

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

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

**APPELLANTS' JOINT RESPONSE AND OBJECTION TO MOTION FOR
LEAVE TO FILE PLAINTIFFS' PROPOSED FINDINGS OF FACT
[DOC#207]**

TO THE HONORABLE ROYAL FURGESON, U.S. DISTRICT JUDGE:

COMES NOW, Appellant, defendant Jeffrey Baron and Appellants NovoPoint, LLC and Quantec, LLC and make this joint response and objection to Motion For Leave to File Plaintiffs' Proposed Findings of Fact [Doc#207].

1. The plaintiff's motion was filed without conference and without a certificate of conference as required by Local Rule 7.1. Accordingly the plaintiff's motion is not properly before the Court for consideration.

2. A negative inference is allowed in civil cases with respect to Fifth Amendment privilege, only where the refusal to testify occurs after there has been probative evidence offered against the witness invoking the privilege. *E.g.*, *Baxter*

v. Palmigiano, 425 U.S. 308, 318 (1976). In this hearing there was none, and accordingly, a negative inference is not supported.

3. The requested findings are not relevant to the motion to stay or vacate pursuant to Federal Rule of Appellate Procedure 8(a) and Mr. Baron had no notice that such findings would be sought. Since these issues are beyond the scope of the motion heard, Mr. Baron did not undertake to put on evidence to defend or rebut such findings. Mr. Baron specifically had objected to being ambushed at the hearing, and, the Court having seized his money, Mr. Baron did not have trial counsel to represent him on matters beyond the scope of the FRAP 8(a) motion. Mr. Baron has also previously objected to the lack of opportunity and means to conduct full discovery with respect to the relevant factual issues.

4. The motion to stay was made specifically so Mr. Baron would be allowed to retain qualified legal counsel to represent him in the trial court. Attempting to proceed to determine factual issues beyond the scope of a FRAP 8(a) motion, attempts to take advantage of the unconstitutional interference with Mr. Baron's ability to obtain trial counsel of his choice pending appeal.

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
State Bar No. 00791608
Drawer 670804
Dallas, Texas 75367
(214) 210-5940
(214) 347-4031 Facsimile

**APPELLATE COUNSEL FOR
JEFFREY BARON,
NOVOPOINT, LLC, AND
QUANTEC, LLC.**

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

Gary N. Schepps