No. 100952-6

IN THE SUPREME COURT
STATE OF WASHINGTON

(Court of Appeals, Division I, Case No. 82720-1-I)

In re

JDH INVESTMENT GROUP, LLC,

Receivership Debtor.

ANSWER TO PETITION FOR REVIEW

Christopher I. Brain (WSBA #5054)
James Bulthuis (WSBA #44089)
TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
Tel: 206.682.5600
Fax: 206.682.2992

Attorneys for Pulte Homes of Washington, Inc.

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INTRODUCTION

Review must be denied because the Petition does not satisfy the considerations for review under RAP 13.4(b). The Petition does not identify a single decision from the Court of Appeals or this Court which actually conflicts with the decision below. Similarly, the "particular circumstances" presented, the abuse of the receivership act by Petitioners, and the unlikely replication of the events in this case, do not raise an issue of substantial public interest to warrant review.

On the eve of foreclosure, Petitioners executed an assignment for the benefit of creditors and filed this case to start a receivership. Petitioners represented to the trial court that a receiver was needed to liquidate the debtor's assets. However, when the appointed receiver proceeded to sell the property, Petitioners objected because Petitioners did not actually want the property sold. The trial judge observed this receivership almost immediately encountered "a lot of tumult and controversy" and "acrimony." (RP 67).

Petitioners now concede this receivership was not filed as a true assignment for the benefit of creditors, but was instead filed to postpone foreclosure. Pet., at 4. A receivership premised on an assignment for the

benefit of creditors is not a reorganization procedure. If Petitioners wished to buy time to refinance the debts, then they should have filed a Chapter 11 bankruptcy. They did not.

The representations Petitioners made to the trial court to appoint a receiver to avoid foreclosure were an apparent sham.

Review should be denied

RESTATEMENT OF ISSUES RAISED

(1) Did the Court of Appeals err by dismissing Petitioners' appeal after Petitioners repeatedly failed to post a supersedeas bond that was a condition to a stay?

(2) If an authorization of sale is not properly stayed pending appeal, is the appeal of the authorization to sell moot under the express terms of RCW § 7.60.260(5)?

RESTATEMENT OF THE CASE

A. The appointment of the receiver.

On the day before JDH was scheduled to lose the Property through foreclosure, JDH entered into an assignment for the benefit of creditors with the Receiver. (CP 2, 5). The assignment recites that JDH was "unable to pay debts as they become due…" (CP 5). Through the

assignment, JDH granted, assigned, conveyed, and transferred all property to the Receiver. (CP 6). The assignment reads: "The assignee shall take possession and administer the estate, […] and convert the estate into money through a sale disposition …" *Id.* (emphasis added). The assignment "irrevocably" appointed the Receiver "with full power and authority to do all acts and things which may be necessary" to effectuate the assignment, including the powers to grant and convey the Property. (CP 7).

The September 12, 2019, Order Appointing General Receiver–drafted by JDH–empowered the Receiver "with exclusive possession and control" over the Property. (CP 14). This included the power to "market, list and sell the Property in the Receiver's discretion." *Id.* (emphasis added); *see also* CP 16–17, 19). Nothing authorized the Receiver to merely hold the Property out of creditors' reach while JDH pursued refinancing. The stated purpose of this receivership was always to sell the Property to pay the creditors. (CP 1-21).

B. The procedural history of this acrimonious litigation.

The trial court instructed the Receiver and its broker on procedures for selling the Property: analyze and vet all offers, negotiate, and select an offer to present to the court for approval. (CP 2208). The trial court made

it clear: the offer selected must satisfy all of the creditors' claims in full at the time of closing. *Id.*

Pulte Homes was interested in the Property for some time. Starting in 2019, Pulte Homes and the City of Auburn discussed ways the entitlements (i.e., the plat) to the Property could be modified to make it feasible for development and construction. (CP 1550). When Pulte Homes secured the City's support, Pulte Homes began negotiating with the Receiver. This culminated in submitting a letter of intent on October 15, 2020. *Id.* There then ensued further negotiations and exchanges of offers, including a draft purchase and sale agreement. *Id.* The Receiver and Pulte Homes spent a total of six weeks negotiating the terms. (RP 13). The negotiations were at arms-length. (RP 14–15).

In November 2020, the Receiver filed a Motion to Approve Terms of Sale Free and Clear of Liens and Rights of Redemption. (CP 229). This motion sought to approve a sale to Pulte Homes. *Id.* The trial court deferred ruling on the sale after objections were raised. (CP 2209). The trial court invited the parties to attempt to agree upon sales procedures. *Id*. Alas, the parties were unable to reach an agreement. (CP 2210). In advance of a status hearing, the Receiver provided several hundreds of pages of material estimating the closing costs, administrative costs, and

creditors' claims. (*Id.*; CP 1060). These were estimated at $7.5 million. (CP 1069).

On February 24, 2021, the trial court instructed the Receiver to continue negotiating with Pulte Homes to finalize the terms of a proposed sale. (CP 2211). On March 24, 2021, the Receiver re-submitted a Motion to Approve Terms of Sale. (CP 1763). JDH filed a cross motion proposing a refinance and termination of the receivership. (CP 1702).

C. The strength of Pulte Homes' offer exceeded any other proposal.

Pulte Homes submitted an offer satisfying the Receiver's criteria and the trial court's requirement that it cover all of the creditors' claims. Pulte Homes is an established builder with a successful track record of entitling, developing, building and selling homes in the City of Auburn. (CP 1549–50). Pulte Homes established its familiarity and due diligence performed on the Property. *Id.* This included Pulte Homes' discussions with the City of Auburn since 2019 regarding a change to the plat entitlements. (CP 1550).

The Purchase and Sale Agreement ("PSA") proposed by Pulte Homes provided three tiers for a purchase price:

1. $13.75 million if Pulte Homes obtained a Reasonable

Use Exception;

2. $10.75 million if Pulte Homes did not obtain a Reasonable Use Exception, but instead obtained a Major Modification Approval; or

3. $10.425 million if Pulte Homes pursued a new preliminary plat instead.

(CP 1801). This offer was nearly $3–$6.25 million more than all of the creditors' claims combined. This surplus would go to Petitioners. Petitioners' purported expert testified that an offer satisfying all creditors' claims is a "rare event." (CP 1405).

The PSA provided that Pulte Homes would deposit independent consideration plus $350,000 in earnest money. (CP 1799). Further, the PSA required Pulte Homes to deposit an additional $171,250 if the three-year closing option was approved by the trial court. (CP 1780). Additional earnest money deposits are required on a graduated basis depending on which entitlement option is secured. *Id.* This earnest money was in cash and not a promissory note. (CP 1799; RP 16).

The Pulte Homes offer afforded a 90-day feasibility period, and up to three years to close. (CP 1801). The reason for a three-year closing is because the current plat requires an "unbuildable road." (CP 1811).

Consequently, the Property needs one of the afore-mentioned deviations to the entitlements before it can be developed.

D. JDH's attempt to derail the sale to Pulte Homes.

When JDH learned the Property would be sold, it issued a subpoena for Pulte Homes' internal valuation of the Property, internal feasibility analyses, and other trade secrets. (CP 1538, 1551). Pulte Homes sat for a deposition and JDH discovered nothing evidencing fraud or self-interest in the negotiations. Indeed, Petitioners offered nothing from the deposition to support their claim that Pulte Homes will invoke a contingency to back out of the transaction.

Throughout this negotiation process, JDH prompted third-parties to make offers on the Property as well. However, Pulte Homes' offer exceeded the next closest bid by $2.75–$6.05 million.

After the Receiver first moved for approval of the sale to Pulte Homes on November 3, 2020, JDH came up with a purported offer from a third-party, Argo Development. (CP 1052). Argo indicated it would submit an initial bid of $3.5 million. (CP 1058). Argo later offered $7.125 million. (CP 945). Petitioners supported a sale to Argo despite the fact that Argo's offers would not satisfy all of the creditors' claims and so

would return no surplus to Petitioners. *Id.*

JDH later floated the idea of refinancing the debt, which was something JDH represented it was working on since 2019. (CP 1541). The Receiver vetted the proposals and informed the trial court:

> The Receiver was/is willing to talk to any credible option to maximize the value of the receivership estate for the benefit of creditors. However, after years of misrepresentations, lack of cooperation, and refusal (inability) to provide any credible lender information, inclusion of financing procedures in a sales process serves no purpose and just becomes confusing and distracting.

(CP 1542)(emphasis added).

On the offer from Argo, the Receiver reported:

> ARGO submitted an offer in 2020 as part of the Court approved marketing and listing process. The offer was false and misleading [in] a number of respects. ARGO misrepresented a number of items – most significantly it provided false and misleading financial information.

(CP 1540).

Four months later, on the eve of the Receiver re-filing its motion to approve the sale to Pulte Homes, Petitioner JDH reappeared claiming it

had a refinance proposal in hand. (RP 16). This would be accomplished by working with the Scrivanich family, who owned Scrivanich, Inc. and the later-formed Bridges West. (CP 1702, 1724). Under the proposal, the Scrivaniches would buy the largest secured creditor's claim, which they ultimately did for $3.775 million. The Receiver reviewed the refinance proposal and noticed numerous gaps. (CP 1951–52, RP 17). These gaps left open the scenario that the refinance was up to $3.5 million short of satisfying all of the creditors' claims.

Scrivanich also refused to place the funds into the court registry because it claimed it wanted to collect interest on its money in the event it decided not to fund the refinance and because it did not want to part with the funds for more than 60 days. (RP 53). On Reply, Scrivanich offered a declaration from its counsel attesting that Scrivanich, through their company Bridges West LLC, placed the loan proceeds into an IOLTA trust account, but offered no actual proof of this. (CP 2077-8). Bridges West refused the Receiver's request to place the funds into the court registry, raising more suspicion from the creditors and Receiver that there were inadequate funds to cover all of the creditors' claims. (RP 18). By the time of the hearing, the Receiver informed Bridges West of six conditions that needed to be satisfied, which Bridges West declined to

satisfy. (RP 18-19).

In addition to the Receiver's concerns, creditor JTP Services opposed JDH's proposed refinance, noting that the proposal lacked procedural safeguards to ensure creditors would get paid. (CP 1860).

In light of Petitioners' objections to the three-year closing period contained in Pulte Homes' offer, Pulte Homes submitted an alternative proposal for the trial court's consideration. It consisted of a choice: (1) Pulte Homes would pay a price equal to satisfying the creditors' claims (roughly $7.5 million) and close within 120 days; or (2) Pulte Homes would proceed with the originally negotiated PSA containing three prices. (CP 1550–51).

E. The trial court's approval of the Pulte Homes offer.

At the hearing, Petitioners were directly asked by the trial court which of Pulte Homes' proposed pathways JDH preferred: the short closing for $7.5 million, or a longer closing for $10.425 to $13.75 million? Petitioners had no answer. (RP 60). Accordingly, the trial court selected the latter because it not only paid all creditors but also provided JDH with substantial surplus proceeds. Petitioners appealed.

F. Continued acrimony on appeal

Petitioners moved to stay the sale pending the appeal on June 18, 2021. Division I's commissioner granted a stay on September 16, 2021, but it was conditioned on Petitioners securing an order from the trial court setting a supersedeas bond. (App. 60). There then ensued multiple motions before the trial court and Division I regarding the bond, which the Petition summarizes. The following are the various deadlines Petitioners were afforded to post the bond:

- October 18, 2021, deadline to secure an order from the trial court setting the bond. (App. 60).
- December 13, 2021, deadline to post a bond. (App. 89).
- January 31, 2022, deadline to post the reduced bond amount. (App. 121).
- March 17, 2022, extended deadline to post the bond. (App. 187).

None of these deadlines were met.

When Petitioners failed to post the bond by the January 4th deadline, Pulte Homes moved to lift the stay and dismiss this appeal. (App. 122). The Court of Appeals considered the motion and ordered Petitioners "to post the supersedeas bond in the amount required by

Commissioner Koh no later than March 17, 2022. Failure to post bond by that date will result in dismissal of the appeal." (App. 187)(emphasis added).

G. The decision below.

The decision Petitioners appeal from is Division I's March 25, 2022 Order granting the motion to lift stay and dismiss the appeal. The Order reads:

> On February 2, 2022 respondent, Pulte Homes of Washington, filed a motion to lift stay and dismiss the appeal after appellants JDH Investment Group failed to post the supersedeas bond ordered as a condition of the stay entered by this court on September 16, 2021. […]
>
> The panel has reviewed the responses filed by the parties. The status reports filed by the parties confirm that the required supersedeas bond has not been filed. Ordinarily the failure to post a supersedeas bond does not impact the viability of an appeal. But this appeal involves the trial court order approving a sale of property subject to a general receivership. And under the particular circumstances here, including the interests of the receiver and the creditors, equitable review compels compliance with the supersedeas bond previously ordered. Consistent with RAP 8.3 and the panel's February 17, 2022 order, the failure to post

> the bond warrants the dismissal of the appeal.

(App. 1-2)(emphasis added).

WHY REVIEW SHOULD BE DENIED.

Petitioners cite RAP 13.4(b)(1)(2) and (4) as the bases for their Petition. None of those sections are satisfied and so review should be denied.

A. There are no decisions that conflict with the order below.

1. The Petition does not identify a single authority on statutory interpretation that conflicts with the decision below.

The Petition asserts that the decision below "conflicts with settled precedent governing statutory interpretation". Pet. at 13. This is an attempt to feign bringing this appeal within the purview of RAP 13.4(b)(1) and (2). The reality is the decision below does not announce a new rule of statutory interpretation. There is no holding in the decision that conflicts with this Court's precedent on how to interpret statutes. Indeed, the only case that Petitioners cite for statutory interpretation is *Washington State Ass'n of Ctys. v. State,* 199 Wn.2d 1, and after spending one sentence on that case, Petitioners never mention it again. There is no discussion on

how the decision below conflicts with that precedent. Thus, Petitioners fail to satisfy RAP 13.4(b)(1) because they have not shown how the decision below conflicts with Supreme Court precedent on statutory interpretation. Similarly, Petitioners fail RAP 13.4(b)(2) because they do not identify a single Court of Appeals decision on statutory interpretation.

2. Petitioners' appeal was tossed after they failed for six months to post the bond that was a condition to the statutorily required stay.

The Petition quotes RCW § 7.60.260(5), but ignores analyzing the most important section: "The reversal or modification on appeal of an authorization to sell […] estate property under this section does not affect the validity of a sale […], unless the authorization and sale or lease were stayed pending the appeal." *Id.* (emphasis added). Petitioners put all of their eggs into the basket of whether "sale" is in the past or present tense, and completely omit the equally important part – that they were supposed to stay both the sale and the authorization to sell. Here, Petitioners initially succeeded in staying the sale on September 16, 2021, but omit telling this Court that the stay was conditioned on posting a supersedeas bond. (App. 60). After numerous extensions and six months to post the supersedeas, Petitioners failed to post it. Thus, the stay that was conditioned on the supersedeas was lifted. Therefore, the "authorization"

to sell was no longer stayed, nor was the "sale" stayed. As a matter of simple statutory application, their appeal was deemed moot and dismissed. The statute prescribes that both the sale and the authorization must be stayed. The statute connects these terms with the word "and," not "or". Both must be stayed, and here they were not.

There cannot be any confusion about this because the decision below plainly stated that posting the bond was a condition of the stay. The decision then repeats: "equitable review compels compliance with the supersedeas bond previously ordered." This is because, in part, interest is accruing at $2,700 per day. (App. 129). Over $996,300.00 in interest has accrued since Appellants first filed their motion to stay on June 18, 2021, and there is no bond to secure this interest, much less the other damages that Respondents may incur. Petitioners' failure to post the bond thwarted a primary purpose of the supersedeas bond, which is to ensure the ability of creditors to satisfy the judgment will not be impaired pending appeal." *Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys.,* 105 Wn.2d 376, 378, 715 P.2d 1131 (1986).

This is not an issue of the Court of Appeals conflicting with precedent. It is a matter of Petitioners failing to comply with the court's

order—multiple times—leading to the unambiguous language in RCW § 7.60.260(5) instructing that the appeal is moot.

3. Petitioners advance the wrong definition of "good faith" purchaser.

Petitioners argue that "Pulte is unequivocally not a good faith 'purchaser.'" Pet. at 20. The problem with this argument is that they cite no evidence. Conversely, the trial court expressly found that the "proposed buyer, Pulte Homes, is acting in good faith." (CP 2201).

Moreover, RCW § 7.60.260(5) does not define a good faith purchaser as one who has already provided value. This not a common law case involving fraud in a purchase, it is a receivership sale and a different definition applies.[1] Because the receivership statute is modeled after the bankruptcy code,[2] bankruptcy cases are helpful in interpreting the statute. The "[g]ood faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings[.]" *In re Gucci*, 126 F.3d 380, 390 (2d Cir. 1997). It may be "lost by 'fraud, collusion between the

[1] The Petition argues Pulte Homes is not a good faith purchaser because it did not advance funds to extend the current plat's expiration date. As support, the Petition states that "at the expense of Downie, JDH applied for a one-year extension of the property's preliminary plat approval,…" Pet. at 10; *also at* 26. This is a misrepresentation of fact by Petitioners because Mr. Downie has so far refused to pay the consultant who processed the application.

purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *Id*. (quoting *In re Rock Indus*. *Mach*. *Corp*., 572 F.2d 1195, 1198 (7th Cir. 1978)). Indeed, Petitioners embraced this definition of "good faith" when arguing to the Court of Appeals below. (Pulte App. 1-3).

Similarly, bankruptcy cases provide guidance on the deference owed to the trial court where there is a finding that the sale was negotiated in good faith. "Absent legal error, this is a '**formidable standard**,'…" *In re Old Cold LLC*, 879 F.3d 376, 383–84 (1st Cir. 2018)(review for clear error unless the court's analysis is infected by legal error)(citations omitted)(emphasis added). Only if this Court forms a strong, unyielding belief, based on the entire record, that a mistake has been made should it upset the lower court's order of sale under the clear error standard. *Id.*; *see also Ewell v. Diebert*, 958 F.2d 276, 281 (9th Cir. 1992)("Typically, lack of good faith is shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders'")(quoting *In re Suchy*, 786 F.2d 900, 902 (9th Cir.

[2] 11 USC § 363(m).

1985)); *In re 255 Park Plaza Associates Ltd. P'ship*, 100 F.3d 1214, 1218 (6th Cir. 1996).

Petitioners cite nothing in the record to suggest fraud, collusion, or unfair advantage of other bidders, despite JDH having subpoenaed and deposed Pulte Homes. Nor have Petitioners ever disputed the other findings of good faith made by the trial court. (CP 2213)("the proposed sale terms are just and proper and in good faith and are the result of significant arm's-length negotiations between the Receiver and Pulte Homes"); (CP 2214) (The "Receiver has made its Motion in good faith and within the Receiver's proper exercise of its business judgment"). Consequently, Petitioners have not carried their formidable burden. The undisputed fact is that Pulte Homes offered two options for purchasing the Property. One had a quick closing and paid enough to cover all of the creditors' claims. The second (and ultimately approved approach), pays millions of dollars more than the nearest bidder and will return millions to JDH. Petitioners were asked by the trial court which of these two options they preferred, and they had no answer. (RP 60). This does not alter Pulte Homes' position as a good faith purchaser.

Petitioners' argument that Pulte Homes is not a good faith purchaser is meritless.

4. Petitioners' argument that the sale must close for the bankruptcy mootness doctrine to apply is at odds with ninth circuit precedent.

Petitioners argue that because the sale has not closed and title has not passed means the bankruptcy mootness rule does not apply. The Petition argues that "federal courts universally stress that closing marks the point…" Pet., at 28. This is wrong. The Ninth Circuit has repeatedly held that if the order of sale is not stayed, then the appeal will be rendered moot "regardless of whether a purchaser has taken irreversible steps following the sale." *In re Onouli-Kona Land Co.,* 846 F.2d 1170, 1172 (9th Cir. 1988)(citing *In re Exennium, Inc.,* 715 P.2d 1401 (9th Cir. 1983)); *see also In re Vista Del Mar Assoc., Inc.,* 1881 B.R. 422, 424 (B.A.P. 9th Cir. 1995). *In re Exennium* observed that "Section 363(m) does not require the purchaser to take irreversible steps consummating the sale, thus making its overturning a hardship to the buyer, before the absence of a stay will be operative." *Id.* at 1404. Thus, the mootness doctrine applies irrespective of whether the "irreversible" step of closing has occurred.

What matters here is whether the order of sale has been stayed. *In re Onouli-Kona*, 846 F.2d at 1171 ("Bankruptcy's mootness rule applies when an appellant has failed to obtain a stay from an order that permits a

sale of a debtor's assets"); *see, also, In re 255 Park Plaza,* 100 F.3d at 1216 (6th Cir. 1996)*; Barnes v. 309 Rte. 100 Dover LLC,* 2020 WL 6565197, 2:20-cv-00045 (D. VT, Nov. 6, 2020). That is consistent with RCW § 7.60.260(5)'s use of the words "authorization and sale". Each word of the statute must be accorded meaning. *State v. Roggenkamp,* 153 Wn.2d 614, 624, 106 P.3d 196 (2005). The Court may not delete language from an unambiguous statute. *Id.* Yet, the interpretation advanced by Petitioners does just that by omitting any consideration of the words "authorization" and "and". Although it is typical for payment and transfer of title to occur shortly after a sale is approved, closing is not a requirement for the mootness doctrine to apply here because the stay on the "authorization", i.e., the order of sale, was lifted.

As further support showing that a sale need not close for the bankruptcy mootness doctrine to apply is *Krebbs Chrysler-Plymouth, Inc. v. Valley Motors, Inc.,* where the Third Circuit applied the doctrine to dismiss an appeal filed *by the buyer* when the buyer paid a ten percent down payment but then refused to close. 141 F.3d 490, 493 (3d Cir. 1998). The bankruptcy court entered an order compelling the buyer to close, which the buyer appealed. The Third Circuit dismissed on grounds of bankruptcy mootness.

This is a nuance of bankruptcy that reflects the need for finality in orders. "The bankruptcy mootness rule differs from general mootness law because it is based on 'the general rule that the occurrence of events which prevent an appellate court from granting effective relief renders an appeal moot, and the particular need for finality in orders regarding stays in bankruptcy.'" *In re 255 Park,* 100 F.3d at 1216 (quoting *In re Onouli-Kona*, 846 F.2d at 1171)(emphasis added). RCW § 7.60.260(5) mirrors the bankruptcy code, and so Division I followed the same nuance for receivership sales. In doing so, the Court of Appeals did not contradict this court or another division's case law on this issue. Similarly, the decision below is consistent with public policy favoring finality of judicial sales. *Walton v. Severson*, 100 Wn.2d 446, 670 P.2d 639 (1983); *In re Spokane Savings Bank*, 198 Wn. 665, 89 P.2d 802 (1939); *see, also, Morrison v. Burnette*, 154 F. 617 (8th Cir. 1907).

Petitioners' argument that no "sale" has occurred also ignores that the Receiver and Pulte Homes executed a Purchase and Sale Agreement in March 2021, which was approved by the trial court. (CP 1799-1823). The Agreement is a contract conferring rights and obligations addressing the ownership of land. It is not some meaningless piece of paper. If Petitioners were somehow successful in disrupting the sale through their

current backroom maneuvering, then Pulte Homes has the right to seek specific performance to acquire the Property.[3] (CP 1817).

B. This case does not address issues of substantial public interest.

An issue of substantial public interest is presented when it affects not only the parties to the proceeding, but also "has the potential to affect" other similar matters. *See State v. Watson,* 155 Wn.2d 574, 577, 122 P.3d 903 (2005)(the underlying decision impacted not only the parties to that proceeding, but had the potential to affect every sentencing proceeding in Pierce County and could invite unnecessary litigation). While the Petition hypothesizes that the decision below could invite speculators to bid at judicial sales, the Petition fails to explain how the decision actually invites unnecessary litigation or creates confusion generally. *Id.* This is because Petitioners do not explain how the facts or outcome in this case have any likelihood of being replicated in the future. Indeed, Division I explained: "[a]nd under the particular circumstances here, including the interests of the receiver and the creditors, equitable review compels compliance with the supersedeas bond previously ordered." (App. 2).

[3] Petitioners are currently attempting to purchase the creditors' claims so that they may try, again, to dismiss the receivership before the sale closes. This only highlights the inconsistency of their representation to the trial

Petitioners argue that moving forward, future judicial sales may attract speculators, but that is mere conjecture because there is no text in Division I's unpublished opinion that could conceivably invite speculative bidders. Nor does the opinion erode the role of the trial court to decide which bid or offer to accept. RCW § 7.60.260(1)(2).

Further, Petitioners' characterization of Pulte Homes as a simple speculator is wholly at odds with the actual evidence. First, Pulte Homes conducted due diligence on the Property since 2019 by working with the City of Auburn on possible changes to the preliminary plat. (CP 1550). Second, Pulte Homes and the Receiver spent six weeks negotiating an involved PSA. (RP 13-15). Third, Pulte Homes responded to Petitioners' subpoena and sat for a deposition. (CP 1538, 1551). Petitioners offered nothing from the document production or deposition to support their conjecture that Pulte Homes is a mere speculator. Fourth, and most obvious, Pulte Homes has fended off Petitioners' repeated attempts to disrupt the sale at the trial court, Court of Appeals, and now here. Petitioners' argument that Pulte Homes is a mere speculator who may never close on the Property lacks credibility.

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court when they argued that a receivership was necessary to sell the Property.

Similarly, this case does not present an issue or doctrine that Petitioners suggest needs to be overturned or revisited. Petitioners' appeal was dismissed because of their own failure to post the supersedeas that was a condition to a stay. Petitioners were given multiple opportunities over six months to post the supersedeas. The Court of Appeals even warned Petitioners that if the supersedeas was not posted by a date certain then the appeal would be dismissed. (App. 187).

CONCLUSION

The Petition fails to establish grounds for review. The Court of Appeals' decision does not conflict with an authority of this court or another court of appeals decision. Similarly, this case does not involve an issue of substantial public interest. Rather, this case involves a gamble by Petitioners to save the Property from foreclosure by misrepresenting to the trial court that the Property would be sold to pay the creditors. This is consistent with their "years of misrepresentations" that the independent Receiver reported to the trial court. (CP 1542). Such a gamble should not be rewarded by this Court.

Review should be denied.

DATED this 22nd day of June, 2022.

TOUSLEY BRAIN STEPHENS PLLC

By _____

Christopher I. Brain, WSBA #5054
Email: cbrain@tousley.com
James Bulthuis, WSBA #44089
Email: jbulthuis@tousley.com
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
Tel: (206) 682-5600
Fax: (206) 682-2992

Attorneys for Pulte Homes

I certify that this brief produced using word processing software contains 4,894 words in compliance with RAP 18.17.

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 22nd day of June, 2022, at Seattle, Washington.

s/Linsey M. Teppner
Linsey M. Teppner, Legal Assistant

No. 82720-1-I
(Consolidated with No. 82721-9-I and No. 82785-5-I)

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

In re

JDH INVESTMENT GROUP, LLC,

Receivership Debtor.

JOINT BRIEF OF APPELLANTS BRIDGES WEST, LLC, JDH INVESTMENT GROUP, LLC, AND THOMAS DOWNIE

Clay M. Gatens
WSBA #34102
Gatens Green
Weidenbach, PLLC
305 Aplets Way
Cashmere, WA 98815-1012
(509) 888-2144

Philip A. Talmadge
WSBA #6973
Gary W. Manca
WSBA #42798
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Appellant Bridges West, LLC

refinancing plan. While the refinancing plan would pay all creditors, it would deprive the receiver of a commission. The receiver's brokerage fee structure deepened this conflict of interest. Under that fee structure, the fee percentage of the sale price decreased as the sale price increased. CP 26. So the receiver had little personal incentive to negotiate a higher sale price. At its root, this transaction involved the receiver's financial interests as much as the interests of the creditors and debtors—a red flag that the trial court overlooked.

Given these circumstances, a finding of "good faith" was crucial, as JDH argued. CP 1882–83. Under federal bankruptcy law, a court must find the sale was in "good faith"—a requirement that protects against collusion and depressed sale prices. *Abbotts Dairies*, 788 F.2d at 149–51. Misconduct may include "collusion between the purchaser and … the trustee." *Id.* at 147. But the trial court's findings of good faith here were barren; the order cited no specific evidence. *See* CP 2167, 2179–80. That omission is all the more glaring because the receiver's

claim to a brokerage fee created a conflict of interest. *See, e.g.*, *Berryman v. Metcalf*, 177 Wn. App. 644, 658, 312 P.3d 745 (2013) (reversing "conclusory" findings in support of attorney fee award because they did not address the opposing party's "very specific objections"). Because the trial court's finding of good faith lacked support, the court abused its discretion. *See id.*

In sum, the trial court abused its discretion. A distant and contingent closing date fails to give the certainty that JDH and its largest creditor deserve. This Court should reverse the sale order.

(4) The Trial Court's Decision to Reject the Refinancing Plan Lacked Support in Law and Reason

(a) JDH and Downie Had Standing to Move for Approval of the Refinancing Plan and to Terminate the Receivership

The trial court was wrong that JDH and Downie "lack[ed] legal standing to negotiate [or] *propose* . . . any refinancing transaction." CL 3, CP 2202 (emphasis added). By rejecting the refinance based on the erroneous legal premise that JDH and

TOUSLEY BRAIN STEPHENS PLLC

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- salishsealegal@outlook.com
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Sender Name: Linsey Teppner - Email: lteppner@tousley.com
Filing on Behalf of: James M Bulthuis - Email: jbulthuis@tousley.com (Alternate Email: lteppner@tousley.com)

Address:
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Suite 1700
Seattle, WA, 98101
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