

No. 12-10489
In the
United States Court of Appeals
for the Fifth Circuit

NETSPHERE, INC. Et Al,
Plaintiffs

v.

JEFFREY BARON,
Defendant – Appellant

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,
Non Party – Appellants

v.

ONDOVA LIMITED COMPANY,
Defendant – Appellee

v.

PETER S. VOGEL,
Appellee

Appeal of Asset Disposal Orders in Ex Parte Receivership
Imposed to Prevent Jeff Baron from Hiring Counsel and
to Force Settlement of Non-Diverse Unpled
Non-Party Former Attorney Fee Claims Alleged against Jeff Baron

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

**EMERGENCY MOTION FOR STAY PENDING APPEAL
OF ORDER TO LIQUIDATE NON-PARTY ASSETS AND DISTRIBUTE
RECEIVERSHIP RES**

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/Appellant:** JEFFREY BARON
- b. Defendant/Appellee:** 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
(3) Jeffrey Baron
- 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 Islands limited liability company
- (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-party attorneys seeking fees 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 APPELLANT

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28 U.S.C. § 200422

28 U.S.C. §165112

TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT COURT OF APPEALS:

NOW COME Appellants Novo Point LLC and Quantec LLC and Appellant Jeffrey Baron, defendant, and respectfully move this Honorable Court to enter orders, to (1) immediately and temporarily stay the orders of the District Court pending consideration of this motion and (2) staying the orders of the District Court pending appeal. In support Appellants respectfully show:

A. Relief Sought & Standard

Appellants seek a stay pending appeal pursuant to Federal Rule of Appellate Procedure 8(a). The criteria for a stay pursuant to Rule 8(a) are well established, as follows. The movant must show: (1) likelihood of success on the merits, (2) irreparable injury if the stay is not granted, (3) absence of substantial harm to the other parties from granting the stay and (4) service to the public interest from granting the stay. *E.g., Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968).

The stay is sought jointly and in the alternative for the following orders:

- a. [DOC 906] The District Court's Order GRANTING IN PART THE RECEIVER'S 883 MOTION FOR APPROVAL OF ADMINISTRATIVE COSTS AND TO DISBURSE CASH AND SELL DOMAIN NAMES TO FUND ADMINISTRATIVE COSTS.

(Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).

- b. [DOC 904] The District Court's Order ORDER: Defendant Jeffrey Baron should retain trial counsel for his representation in the underlying suit. (Ordered by Judge Royal Furgeson on 5/3/2012) (Judge Royal Furgeson) Modified on 5/3/2012 (Furgeson, Royal). (Entered: 05/03/2012).
- c. [DOC 903] The District Court's Order GRANTING THE RECEIVER'S FIFTEENTH APPLICATION FOR REIMBURSEMENT OF FEES INCURRED BY MARTIN THOMAS 886 (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).
- d. [DOC 902] The District Court's Order GRANTING THE RECEIVER'S SIXTH APPLICATION FOR REIMBURSEMENT OF FEES INCURRED BY THOMAS JACKSON 602 (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).
- e. [DOC 901] The District Court's Order GRANTING THE RECEIVER'S FOURTH APPLICATION FOR REIMBURSEMENT OF FEES INCURRED BY MARTIN THOMAS 593 (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).

- f. [DOC 897] The District Court's Order GRANTING THE RECEIVER'S MOTION TO RELEASE RECEIVER FROM OBLIGATION OF FILING TAX RETURNS FOR CERTAIN RECEIVERSHIP PARTIES (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).
- g. [DOC 896] The District Court's Order granting doc 467 Motion for Attorney Fees (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).

B. Jurisdiction of the Court of Appeals

Federal Rule of Appellate Procedure 8(a)(1) provides that a motion for stay of an order "must ordinarily be presented to the district judge in the first instance." The District Court had previously advised this Honorable Court that a stay of the asset sales to allow appeal would be proper. SR. v9 p97. However, Baron presented his motion to the District Court, requesting a ruling last week and no relief was granted by the District Court. The District Court has instructed appellate counsel for Novo Point LLC and Quantec LLC not to make motions seeking relief for the non-party Appellants in the District Court. Accordingly, this motion for stay is sought from this Honorable Court pursuant to Federal Rule of Appellate Procedure 8(a)(1).

When property is placed into a receivership, it is taken into possession by the court through its representative, the receiver. *See Booth v. Clark*, 58 U.S. 322, 331 (1855). As a matter of binding precedent, when a receivership order is appealed the effect of the appeal is that the appellate court has “jurisdiction over the *res* the same as the trial court had”. *Palmer v. Texas*, 212 U.S. 118, 126 (1909). Accordingly, this Honorable Court currently holds possession and jurisdiction over the assets of Baron, Novo Point LLC and Quantec LLC. R. 3934, 4306. Accordingly, pursuant to 28 U.S.C. §1651, this Honorable Court may issue “all writs necessary or appropriate in aid of their respective jurisdictions”. If the District Court’s orders authorizing sale and distribution of receivership assets—cash and domain names owned by Novo Point LLC and Quantec LLC—are not stayed, this Honorable Court will be divested of jurisdiction over that part of the receivership estate. Staying the sale of receivership *res* is necessary to protect this court’s possession and jurisdiction of the receivership estates that are the subject of appeals pending before this Honorable Court.

Notably, for almost a year the District Court respected the jurisdiction of this Honorable Court over the receivership *res*. A year ago, the District Court entered an order that **it was stayed from taking further action on the matters** on appeal before this Honorable Court. SR. v8 p166. Accordingly, the District Court ordered that all motions concerning the receivership be made before this Honorable Court. SR. v8 p1189. This Honorable Court has acknowledged its jurisdiction over the

receivership pending appeal, and has ruled on many orders regarding the receivership *res* that have been pled before it. For example, one of those matters was Sherman's motion to pay his attorneys' fees for the Defendant Ondova with the assets of the non-parties Novo Point LLC and Quantec LLC, and/or to allow the District Court to rule on his motion.¹ **This Honorable Court declined to allow the District Court to rule on the matter at this time** and declined to grant the relief requested by Sherman at this time. Rather, this Honorable Court ruled that this Honorable Court would carry the motion with the case.² Similarly, **the other motions** ruled on by the District Court and challenged in this appeal (or equivalent motions) are **currently pending before this Honorable Court.**³ The District Court is aware of this, and in acting to divest this Honorable Court of jurisdiction over the matters, ordered Vogel to withdraw the motions pending before this Honorable Court. (Doc. 906).

¹ Doc. 511738402 filed on 1/26/2012 in case 10-11202.

² Doc. 511759009 filed on 2/15/2012 in case 10-11202.

³ E.g., Vogel's "Second Sealed *Ex Parte* Motion For .. Liquidation of Assets". (See response to Vogel's motion filed as Doc. 511781078 filed on 3/07/2012 in case 10-11202); Doc. 511831730 filed on 4/23/2012 in case 10-11202; Doc. 511831693 filed on 4/23/2012 in case 10-11202; etc.

C. Background

In August, 2010, all claims pled in the lawsuit **fully and finally settled** and all parties entered a stipulated order of dismissal with prejudice as to all claims. R. 2109, *et.seq.*, 2346-2356. There were two sets of claims asserted in the suit, as follows:

- (1) A diverse breach of contract claim brought by the plaintiffs against the defendants Jeff Baron and his company Ondova. R. 38-51. And,
- (2) A non-diverse breach of contract claim brought as an intervention against the same defendants by a law partner of the District Judge's brother-in-law, Charla Aldous, and attorney J. Rasansky.⁴ R. 385, *et. seq.*

Both the plaintiffs' claim and the Aldous/Rasansky claim fully and finally settled in August 2010. R. 2346-2356.

⁴ Two days after his brother-in-law's law partner filed for intervention, the District Judge appointed a partner at his sister-in-law's former law firm to act as special master in the case. R. 394-396. The appointment was ordered in violation of the mandatory requirements of Fed.R.Civ.P. 53(b)(3). The District judge later appointed that same partner, Vogel, as mediator and, *ex parte*, as receiver. R. 1574,1604. As receiver, Vogel moved for Novo Point LLC and Quantec LLC to be included into his receivership. Vogel then arranged secret asset sales (complained of in a prior appeal) in order to pay himself, his firm and 'professionals' over a million dollars. The million dollars in fees challenged on that appeal were awarded by the District Judge without hearing, and were in addition to previous fee awards to Vogel and his firm, also without hearing, totaling a million dollars and which were taken by the District Court from Baron's savings accounts, and emptying them. R. 1717, sealed Doc. Nos. 424/425,480; SR. v8 p1007, pp990-992. This appeal challenges more secret sales to pay more yet more 'fees' to Vogel and his firm and 'professionals' approved by the District Court, again, without hearing, or supporting findings of fact, etc..

The District Judge's Action to Take Matters His Own Hands and Seize Property *Ex Parte* to Forcibly Pay on Unpled Allegations Baron Owed Money to Former Non-Party Lawyers

Several months later, the District Court was apparently concerned with grievances against Jeff Baron, primarily the allegation that Baron owed money to a series of former attorneys.⁵ The allegations were not pled in the lawsuit before the District Court.⁶ However, on November 24, 2010, The District Court decided to take matters into his own hands 'in the interest of justice'.⁷ In off-the-record *ex parte* proceedings and without supporting pleadings, affidavits, service of process, findings, etc., the District Court signed an order placing Jeff Baron and a long series of non-party entities into receivership.⁸ No affidavits, evidence, or sworn showing was made to establish the cause for seizing the property subject of the receivership. No bond was ordered to protect any party should the receivership order be found wrongful.⁹ No claim of exigent circumstances was made. The

⁵ While no findings were entered in support of the *ex parte* receivership order signed November 24, 2010, In February 2011 the District Court entered findings in denying Baron's Fed.R.App.P. 8(a) motion for relief pending appeal. SR. v2 p339, *et. seq.*

⁶ Other than of the partner of District Judge's brother-in-law and Rasansky,
⁷ *Id.*

⁸ R. 1619-1632. The order was signed at 1:15pm. SR. v11 p83. No findings were entered in support of the receivership order. It is unclear who drafted the order. Information about the *ex parte*, off-the-record proceedings came to light from information provided by third parties and examination of the creation time of key documents. See SR. v11 p82-84.

⁹ This basic constitutional requirement for *ex parte* action against private property relates to the mandatory concern for the rights and possible injury that may be inflicted on the innocent should the *ex parte* action be wrongful. The District Court failed to take any steps at the time the *ex parte* order was entered to protect the rights of Jeff Baron. As a matter of established law, that one-sided approach to justice is a violation of Due Process of Law. *Connecticut v. Doehr*, 501 U.S. 1, 19 (1991).

property ordered seized by the receiver was not subject to any claim pled, and no party was served with process in relationship to the receivership proceedings.

Then, a Motion to Support the Court's Order was Filed

Later in the day after the receivership order was signed, a motion seeking the order was filed. R. 1716; SR. v11 p82-83. The sole grounds stated in the motion for the need for a receivership was to prevent Jeff Baron from hiring legal counsel to defend himself. R. 1578, ¶13. The District Court instructed the receiver, Peter Vogel, to investigate and prosecute the allegations against Baron, but (according to the receiver's position) to ignore all exculpatory evidence. SR. v7 p202.

Then, the District Court was Stayed

Multiple motions for stay of the receivership were denied by this Honorable Court between December 8, 2010 and March 29, 2011, as follows: December 8, 2010 (No. 00511315299); December 20, 2012 (No. 00511327536); February 25, 2011 (No. 00511394852); March 3, 2011 (No. 0051140089); March 29, 2011 (No. 00511427530). The District Court was noticed and aware of each such order of this Honorable Court. In light of the denial of a stay pending appeal to lift the receivership and seizure of assets, on May 5, 2011 and June 20, 2011, the District Court entered stay orders (Doc. 586 and Doc. 616) acknowledging that pursuant to the binding precedent of this Honorable Court and U.S. Supreme Court, the District Court was divested of jurisdiction over the matters on appeal and therefore **a formal stay was entered** against further jurisdiction by the District Court over

the receivership while the matter was on appeal to this Honorable Court, so that the receivership *res* would be controlled by the Court of Appeals. SR. v8 p166; SR. v8 p1189.

The District Court's Personal and Family Relationship to the Key Beneficiaries of the District Court's Orders were Disclosed in Appellate Briefings on March 27, 2012 – and the District Court then Radically Changed its Approach

On March 27, 2012, The District Court's personal and family relationship to key parties in interest and principal beneficiaries of the District Court's orders with respect to the receivership were disclosed in appellate filings before this Honorable Court. The District Court then radically changed its approach and took a different tact with this case, as follows: The District Court immediately ordered that a status conference be held, and at that status conference attempted, apparently, to justify the secret *ex parte* proceedings that were held with Sherman and Vogel¹⁰ and announced that the Court would now take a new course. The District Court then entered an order declaring that because of the rulings of this Honorable Court to

¹⁰ Although the existence of the proceedings has been clearly established in the record from material provided by outside sources (SR. v11 p83), Sherman, Vogel, and District Judge have still not acknowledged the secret proceedings took place, as follows: Sherman has affirmatively denied that the proceedings took place (Doc. 4 filed in Case 3:12-cv-00387-B on 02/17/12 at Page 2) and Vogel and the District Judge have maintained their silence on the issue. Notably, in addition to Sherman's written confirmation to third parties that proceedings were held at 1:15pm in which the District Judge signed the receivership order (the motion for receivership was printed later that day), the District Clerk's records show that Sherman's motion to appoint receiver was filed at 3:40pm and Vogel personally filed the order appointing him as receiver at 3:41pm. It is obviously not possible within the space of the single minute between 3:40pm and 3:41pm for all of the following to have occurred: (1) the District Court to (a) be notified of the motion on the CM/ECF system, (b) review the motion, (c) print an order, (d) sign the order, and (e) deliver the signed order to Vogel's office; and then for (2) Vogel to (a) scan in the order and (b) upload the order to the Court's CM/ECF.

which the District Court's stay order was made subsequent to, that the stay order should now be vacated and the District Court was now empowered to divest this Honorable Court with jurisdiction over the receivership *res*. (Doc. 878).

Accordingly, the District Court has announced that **the District Court no longer recognizes this Honorable Court's jurisdiction over the matters on appeal**, and has now actively attempted to divest this Honorable Court of exclusive control over the receivership *res* by entering orders as to its distribution of the *res*, apparently as quickly as possible. The District Court has also reverted to its former practice of entering its rulings (on most of the motions) without allowing for response by the parties adversely affected by the motions, and ruling on motions that are materially *ex parte*. Similarly, the District Court is clearly aware that Jeff Baron is not represented in the trial court—The District Court's receiver fired Baron's trial counsel in 2010— yet the District Court has proceeded to rule apparently in a rush, as quickly as possible.

The Matters Subject of the District Court's Orders Challenged on this Appeal are Before this Honorable Court, and Some have been Ruled on by this Honorable Court

This Honorable Court has acknowledged its jurisdiction over the receivership pending appeal, and has ruled or postponed ruling on many orders regarding the receivership *res* that have been pled before it. For example, as discussed above, this Honorable Court ordered that it would carry with the case

Sherman's motion for payment and liquidation of receivership assets. (See Document 511759009 filed in Case 10-11202 on 2/15/2012).

D. Likelihood of Success on Appeal

Appeal Divests the District Court of Jurisdiction Over all Aspects of the Case Appealed

As a well-established principle of law, **two courts should not attempt to assert jurisdiction over the same matter simultaneously.** *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (“[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. 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.”; *Dayton Indep. School Dist. v. US Mineral Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir. 1990)(“When one aspect of a case is before the appellate court on interlocutory review, the district court is divested of jurisdiction over that aspect of the case.”) .

A notice of appeal from the receivership order was filed on December 2, 2010. R. 1699. As a matter of binding precedent, 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* at 58. 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* at 1065 (*Griggs* is “follow[ed] rigorously” by this Honorable Court). The sole jurisdiction 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 the 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.

The Supreme Court has ruled that “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).

Secret Ex Parte Proceedings

The Supreme Court has described secret judicial proceedings as “a menace to liberty”. *Gannett Co. v. DePasquale*, 443 U.S. 368, 412 (1979). The receivership and the order for sale subject of this motion all involve *ex parte*, secret proceedings in the District Court, in which advocacy in the trial court has been allowed only against Baron and the entities whose assets have been seized by Vogel.¹¹ The assets ordered liquidated by the District Court have not been disclosed to either Baron or the LLCs. Similarly, no hearing was held and no response or argument was allowed regarding the reasonableness of Vogel’s private sales. In the same way the receivership was imposed, the decision to approve the sale of the assets was **made in secret** between Vogel and the District Court. (Doc

¹¹ Sherman was privy to the District Judge’s signing of the receivership order On November 24, 2010 at 1:15pm. SR. v11 p83. A motion for receivership (R. 1575) was, however, not filed until later that day at 3:40pm, as reflected in the Clerk’s records.

883, sealed and ex parte). Similarly, the sales themselves were not to be by open, public auctions as required by law, absent “extraordinary circumstances”. 28 U.S.C. § 2004; e.g., *Tanzer v. Huffines*, 412 F.2d 221, 222 (3rd Cir. 1969). Rather, the sale of the assets was arranged secretly by Vogel, to secret buyers at secret prices.

Fees may not be Paid in Unauthorized Receiverships

Receivership itself is authorized to conserve property that is subject to equitable claims in property, pending adjudication of those equitable claims in the property. E.g. *Forgay v. Conrad*, 47 U.S. 201, 204-205 (1848); *Gordon v. Washington*, 295 U.S. 30, 37 (1935). Receivership is not authorized to seize an individual’s assets in order to pay for a Court’s investigation of state law claims against that individual, and is not authorized as a means of preventing a party from being able to hire legal counsel to represent them. See e.g. *Id.* There were no claims pled against Baron’s property or Novo Point LLC or Quantec LLC or the LLCs’ property. Accordingly, as a matter of controlling precedent, the District Court lacks subject matter jurisdiction to impose the receivership. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931). Because the District Court lacked jurisdiction, and because the receivership was not authorized by law, Vogel and his ‘professionals’ may not be awarded fees from the receivership estates. *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 373 (1908); and see e.g., *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923).

Notably, Vogel's fees are extensively for investigating and arguing for the disposition of the estates' res. The Supreme Court has held that a receiver "[I]s to stand indifferent between the parties, and may not be heard either in the court which appointed him, or in the appellate court, as to the rightfulness of any order which is a mere order of distribution between the parties". Accordingly, Vogel is not entitled to fees for work not authorized by law. Similarly, much of Vogel's fees are for defending his personal interests and defending his expenses on appeal. Such fees should not be chargeable against the receivership estates. *United States v. Larchwood Gardens, Inc.*, 420 F.2d 531, 534 (3rd Cir. 1970).

The Sherman Fee Award has Absolutely No Basis in Law

The fees awards challenged in this appeal include hundreds of thousands of dollars (\$379,761.18) awarded to Sherman as a party and co-defendant and not a receivership professional.¹² No legal basis was offered by Sherman for the award.¹³ Similarly, no basis in law was found by the trial court in granting the award. As a matter of fundamental law, under the "American Rule" Sherman must pay his own litigation costs and is not entitled to raid the assets of non-party Novo Point LLC and Quantec LLC to pay for the massive attorneys fees he has run up. *E.g., Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 602 (2001) ("a general practice of not awarding

¹² [DOC 896] The District Court's Order granting doc 467 Motion for Attorney Fees (Ordered by Judge Royal Furgeson on 5/3/2012) (Entered: 05/03/2012).

¹³ SR. v5 p236.

fees to a prevailing party absent explicit statutory authority”); *Key Tronic Corp. v. United States*, 511 U.S. 809, 815 (1994); *United States v. Larchwood Gardens, Inc.*, 420 F.2d 531, 534-535 (3rd Cir. 1970) (“the law imposes on a party the duty to pay his own fees and expenses” and thus such fees “are not proper charges against the receivership estate”).

There is not even a **colorable basis in law** for the fees awarded to Sherman. Rather, the award comes in the context where the District Judge and its receiver view appealing the District Court’s orders as “vexatious litigation” and justifying receivership over the litigant. (See e.g., page 20 of Document 511837088 filed on 4/26/2012 in case 12-10003). Further, the orders of the District Court come in a context where the District Court explained to Baron as follows:

- “Say you win [on appeal] and there is no receiver. It doesn't make any difference. **This is going on and on and on until** Mr. Baron has nothing. I mean actually **everything is depleted**. I gather that Mr. Baron is worth lots of money. But it may be that we sell all the domain names. We may sell all of his stock. We may cash in all of his CD's, and we may seize all of his bank accounts to **bring Mr. Baron to a penurious condition**” (SR. v4 p1042-1043).
- “You are a fool, a fool, a fool, a fool to screw with a federal judge, and if you don't understand that, I can make you understand it” (R. 223).

In short, the challenged award represents a usurpation of power to take actions that are clearly not designed to serve any lawful purpose. Instead the challenged order is one of brute power aimed at the redistribution of private property not directed by any guiding principle of law but based solely upon the District Judge's private conceptions of 'justice', however well intentioned they may be. The District Court appears to see its role as that of a sovereign, lording over the community, explaining "I have the force of the Navy, Army, Marines and Navy behind me", (R. 224), "Just remember, I do have access to the Army, Navy, Marines and Air Force", (R. 286).

However, the role of a federal court is not to force itself upon the community and take by brute force the private property of businesses and individuals. Rather the constitutional role of the Article III courts is to be **"the guardian of individual liberty"**. *Stern v. Marshall*, 131 S.Ct. 2594, 2615 (2011). The District Judge below threatened to order the death of a litigant (R. 218) and, as discussed above, expressed his intention to dissipate all of the litigant's property before the District Court's rulings could be heard on appeal (SR. v4 p1042). It is the constitutionally mandated role of this Honorable Court to guard against the District Court's carrying out its threats. This motion prays that this Honorable Court will fulfill that role.

E. Irreparable Injury

The public's perception and confidence in the federal judicial system will be tarnished if the District Court is permitted to violate the authority and jurisdiction of this Honorable Court. Two courts cannot exercise jurisdiction over the same matter at the same time. This Honorable Court has, at its discretion, decided what matters it would allow the District Court to rule on pending appeal, and which matters would be held for decision pending resolution of the appeal. Allowing a district court to unilaterally divest the Court of Appeals of its power and jurisdiction over the subject of matters on appeal directly threatens the integrity of the appellate process and threatens public confidence in the federal court system.

Vogel and Sherman filed motions before this Honorable Court seeking to use the *res* controlled by this Honorable Court in different ways. This Honorable Court has not granted the relief that Vogel and Sherman have requested, and, has instead ruled that Sherman's motion will be carried with the case¹⁴, and has, to this point, not permitted to District Court to proceed on Vogel's latest motions. Substantial, irreparable injury to public confidence in the appellate process will be caused if Sherman and Vogel are allowed to simply go around the jurisdiction of this Honorable Court and obtain a favorable ruling from the District Court for the same **matters ruled on by this Honorable Court (not to the satisfaction of Vogel and**

¹⁴ Document: 00511759009 filed in Case 10-11202 on 2/15/2012.

Sherman) and for matters currently pending before this Honorable Court – while this Honorable Court has jurisdiction over the receivership *res* on appeal.

Further, Vogel and Sherman argue that there can be no appeal from an order to pay them fees or liquidate assets unless the order is stayed. If that is found to be the law, failure to stay will deprive the injured parties their right to appeal. Notably, a substantial amount of assets of Novo Point LLC and/or Quantec LLC have been ordered liquidated by the District Court in non-auction, private insider sales arranged by Vogel.

The attorneys and “professionals” to whom the payments are being directed will be unable, upon information and belief, to repay the money should the awards be reversed on appeal. Over two million dollars has already been ‘distributed’ to Vogel and his ‘professionals’ (mostly his law partners), although the companies were shuttered by Vogel in 2010. That the mammoth fees are a generated billing exercise is clearly demonstrated, for example, by Doc. 887, a **four page** ‘notice’ generated by partners of Vogel in order to inform the District Court in five sections that “the Receiver sent Mr. Baron his living expenses for May 2012 directly via U.S. regular mail” as ordered by the District Court (Doc. 884).

Finally, it is undisputed that domain names represent the entire business enterprise of Novo Point LLC and Quantec LLC. By definition, the value of that business is directly dependent upon the goodwill associated with the domain names as their entire value exists based on their name. That is all they are—names. If

control of the names is lost and placed in the hands of a third party, the companies will have lost control of the use and reputation associated with those names. Threat of reputation loss has been recognized as irreparable. *E.g., Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3rd Cir. 2004).

Notably, there are no exigent circumstances requiring that the sales occur immediately and, granting an emergency stay is necessary to protect the jurisdiction of this Honorable Court over the receivership *res* currently in the possession of this Honorable Court.

F. No substantial Harm if Stay Granted

There is no substantial harm to any party or the public interest. This Honorable Court has jurisdiction over the receivership *res* and has the authority to determine how motions relating to that *res* will be handled. A stay would merely respect the jurisdiction and authority of this Honorable Court of the matters which have been appealed to that Honorable Court. Notably, Vogel and Gardere have already previously been paid by the District Court over two million dollars in fees

¹⁵ 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.

G. Conclusion

Wherefore, Appellants pray that this Honorable Court grant this Motion for Stay Pending Appeal and for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Gary N. Schepps

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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
Gary N. Schepps
COUNSEL FOR APPELLANTS

CERTIFICATE OF CONFERENCE

This is to certify that counsel for Vogel opposes the stay requested by this motion, and counsel for Sherman has not stated their position. Both parties were notified of the filing of this emergency motion..

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

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 Appellees.

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

CERTIFICATE OF EMERGENCY

This is to certify that the facts giving rise to the need for emergency relief are true and complete.

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