

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

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

**RESPONSE TO CARRINGTON COLEMAN MOTION TO BE GIVEN
JEFF BARON’S MONEY WITHOUT TRIAL [DOC 613]**

Appellant, Jeffrey Baron makes this response to Carrington Coleman’s motion filed as Doc 613, seeking to be given Jeff Baron’s money by this Court.

1. As a preliminary matter, objection is raised to Carrington Coleman’s (hereinafter “CCOLE”) lack of standing. CCOLE is neither a party to this lawsuit nor has made any prior motion for relief. Further, the Court has made no finding or adjudication as to CCOLE. Since no right of CCOLE was adjudicated and no motion was made by any party to adjudicate any right of CCOLE, CCOLE has no standing to seek reconsideration of the Court’s order.

2. CCOLE is not a party and their motion does not fall within the scope of 4(a)(1) which is expressly limited in application to motions filed by “a party”. Accordingly, the trial court was divested of jurisdiction over the appealed from

order when it was appealed. CCOLE's argument that their rights should have been adjudicated by the Court when no pleading or motion seeking the adjudication of their rights was before the court, borders on the frivolous.

3. Objection is further raised that CCOLE failed to comply with the local rules of procedure in failing to confer with the undersigned prior to filing of their motion.

4. The entire basis of CCOLE's motion is that the district court has created a 'back door' to do away with Americans' Constitutional right to Jury trials to adjudicate legal claims against them. Instead of CCOLE being required to file a lawsuit and prove a claim in a lawsuit against Mr. Baron, CCOLE would like the Court to bypass the US Constitution and simply give them some of Mr. Baron's money. However, that is not the law. Mr. Baron's assets are in the possession of the receiver. Mr. Baron's alleged debts are not. CCOLE has no claim to the assets held by the receiver. CCOLE has at best a claim at law against Mr. Baron, most of which is barred by the statute of limitations and all of which is outside of the subject matter jurisdiction of a US District court since Mr. Baron and CCOLE are non-diverse.

5. Again, the claim asserted by CCOLE is not a claim against any asset of the receivership, but against Mr. Baron personally. The legally fallacious grounds asserted are that because a claim is alleged against an individual, that claim can be

directly paid—without trial— from assets held in receivership because those assets were seized from that person. **Ordering that a person’s assets be placed into a receivership does not abrogate that person’s Constitutional right to trial by jury for all legal claims asserted against that person.**

6. No prior motion seeking to pay CCOLE money has been filed, and therefore there has been no opportunity to object to their ‘claim’. Most of the ‘claim’ is barred by the statute of limitations. Moreover, while it was initially raised in preliminary negotiations between Mr. Baron, Ondova, and CCOLE that Mr. Baron would be a formal party to the engagement agreement, in the final agreement Ondova was the primary beneficiary of CCOLE’s services and became the exclusive party responsible for the payment of any fees incurred. CCOLE was clearly on notice and acted in conformity with their being on notice that Ondova was the sole obligee. Moreover, Ondova obligated itself not to seek resolution of any dispute over the fees in court without first seeking resolution in arbitration.

7. For further cause, if same is necessary: Mr. Baron has appealed the order appointing the receiver [Doc #136] and NovoPoint, LLC and Quantec, LLC (“SouthPac’s LLC companies”) have appealed from the order including the SouthPac LLC companies into the receivership [Doc #227].

8. Accordingly, pending appeal the district court is without jurisdiction to dispose of any of the assets which were seized by the receiver. *See e.g., Taylor v.*

Sterrett, 640 F.2d 663, 668 (5th Cir. 1981) (“[T]he District Court was divested of jurisdiction only as to matters relating to the April 27 and May 12 orders and subsequent orders and, for that reason, fees cannot be recovered for work relating to these orders”).

9. Mr. Baron would like to respond and object further, but requires access to his money in order to retain counsel expert in objecting to improper fee claims, and an expert to offer an opinion as to the unreasonableness of the fees claimed. Mr. Baron objects to the Court’s denial of his access to his own money for these purposes, and moves to be allowed to have access to such funds and a reasonable opportunity to further object to the motions and provide further evidence in response to the motion. Objection is also made to the denial of Mr. Baron’s rights to conduct discovery, and demand is made for a jury trial on the claims asserted by CCOLE in their motion.

Respectfully submitted,

/s/ Gary N. Schepps
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CERTIFICATE OF SERVICE

This is to certify that this was served on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps
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