Case No. 10-11202

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Netsphere, Inc. et. al.,

Plaintiffs

v.

Jeffrey Baron,

Defendant / Appellant

Daniel J. Sherman
(Ondova Limited Company)

Defendant / Appellee

Interlocutory Appeal of Order Appointing Receiver
From the United States District Court
Northern District of Texas, Dallas Division
Civil Action No. 3-09CV0988-F

EMERGENCY MOTION TO STAY ORDER APPOINTING RECEIVER OVER JEFFREY BARON PENDING APPEAL

Respectfully submitted,

/s/ Gary N. Schepps

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FOR JEFFREY BARON

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. PARTIES

a. Appellant/Defendant: JEFFREY BARON

b. Appellee/Defendant: DANIEL J. SHERMAN, Trustee
for ONDOVA LIMITED COMPANY

c. Intervenor: VeriSign, Inc.

d. Plaintiffs: (1) Netsphere Inc
(2) Manila Industries Inc
(3) Munish Krishan

2. ATTORNEYS

a. For Appellant: Gary N. Schepps
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Dallas, Texas 75240

b. For Appellee: Munsch Hardt Kopf & Harr, P.C.

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(2) Lee J. Pannier, Esq.

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Dallas, Texas 75201-6659
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c. For Intervenor: DORSEY & WHITNEY (DELAWARE) LLP
(1) Eric Lopez Schnabel, Esq.
(2) Robert W. Mallard, Esq.

d. For Plaintiffs:

(1) John W MacPete, Locke Lord Bissell & Liddell
(3) Douglas D Skierski, Franklin Skierski Lovall Hayward
(4) George M Tompkins, Tompkins PC
(5) Melissa S Hayward, Franklin Skierski Lovall Hayward

3. OTHER

a. Companies and trusts seized:

(1) VillageTrust
(2) Equity Trust Company
(3) IRA 19471
(4) Daystar Trust
(5) Belton Trust
(6) Novo Point, Inc.
(7) Iguana Consulting, Inc.
(8) Quantec, Inc.,
(9) Shiloh LLC
(10) Novquant, LLC
(11) Manassas, LLC
(12) Domain Jamboree, LLC
(13) Genesis, LLC.
(14) Nova Point LLC.
(15) Quantec LLC

b. Receiver: Peter Vogel

c. Counsel for Receiver: Gardere Wynne Sewell LLP

(1) Peter Vogel
(2) Barry Golden
(3) Peter L. Loh

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT

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TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW JEFFREY BARON, Appellant, and pursuant to Federal Rule of Appellate Procedure 8(a)(2) moves this Honorable Court to stay the District Court's Order Appointing Receiver over Mr. Baron and all his assets signed on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010] in the District Court below, pending appeal of that order to this Court pursuant to 28 U.S.C. §1292(a)(2).

The granting of this motion is required because Jeffrey Baron has a very substantial likelihood of success on appeal, his constitutional rights are being trampled, and he will suffer acute and irreparable injury–that no citizen of should have to suffer–unless the District Court's order is immediately stayed.

II. SUMMARY

Jeffrey Baron was a defendant and counter-plaintiff in the District Court. The lawsuit before the District Court settled. (Exhibit C). Jeffrey Baron then had the audacity to object in a separate bankruptcy case to the fee application of one Raymond Urbanik. (Exhibit G). Within three business days Mr. Urbanik had the US District Court judge sign, without a hearing, an ex-parte order: (1) seizing all of Mr. Baron's assets, along with the assets of independent trusts to which Mr. Baron is a beneficiary (approximately $20,000,00.00 to $40,000,000.00 in assets); and (2) appointing the receiver over Mr. Baron in the nature of a guardianship over an incompetent. (Exhibits A, F). Mr. Baron's attorneys were told they were fired and *Mr. Baron was threatened that if he tried to hire an attorney he could be held in contempt*. (Exhibits P, R).

The receiver seized all of Mr. Baron's assets, appeared in the bankruptcy court asserting to hold Mr. Baron's rights, and withdrew the objection to Mr. Urbanik's fee application. (Exhibit G). The bankruptcy court then approved the fees and sealed Mr. Urbanik's fee application so that it could not be examined by the public. (Exhibit H).

When Mr. Baron appealed and asked the District Court for emergency relief, the District Court eventually held a 'hearing' (on December 17, 2010) and entered further orders. The District Court declined to grant the emergency stay requested by Mr. Baron, and instead ordered that the seized domain name assets must not be renewed, i.e., must be abandoned, unless their current income exceeds current expenses (no matter what their capital value). (Exhibit M). Unless the receivership is immediately stayed, over a million dollars in domains will be intentionally abandoned by the receiver beginning today and continuing over the next seven days. *See page 22, below.* The District Court is also poised to order in 3 days that Mr. Baron must sign over his bank accounts (approximately $2 Million in cash) to the receiver with a $1,000.00 bond as 'adequate protection'. (Exhibit Q, F).

The District Court also announced at the December 17 hearing, that it is going to have the 'claimants' paid from Mr. Baron's money, without the bother of trials or even lawsuits—despite the fact the claimants are not parties to the district court lawsuit and the 'claims' are wholly outside of the District Court's subject matter jurisdiction.

The relevant law is clear and longstanding. A District Court may not bypass the Constitution by a newly created 'equitable remedy' whereby a party's property is seized and without formal complaints or trial is distributed to 'claimants' as the District Court feels is 'equitable'. The suspension of Mr. Baron's constitutional rights and seizure of

his assets has absolutely no basis in law and is a gross violation of the US Constitution, and the controlling precedent of this Court.

The District Court's order appointing receiver was issued without due process for a clearly improper and unconstitutional purpose. The damages being inflicted upon Mr. Baron by virtue of the order are very real, harsh, irreparable and immediate.

III. STATEMENT OF THE CASE AND FACTS

This motion and appeal arise out of a breach of contract lawsuit filed in the District Court.[1] In this lawsuit Netsphere sought to enforce an alleged contract entered into with Jeffrey Baron and Ondova Limited Company. (Exhibit B). Subsequent to the filing of the lawsuit, Ondova was forced to file for bankruptcy protection. Thereafter, all claims and controversies in the District Court lawsuit settled. (Exhibit C).

Jeffrey Baron is not a judgment debtor and is not in bankruptcy. Mr. Baron is a defendant and counter-plaintiff in the District Court lawsuit and the beneficial owner of the equity of Ondova, the company in bankruptcy.

Mr. Baron became concerned that the attorney for the trustee in the Ondova bankruptcy, Mr. Raymond J. Urbanik, was charging grossly excessive fees[2]. On November 19, 2010, **Mr. Baron filed an objection to Mr. Urbanik's latest fee application in the bankruptcy court.** (Exhibits A, D).

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[1] Netsphere, Inc., et.al., v. Jeffrey Baron, and Ondova Limited Company, Civil action no. 3-09CV0988-F in the Northern District of Texas.

[2] Cloaked with authority and legitimacy as the attorney for the bankruptcy trustee, Mr. Urbanik has effectively drained the equity in Ondova through massive attorney fee billings. Mr. Urbanik's latest billing was for over three hundred thousand dollars, and he has billed a total of about a million dollars in fees. (Exhibit D).

Mr. Urbanik responded by filing a motion *to appoint a particular receiver over Mr. Baron* in the settled District Court lawsuit. Mr. Urbanik had the District Court act without a hearing, ex-parte, to strip Mr. Baron of all his possessions and appoint the desired receiver over Mr. Baron in the nature of a guardianship-- expressly so that Mr. Baron would be unable to hire legal counsel.[3] (Exhibit E).

Mr. Urbanik cited as the ***sole*** necessity for his ex-parte motion that: "*13. Therefore, the appointment of a receiver is necessary under the circumstances in order to remove Baron from control of his assets and end his ability to further hire and fire a growing army of attorneys.*"[4] (Exhibit E).

Without any notice or opportunity for Mr. Baron to be heard; without any supporting affidavits; and without the entry of any findings, the District Court below entered an order stripping Mr. Baron of all his possessions and appointed the requested receiver over Mr. Baron's person.[5] (Exhibit F).

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[3] Mr. Baron has been put in essentially house arrest in Dallas. (Exhibit A).

[4] Mr. Urbanik offered the specious argument that a couple of Mr. Baron's former counsel were making claims in Ondova's bankruptcy case (which has no connection to the district court action) asserting that Mr. Baron provided a substantial contribution to the case under §503(b)(3)(D) and therefore the former counsel were entitled to compensation for professional services rendered. This was the argument why Mr. Baron needed to be stripped of all his assets, and trusts he is a beneficiary of be seized. **The argument is as absurd as it is fallacious.**

If Mr. Baron provided a substantial benefit to the bankruptcy case, he should not be sanctioned. If Mr. Baron paid an attorney who provided the services creating that benefit *Mr. Baron* is entitled to file a claim and recover his expenses. *E.g.*, *In re Energy Partners, Ltd*., 422 BR 68 (Bankr.S.D.Tex. 2009). Assuming *arguendo* that Mr. Baron provided a substantial benefit but did not pay the former attorney, the attorney would be entitled to file a claim to recover a reasonable fee. In either case, *whether or not the former attorney was paid***,** a claim for allowance of the fees could be lawfully filed. The entire issue has zero net effect on the bankruptcy case under §503(b)(3)(D). A claim for allowance can be made either way.

Moreover, there can only be such a claim if Mr. Baron provided a substantial benefit to the bankruptcy case. That is 100% inconsistent with claims that Mr. Baron hindered the bankruptcy.

[5] The order appointing receiver and seizure actions of the receiver actually go further, seizing the

Within just 3 business days after Mr. Baron filed his objection to Mr. Urbanik's fees, Mr. Urbanik had Mr. Baron's person and property under receivership.

The receiver then withdrew the objection to Mr. Urbanik's $334,262.00[6] fee application, and the bankruptcy court approved the fee, and sealed Mr. Urbanik's fee application from public view. (Exhibits G, H).

On December 3, 2010, Appellant filed an emergency motion in the District Court seeking an order vacating the appointment of a receiver and in the alternative the issuance of a stay pending appeal. (Exhibit I). Appellant requested from the District Court, at a three day intervals, emergency consideration of the request for emergency relief. (Exhibit J). After an emergency motion was filed in the Court of Appeals, the District Court set the matter for an 'expedited hearing' on December 17.

At the December 17th hearing the District Court declined to grant the relief requested by Mr. Baron. Instead, **the District Court ruled against the factual claims in Mr. Baron's declaration that he would suffer irreparable injury**, and found there was a 'lawful basis' to delete (abandon) the domain name assets seized by the receiver (regardless of their value) because their cost of upkeep exceed their income. (Exhibits M,S).

The District Court ordered the deletion of *thousands* of Trust assets seized by

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assets of retirement and spendthrift trusts for which Mr. Baron is the beneficiary, as well as the assets of the companies owned by the spendthrift trusts. Again, **Mr. Baron is <u>not</u> in bankruptcy and is <u>not</u> a judgment debtor.** A court is moreover prohibited by law from attempting to appoint a receiver in a bankruptcy case. 11 U.S.C. §105(b).

No party has made any claim to any property right in any of Mr. Baron's assets. Rather, the *express* and only purpose of the receivership and summary confiscation of all of Mr. Baron's property is to prevent Mr. Baron from being able to hire legal counsel. (Exhibit E).

[6] A sum in addition to the $670,000.00 in fees previously approved. (Exhibit D).

the receiver, and proposed in 3 days to order Mr. Baron to turn over private materials such as past years' tax returns, and to sign over approximately $2,000,000.00 in cash from his now frozen bank and retirement accounts to the receiver (serving on a $1,000.00 bond). (Exhibits A, M, Q, F).

The District Court also announced that it was going to pay 'claimants' (not parties to the District Court Lawsuit) out of Mr. Baron's assets in the receivership. (Exhibit A). The District Court set a hearing date for further proceedings *next year*.

Substantial irreparable injury will occur if a stay is not granted immediately. Notably, whether an asset is profitable or not, does not make its loss not irreparable. Especially where a unique asset has no economic value, its loss cannot be compensated for with damages. *See e.g,. Wildmon v. Berwick Universal Pictures*, 983 F.2d 21, 25 (5th Cir. 1992) ("By definition, 'irreparable injury' is that for which compensatory damages are unsuitable").

The District Court has no lawful basis and no subject matter jurisdiction to tell Mr. Baron which assets he must part with forever. Mr. Baron is not in bankruptcy. Mr. Baron is not a judgment debtor—he as not lost a single jury trial. Mr. Baron has not been charged with any crime, he has not been held in contempt of any court order, nor has any attorney representing him been found to have filed any frivolous or groundless pleading or motion. Mr. Baron had almost two million dollars in the bank (which were seized by the receiver).[7] If he wants to maintain unique assets that have no economic

[7] Mr. Baron is now effectively a pauper. A few thousand dollars have been released to him to pay his utilities, buy some food, and minimal medical supplies. His money being seized, Mr.

worth, that is his **right**. The District Court's order to delete the domains instead of staying the receivership order causes direct, irreparable and immediate injury.[8]

No less significantly, Mr. Baron is also currently being deprived of most of his civil rights. (Exhibit F). His assets, bank accounts, credit cards, and legal rights have been taken from him. Mr. Baron's right to a jury trial with respect to other's claims against him (and his claims against them) has been suspended.

In a side-step of the Constitution, the District Court Judge and the receiver are in the active process of administering star-chamber 'justice' and determine who gets Mr. Baron's money. The receiver has already waived Mr. Baron's rights with regard to Mr. Baron's objection to Mr. Urbanik's fees. Daily more money is being siphoned from Mr. Baron's assets as more and more 'costs of receivership' are incurred. Daily more rights are lost and waived as Mr. Baron is prevented from asserting his rights in court.[9]

Mr. Baron is handicapped and the emotional and physical impact has been debilitating. The impact to his health from the stress of the daily irreparable loss of his life's work, coupled with restricted access to legal counsel and has reached the point

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Baron cannot travel out of Dallas to be with friends & family for the holiday, and must suffer the embarrassment of being unable to give Christmas gifts and the harsh stigma of being placed into receivership. All of which is irreparable injury but which pales in comparison to the irreparable physical suffering and damage the stress is causing to Mr. Baron physically. (Exhibit A).

[8] In addition to the assets without market value, the District Court has ordered literally more than a million dollars in domains to be lost. (Exhibit A). Notably, market value of an asset is not determined simply by its cash flow. A million dollar diamond will have negative cash flow because it generates no income but costs thousands to insure. Negative cash flow is not a legitimate *sole* basis to throw away assets—especially someone else's.

[9] For example, tomorrow Mr. Baron will lose his right to object to Mr. Power's application for allowance (in the Ondova bankruptcy case), which unless objected to by tomorrow, December 20, is waived. (Exhibit N). The bankruptcy court recognizes the receiver in place of Mr. Baron. (Exhibit G).

that further delay is no longer an option. Emergency relief is necessary. (Exhibit A).

IV. STANDARD IN GRANTING STAY PENDING APPEAL

The Fifth Circuit has adopted the four standards set out in *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 259 F.2d 921 (DC Cir. 1958) to determine whether stay pending appeal should be granted. *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968). Those factors are: (1) Whether the movant has made a showing of likelihood of success on the merits; (2) Whether the movant has made a showing of irreparable injury if the stay is not granted; (3) Whether the granting of the stay would substantially harm the other parties; and (4) Whether the granting of the stay would serve the public interest. *Id.*

V. ARGUMENT & AUTHORITY

A. LIKELIHOOD OF SUCCESS ON APPEAL

Appointment of a receiver in this case is prohibited by law

The Fifth Circuit has recognized three grounds under Federal law pursuant to which a District Court may appoint a receiver: (1) the appointment of a receiver can be sought "by anyone showing an interest in certain property or a relation to the party in control or ownership thereof such as to justify conservation of the property by a court officer"; (2) receivers may be appointed "to preserve property pending final determination of its distribution in supplementary proceedings in aid of execution"; and (3) receivership may be an appropriate remedy for a judgment creditor who: (a) "seeks to set aside allegedly fraudulent conveyances by the judgment debtor", (b) "has had execution issued and returned unsatisfied", (c) "proceeds through supplementary

proceedings pursuant to Rule 69", (d) "seeks to subject equitable assets to the payment of his judgment", or (e) "otherwise is attempting to have the debtor's property preserved from dissipation until his claim can be satisfied." *Santibanez v. Wier McMahon & Co.*, 105 F. 3d 234, 241 (5th Cir. 1997)(emphasis).

The appointment of a receiver to prevent a defendant from hiring legal counsel is not one of the three grounds recognized by the Fifth Circuit, nor by the US Supreme Court.

The appointment of a receiver is subject to close scrutiny by the appellate court. *Tucker v. Baker*, 214 F. 2d 627, 631 (5th Cir. 1954). Appointment of a receiver where there is no claim to the assets seized is strictly prohibited— **there is no occasion for a court to appoint a receiver of property of which it is asked to make no further disposition**. *Id.* Accordingly, to prevent an individual from being able to hire an attorney can never be a lawful purpose for the appointment of a receiver.

Similarly, the appointment of **a receiver may not be used as a means to provide substantive relief**. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941). The Supreme Court has frequently admonished that a federal court should not appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought. *Id.* As explained by the Fifth Circuit, and by the Supreme Court, Receiverships "are to be watched with jealous eyes lest their function be perverted." *Id.; Tucker* at 631. The appointment of a receiver to force an individual to do something having nothing to do with the property seized is a gross perversion of Receivership.

With respect to the argument that some former attorneys may have claims for fees against Mr. Baron, as a matter of longstanding Federal law **an unsecured contract creditor**[10] has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor and **may not be granted an order of receivership against the debtor**. *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923). The appointment of a receiver to bypass the district court's lack of subject matter jurisdiction and to bypass constitutional protections such as an individual's right to trial, is a prohibited exercise of the receivership power—receiverships may not be granted in favor of unsecured contract creditors.

Mr. Sherman (in whose putative name Mr. Urbanik filed the motion for receivership) is neither individually nor as trustee a judgment creditor of Jeffrey Baron. Mr. Sherman neither individually nor as trustee has any interest in Mr. Baron's property.[11] Accordingly, as a matter of law Mr. Sherman lacks standing to bring a motion for appointment of a receiver under Federal law. *Williams Holding Co. v. Pennell*, 86 F. 2d 230 (5th Cir. 1936).

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[10] The putative movant for receivership below, Daniel J. Sherman, is notably not a creditor of Mr. Baron's. The opposite, Mr. Baron is a ***creditor*** of the bankruptcy estate. Further, with respect to any actual claims Mr. Sherman or Ondova Limited might have against Mr. Baron (none have been asserted), the District Court notably lacks subject matter jurisdiction as there is no diversity of citizenship.

[11] In his motion Mr. Urbanik recast the Ondova bankruptcy court's recommendation on enforcement of the settlement agreement. Notably, the bankruptcy court did not order or recommend the appointment of a receiver, but merely threatened to do so if needed *to enforce compliance with the settlement agreement*. Mr. Baron fully complied with the settlement agreement—well prior to Mr. Urbanik's motion to appoint a receiver. Since the bankruptcy court did not take the step of recommending receivership, the issue is moot. Suffice to say, no law allows bypassing a party's right to due process (such as the right to a trial) when charged with breaching a contract, and had the bankruptcy court taken the step to recommend putting someone into receivership prior to adjudication of liability for breach of contract, substantial issues of law would be raised. E.g., see note 5, above. Notably, Mr. Urbanik did not allege any breach of contract in his motion.

The purpose for which the receiver was sought is clearly unconstitutional

The Fifth Amendment to the United States Constitution establishes that a civil litigant has a constitutional right to retain hired counsel. *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1104 (5th Cir. 1980). Moreover, "the right to counsel is one of constitutional dimensions and should thus be freely exercised without impingement." *Id.* at 1118; *Mosley v. St. Louis Southwestern Ry.*, 634 F.2d 942, 946 (5th Cir. 1981).

An individual's relationship with his or her attorney "acts as a critical buffer between the individual and the power of the State." *Johnson v. City of Cincinnati*, 310 F.3d 484, 501 (6th Cir. 2002). A defendant must be afforded a fair opportunity to secure counsel "of his own choice" and that applies "in any case, civil or criminal" as a due process right "in the constitutional sense". *Powell v. Alabama*, 287 U.S. 45, 53-69 (1932).

If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. *Chandler v. Fretag*, 348 U.S. 3, 10 (1954). A necessary corollary is that "a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth." *Id.*

Obviously, the District Court below can directly control what attorneys are allowed to appear before it, so long as not exercised arbitrarily. However, the purpose of the receivership order is much broader—including to restrict Mr. Baron's ability to

secure legal counsel to prosecute an appeal from the District Court or to assert his rights in the Bankruptcy Court. The express purpose for which the receivership order was sought is to restrict Jeffrey Baron from securing legal counsel and advice from the attorneys of his choice– not only inside, but outside of the District Court. (Exhibit E).

The means of the receivership order is clearly unconstitutional

The seizure clause of the Fourth Amendment prohibits the unreasonable interference with possession of a person's property. *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 2009). The seizure ordered by the District Court was **purely arbitrary—based on no case law or statute, ordered without a trial on the merits of any claim, and entered based on no objective guidelines or guiding principles**.

The application for receivership was grossly defective

Most Federal courts of appeal have held that a receivership is an "extraordinary" equitable remedy to be "employed with the utmost caution" and "granted only in cases of clear necessity." See e.g., *Solis v. Matheson*, 563 F.3d 425, 437 (9th Cir. 2009); *Rosen v. Siegel*, 106 F.3d 28, 34 (2d Cir. 1997); *Aviation Supply Corp. v. R.S.B.I. Aerospace*, Inc., 999 F.2d 314, 316 (8th Cir. 1993); *Consolidated Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322, 326-27 (1st Cir. 1988).

Accordingly, the circuits that have addressed the issue have held that the district court has discretion to appoint a receiver "only after evidence has been presented and findings made showing the necessity of a receivership." *E.g., Solis*, 563 F.3d at 438. ,

The Fifth Circuit has noted six factors considered as indicating the need for a

receivership in those circumstances where the appointment of a receiver is permitted by Federal law, (e.g., supplementary proceedings in aid of execution, etc..). *Santibanez*, 105 F. 3d at 241-242. Those factors are:

(1) A valid claim by the party seeking the appointment;

(2) The probability that fraudulent conduct has occurred or will occur to frustrate that claim;

(3) Imminent danger that property will be concealed, lost, or diminished in value;

(4) Inadequacy of legal remedies;

(5) Lack of a less drastic equitable remedy; and

(6) Likelihood that appointing the receiver will do more good than harm.

In addition for failing to allege a lawful grounds for the issuance of an order appointing receiver, the application for receivership below failed to allege[12] any of the six factors recognized by the Fifth Circuit. There is no claim against Mr. Baron by the party seeking the appointment. **There is no allegation of fraudulent conduct.** There is no finding of any danger of property being concealed or lost. There is no allegation of inadequacy of legal remedies. There is no allegation that a less drastic equitable remedy was not available. There is no reference in the application to the harm that appointing a receiver would do. (Exhibit E). Accordingly, it was an abuse of discretion to enter the receivership order because no finding supported it, even had the order been sought for a lawful purpose.[13]

[12] And the District Court below failed to enter supporting findings as to.

[13] If the order had been sought for a lawful purpose, the District Court must exercise the "least possible power adequate to the end proposed." *Spallone v. United States*, 493 U.S. 265, 280

In sum, a legally groundless motion[14] sought for an unlawful purpose by a party lacking standing as a matter of law. The result has been the suspension of almost every civil liberty of Mr. Baron, taking all his property, suspending his right to contract, his right to privacy, his right to privileged communications with his attorneys, and, by design, impairing is right to travel and to hire legal counsel to defend and protect his rights.

While those who have inflicted this upon Mr. Baron are now gorging themselves on his money, Mr. Baron is effectively imprisoned in Dallas, dependent like an indentured servant on the desires of a Receiver the District Court below has ordered in essence to be Mr. Baron's legal guardian, with a twist—a guardianship not to protect an individual, but the opposite—with a duty to, and for the benefit of an individual's adversaries. (Exhibits A, F).

And Mr. Baron's infraction ? Jeffrey Baron tried to object to Mr. Urbanik's milking of almost all the equity—almost one million dollars for attorney's fees for the bankruptcy trustee— from the small company in which Baron is the beneficial equity holder. Of course, there are two sides to every story. As Mr. Urbanik expressly stated in his motion, appointing a receiver over Mr. Baron and all his assets is one sure way to stop Mr. Baron from hiring an "army of lawyers" to defend his rights against what he

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(1990). If a party is shown, after a hearing, to be threatening some irreparable injury over which the court has subject matter jurisdiction, an injunction will solve the problem.

[14] Brought in a court lacking subject matter jurisdiction over the non-diverse parties.

was concerned were improper, unlawful actions on the part of Mr. Urbanik.[15]

The order appointing receiver was issued without even minimal procedural due process and should be declared void

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing the order violates the fundamental principles of due process. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). Even the temporary taking of property that is not in execution of a final judgment is a "deprivation" as contemplated by the constitution and "had to be ***preceded*** by a fair hearing". *Fuentes v. Shevin*, 407 U.S. 67 (1972). Notably, due process requires an evidentiary hearing ***prior*** to the deprivation of some type of property interest even if such a hearing is provided thereafter. *Mathews v. Eldridge*, 424 U.S. 319, 333.

The District Court's order appointing receiver was not preceded by any type of hearing prior, and was not even supported by affidavit. It is therefore void for lack of procedural due process. *See Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) ("such

[15] Mr. Urbanik's motion makes the seemingly supported, but wholly fallacious complaint that Mr. Baron hired quite a few lawyers and didn't pay his bill. Firstly, that is not a legal basis to appoint a receiver and seize an individual's assets. Mr. Baron is not in bankruptcy. If he owed money to his former counsel they can sue and recover for any fees due. But Mr. Urbanik's claims don't stand up to a close examination. Firstly, he conflates the counsel retained for Ondova and other companies with Mr. Baron's counsel. Secondly, although not in short supply, when each is individually examined the attorney's claims against Mr. Baron seem dubious at best. The claims are not before the District Court and are not diversity claims. Accordingly, extensive analysis of each claim is beyond the scope of this appeal, but by way of example, the attorney that Mr. Urbanik has highlighted by attaching a lawsuit to his motion for receivership (exhibit b to Mr. Urbanik's motion) is suing Mr. Baron for one million dollars. Close reading of the petition reveals that the attorney had no contract, and worked less than two weeks. Notably, that same attorney's *previous* employer has sued the attorney in an unrelated lawsuit, alleging fraud, theft, breach of fiduciary duty, and other grossly unethical practices. (Exhibit K).

proceeding is void as not being by due process of law"); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("rendered in violation of due process is void in the rendering"); *Margoles v. Johns*, 660 F. 2d 291,295 (7th Cir. 1981)("void only if the court that rendered it lacked jurisdiction ... or if it acted in a manner inconsistent with due process of law"). (Exhibit L).

B. IRREPARABLE INJURY

Deprivation of constitutional rights is irreparable injury as a matter of law

It is well settled that the loss of constitutional freedoms for even minimal periods of time constitutes irreparable injury. *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Accordingly, the receivership order—expressly designed to interfere with Mr. Baron's constitutional right to hire legal counsel—involves irreparable injury as a matter of law.

Each day, in fact each hour that Mr. Baron is deprived of property taken by an unreasonable seizure, as a matter of law he is suffering irreparable injury.

Similarly, with each piece of private and personal information about his private life and affairs that Mr. Baron is compelled to disclose, his constitutional right to privacy is either threatened or in fact being impaired. This "mandates a finding of irreparable injury". *Deerfield* at 338.

When a persons' very right to control assets is stripped from them, a cascade of constitutional rights are impaired. It is the right to own and control property that is the cornerstone of a democratic society. For example, suspending an individual's right to possess property directly acts to impair their First Amendment interests by depriving

them of access to the primary medium of public expression—paid advertisements. Such an impairment of an individual's First Amendment freedoms, for even minimal periods of time constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-4 (1976).

Serious and irreparable harm to Mr. Baron personally

As detailed in Mr. Baron's declaration attached hereto as Exhibit A, and incorporated herein by reference, as discussed above, the receivership is imposing serious and irreparable injury to Mr. Baron personally.

Mr. Baron very literally is living in constant fear, day and night. He is being, against his will, forced to reveal all sorts of private, personal information. He is severely suffering emotionally, to the point of becoming despondent. He is suffering from attacks of shortness of breath and dizziness to the extent that he cannot stand upright.[16] Even Mr. Baron's freedom to communicate freely has been stripped from him.[17]

MR. BARON'S PRIVACY, AND SENSE OF SELF CONTROL HAS BEEN TAKEN FROM HIM, NO LESS THAN IF HE HAD BEEN THROWN IN JAIL. Mr. Baron is being deprived of the fundamental right to manage his own affairs, and make decisions about his own assets. He cannot travel, and cannot hire lawyers to defend himself. Mr. Baron's health and medical condition as a very real matter have dramatically deteriorated under the stress of the receivership order in the past three weeks.

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[16] Because his money and credit cards have been seized, Mr. Baron has no means to retain expert to testify as to his condition. The treating physician's diagnoses is attached to Exhibit A. Mr. baron is suffering very real symptoms from the stress of the receivership, including heart irregularity requiring the care of a cardiologist specialist, thrombocytopenia, hypokalemia, and hx seizures. (Exhibit A).

[17] The District Court ordered Mr. Baron to turn over his cell phones to the receiver (Exhibit F, page 7).

Mr. Baron is unable to sleep and is suffering from frequent panic attacks, and nausea. Mr. Baron's diabetes is worsening materially under the stress of the District Court's order and he is no longer able to control his blood sugar level causing his blood glucose levels to jump over 500 (normal readings are less than 100).

There is no way to quantify the damage physically suffered by Jeffrey Baron's due to the stress naturally arising out of being stripped of one's assets and control over his own affairs. Similarly, there is no way to prove the amount of damages Mr. Baron is suffering from being unable to choose how his money is invested and his assets managed. Jeffrey Baron is suffering very real irreparable injury.

Unique domain name assets which mark the apex of Mr. Baron's life work are under immediate threat of deletion by the District Court's order, and unless stopped, in addition to unique names for which there is no replacement price, over a million dollars in domains will be intentionally abandoned by the receiver beginning today and continuing over the next seven days. Thereafter, over the next 45 days, the receiver will throw away over three million dollars worth of domains. (Exhibit A). The receiver's bond is only $1,000.00.

No party from which to recover damages

Mr. Baron is faced with a situation where the wrongful actors carry a mantle of immunity. *E.g. Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981). To the extent that absolute judicial immunity attaches to the actions of Mr. Urbanik in his capacity as attorney for a bankruptcy trustee, Mr. Baron has no party from which to seek redress for his damages.

Since Mr. Baron is the equitable owner of Ondova (the entity ultimately in who's name Mr. Urbanik has acted), any recovery against Ondova would just be taken out of Mr. Baron's own pocket. Accordingly, as a very real matter the damages being caused to Mr. Baron, including the ever-increasing costs of the receiver and the receiver's attorney, are irreparable.

C. NO SUBSTANTIAL HARM TO OTHER PARTIES

This case has settled. Moreover, no party has a legitimate interest in denying Mr. Baron his constitutional right to legal counsel of his choice. If such an interest could be constitutionally served, an injunction prohibiting Mr. Baron from retaining counsel would serve the same interest, without taking away Mr. Baron's constitutional right to own and possess property.

D. PUBLIC INTEREST

There is a compelling public interest in upholding the US Constitution. Protecting an individual's rights in his property and his privacy, and his right to hire legal counsel of his choice, are important public interests served by granting the relief requested by Mr. Baron.

It is frightening to think that if an individual refuses to pay the excessive demands of an attorney or desires to object to grossly excessive fees sought by an attorney in a bankruptcy case, that instead of a right to trial by jury or impartial hearing before a judge, he can have all his assets and private documents immediately stripped from him, and become a ward of the court– incarcerated in 'house arrest' in one city, and prohibited from hiring legal counsel to protect his rights.

The actions taken against Mr. Baron shock the conscious. Prior to the filing of this appeal his attorneys were told by the receiver that they were fired, and Mr. Baron was warned— including warnings made in writing—that he faced contempt and going to jail if he dared attempt to hire an attorney to protect his rights. (Exhibit A, P, R).

Appellate counsel believes the deprivations Mr. Baron's has been—and at this hour is subject to— are grave. Appellant prays this Court agrees.

VI. CONCLUSION

The District Court below suspended Mr. Baron's constitutional right to own, access, and control his own property, for the purpose of denying Mr. Baron the ability to retain counsel. Such an order is unlawful and violates the US Constitution.

VII. PRAYER

Wherefore, Jeffrey Baron prays that this Honorable Court consider and grant this motion on an expedited basis, and Stay pending appeal the Order Appointing Receiver over the person and property of Mr. Baron signed by the District Court below on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010].

Respectfully submitted,

/s/ Gary N. Schepps

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FOR JEFFREY BARON

VIII. TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

FEDERAL RULES

CERTIFICATE OF SERVICE

This is to certify that this brief was served this day on all parties who receive notification through the Court's electronic filing system and by e-mail to:

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CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT JEFFREY BARON

CERTIFICATE OF NOTICE

This is to certify that notice of the filing of this request for emergency relief was provided by telephone to the Clerk of the Fifth Circuit Court of Appeals and to counsel for the Appellee.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT JEFFREY BARON