

Circuit Court for Harford County  
Case No. 12-C-17-000111

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 478

September Term, 2017

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THOMAS BARTENFELDER

v.

KIMBERLY BARTENFELDER

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Graeff,  
Nazarian,  
Arthur,

JJ.

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Opinion by Nazarian, J.

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Filed: April 16, 2018

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this appeal, Thomas Bartenfelder (“Husband”) challenges an order of the Circuit Court for Harford County appointing a receiver for three entities he owns jointly with his estranged wife, Kimberly Bartenfelder (“Wife”). At oral argument, both parties consented to the entry of an order vacating the receivership and remanding the case for further proceedings. We agree, for the reasons we explain below, that is the appropriate course.

## I. BACKGROUND

Husband and Wife hold all of the interests in three entities: Bartenfelder Landscaping Service, Inc. (“Landscape”), Bartenfelder Sanitation Service, Inc. (“Sanitation”), and 3341 Forge Hill LLC (the building housing the two companies). Among their business and personal disputes, there are at least four different proceedings pending in the circuit court. This case is the first of them.

In 2015, before the current group of lawsuits began, Husband and Wife initiated divorce proceedings that they resolved, without a judgment of divorce, via a Memorandum of Understanding (“MOU”). The MOU provided, among other things, that Wife would be added to the business accounts of Landscape and Sanitation, but would not be authorized to issue any check of more than \$10,000 without Husband’s consent.

On January 12, 2017, Wife allegedly removed approximately \$60,000 from the companies’ accounts at M&T Bank without Husband’s consent. The next day, Husband filed a verified complaint against Wife alleging breach of contract, and seeking damages and a temporary restraining order and preliminary injunction; importantly, none of the business entities were named as parties, nor did the complaint seek dissolution of the

companies or any other relief under the Corporations and Associations Article of the Maryland Code. Both parties appeared, with counsel, for an emergency hearing that same day. At the beginning of the hearing, the parties announced that they had reached an agreement to resolve the dispute prior to the hearing. The court asked counsel to recount the terms on the record, and the court memorialized the agreed terms in a consent order that provided, among other things, that Wife would return the \$60,000 and would not withdraw any funds from either of the companies' bank accounts.

On March 28, 2017, Husband filed a Petition for Contempt and Request for Show Cause Order (“Petition for Contempt”) alleging that Wife had removed him as an authorized user from two of the companies' accounts and violated the Consent Order by withdrawing approximately \$36,000 from one of the Companies' accounts without consent. The court issued a Show Cause Order two days later. On April 7, 2017, Husband supplemented his Petition for Contempt with allegations of additional withdrawals. Wife allegedly continued to withdraw money thereafter, and Husband filed an Emergency Motion for Enforcement of Judgment Prohibiting Action and for Ancillary Relief in Aid of Enforcement of Judgment on April 11, 2017.

Two days later, and in the midst of another trial, the court held a hearing on the various motions.<sup>1</sup> Husband asked the court to remove Wife's name from the businesses' accounts. Wife opposed that relief and asked instead that the court impose an equitable

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<sup>1</sup> In the meantime, Wife filed another action (“355,” the last few digits of the case number). The April 13, 2017 hearing was captioned in both this case and in 355, but none of the pleadings from the latter case are in the record in this one.

receivership over the businesses. The parties hinted obliquely at other claims—Wife seeking to force a dissolution of the companies, Husband to force Wife to tender her shares to him—but acknowledged in response to the circuit court’s questions that none of those were before the court in this case.

As the hearing ended, the court seemed to recognize that Wife had taken money out of the companies in violation of the consent order, but stopped short of making formal findings to that effect. The court advised the parties that it intended to appoint an equitable receiver, and, on April 28, 2017, entered an order doing just that: it granted in part and denied in part both parties’ requests for relief, and appointed a receiver to take exclusive power and control over all three business entities. Husband filed a timely notice of appeal.

While the appeal was pending, the parties filed a number of additional motions in this case and in 355—including motions to dissolve the receivership and to consolidate the two cases and a petition asking the court to hold Wife in contempt—and the court held another hearing on May 23, 2017. After argument, the court denied the motion to consolidate, but revised the scope of the receivership:

I’m not going to grant the motion to consolidate, but I am going to rule that the scope of the consent order does not, in fact, foreclose any ability for [Wife] to have access to funds from the corporations, and that if we’re proceeding in 355—well, and then with respect to any petition for contempt, I’m not making a ruling on that. I want to appoint a receiver initially for the limited purpose of determining the amount of funds in each party’s possession or that each party has access to. And they can make that determination within a week or two weeks. And then I can make a determination further at that point as to how to provide the parties with some relief with respect to what

they need for either attorneys’ fees or for personal, you know, expenses.

The court entered two written orders on June 1, 2017 memorializing these decisions, and neither party filed a separate notice of appeal.

## II. DISCUSSION

The single biggest challenge lies in determining which of the myriad conflicts between these parties is actually before us in this appeal. Tempting as it might be to attempt to resolve the parties’ disputes more broadly, this is only one of a series of lawsuits, probably the narrowest in substantive scope. And it comes to us on appeal from a post-judgment ruling in aid of enforcement: the substantive claims were resolved by consent, and the receivership at issue here arises from allegations that Wife serially violated the terms of that consent order. The complaint in this case contains no allegations, and seeks no relief, regarding the stock or governance of the business entities, and indeed none of them is even a party to this case. The fate of the companies and their owners will have to wait another day.

What we do have before us is the circuit court’s initial decision to impose an equitable receivership over the three business entities, and thus to give a neutral third party exclusive control over their finances and operations. We say “equitable receivership” not only because those are the words the court itself used, but also because courts have the inherent equitable authority to impose a receivership to preserve disputed property. *See Spivery-Jones v. Receivership Estate of Trans Healthcare, Inc.*, 438 Md. 330, 343 (2014) (citing *Tatelbaum v. Pantex Mfg. Corp.*, 204 Md. 360, 372 (1954)). Equitable receivers

“are generally appointed by a court only in extraordinary circumstances, including fraud or imminent loss of property,” *id.* (cleaned up), and Husband had in fact alleged that Wife was draining funds from the companies at a rate that would compromise their ability to remain viable financially. In the context of this particular lawsuit,<sup>2</sup> equitable receivership was the form of receivership potentially available to the court.

The problem with the receivership here lies not in whether the court had the authority to impose it, but rather with the parties subject to the receiver’s control and the record underlying the decision. The April 28, 2017 receivership order appointed the receiver and directed him to take exclusive control of three business entities, but none of those entities is a party to this case. The court heard argument about the parties’ respective withdrawals from the companies’ accounts, but didn’t make any findings about the (im)propriety of their actions, the impact on the companies, or whether the circumstances justified such an extraordinary remedy. Although the parties agree on little else, both Husband and Wife agreed at oral argument that the receivership should be vacated. That is the only decision before us for review, and on this record, we agree as well. We express no views on the downstream effects this decision likely will have on the broader litigation, in this case (especially regarding the June 1, 2017 order modifying the scope of the

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<sup>2</sup> Husband attempts to characterize the receivership here as arising from statute, *see* MD. CODE, ANN. CORPS. & ASS’N § 3-403, and that Wife’s request for a receivership triggered his rights to elect to purchase her shares. *See id.* § 4-603. But neither the complaint nor the post-judgment motions in this case alleged any violations or sought any relief under the corporate laws, so the parties’ respective rights to dissolution, buyback, or anything else—whatever those rights may be—were not decided in this case and are not before us.

receivership) and in others, or on the other disputes between these parties not before us here.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HARFORD COUNTY VACATED AND  
REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION. COSTS TO BE DIVIDED  
EVENLY.**