S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

YPSILANTI FIRE MARSHAL and CITY OF YPSILANTI,

Plaintiffs-Appellees,

v

DAVID KIRCHER,

Defendant-Appellant.

FOR PUBLICATION
November 2, 2006
9:00 a.m.

No. 260970
Washtenaw Circuit Court
LC No. 02-000434-CH

ROBERT C. BARNES,

Plaintiff-Appellee,

v

DAVID KIRCHER,

Defendant-Appellant,

and

PATRICIA H. BROWN,

Defendant.

No. 260971
Washtenaw Circuit Court
LC No. 03-001380-CH

YPSILANTI FIRE MARSHAL and CITY OF YPSILANTI,

Plaintiffs-Appellees,

and

BARNES & BARNES,

Plaintiff,

v

DAVID KIRCHER,

Defendant-Appellant.

No. 260972
Washtenaw Circuit Court
LC No. 01-000560-CH

ROBERT C. BARNES,

Plaintiff-Appellee,

v

DAVID KIRCHER,

Defendant-Appellant,

and

CITIZENS BANK,

Defendant.

No. 260973
Washtenaw Circuit Court
LC No. 03-001264-CH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J.

These consolidated appeals are yet another step in the protracted litigation between property owner David Kircher ("Kircher"), and the city of Ypsilanti, the Ypsilanti fire marshal, and former court-appointed receiver Robert C. Barnes (collectively "Ypsilanti"). In Docket Nos. 260970 & 260971, Kircher appeals as of right the trial court's judgment of foreclosure regarding his property located at 400-412 River Street (hereinafter the "Thompson Building").[1] In Docket

---

[1] In Docket Nos. 260970 & 260971, Kircher also purports to appeal as of right certain separate orders pertaining to the Thompson Building, entered in Washtenaw Circuit Court Case No. 02-000434-CH. The claim of appeal in Docket Nos. 260970 & 260971 identified only the February 4, 2005 judgment of foreclosure, entered in Washtenaw Circuit Court Case No. 03-001380-CH, as the final order being appealed. However, when a party claims an appeal from a final order, it may raise on appeal all issues related to other orders entered in the case. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Because Washtenaw Circuit Case Nos. 02-000434-CH and 03-001380-CH involved the same subject matter and common questions of fact, the cases could have been consolidated by the trial court. MCR 2.505(A)(2). Therefore, we will consider Kircher's claims concerning Washtenaw Circuit Case No. 02-000434-CH, even
(continued…)

Nos. 260972 & 260973, Kircher appeals as of right the trial court's separate judgment of foreclosure regarding his property located at 510 West Cross Street (hereinafter the "apartment building").[2] In Docket Nos. 260970 & 260971, we affirm in part, vacate in part, and remand for further proceedings. In Docket Nos. 260972 & 260973, we also affirm in part, vacate in part, and remand for further proceedings.

I. Basic Facts and Procedural History

A. The Thompson Building

These consolidated appeals have their genesis in a series of disputes between Kircher and Ypsilanti, which began in the late 1980s. Ypsilanti had previously filed Washtenaw Circuit Case Nos. 86-031555-CC and 94-002933-CZ to compel Kircher to make certain repairs and abate certain building and fire code violations at the Thompson Building. These prior actions resulted in entry of an agreed order between the parties on May 22, 1996, in which Ypsilanti's building supervisor was appointed receiver for the Thompson Building "for the purposes of bringing the exterior of the building into compliance with the building ordinances and the Historic District ordinance." The order dealt primarily with brickwork and façade repairs, roof repairs, and window and doorway repairs. The order provided that the Ypsilanti building supervisor "shall designate David Kircher as the contractor" to perform the specified repairs "so long as Mr. Kircher performs such duties in a timely fashion and according to" applicable Ypsilanti ordinances. In the event that Kircher failed to adhere to the order, the receiver was given the authority to replace him as contractor, as well as to take certain other actions to effectuate completion of the work. The order provided that all costs of repairs, replacements, and other work were to be paid by Kircher. The order specified that in the event Kircher failed to pay, "a lien shall be imposed upon the property which shall be collectible through property taxes."

At some point, it became apparent that Kircher had not complied with the May 22, 1996 order. A second agreed order was therefore entered by Washtenaw Circuit Judge Donald Shelton on July 14, 1997, directing Kircher to submit bids for the work listed in the prior agreed order, to submit applications for grants or other funding, and to "begin work on the building to complete the repairs and improvements listed in the May 22, 1996 order within 120 days." The

(…continued)

though no order from that case was specifically mentioned in the claim of appeal.

[2] In Docket Nos. 260972 & 260973, Kircher also purports to appeal as of right certain separate orders pertaining to the apartment building, entered in Washtenaw Circuit Court Case No. 01-000560-CH. The claim of appeal in Docket Nos. 260972 & 260973 identified only the February 4, 2005 judgment of foreclosure, entered in Washtenaw Circuit Court Case No. 03-001264-CH, as the final order being appealed. However, when a party claims an appeal from a final order, it may raise on appeal all issues related to other orders entered in the case. *Bonner*, *supra* at 472. Because Washtenaw Circuit Case Nos. 01-000560-CH and 03-001264-CH involved the same subject matter and common questions of fact, the cases could have been consolidated by the trial court. MCR 2.505(A)(2). Therefore, we will consider Kircher's claims concerning Washtenaw Circuit Case No. 01-000560-CH, even though no order from that case was specifically mentioned in the claim of appeal.

July 14, 1997 order was the final order entered in Washtenaw Circuit Case Nos. 86-031555-CC and 94-002933-CZ.

On April 10, 2002, Ypsilanti filed a complaint and commenced Washtenaw Circuit Case No. 02-000434-CH, alleging that the Thompson Building was in violation of the state fire prevention act and certain local building and fire codes. The complaint asserted that Kircher had failed to comply with the May 22, 1996 and July 14, 1997 orders, and sought an order to show cause why a new receiver should not be appointed to complete the work required by the prior orders. As this Court previously explained in *Ypsilanti Fire Marshal v Kircher*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2004 (Docket Nos. 242697 & 242857), slip op at 2,

> The trial court [then] entered an order to show cause why it should not order (1) that a receiver be appointed, (2) that a preliminary injunction and temporary restraining order be entered, and (3) that the receiver take care of the property with costs to [Kircher] and liens against the property. At the show cause hearing, . . . Jon Ichesco [the Ypsilanti fire marshal] testified that he procured a survey after receiving complaints about the building. He relied on an engineer's report that listed the repairs needed to make the building safe. Specifically, Ichesco discussed problems with the roof, the need for tuckpointing, and windowpanes falling into the street. [Kircher] offered only his own testimony about what he thought was required and what he did to repair the building. On cross-examination, [Kircher] asserted that it "would have been impossible" for him to complete the repairs listed in the July 14, 1997, order because he had not received the grant money referred to in a May 22, 1996, order.
>
> The trial court found:
>
> > [Kircher] has not complied with the [c]ourt's May [22], 1996 order, or the July 14, 1997 order. Furthermore, I'm going to specifically find that the building is in dangerous condition and is a nuisance.
>
> The trial court entered an order appointing Robert Barnes as receiver. The order further provided:
>
> > IT IS FURTHER ORDERED that the Receiver needs to make the building economically viable.

The trial court's order appointing Barnes as the receiver for the Thompson Building and authorizing Barnes to complete all necessary repairs was entered in Washtenaw Circuit Case No. 02-000434-CH on June 14, 2002. The order provided that the receiver was to maintain detailed records of the costs expended in repairing Kircher's property, that the receiver was to bill Kircher monthly for these costs, that Kircher was to pay all billed costs within 30 days, and that the receiver would have a lien on the property at the conclusion of the repairs for any costs Kircher had not paid. The order also provided that Kircher was to pay Ypsilanti's attorney fees incurred in conjunction with the enforcement and supervision of the order.

In Docket Nos. 242697 & 242857, Kircher appealed the trial court's June 14, 2002 order, asserting among other things that the trial court lacked jurisdiction to appoint a receiver and that the trial court's order allowed the receiver to undertake and charge defendant unlimited amounts of money for unspecified repairs. In an opinion issued April 27, 2004, this Court determined that the trial court did have jurisdiction to appoint the receiver pursuant to MCL 29.23. However, this Court agreed with Kircher that the order appointing the receiver was overbroad:

> By giving the receiver the authority to make the Thompson building "economically viable," the order allows the receiver to make repairs beyond removing the hazards of which plaintiffs originally complained. [Ypsilanti's] reliance on the fire code does not support [its] argument that the broad scope of the order is appropriate. The quoted portion of the fire code only addresses hazards that endanger human life. It does not address the "economic viability" of the building. Accordingly, we reverse that portion of the June 14, 2002, order providing "that the Receiver needs to make the building economically viable and functional."
>
> On remand, the trial court shall enter an order that more precisely defines the receiver's duties. The listed repairs shall be in keeping with the reasons that the receivership was sought, i.e., to repair the building so that it is no longer a hazard to human life, and also in keeping with the trial court's finding that:
>
> > [Kircher] has not complied with the [c]ourt's May [22], 1996 order, or the July 14, 1997 order. Furthermore, I'm going to specifically find that the building is in dangerous condition and is a nuisance.
>
> The trial court's order must also comply with the provisions of MCL 600.2926 which provides: "In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law." [*Ypsilanti Fire Marshal*, *supra*, slip op at 5-6.]

Kircher also argued that the that trial court awarded too much compensation to the receiver and that the trial court erred in awarding Ypsilanti its attorney fees. This Court rejected those arguments.

Despite this Court's determination that the trial court had jurisdiction to appoint the receiver, Kircher filed a subsequent unsuccessful motion to dismiss for lack of subject matter jurisdiction. On May 19, 2004, the receiver filed a motion for summary disposition relating to the recovery of the costs of repairs performed to date. Kircher then filed a cross-motion to terminate the receivership. The trial court took these motions under advisement, reserving its ruling until after the conclusion of an evidentiary hearing.

On July 22, 2004, the trial court held an evidentiary hearing to determine the reasonableness of the repairs to the Thompson Building. At the beginning of that hearing, the trial court expressed its opinion that the hearing would "satisfy" this Court's remand instructions. Counsel for the receiver agreed, but counsel for Kircher disagreed. Kircher's counsel noted that

this Court had directed the trial court on remand to enter an order more precisely defining the receiver's duties in accordance with the original purpose of the receivership—to repair the building so that it was no longer a hazard to human life—and to provide for payment of a bond. Counsel for Kircher continued:

> I respectfully submit, Your Honor, that we first ought to do what the Court [of Appeals] said. Specify what were the fire hazards that existed back in 2001 with specificity that justified the continuation of this action. Then we'd like to go in and see the property. Mr. Kircher has not been on that property for three years. We . . . aren't ready for an evidentiary hearing without ever seeing whether they actually did what they said they were going to do. So, I think we have to take this in steps. We have to do what the Court of Appeals first told us to do, then we have to have an opportunity to discover whether the fire hazards as listed in the revised order occurred. I think we also have to have evidence that Mr. Barnes [the receiver] has posted a bond. And, then we can, hopefully you'll let us in there to see the property. What's happened in the last three years. And we can then be prepared to respond intelligently to the revised order that's resulted from the remand.

The trial court heard testimony from the receiver's son, Robert M. Barnes (hereinafter "Barnes, Jr."), regarding the nature, extent, reason for, and cost for work performed on the Thompson Building. The court also heard from a licensed architect regarding her review of the building and her opinion concerning the reasonableness of certain repairs. Barnes, Jr. was cross-examined extensively by Kircher's counsel as to the purpose and nature of the repairs. Kircher then testified as to his opinion regarding the condition of the building and advised the court that the building had a working sprinkler system. He also offered a structural engineering report for the building. At the conclusion of the testimony, the trial court asked the parties to submit their closing arguments in writing.

On January 19, 2005, the trial court issued its opinion and order granting the receiver's motion for summary disposition and denying Kircher's counter-motion to terminate the receivership. The court noted that this Court had affirmed the prior order appointing the receiver, "with the exception of reversal as to the part which provided the receiver with the authority to make [the Thompson Building] 'economically viable.'" The trial court continued:

> The Court of Appeals in its [opinion] dated April 27, 2004, remanded the cases and directed this [c]ourt to define the receiver's duties as to the Thompson Building. The duties could only include the authority to make repairs in keeping with the reason the receivership was sought which was to repair the building so that it was (1) no longer a hazard to human life (2) in compliance with the May 22, 1996 order and all subsequent orders and (3) no longer a danger or nuisance.

The trial court then found that the receiver was entitled to summary disposition, noting that the receiver had been properly appointed, that repairs had been made, that Kircher had been provided with invoices and given the opportunity to pay, and that Kircher had failed to pay. The trial court found that

> all repairs were within the parameters of the ruling from the Court of Appeals. The testimony from the [r]eceiver was that repairs were made to remove any danger to human life, to correct code violations, to eliminate any nuisances and to bring the property into compliance with the May 22, 1996 order. There were no repairs solely made to make the building "economically viable." Furthermore, the [r]eceiver provided credible testimony as to the costs and the necessity of the repairs.

The trial court also allowed fees for engineering work performed in conjunction with the repairs, as well as a portion of architect fees incurred by the receiver. The trial court disallowed certain architect fees that were "incurred in creating a plan to make the building 'economically viable.'" The trial court entered a lien against the Thompson Building in the amount of $187,686.38.

Meanwhile, on December 11, 2003, Barnes had commenced Washtenaw Circuit Case No. 03-001380-CH by filing a complaint to foreclose the lien against the Thompson Building property. On February 4, 2005, the trial court entered a judgment of foreclosure, ordering the sheriff to sell the Thompson Building and to pay Barnes $187,686.38 from the proceeds of the sale.

On February 16, 2005, Ypsilanti and Barnes filed a joint motion for the appointment of a successor receiver, as Barnes wished to step down from his duties. Kircher opposed the appointment of a successor receiver, asserting that the trial court had never complied with this Court's remand instructions by entering an order more precisely defining the receiver's duties or by providing for a bond. Further, Kircher asserted that there was no showing that the grounds for the appointment of a receiver continued to exist. Kircher argued that there was no need for a successor receiver, and noted that further appeals were pending before this Court.[3]

The trial court held a hearing on the motion on March 16, 2005. At that hearing, Kircher reiterated his position that there were no grounds to justify the appointment of a successor receiver. Counsel for Kircher stated,

> Your Honor, three years ago, the city came to Your Honor, cited the Fire Prevention Code, and on the basis of convincing Your Honor that there was a hazardous condition there of—that was very grave, of a fire nature. You appointed a receiver. That's three years ago.
>
> That case was brought by the City of Ypsilanti. There was an appeal as you recall. Mr. Kircher didn't believe this was a case for receivership. He thought the legal remedies were adequate. And, Your Honor's order simply says, make the building economically viable.
>
> The Court of Appeals reversed on that issue and said, the [c]ourt has to specify what repairs are necessary. That still has never been done.

---

[3] Kircher filed his claims of appeal in the present consolidated cases on February 22, 2005.

> I am submitting, Your Honor, that if [Barnes] doesn't want to be the receiver anymore that's fine. But, there is no allegation that there's any kind of nuisance over there that's a menace to the people now.
>
> * * *
>
> [The city has] not described any conditions there that would even remotely justify the harsh and extraordinary remedy of receivership.
>
> I ask Your Honor—we don't care if Barnes quits. That's fine. But, we don't want a successor receiver appointed unless grounds are shown that brings this case within equity that would justify it. And we submit there are no grounds.
>
> Certainly they're not saying that imminent danger that existed three years ago still exists. There is no imminent danger. The legal remedies are adequate now.
>
> * * *
>
> Your Honor, the long and short of it is there is not one thing before Your Honor to show that today . . . [t]here is anything there that would justify the . . . invocation of the harsh and extraordinary remedy of receivership.

The trial court did not address these assertions, instead merely inquiring as to whether there were any objections to the particular party nominated by Ypsilanti as successor. Counsel for Kircher identified several objections. Without further comment, the trial court then concluded that it would appoint the nominated entity as successor receiver. The following exchange concluded the hearing:

> MR. WARD [Kircher's counsel]: Your Honor, the other thing is, may I remind you, on April 27, the Court [of Appeals] remanded with instructions that this Court more precisely define—
>
> THE COURT: I heard what you said about that. What you said is not true, but that's alright. You've made your point on the record, thank you.

The trial court entered an order appointing Stuart Beal as the successor receiver on March 21, 2005.

At the sheriff's sale of the Thompson Building, former receiver Barnes was the sole bidder. He purchased the Thompson Building for the amount of the lien.[4]

---

[4] As Kircher's counsel pointed out at oral argument before this Court, the amount of the lien had
(continued…)

On April 20, 2005, Kircher filed in this Court an original action seeking a writ of superintending control. Kircher alleged that the trial court had "repeatedly failed and refused to comply with the Court of Appeals' mandate and to enter the amendatory orders that [it] was directed to enter." Kircher further alleged:

> To make matters worse, after granting the [r]eceiver a judgment of foreclosure of lien . . . the [t]rial [c]ourt appointed a [s]uccessor [r]eceiver . . . without any showing by the City of Ypsilanti of present hazardous conditions within MCL 29.23 which would justify a successor receiver.

Kircher asserted that despite his objection to the appointment of the successor receiver, "the [t]rial [c]ourt simply refused to 'more precisely define the receiver's duties,' or to require a receiver's bond" as mandated by this Court's April 27, 2004 remand instructions in the prior appeal. Thus, Kircher asked this Court for a writ of superintending control to enforce the earlier remand instructions and direct Judge Shelton to (1) issue an order more precisely defining the receiver's duties in keeping with the reasons that the receivership was originally sought, and (2) provide for payment of a bond.

In response to Kircher's complaint for superintending control, Judge Shelton denied that he refused to comply with this Court's remand instructions, and asserted that his January 19, 2005 order complied fully with this Court's April 27, 2004 decision.

On June 3, 2005, this Court granted the complaint for superintending control and directed the parties to "proceed to a full hearing on the merits in the same manner as an appeal of right." Judge Shelton filed a response, indicating that he had "attempted to comply and felt that [he] had complied" with this Court's April 27, 2004 remand instructions, and that he would "follow any directives" from this Court in the future.

On July 12, 2005, the trial court finally entered two *nunc pro tunc* orders amending its prior orders to require the original receiver and successor receiver to each post bond in the amount of $500.

On March 9, 2006, this Court issued an opinion dismissing the writ of superintending control as improvidently granted. *In re Kircher*, unpublished opinion per curiam of the Court of Appeals, issued March 9, 2006 (Docket No. 262153). This Court noted that Kircher had filed appeals in Docket Nos. 260970 & 260971, which remained pending. In light of Kircher's alternate avenue of relief by way of the pending appeals in Docket Nos. 260970 & 260971, this Court concluded that the extraordinary remedy of superintending control was not justified.

B. The Apartment Building

(…continued)

increased substantially beyond $187,686.38 by the time of the sheriff's sale. Between the date of the filing of the claims of appeal and the date of the sheriff's sale, the trial court apparently amended the judgment of foreclosure to significantly increase the amount of the lien.

On May 14, 2001, Ypsilanti commenced Washtenaw Circuit Case No. 01-000560-CH by filing a complaint asserting that Kircher's apartment building at 510 West Cross Street was in violation of the state fire prevention act and certain local building and fire codes. Ypsilanti contended that the alleged violations rendered the apartment building unsafe and a nuisance. As this Court explained in *Ypsilanti Fire Marshal*, *supra*, slip op at 3-4,

> The trial court [then] entered an order to show cause why it should not order the property vacated and declared a nuisance and order [Kircher] to immediately comply with all applicable ordinances. It later entered another order providing:
>
> 1. That parties are to complete a list of repairs to be made to the property and that any dispute with regard to that list will be resolved at an evidentiary hearing scheduled for August 16, 2001 at 2:00 p.m.
>
> 2. The property is to be vacated immediately.
>
> 3. [Kircher] shall have 90 days from the date of the evidentiary hearing to effectuate all of the repairs.
>
> After the show cause hearing, the trial court entered an order that: "materials, equipment and devices" could not be reused unless approved by the fire marshal, that [Kircher] obtain permits and inspections as repairs are made, that the city can make surprise inspections, that a certificate of occupancy be obtained and that the parties would try to resolve as many items as possible. A "Table of Repairs" was attached identifying 224 repairs.[5]
>
> [Ypsilanti] filed a motion for immediate vacation of the premises and sought an order for contempt in which they argued that [Kircher] continued to occupy the building, had not yet obtained a certificate of occupancy and violated the court's previous orders. In response, the trial court entered an order to vacate the premises which also required a certificate of occupancy before further occupation and inspections.
>
> At a subsequent evidentiary hearing, [Ypsilanti's] attorney and [Kircher] simply spoke on the record. [Ypsilanti] asserted that the parties were attempting to resolve the issues, but would litigate anything that was not resolved. [Ypsilanti] also indicated on the record that the parties agreed that [Kircher] would make repairs subject to a determination of workmanship by Harry Hutchinson, head of the city's building department. [Kircher] did not object.

---

[5] The repairs identified in the "Table of Repairs" were based on alleged violations of city building and fire codes, rather than on alleged violations of the state fire prevention act.

> The trial court entered an order stating that [Kircher] had ten days to make repairs. It further provided that city officials could inspect the building twenty-one days from entry of the order and that workmanship would be determined by Hutchinson. Code violations were to be presented to the court for review. On November 27, 2001, the parties stipulated to entry of an order providing that several repairs "shall be undertaken immediately to bring this property into compliance."
>
> At another show cause hearing, [Ypsilanti's] counsel argued that because [Kircher] failed to comply with the trial court's previous orders, a receiver should be appointed to effect the repairs. [Kircher] asserted that some of the repairs were made and [then] discussed the particulars of his interaction with [Ypsilanti]. [Kircher] indicated that he made all the repairs ordered, but that [Ypsilanti had] not given him a certificate of occupancy. The trial court withheld its decision on [Ypsilanti's] motion to appoint a receiver until after an evidentiary hearing.
>
> At that hearing, Hutchinson testified that the November 9, 2001, order indicated that all determinations of workmanship shall be made by him. Since the order was entered, Hutchinson had been to the property and was not pleased with the workmanship of the repairs. Ichesco [the Ypsilanti fire marshal] testified about the repairs that were listed in the complaint and subsequent orders. In particular, he testified that the condition of the chimney posed threats of collapse and carbon monoxide poisoning. [Kircher] testified about the repairs that he made and discussed his occupancy problems. The trial court entered an order giving the city the exclusive responsibility and right to make the repairs listed in the order.

The order was entered by Judge Shelton in Washtenaw Circuit Case No. 01-000560-CH on June 14, 2002. It authorized Ypsilanti to complete five particular repairs of the apartment building. The order directed Ypsilanti to complete specific, enumerated repairs to the garage, the roof, the second floor deck, the stairwell between apartment number three and apartment number four, and the building's chimney. Ypsilanti was given the authority to employ Barnes or any other contractor to complete the enumerated repairs and to "bring this property into compliance." The order provided that all costs were to be paid by Kircher. The order directed Ypsilanti or its contractors to send Kircher regular invoices for the expense of all repairs, and specified that in the event Kircher failed to pay, Ypsilanti would have a lien on the apartment building, which would be subject to foreclosure. The order also provided that Kircher would be liable for any necessary attorney fees and costs incurred by Ypsilanti or its contractors.[6]

On November 21, 2002, Ypsilanti contracted with Barnes and his company, Barnes & Barnes, to perform the repairs to the apartment building as required by the trial court's June 14,

---

[6] Kircher filed a claim of appeal of the June 14, 2002 order in this Court on July 22, 2002.

2002 order. As Ypsilanti's exclusive contractor,[7] Barnes completed work at the apartment building and submitted invoices totaling $54,376.74. Following an evidentiary hearing held on April 2, 2003, the trial court entered an April 8, 2003 order directing Kircher to pay $54,376.74 within 30 days. The order provided that if Kircher paid the full amount, Ypsilanti's right to occupy and repair the apartment building would be terminated and the building would be fully returned to Kircher. The order provided that if Kircher failed to pay the amount due within 30 days, Ypsilanti would remain in possession of the apartment building and would be authorized to expend money to make further repairs necessary to bring the building into compliance with local building and fire ordinances. Finally, the order barred Kircher from being physically present at the apartment building "without the City Building Inspector and a representative of [Ypsilanti's] agent, Robert C. Barnes, being present also."[8]

Kircher did not pay the $54,376.74 due under the trial court's April 8, 2003 order. On November 14, 2003, Barnes commenced Washtenaw Circuit Case No. 03-001264-CH, by filing a complaint to foreclose the lien against the apartment building. Barnes asserted that the $54,376.74 due under the April 8, 2003 order had not been paid, and that interest was accruing at a rate of seven percent. Barnes also contended that several additional repairs had been performed at the apartment building since April 8, 2003, and that the total amount due was now therefore $95,559.50. Barnes submitted an affidavit, in which he averred that $95,559.50 worth of repairs had been performed at the apartment building, that Kircher had been sent timely invoices in this amount, and that this amount had not been paid. Kircher answered the complaint for foreclosure and filed a counterclaim, asserting that he had been damaged by the allegedly wrongful dispossession of his apartment building.

On December 17, 2003, Ypsilanti and Barnes filed a "Joint Motion for specific repairs and/or renovations" in Washtenaw Circuit Case No. 01-000560-CH. Ypsilanti and Barnes asserted in the motion that Kircher had never paid the amount due under the trial court's April 8, 2003 order. Accordingly, Ypsilanti and Barnes sought permission to remain in possession of the apartment building and to perform additional renovations to bring the building into compliance with Ypsilanti fire and building codes. Specifically, Ypsilanti and Barnes asserted that although the building was configured as a five-unit apartment complex, they should be permitted to completely "reconfigure the property into a . . . unit for use by a fraternity or sorority."

On February 11, 2004, the trial court held a hearing on the motion. Counsel for Barnes & Barnes stated that Barnes had demolished the interior of the apartment building and had discovered "hundreds" of defects that were in need of repair in order to bring the building into compliance with Ypsilanti city codes. Counsel continued:

---

[7] Although Barnes was not appointed receiver of the apartment building, as he had been with respect to the Thompson Building, Kircher argues that Barnes acted as a "de facto receiver" of the apartment building under the contract with Ypsilanti.

[8] Kircher filed a claim of appeal of the April 8, 2003 order in this Court on May 12, 2003. This claim of appeal was dismissed by this Court because the April 8, 2003 order was "a postjudgment order that is not appealable as a matter of right."

> [Barnes & Barnes] would like to convert it to a fraternity house. There's a demand for that and they've been approached for it.
>
> Paragraph five of your [April 8, 2003] order basically says that [Barnes & Barnes] can bring the building up to code and make commercially reasonable arrangements to rent the premises.
>
> We probably can do it without your permission, but we would like to err on the side of caution here and ask the [c]ourt to—to allow us to make this—this renovation.

Counsel for Ypsilanti concurred with Barnes, and joined in the request to reconfigure the apartment building as a fraternity or sorority house.

Kircher's attorney noted that Ypsilanti and Barnes had already spent more money than the originally approved amount of $54,376.74, and seemed to wonder whether the trial court was intending to allow them to expend an unlimited amount of money on the apartment building. The following exchange then occurred:

> MR. WARD [Kircher's counsel]: Well, Your Honor, all I'm saying is you gave them a lien [in the amount of $54,376.74]. If they needed to get the [$54,376.74], why didn't they foreclose their lien when it was at [$54,376.74?]
>
> * * *
>
> THE COURT: Why didn't Mr. Kircher—if it's so valuable, pay the 54 to get his property back?
>
> MR. WARD [Kircher's counsel]: —well, Your Honor, all I'm saying—at that point he wasn't able to see the property, and two wrongs don't make a right.

Kircher further explained that he had been unable to obtain financing in the amount of $54,376.74 at the time.

The trial court then commented from the bench, all the while referring to Barnes as "the receiver," despite the fact that no receivership order had ever been entered regarding the apartment building:

> What's being asked for today is to convert the property in to something that is, in the view of the receiver and probably in the view of the city, economically feasible. But, that's not the function of the [c]ourt. It isn't the function of the [c]ourt to make property in to something that's economically feasible for one purpose or another. That's the function of the owner of the property, whoever that turns out—whoever that turns out to be.
>
> They—it may be a good idea to make this in to a fraternity/sorority house, but that's not my role here, to decide whether it's a good idea or a bad idea, or whether that's the—the best approach from an economic viewpoint. It's not the

> [c]ourt's role to authorize or make—to authorize that sort of reconfiguration or make that sort of decision.
>
> I think what has to happen here is that we now need to proceed to collect the funds that have been expended to repair this building. We've been unable to collect them because Mr. Kircher's been unwilling to pay them, and so now we are in a—in an action where the property will be foreclosed upon, it will be sold if that action prevails. And, then the highest bidder can then decide whether they want a fraternity house or a warehouse or whatever fits with code and whatever that owner decides is economically feasible for the property. That's not what I'm charged with here.
>
> This was an action in part, at least, to abate a nuisance, and that's as far as the [c]ourt is going to extend its authority at this point.
>
> I'm going to deny the motion to reconfigure as presently stated . . . . And, we will proceed with all dispatch on the—on the foreclosure action.

On February 23, 2004, the trial court entered an order effectuating its ruling from the bench and denying the motion to reconfigure the apartment building into a fraternity or sorority house.

On March 31, 2004, Barnes filed a motion for summary disposition in the foreclosure action, seeking the trial court's determination of the current amount of the lien. He contended that Kircher had failed to pay the $54,376.74 due under the April 8, 2003 order, and that Kircher had also failed to pay for any of the repairs or renovations that had been performed since that time. Barnes also asserted that Kircher's counterclaim was insufficient to state a claim on which relief could be granted because Kircher had set forth no facts in support of the claim. Moreover, Barnes argued that he was entitled to governmental immunity on Kircher's counterclaim because he had been acting at all relevant times as an agent of the city of Ypsilanti. Barnes requested that the trial court determine the current amount owed by Kircher and enter a lien in that amount against the apartment building.

On April 14, 2004, Kircher answered Barnes' motion and filed a counter-motion for summary disposition on his counterclaim. Kircher contended that it was beyond dispute that he had been injured by Ypsilanti's and Barnes' actions. Kircher asserted that Barnes had exceeded his authority as Ypsilanti's contractor, and had "gutted" the entire inside of the apartment building. Moreover, Kircher asserted that he did not owe the amounts claimed by Barnes—particularly those costs incurred after the April 8, 2003 trial court order.

On May 6, 2004, the trial court entered an order granting summary disposition for Barnes pursuant to MCR 2.116(C)(10), and dismissing Kircher's counterclaim pursuant to, *inter alia*, MCR 2.116(C)(8). The court found that there was no question of fact that Kircher owed money to Barnes for necessary repairs to the apartment building. The court indicated that it would determine the exact amount at a later time.

Meanwhile, In Docket Nos. 242697 & 242857, Kircher had appealed the trial court's June 14, 2002 order entered in Washtenaw Circuit Case No. 01-000560-CH. Kircher argued, as he did with respect to the order entered in Washtenaw Circuit Case No. 02-000434-CH, that the

order was overbroad and conferred on Ypsilanti unlimited authority to make repairs and incur expenses. In the April 27, 2004 opinion, this Court disagreed with Kircher, finding that the June 14, 2002 order concerning the apartment building was narrower in scope than the June 14, 2002 order affecting the Thompson Building:

> Defendant also argues, as he did [with respect to the Thompson Building], that the order does not put sufficient restraints on the city. But the order appealed in this case is significantly different from that in the case [of the Thompson Building]. First, in this case, neither Barnes nor the city was appointed receiver. Instead, the trial court granted the city the exclusive right to repair the building and fire code violations. The order merely permits the city to employ Barnes or other entities to accomplish this task. Additionally, the order is more specific with respect to the repairs to be completed. It lists the repairs that "shall be undertaken by the Plaintiff to bring this property into compliance." Accordingly, the trial court imposed sufficient restraints on the city. [*Ypsilanti Fire Marshal*, *supra*, slip op at 8.]

However, as in the case of the Thompson Building, this Court determined that the trial court's June 14, 2002 order did not sufficiently provide for proper judicial oversight and pre-approval of the expenses incurred in abating fire prevention act and municipal code violations at the apartment building:

> However, as [in the case of the Thompson Building], the order does not provide for the trial court's approval of the amount charged to [Kircher] for the repairs. In light of the harsh consequences of [Kircher's] failure to pay, the order must provide that charges to [Kircher] shall be reviewed by the trial court to determine whether they are appropriate and reasonable before [Kircher] is required to pay. [*Id*.]

On December 10, 2004 and December 13, 2004, the trial court held an evidentiary hearing for the purpose of determining the current amount owed by Kircher for repairs to the apartment building. Barnes, Jr. testified that Barnes & Barnes had initially received directions to proceed only with the five specific repairs listed in the trial court's June 14, 2002 order. He testified that Barnes & Barnes completed the five specific repairs and submitted invoices to Kircher, but that Kircher never paid. Barnes, Jr. testified that after these five initial repairs, Barnes & Barnes determined that additional repairs were necessary, moved forward with these additional repairs, and continued billing Kircher for the additional repair costs. Whereas the original five repairs had been related to the abatement of alleged fire prevention act violations, Barnes, Jr. indicated that the additional repairs were completed to bring the apartment building into compliance with Ypsilanti city ordinances and to make the building economically viable. He indicated that although the trial court had denied the request to convert the property into a fraternity or sorority house, the additional work done by Barnes & Barnes was intended to facilitate modification of the property into a fraternity or sorority house in the future in the event that Barnes ultimately received ownership of the building. He also testified that Barnes & Barnes had never asked the trial court for permission to go beyond the five specific repairs listed in the trial court's June 14, 2002 order, merely deciding on its own that these additional modifications and repairs were necessary. Barnes, Jr. admitted that Barnes & Barnes never approached the trial court or Kircher regarding any of the modifications that were made above

and beyond those listed in the June 14, 2002 order, and conceded that Kircher had never received an opportunity to contest or object to any of these additional repairs and modifications.

A licensed architect testified that she believed all repairs and modifications to the apartment building had been reasonable and appropriate.

Kircher testified that following the initial five repairs listed in the trial court's June 14, 2002 order, he had not been able to arrange for financing to pay the $54,000 owed to Barnes & Barnes. Kircher also testified that he believed the original five repairs could have been performed at a lower cost by another contractor. Kircher informed the court that approximately one month after Judge Shelton had denied Barnes' request to reconfigure the building into a fraternity or sorority house, Barnes had sought from Ypsilanti a special use permit to allow conversion of the apartment building into a fraternity or sorority house.

The trial court entered its final order in Washtenaw Circuit Case No. 01-000560-CH on January 19, 2005. The court determined that its original June 14, 2002 order had included not only the authority to make the five listed repairs pursuant to the fire prevention act, but also the authority to abate violations of Ypsilanti's local building and fire codes. The trial court found that $54,376.74 had come due on April 8, 2003 for the original five listed repairs, and that $163,926.58 had been properly expended since that date. The trial court found that all of these costs were necessary and reasonable, and that Kircher therefore owed $218,303.32.

On February 4, 2005, the trial court entered a judgment of foreclosure in Washtenaw Circuit Case No. 03-001264-CH. The trial court found that a lien had attached to the apartment building in the amount of $218,303.32, and ordered the property sold.

A sheriff's sale was held on April 28, 2005, and Barnes purchased the apartment building for $244,535.09. Kircher objected to the judgment of foreclosure and sheriff's sale on the ground that statutorily prescribed procedures were allegedly not followed. Nonetheless, on July 6, 2005, the trial court entered an order confirming the sale to Barnes and finding that the sheriff's sale of the apartment building had been "regular in all respects."

II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Questions of statutory interpretation are likewise reviewed de novo. *Ayar v Foodland Distributors*, 472 Mich 713, 715-716; 698 NW2d 875 (2005). Clear and unambiguous statutory language is given its plain meaning and is enforced as written. *Id*. at 716.

Whether the law of the case doctrine applies is a question of law, which we review de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). The law of the case doctrine provides that, when an appellate court has made a ruling on a legal question and remanded the case for further proceedings, the legal question thus determined will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same. *In re Cummin (After Remand)*, 267 Mich App 700, 704; 706 NW2d 34 (2005), rev'd in part on other grounds 474 Mich 1117 (2006). The law of the case applies "only to issues

actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

Foreclosure actions are equitable in nature. *Mitchell v Dahlberg*, 215 Mich App 718, 726; 547 NW2d 74 (1996). We review de novo a trial court's equitable decisions. *Id*. at 727. However, we review the findings of fact supporting those decisions for clear error. *Id*.

We review for an abuse of discretion the trial court's decision to appoint a receiver. *McBride v Wayne Circuit Judge*, 250 Mich 1, 4; 229 NW 493 (1930); *Band v Livonia Associates*, 176 Mich App 95, 104; 439 NW2d 285 (1989); *Wayne Co Jail Inmates v Wayne Co Chief Executive Officer*, 178 Mich App 634, 658-659; 444 NW2d 549 (1989). "The appointment of a receiver may be appropriate when other approaches have failed to bring about compliance with the court's orders." *Band*, *supra* at 105. We similarly review for an abuse of discretion a trial court's decision to discharge a receiver and to terminate the receivership. *Singer v Goff*, 334 Mich 163, 167; 54 NW2d 290 (1952).

III. Docket Nos. 260970 & 260971—The Thompson Building

A. The Trial Court's Jurisdiction

Kircher first argues that Ypsilanti was not entitled to maintain this nuisance-abatement action with respect to the Thompson Building because the necessary preconditions for commencing such an action under the fire prevention act were never properly established. We disagree.

Ypsilanti filed its complaint in an attempt to abate and repair alleged unsafe and dangerous conditions at the Thompson Building. The complaint sought nuisance abatement under two separate and distinct theories. First, the complaint sought to abate certain alleged fire hazards pursuant to Michigan's fire prevention act, MCL 29.1 *et seq*. The complaint also sought to abate certain alleged nuisances as violations of Ypsilanti's municipal building and fire codes.[9]

Kircher now contends that the trial court lacked jurisdiction to entertain this nuisance abatement action because "the necessary conditions precedent to invoking the jurisdiction of the circuit court in an action under MCL 29.23" were not met. Specifically, Kircher argues that while the fire prevention requires that nuisance abatement actions be commenced by the *state* fire marshal, the official who initiated the present action was merely a *local* fire marshal.

We previously determined in *Ypsilanti Fire Marshal*, *supra*, that the trial court had jurisdiction to entertain this nuisance-abatement action under the fire prevention act. Therefore,

---

[9] We admit that our prior decision in *Ypsilanti Fire Marshal*, *supra*, may have led to some confusion in this regard. In that decision, we discussed only Kircher's alleged violations of the fire prevention act, and did not address the alleged violations of municipal building and fire codes. Nonetheless, it is clear from the record that Ypsilanti's original complaint was based on both alleged statutory violations and alleged municipal ordinance violations.

Kircher's instant argument is arguably barred by the law of the case doctrine. However, because our opinion in *Ypsilanti Fire Marshal* did not specifically address the particular argument raised here, we will briefly address the merits of Kircher's instant claim.

We agree with Kircher that the fire prevention act must be strictly construed and administered with caution. *Comm'r of State Police v Anderson*, 344 Mich 90, 95; 73 NW2d 280 (1955). We further agree that the enforcement provisions of the fire prevention act may not be invoked unless and until the act's jurisdictional preconditions are satisfied. See *Attorney General v Ankersen*, 148 Mich App 524, 550; 385 NW2d 658 (1986). Therefore, before a nuisance may be abated by way of proceedings under the fire prevention act, the court must first determine that there is in fact a fire hazard that requires abatement, repair, or removal. *Id*.

However, we cannot agree with Kircher's argument that no one other than the state fire marshal himself or herself may ever commence an action under MCL 29.23, which provides in pertinent part:

> The existence of a fire hazard, of any nature, origin, or cause, is a nuisance and the nuisance may be abated, removed, corrected, and its continuance enjoined in the manner provided by law for the abatement of nuisances. If the *state fire marshal* determines that a fire hazard is imminently dangerous or menacing to human life and the public safety requires its immediate abatement, removal, correction, or discontinuance, the *state fire marshal* may bring, or cause to be brought, in the circuit court of the county in which the fire hazard is located, an action to abate, remove, correct, or discontinue the fire hazard. [Emphasis added.]

Because the instant nuisance abatement action was brought by the Ypsilanti fire marshal rather than by the *state* fire marshal, Kircher contends the circuit court was without jurisdiction to consider it.

Kircher's argument is belied by the plain text of the fire prevention act itself. The act clearly provides that the state fire marshal and the bureau of fire services "may delegate to 1 or more individuals employed as full-time fire inspectors by the organized fire department and certified under subsection (2) the authority to enforce 1 or more of the fire safety rules promulgated under this act." MCL 29.2b(1). Ypsilanti fire marshal Jon Ichesco averred, in his affidavit which was presented to the trial court, that he contacted the state fire marshal's office before commencing this action in an effort to obtain authority to proceed against Kircher under MCL 29.2b. While the state fire marshal's office did not delegate absolute authority to Ichesco for all purposes, Ichesco averred that the office did specifically authorize him to "carry out . . . enforcement activities pursuant to MCL 29.2b," and to perform "all other inspections not done by the State Fire Marshal's office." Moreover, the lower court record also contains documentation, signed by the director of the Michigan Office of Fire Safety, certifying Ichesco as a "State Certified Fire Inspector."

Kircher has at no time offered evidence to contradict the contents of Ichesco's affidavit or the other documentary evidence pertaining to this matter. Nor has Kircher ever suggested that Ichesco was not authorized under MCL 29.2b to perform the delegated functions of the state fire marshal. Indeed, Kircher does not even mention on appeal the existence of MCL 29.2b, merely

asserting that because Ichesco was not the "state fire marshal," he was not authorized to commence this action.

In light of the unrefuted documentary evidence, we conclude that Ichesco—the duly authorized Ypsilanti fire marshal with the delegated authority to "carry out . . . enforcement activities pursuant to MCL 29.2b"—was entitled to commence this nuisance-abatement action pursuant to the fire prevention act. Kircher's argument that Ichesco's status as a municipal fire official deprived the circuit court of jurisdiction over this action is without merit. The Ypsilanti fire marshal was entitled to bring this action pursuant to MCL 29.23 on the basis of alleged fire prevention act violations at the Thompson Building.[10]

B. Appointment of Receiver

Kircher next argues that the trial court's original order appointing the receiver for the Thompson Building was deficient for several reasons.

First, Kircher contends that the order appointing the receiver was an improper delegation of the trial court's judicial authority to the city of Ypsilanti. We agree, but find that this error was harmless.

We determined in *Ypsilanti Fire Marshal*, *supra*, that the trial court had the jurisdiction to appoint a receiver for the Thompson Building pursuant to MCL 600.2926. That statute provides that "[c]ircuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law." MCL 600.2926. A court-appointed receiver is a ministerial officer of the court, charged with the task of preserving property and assets during ongoing litigation. *Cohen v Bologna*, 52 Mich App 149, 151; 216 NW2d 586

---

[10] We hold that Ypsilanti was alternatively entitled to bring this action on the basis of Kircher's alleged violations of municipal building and fire ordinances. Home rule cities have broad power to act on behalf of municipal concerns. *Rental Property Owners Ass'n of Kent County v Grand Rapids*, 455 Mich 246, 270; 566 NW2d 514 (1997). Cities may proceed in the circuit court, under properly enacted ordinances, to abate and remove nuisances. *Saginaw v Budd*, 381 Mich 173, 178; 160 NW2d 906 (1968). The Legislature has conferred on the circuit courts broad equitable jurisdiction over nuisance-abatement proceedings, irrespective of the nature and extent of the particular alleged nuisance. MCL 600.2940(1). See also 58 Am Jur 2d, Nuisances, § 338, p 788 (a court sitting in equity "will take jurisdiction when a violation or threatened violation of [a municipal] ordinance amounts to a nuisance, not because the act is in violation of the ordinance, but because it is a nuisance"). However, we note that it is unclear from the record exactly which municipal ordinances Ypsilanti relied on in commencing this action. After searching the record, we are unable to locate the text of any provisions of the Ypsilanti building and fire codes, and we are disinclined to speculate concerning the substance of ordinances which have not been provided on appeal. On remand, it will be necessary for the trial court to specifically identify the municipal ordinances relied on in this matter, and to determine whether Kircher in fact violated those particular ordinances. The trial court must make such findings before moving forward to determine whether the costs of bringing the Thompson Building into compliance with these municipal building and fire ordinances were properly charged to Kircher.

(1974). It is well settled that a receiver's possession of assets and property is tantamount to possession by the court itself. *Chronowski v Park Sproat Corp*, 306 Mich 676, 685; 11 NW2d 286 (1943). A receiver is not appointed as the agent of or for the benefit of one party or the other; rather he or she is appointed to protect and benefit both parties equally. *First Nat'l Bank v E T Barnum Wire & Iron Works*, 60 Mich 487, 499; 27 NW 657 (1886). Thus, as an officer of the court, a receiver should remain unbiased and impartial. *Id*. The position of receiver requires "exercise of [the] soundest judgment, and always the strictest impartiality[.]" *Id*.

In light of the forgoing authority, we conclude that the circuit court may not delegate the power to appoint a receiver to a private party. The power to appoint a receiver belongs exclusively to the circuit court. Therefore, to the extent that the trial court in this matter delegated to Ypsilanti the power to nominate, retain, and supervise a receiver of its own choosing, it acted improperly and exceeded its authority.

However, because Judge Shelton ratified Ypsilanti's nomination of the original receiver and the successor receiver by way of court order, we are convinced that any improper delegation of circuit court authority to Ypsilanti was cured by the trial court's subsequent orders. Accordingly, we conclude that any error in this respect was not decisive to the outcome, and we will not reverse on the basis of harmless error. *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005); see also MCR 2.613(A).

Next, Kircher contends that the trial court orders appointing the receiver and successor receiver should be set aside because the orders do not provide for the payment of a receiver's bond. We disagree.

The trial court's order appointing the original receiver did not provide for the payment of a receiver's bond. As we observed in *Ypsilanti Fire Marshal*, *supra*, MCL 600.2926 provides that "[i]n all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law." Therefore, we remanded with instructions that the trial court enter an order requiring the receiver to post a receiver's bond consistent with MCL 600.2926.

On remand, Judge Shelton did not immediately follow this Court's remand instructions. Further, at the time the initial receiver was replaced with a successor receiver, Judge Shelton again failed to provide for the posting of a receiver's bond. In fact, the trial court delayed its compliance with our explicit remand instruction for more than one year.

However, the trial court eventually complied, entering orders on July 12, 2005, which required both the original receiver and the successor receiver to post receiver's bonds consistent with the mandate of this Court and MCL 600.2926. Thus, we perceive no lasting error in this regard, and Kircher is entitled to no relief on this issue.

Kircher also contends that the trial court's receivership order constituted an abuse of discretion because the creation of a receivership is an extraordinary equitable remedy, and there existed "adequate legal remedies" in this matter. It is true that receivership is a remedy of last resort, and should not be used where another less drastic remedy exists. *Hofmeister v Randall*, 124 Mich App 443, 446; 335 NW2d 65 (1983). Because appointment of a receiver is an extraordinary remedy, a receiver will not be appointed when there exists an adequate remedy at

law. *White v Fulton*, 260 Mich 346, 347; 244 NW 498 (1932). However, Kircher does not sufficiently brief this issue by explaining precisely what "adequate legal remedies" were available in this matter. Nor does he provide citation to proper controlling legal authority. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, . . . nor may he give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). In light of Kircher's failure to properly brief the merits of his argument, we consider this issue abandoned on appeal. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Lastly, Kircher contends that the trial court's receivership order constituted an abuse of discretion because it failed to provide for proper judicial supervision and oversight of the receiver's activities and expenditures. We agree.

Kircher raised a similar argument in his previous appeal, asserting that the trial court's initial receivership order, as written and implemented, granted the receiver nearly unfettered authority to make repairs and renovations to the Thompson Building, and nearly unchecked power to charge Kircher for any such work. We agreed, and expressly directed the trial court on remand to narrow the scope of the receiver's powers and authority. As we stated in *Ypsilanti Fire Marshal*, *supra*, slip op at 5-6,

> By giving the receiver the authority to make the Thompson building "economically viable," the order allows the receiver to make repairs beyond removing the hazards of which plaintiffs originally complained. [Ypsilanti's] reliance on the fire code does not support [its] argument that the broad scope of the order is appropriate. The quoted portion of the fire code only addresses hazards that endanger human life. It does not address the "economic viability" of the building. Accordingly, we reverse that portion of the June 14, 2002, order providing "that the Receiver needs to make the building economically viable and functional."
>
> On remand, the trial court shall enter an order that more precisely defines the receiver's duties. The listed repairs shall be in keeping with the reasons that the receivership was sought, i.e., to repair the building so that it is no longer a hazard to human life, and also in keeping with the trial court's finding that:
>
> > [Kircher] has not complied with the [c]ourt's May [22], 1996 order, or the July 14, 1997 order. Furthermore, I'm going to specifically find that the building is in dangerous condition and is a nuisance.
>
> The trial court's order must also comply with the provisions of MCL 600.2926 which provides: "In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law."

Nonetheless, to date the trial court has never amended its original order or issued a new order to limit or otherwise narrow the scope of the receiver's authority. To make matters worse,

the trial court entered an order replacing the original receiver with a successor receiver on March 21, 2005—nearly eleven months after we issued our remand instructions in *Ypsilanti Fire Marshal*. The order appointing the successor receiver made no mention of this Court's remand instructions, and in no way limited the authority or power of the successor receiver as required by this Court's directive. Instead, the trial court left unchanged the framework under which the original receiver had operated, allowing the successor receiver to merely continue in the shoes of the original receiver and to carry on virtually unlimited repairs and renovations to the Thompson Building without first seeking judicial permission or approval.

"'It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court.'" *K & K Construction, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005), quoting *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Despite this Court's explicit instructions, the trial court permitted the receiver—and then the successor receiver—to continue unchecked and unsupervised, running up substantial costs and only seeking approval long after the charges were already incurred. Indeed, much of the confusion in these consolidated cases stems from the trial court's failure to comply with our April 27, 2004 remand instructions. Our instructions were not intended as meaningless directives with no design, purpose, or reason. Instead, they were meant to bring the trial court's existing orders into compliance with established legal rules and to effect the organized and systematic progress of this complex litigation.

Because the remand instructions were not followed, and the trial court did not approve the costs of repairs and renovations before they were incurred, Kircher necessarily received no opportunity to contest the individual costs incurred by Barnes or to offer evidence in response to the individual proposed projects at the Thompson Building. We recognize that Judge Shelton held after-the-fact evidentiary hearings in an attempt to comply with our remand instructions, and that after these hearings he ultimately approved virtually all of the incurred costs.[11] However, we cannot determine whether Judge Shelton's findings were clearly erroneous because we are not sufficiently presented with competing evidence, which surely would have been offered by the parties had this matter proceeded as directed under our April 27, 2004 opinion. The trial court's after-the-fact approval of the numerous expenses incurred in this matter does not afford us the opportunity for meaningful review that would have followed from an organized cost-by-cost determination in the court below. Moreover, we cannot omit mention of the real possibility that by reserving review of all expenses until after the repairs and renovations were already completed, Judge Shelton in effect preordained his decision to allow or disallow each individual expenditure. It is much less subjective to evaluate the propriety of proposed repairs before they are begun than after the work is finished and the costs are already incurred.

---

[11] We express no opinion as to whether any individual expense was or was not appropriate. Indeed, all costs may have been proper. However, we simply do not have sufficient record evidence from which to assess Judge Shelton's findings with respect to each individual cost.

Further, even assuming that all expenditures were properly made to abate nuisances at the Thompson Building, the trial court did not specifically separate the expenses incurred to abate violations of the fire prevention act from those incurred to abate violations of Ypsilanti city ordinances. Because we do not know whether the costs were incurred to abate fire prevention act violations, city code violations, or both, we necessarily have no basis from which to discern whether any individual cost fell within the parameters of our April 27, 2004 remand instructions.

After reviewing the extensive record in these consolidated cases, we are forced to conclude that the trial court abused its discretion in failing to more precisely define the receiver's duties and in failing to provide for proper judicial oversight and control of the receiver's expenditures. Specifically, the trial court acted improperly by continuing to allow the receiver to incur costs with respect to the Thompson Building without first approving the proposed expenses or separating the proposed repairs into those required to abate fire prevention act violations and those required to abate local ordinance violations.

On remand, the trial court shall separate the individual costs incurred to abate violations of the fire prevention act from the individual costs incurred to abate all other nuisances under the Ypsilanti building and fire codes. With respect to the latter category of expenses—those incurred to abate alleged violations of local ordinances—the trial court shall identify the specific Ypsilanti ordinance under which each repair and expense was authorized.

C. Lien and Foreclosure

Kircher claims several errors with respect to the trial court's calculation of the lien amount, the trial court's foreclosure of the lien, and the trial court's order directing that the property be sold.[12] As an initial matter, we will not set aside a foreclosure sale in the absence of fraud, accident, mistake, or significant irregularities. *Mitchell*, *supra* at 724-725; see also *Senters v Ottawa Savings Bank*, 443 Mich 45, 55-56; 503 NW2d 639 (1993); *Macklem v Warren Construction Co*, 343 Mich 334, 339; 72 NW2d 60 (1955). Thus, even if Kircher were correct in asserting that improper and unnecessary expenses were included in the lien, we would be disinclined to set aside the sheriff's sale.

Kircher argues that the lien against the Thompson Building was too high and should have been calculated at a lower amount. Kircher also contends that the period of redemption following the sheriff's sale should have been one year, rather than six months as the trial court ordered. We agree that the lien should have included only the costs necessarily incurred under the fire prevention act. However, we find that Barnes is entitled to recover those costs necessarily incurred under municipal building and fire codes via an alternative method.

The trial court's failure to comply with our April 27, 2004 remand instructions makes complete appellate review in this matter nearly impossible. We are unable to meaningfully determine on appeal which costs should have been included in the original lien amount because

---

[12] We reject Kircher's argument that the foreclosure action was not properly commenced and was filed prematurely.

the trial court never engaged in a searching cost-by-cost analysis to determine which expenses were necessary to properly abate nuisances and which expenses were not. As noted above, virtually all individual repairs completed by the receiver were approved after-the-fact, and Kircher received essentially no opportunity to contest any of the costs before they were incurred. In light of the evident defects in the trial court's approval of the costs and expenses, we remand for a redetermination of the proper amount of the lien.

On remand, the trial court shall take evidence from the parties regarding the necessity and appropriateness of each incurred expense. MCR 7.216(5). We expressly direct the trial court to engage in a searching review of each individual cost. The trial court shall take additional evidence to determine whether each cost was in keeping with the original purpose for which the receiver was appointed—to abate the fire prevention act violations and municipal code violations alleged in Ypsilanti's original complaint.[13] Once the repair costs are categorized under either the fire prevention act or an applicable Ypsilanti city ordinance, the court should proceed to determine whether each cost was in fact necessary to abate a violation of the act or ordinance in question.

If the trial court determines that any cost was unnecessary to abate an actual violation of the fire prevention act or an applicable city ordinance, that cost must be *excluded* from the new lien amount. For instance, the trial court must exclude from the lien amount any expense that was incurred to make the property "economically viable."

If the trial court determines that any cost was necessarily incurred to properly abate a violation of the fire prevention act, that cost shall be *included* in the new lien amount. The legislature has specifically provided that costs incurred to abate violations of the fire prevention act may be assessed as liens against real property. MCL 29.16(1); *Ankersen*, *supra* at 554.[14]

---

[13] The trial court should remain cognizant of the fact that Ypsilanti's initial complaint cited both alleged fire prevention act violations and alleged city ordinance violations. As noted above, the trial court must first determine whether each expense was incurred (1) to abate a violation of the fire prevention act, or (2) to abate a violation of a specific Ypsilanti city ordinance. The trial court shall separate all costs into one of these categories.

[14] Under the fire prevention act, liens imposed for the expense of abating fire hazards are to be foreclosed in accordance with the procedures set forth in the construction lien act, MCL 570.1101 *et seq*. MCL 29.16(1). Under the construction lien act, the trial court may set a period of redemption, which must not exceed four months. MCL 570.1121(3). Therefore, the period of redemption following the foreclosure of any lien imposed under the fire prevention act must not exceed four months. The trial court in this matter provided for a period of redemption of six months. However, this error was plainly harmless in light of the fact that it actually afforded Kircher more time to redeem than was statutorily authorized. In light of the plain language of the fire prevention act, which adopts the procedures set forth in the construction lien act, Kircher's argument that the trial court should have provided for a one-year period of redemption is without merit.

However, if the trial court determines that any cost was necessarily incurred to properly abate a nuisance under the Ypsilanti building or fire codes, that cost *must be excluded* from the new lien amount. This is because unlike the statutory provision allowing municipalities to impose liens for the cost of abating violations of the fire prevention act, there is no general statutory provision permitting municipalities to impose liens for the cost of general nuisance abatement under city ordinance.[15] In the absence of explicit statutory authorization, a city may not impose a lien on real property. *Home Owners' Loan Corp v Detroit*, 292 Mich 511, 516; 290 NW 888 (1940). Nor may the courts create or impose a lien on real property absent an express agreement by the parties or other legal authority. *Wiltse v Schaeffer*, 327 Mich 272, 282; 42 NW2d 91 (1950); *Whitehead v Barker*, 288 Mich 19, 27; 284 NW 629 (1939).

Accordingly, the costs of abating municipal-ordinance violations were not properly included in the lien amount as originally determined by the trial court. These costs were not collectible through the foreclosure proceedings held in this matter. Nonetheless, as discussed below, it does not necessarily follow that Barnes may not recover the necessary costs of abating municipal-ordinance violations via an alternative method.

After a new and proper lien amount is determined—which does not include the costs of nuisance abatement under the Ypsilanti building and fire codes—the trial court shall subtract that amount from the lien amount originally specified in the trial court's February 4, 2005 judgment of foreclosure. The difference between the lien amount specified in the February 4, 2005 judgment, and the properly determined new lien amount will constitute a surplus, to be disposed of as described below.

As the fee holder and owner of the Thompson Building on the eve of foreclosure, Kircher would ordinarily be entitled to this surplus. At the same time, we note that Barnes is entitled to costs properly incurred in abating violations of the Ypsilanti building and fire codes. Indeed, in the case of any nuisance, the circuit court may abate the nuisance *at the expense of the property owner*. MCL 600.2940(3).

As noted, there exists no general statutory authority allowing municipalities to impose liens for the cost of nuisance abatement under city ordinances. However, costs incurred to abate nuisances may be collected in the same manner as debts are generally collected on execution. MCL 600.2940(4). The Legislature has provided that the expense of abating and removing nuisances in general

---

[15] We note that certain specific statutes allow municipalities to impose liens in limited situations. For instance, provisions of the Michigan Housing Law, MCL 125.401 *et seq*., specifically allow liens against real property for costs related to municipal nuisance-abatement activities. MCL 125.534(7); MCL 125.541(6); MCL 125.541(7). However, neither party has argued that the Housing Law applies in this matter. Further, the Home Rule City Act, MCL 117.1 *et seq*., allows a city to impose liens for the cost of abating a "blight violation." MCL 117.4r. However, before such liens may be imposed, a city must follow the administrative hearing procedures of MCL 117.4q. There is no indication that these statutory provisions apply in this matter.

> shall be collected . . . *in the same manner as damages and costs are collected upon execution*, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold . . . in like manner as goods are sold on execution for the payment of debts. The [official collecting the costs] may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided. [MCL 600.2940(4) (emphasis added).]

The procedure for collecting debts on execution is described in Chapter 60 of the Revised Judicature Act, MCL 600.6001 *et seq*. Accordingly, Barnes may collect all costs properly incurred to abate violations of the Ypsilanti building and fire codes by way of the procedure set forth in MCL 600.6001 *et seq*.

Execution may be made against all personal property of a judgment debtor that is liable to execution at common law. MCL 600.6017. This includes United States currency or money. MCL 600.6017(6). While execution against personal property typically requires a judicial sale, execution against United States currency or money does not. Instead, currency or money may simply be "taken as money collected and paid." MCL 600.6017(6). While there exists a one-year redemption period following execution against a judgment debtor's real property, there is no statutory period of redemption following execution against a judgment debtor's personal property. MCL 600.6062; 27 Michigan Law & Practice, Remedies, § 46, p 229.

Although Kircher would ordinarily be entitled to the surplus left over after subtracting the newly calculated lien amount from the amount specified in the February 4, 2005 judgment of foreclosure, we direct the trial court on remand to impound the surplus and use it to satisfy the necessary expenses incurred to properly abate violations of the Ypsilanti building and fire codes. MCL 600.2940(4); MCL 600.6017(6). After satisfying all expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the Thompson Building, the trial court shall return any money remaining from the surplus to Kircher.

D. Discharge of the Receiver

Kircher also argues that the trial court abused its discretion in failing to discharge the initial receiver and in appointing a successor receiver. We agree, and conclude that the trial court abused its discretion in failing to terminate the receivership at the time of the sheriff's sale.

In general, a receiver should be discharged and the receivership should be terminated when the initial reasons for the receivership cease to exist. 65 Am Jur 2d, Receivers, § 141, p 756. In the context of mortgage foreclosures, a receiver should be discharged when the full amount of the judgment is received at sale, when the property is bid off for the full amount of the debt, interest, and costs, or when the applicable period of redemption has expired. 59A CJS, Mortgages, § 790, p 328. In no case should the receivership be continued beyond the time when title vests exclusively in the foreclosure-sale purchaser. 59A CJS, Mortgages, § 790, p 327.

We perceive no reason why these general rules should not be applied in the context of other lien foreclosure proceedings as well. When Barnes purchased the Thompson Building at

sheriff's sale, he took the property with full knowledge of the fact that further repairs and expenditures were necessary to bring the property into complete compliance with Ypsilanti city codes. Barnes had served as receiver of the same property, and was clearly aware of the Thompson Building's physical condition at the time of sale. In short, when Barnes purchased the property, the original reasons for the receivership ceased to exist, and Barnes himself became responsible for any further necessary repairs.

We conclude that the trial court abused its discretion in failing to terminate the receivership at the time of the sheriff's sale of the Thompson Building. Upon Barnes' purchase of the property, there remained no further need for a receiver. Barnes was fully aware at the time of sale that further repairs were necessary to abate additional code violations, but purchased the property notwithstanding this knowledge. Moreover, as purchaser and owner, Barnes was able following the sale to personally effectuate any further necessary repairs without the assistance of a court-appointed receiver. On remand, the trial court shall enter an order terminating the receivership as of the date of the sheriff's sale. All costs incurred beyond that date by the receiver or successor receiver—with the exception of necessary interest, tax, and insurance costs incurred between the date of sale and the end of the redemption period—are the responsibility of Barnes as record owner of the Thompson Building.

E. Propriety of Post-Appeal Expenditures

Kircher's counsel argued at oral argument before this Court that the trial court had amended the initial judgment of foreclosure after the claim of appeal was filed, approving several new expenses and substantially increasing the lien against the Thompson Building just before the sheriff's sale was held. Kircher argues that this was erroneous. We agree.

Although this issue was not set forth in Kircher's brief on appeal, Kircher's counsel brought it to our attention as soon as practicable. Therefore, we will briefly address it.

Because the lower court records were transmitted to this Court soon after the claim of appeal was filed, we are not certain of the exact extent to which the trial court amended the judgment of foreclosure after the filing of the claim of appeal. Nonetheless, we note that once a claim of appeal is filed with this Court, the trial court may not amend the judgment appealed from except pursuant to an order of this Court, by stipulation of the parties, or as otherwise provided by law. MCR 7.208(A); *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 314; 486 NW2d 351 (1992). Indeed, the filing of a claim of appeal divests the circuit court of its jurisdiction to amend its final orders and judgments. *Wilson v Gen Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990); *Vallance v Brewbaker*, 161 Mich App 642, 648; 411 NW2d 808 (1987). Accordingly, to the extent that the trial court amended the judgment of foreclosure and increased the amount of the lien against the Thompson Building after Kircher filed the claim of appeal in this matter, such action was erroneous and was taken without jurisdiction. We vacate any amendments made to the judgment of foreclosure or the amount of the lien after the claim of appeal was filed in this matter.

F. Costs and Fees

Kircher next contends that the trial court erred in overcompensating the receiver, asserting that the percentage-based fees allowed to Barnes were excessive. Kircher also suggests

that the trial court erred in granting attorney fees to the receiver. As an initial matter, we note that these arguments are barred by the law of the case doctrine. We ruled in *Ypsilanti Fire Marshal*, *supra*, that the broad order allowing receiver's fees and attorney fees in relation to the Thompson Building had been properly entered by the trial court. However, even if these arguments had not been previously addressed, Kircher has abandoned the issues by failing to specifically raise them in his statement of questions presented. MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999); *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). Although several of Kircher's questions presented raise the general appropriateness of certain costs, none of the questions presented specifically identifies the matter of receiver's fees or attorney fees. We decline to further address the merits of these arguments, which have not been properly presented.

G. Kircher's Counterclaim

Kircher also argues that the trial court erred in dismissing his counterclaim in this matter. We disagree. It is axiomatic that conclusory statements unsupported by factual allegations are insufficient to state a cause of action. *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003); *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). In his counterclaim, Kircher put forth only conclusory assertions, contained in broad, generalized sentences and unsupported by factual allegations. He claimed only that Ypsilanti's conduct had caused him to incur financial loss. He did not identify with any specificity the manner in which he had been harmed or the precise nature of his injuries. The counterclaim was therefore insufficient to state a claim upon which relief could be granted. MCR 2.116(C)(8); *Churella*, *supra* at 272.

IV. Docket Nos. 260972 & 260973—The Apartment Building

A. The Trial Court's Jurisdiction

Similar to the argument raised above with respect to the Thompson Building, Kircher argues that Ypsilanti was not entitled to maintain this action with respect to the apartment building because the necessary preconditions for commencing such an action under the fire prevention act were never established. We disagree for the reasons stated in section III.A, above.

The unrefuted documentary evidence showed that Ypsilanti fire marshal John Ichesco was delegated the authority to "carry out . . . enforcement activities pursuant to MCL 29.2b." Therefore, we hold that he was entitled to commence this action under MCL 29.23 on the basis of alleged fire prevention act violations at Kircher's apartment building.[16]

---

[16] Also as above, Ypsilanti was alternatively entitled to bring this action on the basis of alleged violations of municipal building and fire ordinances. As noted, cities may proceed in the circuit court, under properly enacted ordinances, to abate and remove nuisances. *Budd*, *supra* at 178. The Legislature has conferred on the circuit courts broad equitable jurisdiction over nuisance-abatement proceedings, irrespective of the nature and extent of the particular alleged nuisance. (continued…)

B. "After-Discovered" Municipal Code Violations

As in Washtenaw Circuit Case No. 02-000434-CH, Ypsilanti originally filed its complaint in Washtenaw Circuit Case No. 01-000560-CH to abate alleged violations of both the fire prevention act and certain Ypsilanti municipal ordinances. At no time after the initial complaint was filed did Ypsilanti seek to narrow the scope of this action to alleged violations of the fire prevention act alone, or to otherwise discontinue that portion of the action seeking to abate municipal code violations at the apartment building. As we noted above, some of the confusion in these consolidated appeals may stem from our April 27, 2004 opinion itself. There, with respect to the apartment building, we discussed only the five initial repairs under the fire prevention act that were included in the trial court's June 14, 2002 order. We did not discuss any alleged violations of Ypsilanti municipal ordinances.

However, in *Ypsilanti Fire Marshal*, *supra*, we in no way limited the scope of Ypsilanti's authority to the five initial repairs originally listed by the trial court. Instead, we merely expressed our view that the trial court's order with respect to the apartment building—which listed five specific necessary repairs—was narrower and therefore more defensible that the open-ended, broad order entered by the trial court with respect to the Thompson Building. Because the order concerning the apartment building was more precise in its description of the necessary repairs and modifications, we determined that less specific remand instructions were required in the case of the apartment building than in the case of the Thompson Building. We did not, however, decide that the trial court's June 14, 2002 order was in any way *limited* to the five repairs listed therein, or that the trial court was without authority to order the abatement of additional nuisances or violations at the apartment building.

Because we did not decide that the trial court's June 14, 2002 order limited the scope of Ypsilanti's authority to repair the apartment building, we must reject Kircher's claims to the contrary. The law of the case doctrine does not bar the trial court's finding that Ypsilanti was entitled to proceed with other nuisance-abatement projects at the apartment building beyond the original five listed repairs. Nor was it clearly erroneous for the trial court to determine that Ypsilanti had the authority to proceed with the abatement of municipal ordinance violations at the apartment building. Indeed, Kircher was at all times on notice that Ypsilanti was concerned not only about alleged fire prevention act violations, but also numerous alleged municipal code violations as well.

Moreover, we find no record support for Kircher's contention that the code violations alleged by Ypsilanti were not within the original contemplation of the parties and were not

---

(…continued)

MCL 600.2940(1). See also 58 Am Jur 2d, Nuisances, § 338, p 788. However, we note that it is unclear from the record exactly which municipal ordinances Ypsilanti relied on in commencing this action. After searching the record, we are unable to locate the text of any provisions of the Ypsilanti building and fire codes, and we are disinclined to speculate concerning the substance of ordinances which have not been provided on appeal. As in the case of the Thompson Building, it will be necessary on remand for the trial court to specifically identify the municipal ordinances relied on in this matter, and to determine whether Kircher in fact violated those particular ordinances.

included within the scope of the June 14, 2002 order. We reject Kircher's argument that the 178 code violations referred to by the trial court were "after-discovered," and find that those alleged violations were the same as the "178 various code violations" complained of in Ypsilanti's original complaint. In light of the fact that these 178 alleged municipal code violations were included in the original complaint, we conclude that the authority to abate these violations was necessarily included within the scope of the trial court's June 14, 2002 order and this Court's April 27, 2004 remand instructions.

C. Lien and Foreclosure

Kircher claims several errors with respect to the trial court's calculation of the lien amount, the trial court's foreclosure the lien, and the trial court's order directing that the apartment building be sold.[17] As noted above, we will not set aside a foreclosure sale in the absence of fraud, mistake, accident, or significant irregularities. *Mitchell*, *supra* at 724-725; see also *Senters*, *supra* at 55-56; *Macklem*, *supra* at 339. Thus, even if Kircher were correct in asserting that the trial court improperly included unnecessary expenses in the lien amount, we would not be inclined to vacate the sheriff's sale in this matter.

Like the assertions made with respect to the Thompson Building, Kircher asserts that the lien against the apartment building was too high and should have been calculated at a lower amount. However, as above, we are unable to meaningfully review the trial court's findings, and cannot determine whether the lien amount was correctly calculated. Virtually all individual repairs and renovations to the apartment building were approved after-the-fact, and Kircher received no meaningful opportunity to contest any of the costs before they were incurred. Therefore, we remand for a redetermination of the proper amount of the lien against the apartment building. As in the case of the Thompson Building, the trial court shall allow Kircher to separately contest each cost and shall take evidence from the parties regarding the necessity and appropriateness of each incurred expense. MCR 7.216(5). The trial court shall determine whether each cost was in keeping with the original purpose for which Ypsilanti's complaint was filed—to abate the alleged fire prevention act violations and municipal code violations at the apartment building.

---

[17] We reject Kircher's argument that the foreclosure action was not properly commenced because it was filed prematurely. Because the lien was granted to Ypsilanti and the foreclosure action was brought by Barnes, we agree with Kircher that the foreclosure action was not brought by the real party in interest. MCL 600.2041; MCR 2.201(B). A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in someone else. *Blue Cross & Blue Shield of Michigan v Eaton Rapids Comm Hospital*, 221 Mich App 301, 311; 561 NW2d 488 (1997). However, had this issue been properly raised, the trial court could have allowed substitution of the parties at any time during the pendency of this litigation. MCR 2.202(D). Therefore, this was harmless error, and we do not reverse on the basis of error that was not decisive to the outcome. *In re Gazella*, *supra* at 675; see also MCR 2.613(A).

The trial court shall follow the same procedure as that outlined in section III.C, above. On remand, the trial court must first determine whether each expense was incurred (1) to abate a violation of the fire prevention act, or (2) to abate a violation of an Ypsilanti municipal code. The trial court shall separate all costs into one of these two categories. Once all costs are categorized under either the fire prevention act or an applicable Ypsilanti city ordinance, the court should proceed to determine whether each cost was in fact necessary to abate a violation of the act or ordinance in question.

If the trial court determines that any cost was unnecessary to abate an actual violation of the fire prevention act or an applicable city ordinance, that cost must be *excluded* from the new lien amount. For instance, the trial court must exclude from the lien amount any expense that was incurred to make the property "economically viable."

If the trial court determines that any cost was necessarily incurred to properly abate a violation of the fire prevention act, that cost shall be *included* in the new lien amount. The legislature has specifically provided that costs incurred to abate violations of the fire prevention act may be assessed as liens against real property. MCL 29.16(1); *Ankersen*, *supra* at 554.[18]

However, if the trial court determines that any cost was necessarily incurred to properly abate a nuisance under the Ypsilanti building or fire codes, that cost *must be excluded* from the new lien amount. This is because unlike the statutory provision allowing municipalities to impose liens for the cost of abating violations of the fire prevention act, there is no general statutory provision permitting municipalities to impose liens for the cost of general nuisance abatement under city ordinance. In the absence of explicit statutory authorization, a city may not impose a lien on real property. *Home Owners' Loan Corp*, *supra* at 516. Nor may the courts create or impose a lien on real property absent an express agreement by the parties or other legal authority. *Wiltse*, *supra* at 282; *Whitehead*, *supra* at 27.

Therefore, the costs of abating municipal-ordinance violations were not properly included in the lien amount as originally determined by the trial court, and these costs were not collectible through the foreclosure proceedings held in this matter. Nonetheless, as discussed in the case of the Thompson Building, it does not necessarily follow that Barnes may not recover the necessary costs of abating municipal-ordinance violations by way of an alternative method.

---

[18] Under the fire prevention act, liens imposed for the expense of abating fire hazards are to be foreclosed in accordance with the procedures set forth in the construction lien act, MCL 570.1101 *et seq*. MCL 29.16(1). Under the construction lien act, the trial court may set a period of redemption, which must not exceed four months. MCL 570.1121(3). Therefore, the period of redemption following the foreclosure of any lien imposed under the fire prevention act must not exceed four months. The trial court in this matter provided for a period of redemption of six months. However, this error was plainly harmless, especially in light of the fact that it actually afforded Kircher two additional months to redeem. In light of the plain language of the fire prevention act, which adopts the procedures set forth in the construction lien act, Kircher's argument that the trial court should have provided for a one-year period of redemption is without merit.

After a new and proper lien amount is determined—which does not include the costs of nuisance abatement under the Ypsilanti building and fire codes—the trial court shall subtract that amount from the lien amount originally specified in the trial court's February 4, 2005 judgment of foreclosure. The difference between the lien amount specified in the February 4, 2005 judgment, and the properly determined new lien amount will constitute a surplus, to be disposed of as described below.

As the owner of the apartment building on the eve of foreclosure, Kircher would ordinarily be entitled to this surplus. However, Barnes is entitled to recover from Kircher the costs properly incurred in abating violations of the Ypsilanti building and fire codes at the apartment building. MCL 600.2940(3).

Costs incurred to abate nuisances may be collected in the same manner as debts are generally collected on execution. MCL 600.2940(4). Accordingly, Barnes may collect all costs properly incurred to abate violations of the Ypsilanti building and fire codes by way of the procedure set forth in MCL 600.6001 *et seq*.

As discussed above, execution may generally be made against all personal property, including United States currency or money. MCL 600.6017(6). Execution against United States currency or money does not require a judicial sale. MCL 600.6017(6). Instead, currency or money may simply be "taken as money collected and paid." MCL 600.6017(6). While there exists a one-year redemption period following execution against a judgment debtor's real property, there is no statutory period of redemption following execution against personal property. MCL 600.6062; 27 Michigan Law & Practice, Remedies, § 46, p 229.

Although Kircher would ordinarily be entitled to the surplus left over after subtracting the new lien amount from the amount specified in the February 4, 2005 judgment of foreclosure, we direct the trial court on remand to impound the surplus and use it to satisfy any necessary expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the apartment building. MCL 600.2940(4); MCL 600.6017(6). After satisfying all expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the apartment building, the trial court shall return any money remaining from the surplus to Kircher.

D. Discharge of the "De Facto" Receiver

Unlike in the case of the Thompson Building, no receiver was ever appointed in the case of the apartment building. As we noted in *Ypsilanti Fire Marshal*, *supra*, slip op at 8,

> [T]he order appealed in [the case of the apartment building] is significantly different from that in the case [of the Thompson Building]. First, in this case, neither Barnes nor the city was appointed receiver. Instead, the trial court granted the city the exclusive right to repair the building and fire code violations. The order merely permits the city to employ Barnes or other entities to accomplish this task.

However, as noted above, Barnes was appointed as Ypsilanti's exclusive agent to perform repairs and renovations at the apartment building. Further, Barnes was given nearly carte blanche authority by Ypsilanti to determine the necessity of repairs and to decide how to proceed

with the work. Therefore, we agree with Kircher that Barnes acted essentially as a "de facto" receiver of the apartment building.

When Barnes acquired the apartment building at sheriff's sale, paying the full amount of the lien, he took the property with full knowledge of the fact that further expenses were necessary to bring the property into compliance with Ypsilanti city codes. Barnes had served as Ypsilanti's exclusive contractor at that property, and was clearly aware of the apartment building's physical condition. Thus, when Barnes purchased the property, the necessity of Ypsilanti's authority to posses and repair the apartment building necessarily ceased to exist.

We conclude that the trial court abused its discretion in failing to terminate Ypsilanti's authority to posses and repair the apartment building at the time of the sheriff's sale to Barnes. Upon Barnes' purchase of the property, there remained no further need for court oversight of necessary repairs and nuisance-abatement activities. Barnes was fully aware at the time of sale that further repairs were necessary to abate municipal code violations, but purchased the property anyway. As purchaser and owner, Barnes was then able to effectuate any further necessary repairs without the assistance of Ypsilanti or the trial court. On remand, the trial court shall enter an order terminating Ypsilanti's authority over the apartment building as of the date of the sheriff's sale. All costs incurred by Ypsilanti or its contractors beyond that date—with the exception of necessary interest, tax, and insurance costs incurred between the date of sale and the end of the redemption period—are the responsibility of Barnes, as record owner of the property.

E. Costs and Fees

Kircher suggests that the trial court erred in overcompensating Ypsilanti's contractor, asserting that the percentage-based fee allowed to Barnes in this matter was "excessive, and no authority was cited for a court of equity allowing a mark-up of this magnitude." Kircher also suggests that the trial court erred in granting attorney fees in this matter. However, Kircher has abandoned these issues by failing to specifically raise them in his statement of questions presented. MCR 7.212(C)(5); *Caldwell*, *supra* at 132; *Grand Rapids Employees*, *supra* at 409-410; *Marx*, *supra* at 81. As above, although several of Kircher's questions presented broadly raise the general appropriateness of costs and expenditures, none of the questions presented identifies the particular matter of contractor's fees or attorney fees. We decline to address these arguments, which have not been properly presented for our review.

F. Kircher's Counterclaim

Kircher also argues that the trial court erred in dismissing his counterclaim in this matter. We disagree. Conclusory statements unsupported by factual allegations are insufficient to state a cause of action. *Churella*, *supra* at 272; *ETT Ambulance*, *supra* at 395. In his counterclaim, Kircher put forth only conclusory assertions, contained in broad, generalized sentences and unsupported by factual allegations. He claimed that Ypsilanti's conduct had caused him to incur financial loss, but did not allege with any specificity the manner in which he had been harmed or the precise nature of his injuries. Kircher's counterclaim was legally insufficient to state a claim. MCR 2.116(C)(8); *Churella*, *supra* at 272.

IV. Remand to Different Trial Judge

In both Docket Nos. 260970 & 260971, and Docket Nos. 260972 & 260973, Kircher argues that proceedings on remand should be assigned to a different trial judge, to be determined by the state court administrative office. We disagree.

We recognize that if proper procedures had been followed in this matter from the outset, these consolidated appeals may not have been necessary. However, we are also cognizant of the strong probability that any judge would have grown weary of this protracted and oft-irksome matter.

Kircher has failed to demonstrate that the trial judge was in any way actually prejudiced or biased. *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001). At most, Kircher has shown an understandable frustration with the protracted proceedings involved in this matter. The mere fact that a judge rules against a litigant, even if the rulings are determined to be erroneous, is not sufficient to require disqualification or reassignment. *Id*. at 597-598. We decline Kircher's request to involve the state court administrative office or to reassign this matter on remand to a different trial judge. Reassignment to a different judge at this time would necessarily entail a further waste of time and judicial resources. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

V. Conclusion

In light of our resolution of these consolidated appeals, we decline to address the constitutional issues raised by Kircher in these cases.[19]

---

[19] Relying on *Wayne Co v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004), Kircher cursorily suggests that his properties have been taken by Ypsilanti without just compensation. Even assuming the requisite state action could be demonstrated, we disagree with Kircher's contention, which disregards the well-established nuisance exception to the prohibition on governmental takings. The federal and state constitutions both proscribe the taking of private property for public use without just compensation. US Const, Am V; Const 1963, art 10, § 2; *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 23; 614 NW2d 634 (2000); *Oakland Co Bd of Rd Comm'rs v JBD Rochester, LLC*, 271 Mich App 113, 114; 718 NW2d 845 (2006). The Taking Clause of the Fifth Amendment is substantially similar to the Taking Clause of the Michigan Constitution, *Tolksdorf v Griffith*, 464 Mich 1, 2; 626 NW2d 163 (2001), and the two provisions should generally be interpreted coextensively, see *Peterman v Dep't of Natural Resources*, 446 Mich 177, 184 n 10; 521 NW2d 499 (1994). The nuisance exception to the prohibition on unconstitutional takings provides that because no individual has the right to use his or her property so as to create a nuisance, "the [s]tate has not 'taken' anything when it asserts its power to enjoin [a] nuisance-like activity." *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 491 n 20; 107 S Ct 1232; 94 L Ed 2d 472 (1987). Indeed, "[c]ourts have consistently held that a [s]tate need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." *Id*. at 492 n 22. Because Ypsilanti was exercising its legitimate police power to abate the alleged nuisances on Kircher's property, no unconstitutional takings occurred.

In Docket Nos. 260970 & 260971, we affirm the trial court's order appointing the receiver. We also affirm the trial court's order granting receiver's fees, attorney fees, and costs. We affirm the foreclosure proceedings and judgment of foreclosure to the extent that they involved the lien imposed for expenses properly incurred under the state fire prevention act. Finally, we affirm the dismissal of Kircher's counterclaim pursuant to MCR 2.116(C)(8).

We vacate the judgment of foreclosure and foreclosure proceedings to the extent that they involved the collection of expenses incurred solely under the municipal building and fire codes. We also vacate any amendments to the judgment of foreclosure or increase in the amount of the lien entered by the trial court after the filing of the claim of appeal in this matter. We remand for entry of an order terminating the receivership at the time of the sheriff's sale, and for the following further proceedings.

On remand, the trial court shall determine whether each expense was incurred (1) to abate a violation of the fire prevention act, or (2) to abate a violation of the Ypsilanti building and fire codes. For expenses falling into the second category, the court shall state with specificity which provision of the city codes authorized the charges. The trial court shall determine which of the individual expenses were properly incurred to abate violations of the fire prevention act, and shall include these expenses in the amount of the foreclosed lien. The trial court shall then determine which of the individual expenses were properly incurred to abate violations of the Ypsilanti building and fire codes, and shall exclude these expenses from the lien amount as surplus. All costs properly incurred to abate violations of the Ypsilanti building and fire codes shall be paid out of this surplus, and any remainder left after payment of these expenses shall be disbursed to Kircher.

In Docket Nos. 260970 & 260971, we affirm the trial court's order authorizing Ypsilanti to take possession of and make necessary repairs to the apartment building. We also affirm the trial court's order granting contractor's fees, attorney fees, and costs. We affirm the foreclosure proceedings and judgment of foreclosure to the extent that they involved the lien imposed for expenses properly incurred under the state fire prevention act. Finally, we affirm the dismissal of Kircher's counterclaim pursuant to MCR 2.116(C)(8).

We vacate the judgment of foreclosure and foreclosure proceedings to the extent that they involved the collection of expenses incurred solely under the municipal building and fire codes. We remand for entry of an order terminating Ypsilanti's right to possession and to make necessary repairs at the time of the sheriff's sale, and for the following further proceedings.

On remand, the trial court shall determine whether each expense was incurred (1) to abate a violation of the fire prevention act, or (2) to abate a violation of the Ypsilanti building and fire codes. For expenses falling into the second category, the court shall state with specificity which provision of the city codes authorized the charges. The trial court shall determine which of the individual expenses were properly incurred to abate violations of the fire prevention act, and shall include these expenses in the amount of the foreclosed lien. The trial court shall then determine which of the individual expenses were properly incurred to abate violations of the Ypsilanti building and fire codes, and shall exclude these expenses from the lien amount as surplus. All costs properly incurred to abate violations of the Ypsilanti building and fire codes shall be paid out of this surplus, and any remainder left after payment of these expenses shall be disbursed to Kircher.

In Docket Nos. 260970 & 260971, we affirm in part, vacate in part, and remand for further proceedings. In Docket Nos. 260972 & 260973, we also affirm in part, vacate in part, and remand for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jessica R. Cooper