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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
7026 Old Katy Road, Suite 259
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(713) 980-8796

For Peter S. Vogel,
Receiver: Jeffrey R. Fine
Christopher Kratovil
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For Daniel J. Sherman,
Chapter 11 Trustee: Raymond J. Urbanik
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For the U.S. Trustee: Lisa Laura Lambert
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1100 Commerce Street, Room 976
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For Manila Industries,
Inc. and Netsphere, Inc.: John W. MacPete
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Dallas, TX 75222
(214) 564-5205

1 Q And do you recall that you told me it was approximately \$2
2 million?

3 A Against the Receiver? \$2 million?

4 Q Yes.

5 A Okay.

6 Q Now, you are aware of the results of the auction, correct?

7 A Yes.

8 Q So, the value of the portfolio assets which would be
9 proposed to be transferred under the plan settlement, the
10 proposed plan settlement, is \$5.2 million, right?

11 A So I'm told, yes.

12 Q And that's \$3.2 million in excess of what you said your
13 claim against the receiver would be, right?

14 A Right.

15 Q What's the justification for, as you understand it, for the
16 Trustee getting \$3.2 million more in value than 100 percent of
17 its claim?

18 A It -- it's not unlike any bankruptcy that ends up with a
19 surplus which is then returned to the debtor.

20 Q Would you agree with me that to the extent that -- well,
21 strike that. Would you agree with me that it's not guaranteed
22 that Mr. Baron is going to get \$3.2 million back at the end of
23 this plan process?

24 A I don't know if there's any guarantee of anything.

25 Q And to the -- and would you agree with me that to the

1 extent that Mr. Baron doesn't get \$3.2 million back, that some
2 of Mr. Baron's assets or Novo Point and Quantec's assets are
3 going to be used to pay creditors of Ondova?

4 A I don't think that those assets will be used to do anything
5 more than reimburse this estate for the expenses that this
6 estate incurred in basically litigating with Mr. Baron after
7 the global settlement agreement was signed.

8 Q Okay. I don't think you understood my question.

9 A Maybe not.

10 Q My question was, to the extent Mr. Baron doesn't get \$3.2
11 million back, that means some of his assets are being used to
12 pay debts of Ondova, correct?

13 A To reimburse -- yes, to reimburse the estate for fees the
14 estate incurred litigating with him, yeah.

15 Q Well, no, because if he doesn't get \$3.2 million back, that
16 means that the amount of his assets used exceeds the amount of
17 your claim for fees. Do you understand the math?

18 A Well, I mean, I'm also -- my understanding is this estate
19 will also get the -- get liabilities of the receivership, too.

20 Q That was included in the \$2 million that we talked about --

21 A Oh, okay.

22 Q -- at your deposition, you'll recall.

23 A All right. I -- yeah, I couldn't remember exactly what
24 that was, but all right.

25 Q And so when you do the math, if your claim is \$2 million,

1 just to round it out, and Mr. Baron only gets \$2 million back,
2 let's say, at the end of the plan process, --

3 A Right.

4 Q -- that means there was \$1.2 million of Mr. Baron's assets
5 that are in excess of your claim for fees that were used to pay
6 debts of Ondova, correct?

7 A That will only be if and after this Court approves such
8 fees.

9 Q Fair enough.

10 A Okay.

11 Q Now, as a joint proponent of this plan, you, Mr. Sherman,
12 individually and as the Chapter 11 Trustee, you are not
13 contributing any property into this bankruptcy for the plan,
14 correct?

15 A You mean am I selling any names?

16 Q No, I mean are you contributing any property?

17 A It depends. I still have service.com and Mondial. If I
18 don't sell them, I guess I'll be contributing that.

19 Q I'm sorry. Maybe it was an inarticulate question. I'm not
20 asking about the estate now. I'm asking about you personally,
21 Mr. Sherman, who's serving as the Chapter 11 Trustee. You are
22 not adding anything into the bankruptcy plan, correct?

23 A You mean like my car?

24 Q Yes.

25 A No. I'm not selling my car.

1 Q Okay. And your lawyers, the Munsch Hardt firm, they're not
2 contributing any assets into the plan either, correct?

3 A They're not selling their cars either.

4 Q Fair enough. Mr. Vogel personally, who serves as the
5 Receiver, he's not contributing any assets into the plan,
6 correct?

7 A I don't think so.

8 Q And his former law firm, Gardere, --

9 THE COURT: Mr. MacPete, I've read the plan. You can
10 make these arguments in oral argument. We know the answer.

11 MR. MACPETE: Okay. I think I need to make an
12 evidentiary record.

13 THE COURT: There's a pooling of the receivership
14 assets and the Ondova assets.

15 MR. MACPETE: I understand that, Your Honor, but I --
16 I think --

17 THE COURT: No human being is contributing their
18 personal assets. No professional. We don't need to spend 15
19 minutes going through that.

20 BY MR. MACPETE:

21 Q Now, can you articulate for the Court any basis on which
22 you personally, the Receiver personally, or any other third
23 party that's not contributing assets into the bankruptcy plan
24 should get a release or exculpation?

25 A You mean because it's uncommon?

1 Q I'm just asking you what the justification for that would
2 be. If, as you put it, if you're not selling your car and
3 contributing it to the plan, what justification is there for
4 you personally to get a release or exculpation under the plan?

5 A It's one way to wrap things up and have some finality.

6 Q That's the only justification you can think of?

7 A It's a really good one.

8 Q I guess that's true if you're the potential defendant, and
9 maybe not so true if you're the potential claimant. Right?

10 A Well, you'd probably like one, too.

11 Q Maybe I would. But I'm not contributing anything to the
12 plan.

13 Okay. At some point, you and I have had a discussion and
14 you had said something to the effect that you thought that
15 Baron may have breached the global settlement agreement. Do
16 you recall that?

17 A Yes.

18 Q Can you tell -- well, let me ask you this. Is that still
19 your belief today that Mr. Baron has breached his obligations
20 to the Chapter 11 Trustee in the global settlement agreement?

21 A To the extent that he immediately began directing lawyers,
22 hiring new lawyers, and instructing them to attempt to appeal
23 the order that approved the settlement, yes, I considered that
24 to be a breach.

25 Q And is there anything else that, as you sit here today,

1 that you can identify that you think is a breach by Mr. Baron
2 of his obligations under the global settlement agreement to the
3 Chapter 11 Trustee?

4 A I don't know how to add to a wholesale intent to not
5 perform.

6 MR. MACPETE: Your Honor, may I approach?

7 THE COURT: You may. And you're 30 minutes into this.
8 How many -- how much more do you think you have? I'm going to
9 remind you that I said you had thin standing in this matter.

10 MR. MACPETE: I don't have very much. I need to put
11 this exhibit into evidence, and I want to ask him a couple
12 questions about it.

13 THE COURT: Okay.

14 MR. MACPETE: And that will be the conclusion of my
15 examination.

16 THE COURT: Okay.

17 BY MR. MACPETE:

18 Q All right. Do you recognize this document?

19 A The mutual settlement and release? This is what we call
20 the global settlement agreement.

21 Q And if you flip to the back, would you verify that this is
22 the actual executed version of the global settlement agreement?

23 A (Pause.) It appears to be, yes.

24 Q And this is an agreement that you signed on behalf of the
25 Chapter 11 Trustee, correct?

1 A I see my signature, yes.

2 Q Is there anywhere in this agreement that it says that Mr.
3 Baron is not allowed to appeal from the Bankruptcy Court's
4 order approving the settlement?

5 A No. I doubt it.

6 Q Is there any particular provision in this agreement that
7 you can point to specifically that you think Mr. Baron has
8 violated a duty that he owed to the Chapter 11 Trustee?

9 A Other than an intent not to perform? No.

10 Q And in fact, did you ever get a letter from Mr. Baron or
11 his counsel indicating that he was repudiating the agreement?

12 Q I got basically testimony from the lawyers that he called
13 to the stand in Judge Furgeson's court who all said that that's
14 what they were instructed to do.

15 Q But that particular testimony was months and months after
16 the fact, wasn't it?

17 A Before that, I -- I called and -- to interview Robert
18 Garry, the lawyer that sued him, in -- I don't remember if it
19 was late October/early November, the one that said he had been
20 -- he'd placed his name at the state bar, Baron had contacted
21 him to employ him to represent Novo Point and Quantec. He was
22 working at a firm in Collin County, he was looking to leave his
23 job, but didn't want to leave unless he had -- wasn't going to
24 give notice and leave unless he had what he called at least a
25 90-day gig somewhere else. And so after interviewing with

1 Baron, he agreed to go to work for him representing Novo Point
2 and Quantec, and when he got there he found out that Baron
3 wanted him to do things that were really representing Jeff
4 Baron personally and were designed to violate orders that he
5 said existed in the district court and the bankruptcy court and
6 said, none of that has anything to do with Novo Point/Quantec,
7 and so Baron fired him.

8 Q Ultimately, Mr. Baron hasn't managed to successfully breach
9 this agreement, though, has he? He may have talked about --

10 THE COURT: I'm going to interrupt, because all of our
11 time is very important. You're going to have to tell me where
12 you're going with this. Why is this relevant?

13 MR. MACPETE: There was a suggestion by the Chapter 11
14 Trustee that there might be another claim against the
15 receivership which would be predicated on the idea that Mr.
16 Baron had breached the global settlement agreement to the
17 Chapter 11 Trustee. And with all due respect, Your Honor,
18 there is no performance in the global settlement agreement from
19 Mr. Baron directly to the Chapter 11 Trustee. The payments
20 that were all made --

21 THE COURT: Okay. Just ask him what was meant by
22 that. Okay?

23 MR. MACPETE: Okay.

24 THE COURT: Why are we dancing around 42 questions
25 getting there? Just, what did he mean by that?

1 BY MR. MACPETE:

2 Q Isn't it true that Mr. Baron didn't actually owe any
3 performance under the global settlement agreement directly to
4 the Chapter 11 Trustee?

5 A Maybe not.

6 Q In fact, isn't it true that the payments that were being
7 made to the Chapter 11 Trustee were essentially being made by
8 my client, Netsphere?

9 A True.

10 Q The bottom line is Mr. Baron hasn't breached any obligation
11 to the Chapter 11 Trustee under the global settlement agreement
12 because he didn't have any. Isn't that right?

13 A Maybe not.



14 Q Thank you.

15 MR. MACPETE: I have nothing further.

16 THE COURT: All right.

17 MR. MACPETE: Oh, wait. Actually, I need to move this
18 into evidence as Netsphere Exhibit 1.

19 THE COURT: I assume no one has any objection?

20 MR. URBANIK: No objection.

21 MR. KRATOVIL: None, Your Honor.

22 THE COURT: N-1 is admitted.

23 (Netsphere's Exhibit 1 is received into evidence.)

24 THE COURT: All right. Mr. Cochell?

25 MR. COCHELL: May I have a brief break, Your Honor?

1 THE COURT: Five-minute break. I want everyone back
2 here in five minutes.

3 MR. COCHELL: Thanks, Your Honor.

4 THE CLERK: All rise.

5 (A recess ensued from 4:19 p.m. until 4:31 p.m.)

6 THE COURT: All right. Please be seated. All right.
7 Mr. Sherman, you're still under oath. Mr. Cochell?

8 MR. COCHELL: Thank you, Your Honor.

9 THE COURT: You may cross-examine.

10 MR. COCHELL: Thank you.

11 CROSS-EXAMINATION

12 BY MR. COCHELL:

13 Q Mr. Sherman, just a couple of quick questions to start off
14 with. From prior testimony taken in your deposition, I
15 understand that neither you nor your lawyers conducted a
16 valuation of the portfolio before moving towards a sale of the
17 portfolio in this Court?

18 A That's correct.

19 Q Okay. And other than hearing -- and in fact, what you did
20 was rely on Mr. Vogel to determine whatever value he thought
21 was appropriate. Is that a fair statement, sir?

22 A Yes.

23 Q Okay. And other than being told that there was a -- that
24 there had been an agreement with a stalking horse bidder to pay
25 \$4.1 million as the initial opening bid in the auction, other

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