Exhibit A

No. 10-11202

In the
United States Court of Appeals
for the Fifth Circuit

NETSPHERE, INC. Et Al,
Plaintiffs
v.
JEFFREY BARON,
Defendant-Appellant
v.
ONDOVA LIMITED COMPANY,
Defendant-Appellee

Appeal of Order Appointing Receiver in Settled Lawsuit

Cons. w/ No. 11-10113
NETSPHERE INC., Et Al, Plaintiffs
v.
JEFFREY BARON, Et Al, Defendants
v.
QUANTEC L.L.C.; NOVO POINT L.L.C.,
Appellants
v.
PETER S. VOGEL,
Appellee

Appeal of Order Adding Non-Parties Novo Point, LLC and Quantec, LLC as Receivership Parties

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

BRIEF OF APPELLANT JEFFREY BARON

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: Rasansky, Jeffrey H. and Charla G. Aldous

d. Intervenor: VeriSign, Inc.

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

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. Counsel for Receiver: Gardere Wynne Sewell LLP
(1) Peter Vogel
(2) Barry Golden
(3) Peter L. Loh

c. **Other interested Non-parties:**

1. **Garrey, Robert (Robert J. Garrey, P.C.)**
2. **Pronske and Patel**

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

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

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., Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991) (court may issue a preliminary injunction only on notice to the adverse party), *Gordon v. Washington*, 295 U.S. 30, 37 (1935) (receivership of property is authorized only as a step to achieve a further, final disposition requested of that property), *Connecticut v. Doehr*, 501 U.S. 1, 18 (1991) (issuance of an order for prejudgment seizure without prior notice or hearing, violates Due Process when issued without a showing of extraordinary circumstances and the posting of a bond to pay damages for wrongful seizure).

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STATEMENT OF THE JURISDICTION

The Fifth Circuit Court of Appeals has jurisdiction to hear this interlocutory appeal from an order of the District Court of the Northern District of Texas granting an injunction and appointing a receiver, pursuant to 28 U.S.C. §§1292(a)(1) and (2).

The district court lacked subject matter jurisdiction to enter the order because 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: IS A DISTRICT COURT AUTHORIZED TO ISSUE AN INJUNCTION WITHOUT NOTICE TO THE ADVERSE PARTY AND SECURITY REQUIRED FROM THE MOVANT SUFFICIENT TO COMPENSATE THE ADVERSE PARTY FOR THEIR DAMAGES IF WRONGFULLY ENJOINED ?

ISSUE 2: IS A DISTRICT COURT AUTHORIZED TO APPOINT AN EQUITY RECEIVER OVER PROPERTY WHERE NO PLEADING SEEKS FINAL DISPOSITION OF THE PROPERTY ?

ISSUE 3: ABSENT A LIEN OR EQUITABLE INTEREST IN THE PROPERTY BEING AT ISSUE IN THE UNDERLYING LAWSUIT, DOES A COURT HAVE THE INHERENT AUTHORITY TO INTERFERE WITH A LITIGANT'S ASSETS ?

ISSUE 4: WAS THE CHALLENGED ORDER ISSUED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES:

(A) DO THE FOURTH AND FIFTH AMENDMENTS PROHIBIT THE SEIZURE OF ALL OF A PERSON'S PROPERTY AND PROPERTY RIGHTS IN ORDER TO PREVENT THEM FROM HIRING A LAWYER ?

(B) DOES THE FIFTH AMENDMENT PROHIBIT EX-PARTE ISSUANCE OF AN ORDER APPOINTING A RECEIVER OVER ALL OF AN INDIVIDUAL'S PROPERTY AND PROPERTY RIGHTS, WITHOUT NOTICE, HEARING, FINDINGS, AFFIDAVITS IN SUPPORT, A SHOWING OF EXIGENT CIRCUMSTANCES, OR A BOND REQUIRED FROM THE MOVANT ?

(C) DOES THE FOURTH AMENDMENT PROHIBIT THE ISSUANCE OF AN ORDER CONFERRING A RECEIVER WITH AUTHORITY TO SEIZE A PERSON'S PROPERTY WITHOUT A SUPPORTING OATH OR AFFIRMATION SHOWING PROBABLE CAUSE FOR THE SEIZURE ?

(D) DOES THE THIRTEENTH AMENDMENT PROHIBIT PLACING A HUMAN BEING INTO THE POSSESSION AND CONTROL OF A RECEIVER ?

STATEMENT OF THE CASE

This is an interlocutory appeal of an ex-parte order imposing an injunction and equity receiver over Jeff Baron and all of his property. R. 1619, 3924. The district judge ordered the ex-parte seizing of the keys to Jeff Baron's home, his cell phone, all of his personal papers and documents, his checking accounts, his credit cards, all of his savings, all of his stock, his IRAs, and all of his possessions, investments and property rights. R. 1604-1616, 1699. The history of the proceedings leading up to this ex-parte order are as follows:

The lawsuit below involved a 'business' divorce. R. 65-66. On one side of the suit are the plaintiffs Munish Krishan, with Netsphere, Inc., and Manila Industries, Inc. R. 2. On the other side of the suit are Jeffrey Baron with Ondova Limited Company ("Ondova"). R. 3,5. Ondova was a domain name registrar registering domain names to customers throughout the United States. R. 40.

At one point in the proceedings, the district judge ordered 50% of the income stream of Ondova (which had been interpled in an underlying state court action) to be paid to the plaintiffs, and 50% to be paid to the defendant's attorney Friedman as a non-refundable retainer.

R. 367-368. Three weeks later, with 100% of its income having been diverted by the district judge (50% to the plaintiffs, 50% to Friedman), Ondova filed for bankruptcy protection. R. 889.

Eventually, the lawsuit below fully and finally settled. R. 2109. The full and final settlement was approved by order of the Ondova bankruptcy court in July 2010. R. 2225. In August 2010, all parties to the lawsuit entered a Stipulated Dismissal with Prejudice, dismissing with prejudice all claims and controversies in the lawsuit. R. 2346.

Then, on November 19, 2010 in the Ondova bankruptcy case, Jeffrey Baron filed an objection to a newly filed fee application of Munsch Hardt Kopf & Harr ("Munsch Hardt"). R. 1576-1577. Three business days later, Munsch Hardt responded by filing, in the district court, an unverified emergency motion on 'behalf' of Ondova to appoint a receiver over Jeff Baron and seize all of his assets. R. 1575.

The sole ground averred in the motion necessitating the emergency appointment of a receiver was "to remove Baron from control of his assets and end his ability to further hire and fire a growing army of attorneys." R. 1578. The district court immediately granted the

motion ex parte. R. 1604, 1619.

The district court's order placed Jeff Baron and all his property and property rights into the hands of the requested receiver, Peter Vogel. R. 1604-1616. All of Jeff Baron's income and property rights were seized. Id.

No hearing was held on the motion, no opportunity to respond to the motion was provided, and no bond was required of the movant as security should the injunctions against Jeff and seizure of his property be found to be wrongful. Id. The district court's order was entered without any findings of fact or law made in support. Id.

VeriSign, Inc., a non-party intervened, and filed an emergency motion to vacate and modify the receivership order. R. 1640. The district court granted the motion on November 30, 2010 and vacated the injunction order, but only as to VeriSign. R. 1695.

Jeff Baron filed a notice of appeal from the receivership order two days later, on December 2, 2010. R. 1699.

STATEMENT OF THE FACTS

The lawsuit below fully and finally settled. R. 2109. All parties to the suit entered a stipulated dismissal of all claims. R.2346.

Jeff Baron filed an objection to Munsch Hardt's fees in the Ondova bankruptcy case. R. 1576-1577. Three business days later Munsch Hardt filed the emergency motion to have a receiver seize Jeff and all his assets. R. 1575. The receiver then 'took over' and stepped into Mr. Baron's shoes as the litigant in several pending matters, including the bankruptcy case where he withdrew Jeff's objection to Munsch Hardt's fees. R. 4424.

The receiver seized Jeff's personal papers and documents, his bank accounts, his retirement accounts, his stocks, and his savings. All of Jeff's income and earnings were seized. R. 1711-1712. Jeff has been in a civil 'lock down' ever since. R. 1711-1712. He is prohibited from entering into any business transactions, prohibited from spending money, etc. R. 1619-1632. Meanwhile, the receiver has been billing against Jeff's life savings at the rate of over $225,000.00 *each month*– over $150,000.00 per month for the receiver's law firm and over $75,000.00 per month for the receiver personally. SR. v2 p413-414.

The day after filing his notice of appeal, Jeff Baron filed a motion for emergency relief pursuant to Federal Rule of Appellate Procedure 8(a)(1). R. 1702. The motion was express as to its specific designation as an emergency motion and to the provision of the rule of procedure under which the motion was filed: "NOW COMES Jeffrey Baron, Appellant, and files pursuant to Federal Rule of Appellate Procedure 8(a)(1), this Emergency Motion". Id. In support of his motion for emergency relief pursuant to rule 8(a), Jeff Baron laid out the clear legal framework establishing his position that the grounds asserted in the motion to appoint a receiver did not support the appointment of a receiver as a matter of law. R. 1732, 1747-1756, 4143-4150.

The district court withheld ruling for two months and then entered an order denying the motion, *inter alia* offering new retrospective grounds for the receivership that had not previously appeared as grounds for relief in any motion. SR. v2 pp339-360. The new, post-appeal, multifarious justifications offered by the district court include: (1) that Jeff Baron defrauds lawyers, (2) that Jeff is in contempt of court (although no show cause order was ever issued, and

no contempt hearing was held), (3) that the global settlement is in danger (although what term of the settlement was breached, how the district court has subject matter jurisdiction, or why a party's right to trial would be waived if breach were alleged, was not explained), and (4) Jeff is vexatious (albeit, absent a record of having ever been sanctioned by any court, and absent any motion making such allegation). Id.

The district judge clearly believes in his own mind that he– in the past– had entered an order prohibiting Jeff from hiring or firing any attorney without the court's approval. SR. v2 p342. However, no motion ever requested such relief, a hearing on such an order was never held, and no such order was ever pronounced or entered. R. 15-28.

ARGUMENT SUMMARY

Overview

Imagine being a party to a civil lawsuit. You 'buy peace' and settle. You perform your settlement obligations and a stipulated dismissal of all claims is entered into by all parties. Then, a few months later you get a knock on your door. The judge decided you should immediately turn over all of your property to him (through its receiver)– the keys to your home, your cell phones, all of your personal paper and documents, your checking accounts, your credit cards, all of your savings, all of your stock, your IRAs, and all of your possessions, investments and property rights. The reason for this harsh invasion of your most fundamental rights to privacy and to own and control property and transact business with others– is to prevent you from hiring an attorney.

Imagine too that the cost of this 'service' the judge (though his receiver) seeks to charge you is over $225,000.00 *per month*. Even if you had a million dollars of non-exempt assets saved up over your lifetime, that money would be taken from you by the 'receiver fees' after four months.

General Issues

Most intuitively know that a judge cannot simply enter an order to strip a person of all their property and property rights. This appeal lays out the legal precedent and principles as to why that is so. The issues raised in this appeal are very basic: As well intentioned as the district judge may be, the district court is a court of law and equity, not an imperial court. Accordingly, the power of the district court must be exercised within the limits of the law and equity.

The district judge most likely did not initially intend to put Jeff into a 'civil lockdown' for months on end and present him with a million dollar receiver's bill. But when a court disregards the rules of procedure and long established principles of due process, they put their finger in the meat grinder, and soon the whole body is pulled in.

The legal issues involved in this appeal relate the requirements of due process and the limits on a court's authority, both specifically in the use of the remedy of equity receivership and generally. As a rule, appointments of receivers by the federal courts have been subject to close scrutiny. *Tucker v. Baker*, 214 F.2d 627, 631 (5th Cir. 1954).

Dispositive Issues Authoritatively Decided

The Fifth Circuit and/or the Supreme Court have directly addressed issues dispositive to this appeal. These include:

(1) A district court is not authorized to issue a preliminary injunction without notice to the adverse party. *Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991).

(2) A district court is not authorized to issue a preliminary injunction without requiring the posting of a bond to protect the adverse party should the injunction be found to be wrongfully granted. *Phillips v. Chas. Schreiner Bank*, 894 F.2d 127, 131 (5th Cir.1990).

(3) A district court is not authorized to appoint a receiver to seize property unless there is claim seeking further disposition of that property pled before the court. *Gordon v. Washington*, 295 U.S. 30, 37 (1935); *Tucker*, 214 F.2d at 631.

(4) A district court is not authorized to appoint a receiver, as a matter of subject matter jurisdiction, where no pleadings puts

the property subject to the receivership at issue. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931).

(5) A district court is not authorized to seize or freeze a party's assets when the disposition of these assets is not an issue in the underlying lawsuit. *In re Fredeman Litigation*, 843 F.2d 821, 822 (5th Cir. 1988); *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 221-223 (1945).

(6) A district court is not authorized to interfere with a litigant's assets in which no lien or equitable interest was claimed *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 310 (1999).

(7) Issuance of an order for prejudgment seizure without prior notice or hearing, violates Due Process when issued without a showing of extraordinary circumstances and the posting of a bond to pay the damages for wrongful seizure. *Connecticut v. Doehr*, 501 U.S. 1, 18 (1991).

ARGUMENT & AUTHORITY

ISSUE 1: IS A DISTRICT COURT AUTHORIZED TO ISSUE AN INJUNCTION WITHOUT NOTICE TO THE ADVERSE PARTY AND SECURITY REQUIRED FROM THE MOVANT SUFFICIENT TO COMPENSATE THE ADVERSE PARTY FOR THEIR DAMAGES IF WRONGFULLY ENJOINED ?

Standard of Review

A district court's decision to grant an injunction is normally reviewed under an abuse of discretion standard. *Mississippi Power & Light v. United Gas Pipe Lin*e, 760 F.2d 618, 621 (5th Cir.1985). However, issues based on questions law underlying the order are subject to independent review, *de novo. In re Fredeman Litigation*, 843 F.2d 821, 824 (5th Cir. 1988).

As a Matter of Law, the Challenged Order is an Injunction

The challenged order defines "Receivership Party" to "include Jeffrey Baron" and expressly "restrained and enjoined" him from taking any of a long list of actions basic to daily living, such as spending money or using a credit card. R. 1619, 1621. The order also enjoins "Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding". R. 1630. As a matter of law, the order is therefore an

injunction. *Phillips v. Chas. Schreiner Bank*, 894 F.2d 127, 130 (5th Cir.1990) ("The challenged order prevents Schreiner Bank from taking any 'further action in any state or federal court.' It therefore is an injunction").[1]

An Injunction Order Issued in Violation of Rule 65(a)(1) Must be Vacated

Rule 65(a)(1) states that "The court may issue a preliminary injunction only on notice to the adverse party". Fed.R.Civ.P. 65(a)(1). The notice required by rule 65(a)(1) must comply with rule 6(c)(1), which requires five days' notice before a hearing on a motion. *Parker v. Ryan*, 960 F.2d 543, 544 (5th Cir. 1992). The requirement of Rule 65(a)(1) is mandatory. *Phillips,* 894 F.2d at 131, citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974) ("[O]ur entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been

[1] The challenged order is not a Rule 65(b) temporary order, as the order is not temporary and does not set a date that it expires. Fed.R.Civ.P. 65(b)(2). Further, the order was not supported by affidavit or verified complaint (Fed.R.Civ.P. 65(b)(1)(A)), contains no certification of efforts to give notice or reasons why it should not be required (Fed.R.Civ.P. 65(b)(1)(B)), does not state the hour it was issued, nor describe why any injury was irreparable, nor does the order state why it was issued without notice (Fed.R.Civ.P. 65(b)(2)). R. 1619 - 1632.

granted both sides of a dispute."). The challenged order was issued without notice or hearing. R. 27, 1619, 3924. Accordingly, the challenged order was issued in violation of Rule 65(a)(1) and must be vacated. *E.g.*, *Id.*; *Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991).

An Injunction Order Issued in Violation of Rule 65(c) Must be Vacated

Rule 65(c) states that "The court may issue a preliminary injunction or temporary restraining order only if the movant gives security ... proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined". Fed.R.Civ.P. 65(c). Failure to require the posting of a bond by the movant constitutes reversible error as a matter of law. *Phillips,* 894 F.2d at 131. Accordingly, since no security was required from nor provided by the movant below, the order challenged on appeal must be reversed. R. 1619-1632.

ISSUE 2: IS A DISTRICT COURT AUTHORIZED TO APPOINT AN EQUITY RECEIVER OVER PROPERTY WHERE NO PLEADING SEEKS FINAL DISPOSITION OF THE PROPERTY ?

Standard of Review

Questions of law are review *de novo. E.g.*, *In re Fredeman*, 843 F.2d at 824; *Gandy Nursery, Inc. v. US*, 318 F.3d 631, 636 (5th Cir. 2003).

What is an Equity Receiver ?

Where a final decree involving the disposition of property is appropriately asked, the court in its discretion may appoint a receiver to preserve and protect the property pending its final disposition. *Tucker v. Baker*, 214 F.2d 627, 631 (5th Cir. 1954).

What is the Limit of a Court's Authority to Appoint an Equity Receiver ?

Receivership of property is a special remedy that is allowed only as a step to achieve a further, final disposition of that property. This fundamental rule was established by the Supreme Court in *Gordon v. Washington*, 295 U.S. 30, 37 (1935). In *Gordon,* the Supreme Court held that "[T]here is **no** occasion for a court of equity to appoint a receiver of property of which it is asked to make no further disposition." *Id.* (emphasis). This is because Chancery Power does not extend to the

appointment of a receiver over property of which the court is asked to make no further disposition. *Gordon*, 295 U.S. at 37. The English chancery court, from the beginning, declined to exercise its jurisdiction for that purpose. *Id.* Accordingly, equity receivership has not been allowed to be extended to other classes of cases.[2] *Gordon*, 295 U.S. at 38.

The law is clear and well established– a court is authorized to order a receivership over property only as an ancillary remedy with respect to a primary remedy seeking disposition of an accrued right in that property. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941).[3]

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[2] Statutory schemes such as for the SEC and FDIC also authorize the appointment of statutory receivers in particular instances relating to those statutory schemes. *E.g.*, 12 U.S.C §1821(c). No such statutory scheme was invoked nor applies to the case at bar. Also, the First Circuit has held that with respect to "substitution of a court's authority for that of elected and appointed officials" the only limitation on a court's power is "reasonableness under the circumstances", allowing governmental receivership for "constitutional purposes" in such cases. *Morgan v. McDonough*, 540 F.2d 527, 533, 535 (1st Cir. 1976); *but cf. Milliken v. Bradley*, 433 U.S. 267, 288 (1977) (court's power limited to "traditional attributes of equity power" with the traditional role of school authorities maintained "inviolate").

[3] Because receivership of property is authorized only with respect to accrued rights in the property, a simple creditor has no standing to apply for a receiver. *Pusey,* 261 U.S. at 497 ("[A]n unsecured simple contract creditor has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor"). By contrast, a judgment creditor with an unsatisfied judgment, holds an equitable interest in the non-exempt property of his debtor and may apply for a receiver as a step to recovery of that interest. *Id.*

The Prerequisite that a Claim Be Pled Seeking Final Disposition of the Property Before a Receiver Is Appointed Over It is Jurisdictional

Equity jurisdiction of the district court is limited to the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act of 1789. *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999)(citing *Gordon*). Similarly, the inherent powers doctrine derives from the same authority, and is subject to the same limitation. *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978); *Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1409 (5th Cir. 1993). Accordingly, absent a statutory grant of authority, the district court's authority to issue writs is bounded and limited by the authority exercised by the chancery court.

As the Supreme Court explained in *Gordon*, the chancery court did not authorize a court to appoint a receiver of property where no pleading sought final disposition of the property taken into the receivership– and the district court is therefore not authorized to do so either, absent a specific statutory authorization. *Gordon,* 295 U.S. at 37.

The Subject Matter Jurisdiction Corollary

There is a Subject Matter Jurisdiction corollary to the limitation of equity power of the court with respect to receivership– an order appointing a receiver is void for lack of subject matter jurisdiction where no pleadings puts the property subject to the receivership at issue. *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").

The Fifth Circuit explained in *Cochrane*, "unless the subject-matter was by proper pleadings already before the court" "it had no jurisdiction over these properties, [and] its order appointing a receiver to take charge of them was void". *Id*. at 1028-1029.

No Primary Remedy was Pled in the District Court Below

Like the respondent in *Gordon*, the Appellee failed to make any claim against *any* of Jeff Baron's property, let alone *all* of it. In fact, Appellee failed to seek any remedy at all against Jeff Baron other than

the appointment of a receiver.

Like in *Gordon*, the Appellee was not shown to be a creditor, much less a judgment creditor. Accordingly, as in *Gordon*, the district court below exceeded its authority in appointing a receiver to seize all of Jeff Baron's worldly possessions. Since there was no pleading seeking any further disposition of the property seized, the district court lacked authority to issue a receivership over the property. *Gordon,* 295 U.S. at 37.

Also, as in *Cochrane,* no pleading in the district court below put Jeff Baron's personal property at issue. Accordingly, as in *Cochrane*, the district court below lacked subject matter jurisdiction to seize Jeff's property, and the order appointing a receiver to seize all of his property should be declared void.

The Seizure of Jeff Baron's Property Falls So Far Outside the Law That There is No Legal Precedent to Support it

There is no legal precedent allowing the appointment of a receiver to seize an individual's property that was not subject to a claim pled before the Court.

ISSUE 3: ABSENT A LIEN OR EQUITABLE INTEREST IN THE PROPERTY BEING AT ISSUE IN THE UNDERLYING LAWSUIT, DOES A COURT HAVE THE INHERENT AUTHORITY TO INTERFERE WITH A LITIGANT'S ASSETS ?

Standard of Review

Questions of law are review *de novo*. *E.g.*, *In re Fredeman*, 843 F.2d at 824; *Gandy Nursery*, 318 F.3d at 636.

A Court Has No Authority Over a Party's Assets That Are Not at Issue in the Underlying Lawsuit.

The limitation of a court's power over a party's property to jurisdiction over assets at issue in the underlying lawsuit was addressed directly by the Fifth Circuit in *In re Fredeman Litigation*, 843 F.2d 821 (5th Cir. 1988). In *Fredeman,* the trial court entered a preliminary injunction prohibiting the defendants from transferring or removing virtually any of their assets without the court's express approval and the plaintiffs' knowledge. The Fifth Circuit held that "The disposition of these assets was not an issue in the underlying lawsuit" and "the district court lacked power" to enter such an order. *Id.* at 822.

The Fifth Circuit relied upon *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212 (1945) in reaching the *Fredeman* holding. In *De Beers*, the Supreme Court vacated a pre-judgment asset freeze,

because the trial court lacked authority to issue such an order. *Id.* at 223. The Supreme Court held that a district court's inherent power does not extend to exerting control over a litigant's property not subject of the underlying suit, and explained:

> "[Appellee] argues that a court of equity has inherent power to protect its jurisdiction. The fallacy, in the application of the principle here, is that, if service of the defendants is properly obtained, and if the complaint states a cause of action, no one questions the jurisdiction of the District Court"
>
> *De Beers*, 325 U.S. at 221.

A Court Has No Authority to Interfere with A Party's Assets in Which No Lien or Equitable Interest is Claimed

The Supreme Court in *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999) directly addressed the power of a district court to interfere with a litigant's assets in which no lien or equitable interest was claimed. *Id.* at 310. The Supreme Court held that a district court does not have such authority and "We think it incompatible with our traditionally cautious approach to equitable powers". *Id.* at 329. The Supreme Court explained:

> "A more powerful weapon of oppression could not be placed at the disposal of unscrupulous litigants." *Id.* at 330.
>
> "[W]e have no authority to craft a 'nuclear weapon' of the law like the one advocated here. … [I]t would be the most gigantic in its sway, and the most formidable instrument of arbitrary power, that could well be devised. It would literally place the whole rights and property of the community under the arbitrary will of the Judge, acting, if you please, *arbitrio boni judicis* … according to his own notions and conscience; but still acting with a despotic and sovereign authority." *Id.* at 332.

The Long Established Limits of Equity Receivership Require the Showing of an Interest in the Certain Property Placed into the Receivership

Naturally, the long established limits of equity receivership are consistent with the limits of a court's inherent power. The long-established and fundamental prerequisite to the imposition of a receivership is the showing of an interest in certain property such as to justify conservation of the property pending its final disposition. *E.g.*, *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 241 (5th Cir. 1997); *Pusey*, 261 U.S. at 497. Thus, for example, a simple creditor has no standing to apply for a receiver. *Williams Holding Co. v. Pennell*, 86

F.2d 230 (5th Cir. 1936).

No Lien or Equitable Interest in Jeff Baron's Property was at Issue

No lien or equitable interest in any of Jeff Baron's property (let alone all of it) was at issue in the lawsuit. First, no claim at all was pled against Jeff Baron by Ondova, the purported movant for the receivership. R. 563. Jeff Baron and Ondova filed a *joint* answer "as the 'Ondova Parties' ". *Id.* Secondly, the lawsuit below fully and finally settled, and all parties entered into a stipulated dismissal of all claims. R. 2109, 2346. Thirdly, the motion for receivership granted by the order challenged in this appeal, did not seek to protect or enforce any equitable interest or lien in Jeff's property. R. 1575-1579. The sole grounds put forth in the motion to necessitate a receiver was "in order to remove Baron from control of his assets and end his ability to further hire and fire a growing army of attorneys." R. 1578, paragraph 13.

Accordingly, the district court lacked the authority to enter an order seizing all of Jeff Baron's assets and personal property. The only way to describe the challenged order is "a 'nuclear weapon' of the law … most gigantic in its sway, and the most formidable instrument of

arbitrary power, that could well be devised. It would literally place the whole rights and property of the community under the arbitrary will of the Judge". *Grupo Mexicano*, 527 U.S. 332. As the Supreme Court warned: "A more powerful weapon of oppression could not be placed at the disposal of unscrupulous litigants." *Id.* at 330. The challenged order must accordingly be vacated.

The district judge has substantial authority, even without the imperial power to seize a party's assets (absent a lien or equitable interest in the property being at issue in the underlying lawsuit). If necessary to prevent irreparable injury, a court can enjoin a party from hiring lawyers.[4] If a court order is disobeyed, fines and imprisonment can be used to punish and compel compliance. 18 U.S.C. § 401. That is our system. Summary seizure of all of a party's property as a means of insuring obedience to the court is a system of an imperial court, or a court in a banana republic, not a United States District Court of law and equity.

[4] If our constitution permitted preventing a party from freely retaining the advice of legal counsel. See Issue 4, below.

ISSUE 4: WAS THE CHALLENGED ORDER ISSUED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES:

(A) DO THE FOURTH AND FIFTH AMENDMENTS PROHIBIT THE SEIZURE OF ALL OF A PERSON'S PROPERTY AND PROPERTY RIGHTS IN ORDER TO PREVENT THEM FROM HIRING A LAWYER ?

Standard of Review

Questions of law are review *de novo*. *E.g.*, *In re Fredeman*, 843 F.2d at 824.

Forbidden Purpose: To Prevent an Individual from Hiring Legal Counsel

The Fifth Amendment establishes that an individual has the 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 is guaranteed by the Fifth Amendment the "right to the advice" of retained counsel, not just with respect to the adversarial system of justice, but also for "the effective protection of individual rights". *Mosley*, 634 F.2d. at 945.

At one level, 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). Yet, the right to retain counsel is not limited to 'in court' representation. The right also encompasses the right of association with counsel in general.

There are certain kinds of personal relationships which play a critical role our national traditions and act as a critical buffer between the individual and the power of the state. *Roberts v. United States Jaycees*, 468 U.S. 609, 618-619 (1984). An individual's relationship with his or her attorney is such a relationship, and "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).

Accordingly, the Fifth Circuit has established that "The right of access to retained counsel is one of constitutional dimensions and should be freely exercised without impingement." *Mosley*, 634 F.2d at 946. The Appellee's motion seeking to "end" Jeff Baron's ability to retain counsel, sought an improper and unconstitutional purpose. R. 1578, paragraph

13.[5] The district court's granting of the motion must therefore be reversed as violating the protections afforded by the Fifth Amendment.

Notably, a court clearly has authority to control which attorneys appear at bar before it when compelling reasons exist. *E.g.*, *McCuin v. Tex. Power & Light Co.*, 714 F.2d 1255, 1263 (5th Cir. 1983). Which attorneys represent an individual in court, however, is a very distinct issue from which attorneys an individual may associate and seek legal counsel from.[6] The district court is prohibited by the Fifth Amendment from impinging upon an individual's free right to associate with and obtain legal counsel from whatever attorneys an individual may choose. *Mosley*, 634 F.2d at 946. Obviously, to exercise authority over its own docket, a district court does not need to seize all of a litigant's assets to "end his ability to further hire" counsel. A district court can just say "no" and refuse to allow new counsel to appear before it, or refuse to delay the proceedings. *McCuin*, 714 F.2d at 1263.

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[5] The only necessity averred in the motion was "to remove Baron from control of his assets and end his ability to further hire a growing army of attorneys." (Id).

[6] Who is to say from how many attorneys an individual may seek advice ? For example, is one litigant permitted to retain a law firm with 300 attorneys at his call, but another litigant prohibited from retaining 30 solo practitioners ? If there were a limit to the number of attorneys an individual could retain for advice, would that require a limit to the number of attorneys who could associate in a single firm ?

Unreasonable Grounds for Seizure

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 without a hearing and based on no objective guidelines or guiding principles.

"Objectively Unreasonable" is the Test for Violation of the Fourth Amendment

The Fourth Amendment inquiry is one of "objective reasonableness" under the circumstances. *Graham v. Connor*, 490 U.S. 386, 299 (1989). The subjective views of the actors is not relevant. *Id.* The question presented is simple: Was the seizure objectively reasonable under the circumstances ?

The Challenged Order is Unreasonable

The challenged order is clearly not objectively reasonable as it is patently excessive to achieve the stated aim. There were *many* less intrusive and costly alternatives. Accordingly, the seizure of all of Jeff

Baron's property was not reasonable. For example:

(1) The court could have simply said "no" when a new attorney requested to appear in the case. The district court clearly has the power to do so when there is a compelling reason. *McCuin*, 714 F.2d at 1263.

(2) The court could have fined or otherwise sanctioned Jeff Baron for any frivolous pleading that was filed (if there were any).

(3) If the goal was to stop Jeff from receiving legal advice outside of the courthouse, the district court could have[7] simply issued an injunction prohibiting Jeff from hiring any attorneys. Notably, the issuance of an injunction ordering Jeff not to disburse any of his assets and provide his financial paperwork to the receiver *presupposes* that he will comply with the court's orders. If that is the case, the court could have simply ordered him not to hire any attorneys.

[7] Aside from the issue of the constitutionality of that end, as discussed above.

The hardship on a party in having all his assets seized is extreme. Jeff Baron has been forced to turn over his most private affairs (all of his personal documents and records) and has been placed in a civil prison—unable to transact business, control his investments, etc. R. 1619-1632. The cost is also staggering, over $234,000.00 per month. SR. v2 p413-414. The heavy burden on Jeff from the seizure of all his property, greatly outweighs any harm that will may incurred from Jeff's obtaining legal counsel to object to excessive fees requested by the Trustee's attorney in a bankruptcy case.

The principles governing the award of equitable relief in the federal courts are well established. *E.g.*, *Weinberger v. Romero-Barcelo*, 456 U.S. 305,313 (1982). For hundreds of years, injunctions have been recognized as the normal, equitable way to direct a party's actions. *Id.* If an injunction is disregarded, contempt is used to enforce it. 18 U.S.C. § 401. Injunction is equity's tool to direct a party's actions, not seizure of all of a litigant's property. Issuing an order to seize all of an individual's worldly possessions and legal rights (including their life savings, exempt assets, house keys, private papers and photographs,

etc.) in order to stop them from hiring an attorney, is patently oppressive and objectively unreasonable.

Abuse of Discretion Corollary: Must Employ the Least Possible Power Adequate to the End

A corollary to the Fourth Amendment requirement of objective reasonableness is the equitable principle that a court "must exercise '[t]he least possible power adequate to the end proposed.' ". *Spallone v. United States*, 493 U.S. 265, 272 (1990). Seizure of all of an individual's property and property rights is clearly not the 'least possible power' necessary to stop an individual from hiring new lawyers. An injunction or fine will achieve the same purpose. Seizure of all of an individual's property in order to control his relationship with attorneys is rolling over him with a steam roller in order to smash a fly on his collar. It is manifestly unreasonable.

Post-Appeal Retrospective Justifications for the Entry of the November 24, 2010 Order

As a preliminary and fundamental matter, post-appeal retrospective grounds for relief are not an issue on appeal.[8] Rule 7 requires that motions must state with particularity the grounds for the order sought. Fed.R.Civ.P. 7. The purpose of this requirement is "to afford notice of the grounds and prayer of the motion to both the court and to the opposing party, providing that party with a meaningful opportunity to respond and the court with enough information to process the motion correctly." *Registration Control Systems v. Compusystems, Inc.*, 922 F.2d 805, 807 (Fed. Cir. 1990). The only ground asserted by the Appellee as necessitating an emergency receivership was "to remove Baron from control of his assets and end his ability to further hire and fire a growing army of attorneys." R. 1578.

The district court made no findings of fact or conclusions of law pursuant to which it issued the challenged order. R. 27, 1619-1632. Notably, a district court cannot "accept new evidence or arguments" to

[8] This section is included in an abundance of caution. The next section, on page 60, resumes the discussion of the issues on appeal.

support the order after it has been appealed. *Coastal Corp. v. Texas Eastern Corp.*, 869 F.2d 817, 820 (5th Cir. 1989). This is because 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 jurisdiction. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Accordingly, post-appeal grounds raised in justification of the receivership should not be of relevance to this appeal. In an abundance of caution, these post-appeal retrospective justifications are addressed briefly.

In denying[9] Jeff Baron's motion for relief filed pursuant to Appellate Rule 8(a), the district court offered a range of differing grounds and purposes for the ex-parte, emergency receivership, as follows:

(A) Baron Hired and Fired Counsel as a Means of Delaying Court Proceedings. SR v2 p345.

This allegation was never raised in any motion. If Jeff Baron had fired counsel for delay (only a single attorney was

[9] 71 days after the entry of the order.

listed as actually being fired), he apparently was not very successful at it. Not a single specific proceeding was shown to have actually been delayed. Even if the allegation were true, seizing all of an individual's property is not a reasonable method to deal with delays from firing counsel. A court can simply order that there will be no delay even if attorneys are substituted.

(B) Vexatious Litigation Tactics Have Increased the Cost of this Litigation for All Parties. SR v2 p350.

As with the prior post-appeal retrospective grounds, this allegation also was never raised in any motion. As with the prior ground, if Jeff Baron had engaged in vexatious tactics, he was not very successful at it. Not a single filing made on Jeff's behalf was shown to be legally frivolous. The lawsuit fully and finally settled prior to the filing of the motion for emergency receivership, with all parties releasing all claims against Jeff. R. 2109. Accordingly, if there were increased costs, by agreement, that was absorbed by the parties as part of their settlement. Id.

The Fifth circuit has ruled that where there really is

vexatious litigation, the remedy authorized is a pre-filing injunction **that preserves the legitimate rights of the litigant**. *Baum v. Blue Moon Ventures, LLC*, 513 F. 3d 181, 187 (5th Cir. 2008). Seizing all of an individual's property (exempt, and non-exempt, personal documents, photos, cell phones, etc.) is neither the authorized remedy, nor is it reasonable.

(C) Practice of Hiring and Firing Attorneys Exposed the Ondova Bankruptcy Estate to Significant Expense. SR v2 p350.

First, if there were some basis in law whereby a creditor's contribution to the benefit of a bankruptcy case would mean a financial loss to the bankruptcy estate, as the 'threat' is merely one of monetary expense, there is a remedy at law, and thus there is no basis for an equitable remedy. *E.g.*, *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987).

Secondly, if an equitable remedy were appropriate, an injunction requiring that any attorneys could only be hired if their retainer agreement included a term that waived all claims against the Ondova estate would resolve the issue.

Thirdly, the entire 'threat' is legally fallacious and demonstrates the absurdity of the retrospective attempts to justify the receivership order. The 'significant expense' refers to substantial contribution claims which could be made if Jeff hired an attorney that then provided a substantial contribution to the bankruptcy case. SR v2 p359. If a creditor makes a substantial contribution to a bankruptcy case that is "considerable in amount, value or worth" to "foster and enhance, rather than retard or interrupt the progress of reorganization", then the creditor is entitled to recover reasonable expenses, including reasonable attorney's fees, for the substantial contribution. 11 U.S.C. §503(b)(3)(D); E.g., *In re DP Partners, Ltd. P'ship*, 106 F.3d 667, 673 (5th Cir.1997). A claim pursuant to 11 U.S.C. §503(b)(3)(D) for the creditor's contribution may be made by the creditor or by the professional directly. 11 U.S.C. 503(b)(4); e.g. *In re Consolidated Bancshares, Inc.*, 785 F.2d 1249 (5th Cir. 1986).

Notably, there is no right of recovery ***against*** the creditor who provided the substantial contribution. Quite the opposite—a

creditor who provides a substantial contribution to the bankruptcy case is entitled to recovery from the bankruptcy estate for the expenses he incurred in making that contribution. 11 U.S.C. §503(b)(3)(D); *E.g., In re DP Partners*, 106 F.3d at 673.

Accordingly, the hiring and firing of lawyers can have no net effect on the bankruptcy case under §503(b)(3)(D), unless by hiring or firing the lawyers the creditor provides a substantial benefit to the bankruptcy case, in which case either the creditor or the attorney would be entitled to file a claim for allowance of the fees. Providing a substantial contribution is a good thing, which the bankruptcy code encourages by allowing reimbursement of expenses. *E.g.* 11 U.S.C. §503(b)(3)(D).

In the case at bar:

(1) Jeff hired a new lawyer who helped object to excessive fees applied for by the chapter 11 trustee's attorney (Munsch Hardt). If that objection was sustained and the fee application denied, the bankruptcy estate would have been benefited, and Jeff would have been entitled to

recover the cost for filing the objection from the bankruptcy estate.

(2) To prevent Jeff from making that contribution, Munsch Hardt filed their emergency motion, and Jeff's property and property rights were then immediately seized.

The district court's retrospective justification for seizing all of Jeff's property is that by hiring lawyers who could make a substantial contribution, Jeff exposed the bankruptcy estate to expenses. SR v2 p350, 358. That is true. However, that expense was only exposed if his attorneys first made a substantial contribution to the estate which justified the expense. *E.g., In re DP Partners*, 106 F.3d at 673. Accordingly, it is not reasonable to prevent an individual from making a substantial contribution to a bankruptcy estate, let alone seizing all his property in order to do so.

(D) Baron Repeatedly Ignored Court Orders. SR v2 p352.

No show cause order was ever issued. No hearing on contempt was ever held. Nevertheless, as discussed above at page 24, the district judge sincerely[10], but mistakenly believed he "ordered Baron on several occasions not to hire additional counsel without Court approval". SR v2 p352. As discussed on page 42, the entry of such an order would not be constitutional. If the district court had entered an order prohibiting Jeff from hiring any lawyers (it did not), and if Jeff had willfully violated the order, seizure of all Jeff's personal property and assets as punishment would still be patently excessive and unreasonable as a first step to enforcing the order.

Notably, aside from the fundamental procedural defect of finding a party in contempt of court without having issued a show cause order and holding a hearing, the district court's 'finding' is based on an irrefutable mistake of fact– that on July 1, 2009 it

[10] See "the Court notes for the record that Mr. Lyons is not counsel of record in this case. Moreover, the Court previously entered an Order on July 1, 2009, requiring Court approval before Defendant can employ new or additional counsel (See Docket No. 38)." R. 1512. Notably, no such ordered was entered on July 1, 2009, or on any date. R. 17, 503-562.

had entered an Order requiring approval before Jeff could employ additional counsel. Without that leg of the argument, **the district court's entire reasoning as to 'necessity' for seizure of <u>all</u> Jeff's property and property rights fails**. The court reasoned that it had tried lesser restrictive means– an order not to hire additional lawyers without court approval. Since the premise is false, the reasoning fails on its face.

(E) <u>Hired Attorneys Without the Intention of Paying Them.</u> SR v2 p355.

This allegation was never raised in any motion. No specific names of any attorney hired without the intention of paying are stated. Only four attorneys testified at the Rule 8(a) hearing. The first attorney who testified was Lyon. Lyon was paid twenty-six thousand, five hundred dollars and admits he settled his fee dispute for August and September, and that he did not do much work in October and November. R. 4413. The second attorney to testify was Ferguson. R. 4440. He worked "about 45 days" and was paid twenty-two thousand dollars. R. 4442. The third attorney to testify

was Chesnin. R.4478. He testified that the only payment he wasn't paid on was due December 10, and wasn't paid only because of the receivership stopping it. R.4489. The final attorney was Pronske. R. 4519. Pronske did not provide Jeff with a written contract. R. 4520. Pronske testified that he requested to be paid seventy-five thousand dollars, up font, against which he would bill. R. 4521, 4530. He was paid that seventy-five thousand dollars, up font. R. 4530. Pronske did not testify as to any agreement to be paid more than the seventy-five thousand dollars, up front. Pronske did not send Jeff any monthly invoices. R. 4524. Then, one year after he was retained and paid the seventy-five thousand dollar fee, Pronske demanded more money. R. 4526, 4530. Pronske demanded a lot more money– a hundred and ninety-five thousand dollars more. R. 4528.

The evidence established that Jeff paid attorneys tens of thousands of dollars. However, even if the allegation about hiring attorneys without intention to pay were true, the damages are damages at law which the attorneys could recover at trial. Moreover, the district court has no jurisdiction over the issue: the

attorneys and Jeff Baron are non-diverse. *Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010). In any case, it is patently unreasonable and a fundamental denial of due process to seize all of an individual's property– before lawsuits are filed, discovery is conducted, and jury verdicts and judgments are entered.

(F) Stopping the Attempt to Transfer Funds Outside the Jurisdiction of the US. SR v2 p357.

This allegation was never raised in any motion. No specific factual basis is provided for the basis of the allegation, and the 'going to be moving money offshore' testimony related to allegations made in September. R. 4540-4541. In any case, since Jeff received notice of the receivership order well before the receiver seized any assets, if Jeff was going to disobey the court's order, he could have done so and transferred his assets before they were seized. But, as the challenged order presupposes, Jeff obeyed the court's injunction and did not transfer his assets, and the receiver was then able to seize them. Accordingly, the court could have simply issued an injunction prohibiting transferring of the assets out of the country.

It is not reasonable to seize assets where there is no judgment to satisfy. Here there were not even claims before the court. It is patently unreasonable to seize all of Jeff's assets such as his cell phone, house keys, and exempt assets. It is patently unreasonable to seize all of a person's assets for an unknown amount of claims. It is also patently unreasonable to seize a person's assets in November, based on allegations that the person was going to transfer their assets the previous September.

Moreover, if the law allowed requiring a defendant to put up pre-trial security for unsecured creditor's claims the district court could have simply done what the bankruptcy judge apparently did– require the defendant to put up a deposit. R. 4539-4540. It is patently unreasonable, after a party has already put up a cash deposit to secure against unsecured creditor's claims to then seize all of their property to secure those same claims. Id. Notably, the 'lesser' imposition of power, the requiring of security for unsecured creditor's claims, is already well outside the permitted authority of the courts. *E.g.*, *In re Fredeman*, 843 F.2d 821.

(B) DOES THE FIFTH AMENDMENT PROHIBIT EX-PARTE ISSUANCE OF AN ORDER APPOINTING A RECEIVER OVER ALL OF AN INDIVIDUAL'S PROPERTY AND PROPERTY RIGHTS, WITHOUT NOTICE, HEARING, FINDINGS, AFFIDAVITS IN SUPPORT, A SHOWING OF EXIGENT CIRCUMSTANCES, OR A BOND REQUIRED FROM THE MOVANT ?

Standard of Review

Questions of law are review *de novo*. *E.g.*, *In re Fredeman*, 843 F.2d at 824.

The Requirements of Due Process

Due process requires that an individual be given an opportunity for a hearing before he is deprived of any significant property interest. *In re Foust*, 310 F.3d 849, 857 (5th Cir. 2002). It is well settled that even a temporary deprivations of property constitute a "taking" and are "deprivations of property that had to be preceded by a fair hearing". *Fuentes v. Shevin*, 407 U.S. 67, 85 (1972).

Some clear lines have been set by the Supreme Court, as follows: The Supreme Court has established that "[A]bsent notice and a prior hearing [a] prejudgment garnishment procedure violates the fundamental principles of due process". *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). The Supreme Court has

also established that a showing of exigent circumstance is required where impoundment of property is allowed without prior notice and hearing. *Connecticut v. Doehr*, 501 U.S. 1, 18 (1991).

The Supreme Court has also suggested that the impoundment of a bank account without requiring a bond to protect the defendant from wrongful impoundment is a violation of an individual's right to due process. *North Ga. Finishing, Inc. v. Di-Chem*, Inc., 419 U.S. 601, 606 (1975).

Due process requires that the rights of the individual whose property is seized be protected in balance of the rights of those for whose benefit the property is seized. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The accepted protections needed to balance the rights of the party whose property is seized ex-parte, in order to provide that individual with the protections which due process requires include: (1) a sworn showing of the exigent circumstances and probable cause establishing the grounds for ex-parte seizure; (2) sufficient bond to protect the party against all damages in the event of wrongful seizure; (3) a right for immediate hearing to dissolve at which the burden of

proof rests upon the party who obtained the seizure. *Mitchell v. WT Grant Co.*, 416 U.S. 600, 605-606 (1974).

The Failure of Due Process Below

All of the Requirements of Due Process discussed above were violated by the challenged order. The order was issued without notice, hearing, findings, affidavits in support, any showing of exigent circumstances, or a bond required from the movant. R. 27,1619, 3924. Accordingly, the order should be declared void *ab initio* as rendered in violation of due process. *See e.g.*, *Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) ("such 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").

(C) DOES THE FOURTH AMENDMENT PROHIBIT THE ISSUANCE OF AN ORDER CONFERRING A RECEIVER WITH AUTHORITY TO SEIZE A PERSON'S PROPERTY WITHOUT A SUPPORTING OATH OR AFFIRMATION SHOWING PROBABLE CAUSE FOR THE SEIZURE ?

Standard of Review

Questions of law are review *de novo*. *E.g.*, *In re Fredeman*, 843 F.2d at 824.

The Fourth Amendment Applies to Civil Seizures

The Fifth Circuit has established that the Fourth Amendment applies to civil as well as criminal seizures. *Severance v. Patterson*, 566 F.3d 490, 501 (5th Cir. 2009). The Fourth Amendment protects "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and requires that "[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Challenged Order is a Warrant

A Warrant is "A writ … from a competent authority in pursuance of law, directing the doing of an act, addressed to a … person competent to do the act, and affording him protection from damage, if he does it."

BLACK'S LAW DICTIONARY 1756 (Rev'd 4th ed. 1968). The district court is clearly an authority generally authorized to issue writs authorizing a receiver to seize property, and the challenged order is clearly conferring authority upon the receiver to seize Jeff Baron's property– accordingly, the order is a warrant. *Cf.*, *United States v. Fuller*, 160 U.S. 593, 597 (1896).

The Challenged Order was Issued Without any Supporting Oath

The challenged order was issued upon an unverified motion with no affidavits offered in support. R. 1575-1579. The motion was filed with no formal assertion or attestation to the truth of the motion's averments. (Id.). Accordingly, the district court's issuance of the challenged order conferring the receiver with authority to seize Jeff Baron's property was issued in violation of the Fourth Amendment because it was issued without a supporting oath or affirmation showing probable cause for its issuance.

Strong Due Process and Public Policy Basis to Require a Sworn Application for Issuing an Ex-Parte Receivership Order to Seize a Person's Property

Mere allegation should not be sufficient to intrude upon an individual's right to possess property. It is axiomatic that physically seizing a person's property is more intrusive and more an impairment of the owner's rights in the property than merely enjoining a person from disposing of the property. Accordingly, the Federal Rules of Procedure require an affidavit or verified complaint setting out the cause for a Temporary Restraining Order issued without notice. Fed.R.Civ.P. 65(b)(1)(A). The same due process concerns apply to the issuance of an order to seize a person's property.

(D) DOES THE THIRTEENTH AMENDMENT PROHIBIT PLACING A HUMAN BEING INTO THE POSSESSION AND CONTROL OF A RECEIVER ?

Standard of Review

Questions of law are review *de novo*. *E.g.*, *In re Fredeman*, 843 F.2d at 824; *Gandy Nursery*, 318 F.3d at 636.

The Thirteenth Amendment

The Thirteenth Amendment clearly prohibits slavery or involuntary servitude as a civil punishment.[11] Involuntary servitude includes legal coercion. *US v. Kozminski*, 821 F. 2d 1186, 1192 (6th Cir. 1987). A condition of servitude occurs when one no longer possess the liberties and privileges of a freeman. *Slaughter-House Cases*, 83 US 36, 90 (1873)(dissent). As established by the Supreme Court in *Plessy v. Ferguson*, 163 U.S. 537, 555 (1896):

> "The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or

[11] "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States"

disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country."

The District Court's Order

The order challenged on appeal orders that the receiver shall take possession and control of Jeff Baron. R. 1619. The order is unambiguous and grants the receiver "exclusive control" over "Jeffrey Baron", as well as being entitled to "Possession and control over … Receivership Parties ... which term shall include Jeffrey Baron". (Id.). The challenged order also authorizes the receiver to "take in possession ... all assets and documents of the Receivership Party".[12] R. 1625. Even the fruits of Jeff's labor and wages were seized. R. 1620-1626.

Placing one citizen into the possession and control of another is slavery and servitude and is prohibited by the Thirteenth Amendment. Accordingly, the district judge's order must be declared void as unconstitutional.

[12] As noted above, "The Receivership Party" is expressly and unequivocally defined in the order to include Jeffrey Baron. (R. 1619).

CONCLUSION

The basic rights and concepts of the American system of justice have been thrown out the window in the proceedings below. Jeff Baron was treated like he had millions of dollars of outstanding judgments against him. His privacy was violated and all his property was taken from him. However, not a single juror has found against him. Not a single judgment has been entered against him. Due process was entirely skipped over. If Jeff Baron is at risk, so are we all. Public trust in the very foundations of our court system has been placed at risk.

The challenged order should be vacated for two fundamental reasons: (1) The district court lacks authority to issue a receivership over property against which no lien or equitable interest was pled, and (2) The order was issued without due process and in violation of the rules of procedure and the Constitution of the United States.

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

(1) That this Court reverse the district court's order challenged in this appeal. (Docket #124, and Docket #130 in the trial court below).

(2) That this Court declare the challenged void *ab initio*.

(3) That this Court order that Jeff Baron may recover the costs of the receivership from those who have wrongfully provoked it. With respect to that request, the Fifth Circuit has established that where the facts as here show that a receivership was instituted and property was seized upon an unfounded claim, the parties whose property has been wrongfully seized are entitled, on equitable principles, to recover costs from those who have wrongfully provoked the receivership. *Porter v. Cooke*, 127 F.2d 853, 859 (5th Cir. 1942).

The movant below, as a matter of law, had an unfounded claim to appoint a receiver over Jeff. The movant, moreover, misrepresented crucial facts in their motion obtaining the receivership. Most prominently, the movant claimed the bankruptcy Court reported that if Jeff baron decided to proceed *pro se*, it would recommend the district court to appoint a receiver over Mr. Baron and all his assets. R. 1576. The movant's representation is clearly unfounded. The bankruptcy judge did

not recommend that, and most likely would never recommend such a thing– Congress has expressly legislated the right of every individual in the federal court system the legal right to conduct their own cases personally. 28 U.S.C. § 1654. Instead, the bankruptcy court threatened that if Mr. Baron (1) choose to proceed *pro se,* **and** (2) did not cooperate in connection with the final consummation of the Global Settlement Agreement, then it would recommend a receiver be appointed to "perform the obligations of Jeffrey Baron under the Global Settlement Agreement." R. 1588. Notably, Jeff cooperated with the final consummation of the settlement agreement (R. 4409) and the motion for receivership does not aver otherwise.

(4) That this Court order the return of all property the district court below ordered taken from Jeff pursuant to the challenged order, including all 'fees and charges' of the receiver and his employees, agents, 'professionals' and attorneys, because the challenged order and the taking of Jeff Baron's property from him

thereunder was without due process and in violation of his constitutional rights.

(5) That this Court order that all costs of this appeal be taxed against the Appellee and awarded to the Appellant.

Respectfully submitted,

/s/ Gary N. Schepps

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FOR JEFFREY BARON

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DATED: April 6, 2011.

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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 and by e-mail to:

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