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SIXTH DIVISION
November 30, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEN FRANKLIN BANK OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 09 CH 30111
)	
R. J. STUCKEL COMPANY, INC.; ROBERT STUCKEL,)	
DIRECTOR OF EMPLOYMENT SECURITY FOR THE)	
STATE OF ILLINOIS; UNKNOWN OWNERS; and NON-)	
RECORD CLAIMANTS,)	
)	
Defendants.)	
)	
MICHAEL ZUCKER, Receiver-Intervenor Appellee,)	
)	
and)	
)	
TRAVELERS CASUALTY AND SURETY COMPANY)	Honorable
OF AMERICA, and ROCK FUSCO & ASSOCIATES,)	Darryl B. Simko,
LLC, Intervenor Appellees.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Garcia concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion by (1) denying plaintiff's motion for a

rule to show cause concerning the defendants' alleged removal of personal property in contravention of the court's orders; (2) granting the receiver's application for attorney fees and costs; (3) granting the receiver's application for receiver's fees; (4) approving the receiver's final accounting, discharging the receiver, and releasing the receiver's bond; and (5) denying, in part, the plaintiff's motion to reconsider.

¶ 2 This appeal arose from a mortgage foreclosure action by plaintiff Ben Franklin Bank of Illinois against defendants R.J. Stuckel Company, Inc. (RJ Stuckel) and Robert Stuckel (collectively, Stuckel defendants). Michael Zucker was appointed receiver for the subject property. Plaintiff moved for issuance of a rule to show cause against the Stuckel defendants, alleging they violated court orders concerning the surrender of various assets to the receiver. Plaintiff also filed objections to the receiver's claims for receiver's fees and attorney fees and costs, alleging the receiver failed to protect and preserve the property and acted without court approval.

¶ 3 The circuit court denied plaintiff's motion for a rule to show cause against the Stuckel defendants. Furthermore, the circuit court, over plaintiff's objections, granted the receiver's claims for receiver's fees and attorney fees and costs, approved the receiver's final accounting, discharged the receiver, and released the receiver's bond.

¶ 4 Plaintiff appeals the circuit court's rulings, arguing the court erred in denying the motion for a rule to show cause because the Stuckel defendants failed to comply with court orders to surrender numerous items to the receiver and surreptitiously removed machinery and equipment from the property. Plaintiff also argues the circuit court erred in granting the receiver's claims for

receiver's fees and attorney fees and costs because the receiver failed to protect and preserve the property, failed to obtain leave of court to retain counsel, and failed to disclose an alleged conflict of interest. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 5

I. BACKGROUND

¶ 6 In August 2009, plaintiff filed in the Circuit Court of Cook County a complaint for mortgage foreclosure and other relief against the Stuckel defendants to collect on two defaulted commercial loan agreements. A \$1,140,000 loan was secured by a mortgage recorded against the property commonly known as 211-213 Seegers Avenue in Elk Grove Village and a commercial security agreement. The commercial security agreement the Stuckel defendants executed in favor of plaintiff granted plaintiff a security interest in collateral, which was described as equipment, accounts, inventory, instruments, general tangibles, investment property, chattel paper, titled vehicles, and deposit accounts. "Accounts" consisted of, *inter alia*, the debtor's right to payment of a monetary obligation, whether or not earned by performance, for property that has been sold or leased and for services rendered or to be rendered. The other loan, a \$250,000 commercial line of credit, was also secured by the mortgage. Plaintiff alleged that the total unpaid balance at the commencement of the lawsuit was \$1,206,771.62.

¶ 7 In April 2010, after briefing and argument, the circuit court entered an order that appointed Michael Zucker of Peak Properties as receiver at plaintiff's recommendation and over the Stuckel defendants' objection. Zucker was appointed as receiver over the Seegers Avenue property and certain property owned by the Stuckel defendants subject to the commercial security agreement with plaintiff. The court empowered the receiver with all duties, responsibilities and

powers enumerated in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.* (West 2010)), ordered the receiver to abide by Cook County Circuit Court Rules 8.1 through 8.6, and authorized the receiver to take possession of and protect and preserve the personal property. The court ordered the Stuckel defendants to turn over to the receiver, *inter alia*, documents which related in any way to "[c]ontracts, documents, and agreements relating to accounts receivable and payable, operation, management, sale, leasing and/or control of the property." The order also provided that the "receiver may not employ attorneys except with explicit court approval."

¶ 8 According to the receiver's first report on June 17, 2010, the premises consisted of a manufacturing building and warehouse and included offices and a reception area. The premises housed several 50-foot trailers filled with machinery. The receiver inventoried all of that property, took photographs of the equipment and property, and submitted that information to the court. The receiver had served an eviction notice on the Stuckel defendants based on their failure to pay rent, transferred the utilities to the receiver's name, and established separate accounts to receive and pay the expenses of the premises. The receiver noted that the Stuckel defendants' business had "pretty much come to a halt," and plaintiff was seeking the return of the property and collateral. With respect to the real estate taxes, the receiver stated that the plaintiff paid the most recent installment and all back taxes. Furthermore, the receiver stated that he had chosen to use the tax protest firm of Worssek & Vihon, LLP, which would be compensated on a contingency basis.

¶ 9 According to the record, plaintiff did not raise any objection to the retention of tax counsel or the lack of a formal motion to appoint Worssek & Vihon, LLP, as tax counsel. On

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June 21, 2010, counsel for the Stuckel defendants sent the receiver an email that recommended retaining the law firm of Rock Fusco & Associates, LLC (RFA) to serve as tax counsel.

Thereafter, the receiver, counsel for the Stuckel defendants, and RFA exchanged emails that discussed the withdrawal of Worsek & Vihon, LLP, and concluded that a substitution form was not necessary because Worsek & Vihon, LLP, had not filed a complaint yet. The record does not show that plaintiff received any of those emails concerning the substitution of counsel for the tax appeal.

¶ 10 On June 24, 2010, the court approved the receiver's first report and entered an order authorizing Stuckel to remove from the mortgaged premises any personal property not pledged as collateral for the plaintiff's underlying loans.

¶ 11 According to the receiver's second report on September 2, 2010, the receiver was able to collect \$4,000 in rent from the Stuckel defendants, but no further payments were forthcoming. Accordingly, the receiver instructed his counsel to file a five-day notice of eviction due to the Stuckel defendants' lack of cooperation. The receiver noted that Mr. Stuckel, upon the advice of his attorney, would not turn over any books and records, so the receiver asked the court to compel Mr. Stuckel to turn over those documents.

¶ 12 In September 2010, plaintiff filed its first motion for issuance of a rule to show cause why the Stuckel defendants should not be held in contempt for failure to comply with the court's April 2010 order. Specifically, plaintiff alleged the Stuckel defendants failed to produce lists of accounts receivable and current inventory. In response, the Stuckel defendants asserted, *inter alia*, that plaintiff did not hold a perfected security interest in RJ Stuckel's accounts receivable

and, thus, was not entitled to information concerning that asset. Plaintiff, however, withdrew its motion on September 9, 2010, when a judgment of foreclosure and sale in the amount of \$1,726,276.76 was entered in favor of plaintiff.

¶ 13 On October 14, 2010, the circuit court granted the receiver's application to employ counsel and authorized the receiver to retain Thompson Coburn LLP as his counsel. The circuit court also authorized the receiver to retain a security company to guard the mortgaged premises and prevent the removal of equipment and personal property. Meanwhile, Mr. Stuckel filed a Chapter 11 bankruptcy petition in federal court and an emergency motion for turnover of property. In November 2010, the bankruptcy court denied Mr. Stuckel's emergency motion, modified the automatic stay to certain collateral, and excused the receiver from surrendering possession of the mortgaged premises and Mr. Stuckel's personal property.

¶ 14 On January 21, 2011, the circuit court directed the receiver to change the locks to secure the premises and ordered the receiver and plaintiff to confer regarding security and utility issues and invoices. However, on January 26, 2011, the Stuckel defendants moved the court to vacate this order, arguing that another company was a valid and legitimate occupant of the premises and the receiver could not change the locks without securing an order of possession.

¶ 15 According to the receiver's third report on January 23, 2011, the receiver went to the property once or twice a week to ensure that machinery was not missing and to check on the asset. The receiver stated that the case was very contentious between the Stuckel defendants, their attorney and the receiver's attorney on many issues, including the ownership of machinery at the property. Due to plaintiff's concerns, the receiver hired a security company to help monitor

the situation. Although Mr. Stuckel remained cordial, he had not turned over any information to the receiver and was not cooperative concerning rent payments. The receiver concluded that—based on the advice of counsel—changing the locks and "kicking" the Stuckel defendants out was not the best course of action because they had possession of the premises, no harm was coming to the property, the eviction process—which had been delayed due to the bankruptcy filing—was pending, and the Stuckel defendants intended to leave that month.

¶ 16 On January 28, 2011, the court gave the Stuckel defendants leave to remove—at a mutually agreed upon time with the receiver—only those items identified in a bankruptcy court order dated December 6, 2010.

¶ 17 In February 2011, plaintiff filed in the bankruptcy court another motion for a rule to show cause against Mr. Stuckel, alleging he had removed equipment from the premises. In March 2011, the bankruptcy court granted plaintiff's request to dismiss the bankruptcy case but denied, without prejudice, plaintiff's motion to hold Mr. Stuckel in contempt, noting the bankruptcy court's November 2010 order was not directed to Mr. Stuckel. Furthermore, the bankruptcy court concluded that it was not "crystal clear" that Mr. Stuckel actually had removed equipment because plaintiff provided merely hearsay evidence, which indicated only that some people thought Mr. Stuckel or someone on his behalf had removed equipment. The denial of the motion for contempt was without prejudice to plaintiff's claims for possible replevin or detinue if plaintiff could locate the personal property.

¶ 18 According to the receiver's fourth report on March 3, 2011, and supplemental report on March 21, 2011 (the final report), the eviction process had been stayed due to the bankruptcy but

the Stuckel defendants had already vacated the premises. The parties had a large dispute concerning the contents of the premises, to whom the equipment belonged, and which equipment was subject to plaintiff's perfected security interest. The receiver stated that plaintiff did not heed the receiver's advice to install security cameras and did not respond to the receiver's emails concerning payment for any further security measures. According to the receiver, the hiring of a security company had not been the best security option for the premises because someone could have easily driven a truck up to one of the multiple drive-in doors of the premises and loaded property onto the truck while the security company was located on the opposite side of the premises. The receiver stated that equipment, material and shelves were missing from the premises, but the parties knew Mr. Stuckel's new business location. The final report included the receiver's application for expenses, including attorney fees and costs.

¶ 19 On March 31, 2011, plaintiff filed an objection to the receiver's final report, alleged the receiver failed to preserve and protect the property, and moved the court to assess the receiver's bond to cover plaintiff's damages. Plaintiff also moved the court to issue a rule to show cause against the Stuckel defendants for their alleged actions to diminish the estate in violation of the court's prior orders.

¶ 20 On May 23, 2011, the circuit court denied the Stuckel defendants' motion to reduce the judgment and entered judgment in favor of plaintiff and against the Stuckel defendants in the amount of \$499,797.15. The court also approved the receiver's final report; approved the receiver's application for expenses, including attorney fees and costs; and discharged the receiver from any further duties and released his surety bond.

¶ 21 On June 20, 2011, plaintiff filed a motion to reconsider the court's May 23, 2011 order, contending there were several irregularities in the receiver's final report. Plaintiff argued that the receiver was not entitled to compensation because he failed to properly discharge his duties during the course of the receivership. Plaintiff also complained the receiver was trying to unilaterally impose on plaintiff costs and fees not authorized by the court. Specifically, plaintiff stated that the receiver was never granted leave of court to retain RFA, which seemed to be billing for legal services at a higher rate than the previously retained law firm's contingency fee basis. Plaintiff also alleged that the receiver may have had an undisclosed conflict of interest in this matter because he was involved in a number of receiverships with the Stuckel defendants' counsel and had agreed to retain RFA at the request of the Stuckel defendants' counsel.

¶ 22 In response, the receiver argued there was no basis to reconsider the court's approval of the receiver's final report. The receiver conceded that he erroneously had failed to obtain court approval to substitute RFA for the previously retained law firm but asked the court to recognize RFA's efforts in successfully appealing the premises' real estate taxes and obtaining a substantial savings that benefitted plaintiff. The receiver also denied any improper relationship between himself and counsel for the Stuckel defendants.

¶ 23 In July 2011, the Stuckel defendants responded to plaintiff's motion for a rule to show cause, contending plaintiff did not hold a perfected security interest in RJ Stuckel's accounts receivable, was not entitled to information on that asset, and had no statutory authority to try to collect the receivables from RJ Stuckel's customers. The Stuckel defendants also argued that plaintiff failed to identify a single missing item despite plaintiff's possession of numerous

equipment inventories and multiple appraisals of the equipment. In addition, the Stuckel defendants contended plaintiff relied on hearsay statements from third parties not affiliated with this case to support the allegation that the Stuckel defendants had sold two pieces of equipment that were subject to plaintiff's perfected security interest. Moreover, those hearsay statements did not even indicate that the Stuckel defendants actually sold the equipment.

¶ 24 On September 2, 2011, the receiver filed a supplemental application to pay \$12,555.27 in attorney fees and costs to RFA. The requested amount constituted 25% of the \$50,221.11 that RFA had obtained in 2010 real estate tax savings. Plaintiff filed a response objecting to any fees for RFA.

¶ 25 On September 26, 2011, the circuit court denied plaintiff's motion for issuance of a rule to show cause against the Stuckel defendants. However, the court granted in part and denied in part plaintiff's motion to reconsider portions of the court's May 23, 2011 order. Relevant to the issues raised on appeal, the court denied plaintiff's request to disqualify the receiver, reduce or deny his fees, or disapprove of his final report. The court clarified that its prior order was without prejudice to plaintiff asserting any claims against the receiver or his bond in a separate action and the court took no position on the merit or legal effect of any alleged claims asserted by plaintiff in any such separate action. Finally, the court granted the receiver's supplemental application for payment of attorney fees to RFA but reduced the amount to \$10,044.22, which constituted 20% of the \$50,221.11 in 2010 tax savings.

¶ 26 Plaintiff appealed the circuit court's May 23 and September 26, 2011 orders. The Stuckel defendants have not filed any brief on appeal. Zucker, as receiver of RJ Stuckel, Travelers

Casualty and Surety Company of America, Inc. (Travelers), as the issuer of the receiver's bond, and RFA intervened in this action to defend the circuit court's orders that approved RFA's attorney fees, approved the receiver's reports and fees, discharged the receiver following the completion of his services, and released the surety bond issued by Travelers. In a separate action pending in the law division of the Circuit Court of Cook County, plaintiff has sued the receiver and Travelers, alleging they failed to meet their respective obligations as the receiver and issuer of the bond. The proper focus of the appeal before this court, however, is whether the circuit court abused its discretion when making the contested orders.

¶ 27

II. ANALYSIS

¶ 28 No transcript or bystander's report of any proceeding before the circuit court is contained in the record before us on appeal. The appellant has the burden to provide a sufficiently complete record to support any claim of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1994). In the absence of a complete record on appeal, any doubts which may arise will be resolved against the appellant, and it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* at 392.

¶ 29

A. Rule to Show Cause

¶ 30 Plaintiff argues that the circuit court erred in denying plaintiff's motion for a rule to show cause against the Stuckel defendants. "A rule to show cause is one means by which to bring an alleged contemnor before the trial court when the failure to comply with a court order is the alleged contemptuous behavior." *In re Marriage of Berto*, 344 Ill. App. 3d 705, 711 (2003). A reviewing court will not overturn a trial court's decision on a motion for a rule to show cause

absent a clear abuse of discretion. *Id.* at 712. "An abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48, 61 (2005).

¶ 31 Plaintiff contends the circuit court's April 2010 order awarded the receiver possession of the property and personal property and required the Stuckel defendants to surrender numerous items to the receiver, including keys and accounts receivable. Plaintiff complains that the Stuckel defendants failed to comply with that order, and machinery and equipment were apparently being removed surreptitiously from the property. According to plaintiff, the removed equipment included a computer, a microcomputer, eight drill presses, a Bliss C75, and a Walsh 38-ton press. Plaintiff argues that although it raised the issue of the Stuckel defendants' violations to the circuit court on numerous occasions, the court failed to hold the Stuckel defendants in contempt early in the proceedings and thereby emboldened them to engage in further contemptuous conduct.

¶ 32 We find no clear abuse of the trial court's discretion in denying plaintiff's motion for a rule to show cause against the Stuckel defendants. According to the record, counsel for the Stuckel defendants argued throughout the receivership proceedings that plaintiff was not entitled to RJ Stuckel's accounts receivable information because plaintiff did not hold a perfected security interest in that asset. Counsel for the Stuckel defendants also challenged plaintiff's assertion that certain items and equipment on the mortgaged premises had been pledged to plaintiff as collateral. The adjudication of issues concerning the ownership of various items of personal property was delayed by the bankruptcy court stay, and even the bankruptcy court found that it

was not "crystal clear" that Mr. Stuckel had removed equipment from the premises because plaintiff's proof consisted of inconclusive hearsay statements. Finally, plaintiff attempts to support its abuse of discretion claim against the circuit court by citing a transcript containing various statements Mr. Stuckel made during a January 19, 2012 citation to discover assets for Sequester LLC. This transcript is irrelevant to the issue before us because Mr. Stuckel was questioned several months after the circuit court's challenged orders, dated May 23, 2011 and September 26, 2011. In the absence of any transcript or bystander's report of the proceedings before the circuit court, we will not presume that the circuit court lacked a factual basis for its order denying plaintiff's motion for a rule to show cause.

¶ 33 B. RFA's Attorney Fees

¶ 34 Plaintiff argues that the circuit court abused its discretion in granting the receiver's claim for attorney fees and costs for RFA because the receiver failed to obtain the court's specific approval to retain that particular law firm to perform real estate tax work. Plaintiff also complains that RFA's retention was suspect because the Stuckel defendants' attorney suggested to the receiver that he should retain RFA. Further, plaintiff contends that it was denied the opportunity to object to RFA's retention because plaintiff did not receive any notice of that retention until plaintiff received RFA's May 2011 invoice.

¶ 35 We review the circuit court's decision to award RFA attorney fees under an abuse of discretion standard. *People ex rel. Knight v. O'Brien*, 40 Ill. 2d 354, 359 (1968) (the court in which a receiver is appointed has the right to determine the amount paid to the receiver for his services and the services of his counsel); *Alcantar v. Peoples Gas Light and Coke Co.*, 288 Ill.

App. 3d 644, 650-51 (1997) (the amount of attorney fees lies within the sound discretion of the trial court and should not be disturbed absent an abuse of discretion); *T.J. Fox v. Northwest Insurance Brokers, Inc.*, 113 Ill. App. 3d 255, 259 (1983) (the substitution of attorneys is a matter within the discretion of the trial court).

¶ 36 According to the record, the circuit court approved the receiver's June 2010 report, which stated that the receiver had retained the law firm of Worsek & Vihon, LLP, to review the real estate tax assessment of the premises and raise appropriate appeals to secure a fair valuation of the premises. Plaintiff had notice of the receiver's retention of tax counsel and did not object. The receiver has admitted that he failed to move the court to allow the substitution of RFA for Worsek & Vihon, LLP, when he retained RFA later in June 2010. Moreover, the receiver has acknowledged that he retained RFA based on the real estate tax experience of one of its attorneys and RFA's prior working relationship with the Stuckel defendants or their counsel.

¶ 37 When plaintiff objected before the circuit court to the payment of RFA, the receiver asked the court to allow RFA to recover its fees despite the receiver's failure to obtain court approval for RFA's retention. The receiver argued that RFA's efforts resulted in a substantial tax credit of approximately \$50,221.11, which ultimately benefitted plaintiff. Furthermore, the receiver stated that the substitution of RFA as tax counsel did not duplicate any legal fees or expenses because the receivership estate incurred no additional attorney fees from the brief retention of Worsek & Vihon, LLP.

¶ 38 We find no abuse of discretion in the circuit court's decision to allow RFA to recover attorney fees at the same rate of compensation Worsek & Vihon, LLP, would have been entitled

to receive under the terms of its retainer agreement if it had achieved the same tax credit, *i.e.*, a contingency fee basis of 20% of the tax savings. Although Rule 8.2(a) of the Circuit Court Rules of Cook County states that an "attorney for the receiver shall be employed only upon order of the court, upon written motion of the receiver stating the reasons for the requested employment" (Cook Co. Cir. Ct. R. 8.2(a) (eff. July 1, 1976)), reviewing courts do not interfere with the trial court's exercise of its authority to enforce local rules in the absence of facts constituting an abuse of discretion (*In re Marriage of Jackson*, 259 Ill. App. 3d 538, 543 (1994)). The record establishes that: the circuit court approved the receiver's retention of a law firm to evaluate a potential tax appeal and plaintiff raised no objection to the retention of tax counsel; RFA provided legal services during the course of the receivership that were not duplicated by another law firm and resulted in substantial tax savings; plaintiff directly benefitted from RFA's services; and RFA submitted its invoice for attorney fees to the receiver before the receiver was discharged in May 2011. Finally, plaintiff's insinuation about a conflict of interest based upon the receiver's retention of RFA after a suggestion by the Stuckel defendants' attorney is mere speculation. See discussion *infra* Part II.D.

¶ 39

C. The Receiver's Fees

¶ 40 Plaintiff contends the circuit court abused its discretion in granting the receiver's claim for receiver's fees and costs because the receiver continually failed to diligently perform his duties and protect and preserve the property. Specifically, plaintiff alleges that the receiver facilitated the Stuckel defendants' efforts to remove personal property from the mortgaged premises by leaving a door open after the locks were changed. Plaintiff also alleges that the

receiver: failed to prosecute eviction proceedings despite the Stuckel defendants' failure to pay rent; failed to timely evict the Stuckel defendants; allowed the Stuckel defendants to retain possession of the personal property in violation of the circuit court's June 24 and October 14 2010 orders; and did nothing to enhance security despite his apparent knowledge that someone could remove equipment from the premises despite the presence of a security company. Plaintiff argues that the circuit court's blanket approval of the receiver's fees for work he failed to perform was an abuse of discretion. Moreover, plaintiff asserts the circuit court erred in denying plaintiff's request to conduct an evidentiary hearing on these and other issues.

¶ 41 "[T]he receiver is an officer of the court, appointed by the court, and he administers assets which are in the custody of the court; and his fees and those of his employees are set only by the court." *The People ex rel. Knight v. O'Brien*, 40 Ill. 2d 354, 359 (1968). A reviewing court will not interfere with the discretion of the circuit court in fixing the compensation of receivers and their counsel unless it has been abused. *Culver v. Allen*, 206 Ill. 40, 41 (1903).

¶ 42 According to the record, the circuit court approved the receiver's fees and expenses of \$2,449.50 for actions taken by the receiver and the management company over the course of 13 months and the filing of four reports. That amount included \$1,500 in management fees to Peak Properties, \$900 in court appearances to the receiver, and \$49.50 in parking reimbursement.

¶ 43 We cannot say, from the evidence found in the record, that the circuit court's award of the receiver's compensation was an abuse of discretion. Many challenges arose during the course of this receivership. Counsel for the Stuckel defendants instructed them not to provide the plaintiff and receiver with the accounts receivable and argued before the circuit court that plaintiff was

not entitled to that property. Moreover, counsel for the Stuckel defendants argued before the circuit court that plaintiff's perfected security interest did not include all of the equipment and other personal property located on the premises.

¶ 44 While plaintiff and the Stuckel defendants were arguing those issues before the circuit court, the receiver acted to protect the property by inspecting the premises, inventorying the property, and transferring the utilities into his name and paying those bills. Although the receiver succeeded in obtaining \$4,000 in rent from the Stuckel defendants, the receiver began eviction proceedings when further rent payments were not forthcoming. However, the eviction proceedings were subsequently stayed by Mr. Stuckel's bankruptcy filing in federal court. During the bankruptcy stay, counsel for the Stuckel defendants asserted that they retained possession of the premises and contested any attempt to lock them or Sequester, LLC, an unrelated business operated by the Stuckel defendants, out of the premises.

¶ 45 The Stuckel defendants obtained an order in the bankruptcy court that certain equipment located on the premises was exempt from plaintiff's foreclosure efforts. However, as of January 20, 2011, the Stuckel defendants had not removed the exempt equipment from the premises, and plaintiff announced that it would assess storage fees against the Stuckel defendants if they did not remove the exempt equipment. On January 21, 2011, the circuit court directed the receiver to change the locks on the premises, but the Stuckel defendants moved the court to vacate that order, arguing that Sequester, LLC, was a valid and legitimate occupant of the premises and the receiver could not change the locks without securing an order of possession.

¶ 46 On January 28, 2011, the circuit court gave the Stuckel defendants leave to remove, at a mutually agreed upon time with the receiver, only the exempt equipment identified by the bankruptcy court. Because the locks had been changed, the receiver left a door open to allow the Stuckel defendants to remove the exempt equipment. In accordance with plaintiff's preferences, the receiver had hired a security company to monitor the premises, but the receiver had warned plaintiff that a security guard would not prevent the removal of personal property from the premises. Moreover, the receiver had recommended the use of video surveillance equipment to document any unauthorized removal of property, but plaintiff had rejected that recommendation. Thereafter, plaintiff unsuccessfully moved both the bankruptcy court and the circuit court to hold the Stuckel defendants in contempt, asserting they had violated court orders by removing and selling property that was collateral for plaintiff's loan. The courts, however, denied those requests, and the record shows the bankruptcy court found that plaintiff had failed to establish that the Stuckel defendants actually removed the missing equipment. Contrary to plaintiff's assertions on appeal, the evidence in the record does not indicate a lack of diligence by the receiver in discharging his duties and obeying the orders of the court during the course of the receivership.

¶ 47 According to the record, the circuit court reviewed regular reports from the receiver and adjudicated several motions regarding the rights and responsibilities of the various parties during the foreclosure proceedings. The circuit court was in the best position to judge whether the receiver earned his fees, and we find no abuse of discretion concerning the circuit court's approval of the receiver's fees.

¶ 48

D. Receiver's Potential Conflict of Interest

¶ 49 Plaintiff argues that the circuit court abused its discretion by approving the receiver's final accounting, discharging the receiver, and releasing the receiver's bond because the receiver failed to disclose an alleged conflict of interest when he retained RFA to replace Worssek & Vihon, LLP. Specifically, plaintiff alleges that the receiver never disclosed to the circuit court or the parties that he had a prior working relationship with the Stuckel defendants' counsel, who had a previous relationship with RFA. According to plaintiff, "this relationship evidences that [the receiver's] interests and loyalties were divided by his existing business relationship with Stuckel's counsel and his duties as an officer of the court." Plaintiff asserts the circuit court abused its discretion by not inquiring into the receiver's business relationships to determine whether a conflict of interest existed.

¶ 50 The rationale of cases addressing the disqualification of counsel is instructive on the analysis applicable to the instant case. *In re Commissioner of Banks & Real Estate*, 327 Ill. App. 3d 441, 478 (2001). The disqualification of counsel is a drastic measure, and the party seeking it bears the burden of establishing the grounds for it. *Id.* The choice of counsel should not be disturbed " 'unless there is substantial basis for believing that *actual*, rather than merely potential, conflicts of interests are afoot.' " *Id.*, quoting *Guillen v. City of Chicago*, 956 F.Supp. 1416, 1422 (N.D. Ill. 1997). The mere potential that a conflict of interest might occur is insufficient to compel withdrawal or disqualification. *In re Commissioner of Banks & Real Estate*, 327 Ill. App. 3d at 479.

¶ 51 Plaintiff has cited no authority in support of a motion for a hearing on the potential conflict of the receiver or RFA. Moreover, plaintiff's argument suggesting a conflict fails to meet the burden required to demonstrate a conflict of interest in any concrete form. To support the assertion of a conflict of interest, plaintiff relies on an email from the Stuckel defendants' counsel to the receiver, wherein the Stuckel defendants' counsel wrote:

"Per our discussions, we would prefer that you retain Tom Battista from [RFA] to serve as real estate tax counsel in connection with the captioned property. Tom has significant experience in real estate appeal work and is some one [sic] that we have used for years."

¶ 52 Plaintiff's argument is speculative and tenuous and fails to indicate how any prior work RFA may have performed for the Stuckel defendants or their counsel would have influenced RFA or the receiver to plaintiff's detriment. Specifically, RFA's retainer agreement provided that RFA would be paid a contingency fee based upon a percentage of any property tax reduction it obtained. The greater the amount of the tax reduction, the greater RFA's attorney fees would be. Moreover, the substantial tax reduction RFA achieved ultimately benefitted plaintiff. We find no abuse of discretion in the circuit court's decision not to conduct any further investigation into plaintiff's conflict of interest allegations because plaintiff failed to identify any impropriety or undue influence that arose from any prior work RFA may have done for the Stuckel defendants or their attorney. Plaintiff has also failed to identify any impropriety or undue influence that arose from any prior receiverships or work involving both counsel for the Stuckel defendants and receiver Zucker.

¶ 53

E. Motion to Reconsider

¶ 54 Plaintiff argues that the circuit court abused its discretion in denying plaintiff's motion to reconsider the court's approval of the receiver's final report, expenses, attorney fees and costs, discharge of the receiver, and release of his surety bond. Plaintiff contends that reconsideration of the court's decision was warranted by newly discovered evidence. This new evidence consisted of the receiver's retention of RFA without notice to plaintiff and without the court's prior approval; plaintiff's allegations of a possible conflict of interest between the receiver, RFA and counsel for the Stuckel defendants; and plaintiff's allegations that the receiver failed to diligently perform his duties and protect the property.

¶ 55 The purpose of a motion to reconsider is to bring to the trial court's attention newly discovered evidence that was not available at the time of the hearing, changes in the law, or errors in the court's previous application of the existing law. *Simmon v. Reichardt*, 943 N.E.2d 752, 758 (2010). "Where the denial of a motion to reconsider is based on new matters, such as additional facts or new arguments or legal theories that were not presented during the course of the proceedings leading to the issuance of the order being challenged, the abuse of discretion standard applies." *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 330 (2008).

¶ 56 We find no abuse of discretion in the circuit court's adjudication of plaintiff's motion to reconsider. Plaintiff fails to acknowledge that the circuit court did partially grant the motion to reconsider by reducing RFA's attorney fees to the amount of compensation the previously retained law firm would have received. Furthermore, as discussed above, because plaintiff benefitted from RFA's work, we find no error in the circuit court's decision to compensate RFA

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even though the receiver failed to move the court to substitute RFA for the previously retained law firm. In addition, plaintiff has failed to meet its burden to show a substantial basis for believing an actual conflict of interest occurred. Finally, the evidence in the record supports the circuit court's determination that the receiver earned his expenses by performing his duties in accordance with the court's orders.

¶ 57

III. CONCLUSION

¶ 58 Based on the evidence found in the record, we conclude that the challenged orders of the circuit court were not an abuse of discretion. Therefore, we affirm the judgment of the circuit court.

¶ 59 Affirmed.