

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

NETSPHERE, INC.,	§	Civil Action No. 3-09CV0988-F
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

**APPELLANTS' JOINT RESPONSE AND MOTION TO STRIKE THE  
RECEIVER'S MOTION FOR ORDER CONFIRMING PROPRIETY OF  
FUND MANAGEMENT [DOC#199]**

**TO THE HONORABLE ROYAL FURGESON, U.S. DISTRICT JUDGE:**

COMES NOW, Appellant, defendant Jeffrey Baron and Appellants NovoPoint, LLC and Quantec, LLC and make this joint response and motion to strike the Receiver's Motion For Order Confirming Propriety of Fund Management [Doc#199].

1. The receiver's motion does not comply with the mandatory requirements of Local Rule 7.1(a) which require that "Before filing a motion, an attorney for the moving party must confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed." Further, if a conference was not held, the certificate must explain why it was not possible to confer. LR 7.1(b)(3). No conference was held with the Appellants' counsel and no

explanation was provided why such a conference was not possible. Accordingly, the receiver's motion should be appropriately stricken.

2. The Village Trust cannot be a receivership party because the Village Trust is not a party. A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person. *Restatement (Second) of Trusts* § 2 (1959); see e.g., *Coleman v. Golkin, Bomback & Co., Inc.*, 562 F.2d 166,168-9 (2nd Cir. 1977); *In re Columbia Gas Systems Inc.*, 997 F.2d 1039,1064 (3rd Cir. 1993).

3. The property of the Village Trust is owned by SouthPac, a non-party over whom the district court has acquired no personal jurisdiction. SouthPac was not served with process and there is no basis in law for the district court to assert control over any of its assets.

4. The money received by the receiver has been deposited in a way that is substantially uninsured and at risk should the bank holding the funds fail. Pursuant to 28 U.S.C. 2041 the funds must be deposited by the receiver into a US Treasury account.

5. Respondents adopt and incorporate by reference the argument and authority raised in Appellant's Limited Objection To The Receiver's First Application For Reimbursement Of Fees Incurred By Receivership Professional

Joshua Cox [Doc#190] and in Appellants' Joint Objection And Response To (1) The Receiver's First Application For Reimbursement Of Fees And Expenses Incurred By The Receiver [Doc#192] and (2) The Receiver's First Application For Reimbursement Of Fees And Expenses Incurred By Gardere Wynne Sewell LLP [Doc#193].

### **CONCLUSION**

WHEREFORE, premises considered, Appellants move this Honorable Court to strike docket no. 199, and to deny the receiver's motion and jointly and in the alternative to order the receiver to immediately deposit all monies it has received or receives in the future into a US Treasury account.

Respectfully submitted,

/s/ Gary N. Schepps

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LLC, and QUANTEC, LLC**

**CERTIFICATE OF SERVICE**

This is to certify that this was served on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps  
Gary N. Schepps

**CERTIFICATE OF CONFERENCE**

This is to certify that the undersigned attempted to confer in writing (pursuant to counsel for the receiver's request), and no response was received.

/s/ Gary N. Schepps  
Gary N. Schepps