

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION
In Re: Ondova Limited Company, Debtor § Case No. 09-34784-SGJ-11

Jeffrey Baron §

Appellant §

vs. §

Daniel Sherman §

Appellee §

[1122] Order Approving Trustee's Motion for Authority to Sell Property of the Estate, Approving Sale Procedures and Setting Hearing on Final Approval of Sale. Entered on 9/24/2013

VOLUME 3
APPELLANT RECORD

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

In re:

ONDOVA LIMITED COMPANY,

Debtor

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§

**Case No. 09-34784-SGJ-
(Chapter 11)**

INDEX

**APPELLANT'S STATEMENT OF ISSUES ON APPEAL AND DESIGNATION OF
ITEMS FOR THE RECORD**

NOW COMES Appellant, in accordance with Rule 8006 of the Bankruptcy Rules and files Appellant's Statement of Issues on Appeal of Bankruptcy Court's Order Approving Trustee's Motion for Authority to Sell Property of the Estate [Docket 1122] and identifies the following issues for Appeal:

1. Whether the Bankruptcy Court erred in granting the motion for authority to sell the domain name <servers.com>.
2. Whether the Bankruptcy Court erred in denying and overruling Appellant's Objections to the Trustee's Motion To Sell <servers.com>.
3. Whether the bankruptcy erred in determining ownership of <servrers.com>
4. Whether the Bankruptcy Court had subject matter jurisdiction or constitutional authority to enter its order.
5. Whether the Bankruptcy Court had authority to make a determination as to the ownership interest in <servers.com>.

6. Whether the Bankruptcy Court violated the stay imposed by Section 362 of the Bankruptcy Code.
7. Whether the Bankruptcy Court undermining the jurisdiction of the 5th Circuit Court of Appeals in a pending appeal concerning <servers.com>

Appellant, in accordance with Rule 8006 of the Bankruptcy Rules also files Appellant's Designation of Items for Record on Appeal and designates the following items for the Record on Appeal:

Vol. 2

<u>Item No</u>	<u>Description</u>	<u>Document No.</u>
<i>000334</i>	10-7-2011 Motion to sell property under Section 363(b) Filed by Trustee Daniel J. Sherman (Attachments_ _ (1) Proposed Order) (Pannier, Lee) [658]	658
<i>000344</i>	11-7-2011 Response opposed to (related document(s): 658 Motion to sell property under Section 363(b) filed by Trustee Daniel J. Sherman) filed by Other Professional Peter S. Vogel.	675
<i>000437</i>	11-9-2011 Support-supplemental document The Receiver's Supplement to Response and Reservation of Rights Related to Trustee's Motion for Authority to Sell Property of the Estate-Servers.com filed by Other [682]	682
<i>000541</i>	Transcript regarding Hearing Held 11/09/2011 RE: Motions to Sell Property.	687
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<i>000648</i>	11/14/2011 Order granting trustee's motion to sell property of the estate (related document # 658) Entered on 11/14/2011. (Moroles, D.)	691
<i>000651</i>	8/14/2011 Motion to sell property under Section 363(b) and for Approval of Sale Procedures Filed by Trustee Daniel J. Sherman Objections due by 9/9/2013. (Urbanik, Raymond)	1110
<i>000663</i>	Transcript regarding Hearing Held 09/10/13 RE: MOTION TO SELL PROPERTY (doc. 1110)	1121
<i>000893</i>	9/24/2013 Order Approving Trustee's Motion for (a) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(b) and (b) for Approval of Sale Procedure	1122
<i>000960</i>	10/3/2013 Notice of Entry of Order Regarding Auction Sale filed by Trustee Daniel J. Sherman (RE: related document(s)1122 Order Approving Trustee's Motion for Authority to Sell Property of the Estate, Approving Sale Procedures and Setting Hearing on Final Approval of Sale (RE: related document(s)1110 Motion to Sell filed by Trustee Daniel J. Sherman).	1123

Respectfully submitted,

/s/ Stephen R. Cochell

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Certificate of Service

On this date I electronically served the foregoing document using the electronic case filing system of the Bankruptcy Court, and served every party receiving service through the Electronic Filing System of the Court.

/s/ Stephen R. Cochell

Stephen R. Cochell

1 Receiver?

2 MR. LOH: Your Honor, we'd like to call Gary Schepps
3 to the stand.

4 THE COURT: All right.

5 MR. LOH: For the same purpose, we'd like him to
6 answer -- to testify as to what other evidence, if any, he has
7 to substantiate the allegations that he's made in his objection
8 and in the e-mail from this morning.

9 MR. SCHEPPS: I object to this, Your Honor.

10 THE COURT: Let me ask this first. Mr. Schepps, are
11 you going to have any evidence to put on today?

12 MR. SCHEPPS: No, but the evidence that I was going to
13 ask to be admitted today has already been admitted through the
14 Trustee.

15 THE COURT: Okay. You don't have a witness to put on?

16 MR. SCHEPPS: No. I was just -- documentary. And the
17 documentary evidence that I had was self -- is self-
18 authenticating under Rule 902(9) and 903. So -- and it's been
19 admitted already.

20 THE COURT: All right. I'm going to overrule your
21 objection to taking the stand. Given that you have serious
22 allegations with no witnesses of your own, I'm going to give
23 the procedure a little bit of latitude. But we really need to
24 make it very short, Mr. Loh. Okay? So, Mr. Schepps, if you
25 could raise your right hand to be sworn in.

1 GARY SCHEPPS, RECEIVER'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. LOH:

4 Q Okay. Mr. --

5 MR. LOH: Your Honor, --

6 BY MR. LOH:

7 Q Mr. Schepps, state your name for the record, please.

8 A Gary Schepps.

9 Q Okay. And are you, in one of your capacities, the attorney
10 for Jeff Baron?

11 A Yes.

12 Q And did you have an occasion, Mr. Schepps, to send an e-
13 mail to Mr. Golden? Sometime before this hearing this morning,
14 you sent him an e-mail; is that right?

15 A I've sent him several e-mails.

16 Q Okay.

17 MR. LOH: Can I approach the witness?

18 THE COURT: You may.

19 BY MR. LOH:

20 Q There's an e-mail here that we've had admitted as R-3. Do
21 you see that e-mail, Mr. Schepps?

22 A Sure.

23 Q Okay. Do you recall sending that e-mail to Mr. Golden this
24 morning?

25 A Well, that's only part of the e-mail chain. That's --

1 that's part of it.

2 Q And then --

3 A That's not the complete e-mail.

4 Q The entire e-mail chain is in the record as evidence, Mr.
5 Schepps. I'm going to ask you --

6 A That's not true.

7 Q I'm going to ask you about this particular e-mail that you
8 sent to Mr. Golden this morning. Other than what has been
9 discussed here today, do you have knowledge of any other
10 evidence with regard to the sale of Petfinders.com to support
11 Mr. Baron's position?

12 A Nothing other than what's been admitted --

13 MR. THOMAS: Your Honor, I object. This is not
14 relevant. It goes to the Receiver's performance and not to the
15 sale here. Mr. Baron has not said evidence. If there's no
16 evidence, then the Court rules without that evidence. These
17 inquiries into he asked Mr. Schepps about information
18 communicated from Mr. Baron, I don't know Mr. Schepps'
19 relationship with Mr. Baron. It may be attorney-client
20 privileged. But again, it's not relevant to the sale of
21 Petfinders.

22 THE COURT: Okay. Overruled. A little latitude.

23 BY MR. LOH:

24 Q Do you have any other information -- you make -- let me
25 stop. Let me -- strike that. You make several allegations in

1 that e-mail about suppression of evidence, internal records,
2 and other documents supporting Mr. Baron's position that Ondova
3 is not the owner of Petfinders.com. Other than what has been
4 presented here today before the Court, is there anything else
5 to your knowledge that the Court should be made aware of?

6 A Not that I brought with me today.

7 Q Okay. What did you not bring with you today that is
8 evidence of that position?

9 A I'm not prepared to discuss that.

10 Q And why wouldn't you be prepared to discuss that, Mr.
11 Schepps?

12 A I don't know.

13 Q So, you have knowledge of evidence that would support these
14 allegations, yet you chose not to bring it with you today?

15 A I didn't say that.

16 Q Well, what did you do? Did you either decide to bring it
17 or you didn't decide to bring it?

18 A The e-mail stands on its own, Mr. Loh. The Court's going
19 to do what the Court's going to do. My evidence that I was
20 going to admit has been admitted when the Trustee admitted the
21 -- its Exhibit #1, and I believe that it's admitted for all
22 purposes, and the exhibits that are attached thereto are the
23 exhibits that I was going to introduce, because they don't need
24 any authenticating witness for their introduction.

25 Q So would it be fair to say, Mr. Schepps, that you're the

1 one who's suppressing the evidence?

2 A That's not fair to say, no.

3 Q Tell the Court, Mr. Schepps, give the Court an inventory of
4 each piece of evidence that you have that supposedly supports
5 Mr. Baron's positions on the ownership of Petfinders.com.

6 A Mr. Baron doesn't take a position on the ownership of
7 Petfinders.com, and I'm not here representing Mr. Baron in any
8 capacity today.

9 Q What evidence do you have that for whatever reason you
10 didn't decide to bring with you today that supports the
11 position that's been put forth before this Court that Ondova
12 does not own Petfinders.com?

13 A It's the evidence that was admitted in Trustee's 1.

14 Q You just told the Court, Mr. Schepps, that there's other
15 evidence that you didn't bring with you today. What is that
16 evidence?

17 A I didn't tell the Court that.

18 Q Yes, you did.

19 A I did not. I'm sorry.

20 Q Were you mistaken?

21 A I might have been mistaken. I mean, you're just playing a
22 game to try to get the Receiver out of --

23 THE COURT: Okay. I don't want to hear lawyer-
24 arguing. I want to hear evidence.

25 BY MR. LOH:

1 Q You've alleged suppression of evidence, Mr. Schepps. Do
2 you believe that there's any other evidence that exists that
3 has been the subject of this suppression?

4 A Oh, I believe there is, yes.

5 Q Okay. And what evidence is that?

6 A I didn't bring -- I'm not prepared to discuss that today.
7 I'm sorry.

8 Q And why did you not bring it with you today?

9 A Because I didn't think that this was going to be coming up
10 today.

11 Q But this is a hearing on the sale of Petfinders.com.

12 A I understand. And the Court's heard all the evidence
13 already.

14 MR. GOLDEN: Your Honor, the Receiver would request an
15 instruction from the Court to require the witness to answer to
16 state if there's any evidence that he didn't bring here today
17 that he believes has been suppressed. Because he's saying, "I
18 just choose not to," and that doesn't seem to be an appropriate
19 answer in a court. So we would just request respectfully that
20 the Court instruct him to provide the answer.

21 THE COURT: Mr. Schepps, is there any other evidence
22 you are aware of --

23 THE WITNESS: Well, the --

24 THE COURT: -- that refutes the Trustee's evidence
25 that Ondova -- *i.e.*, Compana -- owned Petfinders.com?

1 THE WITNESS: Well, the Receiver did a document dump
2 on me with about --

3 THE COURT: Okay. Yes --

4 THE WITNESS: Five -- five --

5 THE COURT: That was actually a yes or no question.
6 Is there any evidence you're aware of that refutes the
7 ownership by Ondova of Petfinders.com?

8 THE WITNESS: Well, Your Honor, just --

9 THE COURT: Yes or no?

10 THE WITNESS: Well, it's not a yes or no -- it's not a
11 yes or no answer, because --

12 THE COURT: You are either aware of evidence germane
13 to who owns Petfinders.com or not.

14 THE WITNESS: Well, --

15 THE COURT: Yes or no?

16 THE WITNESS: Well, Your Honor, can I just briefly,
17 for 15 seconds, explain? The Receiver sent over about 5,000
18 pages of documents with each domain name that's owned by
19 Quantec and Novo Point, and it has the domain name -- it's like
20 an Excel spreadsheet -- and who the actual owner is. And so I
21 would need -- I believe that Petfinders.com could be in there,
22 and I have those, and they're in randomized order. They're not
23 in any -- and I'd have to go through the documents that were
24 provided to me by the Receiver to see if Petfinders.com is one
25 of the names in the 5,000 pages of domain names that were

1 provided to me. That's -- so I could be aware of some
2 additional evidence if Petfinders.com is listed as an asset of
3 Novo Point in the documents that the Receiver gave me. That's
4 what I'm trying to say.

5 BY MR. LOH:

6 Q Isn't it true, Mr. Schepps, that that list of domain names
7 was provided to you in electronic form?

8 A I don't remember.

9 Q Isn't it true, Mr. Schepps, that because it's in electronic
10 form, it would be fairly easy to type in, in the search bar,
11 "Petfinders.com" and see if that name appears in the electronic
12 form of the list?

13 A Yes, if it was provided to me in electronic form.

14 Q It was. I'll represent to you to you that it was, and I'll
15 represent to the Court that it was.

16 MR. LOH: We have nothing further.

17 THE COURT: Anything further as far as questions of
18 this witness?

19 MR. URBANIK: No, Your Honor.

20 THE COURT: All right. Thank you, Mr. Schepps.
21 You're excused.

22 THE WITNESS: Thank you, Your Honor.

23 (The witness steps down.)

24 THE COURT: All right. As I understood it, no one has
25 any more evidence with regard to the Petfinders motion.

1 Correct? Speak now or forever hold your peace.

2 (No response.)

3 THE COURT: All right. Mr. Urbanik, to recap, the
4 Trustee has put in evidence that Ondova or Compana is the owner
5 -- *i.e.*, the registrant -- of this Petfinders.com domain name.
6 He has put in evidence in the form of testimony from Mr.
7 Nelson, in the form of documents regarding WHOIS information
8 that were admitted through Mr. Nelson, and then we have an e-
9 mail from Mr. Baron's former counsel, Mr. Pronske, indicating
10 Ondova owned the Petfinders name. We also have evidence from
11 the Trustee that this is a trademark-infringing name, which
12 calls into credibility any value inherent in the name if owned
13 by anyone other than the trademark owner, Discovery.

14 That being the only evidence we have as to ownership, we
15 have the Trustee's request to sell to -- again, let me get the
16 exact name -- it's Discovery Communications, --

17 MR. URBANIK: LLC.

18 THE COURT: -- LLC, for \$25,000 cash. It would be
19 free and clear of all interests, and it would be with full
20 releases, mutual releases on either side. Is there anything
21 more to your motion than I have just recapped?

22 MR. URBANIK: Your Honor, you've covered everything.
23 We would like the order simply to be free and clear of any and
24 all liens, claims and encumbrances, and furthermore that the
25 Court finds based on the evidence presented today that

1 Discovery Communications is a good faith purchaser for value,
2 has no connections whatsoever to any of the parties in the
3 case, and therefore is entitled to the protections of
4 Bankruptcy Code Section 363(m).

5 We would ask that all objections be overruled. There was
6 only one timely response, that of the Receiver, simply asking
7 that we put on evidence today of the estate's ownership, which
8 we believe we have. Every other reply has been time-barred.
9 There are no other timely responses except the Receiver's. The
10 response date was October 31, 2011.

11 THE COURT: All right. Counsel on the phone, Mr.
12 Rothleder, do you have anything you wanted to add before the
13 Court rules?

14 MR. ROTHLEDER: No, Your Honor. We have nothing
15 further to add.

16 THE COURT: Okay. Anything else? Mr. Schepps, again,
17 I have not ruled on your standing. I find your standing highly
18 doubtful. What did you want to say? In the microphone.

19 MR. SCHEPPS: I would just object, Your Honor, that
20 they've asked for a waiver of the 14-day automatic stay to
21 appeal, and we would just object to the Court waiving the 14-
22 day automatic stay.

23 THE COURT: All right.

24 MR. SCHEPPS: Thank you, Your Honor.

25 THE COURT: All right. The Court hereby grants the

1 motion of Trustee Daniel J Sherman to sell Petfinders.com, the
2 domain name, free and clear of all interests to Discovery
3 Communications, LLC.

4 This authority is granted under 363 of the Bankruptcy Code.
5 The Court finds the evidence of both Mr. Sherman and Mr. Nelson
6 credible and unrefuted here today that Ondova Compana is the
7 current owner and registrant of Petfinders.com. And as earlier
8 noted, the Court finds the evidence credible that it is a
9 trademark-infringing name which affects significantly the value
10 of the name in any holder other than Discovery Communications,
11 LLC.

12 So the Court finds it is an exercise of reasonable business
13 judgment of the Trustee to enter into a sale of the name to
14 Discovery Communications, LLC. The Court finds the \$25,000
15 sale price to be fair and reasonable under all of the
16 circumstances. The Court does find Discovery Communications,
17 LLC, which has trademarks in Petfinders, to be a good-faith
18 purchaser for value. The Court finds this to be an arms-length
19 transaction. And again, the sale is free and clear of all
20 interests.

21 The Court reserves the right to supplement with a more
22 detailed written order. The Court does find it appropriate and
23 there being good cause to waive the 14-day stay on
24 implementation of the order, which the Court does have the
25 discretion to do. And so the Court does hereby waive the 14

1 days and allows the Trustee to immediately go forward with the
2 sale.

3 All right. So, Mr. Urbanik, we'll look for an order from
4 you.

5 Can we quickly, and I do mean quickly, address the Servers
6 and Sedo sale procedures? Let me ask. We don't have any -- we
7 do or we don't have objections on that one?

8 MR. URBANIK: No objections, Your Honor.

9 THE COURT: Okay. So I of course ruled in an
10 adversary proceeding a couple of weeks ago, in declaratory
11 judgment fashion, that Mr. Sherman had authority to sell both
12 the estate's interest and Mr. Emke's interest in Servers.com.
13 So this is, I guess, supplemental to that ruling, as far as
14 asking approval for the procedure for the sale, correct?

15 MR. URBANIK: Yes, Your Honor. If I may, I might ask
16 the Court to indulge me to allow me to just sort of present
17 both motions in tandem, since the Court has had a full two-day
18 trial on the issue of the sale of Servers.com.

19 DANIEL J. SHERMAN, TRUSTEE'S WITNESS, PROFFER

20 MR. URBANIK: As the Court is aware, there was a two-
21 day adversary proceeding trial in Adversary No. 11-03181-sgj-
22 11, where the issue of the name and the sale of the name and
23 how it was to be sold was tried over two days. The Court found
24 in favor of the Trustee that the name should be sold by the
25 Trustee and that the Trustee should employ the domain name

1 broker Sedo.com to conduct the sale.

2 Your Honor, with respect to the motion to employ Sedo,
3 rather than amend the prior motion, we filed a brand new
4 motion. However, the Court has previously approved Sedo.com to
5 conduct the sale of the domain name. Sedo.com is the -- is one
6 of the largest Internet domain name brokers in the United
7 States, if not the world, and it has sold some of the best-
8 returned Internet domain names in the past few years. We did
9 extensive research regarding which entity should sell this
10 domain name, and based on the Trustee's research and due
11 diligence and in his business judgment felt that Sedo.com would
12 be the best entity to assist the Trustee in selling this domain
13 name.

14 The commission that we've negotiated with Sedo.com is their
15 standard commission of 15 percent, which the Trustee has found
16 is standard in the industry. They offer the 15 percent
17 commission both on broker-assisted sales and online auction
18 sales. Because this is viewed as a more valuable name, we've
19 requested that this be a broker-assisted domain name sale.
20 However, in the event that something happens, it may become an
21 online auction sale.

22 The Court has previously approved that Sedo.com is
23 disinterested, and we would simply ask the Court to again
24 employ -- authorize the employment of Sedo.com to sell the
25 name, with a 15 percent commission. In the event there is no

1 need for further hearing, we'd like the authority to just
2 conduct the sale and close, and we'll put that in the order.
3 And if the purchaser would like a separate motion and an order,
4 we can come to court for that as well.

5 So, Your Honor, we would ask the Court approve the
6 employment of Sedo to conduct the sale.

7 With respect to our motion for authority to sell property,
8 I would like to just make a few comments. The Internet domain
9 name Servers.com was specifically referenced in the global
10 settlement agreement that was approved in July 2010. In the
11 global settlement agreement, Provision 3(e) on Page 7
12 identified that Servers.com was a name owned by Ondova. That
13 settlement agreement was executed -- was approved and executed
14 by all of the parties, including Quantec, Inc., Novo Point and
15 Quantec, LLC, Novo Point, LLC, Mr. Baron, and all of the other
16 Baron entities. There is no question whatsoever that
17 Servers.com is an Ondova name.

18 Furthermore, no party intervened timely in the litigation
19 against Mr. Emke in the adversary proceeding, claiming some
20 right to the domain name Servers.com. The name is believed to
21 have significant value. The only pleading regarding
22 Servers.com that's been filed recently was the one of Mr.
23 Schepps with the Fifth Circuit Court of Appeals last Friday,
24 November 5th, which the Fifth Circuit ruled on yesterday. In
25 its ruling, the Fifth Circuit says, "It is ordered that the

1 emergency motion of Appellant Jeffrey Baron for limited stay,
2 dissolution or otherwise to allow Jeffrey Baron to defend his
3 interest in the Servers.com domain in the Ondova bankruptcy
4 proceedings is denied." And that's from Fifth Circuit Judges
5 Garza, Southwick and Haynes.

6 It is undisputed that it's an Ondova name, Your Honor. The
7 Fifth Circuit has even ruled on that. And we would therefore
8 like authority to proceed with our sale of the domain name
9 using Sedo.com.

10 So I've just sort of presented Your Honor the motion to
11 sell and the motion to employ Sedo. If the Court approves
12 these, I will prepare appropriate orders on each motion and
13 upload them this afternoon.

14 THE COURT: All right. Mr. Sherman, would that be
15 your proffer, and would it be true and correct and the same as
16 you would have testified had you taken the stand?

17 MR. SHERMAN: It is. It is, Your Honor.

18 THE COURT: All right. Anyone wish to cross-examine
19 Mr. Sherman on these bases?

20 MR. LOH: We've been provided two very brief questions
21 for Mr. Sherman from Mr. Thomas that the Receiver would like to
22 pose to him.

23 THE COURT: All right. Mr. Sherman, you are still
24 under oath, I will remind you. And please take the stand.

25 CROSS-EXAMINATION

1 BY MR. LOH:

2 Q Thank you, Mr. Sherman. Just real quickly, with regard to
3 Servers.com, we of course --

4 MR. LOH: I'll just note again for the record, Your
5 Honor, that in Receiver's Exhibit R-4 we have kind of a general
6 objection that was conveyed to the Receiver from Mr. Thomas
7 that Mr. Baron objects to any sale of any domain name. And
8 then in addition to that general objection that we wanted noted
9 for the record from the Receiver, there were these two very
10 brief questions.

11 BY MR. LOH:

12 Q Mr. Sherman, do you have any knowledge as to whether, when
13 Servers, Inc. became insolvent and then was placed under
14 receivership, Jeff Baron's personal interest in the name
15 reverted back to him?

16 A Say what?

17 Q I'll say it again. Do you have any knowledge as to
18 whether, when Servers, Inc. became insolvent and then was
19 placed under receivership, Jeff Baron's personal interest in
20 Servers.com in fact reverted back to Jeff Baron?

21 A I have no such knowledge.

22 Q Do you know whether or not Jeff Baron's interest in
23 Servers.com reverted to any other person or entity?

24 A No.

25 Q Okay.

1 MR. LOH: Pass the witness.

2 THE COURT: Any other questions of Mr. Sherman?

3 MR. SCHEPPS: Your Honor, may I be allowed, as *amicus*
4 for Mr. Baron, to ask a couple of questions?

5 MR. URBANIK: We would oppose the request. The Fifth
6 Circuit has ruled that Mr. Baron has no standing on this
7 matter.

8 THE COURT: Okay.

9 MR. URBANIK: There's not been an objection timely
10 filed by October 31st.

11 THE COURT: Okay. I --

12 MR. SCHEPPS: Your Honor, can I --

13 THE COURT: You know what? I've seen the Fifth
14 Circuit ruling.

15 MR. SCHEPPS: But that's -- but that's what I would
16 just like to point out to the Court, the relevant provision of
17 the Fifth Circuit ruling. And I'd like to point out to the
18 Court, as an *amicus*, the relevant portion of the Trustee's
19 Exhibit #13 that was admitted earlier today. I'd just like to
20 show those two things to the Court, if I may.

21 THE COURT: Okay. Overruled. I think you
22 misunderstand what an *amicus* is. You're purporting to
23 represent many parties in interest.

24 All right. Anything further as far as evidence on this?

25 MR. URBANIK: No redirect, and we have no other

1 evidence, Your Honor.

2 THE COURT: All right.

3 MR. URBANIK: Thank you.

4 THE COURT: Thank you, Mr. Sherman. You're excused.

5 (The witness steps down and is excused.)

6 THE COURT: All right. The Court approves both the
7 motion to approve sale procedures -- I'm sorry. Mr. Golden,
8 did I leave something out?

9 MR. GOLDEN: We just again, and I'm sorry to slow this
10 down, but we wanted to make sure that the record is clear that
11 Mr. Thomas has no evidence that he wishes to present to the
12 Court through the Receiver or that Mr. Schepps has no evidence
13 that he wishes to present to the Court through the Receiver.

14 THE COURT: Okay. I thought when I asked "Any more
15 evidence?" I had, you know, --

16 MR. GOLDEN: I didn't jump up soon enough.

17 THE COURT: -- addressed that. Anybody have evidence?

18 MR. SCHEPPS: Can I speak to the Receiver for 30
19 seconds to one minute and just point out a couple of things to
20 him very, very --

21 THE COURT: Go ahead and speak to him for 30 seconds,
22 but I'm --

23 (Counsel confer.)

24 THE COURT: All right. We've had --

25 MR. URBANIK: I'm ready to respond to the point Mr.

1 Schepps is making to the Receiver. There is --

2 MR. SCHEPPS: I'm just talking to the Receiver. The
3 Receiver --

4 THE COURT: Okay. You asked for 30 seconds. We
5 either have more evidence or we don't. What do we have?

6 MR. GOLDEN: Your Honor, can we make this quickly in
7 terms of putting Mr. Schepps on the stand and just ask him the
8 question, "Please provide all evidence that you think is
9 relevant"? That would certainly give the Receiver cover in
10 terms of presenting all the evidence that he has been given
11 from Mr. Baron.

12 THE COURT: All right. Five minutes tops. Again, I
13 --

14 MR. GOLDEN: We promise.

15 THE COURT: I -- you know, evidence. We're hearing
16 lawyers, lawyers, lawyers, lawyers. Evidence.

17 Mr. Schepps, you're still under oath from the prior
18 swearing-in. Okay.

19 MR. GOLDEN: Thank you, Your Honor.

20 GARY SCHEPPS, RECEIVER'S WITNESS, PREVIOUSLY SWORN

21 DIRECT EXAMINATION

22 BY MR. LOH:

23 Q Mr. Schepps, you're back now on the stand. Is that
24 correct?

25 A Yes.

1 Q And you are -- purport to have evidence with regard to Mr.
2 Baron's interest in Servers.com. Is that right?

3 A Well, the evidence has already been admitted today as
4 Trustee's Exhibit 13.

5 Q Okay. And what is that evidence, or how would you like it
6 presented to the Court?

7 A If the Court would notice that Trustee's Exhibit 13, IV,
8 says, "Security Interest in Name. In the event of insolvency,
9 Receivership and/or other default of the jointly-owned company,
10 the domain name Servers.com shall revert to Jeff Baron and Mike
11 Emke, to be owned jointly and equally. To this degree, these
12 two principals shall maintain a first lien and security
13 interest in the domain name superior to any other investor,
14 equity holder or creditor."

15 And then I would like the Court to take -- to ask the Court
16 to take judicial notice that it imposed a receivership over the
17 name Servers.com. I think the date was on October the 18th.
18 So the imposition of the receivership over Servers.com sprung
19 Servers.com out of Ondova and into Emke and to Baron.

20 And the other piece of evidence that I have is the Court's
21 -- is the Fifth Circuit's ruling that was handed down
22 yesterday, which has been filed with this Court this morning as
23 Document #681, and it clearly recognizes that Mr. Baron has an
24 interest in the name Servers.com, that Mr. Urbanik read into
25 the record a few minutes ago. "It is ordered that the

1 emergency motion of Appellant Jeffrey Baron for a limited stay,
2 dissolution, or otherwise to allow Jeffrey Baron to defend his
3 interest in the Servers.com domain in the Ondova bankruptcy
4 proceedings is denied." So, clearly, an interest of Mr. Baron
5 was recognized by the Fifth Circuit.

6 THE COURT: Anything further?

7 THE WITNESS: No, Your Honor.

8 BY MR. LOH:

9 Q Anything else?

10 A No.

11 THE COURT: Okay. You're excused.

12 THE WITNESS: Thank you, Your Honor.

13 (The witness steps down.)

14 MR. GOLDEN: All right.

15 MR. GOLDEN: Your Honor?

16 THE COURT: Any other evidence?

17 MR. GOLDEN: Your Honor, Mr. Thomas has asked us on
18 behalf of Mr. Baron if we could call Damon Nelson to the stand.
19 I would request permission to be able to do that, and so we
20 could simply ask him the question of, as manager of Novo Point,
21 LLC, do you have any knowledge as to the ownership of the
22 domain name Servers.com? And then we'll leave it at that.

23 MR. URBANIK: Your Honor, the settlement agreement
24 from last summer is already in the record and the owner is
25 Ondova Limited. Mr. Nelson cannot add anything. I've asked

1 the Court to take judicial notice of Paragraph 3 of the
2 settlement agreement, where Mr. Baron and all of his entities
3 acknowledge that Ondova is the owner. I don't see that adding
4 -- having testimony of Mr. Nelson adds to that.

5 THE COURT: Okay. I sustain that objection. I will
6 take judicial notice of that. And I'll take judicial notice of
7 two days of trial testimony I heard and other evidence I heard
8 in the adversary involving Servers.

9 All right. Anything else in the way of evidence?

10 MR. LOH: No, Your Honor.

11 MR. URBANIK: No, Your Honor.

12 THE COURT: All right. The Court grants the 363(b)
13 sale motion of Trustee Daniel Sherman requesting authority to
14 enter into procedures to sell the domain name Servers.com. And
15 the Court also approves, as part and parcel of that, the
16 application of Mr. Sherman to employ Sedo.com at a 15 percent
17 commission to market and attempt the sale of Sedo.com. The
18 Court does find that the Trustee is exercising reasonable
19 business judgment in proposing the sale procedures. They do
20 appear to be fair and aimed at exposing the domain name to the
21 marketplace in an adequate fashion to attempt to achieve fair
22 value.

23 The Court finds these procedures to be in the best interest
24 of the estate. The Court reserves the right to supplement, but
25 the Court does approve under 363 the sale motion, and under 327

1 and 328 the application to employ Sedo. Any objections still
2 pending are overruled.

3 Mr. Urbanik, I am fine with the mechanism proposed where
4 the Trustee simply comes back and files a notice reporting the
5 result. However, at the same time, if any purchaser does want
6 a specific hearing and sale order, we can have a subsequent
7 hearing to do that.

8 Again, for the record, I have hereby overruled any
9 objection with regard to any of these pending matters today.

10 I realize we have the procedural issue of the Receiver's
11 motion to strike and motion for -- second motion for a show
12 cause as to why Gary Schepps should not be held in contempt and
13 sanctioned. I'm going to carry the Receiver's motion and
14 consolidate a hearing on the merits on this new motion with the
15 hearing we have on the first motion to show cause. We are
16 coming back on that first motion to show cause involving Mr.
17 Payne as well as Mr. Schepps on what date, Laura? Do you have
18 that handy, or does someone have that handy? Okay. She just
19 closed it out.

20 MR. LOH: I believe it's the 15th.

21 MR. URBANIK: November 15th? And so the Court will
22 again consolidate and hear any evidence and argument on that,
23 on the newest show cause relief sought.

24 Let me just say, I mean, we've -- Mr. Schepps, we're to the
25 point where we're having way too much time spent in procedural

1 lawyer argument. I want to hear evidence when we have these
2 hearings. When we have a pleading that is filed, such as the
3 one you filed objecting to the Petfinders.com sale, a lawyer
4 should know you've got to come in with evidence. And I have
5 said that many times before. I have told Mr. Payne and you:
6 Come in with Mrs. Katz. Come in with Mr. whoever-it-is at
7 SouthPac. Come in with Mr. Baron. Come in with someone. But
8 you can't file a pleading and throw out all this stuff and then
9 take up the Court's time that way, take up the parties' time,
10 and then not have evidence.

11 I strongly suggest you have evidence when you come in on
12 the 15th, or anytime in the future you file a pleading. Courts
13 decide issues based on evidence. Okay? When you question
14 someone's authority, when you question someone's integrity,
15 when you object in any way to a motion, you'd better have
16 evidence.

17 Why would you come in here without evidence? Would you
18 address that right now? Why would you come in here without
19 evidence? Why would you file a pleading and then not have
20 evidence?

21 MR. SCHEPPS: I'm not prepared to discuss that today,
22 Your Honor, because it's the subject of a pending second motion
23 to show cause. And I'm allowed 24 days to respond to it.

24 THE COURT: All right. Well, again, I presume you're
25 going to have evidence on the 15th and at any subsequent

1 hearings.

2 MR. SCHEPPS: Thank you, Your Honor.

3 THE COURT: All right. We'll look for your orders.

4 Anything else before we come back on the 15th that I don't know
5 about?

6 MR. URBANIK: You're --

7 THE COURT: All right. Stand adjourned.

8 THE CLERK: All rise.

9 (Proceedings adjourned at 12:47 p.m.)

10 --oOo--

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CERTIFICATE

19 I certify that the foregoing is a correct transcript from
20 the digital sound recording of the proceedings in the above-
21 entitled matter.

22

Kathy Rehling

Digitally signed by Kathy Rehling

Date: 2011.11.11 02:49:41 -06'00'

23

24

Kathy Rehling
Certified Electronic Court Transcriber
CET**D-444

Date

25

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ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET



The following constitutes the ruling of the court and has the force and effect therein described.

Henry G. C. George
United States Bankruptcy Judge

Signed November 14, 2011

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

In re: §
ONDOVA LIMITED COMPANY, § Case No. 09-34784-SGJ
Debtor. § (Chapter 11)
§
§

**ORDER GRANTING TRUSTEE'S MOTION FOR AUTHORITY TO SELL
PROPERTY OF THE ESTATE**

At Dallas, Texas, in said District on the 9th day of November, 2011, this Court conducted a hearing (the "Hearing") on the Trustee's Motion for Authority to Sell Property of the Estate (the "Motion")¹ [Docket No. 658] filed on October 7, 2011 by Daniel J. Sherman (the "Trustee"), the duly-appointed Chapter 11 trustee of Ondova Limited Company (the "Debtor" or "Ondova"). As set forth in this Court's Findings of Fact, Conclusions of Law and Order entered on October 18, 2011 ("Findings") [Adversary Proceeding Docket No. 130] this Court previously conducted a trial in Adversary Proceeding No. 11-03181, finding that the Trustee is directed to sell the domain name, servers.com (the "Domain Name"), utilizing internet domain name broker, Sedo.

Upon consideration of the Motion and the arguments and representations made by counsel therein and at the Hearing, this Court hereby finds as follows:

¹ All of the capitalized terms used in this Order, unless otherwise indicated, shall have the meanings ascribed to them in the Motion.

A. This Court has jurisdiction to hear and to determine the Motion and to grant the relief requested therein pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this case and of the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Motion and the Hearing was appropriate and sufficient under the circumstances, and no further notice is necessary.

C. The relief requested by the Trustee in the Motion is appropriate and in the best interests of the Estate and all parties-in-interest.

D. All objections to the Motion are overruled.

E. Pursuant to the Findings, the sale of the Domain Name is an exercise of the Trustee's sound business judgment and is in the Estate's best interest under the circumstances.

F. The Trustee is authorized to sell the Domain Name to a purchaser free and clear of all liens, claims, encumbrances, and interests because one or more of the standards set forth in Section 363(f) of the Bankruptcy Code have been satisfied. Furthermore, this Court has already previously found that the Trustee's sale of the Domain Name meets all of the requirements of Section 363(h) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY:

ORDERED that the Motion is APPROVED. It is further

ORDERED that, pursuant to Sections 363(b), (h), and (f) of the Bankruptcy Code, the Trustee is immediately authorized to sell the Domain Name. It is further

ORDERED that, if the purchaser of the Domain Name desires a subsequent order from this Court approving the sale of the Domain Name or if the Trustee deems it appropriate or necessary to obtain a subsequent order from this Court approving the sale of the Domain Name, the Trustee may petition this Court for, and this Court shall grant, such an order. It is further

ORDERED that in the event no subsequent order is required by the purchaser or the Trustee, within five (5) days of the sale of the Domain Name closing, the Trustee shall file a notice

with the Court identifying the details of the sale of the Domain Name, including the purchase price.

It is further

ORDERED that the sale of the Domain Name shall be free and clear of all liens, claims, encumbrances, and interests pursuant to Section 363(f) of the Bankruptcy Code. It is further

ORDERED that the Trustee is authorized to execute any and all documents he deems necessary or appropriate to effectuate the sale of the Domain Name. It is further

ORDERED that this Order shall be effective immediately and the stay provided for in Bankruptcy Rule 6004(h) is waived. It is further

ORDERED that this Court shall retain jurisdiction to hear and resolve any and all disputes that may arise from the implementation of this Order.

END OF ORDER

Submitted by:

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*ATTORNEYS FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE*

Pursuant to 11 U.S.C. § 363(b) and (B) for Approval of Sale Procedures (the "Motion"), respectfully stating as follows:

I. BACKGROUND

A. Procedural Background And Jurisdiction

1. On July 27, 2009 (the "Petition Date"), Ondova Limited Company ("Ondova" or "Debtor") filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby initiating the above-referenced bankruptcy case (the "Bankruptcy Case") and creating the Debtor's bankruptcy estate (the "Estate"). On September 17, 2009, the Court entered its order approving the appointment of the Trustee.

2. This Court has jurisdiction over this Bankruptcy Case and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Such jurisdiction is core under 28 U.S.C. § 157(b)(2). Venue of this Bankruptcy Case before this Court is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 9007-1 of the United States Bankruptcy Court for the Northern District of Texas.

B. The Domain Name Servers.com

4. Pursuant to an order of this court entered on October 17, 2011, The Trustee has authority to sell the Internet domain name Servers.com (the "Domain Name"). Although the Trustee had previously employed Sedo.com to assist in the sale of the domain name, Sedo.com was unable to locate a purchaser and the Trustee therefore terminated Sedo.com by letter dated August 30, 2012, effective as of September 13, 2012. The Trustee then began his own sale efforts and located a business in the webhosting industry which expressed an interest in purchasing the Domain Name. XBT Holdings Ltd, or an affiliate thereof ("Purchaser"), has made an offer to purchase the Domain Name and operates a large webhosting business that

has no relationship to Ondova, the Trustee, Jeffrey Baron (“Baron”) or any of Baron’s related entities.

5. The Purchaser has proposed an offer of \$300,000 to purchase the Domain Name which the Trustee has accepted subject to higher and better offers and pursuant to the sale procedures delineated herein. The Purchaser is aware that the sale must be approved by the Bankruptcy Court and that the Trustee must determine if there are higher or better offers. The Purchaser has also agreed to be the stalking horse bidder in the event other parties are interested in bidding on the Domain Name and an auction is scheduled by the Trustee. Due to concerns that many matters related to Baron litigation have become protracted, the Purchaser has advised the Trustee that its offer to purchase the Domain Name will terminate if either the sale of the Domain Name has not closed or the auction, if applicable, has not been conducted by December 15, 2013.

6. The sale procedures agreed to by the parties will allow the Trustee to determine if there are any purchasers who would bid a better or higher offer for the Domain Name. In order to evidence its good faith interest in purchasing the Domain Name, Purchaser has placed a \$40,000 deposit with the Trustee and has agreed to allow the Trustee to market the Domain Name for a period of approximately four (4) weeks.

7. Furthermore, the Trustee and Purchaser have agreed to the following additional procedures (the “Sale Procedures”):

- a. Following approval of this Motion, the Trustee may begin to market the Domain Name, noting that it is part of a Bankruptcy Court auction, on Internet websites which are related to the server and webhosting industries and on Internet websites which relate to the Internet domain name industry (i.e. Domain Name Journal).
- b. The Trustee shall have a period of thirty (30) days to market the Domain Name following approval of this Motion. The specific dates and schedule for the marketing and auction sale will be provided to the Court at the hearing on this Motion.
- c. The schedule will call for the Trustee to establish a deadline for interested parties to submit a bid, in the amount of at least \$330,000, and submit financial

information to demonstrate sufficient financial resources to purchase the Domain Name. Any party that seeks to bid on the Domain Name shall be required to place with the Trustee a \$40,000.00 deposit. A party which evidences financial resources and places a deposit shall be designated a Qualified Bidder.

- d. If there is one or more Qualified Bidders, an auction will be scheduled and conducted at the offices of counsel for the Trustee and the initial opening bid will be the highest bid received from a Qualified Bidder and all subsequent bidding will be in minimum increments of \$10,000.00. Qualified Bidders participating in the auction may participate in person or by telephone. The Trustee shall have the absolute right and discretion to determine the highest and best bid (the "Winning Bidder") at the auction.
- e. The second highest bidder shall agree to be the purchaser if the winning bidder fails to close.
- f. Any party participating in the auction which is determined to be the winning bidder but which fails to close on the purchase of the Domain Name shall forfeit their deposit.
- g. In the event that Purchaser is not the winning bidder, it shall receive a \$20,000.00 break-up fee and, like any other Qualified Party which submitted a deposit but was not the winning bidder, shall receive the return of its deposit.¹

8. The Trustee believes that the offer made by Purchaser is fair and reasonable. In the event no other party becomes a Qualified Bidder, the Trustee will file a notice with the Court indicating that there were no other parties that became Qualified Bidders and that no auction will be conducted. In said event, the Trustee may request a subsequent order of the Court approving the sale of the Domain Name to Purchaser.

II. RELIEF REQUESTED

9. By and through the Motion, the Trustee requests that this Court grant him the authority to sell the Domain Name to the Purchaser free and clear of all liens, claims and encumbrances and that this Court designate the Purchaser a good faith purchaser for value

¹ The Purchaser is aware that Baron, and certain attorneys representing Baron, are extremely litigious and due to concerns that Baron or another party may employ vexatious litigation tactics to object, delay or disrupt the auction or the sale of the Domain Name, the Trustee has agreed to address with Purchaser a possible higher break-up fee in the event the Purchaser is not the winning bidder but has expended additional legal fees due to the conduct of Baron, his attorneys or any other party. Any increase in the break-up fee however can be considered in the event the auction sale generates sufficient funds to cover the additional amount. Finally, in the event of any dispute concerning a request for an additional break-up fee, such dispute shall be resolved by the Bankruptcy Court.

pursuant to 11 U.S.C. § 363(m). The Trustee further requests that this Court waive the fourteen (14) day stay period provided for under Bankruptcy Rule 6004(h). Finally, the Trustee requests that this Court approve the requested Sale Procedures set forth herein.

III. ARGUMENT AND AUTHORITY

A. The Proposed Sale Of The Domain Name Should Be Approved

1. The Section 363 Standards

10. A trustee may sell property of the estate "other than in the ordinary course of business" with court approval and after notice and a hearing. 11 U.S.C. §363(b)(1). As recognized by the Fifth Circuit, a trustee is entitled to use his or her business judgment in determining whether to sell assets outside of the ordinary course of business. *See Institutional Creditors of Cont'l Air Lines Inc. v. Cont'l Air Lines Inc. (In re Cont'l Air Lines Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). Also, a trustee should be allowed to sell property of the estate outside the ordinary course if that sale benefits the estate and its creditors. *See Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (reminding courts, when faced with bankruptcy sales, to be mindful of "the ubiquitous desire of the unsecured creditors" and of one of the "primary objective[s] of the Code, to enhance the value of the estate at hand"); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (explaining that "[i]t is a well-established principle of bankruptcy law that the objective of bankruptcy sales and the Debtor's duty with respect to such sales is to obtain the highest price or overall greatest benefit possible for the estate" (quoting *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988))). Therefore, if a trustee exercises his sound business judgment when attempting to sell property of the estate outside the ordinary course of business and, if that sale will benefit the estate and its creditors, then a court should approve the sale.

11. Additionally, a trustee may sell property of the estate outside of the ordinary course of business and "free and clear of any interest in such property of an entity other than the estate", if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f).

12. Satisfaction of any one of the five requirements listed above will suffice to permit a sale "free and clear" of liens, claims and encumbrances. *In re CPower Products, Inc.*, 230 B.R. 800 (Bankr. N.D. Tex. 1998) (stating that, for a sale of assets free and clear of liens, claims and encumbrances, "...one of the conditions of 363(f)(1) through (5) must be met"). Finally, Bankruptcy Rule 6004 provides that a sale outside the ordinary course of business "may be by private sale or by public auction". Fed. R. Bankr. P. 6004(f)(1).

13. In light of the foregoing standards, the Trustee has concluded, as an exercise of his sound business judgment, that the sale of the Domain Name to the Purchaser is in the best interests of the Estate and all parties-in-interest.

14. As noted above, the Purchaser has no connection to Ondova or the Trustee and therefore the Trustee states that the sale of the Domain Name to the Purchaser was negotiated and entered into by unaffiliated parties in good faith, without collusion and from arms-length bargaining positions. Therefore, the Trustee believes the Purchaser is absolutely a good faith purchaser under Bankruptcy Code § 363(m) and should be entitled to all of the protections afforded thereby. The Purchaser has been acting in good faith within the meaning of

Bankruptcy Code § 363(m). Finally, neither the Trustee nor the Purchaser has engaged in any conduct that would cause or permit the purchase of the Domain Name to be avoided under Bankruptcy Code § 363(n).

15. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Trustee submits that waiving the fourteen (14) day stay under Bankruptcy Rule 6004(h) is appropriate under the circumstances because the parties desire to consummate the proposed sale of the Domain Name as soon as possible.

2. Sale Procedures

16. In the interest of maximizing the potential recovery for the Estate, the Trustee requests approval of the Sale Procedures contained herein. The Trustee believes that the Sale Procedures serve the foregoing purposes in a fair, equitable, transparent and competitive manner, with no unreasonable or unfair advantage to the Purchaser. The Trustee submits the Sale Procedures as proposed, will enable all parties and the Court to have the best evidence of the value of the Domain Name thereby ensuring that this estate obtains the highest and best purchase price.

17. The Sale Procedures here are in the best interests of the Estate and all claimants. Several courts have concluded that bid procedures should be approved when the proposed transaction (i) is in the best interest of the estate, creditors, equity holders, and other parties involved and (ii) maximizes revenues for the estate. See *In re Tiara Motorcoach Corp.*, 212 B.R. 133, 137 (Banks. N.D. Ill. 1997); *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Banks. N.D. Ill. 1995); *In re America West Airlines, Inc.*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994).

18. As part of the sale of property of the estate "other than in the ordinary course of business" under section 363(b) of the Bankruptcy Code, a debtor may induce an interested party to expend the resources necessary to serve as the "stalking horse bidder" by offering that

party certain bid protections. Those bid protections take many forms including, without limitation, a break-up or topping fee, expense reimbursement, minimum overbid increments, limitations on the marketing of the assets (for example, a “no shop” or “window shop” clause), bidder qualifications requirements, and short deadlines for competing bidders’ due diligence and submission of competing bids. See Collier on Bankruptcy § 363.2[6] (15th ed. 2009).

19. The Trustee submits that the proposed breakup fee of \$20,000.00 is reasonable. Courts have employed various tests to determine whether the protections offered by a debtor or trustee should be granted. The primary concern of these courts is “whether the offer made by the party seeking the break-up fee will enhance or hinder the bidding process. If the break-up fee encourages bidding, it will be approved, if it stifles bidding, it will not be approved.” See *In re Integrated Resources, Inc.*, 135 B.R. at 750.

20. Courts hold that implementing and, if necessary, awarding bid protections to a “stalking horse bidder” is an appropriate exercise of a trustee's business judgment. See *Integrated Resources*, 147 B.R. at 659 (stating that such procedures “encourage bidding to maximize the value of the debtor’s assets); *Cantaxx Gas Storage Ltd. v. Silverhawk Capital Ptns., LLC*, 2008 U.S. Dist. LEXIS 37803, 17-18 (S.D. Tex. 2008) (stating that “[b]reak-up and similar fees are common in corporate transaction . . . [s]uch fee provision may . . . enhance the bidding process by creating momentum toward closing the sale”); *In re Food Barn Stores Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that, in bankruptcy sales, “a primary objection of the Code [is] to enhance the value of the estate at hand”).

21. Break-up fees and expense reimbursements are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code: “[b]reak-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets . . . In fact, because the . . . corporation ha[s] a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values.” *Integrated Resources*, 147 B.R. at 659-60. Specifically, “break-up fees and other strategies may be

legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” *In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (quotations omitted); accord *Integrated Resources*, 147 B.R. at 660-61 (break-up fees can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”). Courts in this District have likewise found that breakup fees are proper and necessary tools to ensure lively bidding, protect the auction process, and avoid potential litigation. See, e.g., *In re Texas Rangers Baseball Partners*, 431 B.R. 706, 715 (Bankr. N.D. Tex. 2010) (Lynn, J.).

22. In consideration of the foregoing, bankruptcy courts frequently approve break-up fees in connection in proposed bankruptcy sales. In the process, such courts generally consider “(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price.” *In re Twenver, Inc.*, 149 B.R. 954, 956 (Bankr. D. Colo. 1992); *In re Bidermann Industries U.S.A., Inc.*, 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997).

23. The Sale Procedures requested in this Motion should be approved because they: (i) are the product of the Trustee’s sound business judgment; (ii) are in the best interest of the Estate and all other interested parties; (iii) will maximize the value of the Domain Name; and (iv) will enhance the bidding process.

24. The amount of the proposed “stalking horse” or Break-Up Fee which is \$20,000.00 is not unreasonable relative to the proposed purchase price. Similarly, the initial overbid increment of \$30,000.00 is clearly reasonable in relation to the purchase price offered by the Purchaser.

25. Under the business judgment rule, the Sale Procedures proposed by the Trustee are a sound business decision, made in good faith and with full information. The Sale Procedures were negotiated at arm's-length between the Trustee and Purchaser. The Trustee believes that the Auction Procedures are in the ' best interests of this estate..

26. Furthermore, the arms' length negotiations giving rise to the Sale Procedures, the Stalking Horse Bid, and this Motion ensure a fair process for the sale. Accordingly, the Trustee shall request that approval of the sale to the ultimate purchaser incorporate any and all protections under Section 363(m) of the Bankruptcy Code or other law, to the purchaser as a good faith purchaser.

3. Pending Appeals

27. This Court has previously determined ownership of the Domain Name.² Two appeals of this Court's orders related to the Domain Name are pending, one in the District Court and one in the Fifth Circuit³, however no stay has been issued by any court which prohibits the Trustee from entering into a transaction for the sale of the Domain Name.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that the Court enter an order: (i) granting this Motion; (ii) approving the Sale Procedures requested herein; (iii) authorizing the Trustee to sell the Domain Name to Purchaser pursuant to the terms set forth herein, including a specific ruling that the Purchaser is a good faith purchaser for value under Section 363(m) and finding that the Purchaser is entitled to all protections of such a purchaser; (iv) waiving the fourteen (14) day stay under Bankruptcy Rule 6004(h) so the sale may be consummated as soon as possible; and (v) granting the Trustee such other and further relief to which he has shown himself to be justly entitled.

² See Adversary Proceeding Case No. 11-03181, Docket No. 130.

³ See District Court Docket No. 3:12-cv-00244-L and Fifth Circuit Docket No. 13-10121 (Consolidated with Docket Nos. 13-10120 and 13-10122).

Respectfully submitted this 14th day of August, 2013.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Raymond J. Urbanik

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CHAPTER 11 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that, on August 14, 2013, a true and correct copy of the foregoing document was sent to all parties requesting electronic service through the Court's ECF system and also to the parties listed below by first class U.S. mail, postage prepaid:

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/s/ Raymond J. Urbanik
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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

)	Case No. 09-34784-sgj11
In re)	Dallas, Texas
)	
ONDOVA LIMITED COMPANY,)	
)	September 10, 2013
Debtor.)	11:00 AM
)	
_____)	

TRANSCRIPT OF HEARING
ON MOTION TO SELL PROPERTY (doc. 1110)
BEFORE THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE

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20 Ch. 7 Trustee John H. Litzler:
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Potential Purchaser,
XBT Holding Ltd.:
MATTHEW SHAYEFAR, ESQ.
(TELEPHONICALLY)
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Suite 20
Newton Centre, MA 02459

Colloquy

1 (Audio begins mid-sentence)

2 THE CLERK: -- Company. First, appearances in the
3 courtroom, please.

4 MR. URBANIK: Good morning, Your Honor. Ray Urbanik
5 from Munsch Hardt, on behalf of Daniel J. Sherman, Chapter 11
6 trustee.

7 THE COURT: Okay.

8 MR. URBANIK: Judge, I have with me a new lawyer in
9 my firm, Isaac Brown, but he's not yet licensed in Texas; he's
10 just here helping me today.

11 THE COURT: Okay, welcome, Mr. Brown.

12 MR. BROWN: Thank you.

13 MR. SHAYEFAR: Your Honor, I am --

14 MR. COCHELL: Stephen --

15 MR. SHAYEFAR: -- Matthew Shayefar from the Boston
16 Law Group --

17 THE COURT: Okay, just a minute.

18 MR. SHAYEFAR: -- representing the --

19 THE COURT: Sir, just a minute. We're taking
20 appearances in the courtroom first.

21 MR. COCHELL: Yeah.

22 Go ahead.

23 MR. COCHELL: Good morning, Your Honor. Stephen
24 Cochell, appearing on behalf of Mr. Baron.

25 THE COURT: All right, thank you.

Colloquy

1 MR. MCCULLOUGH: Good morning, Your Honor. Kevin
2 McCullough, counsel for John H. Litzler, Chapter 7 trustee in
3 the Baron estate.

4 THE COURT: Thank you.

5 MS. LAMBERT: Lisa Lambert representing William
6 Neary, the United States Trustee.

7 THE COURT: Thank you.

8 All right, let me get my notes here for the right
9 hearing.

10 We have a phone appearance. Please go ahead at this
11 time.

12 MR. SHAYEFAR: Excuse me, Your Honor. This is
13 Matthew Shayefar from the Boston Law Group. I represent the
14 potential purchaser, XBT Holding Ltd.

15 THE COURT: All right. Let me make sure I heard
16 that.

17 Got the wrong document.

18 All right. I'm sorry; was it Matthew Shayefar?

19 MR. SHAYEFAR: Yes, Your Honor.

20 THE COURT: All right, thank you.

21 All right, we have a motion today filed by the Ondova
22 Chapter 11 trustee, for approval of sale procedures to sell
23 the domain name servers.com.

24 Mr. Urbanik, ordinarily we would be hearing simply
25 evidence regarding whether there's a sound business

Colloquy

5

1 justification for this proposed sale, and evidence, details
2 about the proposed procedure, the proposed stalking horse,
3 what kind of notice you're going to give, the auction process,
4 the details of how an auction might occur, et cetera, with the
5 main purpose of maximizing value for the Ondova estate.

6 I've seen that Mr. Baron has objected through counsel
7 Steve Cochell. It appears to me his primary argument is that
8 the domain name is his personally, Jeff Baron's, not the
9 Ondova estate. I know this Court in the past had a trial in
10 an adversary proceeding that was between Mr. Emke -- Mike
11 Emke -- and the Ondova estate, versus their respective rights
12 in the name; and I realize that after a day of evidence, or
13 so, I made findings of fact, conclusions of law, concluding
14 that the Ondova estate -- well, it was complicated, but
15 basically it was all about Emke versus Ondova and a conclusion
16 that Emke had not fulfilled his duties under a certain
17 settlement agreement and, therefore, there were grounds under
18 the settlement agreement to force a sale of the name, and I
19 appointed Mr. Sherman as the receiver to go forward and sell
20 the name.

21 Be that as it may, I know that litigation did not
22 involve Mr. Baron as a party, per se, in that litigation. So
23 all this to say it looks like we've got issues today with
24 regard to not merely the proposed sale auction of the name but
25 maybe ownership of the domain name. I don't think any other

Opening Statement - Mr. Urbanik

1 party-in-interest has objected today.

2 MR. URBANIK: That's correct, Judge.

3 THE COURT: All right, so I guess here's how I'd like
4 to proceed: very short five-minute, maximum, opening
5 statements, just to confirm do I understand the issues as teed
6 up today, and then I really want to go straight to evidence,
7 whatever evidence you have, whatever evidence Mr. Baron has,
8 to either go to the merits of the sale motion or to go to this
9 ownership issue.

10 MR. URBANIK: Okay.

11 THE COURT: Okay? All right, you may proceed.

12 MR. URBANIK: Thank you, Your Honor. We filed the
13 motion to sell the domain name August 14, 2013, and no
14 response was filed until Saturday, September 7th. So
15 yesterday I got to review the response filed by Baron, and we
16 filed just this morning a motion of Daniel J. Sherman to
17 strike the Baron objection, and I'd like to hand the Court a
18 copy or two.

19 THE COURT: I've got it, actually.

20 MR. URBANIK: Okay. Some extra copies here in case
21 anyone --

22 THE COURT: I haven't had time to read it, but --

23 MR. URBANIK: Well --

24 THE COURT: -- I have a copy of it.

25 MR. URBANIK: So, Your Honor, we are good to go

Opening Statement - Mr. Urbanik

1 forward with your proposal. My outline of how I was going to
 2 present was going to be the sale motion itself with a proffer
 3 from Mr. Sherman, then go into the Baron response, and then at
 4 that point our motion to strike the Baron response; was going
 5 to advise the Court that we reached an agreement with the
 6 trustee John Litzler, regarding proceeding. And then I
 7 actually, Judge, was going to visit a little bit with the
 8 Court about where we are in the Ondova case and what's going
 9 on with Mr. Baron and four attorneys that seem to be
 10 representing him but, yet, won't come to court. Mr. Baron is
 11 saying he can't testify at the 341 meeting and, yet,
 12 Mr. Cochell, Mr. Schepps, Mr. Payne and Mr. Hari (ph.) are all
 13 out there filing pleadings in other courts but, yet,
 14 Mr. Baron can't testify at a 341 meeting because he doesn't
 15 have a lawyer. But that's --

16 THE COURT: All right, we --

17 MR. URBANIK: -- that's at the end.

18 THE COURT: -- we may have to have a status
19 conference another time --

20 MR. URBANIK: Sure.

21 THE COURT: -- on that. I really want to figure out
22 are there grounds to go forward --

23 MR. URBANIK: Sure.

24 THE COURT: -- with selling this name or not. So --

25 MR. URBANIK: So in terms of my introduction, Judge,

Opening Statement - Mr. Urbanik

1 I would suggest that today the Court take up our proffer of
2 Mr. Sherman regarding the history of the domain name, our
3 prior efforts to sell, the current offer to sell, our
4 marketing effort itself. Mr. Shayefar is on the phone, can
5 tell the Court a little bit about the purchaser. And then
6 we'll provide the Court the dates for a sale process and a
7 follow-up hearing in the event there's an auction, or a
8 follow-up date to present a final order.

9 So there's quite a bit to go through regarding just
10 the sale motion itself. And then I don't have a witness
11 regarding the -- our motion to strike the Baron response; it
12 would simply be legal argument. And in terms of the agreement
13 we've reached with Mr. Litzler, that'll just take a minute or
14 two to update the Court on that.

15 THE COURT: Okay. On the motion to strike, again, I
16 didn't have time to read it. I was --

17 MR. URBANIK: Okay.

18 THE COURT: -- in a meeting this morning until --

19 MR. URBANIK: Sure.

20 THE COURT: -- the hearing started. But what all are
21 your arguments? I mean, he --

22 MR. URBANIK: Sure.

23 THE COURT: -- he was not a party to the adversary
24 proceeding.

25 MR. URBANIK: It'd go to standing, Your Honor.

Opening Statement - Mr. Urbanik

1 Mr. Baron is in a Chapter 7 case pursuant to order of July 26,
2 2013.

3 THE COURT: Are you saying only the trustee has
4 standing?

5 MR. URBANIK: That is correct. And what we did on
6 our motion to strike, Judge, is we -- we have all the
7 authorities on why Baron personally has no standing under a
8 whole long line of established cases, including a very recent
9 2013 case from Judge Lindsay regarding standing of Chapter 7
10 debtors. Then following that, Judge, we have an argument on
11 why there was no violation of the automatic stay in the Baron
12 personal case because his interest is so speculative, so
13 outlandish and so contingent, there was no need for us to go
14 get us -- lifting the automatic stay in the Baron personal
15 case; and I cite the Fifth Circuit's decision in Chestnut.

16 The claim that Mr. Baron has some interest in this
17 domain name is wishful thinking; it's pretty --

18 THE COURT: Okay, let's --

19 MR. URBANIK: -- it's pretty outrageous.

20 THE COURT: -- let's take this in steps.

21 MR. URBANIK: Um-hum.

22 THE COURT: If you would acknowledge that -- I mean,
23 it may be a slim possibility, but there is a possibility that
24 if either or both estates are solvent, he would have standing.

25 MR. URBANIK: That's correct --

Opening Statement - Mr. Urbanik

1 THE COURT: Okay.

2 MR. URBANIK: -- he would have standing, but it's his
3 burden of proof, under very well established law, to show that
4 he has standing even to argue the position today.

5 And just let me say one more time, in case it wasn't
6 clear, we have reached an agreement for Mr. Litzler --

7 THE COURT: Okay --

8 MR. URBANIK: -- to look at this --

9 THE COURT: Okay, but --

10 MR. URBANIK: -- this contingent interest as --

11 THE COURT: -- but there's --

12 MR. URBANIK: Okay.

13 THE COURT: -- a very remote chance of standing. And
14 what are your other standing arguments besides that one?

15 MR. URBANIK: That's it, Your Honor: He would have
16 the burden of proof to show that there's going to be equity in
17 his personal estate, to make the argument today that he has
18 standing. So nothing in his paper filed Saturday in any way
19 goes to the issue of whether there'll be equity in the Baron
20 personal case. He doesn't address that without doing that, he
21 has no standing. So we filed a motion to strike to show that
22 he's got the burden of proof to show he can argue the
23 position; he hasn't done it.

24 THE COURT: All right, I'm going to overrule your
25 motion, okay? He can put in whatever evidence he wants to

Opening Statement - Mr. Urbanik

1 suggest he has standing --

2 MR. URBANIK: Okay.

3 THE COURT: -- to suggest he has some ownership
4 interest in the name. I don't know what the evidence is going
5 to be other than perhaps that section 4 of the settlement
6 agreement that -- I'm going to hear whatever the evidence
7 is --

8 MR. URBANIK: Sure.

9 THE COURT: -- whatever the evidence is. I don't
10 know what the evidence is. So I overrule the motion to
11 strike.

12 MR. URBANIK: Okay.

13 THE COURT: All right. Anything else? I think we've
14 gone more than five minutes in your opening statement.

15 MR. URBANIK: I'm ready to go forward with the
16 motion --

17 THE COURT: All right.

18 MR. URBANIK: -- to sell, whenever you're ready to --

19 THE COURT: All right, thank you.

20 MR. URBANIK: -- to go into that.

21 THE COURT: Other opening statements? Mr. Cochell?

22 MR. COCHELL: Yes, ma'am.

23 MS. LAMBERT: No, no --

24 MR. COCHELL: Oh.

25 THE COURT: From the U.S. Trustee?

Opening Statement - Ms. Lambert

1 MS. LAMBERT: I think it makes sense for the United
2 States Trustee to go next, because we're not opposing the
3 motion.

4 THE COURT: All right.

5 MS. LAMBERT: The issue of the automatic stay: If
6 the Court were to determine that there is a residual interest
7 in Jeff Baron's Chapter 7 case, the Chapter 7 trustee's
8 agreement does not resolve that there's either a 9019 motion
9 or a stay motion that all creditors will be entitled to notice
10 of. And while Mr. Baron may not have standing, the United
11 States Trustee and the Court are charged with independently
12 assessing that issue.

13 So that doesn't mean that -- today's only a bid
14 procedures motion. It doesn't mean that anything would have
15 to happen if the Court -- if, and only if, the Court
16 determined that Mr. Baron had an interest in the property. I
17 think that the stay, in Mr. Baron's case, could be modified,
18 and then the Court could require some kind of notice of the
19 settlement or notice of the procedures in his individual case,
20 before the sale is completed, and these issues could be
21 resolved that way.

22 But in terms of the Chapter 7 trustee, in Mr. Baron's
23 individual case, agreeing to lift the stay, that cannot occur
24 without notice, because the stay protects both the individual,
25 who is subject to the stay -- Mr. Baron -- and the estate as a

Opening Statement - Mr. McCullough

1 whole and the creditors that are creditors of the estate.

2 THE COURT: Okay, understood.

3 Mr. McCullough?

4 MR. MCCULLOUGH: Yes, Your Honor. The gist of our
5 agreement with the Ondova estate is that the stay be lifted
6 just for the limited purpose of proceeding with the sale and
7 that any interest that the Baron estate may have in
8 servers.com be attached to the proceeds and then we fight
9 about it at that point. We'll work with Ms. Lambert on what
10 proper notice needs to be given in our estate; I think she's
11 raised a good point; we can work with her on trying to achieve
12 that.

13 But I think that our estate is in agreement that the
14 sale should go forward, we could liquidate this asset and then
15 fight over the proceeds later.

16 THE COURT: All right, so that is -- that's the
17 agreement: Whatever interest Jeff Baron may have, let's
18 decide that another day.

19 MR. MCCULLOUGH: Yes.

20 THE COURT: You agree to a vigorous marketing effort,
21 let's all get the highest price possible. Money is put
22 somewhere, in an escrow, in a trust, court registry, wherever.

23 MR. MCCULLOUGH: Right.

24 THE COURT: And then later there can be litigation
25 work --

Opening Statement - Mr. Cochell

1 MR. MCCULLOUGH: And hopefully, by our estate being
2 on board with the sale, it helps to put some of the potential
3 buyers at ease and maybe brings a higher price.

4 THE COURT: Okay. Well, that -- thank you.

5 MR. MCCULLOUGH: Thank you.

6 THE COURT: That would be the normal way of handling
7 this when we have competing bankruptcy estates.

8 Mr. Cochell, now what say you?

9 MR. COCHELL: Thank you, Your Honor. I'm having
10 trouble hearing Ms. Lambert when she talked; I got about half
11 of what she said.

12 But let me just kind of review what our concerns are.
13 Our concerns are that there hasn't been notice of the
14 agreement between the trustee and Mr. Sherman, the other
15 trustee in the case. And we do think that this is a
16 procedurally unusual case in the sense that Mr. Baron -- while
17 he's in an involuntary, the involuntary order for relief is on
18 appeal. And the -- I think the law is very clear that when a
19 case is on appeal, and particularly with respect -- and also
20 the order -- this Court's order on Servers is also on
21 appeal -- the final order's on appeal, not the order that was
22 attached, referred to by Mr. Urbanik.

23 And so when these cases are on appeal and the subject
24 matter of the appeal is now before this Court on what appears
25 to be a second motion to sell, sell the property, we think

1 that this Court is deprived of jurisdiction. And just as in
2 the receivership case --

3 THE COURT: Okay, what does that mean if there's no
4 stay pending appeal?

5 MR. COCHELL: That you cannot undermine --

6 THE COURT: First --

7 MR. COCHELL: Yes, Your Honor.

8 THE COURT: -- back up. Is there a stay pending
9 appeal --

10 MR. COCHELL: No.

11 THE COURT: -- of any of these orders?

12 MR. COCHELL: Not at this point. There is a --

13 THE COURT: Okay.

14 MR. COCHELL: -- motion for stay pending before Judge
15 O'Connor (ph.). And --

16 THE COURT: A stay of which order?

17 MR. COCHELL: Of the bankruptcy order.

18 THE COURT: The order for relief?

19 MR. COCHELL: The order for relief. I'm sorry.

20 THE COURT: Okay. But there is no stay.

21 MR. COCHELL: Correct.

22 THE COURT: So therefore, what legal authority are
23 you referring to that might prevent --

24 MR. COCHELL: I'm referring to --

25 THE COURT: -- a sale in --

Opening Statement - Mr. Cochell

1 MR. COCHELL: -- the Griggs case, which I've referred
 2 to in my objections; I can give you the full cite if you wish;
 3 it's Griggs v. Provident Consumer Discount Company, U.S.
 4 Supreme Court, 459 U.S. 56; and Coastal Corp. v. Texas Eastern
 5 Corp., which is a Fifth Circuit case, 869 F.2d 817. And both
 6 of these courts squarely refer to the proposition that a lower
 7 court does not have jurisdiction to alter the status quo of
 8 the matter on appeal, and retains jurisdiction only to
 9 maintain the status quo; that's the Fifth Circuit case. And
 10 in Griggs -- I quoted from there -- the filing of a notice of
 11 appeal is in the event of jurisdictional significance that
 12 confers jurisdiction on the court of appeals and divests the
 13 district court of its control over those aspects of the case
 14 involved in the appeal.

15 So whether Mr. Urbanik thinks that --

16 THE COURT: Are any of these cases on point? Are
 17 they involving an order for relief that has been appealed? Do
 18 you have any case involving an involuntary bankruptcy where a
 19 debtor, an alleged debtor, has appealed the order for relief
 20 and a higher court has said, 'Bankruptcy Court' --

21 MR. COCHELL: Yes, Your Honor.

22 THE COURT: -- 'even though there's no stay pending
 23 appeal, you cannot go forward with one thing in that
 24 involuntary, as long as there's an appeal pending'? Do you
 25 have any opinion anywhere --

Opening Statement - Mr. Cochell

1 MR. COCHELL: One moment.

2 THE COURT: -- that has held that?

3 MR. COCHELL: Did some research. I didn't cite this
4 for the Court, but let me -- I'm trying to find it here.

5 THE COURT: I mean, we may be going down a rabbit
6 trail, because this is an Ondova hearing in a motion to sell
7 property allegedly owned by Ondova. But assuming you're going
8 to tie this all together somehow, I would like to know once
9 and for all, is there an opinion that says that? I mean, I've
10 been wanting to know that for every hearing we've had in this
11 case.

12 MR. COCHELL: Yes, Your Honor. There's a case -- I
13 haven't analyzed this for a while; however, there's a case
14 called Creations Unlimited, Inc. v. McCain, 112 F.3d 814, and
15 at pages 816 to 817 the court held, as a general rule, a
16 district court is divested of jurisdiction upon the filing of
17 a notice of appeal with respect to any matters involved in the
18 appeal.

19 THE COURT: Does that involve --

20 MR. COCHELL: Okay.

21 THE COURT: -- an involuntary bankruptcy case order
22 for relief? Because what you're citing for me is black-letter
23 law.

24 MR. COCHELL: Well, okay, but --

25 THE COURT: But it's not the same thing as can a

Opening Statement - Mr. Cochell

1 bankruptcy case go forward --

2 MR. COCHELL: Yeah. Okay --

3 THE COURT: -- when the actual order for --

4 MR. COCHELL: Well --

5 THE COURT: -- relief is on appeal.

6 MR. COCHELL: But let me just cite the Netsphere
7 case; that talks about mooted on appeal before the Fifth
8 Circuit. The Fifth Circuit stayed this Court's order for sale
9 in that case because it would have mooted the substance of
10 what was on appeal before the Court. And the Court then, in
11 its opinion, at footnote 2 of that decision, specifically said
12 that the stay was permanent on sale of those domains. I
13 recognize that that court's order doesn't squarely directly
14 compel this Court that the domain name of Servers is within
15 the specific direct ambit of the Netsphere case, but I think
16 that the Court would be erring if the Court did not take
17 notice of the fact that the Fifth Circuit talked about mooted
18 the appeal and that the jurisdiction of the Court needed to be
19 protected --

20 THE COURT: Well, then --

21 MR. COCHELL: -- in so many words.

22 THE COURT: -- maybe you'll get your stay pending
23 appeal. But that's a very different thing if there's no stay
24 pending appeal.

25 MR. COCHELL: But, Your Honor, a motion for stay is

Opening Statement - Mr. Cochell

1 not necessary when you have Fifth Circuit courts -- the Fifth
2 Circuit decisions basically saying this Court has
3 responsibility for interpreting the law. That's a given. And
4 so when there's clear decisional precedent not just from
5 somewhere else or somewhere else in the Fifth Circuit but from
6 the Fifth Circuit in Netsphere involving this Court's
7 decision, I would respectfully --

8 THE COURT: It's not clear.

9 MR. COCHELL: -- submit --

10 THE COURT: It's not clear.

11 MR. COCHELL: Very well. There are --

12 THE COURT: It is --

13 MR. COCHELL: -- other cases.

14 THE COURT: And it's an appeal of a receivership --

15 MR. COCHELL: All right.

16 THE COURT: -- and meanwhile the receiver is
17 proposing to sell receivership assets. The Fifth Circuit
18 issued a stay pending appeal in that context. We now have a
19 different situation of an involuntary case, analogous in some
20 ways yes. You have an appeal of an order for relief, but no
21 stay pending appeal.

22 MR. COCHELL: We have a case, In re Madill, 65 B.R.
23 729, basically saying that the bankruptcy court may not enter
24 orders or take other action that would have the effect of
25 mootng the appeal. I don't know --

Opening Statement - Mr. Cochell

1 THE COURT: What --
2 MR. COCHELL: My materials --
3 THE COURT: -- is the factual --
4 MR. COCHELL: -- don't --
5 THE COURT: -- context?
6 MR. COCHELL: I'm sorry?
7 THE COURT: What is the factual context?
8 MR. COCHELL: I don't have it here --
9 THE COURT: Okay.
10 MR. COCHELL: -- immediately with me.
11 THE COURT: Okay. Let's move on. Let me back up.
12 MR. COCHELL: That was not --
13 THE COURT: Let me
14 MR. COCHELL: -- an involuntary, Your Honor.
15 THE COURT: Okay.
16 MR. COCHELL: I'm sorry.
17 THE COURT: Let me back up.
18 MR. COCHELL: Okay.
19 THE COURT: Let me back up. The trustee in Jeff
20 Baron's bankruptcy case has announced through Mr. McCullough
21 that he consents to a sale process going forward with regard
22 to the Servers, Inc. domain name, servers.com domain name. He
23 consents and is perfectly content to have a decision made
24 another day with regard to how the proceeds get divvied up.
25 All right? In other words, let's go out there, let's have the

Opening Statement - Mr. Cochell

1 stalking-horse bid as the price to beat, and -- what is it,
2 300,000? Is that the stalking-horse bid?

3 MR. URBANIK: Yes, Your Honor.

4 THE COURT: Okay, so the Jeff Baron bankruptcy
5 trustee is happy to let this process play out with the
6 starting bid of 300,000 -- hopefully potentially get a higher
7 price; maybe not -- but go forward, let the domain name be
8 sold, and then the money is held by someone, in escrow: court
9 registry, wherever, a third-party escrow agent. And then
10 later if there is litigation regarding who owned it, that can
11 happen another day. This is sort of the usual way in
12 bankruptcy, okay? That's as close to custom as I can think
13 of: Go out there; strike while the iron is hot; there's a
14 potential bidder right now; take the bird in the hand, or
15 whoever might top him; fight about this another day. Why is
16 this not a good idea?

17 MR. COCHELL: It's a bad idea because Mr. Baron was
18 unable to intervene in the Emke case because --

19 THE COURT: But wait.

20 MR. COCHELL: Hold on.

21 THE COURT: But wait. I understand that, but why is
22 it not a good idea to go out there and market this asset once
23 and for all, see if 300,000 can be beat? And then you got the
24 pot of money and then later we maybe have litigation about
25 this.

Opening Statement - Mr. Cochell

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MR. COCHELL: Be --

THE COURT: I understand your point, but --

MR. COCHELL: Yes, Your Honor.

THE COURT: -- he wasn't a party in that lawsuit --

MR. COCHELL: Right.

THE COURT: -- between Emke and Ondova.

MR. COCHELL: Right. Thank you. I appreciate that.

THE COURT: I understand that.

MR. COCHELL: Yeah.

THE COURT: So what I'm getting at is why shouldn't we strike while the iron is hot and at least have the sale process go forward? And we can have protective language in there that not only makes Mr. Litzler happy but your client happy. All rights are reserved to later make a claim for these sale proceeds.

MR. COCHELL: I think that is fair if you view it from the standpoint of the trustee wanting to generate income that maybe can be distributed, and all of that. The problem is that from our perspective it is taking Jeff Baron's property and selling it at -- under bankruptcy standards where it's unclear that it'll achieve the kind of value that Mr. Baron would want to achieve for his property.

Okay, if you start off with the premise that it's not his property, that's not a bad recommendation --

THE COURT: Okay --

Opening Statement - Mr. Cochell

1 MR. COCHELL: -- but it's his property.

2 THE COURT: -- so let's back up. Are there tweaks
3 that can be made to the sale process that would make him
4 happy, that he thinks might maximize value better than what
5 Mr. Sherman has proposed? Or is he just against a sale,
6 period?

7 MR. COCHELL: No. I don't -- I think whether -- I
8 think that he's against the idea that he should be forced to
9 sell his property, because he believes he's an --

10 THE COURT: So --

11 MR. COCHELL: -- involuntary play --

12 THE COURT: So you think -- do you need to go whisper
13 to him?

14 MR. COCHELL: I can --

15 THE COURT: Is he against the sale --

16 MR. COCHELL: -- go whisper in his ear.

17 THE COURT: Okay. Is he against the sale under
18 any --

19 MR. COCHELL: All right.

20 THE COURT: -- procedure?

21 MR. COCHELL: And just for the record, we believe
22 that it would be a taking under the Fifth Amendment to do it
23 this way before there's been a determination of ownership
24 rights --

25 THE COURT: Okay --

Opening Statement - Mr. Cochell

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MR. COCHELL: -- and so on.
THE COURT: -- well, I want yes or no --
MR. COCHELL: Yes, Your Honor.
THE COURT: -- is he against a sale, period?
MR. COCHELL: Do you want me to do that now?
THE COURT: Yes, please.
MR. COCHELL: Yes, ma'am. Can we step outside for a
minute, Your Honor? Just for a minute.
THE COURT: Just for one minute.
MR. COCHELL: Just for a minute. Thank you.

(Pause)

MR. COCHELL: Thank you, Your Honor.
THE COURT: Okay.
MR. COCHELL: Standing right now and talking to
Mr. -- to my client, we don't know, sitting here right now,
whether there's a way that we could tweak this, without
further discussions with Mr. Urbanik. Having said that, if
the Court is wanting an answer now, as I take it you do,
Mr. Baron is, I think, generally taking the position that he
should not be forced into a sale of his property that he wants
to keep, going forward, for when he gets out of bankruptcy and
until after the courts have spoken on whether the order for
relief that was improvidently granted -- because, I mean, the
fact is that, I mean, we have fairly significant grounds for
appeal. So --

Opening Statement - Mr. Cochell

1 THE COURT: All right, so there's no middle ground we
2 can reach here. That having been said, what is your evidence
3 going to be today?

4 MR. COCHELL: Well, Your Honor, on evidence, we
5 have -- the documents that we attached to our objections,
6 which we think is a matter of law, plus the arguments I've
7 made, should be sufficient for the Court to rule on the issue.

8 THE COURT: Okay, so walk me through that. I know we
9 had the settlement agreement on July 10th, 2009.

10 MR. COCHELL: Yes, Your Honor. And --

11 THE COURT: And what other documents?

12 MR. COCHELL: Yeah, we have -- one moment. We have
13 the Emke settlement, and --

14 THE COURT: Right.

15 MR. COCHELL: -- I don't think there's any dispute
16 that the trustee effectuated the transfer of servers.com to
17 Servers, Inc. The -- and I don't think there's any dispute
18 that the stock of servers.inc (sic) was owned fifty-fifty
19 between Servers, Inc. -- I mean or that servers.com was owned
20 fifty-fifty by Servers, Inc. and Mike Emke.

21 So Ondova did not own that asset. servers.com was
22 the only stock in the company.

23 MR. URBANIK: Your Honor, may I interrupt, please,
24 just for one second? Is the Court asking Mr. Cochell for
25 evidence on standing -- the surplus of estate assets where

Opening Statement - Mr. Cochell

1 Mr. Baron can have a standing to object today, or about the
2 underlying transactions? If it's about their standing, they
3 would have to put on financial information regarding the
4 bankruptcy case.

5 THE COURT: All right, all right.

6 MR. COCHELL: Well, we've had no --

7 THE COURT: I -- let --

8 MR. COCHELL: We've had no --

9 THE COURT: Let me --

10 MR. COCHELL: -- notice --

11 THE COURT: Let me back up.

12 MR. COCHELL: -- of a standing argument --

13 THE COURT: Let --

14 MR. COCHELL: -- Your Honor.

15 THE COURT: Let me back up. We are going forward
16 today. I -- despite my limitation on five minutes, I've
17 broken my own rule. "What evidence are you going to have
18 today" was the question, and I don't want to hear oral
19 argument at this time; we'll have closing arguments
20 ultimately. But your evidence is this settlement agreement
21 from July 10th, 2009 and what else?

22 MR. COCHELL: Okay. And our -- as set out in our
23 objections, that the Court entered an order appointing a
24 receivership over Servers, Inc. and that the settlement
25 agreement provided that ownership would revert to Baron/Emke

1 to be owned jointly and severally if a receivership was
2 imposed.

3 Now, Servers, Inc. never went into bankruptcy, so the
4 argument about the ipso facto clause is off.

5 THE COURT: Okay, are you saying that the moment this
6 Court appointed Daniel Sherman as the receiver over Servers,
7 Inc., that fifty percent of the domain name reverted to
8 Mr. Baron?

9 MR. COCHELL: No, it happened -- yes, I am.

10 THE COURT: All right. Well, there are legal
11 questions and factual questions. That would have been a post-
12 petition transfer -- correct -- of an interest in the Ondova
13 estate? So I'm kind of curious how 549 of the Bankruptcy Code
14 would be applied here. Assuming that is not an issue or a
15 problem, this agreement itself was entered into just days
16 before Ondova filed bankruptcy. So if Ondova had a property
17 interest in the name, if it on the eve of bankruptcy entered
18 into an agreement that resulted in Baron having a reversionary
19 interest, you've got maybe fraudulent-transfer issues.

20 I guess I'd be curious to have evidence why this
21 section 4 was agreed to if historically -- the name had been
22 owned where?

23 MR. COCHELL: Yes, Your Honor.

24 THE COURT: Or -- I say "owned". We of course know
25 what I really mean. The registrant had been whom?

Opening Statement - Mr. Cochell

1 MR. COCHELL: I think those are appropriate
2 questions, but I believe it has to be the subject of an
3 adversary action, because we're talking about --

4 THE COURT: Well --

5 MR. COCHELL: -- ownership.

6 THE COURT: -- we've already had an adversary;
7 unfortunately, your client wasn't a party. And --

8 MR. COCHELL: Well --

9 THE COURT: -- I don't --

10 MR. COCHELL: -- not because --

11 THE COURT: -- know why he didn't intervene.

12 But, all right, well, we're going to have to hear
13 evidence --

14 MR. COCHELL: I'm sorry?

15 THE COURT: -- for me to -- we're going to have to
16 hear evidence today for me to be convinced that there is a
17 problem with going forward in the manner that has been
18 suggested, at least trying to sell the darn thing, get the
19 most possible; and then we can have ownership issues decided
20 another day.

21 MR. COCHELL: Your Honor, the ownership issues can't
22 be decided another day, under Rule 7001 of the Bankruptcy
23 Code. If there's an interest in property that has to be
24 determined, an adversary action has to be filed in due
25 process, giving Mr. Baron --

Opening Statement - Mr. Cochell

1 THE COURT: All right --

2 MR. COCHELL: -- some opportunity --

3 THE COURT: -- I don't know if you were listening. I
4 had a hearing already today where, relying on 363(h) of the
5 Bankruptcy Code, I allowed both a debtor's interest in
6 property as well as a nondebtor co-interest in property, to be
7 sold. There is a mechanism in the Bankruptcy Code --
8 363(h) -- that allows both debtor property and a co-interest
9 owner's property to be sold. Okay? So again, I go back to
10 Mr. McCullough's idea.

11 MR. COCHELL: But --

12 THE COURT: I mean, it makes eminent sense. And even
13 if your client is a hundred percent right on the money --

14 MR. COCHELL: But --

15 THE COURT: -- it appears there's 363(h) authority --

16 MR. COCHELL: But there's also --

17 THE COURT: -- to go forward today.

18 MR. COCHELL: -- a real basic corporate doctrine
19 that, just because a company owns stock in another company --
20 let's say you own stock in GM and you want to sell some of
21 GM's assets; you can't as a stockholder go into GM and start
22 selling off their assets regardless, without a hearing and due
23 process on whether you're entitled to that asset. And they're
24 talking about being a shareholder, fifty percent, in Servers,
25 Inc. and therefore they can sell all the assets of Servers,

Opening Statement - Mr. Cochell

1 Inc. They're not in bankruptcy.

2 THE COURT: All right. We're going to go forward.
3 Again, I'm going to consider the evidence as to the merits of
4 the sale procedures proposed, and I'm going to consider the
5 evidence as to ownership. All right? I'm acknowledging that
6 your client was not a party in the Emke adversary proceeding.

7 So now is your time to put on whatever evidence you
8 think I need to see that might convince me both (a) that your
9 client either owns or co-owns the domain name and (b) why I
10 ought not to allow a sale process to go forward in light of
11 that. Okay?

12 MR. COCHELL: Your Honor, just one more point. Now,
13 the reality here is that we're -- we -- I'll respectfully
14 submit to Your Honor that we're taking the cart before the
15 horse and that Mr. Baron has been precluded from protecting
16 his interests, such as being placed in receivership --

17 THE COURT: I'm --

18 MR. COCHELL: -- a receivership --

19 THE COURT: -- letting him put on --

20 MR. COCHELL: -- that was reversed.

21 THE COURT: -- whatever darn evidence he wants
22 today --

23 MR. COCHELL: Well --

24 THE COURT: -- regarding --

25 MR. COCHELL: -- we --

Opening Statement - Mr. Cochell

1 THE COURT: -- this sale.

2 MR. COCHELL: -- we cannot agree to a process where
3 the Court is going to hear evidence on selling his property --

4 THE COURT: Again --

5 MR. COCHELL: -- in a sale procedure --

6 THE COURT: -- I want the evidence that it's his --

7 MR. COCHELL: -- when his ownership interests have
8 not first been determined.

9 THE COURT: Today --

10 MR. COCHELL: We have not had --

11 THE COURT: -- have at it: Put on your evidence
12 about ownership.

13 MR. COCHELL: That denies us due process under the --

14 THE COURT: Why does it deny --

15 MR. COCHELL: -- Bankruptcy Code. We have not --

16 THE COURT: -- due process?

17 MR. COCHELL: -- had discovery, Your Honor, of a
18 number of things, such as -- they're saying we don't have
19 standing, we have to produce evidence that we have standing to
20 be here. We haven't had -- we just heard that argument this
21 morning.

22 THE COURT: Okay, I don't think it's going to come to
23 that. I am willing to go down the trail of there may be
24 scenarios where Ondova's estate is solvent and Baron's estate
25 is solvent, though he personally has a judiciable interest

1 here, okay, standing, constitutional standing. But what I
2 most want to hear today is evidence that you think supports
3 that your client owns this, that despite what we have thought
4 for years that the Ondova estate had the interest in the name,
5 primarily because there was a July 10th, 2009 agreement that
6 was between Ondova and Emke --

7 MR. COCHELL: And that's exactly --

8 THE COURT: -- and there was --

9 MR. COCHELL: But that's exact --

10 THE COURT: -- years of litigation that involved
11 Ondova and Emke, despite that, your client says he owns it. I
12 want to hear the story.

13 MR. COCHELL: But --

14 THE COURT: That's what --

15 MR. COCHELL: But despite that --

16 THE COURT: -- today is going to be.

17 MR. COCHELL: But you're also saying we have to prove
18 ownership when that's exactly the issue on appeal before the
19 district court in the Fifth Circuit. I mean, we've got a
20 Fifth Circuit appeal on this issue, Your Honor.

21 THE COURT: There's no stay pending appeal, all
22 right?

23 Mr. Urbanik, your first witness, please?

24 By the way, was this on the schedules, the individual
25 domain name of Ondova?

1 MR. URBANIK: You know, Judge, I believe it was. I
2 mean, those were Mr. Keiffer's schedules that we inherited; I
3 don't have them with me. I believe so, but we could --

4 THE COURT: Well, why don't you --

5 MR. COCHELL: I can't hear Mr. Urbanik. I'm sorry.

6 THE COURT: I asked was the domain name servers.com
7 specifically listed on Ondova's schedule, and he doesn't
8 remember.

9 But, Laura, I guess you can look it up. I don't know
10 if we had original schedules, amended schedules, or what.

11 But she'll be looking while we hear the evidence.

12 All right.

13 MR. URBANIK: Okay, thank you, Judge. Your Honor,
14 the first evidence that Mr. Trust -- that Daniel Sherman would
15 call is Mr. Sherman. I'd like to offer the proffer of
16 Mr. Sherman, and he's in the courtroom in case there's a need
17 for any cross-examination.

18 THE COURT: All right, well, let me ask --

19 Mr. Cochell, do you have any objection to the Court
20 taking the direct testimony of Mr. Sherman by proffer as long
21 as you were able to cross-examine him, or would you like him
22 to testify live instead?

23 (Mr. Cochell confers with client)

24 THE COURT: It was a simple question.

25 MR. COCHELL: Your Honor, one moment.

Colloquy

1 (Mr. Cochell confers with client)

2 MR. COCHELL: Your Honor, we're not sure that we
3 really can participate in this, Your Honor. We don't have any
4 discovery. I mean, we're willing to sit here and listen to
5 Mr. Sherman's proffer, but we don't have any discovery of the
6 corporate documents on ownership. We didn't anticipate that
7 we were going to be litigating ownership in the context of a
8 sale procedure.

9 THE COURT: You raised the issue.

10 MR. COCHELL: I'm sorry?

11 THE COURT: You raised the issue.

12 MR. COCHELL: I raised an objection to sale without
13 first determining ownership and without --

14 THE COURT: All right --

15 MR. COCHELL: -- getting the appeals resolved.

16 THE COURT: You raised the issue. You said you
17 didn't have any notice that ownership was going to be the
18 subject of the hearing. You raised the issue.

19 MR. COCHELL: Let me modify that statement. I raised
20 the issue that ownership was not properly being assumed by the
21 trustee, because the ownership issues haven't been resolved as
22 to Mr. Baron. And ownership is not something that you address
23 in the context of a sale procedure, without first going
24 through an adversary procedure. That's the context of my
25 remark. I'm sorry, Your Honor, if I was imprecise.

1 THE COURT: All right, so your answer to my question
2 is what? That's not an answer to my question.

3 MR. COCHELL: We don't have documents from Emke, from
4 the company, to --

5 THE COURT: Mr. --

6 MR. COCHELL: -- to look hard at --

7 THE COURT: Okay --

8 MR. COCHELL: -- ownership.

9 THE COURT: -- this is not a response to my question.

10 Mr. Sherman, would you come up here to be sworn in
11 and take the witness stand? We'll just do your examination
12 the old-fashioned way. Ms. Medders (ph.) will swear you in.

13 (Witness sworn)

14 MR. URBANIK: Your Honor, for the record, just, I
15 want to correct a few things, I think, before we go into
16 Mr. Sherman's testimony. Judge Sam Lindsay denied a motion to
17 stay the involuntary, on December 6. He misspoke. That was
18 deceptive.

19 THE COURT: December 6th?

20 MR. URBANIK: August 6th. I'm sorry. The first
21 exhibit of the motion to strike is Judge Lindsay's denial of
22 their motion to stay your bankruptcy case; Mr. Baron. So what
23 Mr. Cochell said up here about something in front of Judge
24 O'Connor was completely false.

25 Number two, this motion was filed on August 14, 2013.

1 No one contacted me. I never heard from Mr. Cochell about
2 this motion. He sets August 14th to call me, conduct
3 discovery, look into this.

4 Number three, they didn't file an objection to the
5 motion to sell this domain name in 2011; they didn't file an
6 objection to the employ of the broker Sedo in 2011. They've
7 had two years to assert a claim against Ondova or look into
8 these issues. For them to come in here and say "Surprise" is
9 outrageous. This is just like the beginning of the
10 receivership when Baron says, 'Oh, I don't have a lawyer. I
11 can't protect my rights,' and then they come in and disrupt
12 things, seeking to be vexatious and to cause increased
13 expense.

14 So the statement about no stay is a lie. The
15 statement about no information is wrong, because they've had
16 since August 14th. They didn't object in 2011 to the sale of
17 the name then or the employment of the broker. They never
18 asserted a claim. These people are in here as terrorists just
19 trying to disrupt everything.

20 THE COURT: Okay, let me --

21 MR. URBANIK: I just had to get that --

22 THE COURT: -- let me --

23 MR. URBANIK: -- off my chest --

24 THE COURT: -- let me --

25 MR. URBANIK: -- at the beginning.

Colloquy

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THE COURT: Okay, understood.

So a motion for stay pending appeal with regard to the order for relief has already been denied by the --

MR. URBANIK: That's right. It's the --

THE COURT: -- district court.

MR. URBANIK: I could walk it up to the Court.

THE COURT: That's --

MR. COCHELL: It's not in the motion to strike, Your Honor.

MR. URBANIK: It's my first exhibit to the motion to strike.

MR. COCHELL: No, it's not.

THE COURT: Well, I'll check my own copy that --

MR. COCHELL: Understood, Your Honor.

THE COURT: -- printed out from the bankruptcy court docket.

Exhibit A?

MR. COCHELL: This is on an interlocutory appeal. That's -- this --

MR. URBANIK: That was --

MR. COCHELL: We have now --

THE COURT: Okay --

MR. COCHELL: We have a motion for stay --

THE COURT: Okay --

MR. COCHELL: -- pending the final order.

Colloquy

1 THE COURT: All right, well --

2 MR. COCHELL: So if you start talking about
3 misrepresentation, start looking at --

4 THE COURT: All right.

5 MR. COCHELL: -- at things.

6 THE COURT: Okay. I'm tired of he-said-she-said.
7 The point is there's no stay pending appeal. What I wanted to
8 ask you about is this: You said that Mr. Baron never objected
9 to the motion to sell servers.com through Sedo back in 2011.

10 MR. URBANIK: That's correct. I brought the docket
11 sheets and I can show the Court. They objected --

12 THE COURT: Did --

13 MR. URBANIK: -- to petfinders --

14 THE COURT: Did --

15 MR. URBANIK: -- but not to servers.

16 THE COURT: Okay. What about Novo Point and Quantec?

17 MR. URBANIK: No, Jeffrey Baron did not object to the
18 sale of Servers or the employment of Sedo, but he -- and he
19 did intervene in the Emke adversary, but he did file an appeal
20 of the order approving the sale of the domain name. When we
21 go into Mr. Sherman's proffer, we'll go into all the dates and
22 docket numbers.

23 But they didn't come in and object to the sale in
24 2011 or the employment of Sedo. It's two separate motions and
25 two orders. They did not object.

Daniel J. Sherman - Direct

39

1 THE COURT: Okay, I heard that, but did they appeal?

2 MR. URBANIK: Yes, they did. Mr. Baron did, using
3 Mr. Gary Schepps. Without filing an objection in court and
4 without presenting an argument, they still filed an appeal of
5 your orders -- one of your orders, on the sale of servers.com.
6 That's the one that's sitting at the Fifth Circuit that's
7 awaiting briefing.

8 Judge --

9 THE COURT: Well, sitting there at the Fifth Circuit
10 but moot, because you're not --

11 MR. URBANIK: I'm not pursuing that order.

12 THE COURT: -- you're not pursuing that anymore.

13 MR. URBANIK: It's an abandoned motion.

14 THE COURT: All right, let's hear the testimony of
15 Mr. Sherman.

16 MR. URBANIK: Okay. Thank you, Judge.

17 DIRECT EXAMINATION

18 BY MR. URBANIK:

19 Q. Can you please state your name, for the record?

20 A. Daniel J. Sherman.

21 Q. And, Mr. Sherman, what's your connection to this case?

22 A. I'm the Chapter 11 trustee of Ondova.

23 Q. What was Ondova's connection to the Internet domain name
24 servers.com on the date you were appointed?

25 A. Ondova owned -- basically had an undivided one-half

1 interest in the name.

2 Q. And who owned the other half interest in the domain name?

3 A. Mike Emke.

4 Q. And where does Mr. Emke reside?

5 A. California.

6 Q. After Ondova started, obviously there's a lot of things
7 going on, but were there some preliminary discussions with
8 Emke about some -- doing something with the domain name?

9 A. Yes. We were basically told that it was a valuable name
10 and that he was -- the agree -- we'd seen the agreement that
11 had been executed prior to the bankruptcy, in which Emke was
12 then charged with, you know, developing a Web site that --
13 basically developing the name.

14 And we had discussions with him about going forward or
15 selling it. It was -- it all -- it essentially went nowhere.
16 After a year or so, we realized that he had no money. He
17 wanted the estate to give him money to develop a Web site, and
18 we explained that we didn't have that ability.

19 Q. Let me back up. So when you became trustee, you became
20 aware of a pre-bankruptcy -- a pre-Ondova bankruptcy
21 settlement between Ondova and Emke?

22 A. Yes.

23 Q. And did that settlement result from litigation or
24 something?

25 A. Yes. It was -- my recollection is Emke actually, I

1 think, owned the name, but then failed to renew it timely.
2 And after the thirty days, I guess -- I think it's thirty
3 days -- whatever the time period is after a name hasn't been
4 renewed, it sort of falls into the -- into a pile; and Jeff
5 Baron snapped it up and -- I think, and then they -- then I
6 think Emke sued, and they went back and forth.

7 And then they eventually entered into the agreement that
8 said that the name would be placed in a corporation, a Nevada
9 corporation called Servers, Inc., and that Ondova -- by the
10 way, which I think was the -- it was the entity that snapped
11 the name up -- would own fifty percent of the shares, and Mike
12 Emke owned the other fifty percent of the shares.

13 MR. COCHELL: Objection. Hearsay, Your Honor. Move
14 to strike.

15 THE COURT: Overruled.

16 Q. Mr. Sherman, I'm going to hand you the agreement that was
17 entered into between Servers and Mike Emke.

18 A. Yes, this document that you handed me does appear to be
19 the agreement that was presented to me when I was trustee and
20 from --

21 MR. COCHELL: Objection. Hearsay.

22 THE COURT: Overruled.

23 A. -- from which we ultimately ended up filing the
24 adversary, and this was an exhibit in the adversary.

25 MR. URBANIK: Your Honor, may I approach?

1 THE COURT: You may.

2 MR. URBANIK: Probably does -- I'm just handing one
3 copy now, but --

4 THE COURT: Okay.

5 MR. URBANIK: Your Honor, I'd like to ask for that
6 exhibit to be introduced as Trustee's number 1.

7 MR. COCHELL: I haven't seen the document, Your
8 Honor. I don't have a copy of it with me.

9 THE COURT: It's attached to your objection to the
10 sale.

11 MR. URBANIK: Exhibit D to your --

12 MR. COCHELL: Okay, is it D?

13 MR. URBANIK: -- motion to strike. Yeah.

14 MR. COCHELL: Okay. Thank you.

15 THE COURT: Okay. Exhibit will be admitted. What
16 did we call it?

17 MR. URBANIK: Trustee's 1.

18 THE COURT: T-1 will be admitted.

19 (July 6, 2009 settlement agreement was hereby received into
20 evidence as Trustee's Exhibit T-1, as of this date.)

21 BY MR. URBANIK:

22 Q. And the date on that, Mr. Sherman?

23 A. The date on the cover sheet is July 6, 2009, and the
24 signature of Mike Emke and Jeff Baron as president of Ondova
25 is -- appears to be July 6, 2009.

1 Q. And Ondova's bankruptcy was just a few weeks later, on
2 July 27, 2009, is --

3 A. That's correct.

4 Q. -- that correct? Okay.

5 So after those preliminary settlement talks, did more
6 settlement efforts go into trying to resolve things with
7 Mr. Emke?

8 A. Yes, but they went nowhere.

9 Q. And after that -- is part of that settlement effort --
10 wasn't there even a proposal just selling it and splitting it
11 fifty-fifty --

12 A. Yes.

13 Q. -- addressed?

14 A. Yes.

15 Q. Okay. Did you file -- because you weren't able to
16 resolve things, was an adversary proceeding filed in March
17 2011?

18 A. Yes. In this court.

19 Q. And was that adversary number 11-03181?

20 A. I think so. I don't really know what the adversary
21 number was.

22 Q. All right. What was the outcome of that adversary
23 proceeding? I know it's been a few years but, as best as you
24 can recall, what was the outcome of the adversary --

25 A. Well, basically, the judge --

1 MR. COCHELL: Objection. Hearsay.

2 THE COURT: Overruled.

3 A. I -- the -- I believe this Court found that Ondova did
4 have an undivided one-half interest in the name and that the
5 name needed to be sold. And I think that, because Emke --
6 Emke's conduct was so unreasonable, that the Court also
7 assessed the attorney's fees that the estate incurred in
8 attempting to enforce the agreement. The Court ordered the
9 sale of the name, appointed me as the receiver to wind up the
10 affairs, which we did, in the Nevada corporation, and then had
11 the authority to try to sell the name, which we did for -- but
12 again, Sedo didn't come up with an offer that we thought was
13 worth pursuing.

14 Q. And, Mr. Sherman, you were present for the trial of the
15 adversary -- the whole adversary proceeding --

16 A. Yes.

17 Q. -- were you not?

18 A. Yes, I was.

19 Q. And, Mr. Sherman, that document we've introduced as
20 Trustee's 1, that was part of Ondova's records and therefore a
21 document you had --

22 A. Yes.

23 Q. -- seen and reviewed and worked with when she became the
24 trustee?

25 A. Right.

1 Q. You're not seeing it for the first time today?

2 A. No. No.

3 MR. URBANIK: Your Honor, I would like to refer to --
4 the Court to docket 130 in the adversary, which were the
5 findings of fact, conclusions of law, and order, and would
6 like the Court to take judicial notice of the Court's ruling;
7 that's in adversary number 11-03181. I'd like the Court to
8 take judicial notice of the order approving motion to approve
9 award of trustee's professional fees, which is docket number
10 153 in that adversary proceeding.

11 THE COURT: Okay, Court will do so.

12 MR. COCHELL: Just for the record, what was 153?

13 MR. URBANIK: 153 is the Court's order approving the
14 attorney's fees, and the prior number was -- the findings of
15 fact and conclusions, docket number 130.

16 Q. And, Mr. Sherman, Judge Jernigan presided over that
17 adversary proceeding --

18 A. Yes.

19 Q. -- is that correct? Okay. And did Mr. Baron intervene?

20 A. No.

21 Q. And wasn't Martin Thomas Mr. Baron's lawyer at that time?

22 A. Yes.

23 Q. Did Mr. Thomas ever call you to discuss the adversary?

24 A. I have no recollection of him ever calling me about that
25 adversary action.

1 Q. Mr. Martin Thomas, he had ECF notice of the -- everything
2 going on in Ondova, did he not?

3 A. He seemed to, yes.

4 Q. And he called you frequently to talk about things in
5 Ondova?

6 A. He did call me occasionally; I wouldn't call it frequent.

7 Q. How often did Mr. Baron's lawyer call you, though, about
8 things in Ondova when he was counsel?

9 A. Martin didn't. I would see him generally in the
10 courtroom. We always spoke. He, basically, came to every
11 Ondova hearing, as I recall. I don't have a specific
12 recollection of him being in the courtroom during the
13 service.com adversary; he may have been; I just -- I don't
14 recall whether he was or he wasn't.

15 Q. Okay.

16 A. But he was certainly present at almost all other Ondova
17 hearings; always sat in the back row.

18 Q. Okay, Mr. Sherman, you've heard some of the presentation
19 today. You're aware there are still two appeals relating from
20 this adversary that are outstanding, is that --

21 A. Yes.

22 Q. One is for Mr. Emke?

23 A. Right.

24 Q. Do you know the status of that appeal?

25 A. I think it's at the Fifth Circuit.

1 Q. Well, let me --

2 A. Is it not?

3 Q. -- correct you. That's --

4 A. Oh, right.

5 Q. -- still at the district court.

6 A. I'm sorry. Yes. No. That's right. I don't think that

7 Judge Furgeson ever did deal with that.

8 Q. Okay. So that appeal was with Judge Lindsay?

9 A. Right. And --

10 Q. And --

11 A. -- it's fully briefed.

12 Q. No stay's ever been issued regarding anything to do with

13 Ondova related to Mike Emke's appeal?

14 A. Correct.

15 Q. What is the second appeal that --

16 MR. URBANIK: Well, let me strike that question; I'll

17 ask it a little bit later.

18 Q. Mr. Sherman, later in 2011, did you take steps -- in

19 2011, did you take steps to sell servers.com?

20 A. Yes.

21 Q. And what were those steps?

22 A. Well, we asked the Court to authorize us to employ Sedo,

23 because we thought that they would -- they seemed to be pretty

24 good at it. The Court authorized it. We placed it with them

25 and -- I don't remember; they had it four, five or six months,

1 and it -- they just never came back with an offer. I don't
2 think they ever got us an offer of 200 grand or something like
3 that. It was fairly disappointing.

4 Q. Okay. Did you also file -- serve a separate motion to
5 sell the name in order to --

6 A. Yes.

7 Q. -- to get the process to sell it?

8 A. Yes, we did do that.

9 Q. Okay. And is that the motion that Mr. Baron then filed
10 an appeal of the Court's order?

11 A. Yes.

12 Q. Okay. And what's the status of that appeal?

13 A. I can't remember, Mr. Urbanik. I mean, it's --

14 Q. Okay.

15 A. -- up there somewhere --

16 Q. Okay --

17 A. -- having nothing done --

18 Q. Was there ever a stay order entered by any --

19 A. No.

20 Q. -- appellate court?

21 A. No.

22 Q. Thank you.

23 A. It was never stayed.

24 MR. URBANIK: All right. And, Your Honor, just for
25 the Court's reference, the Mike Emke appeal is still sitting

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1 with Judge Lindsay; it's docket number 3:12cv00244. The Baron
2 appeal is with the Fifth Circuit, and I'll provide the Court
3 the number in just a minute. And, Judge, the docket numbers
4 for the sale of Servers and the motion to employ Sedo in this
5 case were 657 -- that was a Sedo motion -- and 658 was the
6 motion to sell. The Court approved the Sedo motion on October
7 17th, and the motion to sell.

8 Q. Mr. Sherman, because Sedo was not successful, did we
9 later terminate Sedo as our broker?

10 A. Yes, we did.

11 Q. Okay. After that, what steps did we take to just try to
12 sell this domain name?

13 A. Well, we continued to toss it out to different brokers in
14 different -- every now and then, people would call, and I --
15 we talked to Damon Nelson and -- about XBT; they -- and I
16 can't remember exactly where XBT came from, but I think they
17 may have been -- they may have been made aware of the name
18 because they were one of the interested parties looking at the
19 portfolio, the entire portfolio, and they had an interest in
20 that name. And they're the ones who came forward and said 300
21 grand.

22 Q. So XBT has made an offer for 300,000?

23 A. Yes.

24 Q. Have they provided you a deposit?

25 A. Yes. They wired 40,000 dollars to me.

1 Q. And have we negotiated with XBT regarding sort of a sale
2 process?

3 A. Yes.

4 Q. And they're aware, and we've discussed with them, an
5 additional marketing period and the conducting of an auction
6 if another bidder --

7 A. We told them --

8 Q. -- shows up from --

9 A. -- it would be subject to a higher and better offer, and
10 basically they said fine. They understood all that; they
11 just -- they didn't want to -- they wanted -- if we didn't get
12 a sale order within, I think, four months, they wanted their
13 money back.

14 Q. That's correct. Okay. Thank you.

15 The motion that we filed August 14th, does that motion
16 contain, you know, the sale procedures that had been proposed
17 by you and agreed to by XBT?

18 A. Yes.

19 Q. As part of the -- and by the way, does XBT have any
20 connection to you, Ondova, Mr. Baron, the receivership or
21 anyone here in Dallas?

22 A. No.

23 Q. Okay. And XBT does operate in the United States, is that
24 your understanding?

25 A. Apparently.

1 Q. Is one of their companies Webzilla, a server company?

2 A. Yes.

3 Q. Okay.

4 A. They have lawyers in New York. I remember that I asked
5 you to check them out because I didn't know who they were.

6 Q. I'm going to correct you: Boston.

7 A. Boston.

8 Q. Yes.

9 A. I thought it was New York.

10 Q. And their attorney is on the phone today.

11 A. Oh, good.

12 Q. Okay. Mr. Sherman, the procedures we're essentially
13 asking the Court to approve today, I'm going to go through
14 them because they're really not -- no one's complained about
15 the procedures as of yet: essentially a thirty-day period to
16 market the domain name, and during that period the trustee --
17 you will place ads in publications such as, you know, Domain
18 Name Journal and other domain name publications; you're going
19 to place ads in technology and server and cloud-based business
20 Web sites and blogs; and at the end of the thirty days, if
21 someone contacts us and shows financial condition, the process
22 calls for them to become a qualified bidder. Is that your
23 understanding?

24 A. Yes.

25 Q. And if someone does appear and is a qualified bidder,

1 you'll conduct an auction?

2 A. I will --

3 Q. Okay.

4 A. -- if the Court authorizes it.

5 Q. If the Court approves this, the XBT folks, if they are
6 outbid at the auction, in that event they would receive a
7 20,000-dollar breakup fee?

8 A. Correct.

9 Q. If the auction occurs because there are qualified
10 bidders, the starting bid price for anyone else would be 330-,
11 is that your understanding?

12 A. Yes.

13 Q. Okay. Mr. Baron -- or Mr. Sherman, I have a footnote in
14 the motion, that addresses an issue that the XBT lawyers have
15 raised, and it relates to their breakup fee. And the footnote
16 essentially advises the Court that in the event that the XBT
17 parties have any extra costs or attorney's fees that are out
18 of the ordinary, caused by some conduct of Mr. Baron or any of
19 his surrogates or related entities, they may come to you about
20 an increase in their breakup fee. Are you familiar with that?

21 A. Yes.

22 Q. And if that occurs, we're going to discuss that with them
23 and, if we can't work out something, we'll come to the Court?

24 A. Absolutely.

25 Q. And do you know why they requested this possible increase

1 in breakup fee?

2 A. I --

3 MR. COCHELL: Objection. Hearsay.

4 THE COURT: Overruled.

5 A. -- think that Mr. Baron's reputation precedes him.

6 MR. COCHELL: Objection. Hearsay. Move to strike.

7 THE COURT: Overruled.

8 Q. Do you believe -- Mr. Sherman, this was the highest offer --
9 their offer of 300,000 is the highest offer you received for
10 the domain name, is that correct?

11 A. Yes, that's correct.

12 Q. And we've been trying to sell it for two years?

13 A. Yes.

14 Q. Okay. Do you believe it's a reasonable offer?

15 A. Under the circumstances, yes.

16 Q. Do you think there's any merit in waiting any longer to
17 try to sell this domain name?

18 A. I don't see it.

19 Q. Isn't there in fact sort of a little bit of a special
20 interest in the domain name now because of the increase on
21 technologies in the cloud and having companies use servers to
22 provide cloud-based services?

23 MR. COCHELL: Objection. Hearsay. Lack of
24 foundation.

25 THE COURT: Overruled.

1 MR. COCHELL: He's not an expert, Your Honor.

2 THE COURT: Overruled.

3 A. There does seem to be an increased interest; now, whether
4 it's because everybody's going to a cloud or not, I don't
5 know. I know the cloud requires lots of servers, and data
6 centers are popping up, but I really -- Mr. Cochell is right;
7 I am not an expert.

8 Q. But in role of trustee, you've spoken to Mr. Nelson, who
9 serves as our --

10 A. Oh, yes. Yes.

11 Q. -- technology advisor?

12 A. Yes.

13 MR. COCHELL: For the record, we move to strike
14 testimony about talking to Mr. Nelson, as hearsay.

15 THE COURT: Overruled.

16 Q. And, Mr. Sherman, I mean, through the sale process,
17 you're going to use genuine efforts to try to get a higher and
18 better bid, is that correct?

19 A. Absolutely.

20 Q. Okay. As part of the sale, we're going to ask -- will we
21 make -- if there's an auction process, obviously we'll come
22 back to the Court with a revised final order approving the
23 sale. And if the -- is that correct?

24 A. Yes.

25 Q. And if XBT ends up being the bidder at 300,000 or a

1 higher offer, we're going to come back and ask for protections
2 under 363(m), holding that they're a good-faith purchaser?

3 A. Right.

4 Q. Okay. Because they have no connections whatsoever to any
5 party here?

6 A. None to me.

7 Q. Okay. And we'll also ask the Court to waive the
8 fourteen-day stay period under Bankruptcy Rule 6004(h), is
9 that correct?

10 A. Yes, that's correct.

11 MR. URBANIK: Your Honor, that's my proffer -- my
12 cross-examination of Mr. Sherman --

13 THE COURT: Your direct.

14 MR. URBANIK: -- I'm sorry.

15 THE WITNESS: Ma'am --

16 THE COURT: All right --

17 THE WITNESS: -- correct.

18 THE COURT: -- thank you.

19 MR. URBANIK: My direct.

20 THE COURT: Who wishes to cross-examine Mr. Sherman?

21 MR. COCHELL: I will, Your Honor; just give me a
22 minute, please.

23 (Pause)

24 CROSS-EXAMINATION

25 BY MR. COCHELL:

1 Q. Good morning, Mr. Sherman.

2 A. Good morning, Mr. Cochell.

3 Q. You mentioned Mr. Thomas as Mr. Baron's attorney. Do you
4 remember Judge Furgeson chastising Mr. Thomas about not
5 representing Mr. Baron, in open court?

6 A. Do I remember him chastising him to his face?

7 Q. Yes. In open court. When you appeared, and I appeared
8 for the first time, before Judge Furgeson on September 27th of
9 2012, there was a hearing about me substituting in for
10 Mr. Thomas. At that time, do you recall Judge Furgeson
11 telling Mr. Thomas, "I didn't pay you 10,000 dollars a month
12 to be a potted plant," quote-unquote?

13 A. I think it was five.

14 Q. You were supposed to represent Mr. Baron vigorously
15 before Judge Jernigan?

16 THE COURT: All right, let's get to the --

17 Q. Do you remember that, sir?

18 THE COURT: -- question? Do you remember?

19 A. I think it was 5,000 dollars a month.

20 Q. Five thousand dollars a month. Whatever.

21 A. I remember him being mildly disappointed, yes.

22 Q. "Mildly disappointed". Do you recall reading the order
23 where he said that he would consider a motion to disgorge
24 Mr. Thomas's fees? It was along with the order on the
25 attorney's fees.

1 A. I --

2 Q. Do you remember that part?

3 A. I don't remember that. I'm not saying that's not true,
4 but I don't remember that.

5 Q. And so Mr. Thomas didn't -- as you understand it,
6 Mr. Thomas didn't have the right to file an objection on
7 behalf of Mr. Baron? Do you remember that?

8 A. No.

9 Q. Okay. Do you remember that Mr. Thomas wasn't supposed to
10 file oppositions to attorney's fees applications?

11 A. I don't remember that either.

12 Q. Do you recall him doing any of those things?

13 A. I remember that he did not. I don't --

14 Q. Okay.

15 A. -- recall that he was prohibited --

16 Q. I see.

17 A. -- from doing so.

18 Q. I see. Do you remember Mr. Thomas saying that he was
19 instructed either by the receiver or by Judge Jernigan that he
20 could not file any pleadings or take active positions on
21 behalf of Mr. Baron? Do you remember him saying that in open
22 court before Mr. -- Judge Furgeson?

23 A. No.

24 Q. Okay. All right.

25 A. What I remember was that he didn't seem to have a very

1 good relationship with Mr. Baron. That's what I remember.

2 MR. COCHELL: I'm going to move to strike as
3 unresponsive, Your Honor.

4 THE COURT: Sustained.

5 MR. COCHELL: Okay.

6 Q. Now, when's the last time you had the domain name
7 servers.com appraised by an expert?

8 A. I don't know. I mean, the best way to figure out the
9 value is to offer it for sale.

10 Q. When is the last time --

11 A. I don't remember.

12 MR. COCHELL: I move to strike.

13 A. I -- okay, no, you can --

14 Q. I'd like an answer to my question, sir. When was --

15 A. I don't --

16 Q. -- the last time --

17 A. I don't recall.

18 Q. -- you had it appraised?

19 A. I don't recall. I think that when we first employed --
20 or discussed the sale of the name with Sedo, because they
21 were -- they were the -- sort of, one of the premier domain-
22 name brokers, that they thought that it was a 250,000-dollar
23 value, at least.

24 Q. And when was that?

25 A. I don't -- I don't know. Two years ago? Whenever it was

1 that we filed our application to employ them.

2 Q. And you believe there's been a change in the market, to
3 increase the interest in servers.com, is that correct?

4 A. I -- the fact that XBT offered us 300- is enough of a
5 change in the market --

6 Q. That's a --

7 A. -- for me.

8 Q. From the last offer from Sedo, that's a 200,000-dollar
9 change in the market in the last two years, right?

10 A. Sounds like it.

11 Q. Okay. So from -- as a nonexpert or as a nonappraiser,
12 that would seem to be an encouraging trend, right?

13 A. It seemed encouraging.

14 Q. Okay. And that's because of the rise of the cloud and
15 the increased use of the cloud, as far as you know?

16 A. I -- yes, I -- yes --

17 Q. Okay.

18 A. -- as far as I know.

19 Q. So did -- so -- but you haven't had the domain name
20 appraised by any expert in the sales and value of domain
21 names, to verify that or to see if others may think there's a
22 better offer out there?

23 A. No.

24 Q. Are you aware of a sale by -- sale of a domain name
25 called server.com as opposed to servers.com?

1 A. I do seem to recall having heard that server.com sold at
2 some point.

3 Q. And sold for 900,000 dollars?

4 A. I don't remember when it was or what the price was. Do
5 you know?

6 Q. Okay. So 900,000's certainly better than 300,000, you'd
7 agree with that, right?

8 A. Right. Yes, yes. I --

9 Q. Absolutely.

10 A. -- I hope we get that.

11 Q. That would settle a lot of problems, I think.

12 With respect to ownership, there's this settlement
13 agreement -- do you recall that -- with Mr. Emke?

14 A. The one that was dated July 6, 2009?

15 THE COURT: Trustee Exhibit 1.

16 MR. COCHELL: I'm sorry?

17 THE COURT: Are you talking about Trustee Exhibit 1?

18 MR. COCHELL: Yes, Your Honor.

19 A. Yes, I am familiar with that.

20 Q. Okay, I'd like to -- do you have it in front of you, sir?

21 A. I do.

22 Q. Okay. Now, Servers, Inc. was never in bankruptcy,
23 correct?

24 A. Far as I know, it was not.

25 Q. Okay, and you were the receiver -- or you are the

1 receiver of Servers, Inc.?

2 A. Yes.

3 Q. Is Servers, Inc. still in receivership?

4 A. I don't know that I would call it that. I mean, the --
5 well, all's we did was go through the process of shutting the
6 corporation down according to the -- whatever the state of
7 Nevada required.

8 Q. Okay. It says here, and my copy's not so good, but
9 what -- this is Roman iv; maybe your copy's better. Do you
10 know what this says? It says, "Security lien or" --

11 A. No, no, it says, "Security interest in name".

12 Q. Okay. All right. Okay, and it says, "In the event of
13 insolvency, receivership and/or other default of the jointly
14 owned company, the domain name servers.com shall revert to
15 Jeff Baron and Emke to be owned jointly and severally," is
16 that correct?

17 A. That is what it says.

18 Q. Okay, and that they maintain a first lien and security
19 interest in the domain name, security to any other investor,
20 equityholder such as Ondova. Is that correct, sir?

21 A. That is what it says.

22 Q. Okay. And this was done shortly before July -- it was
23 done on July 6 but shortly before the bankruptcy in the Ondova
24 case, which I understand was July 27th?

25 A. That sounds right.

1 MR. COCHELL: Your Honor, we only have one copy, but
2 it was attached to the objections, Exhibit --

3 THE COURT: Of what?

4 MR. COCHELL: It's the order appointing receiver. If
5 I may mark it, show it to the witness, and offer it?

6 THE COURT: You may.

7 MR. COCHELL: Thank you.

8 THE COURT: What, you're wanting me to mark it?

9 MR. COCHELL: No, no, I just wanted you to see it. I
10 don't have an extra copy. I was going to show it to the
11 witness, mark it and then offer it.

12 THE COURT: Go ahead.

13 MR. COCHELL: My apologies, Your Honor.

14 Q. Do you recognize this document? This'll be --

15 MR. COCHELL: How do you want it marked, Your Honor?
16 Should I mark it as --

17 THE COURT: I'm sorry, what?

18 MR. COCHELL: -- as Debtor 1 or 2?

19 THE COURT: Go ahead.

20 MR. COCHELL: Okay.

21 THE COURT: Debtor's 1.

22 (Order appointing receiver was hereby marked for
23 identification as Debtor's Exhibit D-1, as of this date.)

24 THE COURT: We normally -- okay, please review our
25 Local Rules in the future. You were supposed to pre-mark your

1 exhibits before you come in here, so we don't waste everyone's
2 time --

3 MR. COCHELL: Yes, Your Honor.

4 THE COURT: -- and have sufficient copies for
5 everyone in the courtroom.

6 MR. COCHELL: Yes, Your Honor.

7 A. You're asking me if I recognize it?

8 Q. Yeah.

9 A. Yes, I do.

10 Q. Do you recognize that?

11 A. I do.

12 Q. That's the order appointing you receiver?

13 A. Yes.

14 MR. COCHELL: We move the admission of Debtor 1, Your
15 Honor.

16 THE COURT: All right, no objection --

17 MR. URBANIK: No objection.

18 THE COURT: -- correct?

19 All right, D-1 is admitted.

20 (Order appointing receiver was hereby received into evidence
21 as Debtor's Exhibit D-1, as of this date.)

22 Q. With respect to the circumstances surrounding the
23 agreement for servers.com, you have no personal knowledge as
24 to what the discussions were between Mr. Baron and Mr. Emke,
25 is that correct?

1 A. That would be correct.

2 Q. Okay. And anything that you have to offer about that
3 would be speculation, is that correct, sir?

4 A. About what Mike Emke and Jeff Baron were talking about?

5 Q. Yeah.

6 A. Yeah, no, that would be pure speculation.

7 Q. Okay. And with respect to --

8 MR. COCHELL: One moment.

9 Q. And your sales procedures were the result of your
10 discussions with XBT? Is that correct, sir?

11 A. Yes. I mean, they -- XBT -- that's XBT Holdings, right?

12 Q. Okay. Okay. And you did not discuss sales procedures
13 with any expert in the field, on what would be the most
14 appropriate procedures or the procedures that are best
15 calculated to reap the highest interest in servers.com?

16 A. Well, I mean, we talked with -- obviously, with Damon
17 Nelson, and we intend to publish the opportunity to buy the
18 name, in the trade journals where, you know, entities that
19 would be interested would see it, including The Wall Street
20 Journal. So we have a -- we have a pretty good offer and
21 we're going to dangle it out there; if somebody else wants it,
22 they'll have a chance to bid on it. I think that's usually
23 the best way to figure out the value.

24 Appraisers just give you an opinion. You dangle them --
25 you dangle a piece of property out there in the market, give

1 it plenty of publication, and that's what the price is.

2 That's been my experience.

3 Q. Now, Mr. Nelson -- he didn't appraise -- or he didn't run
4 any values on servers.com, is that correct?

5 A. I don't remember whether he did or he didn't.

6 Q. Okay. And so you basically just got this offer of
7 300,000 from XBT and said, 'Boy, that's great. Let's do a
8 deal with them'? Is that a fair statement or is it unfair?

9 A. That's -- I think that's a little unfair. We thought --

10 Q. Okay.

11 A. -- that that's a better offer than we got from the
12 vaunted domain broker entity Sedo. And having a legitimate
13 offer like that, it seemed like a good opportunity to put it
14 out there again in front of everybody and see if we can get
15 somebody to bump it a little bit higher.

16 Q. Well, you know, when you guys came back into court a
17 couple of years ago -- or in 2012, saying that you had to have
18 an order to sell because you wouldn't otherwise be able to
19 sell all those domain names, you remember representing that to
20 the Court that the sale had to be done quickly or -- because
21 the market was declining? Do you remember that basic argument
22 to the Court on selling all the domain names?

23 A. During the plan confirmation hearing?

24 Q. Right.

25 A. I remember that the -- that the revenues on those

1 portfolios were going down.

2 Q. Okay. And then you got -- you know, five months later,
3 six months later, you still had people wanting to purchase
4 that property, purchase the domain names, and the value hadn't
5 declined; isn't that correct?

6 A. I don't know that I can say that's true.

7 Q. Okay. So -- but you haven't talked to anybody yet about
8 whether the value of servers.com will decline, when the
9 evidence that you have is that there's increased interest and
10 that the value of servers.com has increased over the last two
11 years, isn't that right?

12 A. I'm not -- I'm trying desperately to follow what you're
13 saying.

14 Q. Okay.

15 A. Would you --

16 Q. I think it was --

17 A. -- say that again?

18 Q. -- too long a question.

19 A. Yeah.

20 Q. Okay. Let me break it down. Over the last two years,
21 the value has increased from 100,000, the last offer you got,
22 and then you get this 300,000-dollar offer, right?

23 A. Okay.

24 Q. Okay. And so what -- and there's been, in your words, an
25 increased interest in server.com because of the cloud,

1 correct?

2 A. That's what I'm told. I don't --

3 Q. Okay.

4 A. -- really know.

5 Q. All right. And --

6 A. I just know that I have a higher offer than I did.

7 Q. All right. And so what's -- sitting here today, there's
8 nothing to say that you wouldn't have another 2- or 300,000
9 dollars' increase in a year or two, in the value of that
10 asset? You don't know one way or the other, right?

11 A. Nor do you. No. No one does.

12 Q. No. But we do know -- in the last few years, and
13 particularly when everybody was talking about declining
14 revenues of domain names at the last sale hearing, we now know
15 that at least as far as servers.com, the value has been
16 increasing. And so the asset might be sold in a year or six
17 months for a lot more money, if you make a more concerted
18 effort to market it, right?

19 A. A more concerted effort to market it?

20 Q. Well, has there been any -- do you know if there's been
21 any effort to develop that domain name?

22 A. What do you mean by "develop" it?

23 Q. By working the domain name, building out the
24 infrastructure of the domain name.

25 A. I don't know what that means. You're going to have to

1 describe that to me.

2 Q. Okay, do you know if -- what advertising has been placed
3 on that server.com -- servers.com to increase the hits?

4 A. I haven't done that, no. I'm -- as a Chapter 11 trustee,
5 I don't develop Web sites.

6 Q. But do you know if there's been any development? That's
7 my question, sir.

8 A. I know that there's never been any development of it in a
9 number of years that Mike Emke had it and Jeff Baron had it.

10 MR. COCHELL: We move to strike, Your Honor.

11 THE COURT: Overruled.

12 MR. COCHELL: Okay.

13 THE COURT: We're stopping at 12:34, a lunch break.

14 MR. COCHELL: Yeah.

15 THE COURT: Can you be finished by then?

16 MR. COCHELL: I don't know, Your Honor.

17 THE COURT: Well, I tell you what: I'm giving you
18 fifteen more minutes to finish.

19 MR. COCHELL: Yes, Your Honor. I appreciate that.

20 Q. And what specifically did you look at to determine
21 whether Jeff Baron was develop -- not developing or developing
22 servers.com? What specifically did you look at that supports
23 your opinion, sir?

24 A. The fact that he hasn't done anything. I've never seen
25 any evidence of it. If you had any evidence that he had, I'm

1 sure you'd present it to me.

2 Q. Well, let me ask you something: Do you know if Jeff
3 Baron had any control of servers.com?

4 A. Apparently he did not. He was litigating with Mike Emke
5 for years, and then he signed this agreement and he went --
6 and Ondova went into bankruptcy.

7 Q. I see. So the basis for your opinion is that the --
8 servers.com was tied up in litigation and couldn't be
9 developed; is that fair? Is that -- that's a yes or no.

10 A. Maybe it couldn't -- yeah, maybe it couldn't, but I've
11 also never -- I don't know that Jeff Baron's ever developed
12 out a Web site.

13 Q. Okay. You don't know one way or the other, right?

14 A. I have never seen any evidence that Jeff Baron developed
15 a Web site.

16 Q. Did you ever look for evidence specifically --

17 THE COURT: Okay --

18 Q. -- on servers.com?

19 THE COURT: -- I'm going to lodge my own --

20 MR. COCHELL: I'm sorry.

21 THE COURT: -- relevance objection. What relevance
22 does this have to either the bona fides of the sale procedures
23 or ownership?

24 MR. COCHELL: It goes to -- if we're talking about
25 selling this asset now, as opposed to determining ownership

1 first, I think it has a lot to do with the value of this asset
2 to Mr. Baron when he comes out of bankruptcy. And it also
3 goes to why the Court should not proceed with this sale,
4 because nobody's done anything, really, to take a look at what
5 the value of this asset is. And there are legal questions
6 about ownership here, Your Honor. So that's why I followed
7 this.

8 THE COURT: Okay. Move on. I don't --

9 MR. COCHELL: Yes, Your Honor.

10 THE COURT: -- see the relevance tie.

11 MR. COCHELL: Okay.

12 BY MR. COCHELL:

13 Q. So Ondova merely is a stockholder in Servers, Inc., is
14 that correct?

15 A. Was a stockholder --

16 Q. Okay.

17 A. -- in Servers, Inc.

18 Q. Okay. And so the receiver owns fifty percent of the
19 stock, is that correct?

20 A. Ondova owns --

21 Q. I'm sorry. -- fifty percent in servers.com?

22 A. Ondova owned fifty percent of the shares of stock in
23 Servers, Inc.; that was the settlement that Ondova reached
24 with Mike Emke after a couple years of litigation. Ondova had
25 the name; the name was --

1 Q. Right.

2 A. The name Servers, Inc. was in the name of Ondova; it was
3 not in the name of Jeff Baron.

4 Q. Okay.

5 A. The agreement that Emke and Ondova reached was to place
6 it in the name of -- was to put the name in Servers, Inc., a
7 Nevada corporation, one-half of the shares of which Ondova
8 owned.

9 Q. What facts do you have to support your conclusion that
10 Mr. Baron didn't have fifty-percent ownership of
11 servers.com --

12 A. I -- my --

13 Q. -- or never had?

14 A. My recollection is that that -- those were the
15 discussions that we had with Emke's counsel in -- when we
16 first filed the adversary.

17 MR. COCHELL: We move to strike for hearsay, Your
18 Honor.

19 THE COURT: Overruled.

20 MR. COCHELL: It's all the questions we have of this
21 witness, Your Honor.

22 THE COURT: All right. Do others have cross-
23 examination of Mr. Sherman?

24 MR. COCHELL: I'm sorry?

25 THE COURT: I'm asking does any other counsel have

1 cross-examination of Mr. Sherman.

2 I have a few questions, Mr. Sherman.

3 Who has paid the registration fees and any other
4 costs to keep the servers.com name registered --

5 THE WITNESS: Ondova.

6 THE COURT: -- during --

7 THE WITNESS: Ondova.

8 THE COURT: Ondova, okay. Has that always been the
9 case, or --

10 THE WITNESS: As far as I know, it has, yes.

11 THE COURT: Okay, so it wasn't simply after the
12 adversary proceeding? I'm looking at my findings of fact,
13 conclusions of law, dated October 18th, 2011, docket entry
14 number 130; that's where I resolved rights between Emke --

15 THE WITNESS: Right.

16 THE COURT: -- and you.

17 THE WITNESS: My recollection, Judge, is that was
18 always an asset of Ondova; it was one of the -- we thought it
19 was a million-dollar asset; it was a big deal. It was never
20 that this is a Jeff Baron name; it was an asset owned by
21 Ondova.

22 THE COURT: So then Ondova was listed as the
23 registrant --

24 THE WITNESS: That's the way --

25 THE COURT: -- of this name?

1 THE WITNESS: -- I remember it, yes.

2 THE COURT: And Ondova was also the registrar
3 until --

4 THE WITNESS: Until the -- I guess, the -- yeah, it
5 was, until it all got shifted to another registrar.

6 THE COURT: And now who's the registrar?

7 UNIDENTIFIED SPEAKER: It's GoDaddy. --

8 THE WITNESS: Yeah, GoDaddy, yeah.

9 THE COURT: Okay. When did you first become aware of
10 this name? You testified early that you had had conversations
11 for Emke a year, about what to do with the name; but when did
12 you first become aware of it?

13 THE WITNESS: I -- you know, within a couple of
14 months. Within a couple of months of my being a -- there was
15 a lot of stuff going on; there was a lot of water coming out
16 of that fire hydrant. But it -- but I became aware of it
17 early on, because we thought that it was some -- a billion-
18 dollar name; we thought it was. And that's why were so
19 disappointed when Sedo didn't come up with anything more than
20 they did.

21 THE COURT: Okay. Now, there've been some questions
22 about Mr. Thomas, but did any Baron lawyer -- Mr. Pronske
23 or --

24 THE WITNESS: Nobody.

25 THE COURT: -- Ryan Lurich -- did any Baron lawyer

1 ever ever --

2 THE WITNESS: Not in --

3 THE COURT: -- say, 'We have a dispute. Jeff Baron
4 owns that name, not Ondova'?

5 THE WITNESS: The objection that Mr. Cochell filed on
6 Saturday -- well, actually it wasn't the objection; I think he
7 filed a witness and exhibit list on Thursday or Friday or
8 something, before an objection had been filed; but it told me
9 that an objection was coming. That is the first time I have
10 any recollection of Jeff Baron asserting ownership interest in
11 the name.

12 THE COURT: All right. Well, the comment earlier
13 about the motion to employ Sedo to broker the name, back in
14 2011 --

15 THE WITNESS: Right.

16 THE COURT: -- and then the motion to sell --

17 THE WITNESS: Right.

18 THE COURT: -- servers.com --

19 THE WITNESS: Right.

20 THE COURT: -- there was a report by Mr. Urbanik that
21 Baron never objected to those motions but then he appealed
22 those two orders. In the appeal was there an argument made
23 that, 'Wait, those are not property of the Ondova estate', or
24 was it more just an objection to the merits of a sale?

25 THE WITNESS: Honestly, I don't remember what the

1 basis of the appeal was.

2 THE COURT: Okay.

3 THE WITNESS: I just don't remember.

4 THE COURT: Okay. I'll look those up. Okay. There
5 was a reference to lawsuits involving Servers.com between Emke
6 and Ondova?

7 THE WITNESS: Right.

8 THE COURT: Do you know how many lawsuits -- is it
9 correct to say there were multiple lawsuits?

10 THE WITNESS: It -- it could be, Judge; I just know
11 that they had litigated for a while, is my recollection.

12 THE COURT: All right. Am I correct that Servers,
13 Inc. was not even formed until after Ondova filed bankruptcy?

14 THE WITNESS: That sounds right.

15 THE COURT: Well, if it was, I guess it was just
16 shortly before the bankruptcy. The Trustee Exhibit 1 is dated
17 July 6th --

18 THE WITNESS: Right.

19 THE COURT: -- 2009. The bankruptcy was filed July
20 27, 2009.

21 THE WITNESS: Right.

22 THE COURT: I mean, the basis for my question is this
23 Trustee Exhibit 1 states, at paragraph 1, "Domain name
24 ownership: The domain name Servers.com shall be owned jointly
25 between Compana" -- the other name for Ondova -- "and Emke, as

1 described under the following terms. The parties shall be
2 equal owners of either an LLC, a C corp., or other acceptable
3 structure formed by Emke." I mean, it sounds like it's to be
4 formed.

5 THE WITNESS: Right.

6 THE COURT: Okay. All right. That's all of my
7 questions. If we can wrap up with Mr. Sherman in five
8 minutes, I'll do that. Otherwise, we're going to take a lunch
9 break and come back and finish this.

10 How much redirect do you have?

11 MR. URBANIK: Your Honor, I don't have any redirect.
12 I am going to call Mr. Baron.

13 THE COURT: Okay.

14 MR. URBANIK: However, I didn't plan for being here
15 this afternoon, and I've got some scheduling conflicts. I'm
16 wide open tomorrow. But I'm going to have Mr. Baron on the
17 stand a while as a cross witness in my case.

18 THE COURT: Okay, first things first. No redirect,
19 so that means no recross.

20 Mr. Sherman, you're excused from the stand.

21 MR. COCHELL: Your Honor, I'd like to recross just
22 for a few minutes.

23 THE COURT: He didn't choose to redirect, so you
24 don't get to recross.

25 MR. COCHELL: Based on your questions, Your Honor.

1 You opened up a line of inquiry that I didn't pursue.

2 THE COURT: Okay. I'll give you three minutes to
3 pursue these questions.

4 MR. COCHELL: Yes, Your Honor. Thank you.

5 THE COURT: My redir -- whatever it was, wasn't even
6 three minutes.

7 RESUMED CROSS-EXAMINATION

8 BY MR. COCHELL:

9 Q. Mr. Sherman, you weren't aware that Mr. Baron has been
10 claiming ownership of Server since 2011? You're not aware of
11 that?

12 A. I don't remember that, no.

13 Q. Okay. And on your testimony about Ondova paying for
14 registration fees, I mean, have you -- when's the last time
15 you looked to see whether Ondova was paying registration fees?

16 A. I have Mr. Nelson monitoring that.

17 Q. Okay. And what speci -- do you recall specifically
18 asking him, do we pay registration fees for --

19 A. Do --

20 Q. -- for Servers.com -- Mr. Nelson?

21 A. I don't remember if I had actually put that question to
22 him. He may have told me it was coming up and it needed to be
23 paid.

24 Q. Okay. Did you know that ICANN prohibits registrars, such
25 as Ondova, from owning domain names?

1 A. Okay.

2 Q. And so therefore, registration fees would not be paid by
3 Ondova for Servers.com.

4 A. So who's been paying it?

5 Q. And that's true, right?

6 A. I don't know.

7 MR. COCHELL: Okay. That's all we have, Your Honor.

8 THE COURT: All right. Thank you, Mr. Sherman;
9 you're excused.

10 All right. What are we going to do? You can't come
11 back this afternoon?

12 MR. URBANIK: I cannot this afternoon, Your Honor.
13 I'm sorry. Tomorrow morning -- tomorrow is wide open. I'm
14 going to call Mr. Baron. I'm going to call Mr. Nelson.

15 MR. COCHELL: Your Honor --

16 MR. URBANIK: And it's going to take several hours,
17 Your Honor. I'm sorry, I just didn't -- we did not believe
18 they had standing, it would be -- we'd be here for so long
19 this morning.

20 THE COURT: You have another court hearing this
21 afternoon, or what is your conflict?

22 MR. URBANIK: I have three client meetings, Judge,
23 and one I rescheduled with --

24 THE COURT: Okay.

25 MR. URBANIK: -- clients.

Colloquy

1 THE COURT: You know what, you need to figure out if
2 you can reschedule client meetings; that's not the same as
3 court hearings. Do you have -- if I were to do this tomorrow
4 instead of today, do you have an issue?

5 MR. URBANIK: Well, I could do it the next day, Your
6 Honor. I have an escrow --

7 THE COURT: Well, you know what? I have court
8 hearings all Thursday.

9 MR. URBANIK: Yes, Your Honor.

10 THE COURT: Your choices are coming back this
11 afternoon or coming back tomorrow. Which works?

12 MR. URBANIK: Afternoon's fine.

13 THE COURT: All right. If you don't have court
14 hearings, Mr. Urbanik, court is more important than client
15 meetings.

16 MR. URBANIK: I understand.

17 THE COURT: So we'll come back -- it's 12:35. We'll
18 come back at 2 o'clock --

19 MR. URBANIK: 2 o'clock.

20 THE COURT: -- to finish the day.

21 MR. URBANIK: All right. Thank you, Your Honor.

22 THE CLERK: All rise.

23 (Recess from 12:35 p.m. until 2:02 p.m.)

24 THE COURT: Good afternoon. Please be seated. All
25 right. We're going back on the record in the Ondova matter.

Colloquy

1 We seem to be missing Mr. Baron and his counsel, anyone have
2 any clues about that?

3 MR. URBANIK: I did not see them downstairs or in
4 this lobby. Has anybody else seen them?

5 THE COURT: It's five after 2. All right. Well, it
6 seems like I had a discussion with Mr. Cochell at a prior
7 hearing, not too long ago, about being late. All right.
8 Well, we're going to take a five-minute break, and Laura,
9 maybe you can go and other people can go look in the
10 hallway --

11 MR. URBANIK: Sure.

12 THE COURT: -- to see if they can find him. Thank
13 you.

14 THE CLERK: All rise.

15 (Recess from 2:02 p.m. until 2:09 p.m.)

16 THE COURT: For the record, it is ten after 2 and we
17 are still waiting on Mr. Baron and his counsel in the Ondova
18 case. Do we have someone on the phone still?

19 MR. SHAYEFAR: Yes, Your Honor. This is Matthew
20 Shayefar.

21 THE COURT: Okay. We are waiting on Mr. Baron and
22 his lawyer to come into the courtroom. We understand they are
23 in the building.

24 MR. SHAYEFAR: I will continue to hold. Thank you.

25 THE COURT: Mr. Baron, do you know, is Mr. Cochell on

1 his way?

2 MR. BARON: He is in the restroom. He should be here
3 any moment.

4 THE COURT: All right, Mr. Cochell. We have been
5 waiting on you and Mr. Baron. What is your explanation for
6 being eleven minutes late?

7 MR. COCHELL: Your Honor, we had to walk back from
8 the lunch. We were -- we walked about five or six blocks, and
9 I just started feeling very badly. I had to just go back out
10 and go to the bathroom. So I wasn't feeling well. That's for
11 the last two or three minutes. I think we were about six
12 minutes late, so I apologize. We just -- it took a while to
13 walk back.

14 THE COURT: All right. Well, you did this to me in a
15 previous hearing not too long ago as well; you kept us all
16 waiting. And I think I admonished you then.

17 MR. COCHELL: I don't recall that, Your Honor, but --

18 THE COURT: Okay. Well, I do.

19 MR. COCHELL: Okay.

20 THE COURT: And if it happens again, you're going to
21 get a monetary sanction.

22 MR. COCHELL: Yes, Your Honor.

23 THE COURT: Okay? All right. We're now ready to
24 resume. Let me talk about some time limitations for this
25 afternoon. We've finished with Mr. Sherman's testimony. I

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1 understand that maybe the trustee is going to call Mr. Baron
2 and Damon Nelson. Let me just be clear for everyone, I have
3 entertained evidence today, and I told you the issues today
4 would both be the merits of the sale procedure motion.

5 MR. COCHELL: I'm sorry; I couldn't hear you.

6 THE COURT: Mr. Cochell, we have a hearing headset.
7 Do you need -- are you hearing impaired; do you need the
8 headset to --

9 MR. COCHELL: I guess I've been losing my hearing,
10 but I'm really having trouble today. I'll be happy to wear
11 one, if you have one.

12 THE COURT: Well, you don't have to, but I'm offering
13 it to you. We have a headset that we give to hearing impaired
14 lawyers, parties, that sometimes help amplify the sound.

15 MR. COCHELL: Yeah.

16 THE COURT: I just --

17 MR. COCHELL: Actually, that would be good --

18 THE COURT: Okay.

19 MR. COCHELL: -- because I am having trouble --

20 THE COURT: Okay.

21 MR. COCHELL: -- to be honest. I just haven't been
22 able to hear.

23 THE COURT: Okay.

24 MR. COCHELL: You just put it on and it works?

25 THE CLERK: Put it on your ears.

Colloquy

1 MR. COCHELL: Okay. Okay.

2 THE COURT: All right. Is it working?

3 MR. COCHELL: Okay. That's great. Thank you.

4 THE COURT: Okay, very good.

5 MR. COCHELL: Thank you.

6 THE COURT: All right. Let's talk about time
7 limitations. First of all, we are going to finish this
8 afternoon. Second of all, I am thinking about putting time
9 limitations on our remaining witnesses, which I understand are
10 going to be Mr. Baron and Damon Nelson, although I don't see
11 him in here at the moment.

12 I want to remind you of what is relevant today.
13 First and foremost, the merit of the sale motion. Is it
14 reasonable for the trustee to be proposing these sale
15 procedures, to be proposing the 300,000 dollar stalking-horse
16 bid, the notice procedures, the auction procedures, the
17 overbid protections? Is that a reasonable sale process at
18 this time? Okay. So any evidence people want to put on to
19 challenge the trustee on this.

20 But second, I have allowed evidence relevant to
21 ownership of this domain name and the trustee's right to
22 pursue a sale of the domain name. Now, to be clear, I have
23 already had litigation in an adversary proceeding between Mike
24 Emke and Ondova where I ended up giving Mr. Sherman the right
25 to sell the domain name. I have opened this up to some

1 relitigation, if you will, because Mr. Baron was not a party
2 to that adversary proceeding, although I think he certainly
3 had notice of it and an opportunity to intervene. But I'm
4 erring on the most conservative side that perhaps he has a
5 right to challenge this right to sale, even though I've
6 already given Mr. Sherman the right to sell after that Emke
7 adversary proceeding.

8 So that being the case, I'm entertaining evidence as
9 to -- competing evidence, if you will, as to ownership or
10 rights into that name. But having said that, I want to remind
11 everyone -- Mr. Cochell, I wish you would pay attention when
12 I'm talking --

13 MR. COCHELL: I am. I'm --

14 THE COURT: -- because this is mostly for your
15 benefit.

16 MR. COCHELL: Yes, Your Honor.

17 THE COURT: 363, I mentioned 363(h) earlier; really
18 363(f) is probably more germane than 363(h). It allows a
19 trustee to sell an asset that the bankruptcy estate has
20 ownership or rights in, even if those rights are subject to a
21 bona fide dispute.

22 So I want to be clear, even if Mr. Baron puts forth
23 much credible evidence that he has some sort of potential
24 interest in the name, the way I see it, 363(f) still permits
25 this Court to allow the sale of it. What I'm trying to get at

1 here is, is it beyond the pale -- is there just no chance that
2 Ondova has an interest? Is there some sort of evidence, that
3 none of us know about, that shows more than a bona fide
4 dispute here in favor of Mr. Baron -- it's just clear-cut that
5 he has the property interest? I'm giving you the benefit of
6 the doubt that maybe that evidence exists and it's never seen
7 the light of the courtroom. Okay?

8 So that's all we're going to hear evidence on. What
9 I'm hearing so far, it sounds like, Mr. Cochell, is the sole
10 argument with regard to ownership is Section 4 of the July
11 10th, 2009 settlement agreement. I'd like you to be candid;
12 is that solely what you're relying on, or is there going to be
13 more evidence than that? Because if that's solely what you're
14 relying on, I think what we've got here is, at best, a bona
15 fide dispute, where I can still authorize the sale of this
16 name under 363(f). Okay? You get what I'm saying?

17 MR. COCHELL: Yes, Your Honor. And I would agree
18 with you that there's probably a bona fide dispute. And with
19 respect to new evidence, we're hampered, in part, by the fact
20 that Mr. Baron has not had all of his documents, you know,
21 that relates back to those years. And so that would go to
22 your issue of whether there's overwhelming or such clear
23 evidence that would knock you off the judicial bench in shock
24 today. So I'm taking a bit of license here, but so it seems
25 to me that if it's understood that if we have evidence to come

1 back and challenge it, that we can do that at a later time
2 before the sale is consummated.

3 THE COURT: Well, you can't just say he hadn't had
4 access to documents and there might be documents; I need more
5 than that.

6 MR. COCHELL: Well --

7 THE COURT: This argument -- I've gone during the
8 lunch break --

9 MR. COCHELL: Yes, Your Honor.

10 THE COURT: -- and I've seen that Mr. Baron has had
11 lawyers making this argument, that he has a right to the name,
12 since at least November 4th, 2011. I'm looking at Fifth
13 Circuit briefing. Okay? And all they said back then was --
14 they talked about Section 4 of this agreement. So --

15 MR. COCHELL: Well, I would proffer to --

16 THE COURT: -- I need to know more than he hadn't had
17 access to documents and there might be documents there.

18 MR. COCHELL: I would proffer --

19 THE COURT: He knows his case better than anyone
20 else, so --

21 MR. COCHELL: I would proffer to the Court that he
22 was the original owner of Servers.com.

23 THE COURT: You know, I need evidence; I don't need a
24 lawyer standing up telling me that. I made it clear from the
25 beginning --

Colloquy

1 MR. COCHELL: Fair enough.

2 THE COURT: -- I need evidence. All right. So the
3 remaining witnesses the trustee intends to call are Mr. Baron
4 and Mr. Nelson?

5 MR. URBANIK: That's correct, Judge.

6 THE COURT: Is that it?

7 MR. URBANIK: Yes.

8 THE COURT: All right. What about on this side, so
9 we can decide time limitations?

10 MR. COCHELL: It's maybe Mr. Baron.

11 THE COURT: All right. Well, we're going to limit
12 Mr. Baron; I'm thinking one hour each. Anybody think that's
13 unfair?

14 MR. COCHELL: No.

15 THE COURT: Okay. So two hours in the aggregate, one
16 hour each. And then Mr. Nelson, I'm thinking a total of one
17 hour, thirty minutes, thirty minutes. Anyone think that's --

18 MR. URBANIK: At the most. At the most, Judge.

19 THE COURT: Does that sound reasonable or
20 unreasonable? Okay.

21 MR. COCHELL: It sounds fine, Your Honor.

22 THE COURT: So an hour in the aggregate. So we'll
23 go, at most, three more hours.

24 All right. Mr. Urbanik, are you ready to call Mr.
25 Baron?

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1 MR. URBANIK: Yes, Your Honor.

2 THE COURT: All right. Mr. Baron, you have been
3 called to the witness stand, please.

4 (Witness sworn)

5 DIRECT EXAMINATION

6 BY MR. URBANIK:

7 Q. Mr. Baron, could you please state your full name for the
8 record?

9 A. It's Jeff Baron.

10 Q. Mr. Baron, prior to the appointment of Daniel Sherman as
11 Chapter 11 Trustee of Ondova, what was your position at
12 Ondova?

13 A. President, I believe; I believe that was the title.

14 Q. How long were you president?

15 A. I'd say, nine years, ten years, I guess, something
16 like -- I can't recall precisely.

17 Q. Okay. Nine or ten years?

18 A. That would be my best guess.

19 Q. Thank you. Mr. Baron, I'm going to zoom right in on the
20 issue raised in Mr. Cochell's pleading filed September 7th.
21 It says that you make a claim to the domain name -- and I'm
22 going to paraphrase -- because there's a security interest in
23 Servers.com reverting ownership to Baron and Emke in the event
24 that Servers, Inc. is placed under receivership. And then in
25 your response, you quote Section 4 of that agreement. Can you

1 explain what was the reason for dropping this provision in the
2 settlement agreement with Mike Emke?

3 A. You're talking about number 4, right?

4 Q. Yes, sir.

5 A. This has been many years ago, so I'm just going to give
6 you my best recollection. It's -- I -- I was a party to --
7 from my best recollection, again, I was a party to the
8 lawsuits, at least one of the lawsuits with Mike Emke, and I
9 had, you know, interests in -- in the domain name. So this
10 was just a way to, I guess, preserve my -- what I had
11 personally, my claims, or whatever, in the name. I would -- I
12 would best put it that way. I'm not articulating this very
13 well, but that's my best way to describe it.

14 Q. What consideration did Ondova get to give you this
15 reversionary interest?

16 A. I'm not sure exactly what you're asking, but if -- could
17 you ask it a little bit different way --

18 Q. Sure.

19 A. -- of what consideration that?

20 Q. By having Ondova agree to this, did Ondova receive any
21 consideration? In giving you, as president, this right, what
22 was given to Ondova?

23 A. I don't know -- again, that's kind of a multi question,
24 but I don't think it was as president. I had -- I had claims,
25 certainly, against Mr. Emke. There was claims going back and

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1 forth regarding the domain name. I think I had a -- I guess
2 this was just part of -- part of the settlement that allowed
3 the -- allowed the -- allowed the case to settle. I had my
4 own -- my own interests, kind of apart from what Ondova had.

5 Q. Your own interests, okay. Let's go back. Who owns the
6 stock in Ondova?

7 A. I -- I know it's a trust. I can't recall. It's been so
8 many years, but I think, if you can refresh my memory, you
9 probably know better than I do at this point.

10 Q. Are you connected, in any way, to this trust that you're
11 saying owns Ondova?

12 A. Yes, of course.

13 Q. Are you a beneficiary of that trust?

14 A. Without seeing the documents, I don't recall. It's been
15 so long since I've looked at that, but probably; I just don't
16 recall.

17 Q. How long has Ondova been in existence?

18 A. Best I can recall, it was -- it's been thirt -- twelve,
19 thirteen years, something like that. It's been long, yeah.

20 Q. Who organized Ondova and brought it to -- created the
21 entity? Who created the entity?

22 A. I don't recall.

23 Q. It wasn't you?

24 A. I think -- again, this is just based on guessing of all
25 those years ago, I think it was -- I think there was a

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1 different -- I think there was another person who organized it
2 and created it. But I'm -- I'm not recalling, off the top of
3 my head.

4 Q. How long have you been president of Ondova?

5 A. I think I just told you; it was something like ten or
6 more years that --

7 Q. Your testimony is you did not create the Ondova Limited
8 Company; that wasn't you?

9 A. No, my testimony was -- I just said it is the same as it
10 was a minute ago when you asked me. It's that I don't recall
11 how it was created exactly; that's a long time ago. But best
12 I can recall, it was organized and created by someone else,
13 but I don't recall.

14 Q. How long have you been employed by Ondova?

15 A. As long as I was president, so the same -- it would be
16 the same period of time.

17 Q. So you did not begin employment with Ondova when it was
18 first created?

19 A. I believe it was right after it was created, best I can
20 remember. It's been many --

21 Q. Is it going --

22 A. -- many years.

23 Q. Is it twelve or thirteen years and then you've been
24 working for Ondova for twelve or thirteen years?

25 A. As best I can remember, but I can't tell you for

1 certain -- with certainty.

2 Q. Okay. So there's a trust that owns the stock, and you're
3 somehow connected to that trust?

4 A. Yes.

5 Q. Is it the Belton Trust?

6 A. Sounds familiar. I don't -- it's been a long time since
7 I've looked at this stuff, but I don't -- don't remember.

8 Q. Who created the Belton Trust?

9 A. I don't recall that.

10 Q. Did you have anything to do with the creation of the
11 Belton Trust?

12 A. I think I was, again, the beneficiary of it, so probably,
13 but I don't -- don't recall.

14 Q. So you're the beneficiary; what all does the Belton Trust
15 own?

16 A. I can't recall.

17 Q. But you do believe it owns the stock of Ondova?

18 A. Now that you're asking me about it, I don't think it is
19 the Belton Trust, so I would have to rephrase my testimony; I
20 do not think the Belton Trust owns Ondova, but I -- I really
21 can't recall precisely, but I don't think so.

22 Q. Who else would have owned it if it wasn't the Belton
23 Trust? What are some of the other entity names that might own
24 Ondova stock?

25 A. Best I can recall, it was a trust, but I don't think it

1 was called Belton Trust, and I don't remember the name that it
2 was called.

3 Q. Are you involved in a lot of trusts?

4 A. There are a lot of trusts -- I don't know if you'd say a
5 lot, but there were trusts.

6 Q. Did you have anything with the creation of these trusts?

7 A. Can you tell me which trusts, if you're --

8 Q. The Belton Trust.

9 A. That doesn't have anything to do with Ondova, I don't
10 think, from what I recall, but I don't -- I don't recall what
11 happened with that trust or how it was set up.

12 Q. Mr. Baron, I don't have the bankruptcy schedules with me
13 here today, or the statement of financial affairs, but
14 would -- if I obtained them, and I showed you the Belton Trust
15 is who you've listed as owner of the Ondova stock, would that
16 make a difference in your testimony?

17 A. I'd like to ref -- if that would help me refresh my
18 memory, but best I can remember of that, Belton Trust didn't
19 have anything to do with owning Ondova, so --

20 Q. All right. Besides you as president of Ondova, who were
21 the other officers?

22 A. I think Mr. Nelson was an officer, and I can't recall if
23 there were others that got put in place at different times.

24 Q. How long was Mr. Nelson an officer?

25 A. It wasn't very long. I just -- I can't recall, though.

1 Q. All right. Who, initially, owned the domain name
2 Servers.com?

3 A. I believe I originally was the -- the first registrant,
4 best I can recall.

5 Q. How did Mike Emke claim an interest in the domain name?

6 A. My recollection is that he -- he had registered it before
7 -- before I did -- and again, it's a long time; I'm just
8 trying to remember -- he had registered it beforehand, and
9 Network Solutions and Verisign, I think, if I recall,
10 terminated his registration. And he didn't -- you know, he
11 didn't like the fact that his registration was terminated; he
12 wanted it back.

13 Q. Although you said you were the first owner, are you now
14 saying Mike Emke was the first owner of the domain name?

15 A. Well, when I said the first owner, I -- I mean between me
16 and Ondova. I wasn't the original owner forever and ever. I
17 don't know who that would have been, when the name was first
18 registered on the Internet. That would be --

19 Q. Mike Emke owned it before you or Ondova?

20 A. Best I can -- that was his claim. I don't know if it's
21 true or not, but that's what he claimed.

22 Q. How did Ondova get the name?

23 A. Best I can recall, I -- I let Ondova -- I let Ondova
24 register it, but I -- it's been a long time; I can't recall
25 exactly.

1 Q. Did you take steps to have the Servers.com name become an
2 asset of Ondova? And if so, what were those steps?

3 A. I -- I don't recall that. I --

4 Q. But somehow Ondova ended up owning this domain name, is
5 that right?

6 A. Ondova certainly had claim to the domain name. I think
7 at that point we weren't saying that a company could own a
8 domain name, so I want just to be careful there. I think we
9 were just -- I think the position was that Ondova was a
10 registrant and not an owner of the domain name. But --

11 Q. And you testified earlier that you were involved in
12 having the name come to Ondova; is that correct?

13 A. I would have been involved in that in some way.

14 Q. Okay. Now, was litigation then -- did litigation then
15 occur between Ondova and Mr. Emke?

16 A. Yes, it did.

17 Q. What courts was that litigation in?

18 A. The best I can recall, it was in a court in Nevada,
19 several courts in Texas. I -- that's all I can remember.

20 Q. And what years did the litigation take place? During
21 what years did the litigation take place?

22 A. I don't -- don't recall. It was over many years; I just
23 don't recall what years.

24 Q. What years did Ondova become registrant of the domain
25 name?

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1 A. I don't recall that.

2 Q. Okay. In connection with the litigation with Mike Emke,
3 were law firms employed?

4 A. Yes.

5 Q. Okay. Who did Ondova hire to represent it?

6 A. I -- I can't recall. If you gave me some names, I could
7 probably refresh my memory and confirm it. I just don't
8 recall the names of the people.

9 Q. Did Ondova employ counsel to represent it in litigation?

10 A. Yes. Yes.

11 Q. Who paid the legal fees for those lawyers?

12 A. Well, for -- best I can recall, it was Ondova paid some
13 and I paid some, but I don't -- I can't recall, with
14 specificity, which was which.

15 Q. So you're saying Ondova paid some and you paid some.
16 What --

17 A. Best I can recall.

18 Q. How much in legal fees did you pay?

19 A. I don't recall at all.

20 Q. If you were to pay legal fees, would you pay them out of
21 your own personal bank account?

22 A. It's possible, sure. It's possible.

23 Q. Well, where else would they come, if it wasn't from your
24 personal bank account?

25 A. I would say it could come from various ways. We had -- I

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1 know a lot of litigation was funded through finance companies
2 that paid directly -- litigation costs directly from finance
3 companies, so it could have been them. I don't recall, but
4 litigation fees were paid from various sources, and that's why
5 I can't tell you that it was for sure out of -- which bank
6 account it would have been out of.

7 Q. What -- okay, if you were to -- if you've paid any legal
8 fees for Ondova to litigate against Mike Emke, what records
9 and documents do you have that show that you paid those legal
10 fees?

11 A. I -- as I sit here today, I can't recall.

12 Q. Do you have your own personal banking records, your
13 personal records, not Ondova's, but do you have your personal
14 banking records for a number of years?

15 A. Best I can recall, most of that was turned over to the
16 receiver in 2010. But best I can recall, most of my documents
17 are in the possession of Mr. Vogel, but --

18 Q. So you did not retain any personal banking documents when
19 Mr. Vogel was appointed?

20 A. That's not what I said. I said most of them -- best of
21 my recollection, most of the documents are with Mr. Vogel. I
22 probably have some. I know we gave some for the involuntary
23 proceeding.

24 Q. Okay. Did you keep copies?

25 A. Of the things that I gave to Mr. Vogel, I don't believe I

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1 kept copies of that, but he may have given a copy to one of
2 the counsel that I had.

3 Q. Do you, in your possession now, have any bank records
4 that show that you funded Ondova's legal fees for its
5 litigation against Mike Emke?

6 A. I can't tell you if it's in my possession or not; I just
7 don't know, at this point.

8 Q. So you're not able to provide any detail on why some
9 reversionary interest went to you? You don't have any bank
10 records. You don't have the amounts. You don't have any
11 books and records that show that you have some personal stake
12 in this domain name, do you?

13 A. Well, I -- I wasn't prepared to be answering those kind
14 of questions or being that kind of documents to this -- this
15 proceeding. So I'm sure if I had the opportunity to do
16 discovery and have some due process, I would have that,
17 because I'm fairly certain it exists, but I don't have it here
18 today. I didn't bring it here. I didn't know that I needed
19 to bring that here.

20 Q. What about the fact that the motion was filed several
21 weeks ago? Didn't you begin preparing for today's hearing
22 then?

23 A. Well, I didn't think that we were -- this was an
24 ownership hearing, so I didn't think that's what -- that's
25 what was being heard here.

1 Q. Okay. Mr. Baron, I'm going to come back to gathering
2 those records. This security interest that was given to you
3 and Mike Emke, did you take any steps to get collateral or get
4 some security interest or, I'll use the word lien, on -- you
5 know, to enforce your right that's in paragraph 4? What steps
6 did you take to perfect or get a security interest in this
7 reversionary right?

8 A. I can't tell you at this point. My lawyers -- I don't
9 know what the lawyers did to do that. I can't -- I don't
10 recall.

11 Q. Has anyone ever told you that you do have some type of
12 security interest or lien --

13 A. Yes.

14 Q. -- in the domain name?

15 A. Yes.

16 Q. Who has told you that?

17 A. Well, that's attorney-client privilege information, so I
18 don't -- I

19 Q. A lawyer told you you have a security interest in the
20 name?

21 A. Yes.

22 Q. Which lawyer?

23 A. I think that's attorney- --

24 MR. COHELL: Objection

25 A. -- client privilege information, and I mean, I'm --

1 THE COURT: Sustained.

2 Q. What -- I'm not asking about anything that you had in any
3 discussions with your lawyer, but what is your understanding
4 of when or where or how this interest became perfected?

5 A. I think "perfected" is a legal term, and if you can
6 explain that; I don't know what that means, precisely, but
7 I've heard that term before. So can you explain what you mean
8 by "perfected"?

9 Q. Like filing a mortgage or a UCC statement.

10 A. I don't know if lawyers have done that for me. I
11 don't -- I just don't. I can't tell you at this time.

12 Q. Do you have evidence with you today that such a security
13 interest was every formally recorded anywhere?

14 A. I personally didn't bring anything with me, so I -- I
15 didn't know that's what it was going to be talked about today
16 and what I had to be -- I didn't know I was going to have to
17 be showing anything about ownership or security interests or
18 anything like that, so I didn't personally bring anything.

19 Q. Going back to this grant of the security interest to you,
20 Mr. Emke (sic), did you present this settlement agreement to
21 Ondova's board of directors before it was assigned?

22 A. Best I can recall, Ondova is a limited liability company,
23 so I don't -- I don't think it has a board of directors.

24 Q. So in 2009, there was no board overseeing Ondova?

25 A. I -- I can't recall with specificity, but I think the LLC

1 had a -- I just don't recall. I'm sorry, I can't recall what
2 the -- what the operating agreement had in it.

3 Q. Other --

4 A. But I know that the rules were followed very closely for
5 whatever the operating agreement had, because I -- I recall
6 that we were very careful about following those rules.

7 Q. Besides yourself, did anyone else in Ondova approve this
8 provision in the Emke settlement agreement?

9 A. I don't recall.

10 Q. Was there anyone else at Ondova that would even need to
11 approve this provision placed on the settlement agreement?

12 A. At that time, I can't recall who, if there was another
13 officer or anybody at Ondova, so I can't recall that.

14 Q. What were the total legal fees you spent fighting Mike
15 Emke in the litigation?

16 A. I can't recall that.

17 Q. Were those lawyers paid?

18 A. I'm fairly certain, I know, that they were paid. I just
19 can't recall how much.

20 Q. And you don't recall if you paid any of those lawyer
21 fees?

22 A. I'm fairly certain that I paid some; I don't recall how
23 much.

24 Q. Okay. Mr. Baron, were you aware that Mr. Sherman and Mr.
25 Emke were involved in a litigation, in 2011, over this domain

1 name?

2 A. I was aware that they had some -- something going on. I
3 don't remember the dates, but I know that they had something
4 going on between -- I guess some kind of issue. I don't
5 remember the dates though.

6 Q. Would you say you became aware that the suit was filed
7 against Emke sometime during 2011?

8 A. I don't know that there was a suit. I know that there
9 was some kind of -- some kind of dispute, but I don't know
10 what the -- I'm sorry; I don't remember the dates and what --
11 what kind of -- I don't remember that it was a suit; I know it
12 was a dispute.

13 Q. I used a sort of imprecise term. Do you know what an
14 adversary proceeding is?

15 A. I've heard the term a bit.

16 Q. Okay. So let me use that term. Did you know that Mr.
17 Sherman had brought an adversary proceeding against Mr. Emke?

18 A. I can't recall if that's what -- what happened, or if it
19 was a -- my understanding was there was some kind of sanction
20 against Emke and the receivership that was -- that was put
21 over him. Now, I don't know that there was ever a -- like, a
22 trial and all that stuff, or an adversary trial or whatever
23 that is.

24 Q. Mr. Baron, were you aware of the motion that Mr. Sherman
25 filed in 2011 to sell the domain name?

1 A. Is that the one that's on appeal? I -- if you could
2 refresh my memory, I can try to help with that. I can't
3 recall the dates or any of that kind of stuff.

4 Q. I'm just asking generally, were you aware Mr. Sherman
5 filed a motion to sell the name?

6 A. In general, I know that he filed something regarding the
7 name that -- that we appealed. And I don't know if it was to
8 sell or if it was to distribute between -- I think it was.

9 Q. So you're aware of an appeal?

10 A. Yes, I'm aware of the appeal.

11 Q. Of an order to sell the name?

12 A. I think that's what it was, but I'm -- if you could
13 refresh my memory with the document that would be helpful,
14 but --

15 Q. Did you instruct Gary Schepps to file an appeal on the
16 Court's order?

17 A. I think that's attorney-client --

18 MR. COCHELL: Objection.

19 A. -- privileged.

20 MR. COCHELL: Objection. It's privileged, Your
21 Honor.

22 THE COURT: Overruled.

23 A. I don't believe I instructed him to do that, but I don't
24 recall, but I don't think so.

25 Q. You did not instruct Gary Schepps to appeal --

- 1 A. I don't --
- 2 Q. -- Judge Jernigan's order?
- 3 A. -- I don't recall, is the real -- the real answer.
- 4 Q. Do you know that there is an appeal pending?
- 5 A. Yes.
- 6 Q. And you don't know who brought the appeal for you?
- 7 A. I'm fairly certain that Gary Schepps brought the appeal.
- 8 Q. Did he do it at your instruction?
- 9 A. I don't recall.
- 10 Q. Did he do it on his own?
- 11 A. I don't recall if we discussed it before it was appealed.
- 12 Q. Did you file an objection to Mr. Sherman's sale motion?
- 13 A. The one that just got filed a couple days ago?
- 14 Q. No, back in 2011, did you file an objection to the sale
- 15 motion?
- 16 A. The best I can recall, and this is, again, just based on
- 17 my recollection, is that my lawyer at the time was prohibited
- 18 from filing an objection because he was told that he could not
- 19 file objections in the bankruptcy court and he was prohibited
- 20 from making any objections on my behalf. And I think, if I
- 21 recall correctly, that Peter Loh had filed some kind of
- 22 nominal objection for it. The best -- that's the best I can
- 23 recall.
- 24 Q. Who told you could not file objections in the bankruptcy
- 25 court?

1 A. That's attorney-client privileged. Okay, it's Mr. Thomas
2 told me that he could not file objections nor speak nor do
3 really anything on my behalf in the bankruptcy court. He was
4 told that -- he told me that he was instructed that he could
5 not essentially represent me in the bankruptcy court.

6 Q. And --

7 A. In any proceeding in the bankruptcy court.

8 Q. -- did you -- I mean, who advised Mr. Thomas of that,
9 Mr. Baron?

10 A. My understanding is that it was a combination of Judge
11 Jernigan, Receiver Vogel, and either you or your client,
12 Mr. Sherman. But I can't recall precisely what he -- that's
13 the best I can recall.

14 Q. Did --

15 A. I think it was a concerted agreement -- some kind of --
16 best I can tell by reading, it was some kind of concerted
17 protocol of some sort. But --

18 Q. Well, let me find out more about that. Where was this
19 protocol entered at? Was it in an order? Was it in a letter?
20 Because I've never seen it and I don't know what you're
21 talking about, so please explain what it is?

22 A. I'm not certain, but I know he talked about that, and I
23 believe I remember reading a transcript where you and
24 Mr. Thomas and the judge were discussing something about the
25 protocol. But as I sit here today, I can't recall when that

1 was. But it may have been at the hearing that you're talking
2 about on the -- for the servers.com sale. But I think you
3 were part of that discussion, if I recall right.

4 Q. Were you in the courtroom?

5 A. No, I was not in the courtroom.

6 Q. So your position is Martin Thomas could not object to the
7 sale because of some agreement between the judge and the
8 lawyers?

9 A. My understanding --

10 Q. To the motion -- the motion because of some agreement
11 between the judge and the lawyers?

12 A. My understanding is that Mr. Thomas was directed that he
13 couldn't make any kind of objections on my behalf and he
14 couldn't represent me, and that I was forbidden from making
15 objections on my own behalf, because Mr. Vogel was the
16 receiver, apparently, that held all of my rights. And the
17 position that Judge Jernigan, that your client, you and
18 Mr. Vogel took were that I had no rights whatsoever to object
19 or do anything to represent my rights in the bankruptcy court,
20 that only Mr. Vogel held my rights, and he was the only person
21 that could -- that could do anything on my behalf. So I was
22 forbidden one hundred percent from exercising my rights.

23 Q. And tell me again, where is this all documented? Do you
24 know?

25 A. Like I said, I believe there's some transcripts that have

1 some of that in it. And certainly, Mr. Thomas told me that
2 fact. And I know Mr. Vogel, on many instances, has expressed
3 his view that he held all of my rights to any kind of legal
4 proceedings. In fact, I think motions for contempt and so
5 forth were filed against Gary Schepps for purportedly trying
6 to exercise my rights when people -- I think it was either
7 your client or Mr. Vogel had said that no -- that I was not
8 allowed to present -- protect and represent my rights, and
9 only Mr. Vogel could do that.

10 Q. Do you have any evidence of any of this today with you?
11 Do you have Mr. Vogel, Mr. Thomas with you today to put any
12 evidence on that this is true at all, or just a figment of
13 your imagination?

14 A. It's certainly not a figment of my imagination. I can
15 assure you that.

16 Q. Then what evidence do you have Mr. -- what evidence do
17 you have Mr. Baron, with you today --

18 A. Oh, I don't have anything with me.

19 Q. You have no evidence with you today --

20 A. Unless my lawyer has it. But it's in the court
21 transcripts and it's in --

22 Q. In which date was that --

23 A. -- the records.

24 Q. -- in which date did that occur?

25 A. I can't tell you off the top of my head.

1 Q. You have no evidence today that you were prohibited from
2 objecting to those sale motions, do you?

3 A. It was in court transcripts that were in this court.

4 Q. Do you have the transcripts with you?

5 A. I don't have them in my pocket. My lawyer may have them.

6 Q. Do you have any evidence, yes or no?

7 A. I think what I'm telling you is evidence. But I'm -- I
8 think it is.

9 Q. No it's not. Do you have any evi --

10 THE COURT: Okay. Let's move on.

11 Q. Okay, Mr. Baron. So even though you didn't object, you
12 instructed Gary Schepps to file appeals of the judge's sale
13 order. Is that correct?

14 A. I answered that question before. I don't recall
15 specifically instructing Mr. Schepps to do that, but I believe
16 it was appealed.

17 Q. So you don't recall telling Gary Schepps to file an
18 appeal on your behalf?

19 A. That's correct.

20 Q. Does Mr. Schepps still represent you?

21 A. No, I don't believe he does.

22 Q. Okay. The agreement that we've been talked about was
23 right before the Ondova bankruptcy case, wasn't it?

24 A. It was July 9th, 2009, so it was before the bankruptcy --
25 Ondova bankruptcy.

1 Q. Was Ondova, you know, solvent on that date? Was it
2 operating and paying its debts as they came due?

3 A. I believe so. That was right around the date that Judge
4 Furgeson diverted a hundred percent of the revenue from Ondova
5 to the lawyers in the case, so I don't recall if that was
6 before this date or after that date. So I'm sorry, I can't
7 answer that without seeing other documents.

8 Q. Well, on the date that Ondova filed, there were clearly
9 some unpaid claims, including claims of lawyers and some
10 lawsuits against Ondova by some businesses like University of
11 Texas and Grupo Andrea. Did Ondova have the necessary funds
12 to pay all of its claims and resolve those lawsuits?

13 A. I think Ondova certainly did have plenty of funds to deal
14 with those issues. The only thing that prevented it from --
15 or would have prevented it from doing that was Judge
16 Furgeson's -- Judge Furgeson's order. And then I'm not sure
17 what date that was. So that would be the only thing that
18 would have stood in the way of that.

19 Q. How much cash did Ondova have on the date of the
20 agreement with Mike Emke?

21 A. I can't recall that.

22 Q. All right. So why was -- why were there proceedings
23 before Judge Furgeson?

24 A. Well, I think you're familiar with that. That's -- that
25 was the --

1 Q. Just for the record, just so we can instruct the --

2 A. Oh. That was the --

3 Q. -- testify about what was going on?

4 A. -- that was the dispute with Netsphere and Munish Krishan
5 and Manila Industries and that whole -- that whole thing.

6 Q. Why did Netsphere commence a litigation in Judge
7 Furgeson's court against you and Ondova?

8 A. That was over the ongoing dispute that was over money
9 that we claimed that Munish Krishan embezzled and claims about
10 domain name ownership and the whole mess that that whole --
11 whole -- do you want me to explain everything about it? I
12 mean, it's -- as you know, it's very convoluted.

13 Q. Did their suit initiate as a result of your failure to
14 comply with an April 2009 settlement agreement?

15 A. No. I think that was certainly their allegation, but
16 that was an allegation that they had.

17 Q. And how long had you been litigating with Netsphere at
18 that time in 2009?

19 A. I think the litigation started in 2006, so --

20 Q. Okay. So in the summer of 2009, is it your testimony
21 that Ondova had plenty of funds to pay all of its creditors in
22 full and settle its litigation with Netsphere, University of
23 Texas, Grupo Andrea, Southern Companies, and all the other
24 parties that asserted claims against Ondova?

25 A. I don't think most of those people that you just

1 mentioned had claims before you and your -- Mr. Sherman took
2 over Ondova. But I think before Judge Furgeson made his, you
3 know, his order diverting funds, it had plenty of -- plenty of
4 funds.

5 Q. So you were not in litigation with the University of
6 Texas on the petition date?

7 A. I think that -- I think that was there in the petition
8 date. I said not all of those ones that you had mentioned.
9 That's all.

10 Q. How about Grupo Andrea?

11 A. I don't believe there was litigation with Ondova on the
12 petition date, I don't think. But I can't recall as I sit
13 here today. I don't think so.

14 Q. Didn't they file your -- file suit against your privacy
15 service prior to the Ondova petition date?

16 A. I don't believe so.

17 Q. They didn't have a suit pending against TIPA or the other
18 companies that Joey Dauben ran for you?

19 A. I believe you're making statements that I don't agree
20 with. So do you want me to --

21 Q. So there was no -- you had never heard of Grupo Andrea
22 before this issue was --

23 A. I've heard -- I've heard of that, yes.

24 Q. Okay. When did you first hear of Grupo Andrea, then?

25 A. They had a -- they had a -- they did have a claim against

1 a domain name. And I don't believe that was an Ondova domain
2 name, but I can't remember, going back this far. I don't
3 think it was owned by Ondova. But I don't recall.

4 Q. Didn't they take your Rule 2004 examination right after
5 the case was filed, because they had claims against Ondova or
6 its privacy business, and they wanted your 2004 examination?

7 A. Now that you just mentioned that, I remember them taking
8 a 2004, but I don't remember what the -- if they had claims at
9 that point, or -- I don't recall. But now I remember what you
10 just told me about that 2004 that they -- they did --

11 Q. All right--

12 A. -- question me.

13 Q. -- so we now know that on the petition date you had --
14 right when this settlement was -- the same time, you had
15 litigation with Netsphere, litigation with University of
16 Texas, some litigation with Grupo Andrea. How about Liberty
17 Media Company? Had they already sued you or one of your
18 privacy companies before the Ondova petition date?

19 A. I don't remember --

20 Q. You don't --

21 A. -- that at all.

22 Q. How about Southern Companies or Harbinger Company; did
23 they have claims against Ondova around the petition date?

24 A. I don't believe so.

25 Q. You don't believe so? How about your privacy companies?

1 A. Can you be specific, because I don't -- if you're
2 referring to TIPA, I don't call that my privacy company, so I
3 don't --

4 Q. Okay. Did Ondova use privacy companies?

5 A. I don't recall if it was Ondova that had the privacy
6 company or if it was the registrant's at the time. This has
7 been many years ago. But there was a privacy-type -- I guess
8 you'd call it that.

9 Q. Okay. When you say registrant's, do you mean the trust
10 that held the domain names?

11 A. It was, I think, back then, a company called Simple
12 Solutions.

13 Q. Um-hum.

14 A. And Blue Horizons.

15 Q. So do you know who Joey Dauben is?

16 A. Yes.

17 Q. Okay. Did you have any connection with him?

18 A. I knew who he was, or who he is.

19 Q. Did he run -- did he run privacy companies?

20 A. I don't know if you would -- if you would call his
21 company a privacy company or what you would call it. But he
22 had a company that was dealing with domain names. I don't
23 know if you would call it a privacy company or not.

24 Q. Would --

25 A. I don't think he would.

1 Q. So I'm trying to understand the financial picture of
2 Ondova in the summer of 2009 and whether it could pay debts as
3 they come due.

4 A. Um-hum.

5 Q. So it's your testimony that there were some large claims,
6 University of Texas, Grupo Andrea, Netsphere, obviously Mike
7 Emke. But you're a little hazy on those other companies I
8 mentioned: Liberty Media, Harbinger, and Southern Companies?

9 A. I don't think Grupo Andrea had a claim against Ondova. I
10 don't recall that at all.

11 Q. When they took your 2004 examination, why did they do
12 that?

13 A. The best I can recall is John and Pete had been trying to
14 convince Grupo Andrea to make a claim against me and against
15 Ondova and convinced them to start, you know, trying to ask
16 questions and trying to find a way to make a claim. But I
17 don't think that -- the best I can recall, they didn't have a
18 claim at that point. But I don't -- again, I don't remember
19 back that far.

20 Q. Which -- was that related to the domain name "Grupo.com"?

21 A. No, I don't think so.

22 Q. What name was it related to?

23 A. I think that was Andrea -- Andrea.com.

24 Q. Who was the registrant of that domain name?

25 A. I don't -- don't recall which one it was. I don't -

1 can't recall that.

2 Q. Did it have any connection to you, the Village Trust,
3 Quantec, Novo Point, or Ondova?

4 A. I think it was one of the companies that I can recall
5 that was owned by Simple Solutions or Blue Horizons. And then
6 there was also a claim that I believe one of Joey Dauben's
7 companies, or him, something like that claim -- they -- I
8 think they claimed that they also had an ownership interest in
9 it.

10 Q. Well, then why did they want your examination --

11 MR. URBANIK: I'll strike that question, Judge.
12 Sorry.

13 Q. Mr. Baron, your lawyer mentioned earlier that a name,
14 server.com, sold for 900,000 dollars. When did that sale
15 occur?

16 A. I'm trying to recall. I think it was -- Mr. Sherman gave
17 me a copy of the -- I'm sure he did -- Mr. Sherman gave me a
18 copy of a printout of a server -- of a sale site where it
19 showed server.com sold for 900,000. I think that was in 2009
20 when he gave me a copy of that sheet. But I don't remember
21 the date of the sale.

22 Q. Okay. And you're sure it's that amount that you're
23 saying is 900,000 dollars. Is that what your testimony is?

24 A. I'm fairly certain it was, but I can't tell you a hundred
25 percent. I would say that there's a ninety-nine percent

1 certainty that it was between 900,000 and a million. But I
2 can't tell you with a hundred percent.

3 Q. Do you still have that document?

4 A. It's very easy to find on the Internet. I could find it
5 in a few seconds.

6 Q. Okay. So you're ninety-nine percent sure about that.

7 Okay.

8 Mr. Baron, are you aware that on Ondova -- the Ondova
9 estate has a right to seek the recovery of any fraudulent
10 transfers of its property during the two-year period prior to
11 the filing of a bankruptcy case. Were you aware of that?

12 A. Not what you're saying in particular.

13 Q. So --

14 A. I believe you if you tell me.

15 Q. So if the Bankruptcy Code had a provision that said that
16 your transfer -- the Emke -- transfer of the domain name to
17 you and Mr. Emke personally could be avoided under bankruptcy
18 law, would you have any defenses to that? How would you
19 respond to that or fight that kind of case?

20 A. It sounds like something that a lawyer would do, not that
21 I can do right now talking to you.

22 Q. Were you aware that bankruptcy law does allow a trustee
23 to recover fraudulent transfers that occurred during the two-
24 year period prior to a filing?

25 A. I don't believe I can say yes to that. I --

1 Q. Okay. You testified earlier that Martin Thomas would not
2 represent you in here. What steps did you take to correct
3 that situation?

4 A. This is attorney-client --

5 MR. COCHELL: Well, Your Honor, at some point when I
6 substituted in for Mr. Baron, I did make a record, read
7 several e-mails to Judge Furgeson between Mr. Thomas and my
8 client. That showed --

9 THE COURT: Okay. I -- this is your opportunity to
10 make an objection. Do you have an objection to the question?

11 MR. COCHELL: We'll object to any discussions between
12 my client and lawyers about what steps to take. I think the
13 relevant question is what steps, if any, did he take.

14 Q. Did you take any steps to --

15 THE COURT: Okay, just a moment.

16 MR. URBANIK: I'm sorry.

17 THE COURT: I overrule that objection. You didn't
18 ask for an out of -- or a communication between him and his
19 lawyer as I understood the question. All right, proceed.

20 Q. What steps did you take to correct the situation
21 describing Martin Thomas, where he could not come into court
22 and represent you?

23 A. Well, first of all, my understanding is that it was a
24 ruling from the court and that I was not permitted to take any
25 steps. But I did -- I certainly asked Mr. Thomas to do

1 things. Asked and asked and asked, many times.

2 Q. And he would not take any steps to represent you in the
3 bankruptcy court?

4 A. My understanding is that he did not and would not. He
5 believed that he was ordered or instructed or whatever not to,
6 and that no matter what I said, he couldn't do it, because
7 that was his -- his marching orders.

8 Q. So even though you did not object to the sale motion, you
9 did not intervene in the Emke case, you felt it was
10 appropriate to appeal Judge Jernigan without getting the stay
11 lifted to assert some reversionary new claim in the domain
12 name. Is that what you're saying you did, without getting the
13 stay lifted in Ondova, you --

14 A. You just said about five or eight things, and I can't --
15 if you can break them up into pieces, I'd be happy to --

16 Q. Why didn't you seek relief from the stay to protect your
17 interest in the domain name in the Ondova case? Ondova was a
18 Chapter 11 debtor.

19 A. Can you ask me that again? I just can't --

20 Q. What steps did you take -- you or your lawyer -- to
21 protect your interest in this domain name that you say arose
22 when the receivership was created?

23 A. What steps did I take? Oh, I certainly -- you know,
24 again this is attorney-client privilege, but --

25 Q. What steps -- I'm not asking what you discussed with your

1 lawyer.

2 A. Oh.

3 Q. What steps did you take?

4 A. Well, these would be things that I would have discussed
5 with my lawyer to do.

6 Q. You didn't do anything in the Ondova case, did you?

7 A. Did I do anything? I don't know what you mean.

8 Q. You did nothing in this case to make a claim for this
9 reversionary interest in servers.com, did you?

10 A. My understanding is that -- that Mr. Schepps, number one,
11 filed some kind of motion asking for legal fees or something
12 like that, to object to the servers.com sale. I recall
13 reading something like that that Mr. Schepps did. I know that
14 we filed an appeal. And I believe that -- I know I did speak
15 with Mr. Thomas -- again, I don't know if I can go into the
16 details about my discussions with Mr. Thomas or other lawyers
17 about what I'd asked them to do about it. But my
18 understanding was that I personally was prohibited from doing
19 it.

20 Q. Can you show me this motion Mr. Schepps filed to take
21 steps in the -- regarding servers.com? That's July 1st
22 through December 31, 2011. And there's no such pleading from
23 Mr. Schepps in there.

24 A. Okay. Well, you just handed me 739 or so -- maybe it's
25 less than that -- but a lot of docket entries. I can --

1 Q. Well, if you have the pleading. Do you have the pleading
2 you say Mr. Schepps filed for you to protect your interest in
3 this domain?

4 A. I don't have it with me, but I recall that it's -- number
5 one, I believe there was something that he filed in the Fifth
6 Circuit Court of Appeals, requesting some kind of money or
7 stay --

8 Q. That's not my question.

9 A. -- based on servers.com.

10 Q. My question is -- Mr. Baron, what did he do in this case,
11 to preserve this so-called interest in the domain name?

12 A. I think I'm describing what he's tried to do to do that.

13 Q. What'd he do in this case?

14 A. Well --

15 Q. If he filed something in this case, can you find it for
16 me in the docket?

17 A. I can look through the docket. But I can tell you that
18 when I was in the receivership, I don't believe that -- I
19 believe that my lawyer was told that he could not file
20 anything, so I doubt I will find anything, because he was
21 instructed and I was under the understanding that I was
22 prohibited, my lawyer was prohibited from filing anything in
23 the case. So I can look through this. But I wouldn't be
24 surprised if there wasn't anything.

25 Q. So you don't have any evidence to show that he filed

1 something in this case to preserve your claim against the
2 domain name, do you?

3 A. I think there is evidence that he's filed things.

4 Q. But you don't know which day, what it's called?

5 A. As I sit here today, there is -- you know, I think, about
6 2- or 3,000 docket entries in all the cases. And I can't
7 remember all that stuff in my head. But I believe it -- I do
8 recall reading a pleading that was filed regarding it.

9 Q. So you directed Gary Schepps to file a pleading in this
10 bankruptcy case to protect your interest in servers.com. Is
11 that your testimony? A hundred percent? You're sure --

12 A. No, I'm not sure that I dir -- no, I can't say that. But
13 I know that Mr. Thomas -- I'm fairly certain that I discussed
14 that with Mr. Thomas about doing that. And my -- his
15 explanations to me always about -- any time I asked him to do
16 anything in the court was that he was instructed that he
17 couldn't do so --

18 Q. And you took --

19 A. -- so I should not even bother him about that kind of
20 thing.

21 Q. -- and you took no steps to terminate Mr. Thomas, did
22 you?

23 A. I believe he was replaced by Mr. Cochell.

24 Q. At whose request?

25 A. Best I can recall is that Judge Furgeson entered an

1 order, where he -- he ordered me to find counsel to deal with
2 issues in the bankruptcy case, and I found Mr. Cochell
3 pursuant to that order that Judge Furgeson issued, as best I
4 can remember about that.

5 Q. But it took a while for that to happen, you didn't do it
6 during 2011, did you? You didn't take any steps to replace
7 Mr. Thomas, did you?

8 A. Well, the order that was given to me by Judge Furgeson
9 and Mr. Vogel was that I was prohibited from hiring counsel,
10 so --

11 Q. Then why did you hire Mr. Cochell?

12 A. Judge Furgeson, I believe, ordered me to hire Steve
13 Cochell.

14 Q. After Mr. Cochell filed a motion to be employed, right,
15 at your request?

16 A. No, I believe it was before that, yes.

17 Q. You're saying Cochell showed up out of thin air and filed
18 a motion to represent you, you didn't visit with him first?

19 A. That's not what I'm saying at all.

20 Q. How did Mr. Cochell become employed?

21 A. I think I answered that. But Judge Furgeson issued an
22 order I believe and he ordered that I had to find counsel to
23 represent me in issues in this bankruptcy court, this is
24 years -- I think it was about two years after the receivership
25 was put over me. And then I found Steve Cochell after Judge

1 Furgeson ordered me to find counsel.

2 Q. Gary Schepps represented you in the receivership, why
3 didn't Gary Schepps go to Judge Furgeson sooner?

4 A. I -- I'm not Gary Schepps I can't --

5 Q. Wasn't he your attorney?

6 A. He was my attorney in the appeal at that time.

7 Q. You didn't ask to replace Mr. Thomas, did you?

8 A. This is attorney-client, I'll ask my counsel if I should
9 answer this.

10 Q. I'm asking a fact, I'm not asking about any attorney-
11 client privilege discussions, you did not have Mr. Thomas
12 replaced sooner because you didn't take any steps to do that,
13 did you?

14 A. Mr. Schepps may have done that, I'm not aware of if he
15 did or if he didn't, but it wouldn't surprise me if he did
16 take steps to try to have that done. That would not surprise
17 me if Mr. Schepps did.

18 Q. Nothing occurred to have Martin Thomas replaced, did it?

19 A. I think I've answered that, and that Steve Cochell -- my
20 understanding is that Steve Cochell took his place.

21 THE COURT: All right, stop, stop. You've got
22 fifteen minutes left.

23 MR. URBANIK: Okay.

24 THE COURT: Let's move on to a different topic.

25 MR. URBANIK: I understand, Judge, I'm sorry.

1 Q. Mr. Baron, what is your view of the value of this domain
2 name?

3 A. I haven't take the time to look at that, I didn't think
4 that's what we were going to be talking about today, so I
5 haven't taken the time to analyze that at all.

6 Q. What are your specific concerns over allowing the trustee
7 to market it in national publications and -- and, you know,
8 for the Internet and for the technology industry?

9 A. As I sit here today I haven't thought about that. I
10 didn't -- wasn't prepared to be answering that kind of
11 questions. But just something I can mention, just off the top
12 of my head, is that, you know, based on the kind of -- what I
13 would call a sham that was done in the auction procedures that
14 Mr. Sherman and Mr. Vogel held last year at the end of
15 November, which was an absolute sham in my opinion, that if
16 the same type of things are done in this proceeding that it
17 will end up in a -- it will be another sham sale with a very
18 low value.

19 Q. What's your --

20 A. So, specifically, it's the way that you and your client
21 and Mr. Vogel advertised the name, did not bring in --

22 MR. URBANIK: Objection. Objection. Nonresponsive.

23 THE COURT: Overruled.

24 A. The way that you advertised the domain name did not bring
25 in qualified buyers, and it was, in my opinion, designed to

1 have a very low sale amount. And it resulted in a very low
2 sale amount. So that's a big problem the way that this -- you
3 and your client advertised the domain name, it does not bring
4 in the value.

5 Q. Are you aware that we've been trying to sell the domain
6 name for two years?

7 A. What you told the Court today, I believe, is that you
8 tried to sell it through Sedo?

9 Q. Yes.

10 A. Okay.

11 Q. And we did not get any offers over 200,000 dollars, were
12 you aware of that?

13 A. I recall you saying that, I don't know if it's true or
14 not, but I remember you saying that.

15 Q. I see. Do you have a buyer that will pay over 300 -- do
16 you know a buyer that will pay over 330,000 dollars for the
17 domain name?

18 A. As I sit here today I can't -- I don't -- I haven't been
19 out trying to find buyers for servers.com, so I wouldn't have
20 one.

21 MR. URBANIK: Your Honor, I'll pass the witness.

22 THE COURT: All right. You've left yourself four
23 minutes.

24 MR. URBANIK: Thank you, Judge.

25 THE COURT: All right, Mr. Cochell, reexamination?

1 MR. COCHELL: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. COCHELL:

4 Q. Mr. Baron, do you remember the hearing where I was
5 appointed as your attorney to substitute in for Mr. Thomas?

6 A. I remember it occurring, I don't think I was there at
7 that hearing, I don't -- maybe you can refresh my memory. Was
8 I there? Okay.

9 Q. Okay. All right. Do you remember --

10 MR. COCHELL: Your Honor, I'll just ask -- I don't
11 have a copy of it, but it's a matter of record, and I believe
12 it's publicly available on PACER, but the transcript of the
13 September 27th, 2012 hearing with Judge Furgeson will have an
14 excerpt setting out the times and dates of e-mail exchanges
15 between Mr. Baron and Mr. Thomas.

16 THE COURT: Okay, you don't have a copy?

17 MR. COCHELL: I don't have a copy with me.

18 THE COURT: I don't have it up on my screen.

19 MR. COCHELL: I'm sorry.

20 THE COURT: I don't have -- you can --

21 MR. COCHELL: We can access it and send it to you
22 later today.

23 THE COURT: You can access and send it to me before
24 the end of the day.

25 MR. COCHELL: Yes, Your Honor, thank you. All right,

1 and we'll just skip that testimony.

2 Q. Did -- what specifically did you do to try and recover
3 records in the receivership after you -- you provided a bunch
4 of records to Mr. Vogel, right?

5 A. Yes.

6 Q. Did you ever make requests for Mr. Vogel to have access
7 to his records?

8 A. I believe counsel did make those requests.

9 Q. Okay. And who would have those records if any were
10 provided?

11 A. It would be probably Mr. Stromberg.

12 Q. How about Mr. Schepps?

13 A. Mr. Schepps, he may have some.

14 Q. Okay. And -- you mentioned earlier, I believe, that Mr.
15 Schepps had received probably a copy of some of the records
16 that you got in receiverships, do you recall that?

17 A. I think he probably did.

18 Q. Okay. And did you make a -- or did you or me, on your
19 behalf, make a request for Mr. Schepps to obtain a copy of
20 those records?

21 A. I believe so.

22 Q. And what was his response?

23 A. I believe he denied or declined to provide those, I
24 believe.

25 Q. In fact, he took the position that you owed him money

1 and, therefore, he wouldn't give you records.

2 A. It sounds -- that sounds right.

3 Q. Okay. With respect to Mr. Schepps, did -- let me just
4 redirect on something else. With respect to auction
5 procedures what is it that was deficient about the auction
6 procedures and the sale of the domain names as to the time and
7 place of the auction and access to information?

8 A. Actually, there was just so much, and I haven't really
9 thought about this. Again, as I explained to Mr. Urbanik I
10 haven't prepared for all this, but off the top of my head
11 there was just so many things wrong with it.

12 The auction was held in a lawyer's office, number one,
13 and that very much chills bids from people that want to come
14 and -- number one, come to the auction, but, number two, I
15 believe the requirement was that the potential bidders had to
16 fly to Dallas to come look at information that they would have
17 to do their due diligence on, so they would have to actually
18 fly -- a lot of these potential buyers are outside the United
19 States, so they'd have to fly to Dallas in a very short period
20 of time, review documents, and the documents in this -- in the
21 domain name industry the only real way to analyze documents is
22 electronically, you just can't analyze paper documents because
23 they're just too voluminous, you can't really put those
24 through a computer model, and you just cant. And my
25 understanding that the only form that these documents were

1 being provided in was paper format, so potential buyer would
2 have to come fly to Dallas, bring, I guess, a team of people
3 in to go pour through, you know, thousands and thousands of
4 paper documents, which is just not practical. It's, in
5 effect, no buyer would do that unless they knew that they
6 could buy it for a very few cents on the dollar, and take a
7 very big gamble they'd be getting something that they were
8 taking a big huge risk on.

9 And the other thing was that the receiver in that
10 proceeding, I believe, required a very substantial down
11 payment or deposit before they were even allowed to come and
12 fly to Dallas to look at the documents to see if it was
13 something they were interested in. So that was a big problem.
14 You know, like I said having -- holding -- having an auction
15 in a lawyer's office, I think just in general, chills bids,
16 buyers don't want to come and buy something in someone else's
17 lawyer's office.

18 In addition, the way that the auction was marketed, it
19 was put out on Internet sites, but when someone were to go to
20 e-mail -- if someone were to go and try to contact the seller
21 in this Internet site the e-mail address wasn't even a valid
22 e-mail address, so their e-mail would have been rejected. And
23 that, certainly, when you can't even contact the seller that
24 chills the bids a lot. And my understanding is that several
25 buyers tried to contact the seller and the seller didn't even

1 respond when they were contacted through the telephone. So
2 all of those things together, and the fact that there was a
3 very short period of time the buyers were able to analyze the
4 information, they didn't have enough time to go get the
5 financing or do what they needed to do their due diligence on
6 and to arrange for financing to buy the domain names, all of
7 those things just lead to a very, low, low price for a sales
8 price.

9 Q. Okay.

10 A. And there was other things too, I just can't remember
11 them sitting here.

12 Q. Okay. So how long would a potential qualified bidder
13 need to, number one, conduct some due diligence, assuming they
14 were provided the proper materials, and how long to obtain
15 financing, if you know?

16 MR. URBANIK: Objection, Your Honor. This line of
17 questioning is sort of premised on an answer to one of my
18 questions about what was wrong with selling one domain name,
19 not 153,000 domain names that, you know, the receiver
20 attempted part of the plan. So we've heard several minutes of
21 Mr. Baron's answer, I'm not sure if it's relevant of that
22 earlier sale.

23 THE COURT: Okay. Relevance objection. Are you
24 asking about the previous sale procedures, or the proposed --

25 MR. COCHELL: No, I was asking about this one. How

1 long in this case for servers would it take to do a proper job
2 of marketing it and to allow people sufficient time to
3 purchase it.

4 THE COURT: Okay. I overruled the objection, to the
5 extent you just rephrase the question.

6 MR. COCHELL: Yeah.

7 MR. URBANIK: Thank you.

8 Q. Go ahead.

9 A. Well, and the thing that I just didn't remember to answer
10 in my last answer to you is that, you know, when you sell a
11 domain name without having it -- developed at all, having
12 it -- if it's been very mismanaged up until the point that
13 you're selling it, the value -- the price that a buyer would
14 pay would be much less than it would be if the name had been
15 properly managed up until the time that it was offered for
16 sale. Because the name that's mismanaged, not developed in
17 all of those kinds of things lead to a buyer not being able to
18 tell what the real value is. It's like, you know, trying to
19 buy a piece of real estate that's been -- you know, a building
20 that's been abandoned for twenty years and it's, you know, a
21 buyer doesn't know what kind of repairs are needed with the
22 plumbing, with the foundation, and all that kind of stuff.
23 Whereas, if the name -- if the building had been occupied, and
24 if it had been managed correctly then a buyer would be -- have
25 a much better ability to determine what the value would be.

1 So that's one problem.

2 The other -- but as far as the timing goes I would just,
3 you know, estimate and say that -- having -- you know, the
4 longer that you give for the sale the higher value you can
5 get, because it takes a long time to market a domain and
6 domain names are very unique and they're very, you know, each
7 one has its own potential buyers, and to find that right buyer
8 sometimes takes a long time.

9 So -- I'm sorry, can you ask me one more time?

10 Q. For a significant -- for an asset that has a minimal
11 value at 300,000 that's still a significant domain name?

12 A. Yes.

13 Q. Is that right?

14 A. Yes, it is. And I would say that, in general, I'm aware
15 of many domain names that have been sold for large amounts,
16 and the honest answer is that sellers keep domain names on the
17 market for years before they can get a real market value,
18 because the names are unique, it's kind of like artwork.

19 Q. Well, now, they've set, I believe, a maximum time period
20 of forty-five days, and then they'd consummate the sale
21 automatically --

22 A. Okay.

23 Q. -- if I'm reading that correctly, is that sufficient
24 time?

25 A. I would say it's absolutely insufficient time, it would

1 result in a very, very low undervalued price, in general.

2 Q. And what would you say is a reasonable time, would it be
3 three months? Four months?

4 A. Well, if you're looking to do like a fire sale, or if
5 you're looking to get, you know, a decent value for it. If
6 you're looking to do a fire sale then maybe six months or more
7 would be a fire sale, if you're looking to get, you know, a --
8 a reasonable price that's reflective of the value then it
9 would be much, much longer than that.

10 Q. You heard Mr. Sherman testify earlier today about the
11 increased interest in servers.com because of the cloud, do you
12 agree with that testimony?

13 A. I can't really comment on that, I don't -- I certainly
14 don't think that the value is going down, but I don't
15 really -- I can't really comment about the cloud and that kind
16 of thing. But I don't think that the value of servers.com is
17 decreasing. Does that answer your question?

18 Q. Yeah. So the increase for Mr. Sherman's value of 100,000
19 when he got an offer to 300,000 two years later, do you think
20 that's an accurate barometer of the market value, or even the
21 liquidation value of this asset?

22 A. No, I don't think that the 300,000 dollars is an accurate
23 barometer. I think just the fact that someone happens to, you
24 know, somehow find Mr. Sherman's name from doing all kinds of
25 research and trying to track down who the owner of servers.com

1 is, and happens to call Mr. Sherman to make an offer, that's
2 not reflective of the value. Because that's reflective of a
3 buyer that's gone through a whole lot of effort to try to find
4 the owner of the domain name and to make a bid, and it's not
5 reflective of any kind of market valuation.

6 Q. And who -- prior to selling a significant asset what
7 steps do you believe need to be taken as a prudent businessman
8 who owns and sells domain names?

9 A. Well, I would think someone that were to do that, and I
10 could just base this on what I know other people that have
11 sold domain names for, you know, decent value is that they do
12 manage the domain name themselves for a period of time to make
13 sure that it's being -- that the domain name is being managed
14 correctly. And some of them will build out a Web site around
15 the domain names so that it gets more revenue and has more
16 attractiveness to it. And if that person was really actively
17 trying to sell the domain name, and I think they would -- it
18 would take a lot of time, but they would go out and find --
19 they would certainly go out and market it like has been
20 described, they would go out and market it through various
21 sources, but they would also, I think on their own, contact
22 potential buyers of that particular domain name. Because
23 there's -- you know the buyer for servers.com name, you know,
24 IBM may be interested in servers.com, but they wouldn't be
25 interested in -- may not be interested in something like

1 rewards.com, or dinnerware.com, so you have different buyers
2 for different domain names.

3 That's how our previous seller would spend quite a bit of
4 time trying to identify the potential buyers for that name,
5 but it would also go about marketing it in other ways too.

6 Q. Do you recall reviewing the findings of fact and
7 conclusions of law filed in the Emke case, filed as document
8 130, in the Ondova proceedings here?

9 A. I remember looking at it, but I'd have to have a document
10 to remember.

11 Q. Okay. Let me give you a copy of that, specifically page
12 3 of 11, of document 130 in the proceedings involving Mike
13 Emke and Servers, Inc.

14 (Pause)

15 Q. And this refers to paragraph 8 about -- does that
16 paragraph relate to what you were referring to as development?

17 A. Yes, he was responsible for developing -- it sounds like
18 developing the domain name, yes.

19 Q. And what does development include?

20 A. It can mean a lot of things, I think in this context --
21 let me just read it a little bit more.

22 (Pause)

23 A. It looks like here it was talking about operating a sort
24 of a Web-hosting business. And that would be something that
25 would be logical to have at servers.com.

1 Q. Did he create a new Internet Web site?

2 A. He created, I believe, a company called Servers, Inc.

3 Q. But did he create a new Internet Web site URL?

4 A. I'm not aware of that he did, I don't know.

5 Q. Okay. Did he create a business plan and model?

6 A. I don't believe he did. I don't believe he did any of
7 these things.

8 Q. Okay. That's any of the things described in paragraph 8
9 of document 130?

10 A. Right, I don't believe he did anything to develop the
11 name.

12 Q. Okay. And, in fact, the judge at paragraph 9 goes
13 through and talks about all the things that Mr. Emke did not
14 do, and we'll just ask the Court --

15 MR. COCHELL: I have a copy for the Court if the
16 Court wishes to --

17 THE COURT: I have it.

18 MR. COCHELL: Okay, all right.

19 Q. So are the steps that Mr. Emke were supposed to do to
20 develop the Web site the kinds of things that you're referring
21 to in terms of creating value for a company, and --

22 A. Yes. Yes. Absolutely. And if he had done what is
23 described in here I think it would have tremendously increased
24 the value of the -- it would have allowed a sale of
25 servers.com much, much more -- much higher than what it would

1 be without doing this.

2 Q. Okay. With respect to Mr. Emke you mentioned you had
3 some interests apart from Ondova and some other lawsuits that
4 related to the servers.com name, in the context of settling
5 the dispute with Ondova and Mr. Emke, were there any claims
6 made by you -- I mean, made by you against Mr. Emke, do you
7 recall?

8 A. I believe so, I can't recall with certainty, but I
9 believe there were claims made.

10 Q. Do you recall whether you personally had any claims
11 against Mr. Emke?

12 A. I believe I did, but I can't recall with a hundred
13 percent certainty, but I believe so.

14 Q. Did you -- what would you need to do to determine if you
15 had any claims against Mr. Emke?

16 A. Claims that I have or that I made in the lawsuit?

17 Q. Had and made?

18 A. Well, I know that I had claims against them, you know,
19 for things such as lawyer fees and so forth, I just don't
20 recall with certainty if we got a chance to make those in the
21 lawsuit. I think we got to that point, but I don't recall if
22 it that got to that point or not.

23 Q. And in resolving this case, which was submitted as, I
24 believe, Trustee's Number 1, the agreement, was their
25 consideration by Mr. Emke -- there was a compromise among the

1 parties, right?

2 A. Right, I think every party was sort of agreeing to give
3 up whatever claims that they had in order to resolve the
4 dispute and so that nobody had to keep fighting and paying
5 lawyers, and doing all that kind of stuff that costs a lot of
6 time, money and effort, energy.

7 Q. And your recollection is that the compromise involved
8 claims that you had against Mr. Emke, whether they were filed
9 formally or not?

10 A. Yes, I believe so.

11 Q. And with respect to --

12 MR. COCHELL: Your Honor, may I have the order for
13 receiver, I believe I provided it to the Court, receivership,
14 Debtor Number 1? Thanks.

15 Q. Just for the record the order appointing a receiver was
16 signed on October 17th, 2011, see that date there?

17 A. Yes.

18 Q. And what is your contention about the ownership interest,
19 what is it that you believe happened on that date, by virtue
20 of the order for receivership in paragraph 4?

21 A. On that date servers -- the domain name at that point --
22 let me just kind of back -- can I backup a little bit --

23 Q. Yes.

24 A. -- or do you want me to answer it exactly? My
25 understanding is that upon signing the settlement agreement

1 Ondova no longer had any ownership interest whatsoever in
2 servers.com, it was all transferred to a company, Servers,
3 Inc. And when a domain name -- so the domain name was
4 transferred to Servers, Inc. and that company was owned fifty
5 percent by Ondova and then fifty percent by Mike Emke. But
6 neither Mike Emke nor Ondova had any interest individually in
7 the -- in the servers.com domain name at that point.

8 Then when the receivership was put in place the -- I'm
9 sorry, when the receivership over Servers, Inc. was put in
10 place servers.com was then owned fifty percent by me and fifty
11 percent by Mike Emke. And the ownership of Servers, Inc. was
12 still owned fifty percent by Ondova and fifty percent by Mike
13 Emke. But the domain name that it previously had been owned
14 by Servers, Inc. then belonged to Mike Emke, fifty percent,
15 and me fifty percent, that's upon the receivership order that
16 you just showed me.

17 Q. Okay. So when Servers, Inc. was created you -- your
18 understanding of the agreement is that Ondova was no longer an
19 owner of servers.com?

20 A. I believe that Ondova ceased being an owner of
21 servers.com upon signing the settlement agreement of July 6th,
22 2009. At that point Ondova did not own any -- anything else
23 in servers.com. If you read paragraph 1, and I can read that
24 if you like, I think describes that.

25 Q. That's unnecessary.

1 A. Okay. Paragraph 1 in the settlement agreement.

2 Q. Right.

3 MR. COCHELL: One moment, Your Honor.

4 (Pause)

5 MR. COCHELL: Can Mr. Baron take a break? I think it
6 will expedite matters.

7 THE COURT: All right. Well, let me tell you where
8 you are time wise.

9 MR. COCHELL: Yes, Your Honor.

10 THE COURT: I lost my notes. 3:12, okay, so you're
11 twenty-four minutes into this. And I'll let you have a five-
12 minute break, more than five minutes it cuts into your hour.
13 Okay.

14 MR. COCHELL: Yes, Your Honor, thanks.

15 THE CLERK: All rise.

16 (Recess from 3:36 p.m. until 3:40 p.m.)

17 THE COURT: All right, please be seated.

18 All right, Mr. Baron, you may take your place on the
19 bench.

20 All right. 3:44, you may resume. And, Mr. Baron,
21 I'm required to remind you you're still under oath.

22 MR. COCHELL: Thank you, Your Honor

23 RESUMED CROSS-EXAMINATION

24 BY MR. COCHELL:

25 Q. Mr. Baron, I'd like to go a little bit further on the

1 kinds of records -- what records would you need to -- that you
2 don't currently have that would help you establish a better
3 understanding of the facts and circumstances underlying the
4 agreement for servers.com exhibit; Trustee's Exhibit 1?

5 A. Well, to I think to establish my ownership interest after
6 the agreement we want to have things like corporate documents,
7 bylaws, operating agreements of the corporation Servers, Inc.
8 We want to have agreements between Ondova and Emke, agreements
9 between Servers, Inc. and Emke and/or Ondova, you know, any
10 kind of operating type documents that govern or organization
11 documents too I think that governs Servers, Inc. as well. And
12 that would be to establish the ownership interest after -- to
13 establish ownership interest prior to the other documents.

14 Q. With respect to --

15 A. Things like that.

16 Q. Sorry?

17 A. Sorry. I was just saying things like that. There's
18 other things too, but that's just what I can think of.

19 Q. With respect to Trustee's Exhibit 1, would -- could you
20 take a look at paragraph 1, I'd like to go through that with
21 you. Basically, it starts off "The domain name servers.com
22 shall be owned jointly between Compana and Emke as described
23 under the following terms." Just to clarify, what was the
24 status of Compana at the time of this agreement?

25 A. Compana was the performer name of Ondova.

1 Q. Okay. And with respect to the following terms "The
2 parties shall be equal owners of either an LLC, a C Corp. or
3 another acceptable company structured formed by Emke," is that
4 right?

5 A. Right.

6 Q. And then "The domain name servers.com shall be registered
7 to the company," that would be Compana or --

8 A. No, the company refers to Servers, Inc., it's the newly
9 formed company. So what's happening here is the domain name
10 is being transferred from anybody that had a claim to interest
11 in it, whether it me, Ondova, Emke, everybody is transferring
12 their claim to servers.com to the new company which became
13 Servers, Inc. So they're giving up any rights to servers.com,
14 and Servers, Inc., the new company, is acquiring all of the
15 ownership in it.

16 Q. Okay. And "The parties shall each acquire equal
17 ownership and voting shares in the company," that would be
18 voting shares in servers.inc (sic), is that correct?

19 A. Servers, Inc., yes.

20 Q. Servers, Inc. And then there was another thing that's
21 not particularly relevant to this case. All right.

22 With respect to ownership, so at the time of entering
23 into this agreement Servers, Inc. became the owner of
24 servers.com, is that correct?

25 A. Yes. Servers, Inc. became the owner of servers.com, I

1 believe that's in the findings of facts, too.

2 Q. Okay. So in order for you to provide a full recitation
3 of the facts surrounding your interest in servers.com you
4 would need the records that we were previously discussing
5 about bylaws and operating agreements, and correspondence?

6 A. Yes, that would be some of the documents, I believe.
7 More would be helpful as well.

8 Q. And that would be something through the discovery
9 process, is that right?

10 A. Right.

11 Q. And earlier counsel was asking you if you had documents
12 in your possession and you responded that they're in the
13 receiver's possession, is that right?

14 A. I think what you're asking me is if I had it here today,
15 I don't have it here today. I think these documents are in --
16 my expectation is in a lot of people's possessions, whether
17 it's Mr. Emke, Mr. Sherman, Mr. Vogel, I may have some but
18 it's in a lot of people's possession, I would assume.

19 Q. All right, thank you.

20 MR. COHELL: Your witness.

21 THE COURT: All right. I have some questions before
22 redirect. All right.

23 Mr. Baron, when server -- no. When was Servers, Inc.
24 actually formed?

25 THE WITNESS: I think it was right after the

1 settlement agreement, but I can't recall just sitting here
2 today, the date.

3 THE COURT: All right. So the wording of Section 1
4 of the settlement agreement reads as if the entity has not
5 been formed yet, that's one reason I'm asking. So you're
6 confirming you don't think it was formed yet, but you think it
7 was formed shortly after the July 6th, 2009 settlement
8 agreement?

9 THE WITNESS: Well, as I'm reading this more closely
10 it says that it was already formed by Emke, so it may have
11 already been formed at the time of the settlement agreement.
12 I'm not sure if it was formed --

13 THE COURT: Where do you see that it was already
14 formed by Emke?

15 THE WITNESS: Number 1, it says the parties shall be
16 equal owners of either an LLC, a C Corp. or other acceptable
17 company structure formed by Emke. So I don't know if that
18 means he had already formed it or he was about to form it, I'm
19 not certain.

20 THE COURT: Okay. But your testimony was you think
21 it was formed shortly after this agreement?

22 THE WITNESS: Well, I said that before I read this a
23 little more closely. After reading it, I'm not sure if it was
24 formed at the time that we signed it or right after. I don't
25 know.

1 THE COURT: All right. So did you ever see the
2 formation documents?

3 THE WITNESS: I don't recall -- I don't recall seeing
4 them, but -- I just don't recall.

5 THE COURT: And so you don't recall if you ever
6 received stock certificates, or a stock certificate?

7 THE WITNESS: I don't recall, but I remember reading
8 in your findings of fact about some things --

9 THE COURT: Okay. I'm just asking --

10 THE WITNESS: Okay.

11 THE COURT: Don't refer to that.

12 THE WITNESS: I just don't recall that.

13 THE COURT: Okay. How many years were you the
14 registrant of servers.com?

15 THE WITNESS: I don't know.

16 THE COURT: Were you the registrant of servers.com,
17 or was Ondova, or was some other entity you're connected with?

18 THE WITNESS: I believe I was a first, but that's my
19 recollection of it.

20 THE COURT: Okay. Do you know how long you --

21 THE WITNESS: I don't.

22 THE COURT: -- were the registrant?

23 THE WITNESS: I don't.

24 THE COURT: When you were the registrant, or when
25 Ondova was the registrant, or when some company in your --

1 that you're connected with was the registrant of servers.com
2 what did you do with it; what did you do with the name?

3 THE WITNESS: Well, the name went under litigation
4 almost immediately after it was registered, after I registered
5 it. Well, I don't know about that. It was not too long after
6 I registered it, it went to litigation. So I don't think very
7 much was done with it because it was in dispute and everybody
8 was disputing who had what rights to it, so I don't think much
9 was done with it.

10 THE COURT: All right. So you don't remember, first
11 of all, what year you became the registrant of it, correct?

12 THE WITNESS: Best I can recall it was maybe
13 2000/2001, that would be my best recollection.

14 THE COURT: And so then the litigation began when?

15 THE WITNESS: I just don't recall, but it was not too
16 long after that, but I just don't recall a year, that's a long
17 time ago.

18 THE COURT: So you or Ondova or some company you were
19 connected with was the registrant of servers.com between
20 either 2000 or 2001 and July 6th, 2009 when you entered into
21 the settlement agreement, and nothing was really done to make
22 money off the name during that time period?

23 THE WITNESS: The best I can recall not much was
24 done. There may have been some advertising put on that site,
25 but because it was in litigation, because there were so many

1 claims in dispute and allegations about a sundry of things
2 there wasn't anything -- there wasn't much done with it, but
3 there may have been some advertising.

4 THE COURT: Okay. So there was a Web site
5 servers.com?

6 THE WITNESS: Best I can recall there was some
7 advertising at some point in time, but I don't think it was
8 the entire period of time between 2000 --

9 THE COURT: Okay. So you have no memory of how much
10 money it made or --

11 THE WITNESS: No.

12 THE COURT: -- what advertising -- what was on the
13 Web site?

14 THE WITNESS: Well, if it was advertising through
15 some of these what these Web people call Monotizers, it would
16 have been whatever they put on there, which --

17 THE COURT: Okay. But you don't remember, you can't
18 testify --

19 THE WITNESS: I can't recall.

20 THE COURT: -- at all.

21 THE WITNESS: I can't recall specifically what was on
22 there.

23 THE COURT: so you cannot tell me how much revenue
24 may have been made off the name?

25 THE WITNESS: I can't tell you that without, you

1 know, getting documents and -- like, Mr. Cochell said, without
2 getting discovery and taking things out.

3 THE COURT: You have any guesses, you have any
4 recollection at all of the range of revenue that you may have
5 made off of servers.com?

6 THE WITNESS: I really don't. I don't.

7 THE COURT: All right. Is there any price at which
8 you would support a sale of servers.com?

9 THE WITNESS: There might be, I just don't think that
10 this is the way to do it. I don't believe this is a proper
11 mechanism to be selling this domain name, and I just don't --
12 I wouldn't want to sell the domain name. I don't want to sell
13 the domain name. If I was forced to do it, then I could
14 probably come up with a price, but if it were up to me I
15 wouldn't --

16 THE COURT: Okay. Come up with a price -- what would
17 be an acceptable price where you wouldn't be in here
18 complaining?

19 THE WITNESS: I can't sit here today and say that
20 because I haven't sat down and evaluated what the market and
21 domain name is worth right now, but I could probably do that.
22 I just -- I can't do that today.

23 THE COURT: All right. On November 4th, 2011 you
24 filed a brief before the Fifth Circuit and I'm looking at --
25 it's so hard to understand their docket entries, or I don't

1 even know if they call them docket entries. This is in case
2 number 10-11202, and it's -- it's got document number
3 00511655466 at the top, date filed 11/4/2011. On page 9 of
4 that pleading you represent that the domain name servers.com
5 has been appraised at 1.4 million to 4.2 million dollars in
6 value, accordingly Baron's legal interest in fifty percent of
7 the domain name, domain name has substantial value between
8 700,000 and 2.1 million. Where did you get that?

9 THE WITNESS: I don't recall participating in that
10 kind of -- that valuation, so I don't recall doing that.

11 THE COURT: All right. Well, you filed a pleading
12 before the Fifth Circuit, and I gave you exact quote, "The
13 domain name has been appraised at 1.4 million to 4.2 million
14 in value."

15 THE WITNESS: Is that Mr. Schepps' filing, is that --

16 THE COURT: Well, he signed the pleading for you.

17 THE WITNESS: Okay. I don't believe I came up with
18 that value.

19 THE COURT: Well, you did.

20 THE WITNESS: As I sit here today, I don't know, and
21 I don't think it was me because I don't recall doing that.

22 THE COURT: Who -- what are the possibilities of
23 where this value came from?

24 THE WITNESS: Well, Mr. Schepps may have obtained it
25 from someone else, I don't recall who he got it from, or if he

1 did, I don't know. But Mr. Schepps may have gotten the value
2 from someone, I would assume that he got it from somebody.

3 THE COURT: Okay. I'm just asking you, this is your
4 pleading, your pleading. What are the possibilities -- where
5 could Mr. Schepps have gotten it from?

6 THE WITNESS: Possibilities I can think of, and I'm
7 not saying that he did this because I don't know, I can't
8 think of it now, but he could have gotten it from an appraisal
9 service, and he could have gotten it from an expert, someone
10 like Mr. Lindenthal that we had as an expert a few months ago.
11 He could have got it from those type of people.

12 THE COURT: Okay. I know the type of people who do
13 appraisals, I'm not asking hypothetically, I'm asking
14 specifically who, what appraiser --

15 THE WITNESS: I don't know.

16 THE COURT: -- what service?

17 THE WITNESS: I don't know. I can't recall anything
18 today.

19 THE COURT: Who had you engaged to help you with
20 this?

21 THE WITNESS: I don't believe I engaged anybody to do
22 this, and I'm just trying to recall back from 2011, there was
23 a lot going on then. But I don't believe I engaged anybody to
24 do that. If Mr. Schepps did I don't recall who he did, or if
25 he did.

1 THE COURT: You're saying Mr. Schepps would have put
2 something like this in a pleading without you reading it?

3 THE WITNESS: Would he have put it in a pleading
4 without me reading it, yes, I don't know if he did or not, but
5 he would have, he could have.

6 THE COURT: You remember this in the pleading?

7 THE WITNESS: Vaguely, but not -- vaguely.

8 THE COURT: Well, what do you think about this value?

9 THE WITNESS: As I sit here today I think it would --
10 it could be a value that an appraiser would come up with the
11 domain name for, you know, it being a dormant domain name, the
12 way it is today.

13 THE COURT: And how would an appraiser come up with
14 that value?

15 THE WITNESS: There's all different sorts of ways. I
16 mean, an appraiser can look at comparable sales, they can look
17 at the business that's behind the domain name, they can look
18 at --

19 THE COURT: Okay. There's no business behind the
20 domain name.

21 THE WITNESS: Okay, I've seen appraisers.

22 THE COURT: So you told -- you told -- oh, you've
23 seen the appraisals?

24 THE WITNESS: No, no, I didn't say that. I said if
25 an appraiser was going to do an appraisal on a name like this

1 they could look at comparable -- comparable sales.

2 THE COURT: Okay. You said -- I haven't heard any or
3 seen any evidence, you said, though, earlier you knew of
4 server.com having been sold between 900,000 and one million --

5 THE WITNESS: I did see that, yes.

6 THE COURT: -- before 2009?

7 THE WITNESS: I remember it being around that time,
8 yeah.

9 THE COURT: So that would be the closest comparable
10 one could conceive here --

11 THE WITNESS: Well --

12 THE COURT: -- therefore, where would you get 1.4
13 million to 4.2 million?

14 THE WITNESS: Well, server.com I think is a much
15 different name -- well, it is different than servers because
16 it's the singular which has a much different connotation than
17 servers. Server, it just has a different connotation than
18 servers does because of the type of go to service, or product
19 that could be sold at that -- that would be associated with
20 that kind of site. A server or --

21 THE COURT: Why would the S be so significant?

22 THE WITNESS: Because servers has I think a
23 connotation of Web hosting and Web servers, and that type of
24 thing. Server has more of a connotation of someone serving
25 breakfast or something like that.

1 THE COURT: What do you base this on?

2 THE WITNESS: It's my own, you know, thought.

3 THE COURT: Okay. Do you have any empirical evidence
4 of that?

5 THE WITNESS: Well, I've been dealing with domain
6 names since -- a long time, over twelve years, and I've spent
7 a lot of time trying to figure out what the semantics of words
8 are, and that's what I base it on, it's not -- I haven't done
9 any scientific study.

10 THE COURT: You don't know of empirical evidence,
11 okay.

12 THE WITNESS: Yeah, I'm not here as a -- yes, that's
13 right.

14 THE COURT: And just one last question. What do you
15 think should be done with the name servers.com?

16 THE WITNESS: I think that the agreement that was put
17 in place by me and Mike Emke, or Ondova and Mike Emke should
18 be honored, and I believed that Mike Emke --

19 THE COURT: Let me back up.

20 THE WITNESS: -- and I should have the right to use
21 the domain name.

22 THE COURT: Let me back up. He didn't honor the
23 agreement?

24 THE WITNESS: If he breached the agreement then I
25 guess the parties to the agreement have claims against

1 Mr. Emke, but I can't really tell you what would happen to
2 that.

3 THE COURT: Well, my job today is to determine if
4 this trustee is exercising reasonable business judgment, okay,
5 so I need to compare what he's proposing to something else.
6 What is your something else that would be more reasonable?

7 THE WITNESS: Well, I mean, if your goal is to -- if
8 you're forcing a liquidation on a domain name --

9 THE COURT: I'm saying -- I'm asking you what would
10 be more reasonable?

11 THE WITNESS: Well, in a normal context, the
12 reasonable thing to do would be to develop the domain name and
13 use it and develop it. That would be --

14 THE COURT: Who would develop it?

15 THE WITNESS: There's lots of -- there are lots of
16 possibilities through servers.com. I think you could
17 certainly employ a company to develop a name like that that
18 would spend, you know, sorts of resources doing it. You
19 could --

20 THE COURT: Let me back up.

21 THE WITNESS: Um-hum.

22 THE COURT: You didn't do it for nine years.

23 THE WITNESS: Well, there was --

24 THE COURT: -- and then you entered into an agreement
25 with Mr. Emke to do it and he didn't do it. So again, what is

1 a better option at this point in time after thirteen years of
2 no revenue from this name, what is the better option than
3 trying to sell it?

4 THE WITNESS: I think that the one option would be to
5 find a very reputable company or individual, and probably
6 company to start --

7 THE COURT: Who and what would it cost and how long
8 would it take?

9 THE WITNESS: If I had a little bit of time to
10 research that I could provide that to you. I just don't have
11 that at my fingertips.

12 THE COURT: Okay. Haven't you had thirteen years to
13 explore that?

14 THE WITNESS: Well, I can explain. For the majority
15 of the time there was litigation pending and there wasn't much
16 sense spending a whole lot of time.

17 THE COURT: Was -- what prevented you during the
18 pendency of the litigation from doing something with the name?

19 THE WITNESS: There was a lot of uncertainty as to
20 what -- who the claims of ownership was of the name and there
21 wasn't --

22 THE COURT: Besides the uncertainty, what prevented
23 you --

24 THE WITNESS: Well, the uncertainty --

25 THE COURT: -- from utilizing the name?

1 THE WITNESS: -- the uncertainty caused --

2 THE COURT: Was there an injunction?

3 THE WITNESS: Just a lot of claims --

4 THE COURT: Okay.

5 THE WITNESS: -- but I don't believe there was an
6 injunction. But if -- certainly, I think if something was
7 done with the domain name there would have been complaints and
8 there could have been injunctions filed by -- or an injunction
9 request filed by Mr. Emke about doing things with them to
10 resolve all sorts of problems that got tangled up when that
11 then was in litigation. There was all kinds of claims. If we
12 were to try to find a potential person that were a company
13 that would develop this name that could be -- that they might
14 have some concerns about doing it themselves because of this
15 litigation. Nobody's going to want to invest a whole bunch of
16 time, money and energy in an asset that is being disputed.

17 THE COURT: All right. Redirect, Mr. Urbanik?
18 You've got twelve minutes maximum.

19 MR. URBANIK: I don't have very much, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. URBANIK:

22 Q. Mr. Baron, earlier when Mr. Cochell was asking you
23 questions, you lumped mismanaged domain names and not
24 developed -- not developed domain names, those are two
25 different things. I mean what would you call a mismanaged

1 domain name?

2 A. It's a broad category but no, I think I'd use that term
3 to describe what Mr. Vogel did to the domain user the last
4 several years and it's just neglecting them and not, you know,
5 not making sure that the correct ads were on there, not
6 dealing with disputes and just sort of letting things go -- go
7 amuck.

8 Q. Okay.

9 A. That type of thing. There's other things too but I'm
10 just --

11 Q. What do you call -- what would a nondeveloped domain name
12 be?

13 A. Like an example at servers.com?

14 Q. Yes.

15 A. Okay. Well, that's an example. Servers.com it's not --
16 I don't know what's there today but there may not be anything
17 on the site at all. It might just be --

18 Q. If I told you it was a blue page with servers.com and if
19 interested contact --

20 A. Yeah, that would be --

21 Q. Undeveloped.

22 A. -- that'd be undeveloped.

23 Q. Okay. Judge was asking you what does it cost to develop
24 a domain name like servers.com? What is your estimate of the
25 cost?

1 A. That's a wide range of answers I could give you if
2 you'd -- it varies a lot. I think you could find someone
3 quite -- I don't know who easily but quite easily, that would
4 not charge anything to develop a site. What they would do is
5 take a percentage of profits or something like that. They
6 would have some type of agreement where they would develop a
7 name in exchange for future profits or revenue or whatever
8 because I don't think it would cost anything.

9 Q. What percentage of the domain name would have to give to
10 them?

11 A. I don't know if you'd have to give a percentage of a
12 domain name. You might. It depends on the deal that you
13 would work but it could just be a percentage of profits. It
14 could be a percentage of revenue. It could be any range of
15 possibilities. So I think you could do all kinds of different
16 arrangements.

17 Q. What's your estimate of the range of what you'd recover
18 if you found such a person to do that?

19 A. The range of --

20 Q. What you can --

21 A. -- can you tell me what recover means? I'm not sure what
22 you mean.

23 Q. Yes. If you sold the name after you entered into such
24 a --

25 A. Um-hum. And again I think that was in a -- that varies a

1 lot too. I think that the potential is very, very high for a
2 name like servers.com because it could be -- turn into a Web
3 site that could be a top Web-hosting company and that would
4 generate a great, great deal of value. Much, much more than
5 it could as an undeveloped name but it could be less than
6 that.

7 Q. In the past couple years, have you entered into any such
8 agreements?

9 A. I've been in a receivership and forbidden from doing any
10 such thing.

11 Q. So you haven't. Okay. So you don't know what these
12 hypothetical Web -- I'm sorry -- Web site developers charge.
13 Do you?

14 A. I just know in general what they have in the past and
15 it's -- it varies. I mean they're all -- it depends on the
16 domain name. Every domain name has a different value to a Web
17 developer. A name like servers.com, I think, would have a lot
18 of attractiveness to a developer like that much more than a
19 name that didn't make any sense like a name with jumbled up
20 characters or one that didn't have any English word
21 connotation to it. So I think servers.com would be an
22 attractive name for a developer and you could probably get a
23 pretty good deal.

24 Q. Would it be fair to say that if you found someone who
25 would do it with no payment, they would want a larger

1 percentage of the recovery when it sold?

2 A. Not necessarily. In don't think necessarily. I think --

3 Q. Do you know somebody that will take no payment at all and

4 still just want a very small recovery if we sell it later?

5 And if so, who is that person or company?

6 A. Can you ask me that again? I'm sorry; a small recovery?

7 Q. Do you have any person that would, for no payment

8 whatsoever develop this domain name and not want some sizeable

9 chunk of the proceeds when it sold?

10 A. I've not gone out and tried to find those people myself

11 but I think they do exist.

12 Q. You think they exist. Have you ever met any of them?

13 A. I have met many developers that do that type of thing but

14 I've not discussed this particular domain name with any of

15 them that I can remember.

16 Q. Are these individuals or businesses?

17 A. Businesses. They would be development people that would

18 help.

19 Q. Can you name a few?

20 A. I can't think of them off the top of my head but they --

21 you can do a Google search and I'm sure find many of them that

22 do that.

23 MR. URBANIK: I pass the witness, Your Honor.

24 THE COURT: All right. Any recross?

25 MR. COCHELL: One moment.

1 THE WITNESS: Can I ask my counsel if I may sit down?

2 THE COURT: Okay. Would you go to the witness stand
3 if your client has a question?

4 MR. COCHELL: Yes.

5 (Off the record)

6 MR. COCHELL: No recross for me.

7 THE COURT: All right. Thank you, Mr. Baron. You're
8 excused from the witness stand.

9 All right. Mr. Urbanik, you may call your next
10 witness.

11 MR. URBANIK: I'd like to call Damon Nelson.

12 THE COURT: All right. Mr. Nelson, please come to
13 the witness stand and raise your right hand.

14 (Witness sworn)

15 THE WITNESS: Yes.

16 MR. COCHELL: Your Honor, Mr. Nelson was not listed
17 on the witness list. I'm not sure there's a legitimate reason
18 to be calling him at this point.

19 MR. URBANIK: He is a rebuttal witness, Your Honor.

20 THE COURT: Well, he's a rebuttal and --

21 MR. COCHELL: Well --

22 THE COURT: Let me ask this. Your objection to the
23 sale was filed when?

24 MR. COCHELL: I'm sorry?

25 THE COURT: Your objection to the sale motion was

1 filed when?

2 MR. COCHELL: My objection to the sale was filed --

3 THE COURT: When?

4 MR. COCHELL: -- I believe it was Saturday.

5 THE COURT: Okay. So he didn't even know about your
6 objection at the time his witness and exhibit list was due.

7 MR. COCHELL: Well, I don't --

8 THE COURT: True?

9 MR. COCHELL: -- I don't think that the objections
10 were due until yesterday. That's what I recall.

11 THE COURT: All right. Well, I'm going to overrule
12 it. He called him as a rebuttal witness. He's going to do
13 rebuttal on the, what, the topic of ownership that was just
14 raised Saturday. Correct?

15 MR. URBANIK: That is correct, Your Honor.

16 THE COURT: Okay. I overrule the objection.

17 DIRECT EXAMINATION

18 BY MR. URBANIK:

19 Q. Mr. Nelson, state your full name.

20 A. Damon Nelson.

21 Q. And, Mr. Nelson, are you currently assisting Daniel
22 Sherman Chapter 11 Trustee of Ondova in matters related to the
23 Ondova case?

24 A. Yes.

25 Q. And previously when Ondova was the registrar of the

1 domain names you assisted Mr. Sherman more regarding Ondova
2 acting as a registrar?

3 A. That's correct.

4 Q. Okay. Have you been involved in matters related to
5 servers.com?

6 A. Yes, to a certain extent.

7 Q. When Mr. Sherman became aware of the servers.com domain
8 name, did he ask you to do an investigation of who owned the
9 domain name?

10 A. As far as history, yes.

11 Q. Okay. And what did you find out when you did that
12 investigation?

13 MR. COCHELL: Objection. Hearsay.

14 THE COURT: Overruled.

15 A. I was looking for a history around the petition date and
16 the registrant's name was Compana, LLC.

17 Q. And Compana is Ondova. Is that correct?

18 A. That's correct.

19 Q. So on the petition date, the domain name was owned by
20 Ondova?

21 A. Compana. Yeah.

22 Q. Okay. Mr. Nelson, were you familiar that a similar
23 domain name was sold in 2009 named server.com?

24 A. Yes.

25 Q. Did Mr. Sherman ask you to investigate the sales price of

1 that domain name?

2 A. Yes.

3 Q. And what did you find out?

4 A. It sold, I believe, sometime in August of 2009 for
5 770,000 dollars by -- in the book it was Sedo.

6 Q. Okay. In connection with this case, Mr. Nelson, do you
7 recall roughly when we employed Sedo to begin the sale efforts
8 of the servers.com?

9 A. Right. I can't recall the exact dates but it was late
10 2011 I believe to sometime in 2012.

11 Q. And is it your understanding that we allowed Sedo
12 approximately one year to try to sell the domain name?

13 A. That's correct.

14 Q. Do you remember what their highest offer was?

15 A. I want to say it was --

16 MR. COCHELL: Objection. Hearsay.

17 THE COURT: Overruled.

18 A. -- I want to say that the conversations were around
19 100,000.

20 Q. Okay. And eventually, we did terminate Sedo.com. Is
21 that correct?

22 A. That's correct.

23 Q. And then we began essentially the trustee's own sale
24 efforts with a blue Web page, if you will, instructing
25 potential parties to contact you?

1 A. Yeah. We had a blue page. Now, it's a -- I think
2 there's actually a sign that says "Domain for Sale" and it has
3 OndovaLimited@gmail which I answer every day.

4 Q. And were you the person first contacted by a purchaser,
5 XBT?

6 A. I can't say a hundred percent. I know I get inquiries
7 and I would forward them to you so the -- who the purchaser is
8 versus how they came in could be a completely different name.

9 Q. Alex -- Alexi --

10 A. That name --

11 Q. -- our purchaser?

12 A. -- yeah, that name sounds familiar.

13 Q. And he contacted you because of the Web page that says
14 contact --

15 A. Yes.

16 Q. -- you? Okay. And Mr. Alex's bid of 300,000, his
17 through his company, XBT, that's the highest bid we've
18 received since the trustee has taken over the sale efforts?

19 A. That's correct.

20 Q. And it's higher than anything Sedo presented to us?

21 A. That's correct.

22 Q. And in this case, we have no broker's commission?

23 A. That's correct.

24 Q. Okay. And you are advising the trustee on the ways to
25 market the domain name to even get a possible higher bid. Is

1 that correct?

2 A. Yes. I believe there are numerous entities that would be
3 interested in buying this domain name but you would have to go
4 out and seek them out through advertising or marketing or some
5 type of traffic generation that --

6 Q. So you are working with the trustee on essentially
7 marketing it through domain name journal and technology Web
8 sites and blogs that deal with servers and clouds. Is that
9 correct?

10 A. Right. In addition to the main investment sites, we
11 would target a cloud-based enterprise; Web sites that are more
12 directed to the chief strategy officer or chief technology
13 officer or Fortune 500 companies. We want to try to get where
14 those people would actually be reading.

15 Q. And in your day-to-day work both for Mr. Sherman and even
16 for Mr. Vogel still, there's other parties in this business
17 that contact you like Jason Boshoff of Domain Holdings and
18 other parties that see the servers.com Web site?

19 A. Yes.

20 Q. And so you're constantly getting calls about it and --
21 about it and whether it's up for sale?

22 A. It's primarily e-mails and --

23 Q. E-mails I meant.

24 A. Yeah. And all the e-mails I redirect to you.

25 Q. Thank you.

1 Just to clarify the record, Mr. Nelson, at some point
2 during Mike Emke's control of the domain name, he did have
3 some ad or parking sites up. Is that your recollection?

4 A. Yes. He actually had a GoDaddy reseller hosting account
5 that he pointed servers.com to hoping to generate, I guess,
6 hosting sales.

7 Q. And it was a fairly basic package, though --

8 A. Yes.

9 Q. -- that you can purchase sort of pre-arrange with
10 GoDaddy?

11 A. Right. I think it's, like, ninety-nine dollars a month
12 to have this reseller package.

13 Q. Okay. And prior to Sedo being employed, I mean did
14 anyone ever make an offer to Ondova to purchase servers.com?

15 A. No.

16 Q. Okay. Or Mr. Emke?

17 A. Not that I'm aware of or Mr. Emke.

18 Q. You heard Mr. Baron talk about possibly developing this,
19 do you have any idea what it would cost to develop this domain
20 name to make it value to go maturely greater than 300,000
21 dollars?

22 A. I would say it's going to be in the half-million dollar
23 range. And a lot of the times the way domain names are priced
24 that are fully-developed out are -- it's based on multiple of
25 earnings. And so it's two years, three years multiple

1 earnings is how you would turn around and flip that domain
2 name when it's ready to sell. So if you wanted to generate
3 two million dollars a year, you had to put some effort to get
4 there.

5 MR. COCHELL: Objection. Move to strike. Lack of
6 foundation.

7 THE COURT: Overruled.

8 MR. COCHELL: Also, he's not an expert under Rule
9 702.

10 THE COURT: Overruled.

11 Q. Does the Ondova estate have the funds to develop this Web
12 site?

13 A. No.

14 Q. Do you know of anyone that would do it for free based on
15 the promise of a future share of the sales price?

16 A. I don't know of anybody's name. I think a statement
17 Baron made could be interpreted that you could find somebody
18 and there might be some joint venture opportunities out there
19 to develop the name without any upfront costs but I'm not
20 aware of it and I haven't ever done any deals like that.

21 Q. Understand. Have you been following the pricing on
22 domain names, Mr. Nelson?

23 A. Yes.

24 Q. And you follow that pretty closely, don't you?

25 A. Yes.

1 Q. There was a sort of a dip in pricing probably in 2011 or
2 2012 after server.com sold. Is that a fair statement?

3 MR. COCHELL: Objection. Lack of foundation.

4 THE COURT: Overruled.

5 A. Yes, sir. I did notice.

6 Q. How are domain name prices this year for 2013?

7 MR. COCHELL: Objection. Lack of foundation.

8 THE COURT: Overruled.

9 A. It seems like compared to the last couple years, the
10 prices for six and seven -- or six-digit and seven-digit names
11 have gone up.

12 MR. URBANIK: I'll pass the witness, Your Honor.

13 THE COURT: All right. Cross?

14 MR. COCHELL: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. COCHELL:

17 Q. Mr. Nelson, if I understand it correctly, is it fair to
18 say that registrant information -- how did you access the
19 registrant information that you were referring to earlier in
20 your testimony?

21 A. Through a -- there's software called a -- a site called
22 DomainTools and they have a Whois history and it pretty much
23 identifies changes in the record itself over time whether it's
24 a payment update or a change in registrar or change in
25 registrant or a change in just technical informational record

1 put -- puts little points in there but I did go back to look
2 at dates around the petition date to discover that there was
3 a -- the Whois record actual states Compana, LLC.

4 Q. Okay. And did you print that out?

5 A. Yes.

6 Q. Did you bring that with you today?

7 A. No, sir.

8 Q. All right.

9 A. It's -- I did e-mail it to Mr. Urbanik.

10 Q. Okay. And when did you look this up?

11 A. I would say it was prior to the Emke case.

12 Q. Okay. And so -- and this Whois information, is it who
13 has it registered or isn't there a distinction between who is
14 the registrant and who is the owner of the information?

15 A. If you're asking does the records reflect the difference
16 between a registrant and an owner?

17 Q. Yes.

18 A. The records do not reflect that. It is the registrar and
19 registrant and admin and technical support information.

20 Q. But isn't there a difference between someone who
21 registers it and someone who actually owns the domain?

22 A. Could be. Sometimes.

23 Q. Okay. Is it fair to say that DomainTools is not the
24 authoritative site for determining registration or ownership?

25 A. DomainTools, I suspect, pulls from the same information

1 everybody else does as a Whois-registered.

2 Q. But you don't know that one way or the other. Is that
3 correct?

4 A. If I --

5 Q. You suspect it but you don't really know. Is that
6 correct?

7 A. -- if I'm pulling Whois information, I typically go to
8 GoDaddy or I go to Hostskater and I can look up information.
9 DomainTools gives me the ability to look back in time over
10 Whois information that GoDaddy doesn't provide that service.
11 Hostskater doesn't provide that service. This is --
12 DomainTools is the only one I've looked at. I've done this a
13 lot of times is look at history and domain names.

14 Q. Okay. But I'm -- so I'm asking you what you did based on
15 your -- when you testified earlier that you looked at who
16 owned -- who is the registrant on the date of the petition --

17 MR. URBANIK: Judge. Asked and answered.

18 MR. COCHELL: Okay.

19 THE COURT: Sustained.

20 Q. And -- but what I'm asking, sir, is what did you
21 actually -- so if you looked at DomainTools, I mean if
22 DomainTools -- I guess your testimony is a little unclear.

23 What is it that DomainTools actually provides and how do
24 you -- why is that reliable?

25 A. It --

1 MR. URBANIK: Past objection. Asked and answered.

2 His answer is --

3 THE COURT: Overruled. Go ahead.

4 A. Okay. It pulls from a database that has -- it says
5 registrar: and then a bunch of names. Registrant: Compana,
6 LLC. It has the same format that GoDaddy or Hostskater has in
7 delivering the information.

8 Q. Okay. And does ICANN, isn't ICANN the company that is
9 the company that maintains registrations and is the authority
10 on registrations?

11 A. They keep a Whois record and I don't have access to
12 ICANN's Whois record.

13 Q. Okay. So you're going to someone who has a different
14 database but -- right? Domain names -- DomainTools is not --
15 does not kick in -- they don't share off of ICANN, right?

16 A. I don't know that.

17 Q. Okay. And you don't know if their information is
18 reliable because they are not the authority on registrations.
19 ICANN is the authority on registration. Right?

20 A. Well, I didn't know I was going to ask -- be asked about
21 DomainTools where they provide the information but I suspect
22 they're actually pulling it from ICANN's database.

23 Q. Okay. So --

24 A. Me, as a registrar right now, I cannot access it. I'm an
25 end user.

1 MR. COCHELL: We move to strike that testimony as --

2 THE COURT: Overruled.

3 MR. COCHELL: -- mere suspicion.

4 THE COURT: Overruled.

5 Q. Okay. And what dates was Compana listed as registrant to
6 servers.com?

7 A. I pulled -- I can't recall exactly the number of records
8 I pulled that I know of but I pulled more than a few and less
9 than a dozen during certain time periods around the
10 2009-2010 --

11 Q. And you don't have any of those records with you today.
12 Right?

13 A. I did not bring them with me. I can access them and
14 deliver them to the Court if need be.

15 Q. Okay.

16 MR. URBANIK: Objection, Your Honor. I'd like to
17 just point to the Court something that may shortcut this.

18 The Court's findings and conclusions entered on
19 October 18th, 2011 in the adversary identifies who the
20 registrar was of the domain name. It was Ondova registered
21 the name in 2002, paragraph 4, that's what the Court's
22 findings were after a very lengthy trial with Mr. Emke.
23 That's the same -- this order also provides the Servers, Inc.
24 entity was created by Conrad Herring on August 10th, 2009 and
25 these are the findings in the case -- while the case at this

1 point.

2 None of the appeals contested these findings. In
3 fact -- and Mr. Baron did not appear in this adversary, didn't
4 intervene. And furthermore, and in his appeal to the district
5 court, there was no -- Mr. Schepps did include the record when
6 he appealed the ruling in the district court. Judge Furgeson
7 denied the appeal of Mr. Schepps in January 2013 as moot. So
8 there's no factual -- there's no party, including Mr. Baron,
9 contesting the facts that Ondova was a registrar. The hearing
10 was before the Court at docket 130 and that is hearing number
11 11-03181.

12 THE COURT: All right. I overrule the objection.
13 You can continue to question him on this but it seems like
14 we're repeating the same question in different ways so --

15 MR. COHELL: Yes, Your Honor.

16 THE COURT: -- hurry along.

17 MR. COHELL: Yes, Your Honor.

18 BY MR. COHELL:

19 Q. All right. Now, you never did deals, I think -- well,
20 you prepped but you never did deals similar to the kind that
21 Mr. Baron was suggesting that there be -- that you could do
22 some sort of arrangement with an investment company that would
23 take a percentage of revenues or profits in exchange for
24 developing a Web site. You never did anything like that?

25 A. I have not done that. No, sir.

1 Q. And you never looked to do anything like that before.

2 Correct? You never tried to find people who would do that

3 sort of a deal?

4 A. I --

5 Q. Yes or no.

6 A. -- in my --

7 Q. Can you answer that yes or no?

8 A. Yes, I have looked.

9 Q. Okay.

10 A. But I --

11 Q. And when was that?

12 A. Probably in the last couple years I do have domain names

13 that I own that I had sought out joint venture arrangements

14 and I didn't like the terms of the deal so I didn't pursue

15 those anymore.

16 Q. Okay. And were they domain names that had a 300,000 to 1

17 million dollar value to them?

18 A. Not as a parked site. No.

19 Q. No. Okay. So the answer to my question, then, is you

20 never tried to do a deal of this kind of magnitude on the

21 terms of development in exchange for a percentage of revenues

22 or profits. Is that correct? You've never done that?

23 A. No.

24 Q. Okay. Now, there has been an increase in the value of --

25 based on your testimony of an offer of 100,000 dollars two

1 years ago through Sedo to now an offer of 300,000. Correct?

2 A. That's correct.

3 Q. That's an increase in value of on the average of 100,000

4 a year. Right? Obviously.

5 A. Yeah. I guess --

6 Q. It's not a trick question.

7 A. Yeah.

8 Q. And so my question, sir, is -- and that's with a Web site

9 that's relatively undeveloped. Right?

10 A. Yeah, it's true.

11 Q. Okay. So the real value of this Web site likely with

12 development is quite substantial particularly if there was a

13 sale of server.com for 770,000 just a couple years ago?

14 A. Well, the sale four years ago for 770,000, the domain

15 name is still blank. There's nothing -- nobody's developed

16 anything. So I don't know the reason why it's still blank but

17 I would anticipate that if it was worth developing they would

18 have probably spent some money in a four year period.

19 As it stands right now, I don't believe we have any money

20 in the bankruptcy trustee account to develop out this domain

21 name to make it more valuable than what it is as a parked

22 domain.

23 Q. Okay. And, of course, nobody's looked into it, into that

24 avenue to increase the value of the assets so that it could be

25 sold at a much higher price, generate a lot more income in a

1 Chapter 11 estate. Right?

2 A. For a joint venture agreement, no.

3 Q. Okay.

4 A. I have not done that.

5 Q. All right. One moment.

6 MR. COCHELL: That's all the questions we have.

7 Thank you, Your Honor.

8 THE COURT: All right. Any redirect?

9 REDIRECT EXAMINATION

10 BY MR. URBANIK:

11 Q. Mr. Nelson, as part of your examination of the name for
12 the trustee, did you look into who was paying the yearly
13 renewal fees for servers.com?

14 MR. COCHELL: Objection. Hearsay.

15 THE COURT: Overruled.

16 A. Ondova Limited was paying the renewals and we're paying
17 them right now through GoDaddy.

18 Q. Did you look back to see how long Ondova had been paying
19 the renewals for servers?

20 MR. COCHELL: Objection. Hearsay.

21 THE COURT: Overruled.

22 A. As long as I was manager of Ondova Limited it was paying
23 the renewals.

24 Q. Okay. Thank you.

25 MR. URBANIK: That's all the questions I have, Judge.

1 THE COURT: All right. Any recross on that redirect?

2 MR. COCHELL: No, Your Honor. Thank you.

3 THE COURT: All right. Thank you, Mr. Nelson.

4 You're excused.

5 All right. Any other evidence from the trustee?

6 MR. URBANIK: No, Your Honor.

7 THE COURT: All right. Trustee rests.

8 Does Mr. Baron have any additional evidence?

9 MR. COCHELL: No, Your Honor.

10 THE COURT: All right. I'll hear closing arguments
11 very briefly, please.

12 MR. URBANIK: Your Honor, we employed Sedo pursuant
13 to an order on October 7th, 2011 to sell the domain name and
14 their highest offer is 100,000 dollars. We terminated Sedo on
15 September 13th, 2012 and since then we have marketed the name
16 on our own and we now have the offer for 300,000 dollars. No
17 one here has shown us, at least, a legitimate argument
18 regarding any flaw or problem with our sale process or sale
19 procedures. We have a willing -- a ready and able buyer to go
20 forward on a purchase who has 40,000 dollars of earnest money
21 and we feel that the sale procedures are reasonable and
22 appropriate and designed to maximize the value of the domain
23 name. They are very consistent, if not even -- maybe more
24 generous than the sale procedures approved in many other
25 bankruptcy cases.

1 So I know the judge, you wanted us to focus on the
2 merits of the sale motion and then Mr. Baron's ownership of
3 the domain name. Nothing Mr. Baron himself raised regarding
4 problems I thought was a basis to not approve the sale
5 procedures we have heard. Nothing from Mr. Baron has shown
6 that he's made any efforts to sell domain names or has any
7 legitimate reason to oppose it although he keeps referencing
8 the receiver's efforts to sell domain names in 2012. We're
9 only selling one name, not 154 -- 153,000 names.

10 Regarding Mr. Baron's -- so with respect to the sale
11 procedures, we would ask the Court to approve the sale
12 procedures as reasonable and in the trustee's business
13 judgment and also approve the finding of XBT as a good faith
14 purchaser of value and that the Court shorten the fourteen-day
15 stay period under Rule 6004.

16 With respect to Mr. Baron's ownership of the domain
17 name, Ondova was clearly insolvent. It was in the zone of
18 insolvency because of that agreement with Mike Emke was nearly
19 three weeks before Ondova filed. There's already a
20 presumption of insolvency. The Court can take judicial notice
21 of the claims register in the Ondova case. The Court can take
22 judicial notice of the -- of the fact that Mr. Baron did not
23 object to the sale in 2011. The Court can take notice that
24 Mr. Baron took no steps to intervene in the adversary of Mike
25 Emke. There's not been any stay of the order approving the

1 sale in 2011. Not been any order staying Mr. Baron's personal
2 bankruptcy case. So regarding Baron's claim on ownership,
3 those are some the things the Court can look at.

4 There's not been any evidence that Mr. Baron provided
5 any consideration through Ondova to get the benefit of that
6 reversionary interest. There's no evidence that Mr. Baron
7 took any efforts to get a perfected security interest or lien
8 in the domain name.

9 Mr. Baron is an officer of Ondova; he was a sole
10 officer so he was an insider. He says he paid attorneys' fees
11 to Ondova to fight Mr. Emke but there's no evidence of any
12 attorneys' fees. As an insider, there's a sort of an
13 additional hurdle that Mr. Baron would have to show that
14 somehow this transaction where he got a reversionary interest
15 was fair and reasonable and for consideration.

16 Mr. Baron could not recall any other officer of
17 Ondova let alone another founder. He did not know who owned
18 the stock of Ondova. And in the event that somehow Mr.
19 Baron's claim against Servers, Inc. vested, I think Ondova
20 would then have another claim against Mr. Baron for breach of
21 fiduciary duty because we saw absolutely no legitimate reason
22 today why Baron should get a reversionary interest in the
23 domain name servers.com. And those are just the facts or
24 reasons, Judge. Obviously, Section 549 is applicable here.
25 This was a post-Ondova petition transaction.

1 We have fully briefed ipso facto clauses in the
2 appeal before Judge Furgeson not yet in the Fifth Circuit but
3 this is clearly an unenforceable ipso facto clause in
4 connection with Ondova. And, in fact, I don't have the site
5 right here at the podium but in the Lehman Brothers case where
6 there were businesses that all over the map courts found that
7 these provisions that were triggered on the insolvency are
8 simply unenforceable. And ipso facto clauses have a very
9 broad longstanding history.

10 So not even having briefed ipso facto, we believe
11 that under 549, under all the factual bases here and also the
12 Court's power to sell the name under 363, there's really no
13 reason to hold up this sale.

14 This offer is a very, very good offer. Our sale
15 procedures are designed to bring in buyers. Mr. Nelson didn't
16 say this but there's sort of a different -- there's a
17 different element when you put an ad in that says we have a
18 buyer and we're going to sell it and the hearing is this date.
19 That brings people to the table more than having a Sedo broker
20 call somebody and say, oh, they're going to sell the name.

21 When you have a bankruptcy auction I do believe that
22 businesses pay more attention to them, they see that that name
23 is finally going to go after all these years of being in play
24 and in controversy and we may obtain a buyer, a big industry
25 player, to purchase this name where it's simply a broker

1 calling or seeing the blue page would not achieve that same
2 result.

3 So we may get the prices that Mr. Baron was talking
4 about or at least implied in a filing with the Fifth Circuit,
5 so for all of the reasons -- I know I'm talking fast, Your
6 Honor -- we don't think there was any evidence presented by
7 Mr. Baron today that would in any way be inconsistent with
8 this Court's approving our sale motion, our sale procedures.
9 If the Court approves the motions, we will coordinate with
10 Traci Davis on the follow-up hearing date. But as I stated on
11 the record earlier, it's a thirty-day marketing period with a
12 fixed date for the qualified bidder, a fixed date for the
13 auction. We will put all that in the notice.

14 You didn't ask any questions for buyers' counsel;
15 he's on the phone and he can answer any questions the Court
16 has regarding the qual -- they're ready, willing and able to
17 close on the purchase. It's probably maybe appropriate to do
18 that today while we're all here.

19 And then finally, I would ask the Court to maybe re-
20 look at the findings and conclusions from the Emke adversary
21 which was hotly contested. The Court did make a lot of
22 findings based on evidence about ownership and who did what
23 and I think I cited Docket 130, no one appealed the facts of
24 what happened in Ondova and Mr. Baron didn't intervene. Mr.
25 Baron didn't file a motion, he didn't object to the sale of

1 the name in 2011.

2 And, Your Honor, I'm probably beating -- take up the
3 Court's time but I'm still very certain that this -- Mr.
4 Baron's standing is suspect in light of Mr. Litzler being his
5 trustee and a lack of showing of any pecuniary interest in his
6 personal case that he would have any standing today.

7 So I'm just going to close on that note, Your Honor,
8 but we would ask the Court to approve the motion for all of
9 the reasons that I just went through and I'm happy to answer
10 any questions or go into anything in more detail.

11 THE COURT: All right. Not at this time.

12 MR. URBANIK: Okay. Thank you.

13 THE COURT: Thank you. Mr. McCullough, briefly.

14 MR. MCCULLOUGH: Yes, Your Honor.

15 I guess recognizing the agreement that we have with
16 the Ondova estate that with the -- ownership doesn't need to
17 be decided today. I think you can sell it subject to a bona
18 fide dispute. I think that's well within the Court's power to
19 do and I think the Court should do and then we can just
20 resolve these issues once the proceeds come in.

21 THE COURT: Thank you. All right. Mr. Cochell?

22 MR. COCHELL: Yes, Your Honor.

23 Your Honor, we think that the Emke settlement
24 agreement did create a fundamental change in the ownership of
25 the company. It went to Servers, Inc. and then Ondova's

1 ownership became that of a stockholder not entitled to the
2 underlying assets on demand. And so that is very fundamental.
3 And then when there's the order of receivership, we believe,
4 also that the ownership reverted to Mr. Baron and Mr. Emke.
5 We think there was consideration for that as shown by
6 Mr. Baron's testimony that yes he did pay attorneys' fees
7 personally for the litigation, that he had claims that he
8 compromised --

9 THE COURT: Okay. What's the real -- I didn't get
10 any evidence other than he thinks he paid some attorneys'
11 fees.

12 MR. COCHELL: Right.

13 THE COURT: I didn't get any evidence of what claims
14 and what lawsuits.

15 MR. COCHELL: Right.

16 THE COURT: He personally asserted against Emke.

17 MR. COCHELL: Right. And, Your Honor --

18 THE COURT: I said at the beginning of today I wanted
19 evidence.

20 MR. COCHELL: Right.

21 THE COURT: Where's my evidence?

22 MR. COCHELL: Well, you said at the beginning of
23 today, that's correct, and the evidence is in the possession
24 of the receiver and of Mr. Schepps who has refused to give it
25 to us. So that's where the evidence is.

1 Mr. Baron has been in receivership. He hasn't had
2 these documents. He --

3 THE COURT: First of all, the lawsuits are a matter
4 of public record.

5 MR. COCHELL: Right.

6 THE COURT: You're an attorney and you know how to
7 get answers, counterclaims, et cetera, et cetera.

8 MR. COCHELL: Right.

9 THE COURT: Okay. Nobody's holding that information
10 hostage.

11 MR. COCHELL: Right.

12 THE COURT: Okay. So you had the ability, you had
13 the time, I have no information about what claims have been
14 asserted, and you quote several lawsuits Emke filed against
15 Compana. And you're telling me Mr. Baron had no ability to
16 retrieve records of what legal fees he may have personally
17 paid in connection with Ondova -- Servers litigation against
18 Mr. Emke.

19 MR. COCHELL: Well, how could he?

20 THE COURT: How --

21 MR. COCHELL: He doesn't have copies of them.

22 THE COURT: Okay.

23 MR. COCHELL: I mean the receivers never --

24 THE COURT: Okay. How many bank accounts has Mr.
25 Baron had in that time period? That's a very simple question.

1 MR. COCHELL: All right.

2 THE COURT: The answer is what?

3 MR. COCHELL: I don't know the answer.

4 THE COURT: You have the ability to get the answer to
5 get that question. You could go to the bank --

6 MR. COCHELL: Yes.

7 THE COURT: -- and get copies of these records. What
8 am I missing? What are you missing?

9 MR. COCHELL: What you're missing is that Mr. Baron
10 does not have unlimited resources. His resources are in the
11 hands of other people and have been for many years. The
12 ability to go out and spend a couple thousand dollars is not
13 his to enjoy at this point in time and that's just a fact of
14 life. And lawyers who step in and try and help him don't have
15 unlimited time and resources.

16 So my basic thesis -- my basic argument earlier today
17 I think still stands that this determining ownership is really
18 properly the subject of an adversary action. He's asserted
19 it. He has a right to discover. We came in without any
20 documents, so did Mr. Baron and that's the point of that
21 cross-examination. He didn't bring it with him.

22 THE COURT: Whose burden is it under --

23 MR. MCCULLOUGH: There was no right to discovery,
24 Your Honor.

25 THE COURT: Tell me this, whose burden is it under

1 363?

2 MR. COCHELL: Well, I think the burden initially is
3 on the trustee to come forward and show that it's a proper
4 sale.

5 THE COURT: Keep going.

6 MR. COCHELL: And I think the burden also is on the
7 trustee when he files an adversary action.

8 THE COURT: Okay. I'm going to answer my own
9 question.

10 MR. COCHELL: Yes, Your Honor.

11 THE COURT: 363(p), "In any hearing under this
12 section," okay, in any hearing under Section 363 of the
13 Bankruptcy Code regarding potential sale of assets, "the
14 trustee has the burden of proof on the issue of adequate
15 protection; and (2) the entity asserting an interest in
16 property has the burden of proof on the issue of the validity,
17 priority, or extent of such interest." There's the answer to
18 my question.

19 MR. COCHELL: All right.

20 THE COURT: Your client who is asserting an interest
21 in the domain name servers.com has the burden of proof on the
22 validity, priority or extent of his interest.

23 MR. COCHELL: And what we're saying is that --

24 THE COURT: There is my evidence.

25 MR. COCHELL: Your evidence is subject to discovery.

1 We haven't had discovery. And you cannot -- you --

2 THE COURT: What evidence is subject only to
3 discovery?

4 MR. COCHELL: Evidence of the by-laws, the corporate
5 minutes, the stock certificates, the ownership of the company,
6 the course of conduct of the company, correspondence as to
7 what the intention of the party --

8 THE COURT: What is that going to tell me?

9 MR. COCHELL: It would --

10 THE COURT: What is that going to tell me about the
11 ownership of servers.com?

12 MR. COCHELL: I think it would have a lot to do with
13 the agreement regarding to servers.com. I think -- you were
14 asking, people were asking what --

15 THE COURT: Your whole argument, is it not, is that
16 paragraph 4, section 4 of the July 6, 2009 settlement
17 agreement operated here such that when this Court appointed
18 Mr. Sherman receiver to sell the name somehow that created a
19 situation where Jeff Baron owned fifty percent of the name,
20 servers.com. Isn't that your whole argument? And what
21 discovery is going to shed light on that interpretation?

22 MR. COCHELL: Well, Your Honor, I'm not going to
23 quibble with you. I think that --

24 THE COURT: I'm just asking the question.

25 MR. COCHELL: -- part of it is --

1 THE COURT: What evidence could you get in discovery
2 that would shed light on the meaning of this section 4?

3 MR. COCHELL: Well, part of it would be to have
4 people who actually provide documents to me before the hearing
5 and people who will give me information prior to the hearing,
6 that's called discovery. You know that. And --

7 THE COURT: Did you serve discovery --

8 MR. COCHELL: Your Honor, no, I didn't. And the
9 reality is that we have limited resources and time to do this
10 stuff. And the Court -- I mean all we can do is what we can
11 do. You may find fault with the lawyering, with the facts,
12 that's fine, but all I'm saying to Your Honor is that we're
13 not coming here to pull the wool over your eyes or anything
14 like this but we don't have the information in our possession,
15 we don't have the resources to go after it on our own and
16 that's where it stands.

17 And again, I sincerely believe that in this sort of a
18 case on a sale determining the ownership requires an adversary
19 hearing. And I -- I'm not a bankruptcy specialist. I'm not
20 going to argue the point with you because --

21 THE COURT: Is there a reason why you haven't filed
22 such an adversary proceeding?

23 MR. COCHELL: Well, I just -- I just got into this on
24 this aspect of it, Your Honor. I was asked to file the
25 objections a bit before they were due. So no, I haven't. We

1 can file an adversary action but it seems to me that if they
2 had that issue they should have filed it but that's just --

3 THE COURT: They don't think there's an issue.

4 MR. COCHELL: Okay.

5 THE COURT: They think I've litigated this.

6 MR. COCHELL: All right. And then there's also this
7 little detail of everything being on appeal and there is this
8 appeal before the Fifth Circuit on this very same issue and
9 there is this case law whether --

10 THE COURT: Isn't that in a moot that's still --

11 MR. COCHELL: I don't think so, Your Honor.

12 THE COURT: How could it not be moot?

13 MR. COCHELL: Because it's still live and it's still
14 being litigated.

15 THE COURT: Whoa, whoa, whoa.

16 MR. COCHELL: That's why.

17 THE COURT: Whoa, whoa. The motion was a motion to
18 employ Sedo as a broker and then a motion to sell servers.com
19 to the retention of Sedo. That's expired. That relief is no
20 longer being sought. How could that appeal possibly not be
21 moot?

22 MR. COCHELL: I don't know, Your Honor.

23 THE COURT: Who's pursuing that appeal?

24 MR. COCHELL: It's been dormant and I substituted in
25 for Gary Schepps recently.

1 THE COURT: Do you think you have an obligation as an
2 officer of the court to let the Fifth Circuit know that that's
3 a moot appeal?

4 MR. COCHELL: And --

5 THE COURT: That's a question, yes or no?

6 MR. COCHELL: Yes, I do.

7 THE COURT: Okay. Are you going to let them know
8 tomorrow, this afternoon?

9 MR. COCHELL: I'm going to let them know after I
10 review the briefs and verify the representations made in
11 court. It may be that you're absolutely right and if you are
12 I will do exactly what I believe should be done and if it's
13 moot then I will advise the Court and file a suggestion of
14 mootness.

15 THE COURT: How could it now be moot?

16 MR. COCHELL: I don't know but Mr. Urbanik and I
17 haven't discussed it. The first time this was raised was just
18 during the course of this hearing and the mootness issue
19 wasn't raised to me before.

20 Also, Your Honor, I don't know if you're aware of
21 this but Judge O'Connor has established a briefing schedule
22 only involuntary.

23 THE COURT: My law clerk let me know this morning --

24 MR. COCHELL: All right.

25 THE COURT: -- when you all were unaware.

1 MR. COCHELL: All right. Okay.

2 THE COURT: So you set a deadline of what, September
3 17th for a response --

4 MR. COCHELL: Right.

5 THE COURT: -- to your motion for stay pending appeal
6 and the reply deadline, I think it's September 25th and he --
7 I don't think he set oral arguments.

8 MR. COCHELL: That's correct.

9 THE COURT: District judges often don't do that.

10 MR. COCHELL: That's correct, Your Honor.

11 THE COURT: No stay pending appeal.

12 MR. COCHELL: Right.

13 THE COURT: Anything else?

14 MR. COCHELL: That's it.

15 THE COURT: Okay. I'm just looking at -- I'm sorry;
16 were you getting up? I've really heard enough.

17 MR. URBANIK: I'm going mention something, Your
18 Honor. I believe Mr. Cochell mentioned earlier that maybe
19 this Court was stayed from proceeding under the Griggs case.
20 If the Court wants to invite a letter brief on whether this
21 court was in any way stayed because of what's happening in the
22 district court, maybe Mr. Cochell could do a letter brief by
23 Thursday or something. We totally disagree. I mean the
24 filing of an appeal doesn't state much or anything. So any
25 ar -- I mean I guarantee you they will appeal what you do

1 today. There will be an appeal. However you rule, Mr. Baron
2 will order -- will have a lawyer that is paying to hire
3 Cochell, Schepps as to those appeals for Mr. Baron's entities.
4 They'll appeal your order and I just think maybe letter briefs
5 showing some of these arguments that Mr. Cochell is making
6 might be appropriate. I don't believe the Griggs case
7 controls this Court's proceeding today and I don't believe he
8 can overcome the standing issue vis-a-vis Mr. Litzler under
9 many cases including Judge Lindsay's case that I mentioned
10 earlier. So that's a suggestion. I'll sit back down.

11 THE COURT: Okay. I get fixated on a lot of things
12 during hearings and sometimes my law clerk and I are
13 exchanging notes and looking at random things on the docket.
14 Just FYI, I'll share one little tidbit. I had asked her to
15 look at was the ownership interest of Servers, Inc. -- was the
16 fifty-percent equity ownership that Ondova had in Servers,
17 Inc., was it listed in the Ondova bankruptcy schedules. You
18 know, we had talked about the settlement agreement dated July
19 6, 2009, we talked about this ad nauseum today, Trustee's
20 Exhibit 1; we've talked about how that was two weeks --
21 actually, twenty-one days before Ondova filed bankruptcy, and
22 it looked like it contemplated Servers, Inc. would be formed.
23 It wasn't quite formed yet, was it formed yet, Mr. Baron
24 didn't quite know; he -- but he thinks maybe it was formed a
25 few days after this agreement but then he really didn't know.

1 But I think the point is the position of -- I think
2 the position of Mr. Baron has consistently been that Ondova
3 came into the bankruptcy case with a fifty-percent ownership
4 in Servers, Inc. and then he thinks, when I appointed
5 Mr. Sherman, the receiver, with authority to sell sever.com,
6 that meant all of a sudden he had an interest in fifty percent
7 of the domain name.

8 Be that as it may, the fifty-percent ownership
9 interest in Servers, Inc. did not specifically appear in
10 Ondova's Schedule B, signed under penalty of perjury. In the
11 question on Schedule B that does ask about stock interest,
12 equity interest, other kinds of interest, there was a zero
13 dollar amount put on the schedule, not specifically Servers,
14 Inc. zero value; it was just zero for any stock or equity
15 interest the estate might have.

16 I don't know what I should infer from that, but the
17 facts are what they are, and I don't think there's any dispute
18 that the settlement agreement was signed on July 6, 2009. And
19 on July 27th, 2009 the Ondova bankruptcy estate owned fifty
20 percent of some entity that had been formed, or was to be
21 formed, to hold the name servers.com. And I don't think
22 there's any dispute that Ondova has paid the registration fees
23 and any other expenses associated with ownership of this name
24 for many years.

25 I'm just going to also throw out there that when the

1 Court ruled in the Emke litigation in October 2011, Court
2 really didn't see any relevance in section 4 of the July 6,
3 2009 settlement agreement. The provisions that this Court
4 thought were most relevant were section 2 of the settlement
5 agreement and section 6 of the settlement agreement. Section
6 2 put certain obligations on Mr. Emke to develop a business
7 plan for servers.com to consult with Ondova regarding that
8 business plan, to design, develop an Internet Web site, to use
9 servers.com, which would be a sales and marketing platform for
10 the business, and he would use his best efforts to develop
11 that Web site in a reasonable amount of time, and et cetera,
12 et cetera, other obligations regarding development and
13 capitalizing on that name.

14 And then -- and then -- that was paragraph 2.
15 Paragraph 6 was, if the parties couldn't agree on whether
16 Emke's management is maximizing the value of servers.com, the
17 parties may seek any one of the following remedies: 1, 2, 3,
18 that -- item 2, any one of these remedies could be sought.
19 Item number 2, one party may buy out the other party for a
20 specified price and/or, based on the best effort to attempt to
21 find a buyer -- okay, I'm sorry; it was paragraph 1 remedy
22 that was relevant here: The parties may seek to sell the
23 business and/or domain name and divide the revenues equally.

24 So the litigation that this Court had was asking this
25 Court for declaratory judgment that Mr. Emke had not fulfilled

1 his obligations under Section 2 to develop the name. Court
2 found he hadn't fulfilled his obligations to develop the name.
3 And then the Court was asked to enter a declaratory judgment
4 that paragraph 6 kicked in, since the parties hadn't agreed on
5 how he was going to manage and use the name, and, pursuant to
6 paragraph 6, a party could seek to sell the domain name.
7 Court declared that provision did apply, so therefore Ondova,
8 one of the parties to the settlement agreement, could seek to
9 sell the business. And as a mechanic for accomplishing that,
10 I appointed Mr. Sherman to essentially be a receiver of that
11 name to sell and market.

12 Now, I'm telling you right now I do not think
13 paragraph 4 really was triggered by that series of events.
14 There wasn't a technical insolvency or receivership or other
15 default of the company Servers, Inc. to trigger reversion of
16 the name to Jeff Baron and Mike Emke jointly and equally. The
17 Court was again declaring section 2 of the agreement violated
18 by Emke, and section 6 of the agreement triggered so that
19 Ondova could force a sale of the domain name. And because we
20 had the unique situation of one party being in bankruptcy and
21 having a bankruptcy trustee who was uniquely experienced with
22 selling assets, it made sense to essentially make him a
23 receiver of the name so that he could sell and market it. It
24 wasn't really the equivalent of a receivership over Servers,
25 Inc.

1 But even if paragraph 4 was triggered, again we have
2 this issue of a post-petition transfer of property of the
3 Ondova estate to the shareholder. We have Section 549 of the
4 Bankruptcy Code that I'm not sure such a transfer would be
5 consistent with. But even more problematic, we have an
6 agreement that was entered into on the eve of Ondova's
7 bankruptcy, three weeks before Ondova's bankruptcy, that
8 created this reversionary interest in Jeff Baron, and there's
9 no evidence of what consideration he might have given as
10 reasonably equivalent value; just his testimony that maybe he
11 paid legal fees -- he's not sure how much -- maybe he paid
12 some legal fees of Ondova associated with the Emke litigation,
13 and maybe he asserted claims personally against Mr. Emke, but
14 we don't have any evidence of that.

15 All this to say the best thing we have here, the most
16 we have here in favor of Mr. Baron, is some argument of a bona
17 fide dispute with regard to the ownership of the name. He had
18 the burden under 363(p) to show that, and really that's just
19 relevant to then determine if there is a sale of the asset, if
20 we have to provide adequate protection of his interest that's
21 in bona fide dispute.

22 On balance, what this all means is there is authority
23 under 363(b), (f) and (p) for the trustee to attempt to sell
24 the domain name servers.com. Again, at best, there is an
25 interest in Baron that is subject to a bona fide dispute, and

1 363(f) provides that the trustee can sell an asset as to which
2 there's some bona fide dispute; it's just a matter of any
3 interest, any claims against the assets attach to the
4 proceeds, to the same extent they have validity against the
5 actual asset. And later we can sort out who gets the
6 proceeds.

7 So there is authority under 363(b) and (f) to approve
8 a potential sale. The Court looks at is there an exercise of
9 reasonable business judgment here by the trustee in wanting to
10 enter into the sale procedures, is there a sound business
11 justification, and the Court finds yes on both counts. I
12 think there is no other option with regard to this asset that
13 might maximize value for all parties-in-interest; there is not
14 the money to potentially develop the name; there has not been
15 a viable competing option presented to the Court for a
16 potential joint venture; et cetera. Moreover, the trustee has
17 made attempts to sell this asset in the past, and this is the
18 best offer, the one from XBT, that has been presented to him
19 thus far.

20 So I am approving XBT as a stalking-horse bidder at
21 the proposed offer price of 300,000 dollars. The Court will
22 approve these proposed bid procedures for there to be a
23 thirty-day marketing period. There shall be a bid deadline
24 that will be at least thirty days after notice of the sale has
25 been provided by the trustee. After the bid deadline, if

1 there are competing qualified bidders, the trustee shall
2 conduct an auction; I'm thinking an auction somewhere in the
3 neighborhood of five days after the bid deadline would be
4 appropriate. The required topping bid would be 300,000 --
5 330,000 dollars, with a 40,000-dollar deposit and evidence of
6 financial wherewithal to be provided to the trustee.
7 Subsequent bidding will be in minimum increments of 10,000
8 dollars.

9 The Court does approve a breakup fee to XBT if it is
10 not the ultimate winning bidder, of 20,000 dollars, and the
11 Court is only approving that at this time. Any request to
12 increase that would have to be made by a subsequent motion.

13 We will have a sale hearing at which the Court will
14 hear reports of the auction process and will consider approval
15 of either the XBT 300,000-dollar bid or a higher and better
16 offer if any is received.

17 And we'll do that sale hearing, Mr. Urbanik, I would
18 say, at least three days after the auction. So why don't you,
19 I guess, follow up with Ms. Davis separately and work
20 backwards.

21 MR. URBANIK: Yes.

22 THE COURT: Again, at least a thirty-day marketing
23 period after your notice goes out, and then a bid deadline at
24 least thirty days after, and then an auction at least five
25 days after, and then a hearing at least three days after.

1 All right. Anything else?

2 All right, well, I hope you will have an answer from
3 Judge O'Connor sometime in late September/early October on
4 whether there is going to be a stay pending appeal.
5 Otherwise, you're certainly all welcome to submit any briefing
6 you want on this issue, but I thought I learned in law school
7 that if a party didn't have a stay pending appeal on an order,
8 that everyone could go forward and rely upon and act on the
9 order. So that's why I continue to go forward in the Baron
10 involuntary case as well as in the Ondova case where there're
11 specific orders that have been appealed.

12 All right, we'll look for your order, Mr. --

13 MR. URBANIK: Thank you, Judge.

14 THE COURT: -- Urbanik.

15 (Whereupon these proceedings were concluded at 5:11 PM)

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1	July 6, 2009 settlement agreement		42

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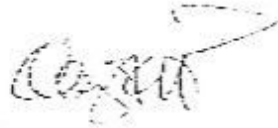
RULINGS

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Motion of Daniel J. Sherman to strike the Baron objection, overruled.	11	27
XBT is approved as a stalking-horse bidder at the proposed offer price of 300,000 dollars.	198	20
The proposed bid procedures are approved.	198	22
There will be a thirty-day marketing period.	198	23
There shall be a bid deadline that will be at least thirty days after notice of the sale has been provided by the trustee.	198	23
After the bid deadline, if there are competing qualified bidders, the trustee shall conduct an auction, at which the required topping bid would be \$330,000, with a \$40,000-dollar deposit and evidence of financial wherewithal to be provided to the trustee. Subsequent bidding will be in minimum increments of \$10,000.	198	25
Breakup fee of \$20,000 to XBT if it is not the ultimate winning bidder, is approved.	199	9

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C E R T I F I C A T I O N

I, Clara Rubín, certify that the foregoing transcript is a true and accurate record of the proceedings.



CLARA RUBIN

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: September 17, 2013

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK

THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 20, 2013

Tawana C. Marshall

United States Bankruptcy Judge

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

In re:

ONDOVA LIMITED COMPANY,

Debtor.

§
§
§
§
§

Case No. 09-34784-SGJ
(Chapter 11)

**ORDER APPROVING TRUSTEE'S MOTION FOR (A) AUTHORITY TO
SELL PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(B)
AND (B) FOR APPROVAL OF SALE PROCEDURES**

Came on for consideration the Trustee's Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(b) and (B) for Approval of Sale Procedures ("Motion") filed on August 14, 2013 [Docket No. 1110], by Daniel J. Sherman, Chapter 11 Trustee ("Trustee") for Ondova Limited Company ("Ondova" or "Debtor"), which Motion seeks authority to sell the internet domain name "servers.com" ("Domain Name" or "Asset") to proposed purchaser XBT Holdings, Ltd., or an affiliate thereof ("Purchaser"), for the sale price of \$300,000.00, which offer has been designated as a stalking horse bid by the Trustee, subject to higher and better bids, if any, and this Court having considered the Motion, the arguments and representations of the

parties, and the evidentiary record before it, finds and concludes that¹: (i) the relief requested in the Motion, including the sale procedures proposed therein (“Sale Procedures”), which include, *inter alia*, a four (4) week period for the Trustee to market the Domain Name, are fair, reasonable, appropriate and designed to maximize the value of the Asset to be sold by the Trustee as proposed therein; (ii) the Purchaser, having submitted an offer of \$300,000.00 shall be designated stalking horse bidder and the proposed \$20,000.00 breakup fee to be paid to Purchaser, if Purchaser is not the high bidder at an auction sale if an auction is conducted by the Trustee, is in all respects approved; (iii) the Trustee has exercised his sound business judgment in determining to sell the Asset to the Purchaser as set forth in the Motion and pursuant to the Sale Procedures; (iv) the Trustee has formulated the Sale Procedures in good faith for the purpose of maximizing the value of the Asset; (v) due and adequate notice of the Motion has been given to all creditors and parties in interest and no other or further notice is necessary; (vi) the proposed Purchaser is a disinterested party not in any way connected to the Debtor, the Trustee or any party-in-interest and therefore is entitled to the protections of 11 U.S.C. § 363(m); and (vii) after due deliberation thereon and for all of the reasons stated by the Court on the record, good and sufficient cause exists to grant the relief set forth herein as being in the best interests of the estate and this estate’s creditors. Accordingly, it is hereby

ORDERED that as provided under 11 USC Section 363(b) and (f), the sale of the Domain Name is a reasonable exercise of the Trustee’s judgment, is based on a sound business justification and should be approved. This Court approves the Motion to sell the Domain Name to Purchaser, or, alternatively, the winning bidder in the event an auction sale is conducted, under the terms and conditions set forth in the Motion free and clear of all liens, claims and encumbrances with any liens, claims and encumbrances attaching to the proceeds of the sale. It is further

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

ORDERED for the reasons stated on the record and in this Order, all objections to the relief requested in the Motion are overruled in their entirety. It is further

ORDERED specifically that the Objection of Jeffrey Baron to Trustee's Motion to Sell Servers.com filed on September 7, 2013 ("Objection") [Docket No. 1115] is denied and overruled in its entirety. This Court, having considered all of the evidence presented, including the testimony of the Trustee and Jeffrey Baron ("Baron"), has determined that the record supports approval for the Motion in all respects. Baron, the former president of Ondova, asserting a reversionary interest in the Domain Name which would in essence convey to him personally proceeds from the sale of the Domain Name, failed to meet the necessary burden of proof under 11 USC § 363(p). Baron's claim of a reversionary interest, which he testified was granted to him on July 7, 2009, shortly before the Ondova Chapter 11 filing date of July 26, 2009, would be, at best, a claim subject to a bona fide dispute and the Court may proceed with the sale of the Domain Name pursuant to 11 U.S.C. § 363(b), (f) and (p). This Court notes that any party seeking to object to a sale of assets holds the burden of proof pursuant to 11 U.S.C. § 363(p) and based on the evidence presented at the hearing, Baron failed to meet his burden of proof as to any claim in and to the Domain Name. Regardless, this Court may sell an asset to which there is a bona fide dispute under 11 U.S.C. § 363(f) and in the event that there is a claim against such asset, such claim attaches to the proceeds to the same extent that they have validity against the actual asset. Finally, this Court was advised that John H. Litzler, the Chapter 7 bankruptcy trustee over Baron (Baron is a debtor in a pending Chapter 7 case before this Court) reached an agreement with the Trustee which allows Litzler to investigate whether Baron holds any legitimate claim or right with respect to the Domain Name. That agreement allows Litzler until October 31, 2013, to assert such claim, with such deadline being subject to extension by agreement of the parties. It is further

ORDERED that the Court finds that the Purchaser is a good faith purchaser for value and if the Purchaser is ultimately determined to be the winning bidder for the Domain Name, it

shall be entitled to all of the protections of § 363(m) of the Bankruptcy Code. Additionally the proposed break-up fee of \$20,000.00 is approved and under certain conditions as described in the Motion, may possibly be increased by order of this Court.² It is further

ORDERED that the Trustee shall proceed with the sale efforts for the Domain Name pursuant to the Sale Procedures (a copy of which are attached as Exhibit "A"), which procedures are hereby approved. The Trustee is authorized to take any and all actions necessary or appropriate to implement the Sale Procedures including, but not limited to, advertising the Domain Name for purchase by auction sale in publications and internet websites as determined by the Trustee, and in the event qualified bidders are located, thereafter conducting an auction sale, which the Trustee has scheduled for October 29, 2013 at 2 p.m. Central time, in accordance therewith. It is further

ORDERED that the sale hearing to consider final approval of the sale of the Domain Name to the successful bidder as purchaser shall occur on **November 4, 2013, at 2:30 p.m.** prevailing Central time ("Sale Hearing"). It is further

ORDERED that the Trustee's proposed Notice of Sale (a copy of which is attached hereto as Exhibit "B") and the Sale Procedures are hereby approved and the Trustee shall cause such Notice of Sale, the Sale Procedures and this Order to be served or filed as follows: (1) filed on the docket of this case; (2) served on all parties who have requested notice in this bankruptcy case pursuant to Rule 2002; (3) the United States Trustee, (4) Peter Vogel, the Receiver for Jeffrey Baron and his counsel, (5) John Litzler, the Chapter 7 Trustee for Jeffrey Baron and his counsel; (6) filed on the docket of the Baron Chapter 7 case; and (7) all parties whom the Trustee believes may be potential purchasers of the Domain Name (all collectively, the "Notice Parties"). It is further

² The Purchaser may seek a higher break-up fee if it is required to expend professional fees caused by any parties who might create additional delay or expense with respect to the Court approved sales process. Any increase in the break-up fee will be determined by this Court.

ORDERED that following the conclusion of the auction, the Trustee shall file and serve upon all Notice Parties, as well as any qualified bidders, notice of the auction results if an auction does occur or, alternatively, a notice that no auction sale was conducted, with such a notice to be filed by 5:00 p.m. Central time on October 31, 2013 ("Sale Notice"). The Sale Notice shall inform parties in interest of the intention to have this Court approve the sale of the Domain Name to the Purchaser, or other successful bidder, at the Sale Hearing. It is further

ORDERED that any objection to the sale of the Domain Name to the Purchaser or other successful bidder shall be in writing and shall set forth the basis of the objection and shall be filed with the bankruptcy court and served upon the Trustee so as to be received on or before November 1, 2013 at 5 p.m. Central time. It is further

ORDERED that this Court shall retain exclusive jurisdiction over matters related to or arising from the implementation of this Order including, but not limited to, any claim, matter or dispute arising from or relating to the Sale Procedures, the proposed sale or the implementation of this Order.

IT IS SO ORDERED.

END OF ORDER

Order Submitted by:

Raymond J. Urbanik
Texas Bar No. 20414050
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500 N. Akard St.
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
rurbanik@munsch.com

SALE PROCEDURES

- a. As directed in the Order Approving Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(B) and (B) For Approval of Sale Procedures (“Motion”), the Trustee shall market the Domain Name Servers.com, noting that it is part of a Bankruptcy Court auction, on Internet websites which are related to the server and webhosting industries and on Internet websites which relate to the Internet domain name industry (i.e. Domain Name Journal).
- b. The Trustee shall have a period of thirty (30) days to market the Domain Name.
- c. Any parties interested in purchasing the Domain Name must submit a bid in the amount of at least \$330,000 and also submit financial information to the Trustee to demonstrate sufficient financial resources to purchase the Domain Name.
- d. Any party that seeks to bid on the Domain Name shall be required to place with the Trustee a \$40,000.00 deposit. A party which evidences financial resources and places a deposit shall be designated a Qualified Bidder. The deposit will be promptly refunded if a bidder is not the winning bidder or second highest bidder at the auction.
- e. If there is one or more Qualified Bidders, an auction will be scheduled and conducted at the offices of counsel for the Trustee and the initial opening bid will be the highest bid received from a Qualified Bidder and all subsequent bidding will be in minimum increments of \$10,000.00. Qualified Bidders participating in the auction may participate in person or by telephone. The Trustee shall have the absolute right and discretion to determine the highest and best bid (the “Winning Bidder”) at the auction.
- f. The second highest bidder shall agree to be the purchaser if the winning bidder fails to close.
- g. Any party participating in the auction which is determined to be the winning bidder but which fails to close on the purchase of the Domain Name shall forfeit their deposit.
- h. In the event that Purchaser is not the winning bidder, it shall receive a \$20,000.00 break-up fee and, like any other Qualified Party which submitted a deposit but was not the winning bidder, shall receive the return of its deposit.
- i. Parties seeking to submit bids must notify the Trustee prior to 5 pm Central time on October 25, 2013 and must submit a offer of at least \$330,000, tender a deposit of \$40,000.00 and provide evidence of financial ability to close.
- j. The auction sale shall be conducted at the offices of Munsch Hardt Kopf and Harr, PC, 500 North Akard Street, Suite 3800, Dallas, Texas 75201 on Tuesday October 29, 2013 at 2 pm, Central time. Telephone participation at the auction sale will be permitted for qualified bidders.
- k. The hearing to approve the sale of the Domain Name to the winning bidder will be held on November 4, 2013, at 2:30 p.m. at the United States Bankruptcy Court, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242.

BANKRUPTCY AUCTION NOTICE

TECHNOLOGY DOMAIN NAME

“servers.com”

BANKRUPTCY COURT ORDERED SALE¹

COURT APPROVED STALKING HORSE BID	\$300,000.00
AUCTION OPENING BID	\$330,000.00
BIDDING INCREMENTS	\$ 10,000.00
MINIMUM DEPOSIT TO BECOME QUALIFIED BIDDER	\$ 40,000.00
AUCTION LOCATION	DALLAS, TEXAS ²
AUCTION DATE	OCTOBER 29, 2013 2 p.m. Central
FINAL COURT APPROVAL DATE	NOVEMBER 4, 2013 2:30 p.m. Central

FOR FURTHER INFORMATION
PLEASE CONTACT COUNSEL FOR
THE BANKRUPTCY TRUSTEE:

rurbanik@munsch.com

¹ Case No. 09-34784-SGJ-11, U. S. Bankruptcy Court, Northern District of Texas

² Telephone participation permitted for qualified bidders

Raymond J. Urbanik
Texas Bar No. 20414050
MUNSCH HARDT KOPF & HARR, P.C.
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500 North Akard Street
Dallas, Texas 75201
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Email: rurbanik@munsch.com

COUNSEL FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE FOR ONDOVA
LIMITED COMPANY

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

IN RE: §
ONDOVA LIMITED COMPANY, § CASE NO. 09-34784-SGH-11
DEBTOR. § CHAPTER 11
§
§

NOTICE OF ENTRY OF ORDER REGARDING AUCTION SALE

TO ALL CREDITORS AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE that pursuant to an Order entered on September 24, 2013, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in the Chapter 11 case of Ondova Limited Company, Case No. 09-34784-SGJ-11, has approved the Trustee’s Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. §363(b) and (B) for Approval of Sale Procedures (“Motion”) [Docket No. 1122]. A true and correct copy of the Order is attached hereto as Exhibit “A”.

Respectfully submitted,

/s/ Raymond J. Urbanik
Raymond J. Urbanik
Texas State Bar No. 20414050
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Ste. 3800
Dallas, Texas 75201
(214) 855-7500 (telephone)
(214) 855-7584 (facsimile)
E-mail: rurbanik@munsch.com

ATTORNEYS FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE FOR ONDOVA
LIMITED COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice is being served electronically on all parties that have requested electronic notice and by first class U. S. Mail to the parties shown on the attached Service List on October 3, 2013.

/s/ Raymond J. Urbanik

Raymond J. Urbanik

EXHIBIT A



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 20, 2013

Tawana C. Marshall
United States Bankruptcy Judge

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

In re:

ONDOVA LIMITED COMPANY,

Debtor.

§
§
§
§
§

Case No. 09-34784-SGJ
(Chapter 11)

**ORDER APPROVING TRUSTEE'S MOTION FOR (A) AUTHORITY TO
SELL PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(B)
AND (B) FOR APPROVAL OF SALE PROCEDURES**

Came on for consideration the Trustee's Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(b) and (B) for Approval of Sale Procedures ("Motion") filed on August 14, 2013 [Docket No. 1110], by Daniel J. Sherman, Chapter 11 Trustee ("Trustee") for Ondova Limited Company ("Ondova" or "Debtor"), which Motion seeks authority to sell the internet domain name "servers.com" ("Domain Name" or "Asset") to proposed purchaser XBT Holdings, Ltd., or an affiliate thereof ("Purchaser"), for the sale price of \$300,000.00, which offer has been designated as a stalking horse bid by the Trustee, subject to higher and better bids, if any, and this Court having considered the Motion, the arguments and representations of the

parties, and the evidentiary record before it, finds and concludes that¹: (i) the relief requested in the Motion, including the sale procedures proposed therein ("Sale Procedures"), which include, *inter alia*, a four (4) week period for the Trustee to market the Domain Name, are fair, reasonable, appropriate and designed to maximize the value of the Asset to be sold by the Trustee as proposed therein; (ii) the Purchaser, having submitted an offer of \$300,000.00 shall be designated stalking horse bidder and the proposed \$20,000.00 breakup fee to be paid to Purchaser, if Purchaser is not the high bidder at an auction sale if an auction is conducted by the Trustee, is in all respects approved; (iii) the Trustee has exercised his sound business judgment in determining to sell the Asset to the Purchaser as set forth in the Motion and pursuant to the Sale Procedures; (iv) the Trustee has formulated the Sale Procedures in good faith for the purpose of maximizing the value of the Asset; (v) due and adequate notice of the Motion has been given to all creditors and parties in interest and no other or further notice is necessary; (vi) the proposed Purchaser is a disinterested party not in any way connected to the Debtor, the Trustee or any party-in-interest and therefore is entitled to the protections of 11 U.S.C. § 363(m); and (vii) after due deliberation thereon and for all of the reasons stated by the Court on the record, good and sufficient cause exists to grant the relief set forth herein as being in the best interests of the estate and this estate's creditors. Accordingly, it is hereby

ORDERED that as provided under 11 USC Section 363(b) and (f), the sale of the Domain Name is a reasonable exercise of the Trustee's judgment, is based on a sound business justification and should be approved. This Court approves the Motion to sell the Domain Name to Purchaser, or, alternatively, the winning bidder in the event an auction sale is conducted, under the terms and conditions set forth in the Motion free and clear of all liens, claims and encumbrances with any liens, claims and encumbrances attaching to the proceeds of the sale. It is further

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

ORDERED for the reasons stated on the record and in this Order, all objections to the relief requested in the Motion are overruled in their entirety. It is further

ORDERED specifically that the Objection of Jeffrey Baron to Trustee's Motion to Sell Servers.com filed on September 7, 2013 ("Objection") [Docket No. 1115] is denied and overruled in its entirety. This Court, having considered all of the evidence presented, including the testimony of the Trustee and Jeffrey Baron ("Baron"), has determined that the record supports approval for the Motion in all respects. Baron, the former president of Ondova, asserting a reversionary interest in the Domain Name which would in essence convey to him personally proceeds from the sale of the Domain Name, failed to meet the necessary burden of proof under 11 USC § 363(p). Baron's claim of a reversionary interest, which he testified was granted to him on July 7, 2009, shortly before the Ondova Chapter 11 filing date of July 26, 2009, would be, at best, a claim subject to a bona fide dispute and the Court may proceed with the sale of the Domain Name pursuant to 11 U.S.C. § 363(b), (f) and (p). This Court notes that any party seeking to object to a sale of assets holds the burden of proof pursuant to 11 U.S.C. § 363(p) and based on the evidence presented at the hearing, Baron failed to meet his burden of proof as to any claim in and to the Domain Name. Regardless, this Court may sell an asset to which there is a bona fide dispute under 11 U.S.C. § 363(f) and in the event that there is a claim against such asset, such claim attaches to the proceeds to the same extent that they have validity against the actual asset. Finally, this Court was advised that John H. Litzler, the Chapter 7 bankruptcy trustee over Baron (Baron is a debtor in a pending Chapter 7 case before this Court) reached an agreement with the Trustee which allows Litzler to investigate whether Baron holds any legitimate claim or right with respect to the Domain Name. That agreement allows Litzler until October 31, 2013, to assert such claim, with such deadline being subject to extension by agreement of the parties. It is further

ORDERED that the Court finds that the Purchaser is a good faith purchaser for value and if the Purchaser is ultimately determined to be the winning bidder for the Domain Name, it

shall be entitled to all of the protections of § 363(m) of the Bankruptcy Code. Additionally the proposed break-up fee of \$20,000.00 is approved and under certain conditions as described in the Motion, may possibly be increased by order of this Court.² It is further

ORDERED that the Trustee shall proceed with the sale efforts for the Domain Name pursuant to the Sale Procedures (a copy of which are attached as Exhibit "A"), which procedures are hereby approved. The Trustee is authorized to take any and all actions necessary or appropriate to implement the Sale Procedures including, but not limited to, advertising the Domain Name for purchase by auction sale in publications and internet websites as determined by the Trustee, and in the event qualified bidders are located, thereafter conducting an auction sale, which the Trustee has scheduled for October 29, 2013 at 2 p.m. Central time, in accordance therewith. It is further

ORDERED that the sale hearing to consider final approval of the sale of the Domain Name to the successful bidder as purchaser shall occur on **November 4, 2013, at 2:30 p.m.** prevailing Central time ("Sale Hearing"). It is further

ORDERED that the Trustee's proposed Notice of Sale (a copy of which is attached hereto as Exhibit "B") and the Sale Procedures are hereby approved and the Trustee shall cause such Notice of Sale, the Sale Procedures and this Order to be served or filed as follows: (1) filed on the docket of this case; (2) served on all parties who have requested notice in this bankruptcy case pursuant to Rule 2002; (3) the United States Trustee, (4) Peter Vogel, the Receiver for Jeffrey Baron and his counsel, (5) John Litzler, the Chapter 7 Trustee for Jeffrey Baron and his counsel; (6) filed on the docket of the Baron Chapter 7 case; and (7) all parties whom the Trustee believes may be potential purchasers of the Domain Name (all collectively, the "Notice Parties"). It is further

² The Purchaser may seek a higher break-up fee if it is required to expend professional fees caused by any parties who might create additional delay or expense with respect to the Court approved sales process. Any increase in the break-up fee will be determined by this Court.

ORDERED that following the conclusion of the auction, the Trustee shall file and serve upon all Notice Parties, as well as any qualified bidders, notice of the auction results if an auction does occur or, alternatively, a notice that no auction sale was conducted, with such a notice to be filed by 5:00 p.m. Central time on October 31, 2013 ("Sale Notice"). The Sale Notice shall inform parties in interest of the intention to have this Court approve the sale of the Domain Name to the Purchaser, or other successful bidder, at the Sale Hearing. It is further

ORDERED that any objection to the sale of the Domain Name to the Purchaser or other successful bidder shall be in writing and shall set forth the basis of the objection and shall be filed with the bankruptcy court and served upon the Trustee so as to be received on or before November 1, 2013 at 5 p.m. Central time. It is further

ORDERED that this Court shall retain exclusive jurisdiction over matters related to or arising from the implementation of this Order including, but not limited to, any claim, matter or dispute arising from or relating to the Sale Procedures, the proposed sale or the implementation of this Order.

IT IS SO ORDERED.

END OF ORDER

Order Submitted by:

Raymond J. Urbanik
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Munsch Hardt Kopf & Harr, P.C.
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500 N. Akard St.
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
rurbanik@munsch.com

SALE PROCEDURES

- a. As directed in the Order Approving Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(B) and (B) For Approval of Sale Procedures ("Motion"), the Trustee shall market the Domain Name Servers.com, noting that it is part of a Bankruptcy Court auction, on Internet websites which are related to the server and webhosting industries and on Internet websites which relate to the Internet domain name industry (i.e. Domain Name Journal).
- b. The Trustee shall have a period of thirty (30) days to market the Domain Name.
- c. Any parties interested in purchasing the Domain Name must submit a bid in the amount of at least \$330,000 and also submit financial information to the Trustee to demonstrate sufficient financial resources to purchase the Domain Name.
- d. Any party that seeks to bid on the Domain Name shall be required to place with the Trustee a \$40,000.00 deposit. A party which evidences financial resources and places a deposit shall be designated a Qualified Bidder. The deposit will be promptly refunded if a bidder is not the winning bidder or second highest bidder at the auction.
- e. If there is one or more Qualified Bidders, an auction will be scheduled and conducted at the offices of counsel for the Trustee and the initial opening bid will be the highest bid received from a Qualified Bidder and all subsequent bidding will be in minimum increments of \$10,000.00. Qualified Bidders participating in the auction may participate in person or by telephone. The Trustee shall have the absolute right and discretion to determine the highest and best bid (the "Winning Bidder") at the auction.
- f. The second highest bidder shall agree to be the purchaser if the winning bidder fails to close.
- g. Any party participating in the auction which is determined to be the winning bidder but which fails to close on the purchase of the Domain Name shall forfeit their deposit.
- h. In the event that Purchaser is not the winning bidder, it shall receive a \$20,000.00 break-up fee and, like any other Qualified Party which submitted a deposit but was not the winning bidder, shall receive the return of its deposit.
- i. Parties seeking to submit bids must notify the Trustee prior to 5 pm Central time on October 25, 2013 and must submit a offer of at least \$330,000, tender a deposit of \$40,000.00 and provide evidence of financial ability to close.
- j. The auction sale shall be conducted at the offices of Munsch Hardt Kopf and Harr, PC, 500 North Akard Street, Suite 3800, Dallas, Texas 75201 on Tuesday October 29, 2013 at 2 pm, Central time. Telephone participation at the auction sale will be permitted for qualified bidders.
- k. The hearing to approve the sale of the Domain Name to the winning bidder will be held on November 4, 2013, at 2:30 p.m. at the United States Bankruptcy Court, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242.

BANKRUPTCY AUCTION NOTICE

TECHNOLOGY DOMAIN NAME

“servers.com”

BANKRUPTCY COURT ORDERED SALE¹

COURT APPROVED STALKING HORSE BID	\$300,000.00
AUCTION OPENING BID	\$330,000.00
BIDDING INCREMENTS	\$ 10,000.00
MINIMUM DEPOSIT TO BECOME QUALIFIED BIDDER	\$ 40,000.00
AUCTION LOCATION	DALLAS, TEXAS ²
AUCTION DATE	OCTOBER 29, 2013 2 p.m. Central
FINAL COURT APPROVAL DATE	NOVEMBER 4, 2013 2:30 p.m. Central

FOR FURTHER INFORMATION
PLEASE CONTACT COUNSEL FOR
THE BANKRUPTCY TRUSTEE:

rurbanik@munsch.com

¹ Case No. 09-34784-SGJ-11, U. S. Bankruptcy Court, Northern District of Texas

² Telephone participation permitted for qualified bidders

**ONDOVA LIMITED COMPANY
PARTIES REQUESTING NOTICE**

GRUPO ANDREA S.A. DE C.V.
C/O MARK E. ANDREWS/EVERETT NEW
COX SMITH MATTHEWS
INCORPORATED
1201 ELM STREET, SUITE 3300
DALLAS, TX 75270-2115

NETSPHERE INC
MANILA INDUSTRIES INC
c/o FRANKLIN SKIERSKI LOVALL ET AL
ATTN M HAYWARD / D SKIERSKI
10501 N CENTRAL EXPY STE 106
DALLAS TX 75231

FRIEDMAN & FEIGER LLP
ATTN LAWRENCE J FRIEDMAN
ATTN RYAN K LURICH
5301 SPRING VALLEY RD STE 200
DALLAS TX 75254

OWENS CLARY & AIKEN LLP
ATTN DANA M CAMPBELL
ATTN WILLIAM L FOREMAN
700 N PEARL ST STE 1600
DALLAS TX 75201

QUANTEC LLC/IGUANA CONSULTING
LLC/NOVO POINT LLC
c/o CRAIG A CAPUA
WEST & ASSOCIATES LLP
PO BOX 3960
DALLAS TX 75208-1260

JEFFREY BARON
c/o GERRIT M PRONSKE
PRONSKE & PATEL PC
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ROBERT W MALLARD
DORSEY & WHITNEY (DE) LLP
300 DELAWARE AVE STE 1010
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JOSIAH M DANIEL
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VINSON & ELKINS LLP
2001 ROSS AVE STE 3700
DALLAS TX 75201-2975

LAW OFFICE OF
CHRISTOPHER A PAYNE PLLC
5055 ADDISON CIRCLE UNIT 428
ADDISON TX 75001-6322

COMERICA INCORPORATED
c/o STRONG, SLATER & JOHNSON LLP
ATTN: MEAGAN MARTIN
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DALLAS TX 75202

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PETER S. VOGEL, RECEIVER
C/O JEFFREY R. FINE
DYKEMA GOSSETT PLLC
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DALLAS, TX 75201-7332

MARTIN K. THOMAS
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