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IN THE COURT OF APPEALS OF INDIANA

Conroad Associates, L.P.,
Appellant-Plaintiff,

v.

Castleton Corner Owners Association, Inc. and McKinley, Inc.,
Appellee-Defendants.

April 13, 2022

Court of Appeals Case No. 21A-PL-1125

Appeal from the Marion Superior Court

The Honorable John M.T. Chavis, II, Judge

Trial Court Cause No. 49D05-1612-PL-44978

Mathias, Judge.

[1] Conroad Associates, L.P. ("Conroad") owns a building that is maintained by Castleton Corner Owners Association, Inc. ("the Association"). In February 2015, a sewer lift station maintained by the Association at the building failed and flooded a tenant's location with sewage. Following the flood, the tenant terminated its lease with Conroad.

[2] Conroad sued the Association for breach of contract for failing to maintain the lift station. The trial court found for Conroad following a bench trial, and the Association appealed. In a published opinion, we affirmed the trial court's judgment that the Association had breached its contract for failing to maintain the lift station. *Castleton Corner Owners Ass'n, Inc. v. Conroad Assocs., L.P.*, 159 N.E.3d 604, 607 (Ind. Ct. App. 2020), *trans. not sought* ("*Castleton Corner I*"). However, we reversed the trial court's calculation of damages and remanded with specific instructions for the trial court to enter a reduced damage award. *Id.* at 615.

[3] While the appeal in *Castleton Corner I* was pending, the trial court held proceedings supplemental to the execution of its judgment against the Association. In the proceedings supplemental, the trial court ordered the Association to transfer title to the sewer lift and associated easements to Conroad in partial satisfaction of the judgment. The Association initiated an appeal of the order in proceedings supplemental in *Castleton Corner Owners Association, Inc. v. Conroad Associates, L.P.*, No. 20A-PL-1253 (Ind. Ct. App. Jul. 6, 2020) ("*Castleton Corner II*"). The Association further declared bankruptcy, initiating an automatic stay of the proceedings supplemental and the appeal in *Castleton Corner II*.

[4] However, the appeal in *Castleton Corner I* was not stayed, and, following certification of our opinion, the Association moved to have the trial court amend the original judgment damages. The Association also tendered payment, via the trial court clerk, in the amount of the amended judgment to Conroad.

The Association thus also moved to vacate the order in proceedings supplemental that was the basis for the appeal in *Castleton Corner II*. Following the lifting of the bankruptcy court's stay, in May 2021 the trial court: granted the Association's motions and amended the original judgment pursuant to our instructions in *Castleton Corner I*; ordered the trial court clerk to release the tendered payment to Conroad in satisfaction of the amount of the amended judgment; and vacated the original order in proceedings supplemental.

[5] Conroad now appeals and raises the following three issues for our review:

I. Whether the trial court had subject matter jurisdiction over the original order in proceedings supplemental due to the pending appeal of that order in *Castleton Corner II*.

II. Whether the Association's motion to vacate the original order in proceedings supplemental violated the bankruptcy stay or was untimely.

III. Whether the trial court erred when it vacated the original order in proceedings supplemental.

[6] We hold that the trial court's continued exercise of jurisdiction was proper as it did not put Association's liability back into doubt, and the manner of enforcing the judgment on that liability remained *in fieri* in the trial court. We further hold that the Association's motion to vacate the original proceedings supplemental order did not violate the bankruptcy stay and was not untimely. And, finally, we hold that the trial court did not err when it vacated the original order in proceedings supplemental. Therefore, we affirm the trial court's judgment.

Facts and Procedural History[1]

[7] This is the third appeal in this contentious case. We summarized the facts leading to this litigation in our opinion in the first appeal:

> In early 2006, Conroad purchased a retail building in an area of Indianapolis known as Castleton Corner. At the time Conroad purchased the Castleton Corner building, it was occupied by Pier 1. On February 28, Conroad and Pier 1 entered into a ten-year lease agreement, which was set to terminate on February 29, 2016. However, Pier 1 had the "right, privilege and option" to extend the lease for two five-year periods.
>
> As the owner of the building, Conroad became a member of the Association, which exists to establish "minimum standards pertaining to the development, use and maintenance" of Castleton Corner. Pursuant to the Association's Declaration of Development Standards, Covenants, and Restrictions ("the Declaration"), the Association agreed to pay "all Maintenance Costs in connection with" improvements constructed at Castleton Corner, which costs are then allocated among the members based on their proportionate share.
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> The Declaration defines "Maintenance Costs" as follows:
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> > "Maintenance Costs" shall mean all of the costs necessary to maintain the Roads, drainage ditches, sewers, utility strips and other facilities within Castle Corner to which the term as used in the relevant sections herein applies, and to keep such facilities operational and in good condition,

[1] We held oral argument in this case on March 24, 2022, in the courtroom of the Court of Appeals of Indiana in Indianapolis. We commend counsel for both parties for the quality of their written and oral advocacy.

> including, but not limited to, the cost of all upkeep, maintenance, repair, replacement of all or any part of such facilities, payment of any taxes imposed on either the facilities or on the underlying fee, easements or rights-of-way, and any other expense reasonably necessary or prudent for the continuous operation of such facilities.

In addition, the Association's Code of By-Laws requires its Board of Directors to provide for the "ownership, operation, maintenance, upkeep, repair, replacement, administration, and preservation of the roads, drainage ditches, utility strips and sewers, including a sanitary lift station" in Castleton Corner.

The sanitary lift station at Castleton Corner collects the toilet and sink runoff from each of the Association's buildings. The lift station then uses two electrically powered pumps to propel the runoff upward until it eventually joins the City of Indianapolis' sewer system. In the event of a malfunction with the pumps, there is a window of two to three hours before the lift station overflows. If the lift station were to overflow, the runoff would flood Conroad's building as it is the lowest one on the Association's sewer system.

Beginning in 2006, McKinley, Inc. ("McKinley") provided maintenance services for the Association. Every Friday, Curtis Pitts, an employee of McKinley, performed visual inspections of the lift station. In addition, every Monday, Pitts would test the generator to ensure that it functioned normally. Pitts was always on call in order to respond to issues with the lift station.

On Friday, February 13, 2015, Pitts conducted his inspection of the lift station and concluded that it was operating normally "with no sign of any issue." However, the next morning, a Pier 1 employee opened the store at 9:00 a.m. and found one-quarter to

one-half of an inch of water containing "raw human sewage" in the back of the store, which levels continued to rise.

Instead of calling Pitts, the employee called a plumbing company, but that company was unable to stop the flooding. Pitts was ultimately notified about the flood at Pier 1 at 6:00 p.m. Pitts arrived at the location and confirmed that the lift station's control panel was not receiving electrical power, which had caused the lift station to fail. Pitts called several companies, and a plumbing company arrived with a vacuum truck to remove the sewage. By that time, the raw human sewage in Conroad's building had "seeped" into the cracks and spaces between the flooring squares and into the drywall. In addition, an electrician arrived to work on the lift station and ultimately repaired it the next morning.

Following the flood of sewage, Pier 1 informed Conroad that it would not pay rent until Conroad repaired the building. Conroad retained a restoration company to clean and restore the building. However, Pier 1 never reopened its store. Instead, on March 1, Pier 1 returned possession of the building to Conroad. Pier 1 then terminated its lease and paid Conroad a termination payment of $128,000. On April 12, 2016, Conroad leased its building to Furniture Discounters, Inc., which lease "carried a lower Base Rent than the Base Rent that Pier 1 would have paid if Pier 1 had renewed its lease" with Conroad.

On July 3, 2017, Conroad filed an amended complaint against the Association in which Conroad claimed, in relevant part, that the Association was negligent and that it had breached the terms of the Declaration when it failed to ensure that the lift station operated properly. Conroad also claimed that the Association had breached its fiduciary duty to its members.

The court held a three-day bench trial beginning on June 10, 2019. At trial, Lloyd Abrams, Conroad's general partner, testified that, while Pier 1 had no obligation to extend the lease past February 2016, he believed that Pier 1 would have remained in Conroad's building had the lift station failure not occurred. Specifically, Abrams testified that Pier 1 would have exercised its options to extend the lease because Pier 1 had occupied the building for twenty years at the time Conroad purchased the building, the rent Pier 1 was paying to Conroad was "favorable" to Pier 1, and the exterior of the building was a "signature" of Pier 1.

Michael Lady, a real estate appraiser, testified about the value of Conroad's building. During his testimony, Conroad moved to admit Lady's appraisal report, which the court admitted over the Association's hearsay objection. Lady's report indicated that, had Pier 1 remained in the building through February 29, 2016, it would have paid Conroad $125,429 in total rent. The report further indicated that Conroad would have received the following additional income from Pier 1 from March 1 through February 29, 2016: $31,983 in property taxes, $2,641 in building insurance, and $17,604 in common area maintenance ("CAM") charges.

At trial, Lady testified that the "effective gross income" Conroad would have received from Pier 1 had Pier 1 remained in the building through February 29, 2016, was $177,656. Lady then acknowledged that Pier 1 had paid Conroad $128,000 to terminate its lease, which resulted in total lost income of $49,656 during the base term of the contract. Lady also testified that, had Pier 1 exercised both of its options to extend the contract, Pier 1 would have paid $485,000 more in rent to Conroad than Furniture Discounters, Inc.

Following the trial, [in August 2019] the court entered detailed findings of fact and conclusions thereon in which the court found in favor of the Association on Conroad's claims for negligence

> and breach of fiduciary duty [("the August 2019 Judgment")]. However, the court concluded that the "phrase 'continuous operation' in the Declaration imposed a strict liability obligation on the Association. By contract, the Association was required to keep the Lift Station working. The Association did not." Thus, the court found that the Association had breached its contract with Conroad.
>
> The court then found that Conroad had sustained the following relevant damages: $49,656 in lost rent for the remainder of the base term of its lease with Pier 1, $32,248 in lost property taxes, $2,400 in lost insurance premiums, and $14,300 in lost CAM charges. But the court found that "Conroad adduced no evidence that, but for the February 14, 2015, incident, Pier 1 would have exercised its two (2) five (5) year options to extend its lease." Accordingly, the court concluded that Conroad was not entitled to lost rent after February 29, 2016, and awarded Conroad damages in the amount of $213,588.70. . . .

Castleton Corner I, 159 N.E.3d at 607–10 (citations, emphases, and footnotes omitted).

[8] Thirteen days after the trial court's entry of the August 2019 Judgment, Conroad filed a motion for proceedings supplemental to collect the "unsatisfied" judgment, with "interest and costs," in the amount of $214,005.58. Appellant's App. Vol. 2 p. 90. In its motion, Conroad requested that, if the Association continued to fail to satisfy the judgment, the "lift station and related real estate should be sold at auction according to law or otherwise transferred to [Conroad] in satisfaction of the judgment." *Id.* at 91. The next day, the trial court set a December 17, 2019, hearing date for proceedings supplemental. *Id.* at 92.

[9] The Association filed a timely motion to correct error from the August 2019 Judgment on the ground that the trial court had miscalculated the damage award. *Id.* at 94. The Association further moved to stay execution of the August 2019 Judgment. *Id.* at 24. In early November, the trial court denied both of the Association's motions. *Id.* at 184, 186.

[10] On November 19, the Association filed a timely notice of appeal from the August 2019 Judgment. *Id.* at 25. Two days later, the trial court *sua sponte* vacated the December 17 hearing on proceedings supplemental. *Id.*

[11] On November 25, Conroad filed a motion to vacate the court's *sua sponte* decision and to reinstate the December 17 hearing date on proceedings supplemental. *Id.* at 187. In its motion, Conroad acknowledged that the trial court had "[s]eemingly" vacated the hearing "as a result" of the Association's notice of appeal. *Id.* at 188. However, Conroad noted that the court had denied the Association's motion to stay execution of the judgment, and Conroad further asserted that the Association had not provided an appeal bond or other security that might entitle it to a stay under Indiana Trial Rule 62(D).[2] *Id.*

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[2] Trial Rule 62(D) provides as follows with respect to a stay upon appeal:

> (1) Procedure for obtaining. No appeal bond or other security shall be necessary to perfect an appeal from any judgment or appealable interlocutory order. Enforcement of a judgment or appealable interlocutory order will be suspended during an appeal upon the giving of an adequate appeal bond with approved sureties, an irrevocable letter of credit from a financial institution approved in all respects by the court, or other form of security approved by the court. The bond, letter of credit, or other security may be given at or after the time of filing the notice of appeal. The stay is effective when the appeal bond, letter of credit, or other form of security is approved by the appropriate court. The trial court or judge shall have jurisdiction to fix and

[12] After various additional filings by the parties, the trial court reinstated the proceedings supplemental hearing for January 2020. A judge *pro tempore* presided over the January hearing. The court concluded that there was a factual dispute regarding the ownership of the lift station and that there was a jurisdictional issue regarding the court's ability to exercise authority over the Association's out-of-state bank account. Tr. Vol. 2 pp. 20–30. The court directed Conroad to refile its motion for proceedings supplemental to have those questions heard by Judge Osborn, who had presided over the parties' trial. *Id.* at 30–31.

> approve the bond or letter of credit and order a stay pending an appeal as well as prior to the appeal. If the stay is denied by the trial court the appellate tribunal may reconsider the application at any time after denial . . . . When the stay or relief is granted by the court on appeal, the clerk of the Supreme Court shall issue a certificate thereof to the clerk of the court below who shall file it with the judgment or order below and deliver it to the sheriff or any officer to whom execution or an enforcement order has been issued.
>
> (2) Form of appeal bond or letter of credit. Whenever a party entitled thereto desires a stay on appeal, such party may present to the appropriate court for its approval an appeal bond or an irrevocable letter of credit from a financial institution. The bond or letter of credit shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or letter of credit shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than a bond or letter of credit. . . .
>
> (3) Effect of appeal bond or letter of credit. Nothing in this subdivision shall be construed as giving the right to stay, by giving such bond or letter of credit, any judgment or order which cannot now be stayed or suspended by the giving of an appeal bond . . . . The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Ind. Trial Rule 62(D).

[13] In February, Conroad refiled its motion for proceedings supplemental. Judge Osborn then held an evidentiary hearing on the motion on June 1, 2020. At that hearing, Conroad requested that the court transfer the Association's nonexclusive easement rights over the lift station to Conroad in partial satisfaction of the judgment under Trial Rule 70. *Id.* at 57. Conroad further requested the court to order the Association to transfer money from the Association's out-of-state bank account to Conroad. *Id.* The Association disputed the merits of Conroad's requests but did not object to Conroad's use of Trial Rule 70 specifically. *Id.* at 58–59.

[14] Following the June hearing, the trial court entered its order in proceedings supplemental ("the June 2020 Proceedings Supplemental Order"). In that order, the court found and concluded in relevant part as follows:

> 4. The Association has not paid toward the Judgment amount . . . .
>
> 5. Interest continues to accrue. . . . [A]s of the date of hearing, June 1, 2020, the unpaid balance the Association owed to Conroad under the Judgment is **$226,835.93**.
>
> 6. The Association has voluntarily chosen to not post and file an appeal bond, notwithstanding that on November 1, 2019, this Court denied the Association's Motion for Stay . . . . Conroad is entitled to this ORDER in aid of collecting the unpaid balance of the Judgment, despite the Association's pending appeal [in *Castleton Corner I*]. *See* Ind. Trial Rule 62(D)(1) . . . .

> 7. It is undisputed that for many years, the Association operated a sewer lift station . . . .
>
> 8. The record of this case reflects that the Association owns the Lift Station . . . . There is no evidence that the Lift Station is exempt from execution. Accordingly, the Association's ownership of easement interests, the Lift Station, sewer pipes including related equipment, the road on the common area of the Association as well as all other assets of the Association are divested from the Association and are vested [in] Conroad as payment for the unpaid balance of the Judgment . . . .
>
> 9. The Association has acknowledged that it owns a bank account with a positive cash balance through KS Star Bank . . . . Funds in the Association's Bank Account are divested from the Association as of the June 1, 2020[,] oral order of the Court[and] are vested in Conroad and shall be paid over to Conroad to pay for the unpaid balance of the Judgment. All subsequent deposits in the Association's Bank Account or any other financial institution where funds are held that are owned by or held for the benefit of the Association[] shall be divested from the Association and vested [in] Conroad with transfer to Conroad to be completed on an immediate basis upon receipt by or on behalf of the Association.

Appellant's App. Vol. 3 pp. 43–44 (emphasis in original). The court further directed the Association to send an initial payment to Conroad by June 10 and to continue making payments thereafter "until all payments equal the full value of the Judgment plus statutory accrued interest at the time of final payment." *Id.* at 45–46. The court then set a compliance hearing for December 7, 2020. *Id.* at 47.

[15] The parties responded to the June 2020 Proceedings Supplemental Order with the following additional filings:

- On June 9, the Association filed a motion to reconsider the June 2020 Proceedings Supplemental Order;
- On June 11, Conroad filed a response to the June 9 motion;
- On June 29, the Association filed a motion to stay the June 2020 Proceedings Supplemental Order;
- On July 1, Conroad filed a motion for a 15-day allowance of time to respond to the June 29 motion;
- The Association filed a response to Conroad's July 1 motion that same day;
- Conroad responded to the Association's response the next day;
- Conroad also filed a petition for contempt on July 2, which Conroad amended on July 7;
- After the trial court denied the Association's motion to reconsider, on July 6 the Association filed its notice of appeal from the June 2020 Proceedings Supplemental Order in *Castleton Corner II*;
- On July 22, the Association filed its response to Conroad's amended petition for contempt;
- That same day, Conroad responded in opposition to the Association's June 29 motion to stay;
- On July 24, Conroad filed another petition for contempt;
- On July 31, the Association filed a motion for allowance to respond and a motion to continue; and
- On August 4, Conroad filed a response in opposition to the Association's motion to continue.

Appellant's App. Vol. 2 pp. 30–34. Further, on July 14, the trial court clerk filed its notice of the completion of clerk's record on our docket in *Castleton Corner II*.[3]

[16] The trial court set a hearing on the pending motions for August 7. *See id.* at 36. The day before that hearing, the Association filed for bankruptcy, which triggered an automatic stay of both the trial court's proceedings and also the appeal in *Castleton Corner II*. *See id.* However, there is no dispute that the bankruptcy stay did not affect the pending appellate proceedings in *Castleton Corner I*. *See* Appellant's Br. p. 27; Appellee's Br. p. 11.

[17] In October 2020, we handed down our opinion in *Castleton Corner I*. We first affirmed the trial court's reading of the Association's contractual "strict liability" to maintain the lift station. *Castleton Corner I*, 159 N.E.3d at 610–13. We further affirmed the trial court's admission of Lady's report and, on cross-appeal, the court's denial of Conroad's request for an additional $485,000 in damages based on Pier 1's failure to "exercise its options to renew and remain in the building for an additional ten years." *Id.* at 613–14 (affirming the admission of Lady's report); *id.* at 615–17 (denying the cross-appeal).

[3] The trial court clerk filed its notice of completion of transcript on July 31.

[18] However, we agreed with the Association that part of the trial court's calculation of damages "awarded the same damages twice." *Id.* at 615. Specifically, on this issue we concluded:

> The trial court awarded Conroad $49,656 in lost rent. While the court did not state in its findings and conclusions how it arrived at that number, it is apparent that the court relied on Lady's calculation of "lost income" to support that figure. However, in his calculation of "lost income," Lady included more than just rental payments. Specifically, in that calculation, Lady included lost rent as well as real estate taxes, insurance, and CAM charges. Indeed, Lady testified that his calculation of lost income represented Conroad's lost "effective gross income." In other words, the $49,656 figure included both lost rent and the reimbursable expenses that Pier 1 would have paid.
>
> Thus, when the trial court awarded damages both for lost rent based on Lady's calculation of "lost income" and for the additional reimbursable expenses, the court awarded the same damages twice. The evidence supports damages in the amount of $49,656 for lost rent and the other reimbursable expenses Pier 1 would have paid. The evidence does not support the separate and additional award of damages for insurance premiums, real estate taxes, or CAM charges. . . .

Id. (citations and footnote omitted). Thus, on this issue, we "reverse[d] the court's damage award and remand[ed] with instructions for the court to award damages to Conroad in the amount of $49,656 for lost rent, property taxes, insurance premiums, and CAM charges." *Id.* (footnote omitted). Revising the damage award in accordance with our opinion resulted in an amended judgment in favor of Conroad in the amount of $164,640.70. *See id.* at 615 n.8.

[19] The clerk of our court certified our opinion in *Castleton Corner I* on December 29, 2020. On January 15, 2021, the Association filed a motion to amend the August 2019 Judgment and to vacate the June 2020 Proceedings Supplemental Order. In that motion, the Association requested the court enter the following relief:

> 15. Combining the amended damages award with the applicable post-judgment interest yields a total judgment of $183,082.69. The Association respectfully requests that the Court enter an Amended Judgment in Conroad's favor, and against the Association, in that amount.
>
> 16. Contemporaneously herewith, the Association has deposited with the Marion County Clerk a check in the amount of $183,082.69, to be held in trust for Conroad. The Association respectfully requests that the Court order the Clerk to pay this amount to Conroad[] in full satisfaction of the Amended Judgment.
>
> 17. Finally, the [June 2020 Proceedings Supplemental Order]—which divested the Association of certain real and/or personal property, in the form of the Lift Station and corresponding easements, and garnished funds from the Association's bank accounts—was entered "as payment for the unpaid balance of the Judgment." The transfer of funds in particular was to "continue until all payments equal [to] the full value of the Judgment plus statutory accrued interest at the time of final payment" has been made.
>
> 18. Because the Association has now paid the amount of the Amended Judgment in full, the Order is moot. The Association respectfully requests that it be vacated, as the Amended Judgment has been satisfied. If the Court vacates the [June 2020

> Proceedings Supplemental Order], the Association will seek dismissal of [*Castleton Corner II*,] with prejudice.

Appellant's App. Vol. 3 p. 162 (citations omitted; internal alteration in original). The Association further conceded that, despite the pending bankruptcy proceedings, the trial court "has regained jurisdiction over the case and may take action in reliance on the Opinion" in *Castleton Corner I*. *Id.* at 161. In any event, the bankruptcy court dismissed the Association's case on March 20, 2021, and closed the case in April.

[20] Meanwhile, on March 4, the trial court, with Judge John M.T. Chavis, II now presiding,[4] held oral argument on the Association's motion to vacate. And, following the bankruptcy court's closing of its case, on May 12 the trial court entered three separate orders on the Association's January 2021 motion ("the May 2021 Orders"). In those orders, the court first amended the August 2019 Judgment to reflect damages in favor of Conroad in a total principal amount of $164,640.70. Appellant's App. Vol. 2 pp. 46–47. The court then ordered the trial court clerk to release the $183,082.69 held in escrow to Conroad "in satisfaction of the Judgment and all post-judgment interest due thereon." *Id.* at 44.

[4] The case was transferred to Judge Chavis following a reorganization of the Marion Superior Court in early January 2021.

[21] Finally, the court vacated the June 2020 Proceedings Supplemental Order. In doing so, the court found that the Association had not yet transferred any title in real property to Conroad under the June 2020 Proceedings Supplemental Order. *Id.* at 51–52. The court then stated that the June 2020 Proceedings Supplemental Order had erroneously ordered the transfer of real property and that Conroad's relief was limited to money damages:

> The concept of divesting and vesting of real property interests by judicial decree is found in Indiana Trial Rule 70(A), which provides in relevant part:
>
> > (A) Effect of Judgment. If a judgment directs a party to execute a conveyance of land, or other property or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment, writ of assistance, or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt and may award damages for disobedience of the order. *If real or personal property is involved, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of both a judgment and of a conveyance executed in due form of law*.
>
> Ind. R. Tr. P.70(A) (emphasis added). Application of Rule 70(A) was relief requested by Conroad in [its second motion for proceedings supplemental,] in which—after quoting Rule 70(A)

as cited above (and emphasizing the same portion)—Conroad attempted to liken the relief available under Rule 70(A) with a writ of assistance.

After consideration of the parties' arguments, this Court concludes that Conroad's and this Court's prior reliance on Rule 70(A) was unnecessary and inappropriate. Rule 70(A) applies only to situations where "a judgment directs a party to execute a conveyance of land, or other property or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, . . . [.]" Ind. R. Tr. P. 70(A). The provision of Rule 70(A) authorizing a court to order the divestiture and vestiture of interests in property is a remedy found only within Rule 70(A) and is only applicable to the situation at which Rule 70(A) is directed—namely, where the judgment directed a party to execute a land of conveyance and the party so directed failed to do so. Here, the [August 2019] Judgment limited Conroad's relief to money damages. That is all Conroad requested in its Complaint, and that is all Conroad received in the Judgment. Thus, Rule 70(A) did not before and does not now apply to the instant case.

Further, reliance on Rule 70(A) is not required because Rule 69 provides the relief needed by Conroad. Rule 69(A) provides:

> (A) Execution Sales. *Process to enforce a judgment or a decree for the payment of money shall be by writ of execution*, unless the court directs otherwise . . . .
>
> *The sale of real estate shall be conducted under the same rules and the same procedures applicable to foreclosure of mortgages, including subdivision (C) of this rule*, without right of redemption after the sale but subject to the judgment debtor's right to care for and remove crops growing at the

> time the lien attached as in the case of mortgage foreclosure. . . .
>
> Ind. R. Tr. P. 69(A) (emphas[e]s added). Thus, Rule 69(A) afforded Conroad the tools required to collect its money damages judgment from the Association, and its use of the judicial process to collect by any other means were improper. . . .

Id. at 50–51 (internal emphases in original; record citations omitted). Thereafter, the Association moved to dismiss its appeal in *Castleton Corner II* with prejudice, which our Court granted. Appellant's App. Vol. 4 p. 212. Conroad now appeals the May 2021 Orders.

Discussion and Decision

Issue One: Whether the Trial Court had Subject Matter Jurisdiction over the June 2020 Proceedings Supplemental Order in Light of the Pending Appeal in Castleton Corner II

[22] Conroad first asserts that the pending appeal in *Castleton Corner II* divested the trial court of subject matter jurisdiction over the June 2020 Proceedings Supplemental Order, as that was the order on appeal. As our Supreme Court has explained, where, as here, "the facts are not in dispute, subject matter jurisdiction is a pure question of law that we review *de novo*." *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020).

[23] Conroad's argument on this issue is premised on Indiana Appellate Rule 8. That Rule provides: "The Court on Appeal acquires jurisdiction on the date the Notice of Completion of Clerk's Record is noted in the Chronological Case

Summary. Before that date, the Court on Appeal may, whenever necessary, exercise limited jurisdiction in aid of its appellate jurisdiction . . . .” Ind. Appellate Rule 8. Here, the trial court clerk filed its notice of the completion of clerk’s record on our docket in *Castleton Corner II* on July 14, 2020. As our Supreme Court has stated: “Under Appellate Rule 8, the notice of completion of clerk’s record is the document having jurisdictional significance, depriving the trial court of jurisdiction and conferring jurisdiction in the appellate court.” *Town of Ellettsville v. Despirito*, 87 N.E.3d 9, 11 (Ind. 2017).

[24] But there are exceptions to the exclusivity of our jurisdiction where the matters that continue in the trial court “are independent of and do not interfere with the subject matter of the appeal.” *Crider v. Crider*, 15 N.E.3d 1042, 1064–65 (Ind. Ct. App. 2014) (quotation marks omitted), *trans. denied*. One such exception allows the trial court to “enforce a judgment.” *Id.* For example, there is no dispute that the proceedings supplemental here were within the trial court’s jurisdiction notwithstanding the pending appeal in *Castleton Corner I*.

[25] Of course, the order appealed in *Castleton Corner II* was the June 2020 Proceedings Supplemental Order itself. But that order was just that—it was supplemental to the underlying liability that had already been determined by the trial court and was affirmed by our Court in *Castleton Corner I*. And while we affirmed the Association’s liability in *Castleton Corner I*, we did not affirm the

trial court's calculation of damages, which is what the June 2020 Proceedings Supplement Order addressed.[5]

[26] Further, while the notice of appeal and completion of clerk's record had been filed in *Castleton Corner II*, that appeal had otherwise not been prosecuted but, rather, had been stayed by virtue of the bankruptcy action. And, following certification of our opinion in *Castleton Corner I* and the Association's tender to the trial court clerk the full amount of the amended judgment, the Association represented that it would move to dismiss the appeal in *Castleton Corner II* with prejudice upon the trial court vacating the June 2020 Proceedings Supplemental Order and releasing the tendered funds to Conroad.

[27] We believe those circumstances supported the trial court's jurisdiction to reconsider the manner in which the underlying liability should have been executed to satisfy Conroad's judgment. Again, the trial court's continued exercise of jurisdiction did not put Association's liability back into doubt, and the manner of enforcing the judgment on that liability remained *in fieri* in the trial court. We therefore agree with the Association that the trial court retained

[5] The parties dispute the scope of our partial remand in *Castleton Corner I*, and they cite foreign authority for the impact of a partial remand. We need not go down that rabbit hole—our holding in *Castleton Corner I* did not nullify the underlying judgment on the Association's liability but, rather, amended the judgment only as to the Association's damages.

subject matter jurisdiction on the limited question of the manner in which the judgment on the underlying liability should have been enforced.[6]

Issue Two: Whether the Association's January 2021 Motion to Vacate the June 2020 Proceedings Supplemental Order Violated the Bankruptcy Stay or was Untimely

[28] Conroad next asserts that the Association's January 2021 motion to vacate the June 2020 Proceedings Supplemental Order was not permitted both because it violated the bankruptcy stay and also because it was untimely. Each of those arguments is addressed in turn.

A. Whether the Association's January 2021 Motion Violated the Bankruptcy Stay

[29] Conroad contends that the Association's January 2021 motion to vacate the June 2020 Proceedings Supplemental Order, and the trial court's March 4, 2021, hearing on that motion, violated the federal bankruptcy court's stay of the proceedings supplemental. Thus, Conroad continues, the May 2021 Orders,

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[6] As a subissue, Conroad also asserts that the trial court had no subject matter jurisdiction over the June 2020 Proceedings Supplemental Order because that order was a final judgment. *See* Appellant's Br. at 41–44. But Conroad's argument here is not supported by cogent reasoning. Indiana Trial Rule 60 plainly permits trial courts to revisit final judgments in at least some circumstances, which would not be the case if trial courts lacked subject matter jurisdiction over final judgments. Further, our holding in *Castleton Corner I* directed the trial court to amend the underlying judgment on damages, and it is not clear how the trial court could do so while simultaneously not revisiting the June 2020 Proceedings Supplemental Order in some manner.

Similarly, Conroad also asserts on appeal that the trial court erred when it permitted the Association to untimely object to the transfer of the Association's real property interests. But, as explained above, the original judgment was remanded to the trial court for a reduction of damages, and enforcement of the amended judgment amount remained *in fieri* in the trial court. We therefore cannot say the trial court abused its discretion when it permitted the Association to challenge the manner in which the trial court enforced the amended judgment amount.

which resulted from that motion and that hearing, are void even though the bankruptcy court lifted the stay on March 30, 2021, and closed the Association's case in April 2021.

[30] In support of its position, Conroad relies on *Hendrix v. Page*, 640 N.E.2d 1081 (Ind. Ct. App. 1994).[7] In *Hendrix*, the defendant filed for bankruptcy and received an automatic stay of state judicial proceedings against him. After the imposition of the stay, the plaintiffs filed their complaint for money damages against the defendant following an alleged personal injury. We concluded that the plaintiffs' complaint "violated the automatic stay," which applied to "the commencement or continuation of a judicial proceeding *against the debtor* that was or could have bene commenced before the bankruptcy case was filed." *Id.* at 1083 (citing 11 U.S.C. § 362(a)(1)) (emphasis added). We therefore held that the "judicial actions and proceedings brought against the debtor *while the stay is in effect* are a nullity and are void *ab initio*." *Id.* at 1084 (emphasis added). We added: "[S]ubsequent attempts by the [plaintiffs] to obtain relief from the stay . . . by having the stay lifted retroactively are unavailing. Actions taken in violation of the stay are void . . . . *The lifting of the stay validates only later judicial proceedings, not prior ones*." *Id.* at 1085 (emphasis added).

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[7] The only other authority relied on by Conroad for this issue is *Marion County Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437, 439–40 (Ind. Ct. App. 2008), *trans. denied*, but that appeal involved the subject matter jurisdiction of the Indiana Tax Court, not the effect of a federal bankruptcy court's stay on state court proceedings.

[31] Conroad reads the language in *Hendrix* that "[a]ctions taken in violation of the stay are void" to apply to the May 2021 Orders because those orders followed the apparently invalid January 2021 motion and March 2021 hearing. Appellant's Br. p. 45. But Conroad is mistaken. *Hendrix* discusses only filings and orders entered while the stay is in effect, not filings and orders entered after the stay is lifted. *See* 640 N.E.2d at 1085. Further, *Hendrix* did not involve a state court filing made by the debtor but instead involved a filing against the debtor. 640 N.E.2d at 1083–84. Here, on the other hand, the Association was the debtor and also filed the January 2021 motion, which resulted in the March 2021 hearing. And, even if the January 2021 motion and the March 2021 hearing violated the stay, the May 2021 Orders were entered by the trial court after the bankruptcy court had closed the bankruptcy case and lifted its stay. Thus, as *Hendrix* makes clear, the May 2021 Orders were not rendered void by the prior bankruptcy stay. *See* 640 N.E.2d at 1085.

[32] B. Whether the Association's January 2021 Motion was Untimely

[33] Conroad also argues that the Association's January 2021 motion was untimely. This argument, however, appears to rehash Conroad's earlier arguments with respect to subject matter jurisdiction. *See* Appellant's Br. at 46–49. Insofar as there is new argument here, it appears to amount to Conroad asserting that "[t]he Association cannot launch successive waves of attack seeking to revisit the same trial court order, while having passed up the trial-level review procedures available to it (Trial Rules 59, 60, etc.), and having abandoned its appeal." *Id.* at 47. Indeed, much of Conroad's brief characterizes the

Association's actions as repeatedly seeking to delay payment of the judgment against it. *See id.* at 11–13, 17–26, 28–30.

[34] While we understand a judgment creditor's frustration in delayed collection of its judgment, nothing in the Bankruptcy Code or our Trial Rules prohibited the Association from filing any of the pleadings it submitted. We conclude that Conroad has not demonstrated that the Association's motion was untimely.

Issue Three: Whether the Trial Court Erred when It Vacated the June 2020 Proceedings Supplemental Order

[35] The final issue in this appeal is whether the May 2021 Orders are substantively incorrect. Although broadly framed around all three of the May 2021 Orders, Conroad's specific arguments here are the following: (A) that the trial court erred when it concluded that the June 2020 Proceedings Supplemental Order had erroneously ordered the transfer of the Association's interests in real property; and (B) that the court erred as a matter of fact when it found that the transfer of title to Conroad had not yet occurred. Each argument is addressed in turn.

A. Whether the Trial Court Erred When It Vacated the June 2020 Proceedings Supplemental Order's Divesture of the Association's Real Property Interests

[36] Conroad asserts that the trial court erred when it concluded that the June 2020 Proceedings Supplemental Order had erroneously relied on Trial Rule 70 to transfer real property interests from the Association and to Conroad. As an initial matter, there is no dispute that Conroad relied in part on Trial Rule 70 in

seeking relief through the proceedings supplemental. The June 2020 Proceedings Supplemental Order does not cite a legal basis for the order to divest the Association of its real property interests. But, in its May 2021 Orders, the court concluded that the June 2020 Proceedings Supplemental Order had relied on Trial Rule 70, and the parties on appeal appear to agree that that was the legal basis for the court's original order.

[37] Trial Rule 70(A) provides:

> *If a judgment directs a party to execute a conveyance of land, or other property or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done* at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment, writ of assistance, or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt and may award damages for disobedience of the order. *If real or personal property is involved, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of both a judgment and of a conveyance executed in due form of law*.

(Emphases added.) That language is straightforward: for the trial court here to have divested the Association of its real property interests and vested those interests in Conroad, the underlying judgment itself must have directed the Association to execute that conveyance. Here, the underlying judgment had no such direction.

[38] Conroad attempts to avoid that result by emphasizing that Rule 70 also speaks to circumstances in which the underlying judgment requires a party "to perform any other specific act," which Conroad reads to "include[] . . . the original money judgment." Appellant's Br. at 54–55. But we cannot agree with this reading of Rule 70. The Rule speaks to the execution of specific acts directed by the underlying judgment. Thus, where the underlying judgment directed only the payment of money, execution against the judgment debtor and proceedings supplemental to execution apply, both of which have due process protections of appraisal prior to a public sheriff's sale of any real estate. At that public sale, the judgment creditor may bid any amount of the judgment and may supplement that judgment value with additional funds if desired.

[39] Conroad also attempts to emphasize the language in Rule 70 that "real or personal property is involved." Appellant's Br. at 54. Specifically, Conroad asserts that this litigation began when the real property of the lift station failed. But, again, Conroad's reading of Rule 70 stretches it too thin. There is no real property involved in the underlying judgment here, and, thus, Rule 70 does not apply.

[40] Still, Conroad further asserts that the June 2020 Proceedings Supplemental Order "must be sustained so long as any legal theory can support it," and for that support Conroad turns to Trial Rule 69. Appellant's Br. at 52 (quotation marks omitted). First, the "any legal theory" language refers to this Court's review of the order on appeal, not to the trial court's review of its own orders. *See Prime Mortg. USA, Inc. v. Nichols*, 885 N.E.2d 628, 669 (Ind. Ct. App. 2008).

The orders on appeal are the May 2021 Orders, not the June 2020 Proceedings Supplemental Order. This Court has no obligation to justify the June 2020 Proceedings Supplemental Order under any legal theory.

[41] In any event, Trial Rule 69 states in relevant part as follows:

> (A) Execution sales. Process to enforce a judgment or a decree for the payment of money shall be by writ of execution, unless the court directs otherwise and except as provided herein. Notwithstanding any statute to the contrary, real estate shall not be sold until the elapse of six [6] months from the time the judgment or execution thereon becomes a lien upon the property.
>
> *The sale of real estate shall be conducted under the same rules and the same procedures applicable to foreclosure of mortgages*, including subdivision (C) of this rule, without right of redemption after the sale but subject to the judgment debtor's right to care for and remove crops growing at the time the lien attached as in the case of mortgage foreclosure. Unless otherwise ordered by the court, the sheriff or person conducting the sale of any property upon execution shall not be required to offer it for sale in any particular order, in parcels, or first offer rents and profits and shall be required to sell real and personal property separately pursuant to the law applicable. Execution upon any property shall not suspend the right and duty to levy upon other property.
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> * * *
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> (C) Foreclosure of liens upon real estate. *Unless otherwise ordered by the court, judicial foreclosure of all liens upon real estate shall be conducted under the same rules and the same procedures applicable to foreclosure of mortgages upon real estate*, including without limitation redemption rights, manner and notice of sale, appointment of a receiver, execution of deed to purchaser and without valuation

and appraisement. Judicial lien foreclosures including mortgage foreclosures may be held at any reasonable place stated in the notice of sale. In all cases where a foreclosure or execution sale of realty is not confirmed by the court, the sheriff or other officer conducting the sale shall make a record of his actions therein in his return to be filed promptly with the record of the case and also in the execution docket maintained in the office of the clerk.

* * *

(E) Proceedings supplemental to execution. Notwithstanding any other statute to the contrary, proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered alleging generally:

> (1) that the plaintiff owns the described judgment against the defendant;
>
> (2) that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment;
>
> (3) that the defendant be ordered to appear before the court to answer as to his non-exempt property subject to execution or proceedings supplemental to execution or to apply any such specified or unspecified property towards satisfaction of the judgment; and,
>
> (4) if any person is named as garnishee, that garnishee has or will have specified or unspecified nonexempt property of, or an obligation owing to the judgment debtor subject to execution or proceedings supplemental to execution, and that the garnishee be ordered to appear and answer concerning the same or answer interrogatories submitted with the motion.

> If the court determines that the motion meets the foregoing requirements it shall, ex parte and without notice, order the judgment debtor, other named parties defendant and the garnishee to appear for a hearing thereon or to answer the interrogatories attached to the motion, or both.
>
> The motion, along with the court's order stating the time for the appearance and hearing or the time for the answer to interrogatories submitted with the motion, shall be served upon the judgment debtor as provided in Rule 5, and other parties and the garnishee shall be entitled to service of process as provided in Rule 4. The date fixed for appearance and hearing or answer to interrogatories shall be not less than twenty [20] days after service. No further pleadings shall be required, and *the case shall be heard and determined and property ordered applied towards the judgment in accordance with statutes allowing proceedings supplementary to execution* . . . .

(Emphases added.)

[42] According to Conroad, the above-emphasized language under subdivision (E) means that the trial court had the broad authority to divest the Association of its real property interests in partial satisfaction of the judgment. But Conroad's reading of Rule 69(E) ignores the balance of the Rule, in particular the language in subdivisions (A) and (C) that require a divesture of real property under Rule 69 to be by way of a sheriff's sale, which did not happen here.

[43] Finally, in an alternative to reliance on the Trial Rules, Conroad asserts that the June 2020 Proceedings Supplemental Order's divesture of the Association's real property interests was within the inherent authority of the trial court and the Association's purported "disregard[of] court orders." Appellant's Br. at 56.

This argument is a nonstarter on this record. Again, the question in this appeal is not necessarily whether the June 2020 Proceedings Supplemental Order could have been justified; it is whether the May 2021 Orders were erroneous. Further, the May 2021 Orders were not orders in contempt. We agree with the Association that Trial Rule 69(A) clearly set forth the procedure for making Conroad whole, and, thus, the trial court's assessment in the May 2021 Orders that it had no basis to depart from Trial Rule 69(A) in the first instance was correct.

B. Whether the Trial Court Erred as a Matter of Fact when It Found that the Transfer of Title to Conroad had not yet Occurred

[44] Finally, Conroad asserts that the trial court committed clear error when it found as a matter of fact that the transfer of title in the lift station and associated easements had not yet occurred. Conroad appears to be correct that the court erred insofar as the court found that Conroad had not recorded its interests in the real property. *See* Appellant's App. Vol. 3 pp. 222–43. However, we agree with the Association that "[b]y vacating the June 2020 [Proceedings Supplemental] Order and the transfer itself, the trial court effectively recognized the Lift Station and easements rightfully belonged" to the Association. Appellee's Br. at 39. *Id.*

[45] Thus, by copy of this judgment, the county's Clerk should record the judgment in its Judgment Docket, and once submitted to the county's Recorder, the erroneous order transferring title will be subject to the terms of, and invalidated

by, Judge Chavis's judgment. Accordingly, as we affirm the trial court's decision to vacate the June 2020 Proceedings Supplemental Order, we affirm its judgment on this issue as well.

Conclusion

[46] For all of the above reasons, we affirm the trial court's judgments in the May 2021 Orders.

[47] Affirmed.

Bailey, J., and Altice, J., concur.