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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
JEFFREY BARON,	§	**Bankr. No. 12-37921-SGJ**
	§	
Alleged Debtor.	§	**Hearing: Feb. 13, 2013 @ 1:30 p.m.**

ALLEGED DEBTOR'S RESPONSE TO PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT

Comes now, **JEFFREY BARON**, the Alleged Debtor ("Baron") who files this his Response to the Petitioning Creditors' Motion for Summary Judgment (the "Motion"), and in response shows as follows:

SUMMARY OF THE RESPONSE

The petitioning creditors have the burden not merely to establish the existence of their claims but must also to establish **"a prima facie case that no bona fide dispute exists"** as to the validity or amount of their claims. *Matter of Sims*, 994 F.2d 210, 221 (5th Cir. 1993). The grounds offered by the petitioners to establish a prima facie case that no bona fide dispute exists

as to their claims is the District Court's May 18, 2011 order.

The petitioning creditors assert that the order is unstayed and adjudicates Baron's liability for their claims. The petitioning creditors further claim that a full evidentiary hearing was held on April 28, 2011, which included the live testimony of a number of attorneys. Further, the petitioning creditors assert that the motion granted by the district court was fully litigated, and that the alleged debtor invoked his Fifth Amendment rights against self-incrimination at the hearing.

However, Baron will prove that: (1) the district court order relied upon by the petitioning creditors has been stayed and as a matter of law the petitioning creditors' claims are subject to a bona fide dispute; (2) *res judicata* does not bar Baron's bona fide disputes as to the Petitioning Creditors' claims because no final determination was made of either the liability or amount of the claims against Baron; (3) collateral estoppel does not bar Baron's bona fide disputes as to the Petitioning Creditors' claims because the "facts" determined were not essential to the order, and because the order was not fully and fairly litigated; (4) in addition to the Motion exceeding the scope of this Court's January 17, 2013 orders by attempting to address insolvency, there are fact issues on this question for which Baron is entitled to due process, including discovery. For these reasons, the Motion should be, in all respects, denied.

PROCEDURAL HISTORY

Although the procedural history of the litigation involving Baron is voluminous, the portions relevant to the Petitioning Creditors' summary judgment motion on preclusion, consisting primarily of orders from the District Court in *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*, Civil Action No. 3:09-CV-0988-F ("the District Court Case"), the Fifth Circuit Court of Appeals in Netsphere, Inc., et al. v. Jeffrey Baron, Appeal No. 10-11202 ("the Appeal"), and this

Court in In re Ondova Limited Company, Bankr. No. 09-34784-SGJ-11 ("the Ondova Bankruptcy Case") is somewhat more simple, and will be all that is cited herein. The logical beginning is Petitioning Creditors' Exhibit J-2, Judge Royal Ferguson's findings, conclusions and order dated May 18, 2011 in the District Court Case, Docket No. 575 ("the Claims Resolution Order").

The Claims Resolution Order

In the Claims Resolution Order, coming as it did in regards to the Receiver's Fourth Motion for Order Approving Assessment and Disbursement of Former Attorney Claims [Docket No. 562] ("the Fourth Motion"), Judge Ferguson stated that one of his goals was to "resolve" the claims of Baron's former attorneys. *Id.* at p. 3, ¶3. Judge Ferguson acknowledged that the Fourth Motion he was then considering proposed "a settlement and compromise of the Former Attorney Claims" *id.* at p. 5, ¶7, that his consideration was "summary" in nature, *id.* at pp. 6-7, ¶11, that the Receiver had the right to waive Baron's otherwise extant right to a jury trial, *id.* at pp. 9-11, ¶¶16-20, and that the Receiver was not required to collect or offer evidence or make arguments to controvert the Former Attorney Claims," referred to as "the Defense Obligation." *Id.* at p. 5, ¶8.

Thus, the District Court, through the Claims Resolution Order, established a voluntary procedure in which Baron's Former Attorneys could ***elect*** to voluntarily compromise their claims for a fixed amount, "waive" alleged claims against Baron in excess of amounts suggested by the District Court, and be paid by the Receiver. *Id.* at pp. 20-22, ¶¶35-37. Critically, however, the District Court also acknowledged that it was not making any determination of "the Baron Claims," consisting loosely of "legal malpractice and other civil claims." *Id.* at p. 21, ¶36. Judge Ferguson went on to state, "Through this Order, Baron maintains any and all rights to

bring, after the end of the Receivership, the Baron Claims," *id.* at pp. 22, ¶36, holding that then the restrictions imposed by any waiver of other rights as a result of their compromises to be paid by the Receiver would be lifted. *Id.*

Apart from the clearly non-determinative language of Judge Ferguson's ruling in the Claims Resolution Order, after it was entered, it does not appear that the District Court treated this order as a "final judgment" on the Former Baron Attorney claims for FRCP Rule 54(a) purposes. There was no "judgment" entered; there was no final disposition of ***any*** of the claims -- referring both to those of Baron expressly reserved in the Order ***and*** to those being "compromised" by the Former Baron Attorneys; there was no "severance" of the claims of the Former Baron Attorneys; and the mandatory procedure for certification of fewer that all claims or all parties for finality in FRCP Rule 54(b) was not followed.[1] Perhaps most critically, however, the Claims Resolution Order to pay the claims was stayed by Judge Ferguson.[2]

The District Court's Stay Order

The next order from Judge Ferguson pertinent to this Motion was his order on the Receiver's "Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys," Docket No. 980. In response, and seeking "to preserve the status quo for appeal," on June 18, 2012, Judge Ferguson entered his "Order Regarding Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys," Docket No. 987 (*see* Baron Exhibit D-1, hereafter referred to as the "Stay Order"). In the Stay Order, at p. 3, Judge Ferguson acknowledged that "one of the appeals of Receivership Orders deals with the Court's decision regarding [the Former

[1] Rule 54(b) states that unless the Court "expressly determines that there is no just reason for delay," any order adjudicating fewer than all claims or all parties "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

[2] Although Judge Ferguson did not use the word "stay," under well-established Fifth Circuit authority, Docket No. 987 constitutes a stay and suspended the designated proceedings of the Receiver under prior orders to pay compromised claims. *Tesfamichael v. Gonzales*, 411 F.3d 169 (5th Cir. 2005).

Baron Attorneys' fee] claims, [and] Baron should be able to contest the decision before funds are distributed." *Id.* at p. 3. Thus, Judge Ferguson held:

> "Accordingly, it is ORDERED that no funds be distributed to the former Baron attorneys until the completion of the Appeal. Those funds now available will be segregated and set aside by the Receiver until a decision is made by the Court of Appeals."

Id. As clarified by the Court of Appeals' order dated December 31, 2012, holding that "district court orders that were in place prior to the release of our opinion remain in place" (*see* Petitioning Creditors Exhibit J-6, p. 1), the Stay Order represents the *status quo* as of the filing of the involuntary petition against Baron.

The Court of Appeals Reversal of the Receivership Order

In the Appeal, on December 18, 2012, the Court of Appeals set aside the appointment of the Receiver, and with it, Judge Ferguson's rulings, including the Claims Resolution Order and, with it, the voluntary resolution procedure Judge Ferguson had imposed. *See* Petitioning Creditors' Exhibit J-5 (hereafter, "J-5") As a critical rationale for its ruling that imposition of the Receivership was an abuse of discretion, the Court of Appeals repeatedly and unambiguously went to pains to recognize that what made it so was the seizure of Baron's assets using the Receivership to satisfy unsecured and not-yet-determined claims.

> Baron's former attorneys were free to make claims against the bankruptcy estate, many had done so. Alternatively, to the extent that they represented Baron or his companies in matters unrelated to the Ondova bankruptcy, the attorneys could file suit in a court of appropriate jurisdiction to collect the fees owed, which many had done. Establishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority. . . . Moreover, for those unpaid attorneys who had filed claims, ***the claims had not been reduced to judgment*** such that a receiver would have been proper to "set aside allegedly fraudulent conveyances by [Baron]." (Citations omitted; emphasis added.)

See J-5 at p. 18.

> Although the attorneys' allegations and claims were delaying the district court and bankruptcy proceedings, they were not the subject matter of the underlying litigation. "The general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a ***potential money judgment***." (Citations omitted; emphasis added.)

Id. at p. 19.

> "[F]ederal courts in this country have traditionally applied the principle that courts of equity will not, as a general matter, interfere with a debtor's disposition of his property ***at the instance of a nonjudgment creditor***. (Citations omitted; emphasis added.)

Id. at p. 20.

> The case before us is similar to *Grupo Mexicano* to the extent that the receivership remedy was for the purpose of controlling Baron's transferring of funds that were to be paid to attorneys – ***nonjudgment creditors***. (Citations omitted; emphasis added.)

Id. at pp. 20-21. And finally,

> The receivership ordered in this case encompassed all of Baron's personal property, none of which was sought in the Netsphere lawsuit or the Ondova bankruptcy other than as a possible fund for paying ***the unsecured claims of Baron's current and former attorneys that had not been reduced to judgment***. (Emphasis added.)

Id. at p. 21. If anything, the Court of Appeals has most plainly ruled that there was no binding adjudication of the merits of the claims of the Former Baron Attorneys and, to the extent that they seek preclusive effect from Judge Ferguson's orders, the Petitioning Creditors. The Court of Appeals also frequently made clear the point that the Receivership was used to seize Baron's personal assets, even though they were "unrelated to the underlying litigation," even though they "were not sought in the Netsphere lawsuit or the Ondova bankruptcy," *id*., and even though there was no evidence that assets that were in fact the subject of the litigation before the District Court "were being moved beyond the reach of the court." *Id*. at 16.

The Court of Appeals' Stay of the District Court's Claims Resolution Order

After the Court of Appeals' opinion reversing as improper the appointment of the Receivership under which the still-stayed District Court order to enter into the voluntary compromises of Former Baron Attorneys' claims was handed down, the Court of Appeals handed down a stay of its own. In Petitioning Creditors' Exhibit J-6, the Court of Appeals ordered a stay as follows: "The import of our order of November 9, 2012, has not changed, which said this: 'Disbursement of any other assets of the Receivership should be as limited as possible until this Court resolves the appeals.' We have resolved the appeals, but the only expenditures should be those appropriate for the Receiver to make until relinquishment of control of assets." *Id*. at p. 7.

The Ondova Fee Enhancement Order

Last, counsel for the Petitioning Creditors, Mr. Pronske, cites an order from this Court in the Ondova Bankruptcy Case entered on November 30, 2012, "Granting the Second Amended Application of Pronske & Patel, P. C. for Payment of Fees as an Administrative Expense for a Substantial Contribution to the Estate," Docket No. 978 (Exhibit J-4). While this order is certainly a final and non-appealable order, it is for counsel's contribution ***to the Ondova bankruptcy estate***, and fails to make or include any determination of liability for all - - or any part - - of those fees by Baron. Notably, also, it came just over two years from Mr. Pronske's withdrawal from representation of Baron. *See* Baron Exhibit D-4.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate, when, viewing the evidence in the light most favorable to the nonmoving party, the record reflects that no genuine issue of any material fact

exists.[3] A "dispute about a material fact is 'genuine'...if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[4] The district court must resolve all reasonable doubts about the fact, and indulge all reasonable inferences from the evidence, in favor of the non-movant.[5]

The Petitioning Creditors ask this Court to hold that the Claims Resolution Order and the Ondova Fee Enhancement Order have preclusive effect on Baron's right to assert that the claims of the Petitioning Creditors (against him) remain subject to bona fide dispute. Fundamentally, there are two types of preclusion which could apply: claim preclusion (or *res judicata*) and issue preclusion (or collateral estoppel). The standards for each are well-developed in the Fifth Circuit.

Application of *res judicata* is proper only if the following criteria are met: (1) the parties must be identical in the two suits; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same cause of action must be involved in both cases.[6] In particular, what constitutes a "final judgment" is determined by reference to the Federal Rules of Civil Procedure and precedent. Rule 54(a) defines a judgment as "any decree or order from which an appeal lies." The Supreme Court has held that a final judgment is a ruling or decree which conclusively determines the rights of the

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[3] *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). See also *Bridgmon v. Array Sys. Corp.,* 325 F.3d 572, 576 (5th Cir. 2003).

[4] *Sulzer Carbomedics, Inc. v. Oregon Cardio-Devices, Inc.,* 257 F.3d 449, 456 (5th Cir. 2001) (quoting *Anderson,* 477 U.S. at 248).

[5] *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *St. Paul Guardian Ins. Co. v. Centrum GS, Ltd.*, 283 F.3d 709, 712 (5th Cir. 2002). See also, *Hom v. Squire*, 81 F.3d 969, 973 (10th Cir. 1996); *Pocchia v. NYNEX Corp.*, 81 F.3d 275, 277 (2d Cir. 1996).

[6] *Matter of ARK-LA-TEX TIMBER CO., INC.*, No. 06-30105 (5th Cir. filed January 29, 2007) *(citing Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559 (5th Cir. 2004)).

parties, leaving nothing for the court to do but execute and enforce the judgment.[7] Rule 54(b) makes plain that, unless the court express determines that there is no just reason for delay of an appeal of an order adjudicating less than all claims of all parties, any such order does not end the action.[8]

Collateral estoppel will apply to bar relitigation of facts determined by a court when, in the initial litigation: (1) the facts sought to be litigated were fully and fairly litigated; (2) those facts determined were essential to the judgment; and (3) the parties were cast as adversaries.[9] This Court has also held that three "sub-factors" must also be considered: "'(1) whether the parties were fully heard; (2) whether the court supported its decision with a reasoned opinion; and (3) whether the decision was subject to appeal or was in fact reviewed on appeal."[10]

ARGUMENTS AND AUTHORITIES

The factual grounds asserted by the petitioning creditors are not supported by the record and are controverted by the summary judgment evidence.

A. The Stay of the Claims Resolution Order Gives Rise to a Bona Fide Dispute

The Claims Resolution Order relied upon by the petitioners was stayed by order of the District Court, and later, upon reversal receivership, in the Court of Appeals. *See* Exhibits D-1 and Petitioning Creditors' J-6 respectively.

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[7] *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978); *Mowhawk Indus. v.Carpenter*, 558 U.S. 100 (2009). *See also Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 528 (5th Cir. 1996).

[8] *See, e.g., iLOR, LLC v. Google, Inc.*, 550 F.3d 1067 (Fed. Cir. 2008) (holding that where the district court's ruling disposed of the plaintiff's claims, but failed to address the defendant's counterclaims, the judgment was not final).

[9] *Pace v. Bogalusa City Sch. Bd.,* 403 F.3d 272, 290 (5th Cir. 2005); *Gupta v. Eastern Idaho Tumor Inst., Inc. (In re Gupta)*, 394 F.3d 347, 351 (5th Cir. 2004). *See also Copeland v. Merrill Lynch & Co.*, 47 F.3d 1415, 1423 (5th Cir. 1995) (holding that where the issue presented was not a "'critical and necessary part'" of the prior judgment, collateral estopped would not apply).

[10] *In re Henry S. Miller Commercial, LLC*, 418 B.R. 912, 917 (Bankr. N. D. Tex. 2009), *quoting State Farm Fire & Cas. Co. v. Fullerton*, 118 F.3d 374, 382 (5th Cir. 1997).

The Fifth Circuit has defined a "stay" as "[a] stopping; the act of arresting a judicial proceeding by the order of a court. Also, that which holds, restrains, or supports. A stay is a suspension of the case or some designated proceedings within it. It is a kind of injunction with which a court freezes its proceedings at a particular point."[12]

On June 18, 2012, the district court entered an order staying the order to pay the 'former attorneys' as a compromise of their claims, pending appeal. Exhibit D-1. The district court ordered that "no funds be distributed to the former Baron attorneys until the completion of the appeal." Exhibit D-1 at p. 3. Moreover, the district court expressly recognized that the claims were subject to a dispute, and ordered that "***Baron should be able to contest the decision before funds are distributed***." *Id.* (emphasis added). Following the Court of Appeals ruling, the Court of Appeals imposed a stay of its own, even while acknowledging that the status quo, and all prior orders of the District Court (including its stay order above) remained in force.

It is well-established that where creditors possess a stayed order their claims are subject to a bona fide dispute**.** The Fifth Circuit has affirmed the bankruptcy court holding that "creditors possessed a stayed judgment. Accordingly, such claims were subject to a bona fide dispute and lacked standing to institute an involuntary petition." *In re Norris*, 183 B.R. 437, 453 (Bankr. W.D. La. 1995), *aff'd*, 114 F.3d 1182, 1997 WL 256808 (5th Cir. 1977). In affirming the bankruptcy court's opinion, the Fifth Circuit cited with approval the holding in *In re Raymark Industries, Inc.*, 99 B.R. 298 (Bankr. E.D. Pa. 1989). The court in *Raymark Industries* held that ***"a creditor who holds a stayed judgment holds a claim which is subject to a bona fide dispute, and hence, lacks standing to institute an involuntary bankruptcy case."*** *Id.* at 299.

[12] *Tesfamichael v. Gonzales*, *supra* at Footnote 2.

In *In re Henry S. Miller Commercial, LLC*,[13] a recently-decided case with surprising resonances cited by the Petitioning Creditors, this Court held that even an unstayed judgment does not preclude inquiry into whether or not there is a bona fide dispute as to the validity or amount of a claim, and that "objective circumstances that might give rise to a bona fide dispute as to liability or amount" could still exist.[14] Several of the examples the Court gave in *Miller* of such objective, "specialized" circumstances which would justify considering a dispute bona fide - - even as to an unstayed judgment - - apply to this case, including:

> a] a judgment entered against a non-party (seizure of assets not sought in the Netsphere litigation or the Ondova bankruptcy);
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> b] "where subsequent events cast doubt upon the judgment's enforceability, such as . . . posting of a bond;" or
>
> c] some sort of appellate holding [albeit in this case, rather than another one] that . . . suggests it is inevitable that the . . . judgment will be reversed."[15]

And while in *In re Henry S. Miller Commercial, LLC* centered on an "unstayed" judgment, that which Petitioning Creditors claim as the judgment (which clearly is not a "judgment" in any critical sense) was stayed both by the court that issued it, and also by the court that reversed it.

B. ***Res Judicata*** **Does Not Bar Baron from Establishing a Bona Fide Dispute as to the Claims of the Petitioning Creditors Since There Was No Final Determination**

Res judicata does not bar Baron from urging that the claims of the Petitioning Creditors are subject to bona fide dispute for multiple reasons, but most prominent among them is the absence of a final judgment determining either the Petitioning Creditors' claims or the defenses and counterclaims of Baron.

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[13] *Supra*; cited at Footnote 10.
[14] *Id*. at 921.
[15] *Id*. at 921-22.

No *Decision* on the Petitioning Creditors' Claims. Indeed, even when one disregards the effects of the various orders staying the effects of his Claims Resolution Orders, a careful examination of Judge Ferguson's Claims Resolution Order reflects not a single instance of an actual judicial determination of the claims of the Petitioning Creditors. While Judge Ferguson's clever and well-intentioned procedures established a means by which Former Baron Attorneys could either "take" or "leave" a compromise at a rate suggested by the District Court, none of the Former Baron Attorneys had their claims "adjudicated" in any meaningful sense. A judicial adjudication is not "optional"; rather, it is ***a decision by the court*** from which the options are limited to either acceptance, or appeal. Judge Ferguson's "ruling," such as it was, only provided an opt-in choice with payment of a lesser amount, plus certain benefits and protections and waivers, for those who selected it.

Further, the District Court conditionally ordered the Receiver, not Baron, to pay the claims with the payment to act as a compromise and settlement. Exhibit J-2 at pp. 20-22. Unlike a corporation in receivership, an individual whose property is seized by a receiver does not have privity with the receiver, and is not bound by the receiver's obligations. *See Booth v. Clark*, 58 US 322, 331 (1855) ("A receiver is an indifferent person between parties ... He is appointed in behalf of all parties .. The money in his hands is in *custodia legis* for whoever can make out a title to it. ... The receiver is but the creature of the court; he has no powers except such as are conferred upon him"); *Temmer v. Denver Tramway Co.*, 18 F.2d 226, 230 (8th Cir. 1927) ("The receiver could neither speak for them [parties to the suit] nor bind them"). And, recently, the Court of Appeals has negated those powers, ruling them to have been improperly granted in the first instance. Thus, to the extent that any acts by the Receiver have impacted the rights of Baron to pursue or allege bona fide disputes, the authority for those acts was improper,

and any acts compromising Baron's rights are now voided.

Turning to the Ondova Fee Enhancement Order,[16] while it establishes the "enhancements" that services provided by Mr. Pronske conferred ***upon Ondova***, it fails to establish what amount of those "enhancements" (if any) were benefits to, or the liability of, Baron. It could be said that res judicata principles would bar the assertion of any personal liability which was, or could have been, joined with that determination, but at minimum, it cannot be said that it establishes any liability of Baron.

No *Decision* on the Baron Claims. What can be said of Judge Ferguson's lack of a judicial determination of the Petitioning Creditors' claims is even more explicit when it comes to Baron's bona fide disputes thereof. In the Claims Resolution Order, Judge Ferguson expressly reserved Baron's claims and defenses for Baron to choose to prosecute (or not) in the future.[17] And further, in the Stay Order, Judge Ferguson ruled that "one of the appeals of Receivership Orders deals with the Court's decision regarding [the Former Baron Attorneys' fee] claims, [and] Baron should be able to contest the decision before funds are distributed." These hardly seem like the words of a decision that decides or forecloses the existence of bona fide disputes; to the contrary, they recognize the continuing vitality of the right to raise bona fide disputes. Those claims comprising bona fide disputes cannot be said to have been precluded by the very "ruling" which expressly reserves them for future decision.

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[16] Interestingly, the Claims Resolution Order suggested that the Pronske & Patel fee claim be reduced from $241,912.70 to $177,352.70.

[17] As just one example, breach of fiduciary duty is potentially a complete defense to the payment of the disputed attorney's fees, inasmuch as the common law remedy therefor is disgorgement of as much as all fees paid. "An attorney's compensation is for loyalty as well as services, and his failure to provide either impairs his right to compensation." *Burrow v. Arce*, 997 S.W.2d 229, 240 (Tex. 1999). Thus, Baron's claims for breach of fiduciary duty, pled as counterclaims and upon which a jury trial was demanded, give rise to a bona fide dispute as to the amount and liability on the attorneys' fees the petitioners are claiming. *See Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 369 (5th Cir. 1962) (counterclaims can reduce the number of creditors).

C. Collateral Estoppel Does Not Bar Baron from Establishing a Bona Fide Dispute as to the Claims of the Petitioning Creditors Since the Facts Determined Were Not Essential to the Judgment, Since the District Court's Order Was Appealed, and Since the Issues Were Not Fully and Fairly Litigated

Taking off from the prior argument, wherein it was shown that the Claims Resolution Order was not anything like conventional judicial decisionmaking which decides and either grants or eliminates claims and defenses, it is also clear, as the Court of Appeals makes plain, that the rulings culminating in the seizure of Baron's assets and appointment of a Receiver were in service of claims which were not the basis of the underlying dispute. Instead, the District Court's seizure of Baron's assets to pay undetermined claims of attorneys against ***Baron*** - - when the Court of Appeals found that Baron's assets were "unrelated to the underlying litigation," and when those assets "were not sought in the Netsphere lawsuit or the Ondova bankruptcy" - - was clearly not essential to an issue the District Court was required to determine, which resulted in the reversal of the Claims Resolution Order as an abuse of discretion.

This also raises one of the "sub-issues;" inasmuch as the Claims Resolution Order on which the Petitioning Creditors claims was allegedly based was not only appealed, but appealed successfully, issue preclusive effect should not be accorded it. There is, of course, no collateral estoppel effect that attaches to orders reversed on appeal.[18]

Last, it appears there is good cause to question whether the rights of Baron were "fully and fairly litigated" separate and apart from the appellate determination that the imposition of the Receivership was an abuse of discretion. The order relied upon by the Petitioning Creditors was granted without allowing Baron discovery, paid counsel, or several other elements due process.

See Exhibit D-3. Orders granted without due process are void and have no legal effect.[19] The Fifth Circuit has also ruled that a defendant should be afforded a fair opportunity to secure counsel of his own choice.[20] And due process typically will also include a reasonable opportunity to conduct discovery.[21] Finally, the hearing held April 28, 2011 included no live testimony; it is well established that a party not "afforded notice and an opportunity to be heard on the motion" has been denied the requirements of due process of law.[22] Baron was denied the opportunity to be heard on how the district court's finding as to the excessive, unreasonable fees, should impact the Court's granting of relief.

D. <u>Baron Objects to Any Determination of the Claims of Insolvency on this Motion</u>

Baron objects that the inclusion of the "insolvency" question in the Petitioning Creditors' Motion is a direct violation of this Court's January 17, 2013 order, which provides, in relevant part, "ORDERED that ***the sole legal issue*** to be determined by the Court at Trial is whether the claims of the petitioning creditors are subject to a bona fide dispute . . .". (Emphasis added) The inclusion of this issue in the Motion is thus improper, and given the seven days Baron had to prepare, with no prior determination of his jurisdictional or pleadings motions and with no prior discovery, this imposes an undue hardship on Baron and denies him his right to due process. This denial of due process is all the more troubling (putting aside the improper seizure of his personal assets through Receivership by the District Court) in a matter which, as this Court pointed out in *In re Henry S. Miller Commercial, LLC*, evokes special policy concerns requiring

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[18] *Angel v. Bullington*, 330 U.S. 183, 208 n.15 (1947)("If . . . a judgment has been vacated by the trial court or reversed by an appellate court, it is no longer conclusive between the parties, either as a merger of the original cause of action or as a bar to an action upon the original cause of action. . . .".

[19] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Cir. 1949) ("a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void.")

[20] *Powell v. Alabama*, 287 U.S. 45, 53 (1932); *Texas Catastrophe Property Ins. Ass'n v. Morales*, 975 F.2d 1178, 1180 (5th Cir. 1992) ("there is a constitutionally guaranteed right to retain <u>hired</u> counsel in civil matters").

[21] *Williamson v. Tucker*, 645 F.2d 404, 414 (5th Cir. 1981) ("the district court must give the plaintiff an opportunity for discovery and for a hearing that is appropriate to the nature of the motion").

protection for involuntary debtors.[23] Debtor has put forth evidence which raises an issue of fact with regard to alleged insolvency and shows that many of his debts, including those of several of the Petitioning Creditors, were paid as due until they became disputed. Nevertheless, in an abundance of caution, if this Court will consider the insolvency issue, then Baron has contemporaneously filed herewith a motion for continuance, which is incorporated in this portion of the Response.

E. Analysis of the Fee Disputes Reveals Issues of Fact Precluding Judgment

Mr. Hall had a written contract, capping his fee at $10,000 per month and containing a merger clause requiring any modification be in writing. Exhibit D-6. Mr. Hall admits being paid in full for 10 months, but alleges that in the 11th and last month Mr. Baron orally agreed to a $5,000.00 fee increase. Exhibit P-H. Hall asserts a claim that Baron breached the written contract by paying the amount specified in the written agreement, $10,000, as payment in the eleventh month. *Id.*

In light of the written contract's merger clause, Mr. Hall's claim of an oral modification increasing the fee by $5,000 for the last month is groundless as a matter of law. Mr. Hall has the fiduciary duty to fully inform his client about the legal effect of his contract. *E.g.*, *Holland v. Brown*, 66 S.W.2d 1095, 1102 (Tex.Civ. App.-Beaumont 1933, writ ref'd) (duty to affirmatively disclose all material facts that would affect their relationship as well as legal consequences of those facts, and that breach of this duty states a claim for constructive fraud).

Moreover, an attorney's attempt to increase the fee charged by modifying an existing

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[22] *International Transactions v. Embotelladora Agral*, 347 F.3d 589, 594, 596 (5th Cir. 2003).

[23] *Id.* at 919; *see also In re Staxxring, Inc.*, 2010 Bankr. LEXIS 1803 (Bankr. N. D. Tex. 2010; Jernigan, J.) (holding, in dismissing a six creditor petition after eliminating all but two, "Congress has expressed an intent in section 303 of the Bankruptcy Code that creditors with questionable claims ought not to be allowed to force companies into bankruptcy, and in light of this policy, has put forth somewhat stringent standards in section 303(b)(1).")

contract is, as a matter of law, automatically subject to a bona fide dispute and is presumed invalid. *Archer v. Griffith*, 390 S.W.2d 735, 739 (Tex. 1964)("There is a presumption of unfairness or invalidity attaching to the contract, and the burden of showing its fairness and reasonableness is on the attorney"). If further response be necessary, Mr. Baron denies the oral modification alleged by Mr. Hall. Exhibit D-7. Accordingly, Mr. Hall's claim is clearly subject to a bona fide dispute as to validity and amount.

Further, it is a violation of an attorney's fiduciary duty to fail to reduce a fee agreement to writing, where such a requirement could be reasonably expected by the client. *Jackson Law Office, P.C. v. Chappell, 37 S.W.3d 15, 22--23* (Tex.App.---Tyler 2000, pet. denied). Making misrepresentations about the legal effect of an attorney's contract, is also a violation of the attorney's fiduciary duty. *Cantu v. Butron*, 921 S.W.2d 344, 349--50 (Tex.App.---Corpus Christi 1996, writ denied).

Breach of fiduciary duty is a defense to the payment of the disputed attorney's fees. This is because as a matter of dispositive Texas law, "An attorney's compensation is for loyalty as well as services, and his failure to provide either impairs his right to compensation". *Burrow v. Arce*, 997 S.W.2d 229, 240 (Tex. 1999). Thus, Baron's claims for breach of fiduciary duty, pled as counter claims and upon which a jury trial has been demanded, if successful, defeat the attorney's right to compensation and thus independently constitute a bona fide dispute as to the amount and liability on the attorneys' fees the petitioners are claiming. *See Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 369 (5th Cir. 1962) (counterclaims can reduce the number of creditors).

Mr. Lyon has failed to produce his written contract for review by this Court. Lyon's billing 'invoices' establish that he claims his fee increased from $40/hour to $300/hour as of

September 2009. Exhibit P-D. Lyon's claim is shown fictitious and subject to a bona fide dispute by **Lyon's own email sent to other attorneys in October 2009**, seeking more work from Mr. Baron on the basis he was only charging Baron **$40/hour** and therefore provided "**more bang for the buck**"**.** Exhibit D-5 at page 2. Lyon's own email clearly states and admits that his billing rate was the $40.00 /hour he was paid, and not the $300/hour he now claims. Mr. Lyon's claim is clearly subject to a bona fide dispute as to validity and amount. If further argument is necessary, Baron disputes the fees and testifies that Lyon settled his dispute in a written accord and satisfaction that was paid on by Baron. Exhibit D 7. The fiduciary duty violations discussed above, apply also to Mr. Lyon.

Mr. Taylor's contract has a monthly fee cap, which Mr. Taylor admits he was paid in full. Exhibit P-F. Mr. Taylor, however, claims that he is also entitled to a contingency fee. Taylor's claim is groundless as a matter of law as, according to Mr. Taylor, "no specific value was ever negotiated that would be subject to the contingency-fee calculation." *Id.* Since Taylor admits he cannot show that he met the contingency conditions, as a matter of law there is a bona fide dispute as to his claim for contingency fees.

There is no provision in Mr. Taylor's contract allowing him to increase the hourly fee he agreed to because no value was negotiated that would satisfy the conditions required for the attorneys to be entitled to a contingency fee. After the case was fully settled, Taylor sent Jeff an email confirming that the only remaining fee due was a small bill—with no mention of any claim of any entitlement to any contingency fee. Exhibit D-7.

Notably, the lawsuit Taylor handled was for an asset owned by Jeff Baron's Roth IRA. Taylor's principal client was the IRA with Jeff only involved through his beneficial interest. Exhibit P-F. The IRA received no benefit what-so-ever from the settlement. Exhibit D-7.

Under the terms of the settlement, hundreds of thousands of dollars that the defendant had been willing to pay prior to the settlement were lost, as were substantial revenue from the asset. *Id.*

Taylor's right to be paid a contingency fee was expressly conditioned on an express formula contained in the written contract. Exhibit P-F. Pursuant to the written formula in Taylor's contract, to satisfy the contingency condition Taylor must show that he obtain a recovery greater in value than the value of the domain name itself added to the hundreds of thousands of dollars the defendant was willing to pay at the time Taylor was retained. Exhibits P-F, D-7. Pursuant to the formula in Taylor's contract, that value is deducted from any recovery in computing the contingency fee that would be due.

Taylor lost the money offered by the defendant prior to Taylor's litigation and Taylor won nothing and has admitted that he can demonstrate no benefit to his client. Exhibit D-7. Taylor admits he received a substantial fee for his work on an hourly basis, exactly as called for in his written contract. Exhibit P-F. Taylor admits that he is seeking a sum of money not called for in his written contract, but rather was computed in a way Taylor unilaterally invented and which was not a term or provision of the written agreement. *Id.* Accordingly, the Taylor/Power's claim is clearly subject to a bona fide dispute as to validity and amount.

The fiduciary duty violations discussed above, apply also to Taylor/Powers. If further argument is necessary, Baron disputes Taylor's claim for additional fees. Exhibit D-7.

Mr. Ferguson's claim is clearly subject to a bona fide dispute as to validity and amount. Mr. Ferguson was paid in full under the terms of his written agreement letter attached to his summary judgment evidence even though Ferguson has failed to produce any work reports detailing his purported work hours to justify those fees. Exhibits P-C and D-7. For the period prior to September, Ferguson admits he had an agreement and was paid under that contract.

Exhibit P-C. Ferguson seeks to avoid the agreement- paid on in full (Baron's payment for Ferguson's hotel and meal present a $107.00 dispute that Ferguson makes). There is no question that, at a minimum, the written agreement for Ferguson's work prior to September was substantially performed by Mr. Baron and Ferguson was paid. *Id.*

Ferguson seeks to avoid the agreed upon fee of his written contract by claiming Baron failed to pay $107.00 or, allegedly paid 'untimely'. Even if his claim were true, Ferguson, accepted the payments. Having accepted payment based on a written fee arrangement, Ferguson cannot demand a higher rate for that work. The fiduciary duty violations discussed above, apply also to Mr. Ferguson.

Ferguson sent a letter, during the same period Ferguson claims to have been subject to 'late payment', and the letter does not mention any such events such as 'late payment'. Moreover, his own letter confirms that Ferguson will not charge for more than 10 hours work (at $300/hour) for the period *after* September 1st (Ferguson admits that for the period prior to September 1st, he was paid pursuant to his written agreement). Exhibits P-C and D-7. Ferguson provides no work reports, which is another violation of his fiduciary duties, and in any event, pursuant to his written agreement is limited to a maximum $3,000.00 fee unless he can produce written authorization for working more hours. That fee would only be due if he can prove that he worked 10 hours in September. Ferguson has produced no billing records to substantiate his claim and Baron denies that Ferguson provided the work in September. Exhibit D-7. Again, Ferguson has provided no evidence of his work and no billing reports. At most, Ferguson is entitled to $3,000.00 based on his own letters, yet his claim is for over $70,000.00. His fee demand is unconscionable and a violation of Ferguson's ethical and fiduciary obligations. By virtue of those violations, and by virtue of his excessive fee demand, Ferguson forfeits his right

to payment, if any such right had existed.

Ferguson's claim for fraud is legally meritless. Ferguson claims he was 'defrauded' because Baron told him that Baron would not pay his fee, but rather, the million dollar trust would pay the fee. There is no materiality to the alleged 'false representations', which Baron denies making. Exhibit D-7. If Baron promised to pay from his own pocket, or with money funded from a multi-million dollar trust, the money is just as green.

Notably, no hourly work reports were provided to his client, nor attached to Ferguson's affidavit. Ferguson also appears to admit violating his fiduciary duties and committing malpractice, as follows: According the Ferguson, his client wanted to void an agreement but against his client's wishes (if Ferguson is to be believed) Ferguson got the agreement finalized by non-appealable order. Exhibit P-C. Ironically, Ferguson feels perfectly free to try to avoid a contract he entered into and was paid upon, but is proud that he-- according to him-- violated his client's wishes and instructions and locked his client into an agreement his client sought to void. If further argument is necessary, Baron disputes Ferguson's fees. Exhibit D-7.

Ms. Schurig now claims a debt from Mr. Baron of $93,731.79, but swears under oath that she was paid over a million dollars in fees and that her claim against Mr. Baron is only for $1,331.50. Exhibit P-B. The district court's single factual finding made after the 'hearing' held on April 28, 2011, was that the **maximum reasonable fee** for the work alleged to have been preformed for Baron was $400.00 per hour. Exhibit D-2. Schurig's billing to Baron includes hourly work charged in excess of $400/hour. Exhibit P-B. The total excess charges over $400.00 per hour in her billing exceed the amount Schurig testified was due from Baron.

It is a breach of fiduciary duty charge an unreasonable fee, and is a defense to payment that a fee requested is unreasonable. District Court's order establishes that Schurig's fees over

$400/hour are unreasonable. When those unreasonable fees are removed from the billing, no amount is due. The fiduciary duty violations discussed above, apply also to Ms. Schurig. If further argument is necessary, Baron disputes Schurig's fees. Exhibit D-7.

Further, Mr. Baron provided Ms. Schurig over $2 Million to hold in trust, which funds have never been reasonably or rationally accounted for by Ms. Schurig. Exhibit D-7.

Notably, Baron does not own Asia Trust and no explanation in fact or law has been offered as to why Jeff Baron would be liable under the law for their debt, if that debt were due. Moreover, as a matter of Texas law, collection from Jeff for the debts of Asia Trust are barred by the Statute of Frauds. Similarly, there has been no showing that the claimant law firm with respect to the Schurig affidavit has any rights against Mr. Baron.

Mr. Garrey's testimony is not credible, and is provably false. Accordingly, his claim is clearly subject to a bona fide dispute as to validity and amount. Garrey swears that he was asked by Jeff Baron to prepare and file a Special Appearance on behalf of The Village Trust in a lawsuit pending in Dallas State District Court. Garrey swears that he performed all of these tasks. As a matter of public record, no such special appearance exists. Moreover, Garrey's emails establish that contrary to his testimony, he solicited the Village Trust to be retained to file the special appearance and the Trust rejected his offer and did not retain him.

Garrey's bitter reply email to the Village Trust confirmed that, directly contrary to his affidavit testimony, he was NOT ASKED OR RETAINED TO PROVIDE ANY LEGAL SERVICES FOR THE TRUST, AND HE PROVIDED NONE. Exhibit D-7.

Similarly, Garrey claims that he was retained by Mr. Baron to object to the fee requests of the Receiver's counsel, and asked to devise a strategy to remove the Receiver and the Receiver's counsel. Exhibit P-E. However, Mr. Garrey's sworn testimony is that he stopped

working for Baron *prior to any motion to appoint the receiver* and it is **impossible** for Mr. Garrey to have performed the services he claims. Garrey's testimony is false.

Not only is Garrey's factual account false, but when examined, Garrey's affidavit establishes that Mr. Baron's alleged obligation -- for three months and including a bonus-- totaled at most **only $375.00.** Exhibit P-E at page 9. Notably, Garrey states he worked only for two weeks, and clearly did not earn the full $375.00 his affidavit establishes is the amount that would be due from Mr. Baron if Garrey had performed actual work, had done so for three months, and had not forfeited his fee by violating the fiduciary duties he owed to his client.

The fiduciary duty violations discussed above, apply also to Mr. Garrey. His 'lawsuit' against Mr. Baron is a clear violation of his duty of loyalty and to maintain attorney-client confidences, and not to fabricate false allegations against a former client. If further argument is necessary, Baron disputes the fees. Exhibit D 7. Mr. Garrey's claim is clearly subject to a bona fide dispute as to validity and amount.

Mr. Pacione seeks payment for fees but provides only a 'block' report of the alleged work he performed. Exhibit P-H. The written contract relied upon by Pacione is clear that his work obligation -- and Mr. Baron's payment obligation was to start in March, not January or February. Pacione, however, claims fees for January and February.

In making his affidavit Pacione failed to provide the written terms for his January and February work. Mr. Baron, however, has provided evidence of those terms. Exhibit D-7. The work product for which Mr. Pacione was to be paid is clear and explicit, including specific deadlines. Mr. Pacione, however, failed to perform and provided Mr. Baron **no work product**. Exhibit D-7. Mr. Baron testifies that he asked Pacione to sign a contract. *Id.* Pacione's failure to do so before engaging in work is a violation of Pacione's fiduciary duty to Mr. Baron. *See*

Jackson Law Office, 37 S.W.3d at 22-23.

Baron testified that he offered to pay Pacione based on the work product he provided, for example, a memorandum of law, but that Pacione produced no work product. Mr. Pacione's claim is clearly subject to a bona fide dispute as to validity and amount. Pacione notably fails to provide an hourly work report. The fiduciary duty violations discussed above, apply also to Mr. Pacione. If further argument is necessary, Baron disputes the fees. Exhibit D 7.

Mr. Pronske certainly worked hard in the Ondova case and was awarded a substantial contribution claim ***against Ondova*** for the same work he seeks to recover against Mr. Baron. Exhibit P J-4. As Mr. Pronske is not entitled to a double payment for his work, any claim against Baron for the same work is contingent upon the disposition of the Ondova fee award.

Notably, Pronske admitted under oath the Mr. Baron did not negotiate to pay his fee. Exhibit P-A. Rather, Pronske testifies that he agreed to be paid by the Village Trust and understood up front that Mr. Baron would not be responsible for paying the fee. *Id.* Mr. Pronske's attempt to enforce his alleged fee thus violates Texas law including the Statute of Frauds, and thus violates Pronske's fiduciary duties to Mr. Baron.

Pronske admitted under oath that there are no engagement agreements relating to the representation and that he did not expect Mr. Baron to pay for his services. Exhibit P-A. Pronske claims that payment was to come from the Village Trust. *Id.* Pronske swears he received a $75,000.00 initial retainer from the Village Trust. *Id.* Pronske has admitted under oath he was to bill against that pre-paid retainer. *Id.* Despite his legal and fiduciary duties to do so, Pronske failed to send monthly billing statements, failed to send monthly reports detailing the status of the retainer, and failed to request a replenishment of the retainer. *Id.;* Exhibit D-7. Notably, Pronske's first billing statement was printed only in February 2011, a year after the work was

performed. Exhibit P-A. Pronske forfeited his right to a fee by violating the fiduciary duties he owed to Mr. Baron, by virtue of the forgoing, and as follows:

Pronske filed a motion accusing his own client of misconduct, and advocating against his own client. Exhibit D-4. Pronske's motion stated that "PronskePatel has recently learned that Mr. Baron intends to transfer assets to an offshore entity over which U.S. Courts will not have jurisdiction, in order to hide those assets from legitimate creditors". *Id.* at page 2. Pronske's motion further states that "PronskePatel has recently learned that Baron intends to hide his assets offshore as early as September 15, 2010. Thus, the hearing will need to move forward expeditiously to prevent Mr. Baron's unlawful activities." *Id.* at page 3. (Baron disputes the truth of Pronske's allegations. Exhibit D-7.) It is undisputed that Pronske made the allegations while representing Baron. Exhibit D-7.

Assuming what Pronske stated in his motion was true (Baron disputes this), that means that Pronske was revealing client confidential information. Whether Pronske's claim about threatened moving of assets (by seeking to find a replacement trustee for the Village Trust, *as ordered by the Court*,) were true or not, Pronske was placing his own personal interest (ability to collect his fee), above his clients. As discussed below, that is a violation of his core duty of loyalty.

The profession of law is unlike most other professions. The duty placed upon an attorney to his client is one of a fiduciary. **WHEN FACED WITH A CHOICE BETWEEN PERSONAL LOSS AND CAUSING LOSS TO HIS CLIENT, AN ATTORNEY IS BOUND BY LAW, TO PLACE HIS CLIENT'S INTERESTS FIRST.** Pronske failed to do this.

It was a violation of Mr. Pronske's fiduciary duties for Mr. Pronske to place his personal interests over his client's. *Goffney v. Rabson*, 56 S.W.3d 186, 193 (Tex.App.- Houston [14th Dist.] 2001, pet. denied) ("placing personal interests over the client's interests");*State v. Baker*, 539 S.W.2d 367, 374 (Tex.Civ.App.—Austin, 1976, writ ref'd n.r.e.) ("Neither his personal interests, the interest of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."). It was a violation of Mr. Pronske's fiduciary duties to Mr. Baron for Mr. Pronske to act as an advocate against his client. *Delta Air Lines, Inc. v. Cooke*, 908 SW 2d 632, 633 (Tex.App.-- Waco 1995) ("not act as advocate against a person the lawyer represents").

Mr. Pronske also violated his fiduciary duties to Mr. Baron by (1) failing to reduce his fee agreement to writing, (2) failing to keep and provide on a timely basis a record of the services rendered, (3) failing to provide timely billing statements, (4) threatening to withdraw on short notice in an attempt to force a client to pay a disputed fee. *See Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 22--23 (Tex.App.---Tyler 2000, pet. denied). Further, Pronske violated his ethical and fiduciary duty to his client by intentionally taking an action to prejudice and damage his client during the course of their relationship. Prior to filing his motion, Pronske threatened Mr. Baron that he would "Scorch the Earth" against him unless his newly demanded fee was immediately paid. Exhibit D-7.

The other fiduciary duty violations previously discussed above, apply also to Mr. Pronske. If further argument is necessary, Baron disputes Pronske's fees. Exhibit D-7.

Notably, none of these issues were addressed in the determination of Pronske's administrative claim for substantial contribution in the Ondova case. In that case, Baron was prohibited from litigating or contesting Pronske's claim and the determination of the

administrative claim did not determine any issues regarding Pronske's contractual rights with respect to Mr. Baron, nor Baron's fiduciary duty claims with respect to Pronske. Exhibit D-7. The substantial contribution claim allowance is based on the reasonableness of the fees with respect to the benefit provided the Ondova estate, not with respect to the work provided for Mr. Baron's benefit. *See e.g., Matter of Consolidated Bancshares, Inc*., 785 F.2d 1249,1253 (5th Cir. 1986). Nevertheless, Pronske's reliance on the substantial contribution award to allege a higher **claim against Mr. Baron** than was provided for in the district court's order, negates the petitioning creditors' argument that the district court's order finally adjudicated the validity and amount of the claims.

For further cause, should same be necessary, Mr. Pronske's claim is clearly subject to a bona fide dispute as **the district court found** Pronske's billing rate was unreasonable for the work provided to Mr. Baron. Exhibit D-2. By charging his client excessive fees, Mr. Pronske (like each of the claimants seeking excessive fees) violated his fiduciary duty to Mr. Baron, giving rise to the forfeiture not just of the excessive portion of the fees, but to the attorney's right to fees entirely. *See Braselton v. Nicolas & Morris*, 557 S.W.2d 187 (Tex.Civ.App.– Corpus Christi 1977)("There exists, therefore, a lawfully imposed duty not to charge excessive fees."); *Deutsch v. Hoover, Bax & Slovacek, L.L.P.,* 97 S.W.3d 179, 196 (Tex.App.Houston [14th Dist.] 2002, no pet.)("Attorneys owe their clients a fiduciary duty of absolute perfect candor"); *Murphy v. Gruber*, 241 S.W.3d 689 (Tex.App.– Dallas 2007) (excessive fee claim involves "the integrity of their billing practices"); *Burrow v. Arce*, 997 S.W.2d at 240.

CONCLUSION

In determining the question of the standing of the petitioning creditors, and thus the question of the Court's jurisdiction to proceed in an involuntary bankruptcy, "The court's

objective is to ascertain whether a dispute that is bona fide exists; the court is not to actually resolve the dispute." *In re Sims*, 994 F.2d at 221. Accordingly, the court is not charged with attempting to resolve the merits of the claims, but rather "to ascertain whether an objective legal basis for the dispute exists." *Id.*

The petitioning creditors carry the burden of first coming forward with the evidence, not just to establish the existence of their claims, but also to put on a prima facie case that the claims are not subject to a bona fide dispute. The ruling of the Fifth Circuit is clear, "[T]he petitioning creditor **must** establish a prima facie case that no bona fide dispute exists." *Id.*

The grounds offered by the petitioning creditors to establish a prima facie case that no bona fide dispute exists is their argument that the district court's May 18, 2011 order is unstayed and determined Baron's liability for their claims. Contrary to the allegations of the petitioning creditors, the district court's May 18, 2011 order does not determine Mr. Baron's liability for their claims, and, in any case, was stayed by the district court and reversed by the opinion of the Fifth Circuit.

As a matter of established law affirmed by the Fifth Circuit, "**a creditor who holds a stayed judgment holds a claim which is subject to a bona fide dispute, and hence, lacks standing to institute an involuntary bankruptcy case**". *In re Raymark Industries*, 99 B.R. at 299; *In re Norris*, 183 B.R. at 453, *affirmed* 114 F.3d 1182, 1997 WL 256808 (5th Cir. 1997).

For the reasons set forth above, the Motion of the petitioning creditors should be, in all things, denied and the case dismissed for want of jurisdiction.

Respectfully submitted,

STROMBERG STOCK, PLLC

By*: /s/ Mark Stromberg*

Mark Stromberg
State Bar No. 19408830

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2013 a true and correct copy of the foregoing document was sent by email to Lisa Lambert, Counsel for the United States Trustee; Gerrit Pronske, Counsel for the Petitioning Creditors, was served upon all persons identified below by regular mail, postage prepaid, and to all other persons requesting notices via the ECF system.

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Attorneys for Jeffrey Baron, Alleged Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
JEFFREY BARON,	§	**Bankr. No. 12-37921-SGJ**
	§	
Alleged Debtor.	§	**Hearing: Feb. 13, 2013 @ 1:30 p.m.**

APPENDIX OF EXHIBITS IN SUPPORT OF ALLEGED DEBTOR'S RESPONSE TO PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT

Comes now, **JEFFREY BARON**, the Alleged Debtor ("Baron") who files this his Appendix of Exhibits in Support of Alleged Debtor's Response to the Petitioning Creditors' Motion for Summary Judgment as follows:

1. Exhibit D-1: "Order Regarding Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys" dated June 18, 2012, Docket No. 987, from *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*, Civil Action No. 3:09-CV-0988-F ("the District Court Case").
2. Exhibit D-2: "Order Denying Without Prejudice Receiver's Motions to Approve Assessment and Disbursement of Former Attorney Claims" dated May 6, 2011, Docket No. 527 from the District Court Case.
3. Exhibit D-3: "Declaration of Gary Schepps" filed April 28, 2011, Docket No. 499-1 from the District Court Case.

4. Exhibit D-4: "Motion for Expedited Hearing on Emergency Motion to Withdraw as Attorney of Record for Jeffrey Baron" dated September 9, 2010, Docket No. 423, from the *In re Ondova Limited Company*, Bankr. No. 09-34784-SGJ-11 ("the Ondova Bankruptcy Case").
5. Exhibit D-5: "Declaration of Jeffrey Baron" filed on May 3, 2011, Docket No. 507-1, from the District Court Case.
6. Exhibit D-6: "Attorney Client Agreement" between Jeff Baron and Jeffrey T. Hall effective August 1, 2009.
7. Exhibit D-7: "Declaration of Jeffrey Baron" dated February 8, 2013.
8. Exhibit D-8: INTENTIONALLY OMITTED.
9. Exhibit D-9: "Defendants' Motion to Approve New Bankruptcy Counsel for Ondova Limited Company" filed on September 1, 2009, Docket No. 63, from the District Court Case.

Respectfully submitted,

STROMBERG STOCK, PLLC

By: */s/ Mark Stromberg*
Mark Stromberg
State Bar No. 19408830

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2013 a true and correct copy of the foregoing document was sent by email to Lisa Lambert, Counsel for the United States Trustee; Gerrit Pronske, Counsel for the Petitioning Creditors, was served upon all persons identified below by regular mail, postage prepaid, and to all other persons requesting notices via the ECF system.

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/s/ Mark Stromberg
Mark Stromberg

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN PLAINTIFFS,	§	
v.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY, DEFENDANTS.	§	

EXHIBIT D 1

ORDER REGARDING MOTION TO CLARIFY INSTRUCTION TO RECEIVER ON PAYMENTS TO FORMER BARON ATTORNEYS

BEFORE THE COURT is Receiver's Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys (Docket No. 980). Because of the importance of the issue, the Court has given this matter priority. The Court granted the Trustee's Motion to Lift Stay Imposed by this Court's Order of May 24, 2011 for two primary purposes: 1) progressing the underlying litigation, and 2) addressing matters impacting the administration of the Receivership. In determining which administrative acts the Receiver may now perform, the Court will first consider how best to preserve the status quo for appeal. In some instances preserving the status quo will require granting the Receiver leave to complete the proposed action. In others, it will require setting money aside or taking other action to ensure a fair result is obtained by all parties upon resolution of those matters now on appeal. After due consideration, the Court is of the opinion that payments should not be made at this time to the Former Baron Attorneys, in

order to preserve the amounts on hand until the Court of Appeals for the Fifth Circuit can rule on the pending appeal.

A brief review of the history of this matter is in order. After the Ondova Bankruptcy was filed, this action was stayed in order for the Bankruptcy Court to resolve the issues in bankruptcy. As the Bankruptcy Court was employing her best efforts to do so, the case became overwhelmed by a revolving door of lawyers entering and exiting the proceedings at the behest of Jeffrey Baron, the other Defendant in the instant action before this Court. Given that the Bankruptcy Court manages a docket of approximately 4,000 cases, the disruption to the work of that Court threatened the administration of her entire docket. At the same time, claims by Baron's attorneys against the Ondova estate threatened to completely bury the ability of the Bankruptcy Court to resolve the bankruptcy itself. So that the Bankruptcy Court could accomplish her work in the one case and adequately administer her docket of all her cases, this Court created the Receivership. Also, to try to deal with the numerous claims for fees and expenses of the numerous lawyers that Baron had hired and fired, the Court set up a procedure to receive and adjudicate the claims, again in order to relieve the burden on the Bankruptcy Court. Again, the goal was to give the Bankruptcy Court the ability to complete the bankruptcy case.

At no point did this Court decide that the Receivership would continue passed the time needed to achieve its goals. The Court also was at the time and still is of the opinion that the Receivership was the least restrictive way of achieving its goals, including the

resolution of the claims by the Baron lawyers. Since one of the appeals of Receivership Orders deals with the Court's decision regarding those claims, Baron should be able to contest the decision before funds are distributed.

At the same time, given the importance of the appeal to the former Baron attorneys, those attorneys should be afforded the opportunity to have their voice heard before the Court of Appeals. Exactly how that would be accomplished is not within the purview of this Court.

Accordingly, it is ORDERED that no funds be distributed to the former Baron attorneys until the completion of the appeal. Those funds now available will be segregated and set aside by the Receiver until a decision is made by the Court of Appeals.

It is further ORDERED that the Receiver notify the former Baron attorneys of this decision, of the appeal, and of the Court's view that they, as a group, should intervene in the appeal of their issue so that the Court of Appeals has a clear understanding of their stake in this matter.

IT IS SO ORDERED.

Signed this 18th day of June, 2012.

Royal Furgeson
United States Senior District Judge

EXHIBIT D 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC., MANILA INDUSTRIES, INC., and MUNISH KRISHAN, Plaintiffs,	§	Case No. 3:09-CV-988-F
v.	§	
JEFFREY BARON, and ONDOVA LIMITED COMPANY, Defendant.	§	

ORDER DENYING WITHOUT PREJUDICE RECEIVER'S MOTIONS TO APPROVE ASSESSMENT AN DISBURSEMENT OF FORMER ATTORNEY CLAIMS

BEFORE THE COURT are the Receiver's First, Second and Third Motions to Approve Assessment and Disbursement of Former Attorney Claims and Appendices (Docket Nos. 396, 397, 400, 401, 411 and 412). The Court held an evidentiary hearing on these motions on April, 28, 2011. At this hearing the Receiver entered into evidence exhibits 1-25 which were the sworn declarations of the former Baron attorneys. Baron presented no evidence at the hearing to controvert the evidence presented by the Receiver.

After reviewing the evidence presented by the Receiver detailing the former attorney's fee requests, the Court finds that the maximum fee per hour in this case is capped at $400.00. The Court does not question that the evidence presented by the Receiver establishes that some of Baron's former attorneys were retained at a billing rate higher than $400.00 per

hour. However, it is the opinion of the Court that $400.00 per hour is the maximum reasonable fee for the work done in this case.

Accordingly, the Receiver's pending Motions to Approve Assessment (Docket No. 396, 400, and 411) are DENIED WITHOUT PREJUDICE.[1] The Receiver is instructed to recalculate its proposed disbursements taking into account the Court's cap of $400.00 per hour and resubmit its Motion to Approve Assessment and Disbursement of Former Attorney Claims with the new disbursement totals. To be clear, all former attorneys with established billing rates less than $400.00 per hour will maintain their previous rates. All former attorneys with established billing rates over $400.00 per hour will be paid a maximum of $400.00 per hour for the work they did for Mr. Baron.

It is so Ordered.

Signed this 6th day of May, 2011.

Royal Furgeson
Senior United States District Judge

[1] Disposes of Docket Nos. 396, 400 and 411.

EXHIBIT D 3

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

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

DECLARATION OF GARY SCHEPPS

1. My name is Gary Schepps. I am the appellate counsel for Jeff Baron and have been ordered by Judge Furgeson to act as trial counsel as well. I am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct. I have personal knowledge of the stated facts, which I learned as the result of being subjected to the facts and events stated herein.

2. I formally requested that the receiver produce the material as stated in the exhibit attached to Jeff's Response, and Amended Response to the Assessment of Former Attorney Claims, previously filed in this cause. A very limited amount of material was requested, including for example, all fee agreements, all correspondence between the attorneys and their client relating to the fee and specifically (1) a copy of the actual billing sent to the client, and (2) the correspondence sent by each attorney making any demand for payment, and any return correspondence. The receiver agreed to produce this material in the format requested (OCR'd tabbed PDF files) and I spoke with a copy service hired by the receiver explaining specifically what material was requested. The receiver refused to produce the material they had promised to produce. There were several exchanges with the receiver, including the receiver's claim that the failure of their production was my fault because I failed to contact their copy service. I did contact their copy service and had a detailed conversation setting out specifically what was requested (the exact thing which was requested in writing to the receiver). I discussed the request at a formal 'meet and confer' meeting with the

receiver. Still, the receiver refused to produce what they had promised to produce, and I was forced to make a formal motion. The withheld material is necessary to fairly evaluate and respond to claim for unpaid attorney's fees.

3. The rules of ethics require that an attorney's fee be limited to reasonable fees for the services rendered. An attorney is prohibited from charging unreasonable fees and fee forfeiture of the entire fee paid the attorney is the remedy for an attorney's excess fee demand. As a matter of law, proof of the reasonable of an attorney's fee requires expert opinion. I formally requested from the receiver access to some of Jeff's funds to hire an expert on the fees issue. I requested this even in a formal 'meet and confer' session with the receiver. The receiver refused to provide any such funding. I attempted to find an expert who would work on a contingency basis, and was unable to find any qualified expert agreeing to do so. As a matter of law, without an expert's opinion is not possible at this time to present evidence that any attorney's fee is unreasonable. Accordingly, it is not possible to offer evidence in defense of the attorney's claims with respect to that aspect of the claim's defense. It is my opinion there are grounds to assert the defense of unreasonable fees on Jeff's behalf.

4. Proof of Malpractice requires expert opinion. In order to present evidence of malpractice an expert's opinion is required. The facts stated above apply to an expert on malpractice. If Jeff is prohibited from using his own money to hire an expert, as a matter of law he is unable to present evidence to establish a defense of malpractice. It is my opinion there are grounds to assert the defense of malpractice, on Jeff's behalf.

5. I handle federal appeals, not federal trials. I have never on my own handled a federal trial, bench or jury, and have always relied upon hired trial counsel for trials in the federal court. I am not qualified on my own to appear in federal court and defend multiple claims against multiple teams of attorneys. I require assistance to handle the organization of the files, tracking of admission of evidence, preparation and tracking of objections, and many other aspects of the appearance. If I was up against a single attorney who also had no support, I think I could manage. It is simply not possible for me to properly represent Jeff's interests by myself. My engagement was express and clear that I was not accepting employment to make any appearance as trial counsel. An AV rated trial attorney was representing Mr. Baron at the time I was retained as appellate counsel, but he was 'fired' by

the receiver. From the moment this Court ordered me to be trial counsel for Jeff, I have been flooded by the receiver and the trustee with a mountain of paperwork. I have been working well over 65 hours per week on the trial court issues, for around four months now. As the Court is aware, I have not been paid because the Court has not allowed Jeff to pay me.

6. Even a minimal evaluation of an attorney's claim would take a week of work. Some of the larger claims will take a couple weeks of work to properly evaluate. Working on my own it will take me over 24 weeks, approximately half a year, dedicated strictly to that job, to evaluate the 'claims' presented. If I were allowed the funds to hire sufficient attorneys and staff to assist me, the evaluation could be completed in less than a month.

7. Basic discovery is necessary to properly investigate and respond to the claims. This includes an opportunity to conduct depositions, and obtain disclosures from the claimants. An opportunity to serve admissions would also be helpful. For example, Mr. Ponske at one time swears under oath that there was no engagement agreement, but at another time swears that there was an engagement agreement. While some attorneys may be quick on their feet and have sufficient experience to put on a hearing with live witnesses without the need to conduct formal discovery, I am not one of those attorneys. I need to question a witness in a deposition, and then spend considerable time figuring out how to admit the relevant evidence I desire. I am not qualified to prove up a foundation 'from the seat of my pants'. My ability to put on a hearing is based on hard work and preparation. Without the opportunity to conduct the underlying discovery I am not qualified to defend the claims against Jeff. I am not able to 'shoot from the hip' and reliably hit a target. In order to put on a defense at a hearing I must be allowed to prepare for it. As discussed in this affidavit, I have not been allowed to prepare a defense in this case.

8. Because this Court has ordered that the undersigned counsel must work without payment, for the past four months the undersigned has been forced to work over 65 hours a week on trial court matters reviewing, researching and responding to a mountain of paperwork generated by two teams of attorneys billing often over 24 hours a day. The overwhelming workload without pay, has forced counsel to turn away and defer other work, and go without material income for four months. Frankly, I am also tired.

9. It is notable, that the claimant attorneys have been paid nearly two million dollars while by court order the undersigned has worked on this case as court ordered trial counsel for months and has been paid no money. Instead, this court has taken Jeff's own money, most of his liquid funds, and paid the receiver who has engaged in a blizzard of work in fabricating claims against Jeff, and against me personally as his attorney. In addition to being unpaid, I have been subject to personal insults by the Court's receiver and his law partners (for example, accusing me of being "despicable").

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 28th day of April, 2011, in Dallas, Texas.

/s/ Gary N. Schepps
Gary N. Schepps

EXHIBIT D 4

Gerrit M. Pronske
State Bar No. 16351640
Rakhee V. Patel
Texas Bar No. 00797213
Christina W. Stephenson
State Bar No. 24049535
PRONSKE & PATEL, P.C.
2200 Ross Avenue, Suite 5350
Dallas, Texas 75201
(214) 658-6500 – Telephone
(214) 658-6509 – Telecopier
Email: gpronske@pronskepatel.com
Email: rpatel@pronskepatel.com
Email: cstephenson@pronskepatel.com

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

In re:	§	
	§	
ONDOVA LIMITED COMPANY,	§	**CASE NO. 09-34784-SGJ-11**
	§	
Debtor.	§	**Chapter 11**

MOTION FOR EXPEDITED HEARING ON EMERGENCY MOTION
TO WITHDRAW AS ATTORNEY OF RECORD FOR JEFFREY BARON

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Pronske & Patel, P.C. ("PronskePatel"), pursuant to Section 105 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et. seq.* (the "Bankruptcy Code"), seeks an order from the Court setting an expedited hearing on *Emergency Motion to Withdraw as Attorney of Record for Jeffrey Baron* [Docket No. 419] (the "Motion to Withdraw"). In support of this Motion, PronskePatel respectfully represents as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). This matter is a core proceeding and this Motion is proper in this district pursuant to 28

U.S.C. §§ 1408 and 1409.

2. The statutory basis for relief requested herein is Section 105 of the Bankruptcy Code.

II. BACKGROUND

3. On July 27, 2009 (the "Petition Date"), the Debtor filed for bankruptcy protection under chapter 11 of title 11 of the Bankruptcy Code.

4. On September 17, 2009, the Court entered an order approving the appointment of a chapter 11 trustee (Docket No. 98).

III. RELIEF REQUESTED

5. As more fully set forth in the Motion to Withdraw, PronskePatel hereby seeks formal withdrawal as attorneys of record for Jeffrey Baron in the above-referenced bankruptcy action.

6. Expedited consideration of the Motion to Withdraw is warranted by the impending time-sensitive issues in this case. Upon information and belief, PronskePatel has recently learned that Mr. Baron intends to transfer assets to an offshore entity over which U.S. Courts will not have jurisdiction, in order to hide those assets from legitimate creditors. Upon information and belief, Mr. Baron will be transferring such assets around September 15, 2010. In order to pursue state court remedies against such assets and to comply with all ethical obligations, PronskePatel must withdraw as counsel of record for Mr. Baron by September 15, 2010. Thus, PronskePatel must respectfully request that the Court grant relief on an expedited basis, so that PronskePatel may withdraw prior to the transfer of assets by Mr. Baron. Accordingly, PronskePatel respectfully requests a hearing on the Motion to Withdraw on an expedited basis, on or before September 15, 2010. Specifically, PronskePatel requests that this

matter be set before or at the same time as the expedited status conference currently set in this case on September 15, 2010 at 1:30 p.m. [Docket No. 22].

7. PronskePatel has recently learned that Baron intends to hide his assets offshore as early as September 15, 2010. Thus, the hearing will need to move forward expeditiously to prevent Mr. Baron's unlawful activities.

8. Notice of the proposed emergency hearing will be provided to the Trustee, Mr. Baron, counsel for Mr. Baron, and all parties requesting notice.

WHEREFORE, PREMISES CONSIDERED, PronskePatel respectfully requests the Court enter an order expediting the hearing on the Motion to Withdraw and granting such other and further relief, whether in law or in equity, as the Court may deem proper.

Dated: September 9, 2010

Respectfully submitted

By: /s/ Gerrit M. Pronske___

Gerrit M. Pronske
Texas Bar No. 16351640
Rakhee V. Patel
Texas Bar No. 00797213
Christina W. Stephenson
Texas Bar No. 24049535
PRONSKE & PATEL, P.C.
2200 Ross Avenue, Suite 5350
Dallas, Texas 75201
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Facsimile: 214.658.6509
Email: gpronske@pronskepatel.com
Email: rpatel@pronskepatel.com
Email: cstephenson@pronskepatel.com

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that on September 8, 2010 I conferred with Gary Lyon, counsel for Mr. Baron, regarding the relief requested in the Motion. Mr. Lyon indicated that Mr. Baron is unopposed to the expedited setting. I further certify that on September 9, 2010, I conferred with Raymond Urbanik, counsel for the Trustee, regarding the relief requested, and Mr. Urbanik indicated that he is unopposed to the expedited setting.

/s/ _Gerrit M. Pronske_____
Gerrit M. Pronske

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 9, 2010 I caused to be served the foregoing pleading upon all parties registered to receive electronic notice via the Court's electronic transmission facilities.

/s/ _Gerrit M. Pronske_____
Gerrit M. Pronske

EXHIBIT D 5

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

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

DECLARATION OF JEFFREY BARON

1. My name is Jeffrey Baron. I am a defendant in the above entitled and numbered cause. I am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct. I have personal knowledge of the stated facts, which I learned as the result of being subjected to the facts and events stated herein.

2. The attached Exhibits are true and correct copies of emails, which were sent by the attorneys (Gary Lyon and Stan Broome) as indicated in the email.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 3rd day of May, 2011, in Dallas, Texas.

/s/ Jeffrey Baron
Jeffrey Baron

Exhibit A

From: Stan Broome [mailto:SBroome@broomelegal.com]
Sent: Friday, October 08, 2010 1:57 PM
To: Jeff Baron; Martin Thomas; J cox
Subject: Fwd: PhoneCards.com

Sent from my iPhone

Begin forwarded message:

> **From:** "Gary G. Lyon" <glyon.attorney@gmail.com>
> **Date:** October 8, 2010 1:50:40 PM CDT
> **To:** "'Stan Broome'" <SBroome@broomelegal.com>
> **Subject: RE: PhoneCards.com**
>
> Stan,
>
> I just wanted you to have a copy of this. I will see if I can work this one out with Jeff and Mark. If it comes to litigation, I will then bring you in. This way Jeff can't keep yelling about attorney fees. If I handle this one then it lets you stay around as needed in litigation. I am $40 an hour (yeah, I know) so we can get some more bang for the buck and it frees you to concentrate on the Gerrit matter.
>
> I am sorry I didn't clarify myself in the previous email.
>
> Gary
>
> -----Original Message-----
> From: Stan Broome [mailto:SBroome@broomelegal.com]
> Sent: Friday, October 08, 2010 1:38 PM
> To: Gary G. Lyon
> Subject: Re: PhoneCards.com
>
> Ok. I will respond. Please direct him to me for any further communications on fee issues.
> Thx
> Stan
>
> Sent from my iPhone
>
> On Oct 8, 2010, at 1:31 PM, "Gary G. Lyon" <glyon.attorney@gmail.com> wrote:
>
> Stan,

I am forwarding this to you so that you won't be "surprised" if Jeff

disputes this bill. I don't really know that Jeff owes the firm any additional monies as the case settled without going to trial. If Mark is arguing that he had a contingency fee agreement, I don't know that a settlement would entitle him to be paid under that contract.

Anyway, just keep this for later use if necessary.

Gary

Gary G. Lyon

Attorney at Law

Post Office Box 1227

Anna, TX 75409

972.977.7221

Fax 214.831.0411

Email: glyon.attorney@gmail.com

Skype: gary.g.lyon

-----Original Message-----

From: mark taylor [mailto:mark@powerstaylor.com]

Sent: Friday, October 08, 2010 8:43 AM

To: Gary G. Lyon

Subject: PhoneCards.com

Gary:

Our firm is still owed $2,460 on the hourly portion of our fees. As explained in the attached letter, I have proposed that Mr. Baron pay us an additional $42,000 to cover the contingency fee portion of our agreement. Mr. Baron has not yet responded to this letter.

Mark

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 9.0.862 / Virus Database: 271.1.1/3183 - Release Date: 10/07/10

13:34:00

<10.7.10 Baron Correspondence.pdf>

<mark.tiff>

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 9.0.862 / Virus Database: 271.1.1/3183 - Release Date: 10/07/10
13:34:00

Exhibit B

From: mark taylor [mailto:mark@powerstaylor.com]
Sent: Thursday, August 26, 2010 4:16 PM
To: Jeff Baron
Subject: Powers Taylor

Jeff:

I know you've got a hundred things on your plate right now, but we have an invoice that is approaching 60 days old. Could you check on getting both of our outstanding invoices paid now? We'll probably have a very small bill that will go out at the first of September, but that should be the last one. Thanks.

EXHIBIT D 6

ATTORNEY-CLIENT AGREEMENT

This Attorney-Client Agreement ("Agreement" or " Master Agreement") is between Jeff Baron (the "Client") on the one hand, and Jeffrey T. Hall ("Attorney") on the other. This Attorney-Client Agreement is effective August 1, 2009.

Purpose of Attorney-Client Agreement. Client retains Attorney and Attorney agrees to represent Client for various personal and corporate litigation matters and for various transactional and corporate matters for an initial term of one month (the "Initial Period") and automatically renewing on a month-to-month basis thereafter. For each litigation matter, Attorney and Client may enter into a separate representation agreement with Client or entity that Client has an interest in (a "Specific Matter Agreement") that may set forth the hourly rate of Attorney for purposes of determining and potentially recouping necessary and reasonable attorneys' fees in any given litigation. Notwithstanding the terms set forth in those Specific Matter Agreements, this Master Agreement governs the entire relationship between Client and Attorney, and the terms of the Master Agreement, including those with respect to the fees due Attorney, supercede any conflicting terms in any other agreements, including without limitation, the hourly rate set forth in a Specific Matter Agreement.

Scope of Engagement. Attorney is responsible for overseeing and handling all of Client's litigation matters, including without limitation, research, drafting, filing, conducting discovery, coordinating with outside, opposing and local counsel, and handling hearings and trials for Client. Attorney will handle litigation matters directly as counsel of record and will oversee, manage and direct other matters with outside and local counsel when Client is represented by outside counsel and/or litigation is in a foreign state. Attorney will also be responsible for various general transactional legal matters such as contract drafting and consulting. During the course of work, Attorney will obtain a large amount of confidential information and agrees that, during the term of this Agreement or any time thereafter, Attorney will not represent any party that is or becomes adverse to Client. Attorney shall provide work product, regardless of stage of completion, to the Client or Client's designee(s) as requested and shall further communicate the status of the various matters within Attorney's responsibility as requested.

To fulfill the responsibilities set forth herein, Attorney shall devote at least half of its time to Client's matters. Client and Attorney agree that one half of Attorney's time is eighty hours a month.

Payment. At the end of each month, Attorney shall submit an invoice to Client confirming the time Attorney worked on Client's matters during the month and shall be paid, provided Attorney performed the work defined in the Scope of Engagement section, $10,000.00 per month.

Additional Matters. Attorney will not enter into a fee sharing arrangement concerning any matters related to Client without Client's written approval.

Expenses. In addition to Attorney's fee for rendering professional services, Attorney will be reimbursed for other charges and expenses incurred directly related to the performance of legal services for Client. Attorney will obtain prior approval from Client or Client's designee(s) if Attorney anticipates incurring any charges or expenses over $100 or when charges and expenses in aggregate exceed $300 in any month

Termination or Withdrawal; Notice. The Client may immediately terminate Attorney's representation of Client under this Agreement, and all Amended Agreements, as well as any Specific Matter Agreement, at any time by providing notice to Attorney ("Notice"). Attorney may terminate his representation of Client under this Agreement and all Amended Agreements, as well as any Specific Matter Agreement, at any time by providing notice to Client ("Notice"). Should Attorney give Notice, Attorney is obligated to continue prosecuting all cases and working for the remainder of the time after Attorney gives notice until Attorney's withdrawal has been effectuated pursuant to applicable rules governing the withdrawal of attorneys (the "Termination Date"). Should Client give Notice (or should Attorney be prevented by a Court, the Client or other legal process from withdrawing from Attorney's representation of Client), Client is obligated to pay attorney fees and reimbursable expenses as set forth herein until the Termination Date. Notice is effective only upon delivery by both regular mail and email to the following:

Attorney
Jeffrey T. Hall
7242 Main Street
Frisco, Texas 75034
jthallesq@gmail.com

Client
Jeff Baron
P.O. Box 111501
Carrollton, Texas 75011
jeff@ondova.com

Venue; Choice of Law. The parties agree that Texas law governs this Attorney-Client Agreement and that venue for any dispute concerning this Agreement lies solely in Dallas County, Texas.

Amendment to Attorney-Client Agreement. This Agreement can be amended and/or modified only by written agreement signed by both parties ("Amended Agreement"). If amended, the terms of any Amended Agreement, including those with respect to the fees due Attorney, supersede any conflicting terms in this Agreement.

ATTORNEY

Jeffrey T. Hall

CLIENT

Jeff Baron

Alan L. Busch
Busch, Ruotolo & Simpson, LLP
100 Crescent Court, Suite 250
Dallas, Texas 75201
Telephone: (214) 855-2880
Facsimile: (214) 855-2871
E-mail: busch@buschllp.com

Mark Stromberg
State Bar No. 19408830
STROMBERG STOCK, PLLC
Two Lincoln Centre
5420 LBJ Freeway, Suite 300
Dallas, Texas 75240
Telephone 972/458-5335
Facsimile 972/770-2156
E-mail: mark@strombergstock.com

Attorneys for Jeffrey Baron, Alleged Debtor

EXHIBIT D7

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
JEFFREY BARON,	§	**Bankr. No. 12-37921-SGJ**
	§	
Alleged Debtor.	§	**Hearing: Feb. 13, 2013 @ 1:30 p.m.**

DECLARATION OF JEFFREY BARON

STATE OF TEXAS §

COUNTY OF DALLAS §

1. My name is Jeffrey Baron. I am over twenty-one years of age, am of sound mind, and full capable of making and competent to make this declaration. I have never been convicted of a crime involving moral turpitude. All of the facts set forth herein are within my personal knowledge, obtained as the result of witnessing the facts and experiencing the events stated herein, and are true and correct.

2. Each of the disputes discussed below existed prior to the filing of the petition for involuntary bankruptcy in this case, and still exist today. The Fifth

Circuit, as I understand the opinion, held that a receivership was the improper way to resolve these disputes. I want to resolve the disputes, but I do not want to do it in an involuntary bankruptcy proceeding.

Hall

3. I dispute Mr. Hall's claim for fees and Mr. Hall knows this. The matter is pending in state court. Prior to making his claims, I paid him everything I was obligated to pay him. **The contract marked exhibit 6 (D 6) to my summary judgment response is a true and accurate copy of my contract with Hall.** His claim, which I deny, is that I made an oral agreement with him to increase the amount of his contract for the last month, or to pay him an extra $5,000.00 for his last month. He was paid in full and I owe him nothing. My dispute as to the validity and amount of Mr. Hall's claim for fees is bona fide. To the best of my knowledge, there is currently a disputed claim lawsuit pending in the JP court over Hall's claim.

Lyon

4. I dispute Mr. Lyon's claim for fees and he knows this. Lyon's billing rate was $40/hour. He was paid for his work as agreed and I never agreed to pay him $300/hour and Lyon never billed me at that rate while he was working for me. His $300/hour bills are fictitious, created after he was no longer working for me. Moreover, Lyon settled his dispute in a written accord and satisfaction entered into to resolve his fee dispute. I complied with, relied on, and paid money to Lyon under the written accord and satisfaction agreement. My dispute as to the validity and amount of Mr. Lyon's claim for fees is bona fide, based on the objective facts and rules of law. Lyon violated his most basic duties, including duty of candor and loyalty, and has made false representations regarding his relationship with me and his fee. After

Mr. Lyon had been performing legal work for me in Texas, I was informed that it was illegal for Mr. Lyon to do so because he is not licensed by the state to practice law here.

5. Mr. Lyon's statements about my financial affairs are groundless. Mr. Lyon has no personal knowledge of my financial condition, and he has no idea what financial obligations I have, or whether or not they were paid. I have not had a substantive conversation with Mr. Lyon at all, much less concerning my financial condition in years.

6. I am paying my undisputed debts as they come due. Currently I am paying the following bills: My monthly electric bill, the monthly bill for my apartment, my dentist, and the bills for my medications and medical treatment. I also have paid my lawyer's bill involving tens of thousands of dollars. Notably, over the years I have paid my bills, pursuant to my legal obligations. This is demonstrated by Mr. Hall, who has testified that I paid him the monthly fee, for every month, pursuant to the terms of his written contract. The only bills that have not been paid are for disputed debts, for example, Hall's disputed fee claim for an additional $5,000.00 beyond the amount agreed to in our written contract.

7. This is also demonstrated by Mr. Taylor's affidavit, in which he admits he was paid, in full, his bill that was due pursuant to the written terms of our contract. The fee that I did not pay him, was the disputed fee that Mr. Taylor admits is not called for by the written terms of our agreement. Thus, I pay my undisputed debts as they come due, and have done so for years. It is only the <u>disputed</u> debts that have not been paid.

8. I do not have access to my documents and records, which have been

seized by the receiver. Without those documents I am unable to provide more detail, but, my attorneys have been paid literally millions of dollars over the past few years.

Powers/Taylor

9. I dispute the Taylor claim for fees and he knows this. I have a written agreement with Mr. Taylor and he was paid every dime called for in the agreement. There is a contingency condition to the agreement, but the contingency was not met because Mr. Taylor failed to obtain a positive result on the case he handled. At the time I entered the settlement Taylor never informed me that any contingency would be due him based on the settlement. I would not have agreed to such an arrangement if he had attempted to make such a claim at the time. At the time, he told me that no contingency was due, and sent me a written email confirming that only a small bill would be sent, and that would be the last one. (A true and accurate text of Taylor's email appears below.) Taylor had a retainer from me sufficient to cover all of his 'oustanding' inovices, and was paid in full pursuant to the terms of his contract. Taylor admits he was paid in full for his hourly work, and admits that it is impossible for him to show how he is entitled to any money under the express, written contingency fee provision the he drafted.

10. Taylor was paid approximately $100,000.00 and to the best of my knowledge, owes a refund of the unused portion of the retainer he was paid, to the best of my recollection, around $10,000.00 or so. Taylor has not refunded or returned the retainer, in violation of the express terms of our written agreement. To be clear, Taylor was paid in full for all of the fees due Taylor pursuant to our written fee agreement.

11. Instead of obtaining a recovery for my IRA that owns phonecards.com,

Taylor's work resulted in both the $200,000+ payment, which the defendant had previously agreed to pay and many months of revenue from the domain name asset, being lost. To be clear, Taylor's work resulted in a substantial loss for my IRA, not a recovery.

12. After the settlement, Taylor sent me an email that stated as follows:

> From: mark taylor [mailto:mark@powerstaylor.com]
> Sent: Thursday, August 26, 2010 4:16 PM
> To: Jeff Baron
> Subject: Powers Taylor
>
> Jeff:
>
> I know you've got a hundred things on your plate right now, but we have an invoice that is approaching 60 days old. Could you check on getting both of our outstanding invoices paid now? We'll probably have a very small bill that will go out at the first of September, but that should be the last one.
>
> Thanks.

13. My dispute as to the validity and amount of Mr. Taylor's claim for fees is bona fide. I note for the court, in case the court is not aware, the receiver seized my documents and records, and the records and evidence of my attorney representing me in these fee disputes, so I am unable to look a those documents at this time, to refresh my recollection and provide more exact information. I am not able to fully defend myself and provide more evidence unless I am allowed to have all the documents and records that were taken by the receiver, and sufficient time to organize them and review them. This applies to all of the disputed fee claims discussed in this declaration.

Schurig

14. I dispute Ms. Schurig's claim for fees and she knows this. Schurig's

affidavit states she received well over a million dollars in fees and claims that I owe her under $1,400.00. However, Schurig has claimed against me nearly a hundred fold that in her petition in this case, making a claiming for over $90,000.00.

15. I sent Ms. Schurig over $2 Million to hold in trust, which funds have never been reasonably or rationally accounted for by Ms. Schurig. My attorneys have made repeated requests for an accounting and she has never provided any documentation, that I am aware of, accounting for the money in any reasonable or rational way. Also she was sent hundreds of thousands of dollars in trust to pay my taxes, and upon information and belief, she has not done so, but has used the money for unauthorized uses, upon belief, taking the money. If allowed to take depositions, I could prove this by the testimony of attorneys involved in sending her the money, and by her banking records. My dispute as to the validity and amount of Ms. Schurig's claim for fees is bona fide.

16. I dispute that I owe Schurig any money. The district judge determined that she overcharged me and was billing me at an unreasonable rate. She is also charging me money in her billing for work *prior* to the date of the retainer contract in her affidavit. When her bill is adjusted to reflect the maximum reasonable rate the district judge determined was reasonable for her to charge, Schurig owes me a refund. I would also like her to return my $2 Million Dollars, and the hundreds of thousands dollars she was sent to hold in trust for taxes. In the conduct discussed above, Schurig breached her fiduciary duties to me, and has no right to collect any fee.

Pacione

17. I dispute Mr. Pacione's claim for fees and he knows this.

18. The following is the true and accurate text of a letter Pacione received

from me on February 9, 2010 setting out in writing the agreed work product he was to provide me as part of his work for me in February:

> From: jeffbaron1@gmail.com [mailto:jeffbaron1@gmail.com]
> Sent: Tuesday, February 09, 2010 3:28 PM
> To: 'David Pacione'
> Subject: RE: tasks with deadlines
>
> Annotated Timeline w/ documents 2/18/10
>
> Bankruptcy Motions filed (objection to claims and Payment of special Master Fees) Week of 2/8/10
>
> Motion to Disqualify 2/18/10
>
> Trademark Memo 2/19/10
>
> Breach of Fiduciary Duty Memo 2/19/10
>
> Depo Outline (Munish, Manish, Jill) - After mediation

19. Pacione failed to do all of the above listed work and provide me the work product. His doing that work was a prerequisite to my obligation to pay him. I asked him to sign a contract and told him that if he did not complete the assignments listed, and return the work product to me by the 'deadline', that there was no payment obligation due until a written contract was signed-- and he agreed. He represented that he was doing all the work, but then, failed to do it and provide me the work product.

20. The written terms in the written contract Pacione attached to his summary judgment affidavit make clear that my agreement to pay him was based on his providing work product to me. Pacione understood that my agreement to pay him any money was based on the terms of the written contract, but Pacione did not sign the contact with me because he, based on what he said, was not sure he wanted to

take responsibility for handling the cases. I asked him to do specific things, and provide work product to me. He provided me effectually no work product. I asked him provide me a detailed time statement and he provided only a 'block' statement of his time and demanded money. While Pacione may expect me to 'take his work for it' and pay him a fixed rate of money, that was not our agreement. We had set, written work product that he was supposed to provide, and deadlines for providing it. The first thing was a "Annotated Timeline w/ documents 2/18/10". He failed to provide that. My agreement to pay Pacione any fee was clearly and expressly based on his providing the work product. The was stated expressly in our conversations. I never agreed to pay Pacione simply to do work, or do whatever he wanted to do, or anything like that. I agreed to pay for Pacione providing me specific work product that was listed, in writing. Pacione failed to perform.

21. Again, Pacione had a discreet list of tasks with deadlines. He did not do the work, and is not entitled to be paid. I offered to pay him based on the work product he provided to me, for example the Annotated Timeline. If he would have provided that work product to me, I would have happily paid for it. My attorneys were paid millions of dollars in fees. For example, I paid Hall over $100,000.00. **Pacione did not provide me the work that I agreed to pay him for.**

22. Pacione sued me in the district court, the case is disputed, and had been dismissed against Pacione at one point. My dispute as to the validity and amount of Mr. Pacione's claim for fees is bona fide.

Garrey

23. I dispute Mr. Garrey's claim for fees and he knows this.

24. He was supposed to start working but did not generally show up for

work, and told me he was not going to work for me after about 10 days when he demanded a large payment and I refused to pay him.

25. I did not defraud Garrey in any way. Everything I ever said to Garrey was true and accurate. His claims are fabricated. I owe him no money. He did not perform the work he claims to have performed. Pursuant to my agreement with Garrey, the total amount I was obligated to pay him in return for three months work, was a total of $375.00. Garrey admits this in his summary judgment affidavit (at about page 9 or 10) and includes the "breakdown of payments" that had been agreed to regarding my obligations to pay him for working three months. It can be clearly seen from his affidavit that my statements are true. Garrey filed a lawsuit against me and demand $1 Million Dollars for his alleged 14 days of 'work'.

26. In his affidavit for summary judgment Garrey claims, for example, that he performed work for the Village Trust, preparing and filing a special appearance for them. His statements are false and completely untrue. Garrey attempted to directly contact the trustee of the Village trust and solicit work from him. The Trustee rejected Garrey's offer, and Garrey sent a letter that proves Garrey never did any work for the Trust, stating, "I have not been asked or retained to provide any legal services for The Trust." That is obviously, opposite what Garrey has sworn to in his false claim. Garrey's claim against me is false, it is untrue. His lawsuit for his disputed claim is pending in state court.

27. The following is the true and accurate text of an email that I was forwarded which was sent to the trustee of the village trust from Garrey:

> From: Bob Garrey [mailto:bgarrey@gmail.com]
> Sent: Thursday, November 11, 2010 9:07 AM
> To: Tine Faasili Ponia

Cc: ; Brian Mason
Subject: Re: $58,000 owed to The Village Trust

Thank you for the response Tine.

This email will confirm that the Village Trust: 1) will be requesting the funds due under the Global Settlement Agreement; and 2) will secure separate counsel for the F&F lawsuit.

For purposes of clarity only, this will further confirm The Village Trust does not require or expect any legal services from me, and I have not been asked or retained to provide any legal services for The Trust.

Best regards,
Bob Garrey

Sent from my iPhone

On Nov 10, 2010, at 10:01 PM, "Tine Faasili Ponia"
wrote:

> Dear Bob
>
> Thank you for your email.
>
> If the trust is indeed entitled under the Settlement Agreement to
> receive the $58,000 upon request, we would prefer to request the
> release of the money from the bankruptcy trustee directly ourselves.
>
> With regards to the suit filed by Friedman & Feiger, thank you for
> your offer of assistance but the trustee is of the view that the trust
> must engage independent counsel.
>
> Kind regards
>
> Tine Faasili Ponia
> GENERAL COUNSEL
> SOUTHPAC TRUST LIMITED
> Phone (682) 20 514
> Facsimile (682) 20 667
> USA Free Fax 1-800-863-0056
> Website www.southpacgroup.com
>
> ==>
==========>
==========>

This communication (including any files or text attached to it) is

> confidential and may also be privileged. It is intended only for the
> recipient(s) named above.
> If you are not an intended recipient, you must not read, copy, use or
> disclose this communication to any other person.
> Please also notify us immediately by telephoning (682) 20 514, or
> replying to this communication, and then delete all copies of it from
> your system.
> ==>
==========>
==========>

> -----Original Message-----
> From: Bob Garrey [mailto:bgarrey@gmail.com]
> Sent: Tuesday, 9 November 2010 6:18 p.m.
> To: Brian Mason
> Cc: Jeff Baron; Bob Garrey
> Subject: $58,000 owed to The Village Trust
>
> Brian,
> I am assisting Jeff Baron on several matters. One of those matters is
> the release of more than $58,000 owed to The Village Trust pursuant to
> the Global Settlement Agreement relating to Pokerstar.com Revenues.
> With your approval we would like to request the Bankruptcy Trustee
> release the funds to the Village Trust. Please let me know if this is
> acceptable to you.
>
> I am also aware of your potential need for counsel to file a Special
> Appearance in the Texas State Court lawsuit filed by Friedman &
> Feiger. If I can assist you in any manner, please let me know.
>
> Best regards,
> Bob Garrey
>
> Sent from my iPhone

28. My dispute as to the validity and amount of Mr. Garrey's claim for fees is bona fide. In order to make very clear, Mr. Garrey is lying. That should be clear from his sworn affidavit. He says he stopped working before November 14, 2010. He says he was hired to find a strategy to remove the receiver and his attorney. The motion to appoint the receiver was not filed until November 24, 2010, after

Garrey admits he was not working for me. Yet, Garrey swears he was hired to find a strategy to remove the receiver, and that he preformed that service. His claim is a completely false.

Ferguson

29. I dispute Mr. Ferguson's claim for fees and he knows this. Ferguson never provided a time log, although, to the best of my recollection, I repeatedly requested it.

30. I had an agreement with Ferguson and paid him on it in full. Beyond that, Ferguson agreed that he would not do more than 10 hours work without express written permission. He did not provide me with any work reports a beyond what he was paid for. To the best of my recollection, I never discussed with Ferguson my personal financial situation or how much money I had or did not have personally. I never made any false statement to Ferguson.

31. The following is the true and accurate text of an email sent by Dean Feruson on August 25, 2010:

> Received: from [76.13.10.167] by t6.bullet.mail.ac4.yahoo.com with NNFMP; 26 Aug 2010 05:44:27 -0000
> Received: from [76.13.12.65] by n13.bullet.mail.ac4.yahoo.com with NNFMP; 26 Aug 2010 05:44:27 -0000
> Received: from n13.bullet.mail.ac4.yahoo.com (n13.bullet.mail.ac4.yahoo.com [74.6.228.93]) by mx.google.com with SMTP id u2si4328262qcq.123.2010.08.25.22.44.29; Wed, 25 Aug 2010 22:44:29 -0700 (PDT)
> Received: from [71.22.111.183] by web65414.mail.ac4.yahoo.com via HTTP; Wed, 25 Aug 2010 22:44:27 PDT
> Received: (qmail 68692 invoked by uid 60001); 26 Aug 2010 05:44:27 -0000
> Received: from [127.0.0.1] by omp108.mail.ac4.yahoo.com with NNFMP; 26 Aug 2010 05:44:27 -0000
> Received: by 10.216.19.134 with SMTP id n6cs77626wen; Wed, 25 Aug 2010 22:44:31 -0700 (PDT)
> Received: by 10.224.54.69 with SMTP id p5mr6384469qag.123.1282801470581; Wed, 25 Aug 2010 22:44:30 -0700 (PDT)

Return-Path: <dwferg2003dm@yahoo.com>
From: "dean ferguson" <dwferg2003dm@yahoo.com>
To: <jeffbaron1@gmail.com>,
"Gary G. Lyon" <glyon.attorney@gmail.com>,
<jamesmeckels@gmail.com>
Subject: Update as to My role
Date: Wed, 25 Aug 2010 23:44:27 -0600
Message-ID: <252661.67438.qm@web65414.mail.ac4.yahoo.com>
MIME-Version: 1.0
Content-Type: multipart/alternative;
boundary="----=_NextPart_000_01F7_01CDDEB7.5C8B0AD0"
X-Mailer: Microsoft Outlook 14.0
Thread-Index: AQHJzKXUlPkVST+6af05gWAJmM91wQ==

This is a multipart message in MIME format.

------=_NextPart_000_01F7_01CDDEB7.5C8B0AD0
Content-Type: text/plain;
charset="us-ascii"
Content-Transfer-Encoding: 7bit

After lengthy discussions with Jeff over the last couple of days, and having taken stock of my workload, the issues facing Jeff, the parties' respective positions and the needs of our mutual client, Jeff Baron, I have concluded that I must immediately, substantially limit my participation as counsel for Jeff. Accordingly, I am withdrawing immediately as counsel. I will, however, agree to begin work as a consulting bankruptcy attorney, with no obligation to work or provide any services whatsoever. If Jeff requests that I perform certain tasks from time to time, and I in my sole discretion agree to do so, he has agreed to compensate me for my work at a discounted rate of $300/hour. Absent further written agreement, it will be presumed that I will not work or bill in excess of 10 (ten) hours per month. I will assist in the transition to new bankruptcy counsel and shall be available at my convenience and in my sole and absolute discretion to James, Gary or any other counsel for Jeff (and, if appropriate in my opinion, entities such as Quasar) as I may elect. I shall have no role in any proceedings involving Gerrit Pronske except as I, in my sole discretion, shall choose, and in no event shall I serve as or be deemed to be Jeff's counsel in any such proceedings. I agree that, to the extent I provide consulting advice, I will maintain client confidences. I also agree not to accept representation of any other party in the Ondova case and acknowledge that in my role as consultant, and while so employed, I am not and will not accept employment adverse to Jeff. In consideration of past services rendered, my willingness to serve as consulting bankruptcy counsel under the limitations expressed herein and other good and valuable consideration, Jeff has agreed to pay me, as soon as reasonably practical, the sum of $15,000.00 (Earned Fee Payment), which is deemed earned and immediately due and payable without further

action. My agreement to participate in any fashion is premised in large part upon there being an ongoing "team" consisting of Gary Lyon, James Eckels and a "player to be named later" ("PTBNL" - sorry, couldn't resist a bad baseball pun, give the ranger's BK situation). Jeff has agreed that he will timely compensate all team members in a fashion mutually acceptable to them (and in which I have no further stake). Until and unless I receive payment of the Earned Fee Payment, I shall have no obligation to take any action whatsoever, including any action as a consultant hereunder. If I choose in my sole discretion to provide services before the payment is received, the fact that I choose to render services shall in no way be deemed a commitment to provide any further services. Notwithstanding any other term or condition of this or any other agreement, if in my sole discretion I render any such services before receipt of the Earned Fee Payment, Jeff agrees to pay me for the services at the agreed upon consulting rate, separate and apart from the Earned Fee Payment. Jeff and I intend for it to be absolutely clear that I may withdraw from and terminate my role as consulting counsel at any time, for any reason or no reason, in my sole and absolute discretion, provided only that to the extent I undertake a specific task or provide a particular service, I shall have the duty of ordinary care in rendering such service or accomplishing the task, and in no event shall there arise from the fact that I undertook the task or service any special, extraordinary or fiduciary obligation.

Sorry for the long winded exposition, but I think it is important to lay the predicate for this relationship so that there is no deviation from expectations. My willingness to take any action whatsoever in the nature of working for Jeff is conditioned upon the idea that he is going to find other counsel to work with Gary to handle the bankruptcy aspects of the case. I am willing, subject to the foregoing restrictions, to "download" my general thoughts and specific knowledge of the case and relevant facts, to assist in transition, and to provide limited advice, if requested and desired by Gary and/or replacement counsel. I think I can convey to replacement counsel in a few short hours a pretty good idea of what Gerrit contemplated, where he and Gary were headed, what it would take to get an agreement with Ray, the concept of the Section 365 based plan, etc. and alternatives to the plan.

As to when I shall announce my withdrawal and new role, that depends upon events. Here's what I would like to see - (1) in the morning, James and I need to talk. I think we can reach a quick agreement with Ray accepting the terms of the interim agreement with a few minor, but important changes: (a) need to add a provision stating that entering into the interim agreement has no precedential effect, not admissible as evidence of reasonableness of any amount, all rights expressly preserved; (b) while we will agree that Joey has to be satisfactorily resolved, it is not appropriate to specify in this agreement because of potential effect on litigation. We will enter into side agreement that he must be satisfactorily resolved (to his and our satisfaction - if we reach a deal with him, Ray can't say "that's not good enough - Joey is a big boy); (2) Assuming we can sign off on the interim agreement, we enter into agreement

postponing September 8 hearing, extending answer deadline to late September or October, and postpone Jeff's deposition. I'd like for Gary to be the point for any deposition discussions, but since he'll be at parkland tomorrow, James and I will ask to move depo and see if the desire to take it is limited to price issues or if this is a fishing expedition; (3) Assuming we postpone all Ray related deadlines, Jeff can focus on finding new BK primary counsel and selecting new trustee. James can work with me to flesh out the Schnabel deal, determine feasibility of Fabulous.com, address technical issues. (4) Somehow, Gerrit needs to be postponed and convinced to hold off, even if only briefly. Gary - you are going to have to take a leadership role on this until Jeff can get new counsel on board, even if that counsel is separate from BK counsel (how many lawyers does it take to screw in a lightbulb? Obviously, two, but it has to be a big lightbulb, and I'm not sure how they get in it to screw). I am out, James can't do it. Maybe you can start by suggesting that Gerrit really shouldn't sue while he is still counsel of record in the BK. Maybe he could withdraw and You could tell him Jeff is getting new counsel but will make a cash plus mediation offer Monday or Tuesday?

Good night. d.

Dean W. Ferguson
Kingwood, Texas 77345
713.834.2399
dwferg2003dm@yahoo.com

32. My dispute as to the validity and amount of Mr. Ferguson's claim for fees is bona fide, based on the objective facts and rules of law.

Pronske

33. I dispute Mr. Pronske's claim for fees and he knows this. On January 4, 2011, Pronske admitted that (1) his engagement was negotiated by Schurig and not by me, (2) the agreement was that he would be paid a fixed amount up front, seventy-five thousand dollars, and that he would bill against that pre-paid retainer. Pronske admitted that he received the $75,000.00.

34. On or about September 27, 2010 Pronske admitted in his counterclaim filed against me that I did not represent to him that I was going to personally pay for his Firm's services. Rather, Pronske stated that the retainer was due from the Trust.

35. To be clear, Pronske did a lot of work. He worked long hours. He has also admitted that he did not negotiate an agreement with me to pay him. At the beginning, Pronske agreed to work for Ondova. On September 1, 2009, (see Doc 63 in the district court case). Friedman brought him in.

37. After I got to know Pronske, I believed that he was my friend and really cared about me and the case. When he paid attention to the case he was helpful. Prior to demanding hundreds of thousands of dollars, Pronske did not provide me with work reports or bills, or notify me that he had used up the retainer.

38. On or about July 2010, Pronske demanded that I pay him for his prior work. Prior to that time he did not send me any demand or notice for those fees. Less than a week after he request (for the first time) I pay him money (beyond the $75,000.00 he had been paid), Pronske said he was not going to do any more work for

me. When I tried to have a new attorney substitute in (because Pronske was refusing to handle the case), Pronske refused to sign off on the substitution unless I first paid him the fees he demanded.

39. I had no intention or plan to move any of my assets in September 2010, and Pronske's public, on-the-record representations that I did are completely false and a breach of fiduciary duty which led to the improper imposition of a receivership over me, causing me direct and continuing harm. I never told Pronske that I had any intention of secreting or transferring offshore my personal assets. Pronske threatened me that if I did not immediately pay him all the money he wanted, he would harshly retaliate against me, and recruit assistance from other attorneys.

40. My dispute as to the validity and amount of Mr. Pronske's claim for fees is bona fide.

Summary

41. Each of the petitioners, in their specific circumstances have sought excessive fees. The district judge found that Pronske's fees and Schurig's fees billed at over $400.00 per hour were not reasonable for the work performed. Hall and Taylor are seeking fees that they are not entitled to under their contract and they were paid every dime they were owed under their contract. Hall was paid $10,000.00 beyond what he was owed under the express terms of our written agreement. Taylor was paid in full, and to the best of my knowledge, there is a retainer balance that should have been returned to me when his representation ended. Garrey and Pacione are seeking fees for work they did not perform. Lyon is seeking fees at a rate almost ten times higher than he agreed to and at which rate ($40/hour) he solicited work be given to him. Ferguson is seeking more than twenty times the maximum possible fee

he could be owed based on his own written letter, assuming he did the work he says. He has not provided any billing statements to support his claim.

42. The attorneys have also violated their fiduciary duties by violating the Texas rules of professional responsibility, including the prohibition for seeking an excessive, improper, or unreasonable fees. I have been substantially damaged by their wrongful conduct, and without their participation, the receivership would have been stayed or vacated, and the petition for involuntary bankruptcy would not have been filed. I have been under an unauthorized receivership for over two years and have been substantially damaged by the attorneys' actions. One of my former attorneys.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 8th day of February, 2013, in Dallas, Texas.

/s/ Jeffrey Baron
Jeffrey Baron

Respectfully submitted,

STROMBERG STOCK, PLLC

By: */s/ Mark Stromberg*
Mark Stromberg
State Bar No. 19408830

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2013 a true and correct copy of the foregoing document was sent by email to Lisa Lambert, Counsel for the United States Trustee; Gerrit Pronske, Counsel for the Petitioning Creditors, was served upon all persons identified below by regular mail, postage prepaid, and to all other persons requesting notices via the ECF system.

Gerrit M. Pronske
PRONSKE & PATEL, P. C.
2200 Ross Ave., Suite 5350
Dallas, Texas 75201

Dean Ferguson
4715 Breezy Point Drive
Kingwood, Texas 77345
Email: dwferg2003dm@yahoo.com

Gary G. Lyon
The Willingham Law Firm
6401 W. Eldorado Parkway, Suite 203
McKinney, Texas 75070
Email: glyon.attorney@gmail.com

Robert Garrey
1201 Elm Street, Suite 5200
Dallas, Texas 75270
Email: bgarrey@gmail.com

Darrell W. Cook and Stephen W. Davis
Darrell W. Cook & Associates
One Meadows Building
5005 Greenville Ave., Suite 200
Dallas, Texas 75206
Email: all@attorneycook.com

Shurig, Jetel Beckett Tackett
100 Congress Ave., Suite 5350
Austin, Texas 78701
Email: mroberts@morganadler.com

Jeffrey Hall
8150 N. Central Expy., Suite 1575
Dallas, Texas 75206
Email: jeff@powerstaylor.com

David Pacione
Law Offices of Brian J. Judis
700 N. Pearl St., Suite 425
Dallas, Texas 75201
Email: david.pacione@CNA.com

Sidney B. Chesnin
4841 Tremont, Suite 9
Dallas, Texas 75246
Email: schesnin@hotmail.com

Lisa L. Lambert and Nancy Resnick
Office of the United States Trustee
1100 Commerce St., Room 976
Dallas, Texas 75242
Email: lisa.l.lambert@usdoj.gov
Email: nancy.s.resnick@usdoj.gov

/s/ Mark Stromberg
Mark Stromberg

EXHIBIT D 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC.	§	
MANILA INDUSTRIES, INC.; and	§	
MUNISH KRISHAN	§	
	§	
Plaintiffs,	§	**CIVIL ACTION NO. 3-09CV0988-F**
vs.	§	
	§	
JEFFREY BARON and	§	
ONDOVA LIMITED COMPANY,	§	
	§	
Defendants.	§	

DEFENDANTS' MOTION TO APPROVE NEW BANKRUPTCY COUNSEL FOR ONDOVA LIMITED COMPANY

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW, Jeffrey Baron ("Baron") and Ondova Limited Company ("Ondova") (Baron and Ondova are collectively referred to as "Defendants") and file this Motion to Approve New Bankruptcy Counsel for Ondova Limited Company, and for cause would respectfully show unto the Court as follows:

I.

As a result of the Court's concerns that Defendants have changed counsel as a tactic to delay proceedings, the Court ordered that Friedman & Feiger, L.L.P. was lead counsel for Defendants and that Defendants must first obtain approval from this Court to employ new or additional counsel. Unbeknownst to Friedman & Feiger, L.L.P., Jay Kline, Jr., Esq. hired E. P. Keiffer, Esq. with the law firm of Wright Ginsberg Brusilow, P.C. to put Ondova into bankruptcy. Since putting Ondova into bankruptcy, Ondova's bankruptcy counsel has been secretive, uncooperative, uncommunicative and hostile towards Friedman & Feiger, L.L.P. and it

is unclear that they have even been acting in Ondova's best interests. Defendants would like to now change Ondova's bankruptcy counsel so that all counsel can work harmoniously towards a unified goal.

II.

Defendants would like approval to employ Gerrit M. Pronske, Esq. with the law firm of Pronske & Patel, P.C. as Ondova's new bankruptcy counsel. Pronske & Patel, P.C. are highly regarded bankruptcy litigators with experience in handling complex bankruptcy matters. Friedman & Feiger, L.L.P. has an excellent working relationship with Pronske & Patel, P.C. and were involved in the process of choosing substitute bankruptcy counsel. This change in bankruptcy counsel will enable Defendants' bankruptcy and litigation counsel to work together towards a unified goal. This change is not sought for purposes of delay but to ensure that justice is served.

WHEREFOR PREMISES CONSIDERED, Jeffrey Baron and Ondova Limited Company respectfully pray that the Court approve hiring Pronske & Patel, P.C. as Ondova's new bankruptcy counsel; and, for such other and further relief, both general and special, at law and in equity, to which Defendants may be justly entitled.

Dated: September 1, 2009

Respectfully submitted,

Lawrence J. Friedman
Texas Bar No. 07469300
James Robert Krause
Texas Bar No. 11714525
Ryan K. Lurich
Texas Bar No. 24013070

FRIEDMAN & FEIGER, L.L.P.
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COUNSEL FOR DEFENDANTS
JEFFREY BARON AND
ONDOVA LIMITED COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2009, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court for the Northern District of Texas, Dallas Division, using the electronic case filing system of the Court. The electronic case filing system will send a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept the Notice as service of this document by electronic means:

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