval of the first two receiver's certificates.

¶ 66 However, as Gizynski did submit timely objections to CR Realty's motions for approval of $49,280 in contractors' costs underlying receiver's certificate no. 3, as well as the $19,756.80 for professional and legal fees underlying receiver's certificate no. 4, we proceed to review the court's approval of those costs and fees. We apply a deferential abuse of discretion standard with

respect to this challenge: "The test for determining whether an award of receiver's fees is excessive is whether there has been a clear abuse of discretion." *Plote, Inc. v. Minnesota Alden Corp.*, 95 Ill. App. 3d 5, 6 (1981). Our precedent has established a burden-shifting framework for assessing whether the receiver's fees are excessive. "The burden rest[s] initially upon the receiver and his attorney to present sufficient evidence of the reasonableness of the fees." *Brackett v. Sedlacek*, 116 Ill. App. 3d 978, 981 (1983). That is, "[a] petitioner who requests an award of fees must submit enough evidence on the reasonableness of the fees to permit the trial court to make a reasoned decision based on the applicable law." *Plote*, 95 Ill. App. 3d at 6.

¶ 67 In *Plote*, this court explained that: "In the typical case, where a petition for fees is supported by a time sheet which details the receiver's activities, and which shows other factors relevant to an award of fees, this can be sufficient to establish that the fees requested are reasonable." *Id.* at 7. "After sufficient evidence of reasonableness is presented, the burden shifts to the respondent to show that the fees are not reasonable." *Id.*

¶ 68 In this case, we cannot say the trial court abused its discretion in finding sufficient evidence supporting the reasonableness of the $49,280 in costs underlying receiver's certificate no. 3. Notably, the trial court initially declined to approve CR Realty's accounting of this amount, as CR Realty's initial submission specified the contract amount of $49,280 paid to general contractor Sterling, but did not provide further information on how those funds were allocated. The court approved this amount only after CR Realty complied with the court's order to supplement the accounting with documentation of payment to third parties, including the invoice from subcontractor Green Demolition for the amount of $34,500. Based upon the

documentation provided, we cannot say there was insufficient "evidence on the reasonableness of the fees to permit the trial court to make a reasoned decision" in approving those fees. *Id.*

¶ 69 In addition, CR Realty provided detailed invoices supporting its separate accounting of the $19,756.80 in professional and legal fees underlying receiver's certificate no. 4. That submission included detailed invoices from the receiver and its law firm, Brown Udell, specifying the dates and hours of work performed by each individual and descriptions of the tasks completed. Our court has previously found no abuse of discretion in awarding fees where, as here, "both the receiver and his attorney furnished the trial court with detailed time and activity summaries." See *Brackett*, 116 Ill. App. 3d at 982. In this case, the trial court likewise found such documentation was sufficiently detailed to establish reasonableness, and we cannot say that this determination was an abuse of discretion.

¶ 70 As CR Realty presented evidence of the reasonableness of the expenses and fees underlying certificate no. 3 and certificate no. 4., the burden thus shifted to Gizynski to show why such amounts were not reasonable. *Plote*, 95 Ill. App. 3d at 7. However, Gizynski merely repeated speculative allegations of "self-dealing" and other misconduct by the receiver, the contractors, the Brown Udell law firm, and other entities. As recognized by the trial court, Gizynski failed to meet his burden as he did not submit any actual evidence to suggest that CR Realty's expenses and fees were excessive. See *Brackett*, 116 Ill. App. 3d at 982 ("Since Mid-America did not present any evidence to show that the fees requested were unreasonable *** 'there is nothing to rebut the trial court's conclusion that the [receiver and attorney] fees were reasonable.' ") (quoting *Plote*, 95 Ill. App. 3d at 8)).

¶ 71 Moreover, we reject Gizynski's argument that he was entitled to an evidentiary hearing to elicit evidence to challenge the reasonableness of the amounts claimed in the receiver's accountings. Although a receiver must submit evidence of the reasonableness of its fees, "[t]his does not mean that there must be an evidentiary hearing on every petition for fees." *Plote*, 95 Ill. App. 3d at 7. Rather, once CR Realty provided evidence to support the reasonableness of the requested amounts, the burden shifted to Gizynski to present evidence of unreasonableness. The fact that Gizynski could not do so did not entitle him to an evidentiary hearing, notwithstanding his speculative allegations of wrongdoing. Based on the receiver's submissions and Gizynski's failure to rebut their reasonableness, we cannot say the trial court abused its discretion in approving CR Realty's accountings with respect to either certificate no. 3 or certificate no. 4.

¶ 72 Finally, we address Gizynski's arguments that the trial court erred in granting the motion to quash the subpoena served upon Sterling, the general contractor, or that the court otherwise should have permitted him to elicit discovery from the contractors who performed the sign removal. We recognize that generally, "[t]he trial court has discretion over the conduct of discovery, and its decision will not be overturned absent an abuse of that discretion." *Bangaly v. Baggiani*, 2014 IL App (1st) 123760, ¶126. With respect to subpoenas, we have recognized that their use "is a judicial process, and courts have broad and flexible powers to prevent abuses of their process." *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 62. Thus, as with other discovery matters, "[w]e review a circuit court's decision to quash a subpoena for abuse of discretion." *Id*. We have found no abuse of discretion to quash a subpoena where "the information sought was manifestly irrelevant or related, if at all, to issues that had already been adjudicated." *Id.* at ¶ 63.

¶ 73 In this case, Gizynski's subpoena sought information from the general contractor about the bidding process and its selection and payment of subcontractors in carrying out the sign removal, issues related to the reasonableness of the costs claimed by CR Realty in its accounting for issuance of receiver's certificate no. 3. However, by the time the subpoena was issued in January 2012, the trial court had already approved CR Realty's accounting of sign removal costs and issuance of certificate no. 3 in the amount of $49,280. Indeed, on December 5, 2011, the court explicitly instructed Gizynski that he was *not* permitted to serve discovery regarding the contractors' performance of the work, as certificate no. 3 had already been approved: "There's not going to be discovery. Those certificates are done."[5] As the January 2012 subpoena to Sterling sought information as to issues that were already adjudicated, we cannot say the trial court abused its discretion in declining to permit discovery on that topic.

¶ 74 In any event, as emphasized by the trial court, we are mindful of the extremely long history of the case since 2003, and that Gizynski's failure to comply with numerous court deadlines unnecessarily delayed the action and prompted the appointment of a receiver. Moreover, it is apparent that Gizynski's discovery requests were directed toward speculative allegations of misconduct by the receiver and its contractors. Under these circumstances, we cannot say it was unreasonable for the trial court to deny Gizynski's attempt to prolong the action through burdensome discovery that was unlikely to yield material information. Thus we do not

[5] In addition, as correctly noted by CR Realty, Illinois Supreme Court Rule 201(h) states that "[i]n suits for violation of municipal ordinances where the penalty is a fine only, no discovery procedure shall be used prior to trial except by leave of court." Ill. S. Ct. R. 201(h) (eff. Sep. 1, 1974).

find that the court abused its discretion when it quashed the subpoena and barred further discovery.

¶ 75 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 76 Affirmed.