No. 11-10289

In the United States Court of Appeals for the Fifth Circuit

NETSPHERE, INC., ET AL,
Plaintiffs

v.

JEFFREY BARON,
Defendant- Appellant

v.

DANIEL J SHERMAN,
Appellee

Interlocutory Appeal of Orders
In Receivership on Appeal

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

BRIEF FOR JEFFREY BARON

Respectfully submitted,

/s/ Gary N. Schepps

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FOR APPELLANT

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. Defendant: JEFFREY BARON

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

C. INTERVENOR: RASANSKY, JEFFREY H.
AND CHARLA G. ALDOUS

d. Intervenor: VeriSign, Inc.

e. Plaintiffs: (1) Netsphere Inc
(2) Manila Industries Inc
(3) MUNISH KRISHAN

F. APPELLANTS: (1) NOVO POINT, LLC
(2) QUANTEC, LLC

G. APPELLEE: PETER S. VOGEL

2. ATTORNEYS

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c. For Intervenor VeriSign: Dorsey & Whitney (Delaware)
(1) Eric Lopez Schnabel, Esq.
(2) Robert W. Mallard, Esq.

d. For Intervenor Rasansky and Aldous: Aldous Law Firm
(1) Charla G Aldous

d. For Plaintiffs:

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

3. OTHER

a. Companies and entities purportedly seized by the receivership:

(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
(16) Iguana Consulting, LLC
(17) Diamond Key, LLC
(18) Quasar Services, LLC
(19) Javelina, LLC
(20) HCB, LLC, a Delaware limited liability company
(21) HCB, LLC, a U.S. Virgin Islands limited liability company
(22) Realty Investment Management, LLC, a Delaware limited liability company
(23) Realty Investment Management, LLC, a U.S. Virgin
(24) Islands limited liability company
(25) Blue Horizon Limited Liability Company
(26) Simple Solutions, LLC
(27) Asiatrust Limited
(28) Southpac Trust Limited
(29) Stowe Protectors, Ltd.
(30) Royal Gable 3129 Trust

b. Receiver / Mediator / Special Master: Peter Vogel

c. Non-parties seeking money from the receivership res:

1. Garrey, Robert (Robert J. Garrey, P.C.)
2. Pronske and Patel
3. Carrington, Coleman, Sloman & Blumenthal, LLP
4. Aldous Law Firm (Charla G. Aldous)

5. Rasansky Law Firm (Rasansky, Jeffrey H.)
6. Schurig Jetel Beckett Tackett
7. Powers and Taylor (Taylor, Mark)
8. Gary G. Lyon
9. Dean Ferguson
10. Bickel & Brewer
11. Robert J. Garrey
12. Hohmann, Taube & Summers, LLP
13. Michael B. Nelson, Inc.
14. Mateer & Shaffer, LLP (Randy Schaffer)
15. Broome Law Firm, PLLC
16. Fee, Smith, Sharp & Vitullo, LLP (Vitullo, Anthony "Louie")
17. Jones, Otjen & Davis (Jones, Steven)
18. Hitchcock Evert, LLP
19. David L. Pacione
20. Shaver Law Firm
21. James M. Eckels
22. Joshua E. Cox
23. Friedman, Larry (Friedman & Feiger)
24. Pacione, David L.
25. Motley, Christy (Nace & Motley)
26. Shaver, Steven R. (Shaver & Ash)
27. Jeffrey Hall
28. Martin Thomas
29. Sidney B. Chesnin
30. Tom Jackson

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

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not believe oral argument would be helpful in determining the issues involved in this appeal. The issues are pure questions of law determined *de novo* and involve long established legal principles. Dispositive issues in the case have been authoritatively decided, *e.g., Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)(The filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal); *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931) (absent pleadings asserting a claim over the receivership property, an order appointing a receiver is void for lack of subject matter jurisdiction); *St. Clair v. Cox*, 106 U.S. 350, 353 (1882) (order void unless the District Court acquired jurisdiction over the party by personal service or voluntary appearance); *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923)(Even where the court which appoints a receiver had jurisdiction at the time, but loses it ... the first court cannot thereafter make an allowance for the receiver's expenses and compensation.) .

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

FEDERAL RULES

STATEMENT OF THE JURISDICTION

The Fifth Circuit Court of Appeals has jurisdiction to hear this interlocutory appeal from the orders of the District Court of the Northern District of Texas: (1) appointing a receiver, (2) taking steps to accomplish the purposes of a receivership, including denying Jeff Baron the ability to hire counsel, (3) directing the sale of receivership assets, (4) ordering the disposal and disbursement of receivership property; pursuant to 28 U.S.C. §§1292(a)(1) and (2).

The District Court lacked subject matter jurisdiction to enter the orders because: (1) The District Court was divested of jurisdiction over the matter when it was appealed to the Fifth Circuit Court of Appeals; (2) the District Court lacks personal and subject matter jurisdiction over the multitude of parties ordered into receivership; and (3) no claim for relief regarding the property ordered into receivership was pled. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931) (absent pleadings asserting a claim to support the receivership, an order appointing a receiver is void for lack of subject matter jurisdiction, in fact, "their proceedings are absolutely void in the strictest sense of the term").

ISSUES PRESENTED FOR REVIEW

ISSUE 1: Does an interlocutory appeal divest the trial court of jurisdiction over the matter appealed ?

ISSUE 2: Does Due Process require that a party be afforded the opportunity to be heard on motions before relief is granted against that party ?

ISSUE 3: Must a court acquire personal jurisdiction over a third-party in order to order that third-party into receivership ?

ISSUE 4: Where a single receiver was appointed over multiple receivership parties and res, did the District Court abuse its discretion in awarding receivership fees and expenses (1) Without a showing or finding that the fees and expenses were reasonable or necessary; and (2) Without regard to which of multiple receivership parties or for which of a multiple receivership res the fees were allegedly incurred.

ISSUE 5: Did the District Court err in awarding receivership fees and expenses where the receiver was prohibited by law from being appointed as a receiver ?

ISSUE 6: Did the District Court err in (1) Awarding receivership fees and expenses Without allowing the receivership party the opportunity to hire experienced legal counsel to offer evidence and argument as to the necessity or reasonableness of the fees and (2) Denying Baron the right to use his own money to hire counsel to represent him and protect his rights ?

STATEMENT OF THE CASE

This is an interlocutory appeal from orders entered by the District Court exercising control of a receivership while the matter is on appeal to the Fifth Circuit.

STATEMENT OF FACTS

One defendant below, Ondova (through the chapter 11 trustee who now controls it, Sherman) filed a motion for the District Court to seize all of the assets of another defendant, Jeffrey Baron, in order to prevent him from hiring an attorney.[1] Sherman falsely made it look like the bankruptcy judge desired a receiver over Baron if he hired any lawyers.[2] The District Judge granted Sherman's motion *ex parte* and later explained: "[T]he receivership is an effort to stop the parade of lawyers trying to wiggle out of lawful injunctions from judicial officers. Yes, sir."[3]

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[1] R. 1578 (paragraph 13, "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."), 1619-1632. One reason cited by Sherman in his motion was that three business days before, Baron had hired an attorney to assist in objecting to Sherman's Attorney's fee application in the bankruptcy court where Baron is a creditor. 1576-1577.

[2] R. 1576.

[3] R. 4593-4594.

The original purpose of the *ex parte* receivership was clear: Jeff Baron was warned that he was "prohibited from retaining any legal counsel" and that if he did "the Receiver may move the Court to find you in contempt".[4] To enforce compliance and to stop Jeff from having any money to hire a lawyer, all of his assets (including his exempt property) were seized[5], as were all of his future earnings[6]. Jeff was ordered not to cash any checks[7] or enter into any business transactions[8]. Jeff Baron has been this "civil lockdown" since the day the challenged order was issued *ex parte* in November 2010. Baron has been forced to live off a monthly sustenance stipend disbursed to him by the receiver. Under the express threat of contempt, Jeff Baron has been permitted to purchase only "local transportation, meals, home utilities, medical care and medicine."[9]

[4] SR. v8 p1213.
[5] R. 1620.
[6] R. 1622 paragraph F.
[7] R. 1620, 1621 paragraph C.
[8] R. 1620, 1622, 1627 paragraph A.
[9] SR. v8 p1213.

When the receivership was imposed, Baron immediately turned over his personal documents and files requested by the receiver.[10] Baron's estate consists essentially of some savings accounts and some Roth IRAs.[11] Accordingly, the receiver was not left with very much to do.

Baron appealed the receivership order on Dec. 2, 2010.[12]

The receiver then moved to add a multitude of companies into his receivership (without lawsuits, service, evidence, or the normally expected process of law).[13] Those companies include:

1. NovoPoint, LLC.
2. Quantec, LLC.
3. Iguana Consulting, LLC.
4. Diamond Key, LLC.
5. Quasar Services, LLC
6. Javelina, LLC.
7. HCB, LLC, a Delaware limited liability company.
8. HCB, LLC, a USVI company.
9. Realty Investment Management, LLC.- Deleware.
10. Realty Investment Management, LLC – USVI.
11. Blue Horizon, LLC.
12. Simple Solutions, LLC.
13. Asiatrust Limited.
14. Southpac Trust Limited.

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[10] R. 3891.

[11] SR. v8 p1007.

[12] R. 1699-1700.

[13] R. 1717, 3952; SR. v1 p40, and sealed record Doc 609; SR. v2 pp365,405.

15. Stowe Protectors, Ltd.
16. Royal Gable 3129 Trust.
17. CDM Services, LLC
18. URDMC, LLC.

The District Judge made no findings in entering his November 2010, *ex parte* receivership order. R. 1619-1632. Months later, in February 2011 the District Court entered findings in denying Baron's FRAP 8(a) motion for relief pending appeal. The post-appeal explanation in those findings is essentially as follows: The District Court believes Baron was a vexatious litigant (although never appearing *pro se*) who owed money in undetermined amounts to his former attorneys, and therefore should be denied the ability to hire an experienced trial lawyer to defend himself, and should be stripped of his possessions without trial "so that justice is done". SR v2 p358.

While this matter has been on appeal, the District Court has distributed essentially all of Jeff's savings account balances to the receiver and his law firm.[14] The amount is staggering— almost a million dollars. SR. v8 p990-992.

[14] Around $400,000 in a stock portfolio, and IRAs remain, but the stocks are currently subject to a motion by the receiver to liquidate to pay additional fees, and the receiver did not pay 2010's taxes.

ARGUMENT SUMMARY

The District Court below lacked jurisdiction over the receivership with respect to which the challenged orders were issued. Additionally there was a breakdown of the basic protections of Due Process, with the District Court:

(1) issuing orders against non-parties upon whom no service was made and over whom the District Court lacked personal jurisdiction;

(2) issuing orders without allowing the mandated opportunity to respond to the motions seeking relief; and

(3) denying Baron the opportunity to hire experienced Federal trial counsel.

ARGUMENT & AUTHORITY

ISSUE 1: DOES AN INTERLOCUTORY APPEAL DIVEST THE TRIAL COURT OF JURISDICTION OVER THE MATTER APPEALED ?

Standard of Review

Issues based on questions law are subject to independent review, *de novo*. *In Re Fredeman*, 843 F.2d at 824.

Appeal Divests the District Court of Jurisdiction Over the Matter Appealed

Jeffrey Baron filed a notice of appeal from the receivership order on December 2, 2010. R. 1699. The filing of a notice of appeal is an event of jurisdictional significance– it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The divesture of jurisdiction of the trial court involves all those aspects of the case appealed. *Id.* As a matter of well-established law, the district court loses jurisdiction over all matters which are validly on appeal. *Dayton Indep. School Dist. v. US Mineral Prods. Co.*, 906 F.2d 1059, 1065 (5th Cir. 1990) ("rule which we follow rigorously"). The sole authority of a district court with respect to

a matter on interlocutory appeal is to maintain the status quo of the case as it rests before the court of appeals. *E.g.*, *Coastal Corp. v. Texas Eastern Corp*., 869 F.2d 817, 820 (5th Cir. 1989); *Dayton* at 1063.

The District Court was Divested of Jurisdiction over Receivership Res

As an well-established principle of law, the effect of an appeal of a receivership is that the appellate court is vested with jurisdiction over the receivership res. *E.g.*, *Palmer v. Texas*, 212 U.S. 118, 126 (1909). The Supreme Court held in *Palmer* "**[T]he effect of the appeal was simply ... that the appellate court still had jurisdiction over the res the same as the trial court had**". *Id.* The Supreme Court explained this rule in Palmer, holding:

> "If a court of competent jurisdiction, Federal or state, has ... obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty"
>
> *Id.* at 125.

As a well-established rule, "Even where the court which appoints a receiver had jurisdiction at the time, but loses it ... the first court

cannot thereafter make an allowance for his expenses and compensation". *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923). Once the matter was placed before the Court of Appeals, the property was in the possession of the Court of Appeals, and "[T]hat possession carried with it the exclusive jurisdiction to determine all judicial questions concerning the property." *Wabash R. Co. v. Adelbert College of Western Reserve Univ.*, 208 U.S. 38, 46 (1908). As a well-established principle of law and comity, two courts should not attempt to assert jurisdiction over the same matter simultaneously. *Griggs* at 58; *Dayton* at 1063.

While the matter is on appeal, not only is the district court divested of authority over the receivership res, but it is without authority over the matter on appeal, and has no jurisdiction award fees for the matter while it is on appeal. *E.g.*, *Taylor v. Sterrett*, 640 F.2d 663, 668 (5th Cir. 1981) ("[T]he District Court was divested of jurisdiction only as to matters relating to the April 27 and May 12 orders and subsequent orders and, for that reason, fees cannot be recovered for work relating to these orders.").

Accordingly, the District Court was without authority to disburse hundreds of thousands of dollars from the receivership res as 'fees'. Docs 274, 275, 276, 278, 283, 284, 292, 294, 295, and 297. SR. v2 pp 367, 368, 369, 371, 377, 378, 411, 413, 414; SR. v3 p44. Similarly the District Court was without Authority to authorize the liquidation of receivership assets, nor to restart the 10-clock for expanding the receiver's authority. Doc 288; SR. v2 p406 and Doc 293; SR. v2 p412.

District Court was Divested of Jurisdiction to Tamper with the Order on Appeal

As a matter of established law, **"[T]he district court lacks jurisdiction 'to tamper in any way with the order then on interlocutory appeal' "** *Coastal Corp,* 869 F.2d at 820. Accordingly, the District Court was without authority to expand the receivership order to include a multitude of new receivership parties. Doc 272; SR. v2 p365 and Doc 287; SR. v2 p405.

Policy Issue: Prejudgment of Validity of Receivership

The validity of the receivership order should be resolved on appeal *before* the District Court should be allowed to distribute and disburse the property of a party which was seized by the District Court's

receivership order. Otherwise, the District Court can effectively bypass review by the Court of Appeals by *de facto* distribution of the receivership res before the validity of the receivership has been resolved on appeal. A district court should not be allowed to moot a matter pending before the Court of Appeals. *Dayton*, 906 F.2d at 1063. Accordingly, the challenged orders Doc 275 (SR. v2 p368), Doc 276 (SR. v2 p369), Doc 294 (SR. v2 p413), Doc 295 (SR. v2 p414), Doc 274 (SR. v2 p367), Doc 278 (SR. v2 p371), Doc 283 (SR. v2 p377), Doc 292 (SR. v2 p411), and Doc 297 (SR. v3 p44), should be reversed.

ISSUE 2: DOES DUE PROCESS REQUIRE THAT A PARTY BE AFFORDED THE OPPORTUNITY TO BE HEARD ON MOTIONS BEFORE RELIEF IS GRANTED AGAINST THAT PARTY ?

Standard of Review

Issues based on questions law are subject to independent review, *de novo*. *In Re Fredeman*, 843 F.2d at 824.

Argument

As a matter of well-established law, failure to afford a party the opportunity to be heard on a motion seeking relief against them is fundamentally inconsistent with the notion of due process and orders issued without such an opportunity are void. *E.g. Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)(restored the petitioner to the position he would have occupied had due process of law [the opportunity to be heard] been accorded to him in the first place); *Pennoyer v. Neff*, 95 US 714, 737 (1878) ("void as not being by due process of law")*; Goss v. Lopez*, 419 U.S. 565, 579 (1975) ("The fundamental requisite of due process of law is the opportunity to be heard"); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-430 (1982) (due process violated in denying potential litigants established adjudicatory procedures); *Joint Anti-Fascist*

Refugee Comm. v. McGrath, 341 U.S. 123, 161 (1951) ("Fairness of procedure is 'due process in the primary sense.' It is ingrained in our national traditions and is designed to maintain them.")(citation omitted); *International Transactions v. Embotelladora Agral*, 347 F.3d 589, 596 (5th Cir. 2003).

The local rule of the Northern District of Texas allows a respondent 21 days to respond to motions. N.D. Tex. L.R. 7.1(e) ("Time for Response and Brief. A response and brief to an opposed motion must be filed within 21 days from the date the motion is filed."). The District Judge did not order or provide any notice that the time would be shortened, and expressly acknowledged that the time allowed was "a full twenty-one days to respond to every motion that's filed". SR. v4 p863. Accordingly, with respect to Orders Doc 287 (SR. v2 p405), Doc 288 (SR. v2 p406), Doc 285 (SR. v2 p403), Doc 293 (SR. v2 p412) and Doc 291 (SR. v2 p409), the District Court abused its discretion in granting relief without allowing Baron the legally mandated opportunity to respond and be heard on the requested relief. As discussed above, the District Court's failure to allow Mr. Baron the

established procedures and opportunity to respond and be heard on the relief requested against him, constitutes a violation of Due Process and should render the orders so entered void.

ISSUE 3: MUST A COURT ACQUIRE PERSONAL JURISDICTION OVER A THIRD-PARTY IN ORDER TO ORDER THAT THIRD-PARTY INTO RECEIVERSHIP ?

Standard of Review

Issues based on questions law are subject to independent review, *de novo*. *In Re Fredeman*, 843 F.2d at 824.

Argument

The District Court issued two Orders (Doc 272;SR. v2 p365 and Doc 287;SR. v2 p405) placing a multitude of companies into the District Court's receivership. The orders were granted at the request of the receiver himself. No service was issued against any of the added parties, no personal jurisdiction over those parties was obtained, no hearing was held on the orders, etc. SR. v2 pp 365, 405.

As a fundamental principle of well established law, a court rending a ruling against a party must first acquire jurisdiction over that party by personal service or voluntary appearance. *St. Clair v. Cox*, 106 U.S. 350, 353 (1882). Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied. *Omni Capital Int'l, Ltd. v. Rudolf*

Wolff & Co., 484 U.S. 97, 104 (1987). Orders issued without personal jurisdiction are void. *Pennoyer v. Neff*, 95 U.S. 714, 728 (1878).

Similarly, since there was no claim or controversy concerning the non-parties added to the receivership, the District Court below lacked subject matter jurisdiction to place the multitude of companies into receivership. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931); *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 89 (1998); *and see Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986); *Middle South Energy, Inc. v. City of New Orleans*, 800 F.2d 488, 490 (5th Cir. 1986)(without an actual case or controversy between the parties within the meaning of Article III of the Constitution there is no subject matter jurisdiction).

Accordingly, the District Court's orders (Doc 272;SR. v2 p365 and Doc 287;SR. v2 p405) should be declared void.

ISSUE 4: WHERE A SINGLE RECEIVER WAS APPOINTED OVER MULTIPLE RECEIVERSHIP PARTIES AND RES, DID THE DISTRICT COURT ABUSE ITS DISCRETION IN AWARDING RECEIVERSHIP FEES AND EXPENSES (1) WITHOUT A SHOWING OR FINDING THAT THE FEES AND EXPENSES WERE REASONABLE OR NECESSARY; AND (2) WITHOUT REGARD TO WHICH OF MULTIPLE RECEIVERSHIP PARTIES OR FOR WHICH OF A MULTIPLE RECEIVERSHIP RES THE FEES WERE ALLEGEDLY INCURRED.

Standard of Review

Receivership fee allowances are reviewed for abuse of discretion. *Commodity Credit Corporation v. Bell*, 107 F.2d 1001 (5th Cir. 1939).

Argument

A series of orders challenged in this appeal, Doc 275 (SR. v2 p368), Doc 276 (SR. v2 p369), Doc 294 (SR. v2 p413), Doc 295 (SR. v2 p414), Doc 274 (SR. v2 p367), Doc 278 (SR. v2 p371), Doc 283 (SR. v2 p377), Doc 292 (SR. v2 p411), and Doc 297 (SR. v3 p44), award fees to the receiver, his law partners, and 'professionals' employed by the receiver. With respect to the motions seeking such fees, there was no argument or evidence offered that the fees were reasonable or necessary. The fees moreover were billed for work on multiple receivership res, for work involving multiple receivership parties, but were not segregated in any

way, and were charged randomly against any particular receivership party or res. The District Court entered no findings of fact or law in support of its granting the motions for payment of the fees. Accordingly, the District Court abused its discretion in granting the fee awards.

ISSUE 5: DID THE DISTRICT COURT ERR IN AWARDING RECEIVERSHIP FEES AND EXPENSES WHERE THE RECEIVER WAS PROHIBITED BY LAW FROM BEING APPOINTED AS A RECEIVER ?

Standard of Review

Issues based on questions law are subject to independent review, *de novo*. *In Re Fredeman*, 843 F.2d at 824. The discretionary aspects of receivership fee allowances are reviewed for abuse of discretion. *Commodity Credit*, 107 F.2d at 1001.

Argument

On July 9, 2009, the District Court employed Peter Vogel as a special master in the case below. R. 394. While still in his role as special master, Vogel consulted *ex parte* with Sherman (who then controlled the defendant Ondova) with respect to the motion to appoint himself (Vogel) as a private receiver over Mr. Baron's assets. SR. v5 p238. Vogel was also a special master when he moved to add additional parties under his own receivership. R. 1717. A special master employed by the Court is an officer of the court. *E.g.*, *Devlin v. Scardelletti*, 536 U.S. 1 (2002). Further, courts which have considered the issue have

held that a special master is a judge sitting in the case in which he is employed. *E.g.*, *Horton v. Ferrell*, 335 Ark. 366, 981 S.W.2d 88 (1998); *Vereen v. Everett, Dist. Court*, (ND Georgia 2009, No. 1:08-CV-1969-RWS).

Congress mandated in 28 U.S.C. §958 that any person (1) holding *any* civil office or (2) employed by any judge of the United States shall not be appointed a receiver in any case. Accordingly, Peter Vogel could not be appointed a receiver because he was employed by the District Judge as a special master at the time he was appointed receiver. A clear public policy purpose of the statute is to prevent conflict of interest. The possibility that a special master in a case would consult to have himself appointed as receiver over a party in the lawsuit where he presently sat as a judge, violates the most fundamental notations of an independent judiciary. If the motive of personal profit is allowed to enter the side of the bench behind which judges and special masters sit, the very foundation of an independent, impartial judiciary is threatened. For this reason, the fees awarded to Peter Vogel and his law should be reversed.

ISSUE 6: DID THE DISTRICT COURT ERR IN (1) AWARDING RECEIVERSHIP FEES AND EXPENSES WITHOUT ALLOWING THE RECEIVERSHIP PARTY THE OPPORTUNITY TO HIRE EXPERIENCED LEGAL COUNSEL TO OFFER EVIDENCE AND ARGUMENT AS TO THE NECESSITY OR REASONABLENESS OF THE FEES AND (2) DENYING BARON THE RIGHT TO USE HIS OWN MONEY TO HIRE COUNSEL TO REPRESENT HIM AND PROTECT HIS RIGHTS ?

Standard of Review

Issues based on questions law are subject to independent review, *de novo*. *In Re Fredeman*, 843 F.2d at 824. The discretionary aspects of receivership fee allowances are reviewed for abuse of discretion. *Commodity Credit*, 107 F.2d at 1001.

Argument

Baron repeatedly moved to be allowed access to his own money in order to hire attorneys to represent him. E.g., R. 2720; SR. v2 p384 (Doc 264). However, the District Court did not allow Baron to hire counsel. E.g., Doc 316 (SR. v4 p119).

The Fifth Circuit has held 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 Fifth Circuit has held that "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). The Supreme Court has held that a party 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).

That basic right was denied Baron by the District Court below. The order denying Baron the right to hire an experienced Federal trial attorney and the orders issued against Baron while he was deprived of that basic constitutional right should be reversed.

PRAYER

Appellant, jointly and in the alternative requests the following relief:

(1) That the challenged orders be reversed.

(2) That the challenged orders be found to be void *ab initio*.

(3) That costs be taxed against the Appellees.

Respectfully submitted,

/s/ Gary N. Schepps

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JEFF BARON

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because: this brief contains 5,456 words.

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using MS Word 2000 in 14 and 15 point century font.

DATED: August 12, 2011.

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

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.

CERTIFIED BY: /s/ Gary N. Schepps
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