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

NETSPHERE, INC.; MANILA INDUSTRIES, INC.; AND MUNISH KRISHAN,	§	
Plaintiffs,	§	
v.	§	Civil Action No. **3:09-CV-0988-L**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

ORDER

Before the court is the Motion to Quash Subpoena Served by Baron in Contempt of the Protective Order of This Court and Motion for Sanctions (Doc. 1436), filed February 12, 2015. After considering the motion, response, record, the court's familiarity with this and related cases, and applicable law, the court **denies** the Motion to Quash Subpoena Served by Baron in Contempt of the Protective Order of This Court (Doc. 1436); and **denies without prejudice** the Motion for Sanctions (Doc. 1436).

I. Basis for Motion to Quash and Motion for Sanctions

Novo Point LLC and Quantec LLC ("LLCs") move to quash the subpoena served by Baron on Name.com, Inc. The LLCs contend that the subpoena was issued in violation of the Agreed Protective Order and Discovery Control Order entered by former Senior United States District Judge Royal Furgeson ("Judge Furgeson") on October 18, 2012, in this case upon motion by the court-appointed receiver. The LLCs contend that the 2012 order expressly prohibits Baron and his counsel

from conducting discovery outside of that permitted by the bankruptcy court, and that the discovery period established by the order has long since closed. The LLCs further contend that Baron served the subpoena on Name.com, Inc. without providing notice upon the parties in this case as required by Federal Rule of Civil Procedure 45(b)(1), and that the subpoena was issued by Baron's counsel, Leonard Simon, in violation of the court's prior order prohibiting Mr. Simon to substitute as counsel in this case for Mr. Cochell until after the receivership has been wound down. Finally, the LLCs contend that this is yet another example of Baron interfering with the court's wind-down orders by intimidating third parties into not recognizing Lisa Katz's ("Katz") authority to manage the LLCs' receivership assets that were released by the Receiver to Katz in accordance with this court's orders. The LLCs therefore contend that sanctions against Baron and his counsel for discovery abuse "may be appropriate." LLCs' Mot. 5.

II. Baron's Response to Motion to Quash and Motion for Sanctions

Baron contends that neither Katz nor attorney Christopher Payne ("Payne"), who filed the motion to quash on behalf of the LLCs, has authority to represent or manage the LLCs. Baron further asserts that the motion to quash should be denied because: (1) the LLCs were never parties to this action; (2) no timely objection to the subpoena was made in the District Court of Delaware, where compliance with the subpoena is required; and (3) the 2012 discovery order is no longer relevant, as it pertained to the Ondova bankruptcy trustee's plan to liquidate the receivership assets. In addition, Baron contends that there has been no discovery in this case aside from that pertaining to the receivership, bankruptcies, and the 2009 preliminary injunction hearing, and that certain issues with respect to the underlying litigation remain unresolved, including Netsphere's alleged default

and failure to make a payment of $600,000 and transfer domains names pursuant to the under the Global Settlement Agreement ("GSA").

Regarding the motion for sanctions, Baron contends that he should not be sanctioned because he is simply a victim of the unauthorized acts taken by Payne, Katz, and others acting in concert with them, on behalf of the LLCs. According to Baron, the receivership in this case was "vacated" by the Fifth Circuit on December 18, 2012,[1] and he issued the subpoena out of frustration with the gridlock in this case and related Civil Action No. 3:14-CV-1552-L filed by the LLCs against Payne, the LLCs' manager Katz, and others. Baron's Resp. 2. Although he is not a party to the action filed by the LLCs, Baron also notes that he recently filed a letter to the court in Civil Action No. 3:14-CV-1552-L to express his frustration that a hearing has not yet been set on the LLCs' request for injunctive relief. In his letter, Baron requests that the court either set the LLCs' request for injunctive relief for hearing or remand the case to state court. Baron contends that the delays in this case and Civil Action No. 3:14-CV-1552-L are largely attributable to Payne's and Katz's litigious motion practice, which has "obfuscate[d], dissemble[d,] and obstruct[ed]" the resolution of the parties' dispute as to who has authority to control or manage the business affairs of the LLCs. Baron maintains that, unlike Payne and Katz, he "has done nothing to cause this [frustrating] situation." *Id.* at 7.

As before, Baron contends that, after the court announced in early 2014 that it would begin winding down the receivership, David McNair ("McNair") was appointed as the new manager of the

[1] The receivership was not "vacated" by the Fifth Circuit, and Baron's repeated assertion to this effect in this case and related cases made in support of requests for injunctive and other relief mischaracterizes the Fifth Circuit's December 18, 2012 opinion and holding. The Fifth Circuit reversed the receivership order and remanded to this court with instructions to expeditiously wind down and vacate the receivership and discharge the Receiver; **however, the disruptive conduct of Baron and others acting on his behalf have interfered with the court's efforts in this regard.**

LLCs, and that McNair terminated Katz's employment contract and Payne's authority to act as counsel for the LLCs on February 18, 2014. Baron asserts that this evidence demonstrates that McNair, rather than Payne or Katz, has authority to manage and control the LLCs' affairs. In addition, Baron points to show cause proceedings in the Ondova bankruptcy proceedings in which the bankruptcy court questioned Payne's, Katz's, and former Baron attorney Gary Schepps's ("Schepps") authority to represent and act on behalf of the LLCs given that none was able to identify a person associated with the Village Trust or the LLCs to whom they reported and derived such authority, and the LLCs were under the Receiver's control at that time.

Baron asserts that this court nevertheless declined to consider his evidence regarding the ownership of the LLCs and ordered the receiver to return all of the LLCs' receivership assets to Katz, the person or agent previously designated and authorized by the LLCs' to act on their behalf. Baron therefore maintains that he and the LLCs have been left with no choice but to sit back and watch while Payne and Katz, assisted by Schepps, hijack all of the LLCs' assets and misrepresent to the LLCs' domain monetizers that they have authority to receive revenue for the LLCs while blocking Baron's efforts to obtain information regarding the LLCs. Baron contends that Payne and Katz have used the LLCs' assets to compensate themselves for fees they claim to be owed for services rendered on behalf of the LLCs while refusing to submit any requested invoices to him or McNair for payment.

According to Baron: "The LLCs represent the last of the assets left to [] beleaguered litigant, Jeffrey Baron, who has been subjected to a wrongful receivership, a wrongful involuntary bankruptcy action, and the dissipation of over $5,000,000 of his estate used to pay the Receiver's professionals and the professionals of the Trustee for Ondova." *Id.* Baron maintains that the court should not

sanction him for merely attempting to obtain information about the domain names that are the subject of the parties' dispute in Civil Action No. 3:14-CV-1552-L, particularly given the amount of time that the motions for injunctive relief and jurisdictional challenges in that case have been pending. Baron contends that at some point, justice delayed is justice denied, and that the court should decide the motion to quash and motion for sanctions with this in mind.

III. Discussion

A. Motion to Quash Subpoena

"A subpoena must issue from the court where the action is pending." Fed. R. Civ. P. 45(a)(2). Only the "court for the district where compliance is required" may quash or modify a subpoena unless the motion to quash is transferred to the issuing court. Fed. R. Civ. P. 45(d)(3) and (f). The subpoena issued by Baron indicates that compliance is required by Name.com, Inc. in Delaware, and no motion was filed in Delaware or transferred to this court. Accordingly, the court does not have authority to quash the subpoena because compliance with the subpoena is not required in the Northern District of Texas.

The subpoena, however, did not issue from a court where an action pertaining to the information sought is pending. The only receivership issue remaining is the Receiver's application for reimbursement and discharge, and Baron previously contended that the court should not conduct proceedings to resolve who owns or has authority to control and manage the LLCs before winding down the receivership. Moreover, contrary to Baron's assertion, the trust documents and evidence relied on by him, the LLCs, McNair, and RPV, Ltd. ("RPV") in this and other cases do not clearly establish McNair's authority to manage the LLCs; rather, these documents and evidence raise more questions than they answer and tend to confirm this court's and the bankruptcy court's suspicion that

Baron has used and continues to use the Village Trust and the LLCs to manipulate the proceedings in this and other cases assigned to the court and to avoid obligations owed to those with whom Baron, Ondova, or the LLCs have done business.

Unhappy with the manner in which the court determined that the receivership assets should be returned to the receivership parties, Baron now wants to use this action to conduct discovery regarding the exact matter to which he previously objected even though he acknowledges that the LLCs are not a party to the underlying litigation. The court, however, made clear that it would not allow Baron or anyone else to use this action or the receivership proceedings in this case as a forum to litigate issues pertaining to the ownership and right to control or manage the LLCs, which in essence is just another dispute between Baron and one of the numerous attorneys or persons claiming to be owed compensation for services performed on behalf of Baron or the LLCs.

Further, the court is not convinced that the information sought from Name.com, Inc., including information regarding Payne, Katz, Schepps, Domain Vault, and the LLCs, has anything to do with the GSA, Netsphere, or any other matter relevant to the underlying litigation in this case. The subpoena therefore does not comply with Rule 45(a)(2)'s requirement that a subpoena issue from the court where the action is pending. Accordingly, the subpoena is facially invalid and unenforceable, and compliance with it is not required. *See* Fed. R. Civ. P. 45(a)(2); *Rose v. Enriquez*, Case Nos. SA-13-MC396-FSR, CV-11-7838-DDP, 2013 WL 2458723, at *2 (W.D. Tex. June 6, 2013) (concluding that subpoenas issued from the wrong court in violation of Rule 45(a)(2) are facially invalid and unenforceable).

B. Motion for Sanctions

The court finds it difficult to empathize with Baron, as the situation he now finds himself in is one of his own making. The Fifth Circuit's determination that sanctions or a finding of contempt by the district court, rather than imposition of a receivership, would have been a more appropriate means of controlling "Baron's vexatious litigation tactics" in "ignoring court orders and hiring and firing of attorneys, which delayed court proceedings, increased the general cost of litigation, and increased expenses for the bankruptcy estate," is hardly a ringing endorsement of Baron's conduct and does not support his contention that he is merely a victim of the receivership and involuntary bankruptcy proceeding brought against him by his former attorneys. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 310-11 (5th Cir. 2012). Emboldened by the reversal of the receivership order and partial reversal of the judgment in the involuntary bankruptcy proceeding, Baron has continued to engage in disruptive conduct and has shown no signs of being deterred. Baron's conduct, and the conduct of those acting on his behalf or in the name of the LLCs, however, has not gone unnoticed by the court.

The court inherited the morass in this and the other cases involving Baron and the LLCs after Judge Furgeson retired in June 2013, but that does not mean it must tolerate the parties' and attorneys' disruptive conduct or failure to comply with the court's orders. The court currently has assigned to it approximately 290 civil cases and 60 criminal cases, and, by law, the court's criminal docket must take precedence over its civil docket. The unnecessary motions and documents filed in this case and other Baron- related cases involving the same parties and attorneys *far exceed* that in any of the court's other cases. There have been approximately 100 docket entries in this case since the court directed the Receiver to begin taking steps to wind down the receivership. Similarly,

although related Case No. 3:14-CV-1552-L has been pending for less than one year, 12 motions have been filed in that case, and there are 68 docket entries.

The revolving door of attorneys representing Baron and the LLCs, the continually shifting alliances and litigiousness of the attorneys and persons acting on behalf of Baron and the LLCs (the parties to the receivership), and the proliferation of lawsuits, have greatly complicated matters and interfered with the court's efforts to expeditiously wind down the receivership and rule on the numerous motions pending in this and the other Baron-related cases. Supervising the shenanigans and conduct of the receivership parties and their counsel in this case and the other related cases has been a full-time job for the court and its staff, and the nonsense has unnecessarily consumed large amounts of the scarce judicial resources. Moreover, the proceedings are unnecessarily delayed every time the court has to divert its attention to focus on an unnecessary motion or document filed in an attempt to get the "last word"; the court is notified that Baron or those acting on his or the LLCs' behalf have filed yet another lawsuit or motion in another case requesting essentially the same relief—that is, a determination that Katz and Payne lack authority to manage or represent the LLCs;[2]

[2] After the court announced in early 2014 that it would begin winding down the receivership in this case, Baron, through his new attorney Leonard Simon, requested that the court order the Receiver to turn over the LLCs' noncash domain name portfolio assets to an unidentified and yet-to-be designated representative of RPV, the purported trustee of the Village Trust. Baron also requested that the court do so without first conducting the evidentiary proceedings recommended by the Receiver to determine the person or entity with authority to oversee the LLCs' business affairs and assets. After the court ordered the Receiver to turnover the LLCs' assets to Katz, who was hired by the Village Trust in 2011 to manage the LLCs' affairs in Texas, RPV appeared for the first time in this case contending, as Baron did, that McNair, who was allegedly appointed as the LLCs' manager after the court ordered the LLCs' assets returned to Katz, has authority to manage and control the LLCs' assets and business, and that Katz and attorney Payne no longer have authority to manage or represent the LLCs because their services were terminated by McNair. On April 22, 2014, counsel for RPV filed a Texas state court action on behalf of the LLCs, seeking to enjoin Katz and Payne from continuing to exercise authority or control over the LLCs and the assets that the court previously ordered returned to Katz. After the case was removed to federal court, the requested injunctive relief was denied by Chief United States District Judge Jorge A. Solis on May 6, 2014. *See* Civil Action No. 3:14-CV-1552-L. On April 7, 2014, a lawsuit was also filed on behalf of the LLCs in federal court in Florida by another attorney seeking similar injunctive relief. In addition, McNair, who was represented by different attorneys, filed an application on March 24, 2014, in the Cooks Islands seeking a declaratory judgment, similar to that sought in Civil Action No. 3:14-CV-1552-L, regarding his, Katz's, and Payne's authority. The court also has reason to believe that a lawsuit was filed in Australia. The filing of multiple lawsuits by Baron, the LLCs, or those acting on their behalf for the purpose of obtaining essentially the same relief has created

the court is notified that Baron, or those acting on his or the LLCs' behalf, is engaging in conduct that undermines the court's receivership orders; or the court receives written correspondence from Baron in cases to which he is not a party, complaining about alleged delays to which he has significantly contributed.

The court will not allow its other civil and criminal cases to languish as a result of the litigiousness of the parties' and attorneys' conduct in this and related cases. Accordingly, if the vexatious litigation and proliferation of Baron-related lawsuits continue, the proceedings in this and other Baron-related cases will necessarily be delayed, and the offending parties, persons, entities, or attorneys, whose bad faith conduct has interrupted or interfered with the court's administration of its docket, will be sanctioned. The court will not interrupt the proceedings on the merits in this or

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unnecessary confusion and chaos.

The inconsistent positions taken by Baron and the LLCs and those acting on their behalf in various proceedings before this court and the bankruptcy court have been similarly disruptive and unproductive. Notably, although Baron previously steadfastly maintained in this case and the bankruptcy proceedings that he did not own or have any right to control the LLCs or their assets and objected to the bankruptcies findings to the contrary, he did an about-face after the court indicated that it would begin winding down the receivership, and he began contending that the LLCs' assets are his own assets. Likewise, Baron never previously objected to Katz, Payne, or Schepps acting on behalf the LLCs when it benefited his own agenda of disrupting the proceedings in this case and the bankruptcies cases and preventing the LLCs' assets from falling into the hands of the bankruptcy trustee. Notwithstanding the inconsistent positions taken in this case, Baron and the LLCs maintain in a recently filed motion in the Ondova bankruptcy case that "[t]he LLCs are separate and apart from the Debtor, Ondova, and Baron." Mot. to Confirm Settlement Authority 3. Baron and the LLCs nevertheless indicate that, because the LLCs have been previously implicated in the bankruptcy proceeding due to their perceived relationship with Baron, they request the bankruptcy court to make a determination regarding the authority of Payne, Katz, and Schepps, who is currently listed as counsel for Baron and the LLCs in an appeal pending before the Fifth Circuit, to act on behalf of the LLCs. According to the motion, without this requested relief, the LLCs will not be able to recover valuable assets that were assigned to the Village Trust pursuant to the GSA needed to effectuate a plan of reorganization and beneficial settlement with the Ondova bankruptcy estate. Baron's and the LLCs' request for relief is ironic given that: (1) Baron's and the LLCs' prior actions interfered with the implementation of the GSA, according to the bankruptcy court; (2) Baron previously villainized the bankruptcy court and its efforts to determine whether he or others had authority to manage or control the LLCs; and (3) the bankruptcy court previously found that Baron was the director or person ultimately responsible for the disruptive conduct and sham orchestrated on the bankruptcy court with respect to the LLCs. Based on the court's familiarity with the Baron-related cases and its careful review of the trust documents relied on by Baron, the LLCs, and those acting on their behalf, the court strongly suspects that the bankruptcy court's intuition regarding Baron's conduct is correct.

other cases to conduct sanctions hearings as this will serve only to reward the offending parties, persons, entities, or attorneys seeking delay and result in needless satellite litigation. Accordingly, the court **denies without prejudice** the Motion for Sanctions. The court instead will assess at the conclusion of this and the other Baron-related cases whether any parties, nonparties, or attorneys should be sanctioned for interfering with the court's orderly and expeditious disposition of its cases; disrupting or delaying the proceedings in this or other cases; or unnecessarily increasing the cost of litigation.

This should come as no surprise because the record in this and the related Baron cases is replete with prior warnings from this court, Judge Furgeson, and the bankruptcy court regarding disruptive and abusive litigation practices. Thus, all parties, nonparties, and attorneys participating in this and other Baron-related cases, including those involving the LLCs, are on notice, and there will be no further warnings before sanctions are imposed.

IV. Conclusion

For the reasons stated, the court **denies** the Motion to Quash Subpoena Served by Baron in Contempt of the Protective Order of This Court (Doc. 1436); and **denies without prejudice** the Motion for Sanctions (Doc. 1436). Further, the court **directs** the clerk of the court to file this order in this case, as well as the following cases: Civil Action Nos. 3:14-CV-1552-L; 3:14-CV-1126-L; and 3:15-CV-232-L. The clerk **shall** also contact the bankruptcy clerk to ensure that the order is docketed in the Ondova bankruptcy, Case No. 09-34784-SGJ-11.

It is so ordered this 3rd day of March, 2015.

Sam A. Lindsay
United States District Judge