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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 09-34784-sgj-11**
) Chapter 11
ONDOVA LIMITED COMPANY,)
) Dallas, Texas
Debtor.) November 14, 2011
)
) CONFIRMATION HEARING
)
) Excerpt: Daniel Sherman
) Testimony

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Jeffrey Baron: Stephen Rudolph Cochell
THE COCHELL LAW FIRM
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For Peter S. Vogel,
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1 Q So, Servers is still there in the portfolio; is that
2 correct?

3 A It is. I think we finally took it back -- I think we
4 finally terminated the brokerage listing agreement with the
5 Sedo agent a couple of months back.

6 Q Okay. All right.

7 MR. COCHELL: One minute, please.

8 (Pause.)

9 BY MR. COCHELL:

10 Q With respect to Mr. Emke's company, am I correct in
11 understanding that you as the Chapter 11 Trustee placed Mr.
12 Emke's company into receivership? Am I correct about that, or
13 just wrong?

14 A I don't think we placed his company into receivership.

15 Q Okay.

16 A No, I -- I'm pretty sure I'd remember doing that.

17 Q Now, in your direct testimony you raised the creation of
18 the receivership and talked about the facts and circumstances
19 leading up to the receivership. Do you recall that testimony,
20 sir?

21 A You mean when I talked about Robert Garry?

22 Q No, about when you -- you went to the Court and you
23 obtained a receivership order.

24 A Remind me. What did I say about it?

25 Q Well, you testified about the facts and circumstances

1 leading up to requesting the receivership and that you obtained
2 a receivership order.

3 A Right.

4 Q Okay.

5 A Okay.

6 Q Remember that?

7 A I -- okay.

8 Q Okay.

9 A I mean, I have testified about that before. But if you're
10 speaking about something specifically I said today, I don't --

11 Q Okay. You don't, sitting here, --

12 A No.

13 Q -- recall that?

14 A No. Just what do you --

15 Q Well, --

16 A What do you want to know?

17 Q Well, what I'd like to know is when you went to get the
18 receivership, you applied for an ex parte order --

19 A Uh-huh.

20 Q -- for the receivership?

21 A Right.

22 Q Okay. And so you met with the judge ex parte. Is that
23 correct, sir?

24 A Yes.

25 Q Okay. And who else was with you?

1 A My lawyers, I think.

2 Q Was Mr. Vogel with you?

3 A You know, I don't remember. He might have been. He wasn't
4 as important to me at that moment as the judge was and what my
5 lawyers had written out. But I -- he could have been there. I
6 don't know, honestly.

7 Q Okay. And was there a court reporter at this ex parte
8 hearing?

9 THE COURT: Okay. I'm intervening again. What on
10 earth does this have to do with the confirmability of the plan
11 or the auction?

12 MR. COCHELL: Well, Your Honor, we think it's relevant
13 to the issue of the process by which a Chapter 11 trustee went
14 to a court requesting a receivership and --

15 THE COURT: This is all on appeal to the Fifth
16 Circuit. They're either going to uphold it or not. What does
17 this have to do with the plan?

18 MR. COCHELL: Well, Your Honor, this whole ex parte
19 meeting has been shrouded in secrecy, and we've not been
20 allowed it to ask questions about it. And for some reason,
21 there's this like wall about what happened at this ex parte
22 hearing. And I think as a matter of due process, when a
23 trustee acting on behalf --

24 THE COURT: Okay.

25 MR. COCHELL: -- of a Chapter 11 estate --

1 THE COURT: Overruled.

2 MR. COCHELL: Yes, Your Honor.

3 THE COURT: This is --

4 MR. COCHELL: Okay.

5 THE COURT: -- very improper.

6 MR. COCHELL: Well, --

7 THE COURT: It's not just improper. It's way over the
8 line. Okay? The receivership order has been appealed. This
9 is not a setting to revisit that.

10 MR. COCHELL: Well, it is a -- okay, Your Honor. Your
11 Honor's ruled.

12 THE COURT: Move on.

13 MR. COCHELL: I respectfully take issue.

14 THE COURT: You've been questioning 35 minutes. Okay?

15 MR. COCHELL: Well, --

16 THE COURT: I want to hear evidence relevant to the
17 plan and the auction and the compromise.

18 MR. COCHELL: And Your Honor, that really concludes my
19 examination. I respectfully take issue with Your Honor's
20 ruling on this point, but I understand Your Honor has ruled.
21 Thank you.

22 THE COURT: All right. Redirect?

23 MR. URBANIK: Your Honor, just for the record -- and I
24 will redirect Mr. Sherman in a minute -- the receivership order
25 was entered November 24, 2010. Mr. Schepps, which is Mr.