

No. 10-11202 and consolidated cases

In the
**United States Court of Appeals
for the Fifth Circuit**

No. 10-11202
NETSPHERE, INC. Et Al,
Plaintiffs

v.

JEFFREY BARON,
Defendant-Appellant

v.

ONDOVA LIMITED COMPANY,
Defendant-Appellee

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

**JEFFREY BARON'S RESPONSE TO
VOGEL MOTION TO STRIKE OR FOR LEAVE TO RESPOND TO
RESPONSE OF CARRINGTON, COLEMAN**

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

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

Cons. w/ No. 11-10290
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, ET AL, Defendants
v.
QUANTEC L.L.C.; NOVO POINT L.L.C., Non-Party Appellants
v.
PETER S. VOGEL, Appellee

Cons. w/ No. 11-10390
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – Appellant
v.
QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants
v.
ONDOVA LIMITED COMPANY, Defendant – Appellee
v.
PETER S. VOGEL, Appellee

Cons. w/ No. 11-10501
NETSPHERE, INC. ET AL, Plaintiffs

v.
JEFFREY BARON, Defendant – Appellant
QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P., Appellant

v.
PETER S. VOGEL; DANIEL J. SHERMAN, Appellees

Cons. w/ No. 12-10003
NETSPHERE, INC. ET AL, *Plaintiffs*

v.
JEFFREY BARON, *Defendant – Appellant*
QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*

GARY SCHEPPS, *Appellant*

v.
PETER S. VOGEL, *Appellee*

Cons. w/ No. 12-10444

In re: NOVO POINT LLC, Petitioner

Cons. w/ No. 12-10489
NETSPHERE, INC. ET AL, *Plaintiffs*

v.
JEFFREY BARON, Defendant – *Appellant*
QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

Cons. w/ No. 12-10657
NETSPHERE, INC. ET AL, *Plaintiffs*

v.
JEFFREY BARON, Defendant – *Appellant*
QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT:

COMES NOW Appellant Jeffrey Baron and respectfully shows:

Vogel opens his motion with the standard vitriolic rhetoric designed to cast erroneous and unsupported aspersions against Jeffrey Baron. Contrary to Vogel's wholly unsupported vitriol, the record does not support Vogel's vitriolic mantra that Baron has engaged in a campaign of vexatious litigation. Baron has been the **defendant**, not the plaintiff, in a series of suits brought by Netsphere, et.al. Baron prevailed on every suit, including prevailing on appeal in the Ninth Circuit. Most tellingly, Baron has never been sanctioned for any misconduct, *in any court*.

Vogel's misleading argument, makes it appear that Baron hired CCSB and failed to pay them. To the contrary, CCSB was retained by Ondova, and submitted a claim in the Ondova bankruptcy estate. **Although he had no legal obligation to do so, Baron agreed to fund the Ondova estate so that CCSB (and every other Ondova creditor) would be paid in full.** Baron funded and provided approximately two Million Dollars, in cash, to pay CCSB and every other creditor, and leave a surplus of over one Million Dollars left in the Ondova bank account.

Instead of using that money to pay CCSB, and the other creditors, as had been agreed in writing, Vogel and Sherman worked together to generate massive attorneys fees for themselves. From the inception of the receivership, until shortly before oral argument, Baron had no paid counsel and filed no motions pro se.

Yet, Vogel and Sherman emptied, literally, the millions that had been funded into Ondova. Vogel also has also taken, for himself and his counsel, millions of dollars in ‘fees’ from the receivership and opposes its termination. If the receivership is continued, Vogel can extend his billing. For that reason, Vogel and his counsel have engaged in a never ending motion practice and have now filed more than seventy-five motions in this appeal.

In the bankruptcy court, CCSB has described the facts this way, “**the cycle seen before in this case occurs again - where a sizable corpus, which was originally intended to pay claims, is instead eaten up by seemingly fathomless administrative costs. This is also quite possible as fees, particularly those of the Receiver, have been reminiscent of the mythological Thessalonian king Erysikhton [who was inflicted by the goddess Demeter with insatiable hunger]. See Ondova Bankruptcy Dkt. 899 at 6.**

CCSB has attached a copy of Baron’s answer in the involuntary bankruptcy case— filed by the same group of attorney “claimants” used to ‘justify’ the receivership. In that answer is a “summary of the disputed claims” detailing the claims, including as follows:

“e. **Ms. Schurig** now claims a debt from Mr. Baron of \$93,731.79, but previously swore under oath that she was paid over a million dollars in fees and that her claim against Mr. Baron was only for \$1,331.50. Further, Mr. Baron provided Ms. Schurig over \$2

Million to hold in trust, which funds have never been reasonably or rationally accounted for by Ms. Schurig.”

“a. **Mr. Hall** had a written contract, capping his fee at \$10,000 per month and containing a merger clause requiring any modification be in writing. Mr. Hall admits being paid in full for 10 months, but alleges that in the 11th and last month Mr. Baron orally agreed to a \$5,000.00 fee increase. Hall asserts a claim that Baron breached the written contract by paying the amount specified in the written agreement, \$10,000, as payment in the eleventh month. In light of the written contract’s merger clause, Mr. Hall’s claim of an oral modification increasing the fee by \$5,000 for the last month is meritless as a matter of law.”

“b. **Mr. Taylor’s** contract also has a monthly fee cap, which Mr. Taylor admits he was paid in full. Mr. Taylor, however, claims that he is also entitled to a contingency fee. Taylor’s claim is meritless as a matter of law as, according to Mr. Taylor, “no specific value was ever negotiated that would be subject to the contingency-fee calculation.”

“c. **Mr. Lyon** refused to produce his written contract, but claimed his fee increased from \$40/hour to \$300/hour as of September 2009, but that he was paid only at \$40/hour and thus under-paid From September/December 2009. Lyon’s claim is shown fictitious and

meritless by Lyon's own email sent to other attorneys in October 2009, seeking more work from Mr. Baron on the basis he was only charging Baron \$40/hour and therefore provided "more bang for the buck". Lyon's own email clearly states and admits that his billing rate was the \$40.00/hour he was paid, and not the \$300/hour he now claims."

Vogel is the Court's receiver, not a party. Vogel has no standing by which he has any right to challenge CCSB's response to Vogel's petition for en banc rehearing. Vogel has offered no reason that his 20 pages of briefing seeking en banc rehearing are not sufficiently lengthy, and that the Court should be provided, even more, additional briefing by Vogel.

Accordingly, Vogel's motion should be in all things denied.

Respectfully submitted,

/s/ Gary N. Schepps

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JEFFREY BARON**

CERTIFICATE OF SERVICE

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

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