No. 10-11202
and Consolidated Cases

In the
United States Court of Appeals
for the Fifth Circuit

No. 10-11202
NETSPHERE, INC. Et Al,
Plaintiffs
v.
JEFFREY BARON,
Defendant-Appellant
v.
ONDOVA LIMITED COMPANY,
Defendant-Appellee

Appeal of Ex Parte Order Appointing Receiver
Where No Claims were Pled in the Property Seized

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

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

JEFFREY BARON'S RESPONSE TO RECEIVER'S PETITION FOR REHEARING EN BANC

Cons. w/ No. 11-10289
NETSPHERE, INC., ET AL, *Plaintiffs*
v.
JEFFREY BARON, *Defendant- Appellant*
v.
DANIEL J SHERMAN, *Appellee*

Cons. w/ No. 11-10290
NETSPHERE, INC. ET AL, *Plaintiffs*
v.
JEFFREY BARON, ET AL, *Defendants*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Non-Party Appellants*
v.
PETER S. VOGEL, *Appellee*

Cons. w/ No. 11-10390
NETSPHERE, INC. ET AL, *Plaintiffs*
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
ONDOVA LIMITED COMPANY, Defendant – *Appellee*
v.
PETER S. VOGEL, *Appellee*

Cons. w/ No. 11-10501
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P., *Appellant*
v.
PETER S. VOGEL; DANIEL J. SHERMAN, *Appellees*

Cons. w/ No. 12-10003
NETSPHERE, INC. ET AL, *Plaintiffs*
v.
JEFFREY BARON, *Defendant – Appellant*
QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*

GARY SCHEPPS, *Appellant*
v.
PETER S. VOGEL, *Appellee*

Cons. w/ No. 12-10444

In re: NOVO POINT LLC, Petitioner

Cons. w/ No. 12-10489
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

Cons. w/ No. 12-10657
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

Respectfully submitted,

/s/ Gary N. Schepps
Gary N. Schepps
Texas State Bar No. 00791608
5430 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 200-0000 - Telephone
(972) 200-0535 - Facsimile
Email: legal@schepps.net
FOR JEFFREY BARON

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INTRODUCTION

This appeal presents a question of exceptional importance and raises a fundamental question as to the relationship between the public and the federal courts: May a federal court confiscate property that it lacks the authority to seize in order to pay for the unauthorized seizure ?

The Panel has invested a substantial effort in considering the consolidated appeals. The Panel has worked through some **1,800 pages of briefing** and **three hours of oral argument**. The Panel's opinion correctly lays out the authoritative law and controlling precedent with respect to the federal court's lack of jurisdiction and authority to impose a receivership over property that is not the subject of an underlying claim or controversy. Still, there is a narrow, focused question of law that is of exceptional importance worthy of a *partial* rehearing en banc, as follows: **Whether a court without jurisdiction and authority to place property into receivership has the power to make any charge upon, or disposition of, the assets.** The Panel's decision on this one point conflicts with the controlling precedent of the United States Supreme Court.

ARGUMENT FOR PARTIAL REHEARING EN BANC

Where the court lacks jurisdiction to impose a receivership over property, it does not acquire jurisdiction over that property through the receivership. *E.g.*, *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1028 (5th Cir. 1931). The Supreme Court has ruled that without jurisdiction over the property, the district court is "without power to make any charge upon, or disposition of, the assets". *Lion*

Bonding & Surety Co. v. Karatz, 262 U.S. 640, 642 (1923).[1]

In reaching the opposite result, the Panel's decision erroneously relies on the Supreme Court's holding in *Palmer v. Texas*, 212 U.S. 118 (1909). The Supreme Court has dispositively ruled that the holding of *Palmer* does not apply where the trial court lacks the jurisdiction to impose the receivership. *Lion Bonding,* 262 U.S. at 642.

The Panel's decision also erroneously looks to *WF Potts Son & Co. v. Cochrane*, 59 F. 2d 375, 377 (5th Cir. 1932) for guidance in a case where the court lacks jurisdiction over the receivership res. The *WF Potts* appeal did not involve a challenge to the disposition of receivership assets. In *WF Potts* that issue was waived. *Id*. at 378. Rather, the issue in *WF Potts* was the recovery from the plaintiff for damages caused by the imposition of the receivership. *Id.*

The Supreme Court has ruled that "If there were no jurisdiction, there was no power to do anything but to strike the case from the docket". *Mayor v. Cooper*, 73 U.S. 247, 250-251 (1868). The Supreme Court has held that this rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception. *Mansfield, C. & LMR Co. v. Swan*, 111 U.S. 379, 382 (1884). The rule is mandatory and fundamental to American Jurisprudence. *E.*g., *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838) (jurisdiction is required to exercise any judicial power). As a matter of controlling precedent, a court not having jurisdiction

[1] The Supreme Court also expressed this rule in *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 373-374 (1908), recognizing that "If he [the receiver] has taken property into his custody under an irregular, unauthorized appointment ... As to such property his appointment as receiver was unauthorized and conferred upon him no right to charge it with any expenses." *Id.*

of the res, cannot affect it by its decree. *Fall v. Eastin*, 215 U.S. 1, 11 (1909).

Actions taken by a court beyond its authority are not mere error but, pursuant to the binding precedent of the Supreme Court, are absolutely void. *E.g.*, *Windsor v. McVeigh*, 93 U.S. 274, 282-283 (1876) ("would not be merely erroneous they would be absolutely void; because the court in rendering them would transcend the limits of its authority").[2] The Supreme Court similarly ruled in *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945) that when a court has no judicial power to do what it purports to do "its action is not mere error but usurpation of power."

ARGUMENT AGAINST REHEARING THE ENTIRE APPEAL

THE FACTS: WHAT DID JEFF BARON DO?

Vogel's argument serves up large piles of hyperbolic rhetoric. However, when examined for specifics, the record does not support *any* of Vogel's assertions of wrongdoing by Baron.[3] The District Court, however, believed Vogel's rhetoric and found, for example, that Baron changed bankruptcy counsel **so frequently that he threatened to bring the Bankruptcy Court's "entire docket" to a standstill.** SR. v16 p1276. When the specifics are examined, Vogel's unsupported rhetoric is exposed– for example, in two years Baron changed bankruptcy counsel only three times.[4]

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[2] For example, "The decree of a court of equity upon oral allegations, without written pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the Chancellor. And the reason is, that the courts are not authorized to exert their power in that way." *Windsor* at 283.

[3] Vogel's argument presents a creative writing exercise entirely disconnected from the record. The 'factual' and procedural statements in *every sentence* (save four) of Vogel's argument find no support in the record and offer a fancifully, howbeit creative, fictionalized accounting.

[4] Keiffer was Ondova's bankruptcy counsel. Baron's district court counsel demanded that Keiffer

Because the District Court's findings were based on Vogel's rhetoric, those findings, appearing of record in the District Court's orders– such as that Baron threatened the bankruptcy court's docket by changing counsel so frequently– are simply not reliable. SR. v16 p1276. Yet, those erroneous findings were the express basis of the District Court's decision to impose the *ex parte* receivership order seizing all of Baron's assets and property rights. *Id*. Notably, the findings were all made without the benefit of what would be traditionally considered "Due Process of Law".

No trial was ever held. No judgment was ever entered against Mr. Baron. Instead, Baron was 'tried and convicted' of whatever supposed misconduct in an *ex parte*, private off-the-record hearing held in chambers. R. 3924; SR. v5 p321; SR. v11 p83. At the *ex parte* hearing, the District Judge ordered the seizure of all of Baron's assets, all his money, credit cards, and all of his property exempt or otherwise. R.1604-6; SR. v5 p321, v11 p82-83 (order signed at 1:15pm).

Jeff Baron's documents and records were seized and Vogel, as the District Court's receiver, then fired Jeff's "AV" rated trial counsel. R. 3890-2. Jeff was ordered under threat of contempt not to retain any counsel to defend himself. SR. v8 p1213. The only attorney willing to help was an appellate counsel, Schepps, who worked unpaid in a limited role on Baron's appeal, with the assistance at one hearing of another unpaid appeal lawyer, Barrett. R. 1712-3, 2718-9, 4395,4397.

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be let go, SR. v18 p185, and so he was replaced by (1) Pronske. R. 1157. In September 2010 Baron hired (2) Ferguson, a new lawyer he hoped could facilitate the immediate closing of the bankruptcy. Ferguson was unable to help and (3) Thomas was hired. Doc 1126-1 at 17-18, Two other lawyers appeared briefly for Baron on specific issues, Jones and Broome, neither was hired as bankruptcy counsel. All changes of counsel were with express Court approval.

Baron appealed the receivership order and filed a FRAP 8(a) (Vacate or Stay) motion that the District Court ordered would be "limited to the appeal of the Order Appointing Receiver". R. 3557. The District Court conducted the FRAP 8 hearing after **denying** Baron access to (1) **his own documents** and evidence, (2) a trial attorney and **hired counsel**, (3) **notice of the 'charges'** against him, and (4) an opportunity to conduct **discovery**. R. 1575-1577, 3556-3557, 3565-3566, 3891-3892.

Under those conditions, and weeks after being divested of jurisdiction over the matter by Baron's appeal, the District Court converted the FRAP 8 motion for relief on appeal into a 'hearing' where Jeff faced defending himself against surprise allegations of newly alleged wrongdoing– not raised in any motion– such as fraud. At the hearing, Jeff Baron came forward to testify in his own behalf, with the help of Barrett, an unpaid appellate lawyer who tried to help. R. 4395,4397. Barrett had no experience in the federal court and found the matter beyond his competence, informing the Court, "**I'm frankly not equipped to handle it, to be honest with you, Judge**". R.4603. After Jeff Baron took the stand, but before he testified, the Judge intimidated Barrett by declaring that his mind was already made up, and he was not going to believe Jeff. R. 4605:9-18. Barrett immediately directed Jeff not to testify. R.4606:8. The Judge instructed Jeff to comply with Barrett's directive, and Jeff complied. R. 4608:10-13. That was the only 'hearing' Jeff Baron received.[5]

[5] The FRAP 8 (Vacate or Stay) hearing was held in January, 2011, weeks after the District Court had been divested of jurisdiction by Baron's appeal on December 2, 2010. R. 1699. *E.g.*, *Coastal Corp. v. Texas Eastern Corp.*, 869 F.2d 817, 820 (5th Cir. 1989)(district court cannot generally accept new evidence or arguments to support order while the validity of the order is on appeal).

No record exists of the *ex parte* hearing at which the District Court imposed the receivership. This Honorable Court should carefully examine the issue of *specifically* what Jeff Baron did that would justify granting a district court the jurisdiction and authority to confiscate his property to pay the fee for seizing it. Here, Baron was turned from being financially independent into someone stripped of his bank accounts and thrown into involuntary bankruptcy proceedings. That is the *effect* of the Panel's decision, even if not the intention.

THE FACTS: THE LAWSUIT FULLY & FINALLY SETTLED.

Contrary to Vogel's rhetoric, the proceedings were not brought to a grinding halt because of a disgruntled litigant's vexatious, fraudulent, pornographic, cyber-squating, etc. conduct. The proceedings were brought to a grinding halt by a court approved 'global settlement agreement' that settled all claims and controversies between all parties. R. 2225, 2234, 2262-83. Thus, the district court case came to an end in August, 2010 when all parties entered into a stipulated dismissal with prejudice of all claims. R. 2346.

The 'fraud' involved has been that of Vogel and Sherman, who used an *ex parte* hearing to mislead the District Judge into believing that Baron had violated the

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Baron's motion was expressly filed under Fed.R.App.P. 8(a) and ordered heard as a motion seeking appellate relief, and is, accordingly, non-appealable. *E.g.*, *In re First South Sav. Ass'n*, 820 F.2d 700, 708 (5th Cir. 1987)("district court's decision to deny a stay pending appeal was not a final order"). Baron sought not a dissolution of the receivership, but a stay or equitable vacation under *Wayne Gas Co. v. Owens Co*., 300 U.S. 131, 136-7 (1937) (court may vacate a decree granting equitable relief "after an appeal has been perfected and after the time for appeal has expired" but "before rights have vested on the faith of its action.") to "preserve the status quo" pending appeal. *Newton v. Consolidated Gas Co. of NY*, 258 U.S. 165, 177 (1922).

District Court's order to mediate fee disputes with former attorneys and had breached his settlement obligations to Sherman, the chapter 11 trustee of Ondova.

After painstakingly working through two thousand pages of briefing, and three hours of oral argument, the Panel correctly found that Vogel and Sherman's core representations were simply not supported by the record. Contrary to the Vogel's rhetoric, the property seized by the District Court had nothing to do with the underlying lawsuit. When challenged by the Panel in oral argument, no order could be identified that Baron violated.

After the oral argument in this appeal had been held, Jeff Baron was allowed– for the first time– a paid advocate to challenge Sherman under oath on the witness stand. Under cross-examination, the rhetoric sold to this Honorable Court in Sherman and Vogel's appellate briefings completely collapsed.

First, Sherman admitted that there had been an *ex parte* hearing to impose the receivership and he participated. Doc 1126-1 at 81. Thus, the receivership was not imposed "instanter", as erroneously represented by Vogel in his petition for rehearing (at page 4) and as erroneously suggested in the District Court's findings in denying Mr. Baron his FRAP 8 (stay or vacate) motion on February 4, 2011. SR v2 p343-4.

Second, contrary to the repeated false representations Sherman and Vogel made to the District Court and this Honorable Court that Baron had caused the mediation to fail by disobedience to the court's mediation order, Sherman testified that Vogel reported to him ***it was the attorney claimants*** who caused the mediation

fail by refusing to mediate. Doc 1126-1 at 23.

Third, Sherman testified that Baron had not violated, in any way, any obligation due Sherman under the global settlement agreement. Doc 1126-1 at 56.

In other words, when finally confronted under oath, Sherman admitted that the rhetoric he and Vogel used to obtain and justify the receivership was **false**.

VOGEL'S UNSUPPORTABLE ARGUMENT

Vogel's[6] argument that Baron was vexatious, and delayed court proceedings is equally without merit. There is nothing in the record that demonstrates that Baron vexed any party or delayed *any* proceedings.[7] Vogel's argument that Baron violated court orders is unfounded– at oral argument, no order could be identified that Baron even *allegedly* violated.

Vogel's final argument that Mr. Baron didn't pay his lawyers is meritless– the attorneys did not file pleadings in the district court and no trial was held to adjudicate any of the alleged claims. Moreover, the claims are non-diverse state law actions falling well outside of the jurisdiction of the federal court. *See Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010).

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[6] Vogel's standing to petition for rehearing is unclear. By law, the receiver is "the creature of the court", *Atlantic Trust*, 208 U.S. at 371, charged with being "an indifferent person between parties". *Booth v. Clark*, 58 US 322, 331 (1855). Vogel, however, using Jeff Baron's money, has become a highly paid advocate for his own position. Notably while Vogel has used millions in receivership assets to pay for legal representation in this appeal, Jeff Baron has been prohibited from having the assistance of any paid appellate counsel.

[7] For example, Vogel argues that Baron took Ondova Bankrupt to avoid a contempt hearing. The record, however, shows that *prior to* filing the Ondova bankruptcy, Baron was notified that the contempt hearing would *not* be held. SR. v18 p329; R. 919.

LEGAL ANALYSIS OF VOGEL'S REHEARING REQUEST

Vogel's petition for rehearing raises three core legal issues.

The first issue involves this Honorable Court's holding in *Cochrane v. W.F. Potts Son & Co*., 47 F.2d 1026, 1029 (5th Cir. 1931) and the limits of a federal court's subject matter jurisdiction, as follows:

Reynolds

The federal court is not empowered to seek out matters that in the court's sense of equity need intervention by the court. Rather, as a matter of the protection of the liberty of the citizens, the federal court's authority is limited to the resolutions of claims and controversies brought before the court for resolution. *Reynolds v. Stockton*, 140 U.S. 254, 268 (1891). In *Reynolds*, the Supreme Court ruled that "Persons by becoming suitors do not place themselves for all purposes under the control of the court, and it is only over these particular interests, which they choose to draw in question, that a power of judicial decision arises." *Id.*

The Supreme Court laid down a fundamental rule of limited subject matter jurisdiction and ruled that a court's jurisdiction is "confined to the subject-matter set forth and described in the petition." *Id.* at 269. The Supreme Court's ruling is clear– the jurisdiction of the District Court is limited to the resolution of the claims asserted in the pleadings. *Id*. at 265. In *Reynolds*, as this Honorable Court held in *Cochrane*, the Supreme Court ruled that the district court's exercise of judicial power was invalid because "it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation." *Reynolds* at 265.

Cochrane

The jurisdictional question in *Cochrane* is not, as Vogel erroneously argues, that a state court later attempted to assert authority over the bond series. Rather, the question addressed in *Cochrane* is the limit of a federal court's jurisdiction to impose a receivership over property that is not subject to a controversy at issue before the Court. *Cochrane*, 47 F.2d at 1029.

In *Cochrane*, the plaintiff sued to protect against an alleged fraudulent scheme involving the issuance of a series of bonds. *Id*. at 1027. In order to abate the fraud, the plaintiff moved the court to take charge of the securities through a receivership. *Id.* However, since no claim of lien or equitable right by the plaintiff was alleged in any of the securities outside of a single series, "E", the court appointed a receiver over property to "which no person was before the court claiming to have any interest". *Id*. at 1028.

The appellant contended that the district court "never acquired jurisdiction over, any of the securities belonging to series A, B, C, D, and F ... because as to such series A, B, D, and F no claim of interest in or right to any of their subject-matter has been asserted in this court". *Id*. This Honorable Court agreed, and ruled that the district court lacked subject matter jurisdiction over the assets because "the plaintiffs' pleadings [did not] put their subject-matter at issue, or bring them within the ambit of the court's jurisdiction". *Id.* at 1029. The Court noted that "while there were general allegations of fraud and confusion in the matter of the affairs of the two companies,

the plaintiffs' pleadings limited their claim to the bond issue E and nothing was alleged to set up any claim against or charge upon the other securities." *Id.* at 1029.

"Departure from the doctrine of stare decisis demands special justification." *E.g., Welch v. Texas Dept. of Highways*, 483 U.S. 468, 478-9 (1987). The receiver, however, has failed to explain why there is special justification for the reversal of the long established precedent of this Honorable Court. The receiver argues, for example, that the doctrine of *quasi in rem* jurisdiction somehow impacts the *Cochrane* decision. Contrary to the receiver's argument, the doctrine of *quasi in rem* jurisdiction was developed well before this Court's ruling in *Cochrane.*[8]

Current Law: Griffin v. Lee

Unless a dispute "falls within the confines of the jurisdiction conferred by Congress, such courts do not have authority to issue orders regarding its resolution." *Griffin v. Lee*, 621 F.3d at 388. Such jurisdiction goes to "the core of the court's power to act". *Id.* The federal court's jurisdiction does not include resolution of the non-diverse state law attorney fee claims of a litigant's former counsel. *Id.* at 382, 390. Critically, as this Honorable Court ruled in *Griffin*, "Federal courts are courts of limited jurisdiction. They possess only that power authorized by the Constitution and statute, which is not to be expanded by judicial decree." *Id*. at 388.

The second issue involves the bounds of a federal court's equity jurisdiction, and thus the bounds of its All Writs, and inherent power. Vogel's argument seeks

[8] A decade before *Cochrane*, the distinction between *quiasi in rem* proceedigns and *in personam* actions was already considered "ancient" *Ownbey v. Morgan*, 256 U.S. 94, 109 (1921).

reconsideration of a fundamental question that was dispositively ruled on by the Supreme Court in *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). In *Grupo Mexicano,* Justice Ginsburg argued for a "dynamic equity jurisprudence" to extend the equity jurisdiction of the federal courts beyond the uses "'traditionally accorded by courts of equity' at the time the Constitution was adopted." *Id*. at 336-7. Justice Ginsburg argued for an "adaptable" federal equitable power" that extended "beyond the contemplation of the 18th-century Chancellor". *Id.*

That "adaptable" power was **dispositively rejected** by the Supreme Court, which ruled that "This expansive view of equity must be rejected". *Id.* at 321. Justice Scalia, writing for the Court, explained that "equity is flexible; but in the federal system, at least, that flexibility is confined within the broad boundaries of traditional equitable relief. To accord a type of relief that has never been available before ... [is] not of flexibility but of omnipotence." *Id*. at 322.

Citing *Gordon v. Washington*, 295 U.S. 30, 36 (1935), the Supreme Court ruled in *Grupo Mexicano* that **"the equity jurisdiction of the federal courts is 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, 1789"**. *Id*. at 318. Accordingly, the Supreme Court held the bounds of a court's equity jurisdiction was **"whether the relief respondents requested here was traditionally accorded by courts of equity."** *Id.* at 319.

As held in the panel's decision, the relief Vogel seeks was not that traditionally accorded by courts of equity, and is in fact, *without precedent in the*

history of American Jurisprudence. Vogel's argument seeks to side-step the bounds of equity jurisdiction by reference to the All Writs Act, and a courts inherent authority. However, as this Honorable Court has ruled, "Both the All Writs Act and the inherent powers doctrine provide a federal court with various common law equity devices". *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)("The inherent powers doctrine ... is rooted in the notion that a federal court, sitting in equity, possesses all of the common law equity tools of a Chancery Court"); *Grupo Mexicano* at 326 fn 8 ("All Writs Act, 28 U.S.C. § 1651, ... we have said that the power conferred by the predecessor of that provision is defined by 'what is the usage, and what are the principles of equity applicable in such a case.' *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 219 (1945)").

Accordingly, neither the All Writs Act nor the inherent powers doctrine authorize more or greater authority than a court's equity powers. *Id.; and see*, *In re Fredeman Litigation*, 843 F.2d 821 (5th Cir. 1988)("The disposition of these assets was not an issue in the underlying lawsuit, but the district court premised the injunction on 'its inherent power to protect — through equity — the future utility of a potential judgment for damages.' Because the district court lacked power to enter such an injunction under general equitable principles ... we vacate").

The third issue involves the bounds of a federal court's receivership jurisdiction specifically. Litigants can sometimes be frustrating, and as much as a judge would like to order a litigant's family pet, or family bible seized by a receiver and held under threat of destruction as a means to controlling the behavior of a

litigant,[9] such power was not exercised by the High Court of Chancery in 1789, and has never been allowed the federal courts. Rather, in a free society, the Court issues orders and injunctions to compel behavior– a tradition with several hundred years of history. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982). Compliance is coerced when necessary, by fines and imprisonment. 18 U.S.C. § 401.

The Supreme Court has dispositively ruled that "there is no occasion for a court of equity to appoint a receiver of property of which it is asked to make no further disposition. The English chancery court from the beginning declined to exercise its jurisdiction for that purpose." *Gordon v. Washington*, 295 U.S. 30, 37 (1935). Thus, "a federal court of equity will not appoint a receiver where the appointment is not ancillary to some form of final relief which is appropriate for equity to give." *Id*. at 38.

Accordingly, this Honorable Court has ruled that "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. ... **There is no occasion for a court of equity to appoint a receiver of property of which it is asked to make no further disposition.**" *Tucker v. Baker*, 214 F.2d 627, 631 (5th Cir. 1954).

[9] The district court below seized all of Mr. Baron's property, paperwork, and possessions, and ordered Mr. Baron to turn over his cell phones and not to engage in any economic transactions. Contrary to Vogel's "creative" argument, neither Baron nor his counsel was ever held in contempt of any order nor sanctioned for any wrongdoing (in this, or any other litigation).

CONCLUSION & PRAYER

The Supreme Court began the seminal case of *Boyd v. United States*, 116 U.S. 746 (1886) with a quote from the 1765 English case of *Entick v. Carrington*, as follows: "The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable". Unless a partial rehearing is granted, Circuit law will now allow **the confiscation of property found beyond the authority of the Court to seize.**

The Supreme Court has held that "[It rests] on the central principle of a free society that courts have finite bounds of authority ... which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power. The courts, no less than the political branches of the government, must respect the limits of their authority". *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988).

The limitation of a court's authority to the boundaries of authorized controversies pled before the court is "founded in concern about the proper – and properly limited – role of the courts in a democratic society". *Allen v. Wright*, 468 U.S. 737, 750 (1984). It is the first line of defense in the protection of liberty against unauthorized intrusion. *Id.* Unless a partial rehearing is granted, the ruling of this Honorable Court removes that line of defense to the protection of liberty. The Panel's decision acknowledges that the District Court exceeded the boundaries of its authority, but allows it to do so, and thereby **fails to protect the public from the very wrong complained of— the excessive use of judicial power.**

The issues at stake are of exceptional importance. Partial rehearing en banc in this case is important to preserving a free society and protecting the citizens of this Circuit from well intentioned but excessive use of judicial power by the federal courts. Accordingly, Jeffrey Baron prays that a partial rehearing en banc be granted to address the issue**.**

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
Texas State Bar No. 00791608
5430 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 200-0000 - Telephone
(972) 200-0535 - Facsimile
Email: legal@schepps.net
COUNSEL FOR JEFFREY BARON

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 APPELLANT JEFFREY BARON