

CASE NO. 13-10696

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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NETSPHERE, INC., *et. al.*,

Appellees,

v.

JEFFREY BARON, *et. al.*,

Appellants.

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On Appeal from the United States District Court  
for the Northern District of Texas, Dallas Division  
District Court No. 3:09-cv-0988-L

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**SUGGESTION OF BANKRUPTCY AS TO INVOLUNTARY DEBTOR JEFFREY BARON**

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Respectfully submitted,

/s/ Mpatanishi Tayari Garrett

Mpatanishi Tayari Garrett

TX State Bar No. 24073090

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COMES NOW Appellant Jeffrey Baron, by and through his undersigned attorney, and would show the Court:

1. He has been adjudged an involuntary Chapter 7 debtor under Title 11, United States Code, in the United States Bankruptcy Court for the Northern District of Texas, which bears the case number 12-37921-sgj7.

2. An Order for Relief was entered on June 26, 2013 over Baron's ardent objections, where an appeal of the Order for Relief is currently pending. Although he is without bankruptcy counsel because the involuntary petition circumvented the Fifth Circuit's December 2012 Order and subsequent mandate to return receivership property to Baron, and where he cannot access funds sufficient to hire bankruptcy counsel, the Bankruptcy Court denied Baron's request for a stay of its Order for Relief.

3. Shortly after Baron's request for a stay of the Order for Relief was denied by the Bankruptcy Court, believing the automatic stay applies, attorneys for Baron's Chapter 7 trustee have requested Baron suspend his pursuit of the instant appeal. (See Attached Exh. A).

4. Although Baron disagrees the automatic stay applies to this proceeding because it is not an action "against the debtor" within the meaning of § 362 of the bankruptcy code, he has agreed to file the instant Suggestion of Bankruptcy in an effort to minimize costs to his estate and to preserve judicial economy. Baron, however,

reserves all rights with respect to this appeal and maintains the Bankruptcy Court does not have jurisdiction to pursue the underlying involuntary process.

5. This Suggestion of Bankruptcy applies to Baron only, and is not intended to apply to co-appellants Novo Point LLC and Quantec LLC, both of which may continue to pursue the instant appeal. *See Wedgeworth v. Fibreboard*, 706 F.2d 541,544 (5<sup>th</sup> Cir. 1983)(the language of the automatic stay only stays actions against the debtor).

WHEREFORE, appellant files this suggestion that this action has been stayed against Jeffrey Baron by the operation of 11 U.S.C. § 362.

Respectfully submitted,

**TAYARI LAW PLLC**

By: /s/ Mpatanishi Tayari Garrett

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**CERTIFICATE OF COUNSEL**

This Suggestion of Bankruptcy is filed at the request of counsel for Appellant Jeffrey Baron's Chapter 7 Trustee in his involuntary case. On August 20, 2013, I called attorney Katheryn Reid to confirm this filing. Counsel to Appellee, Peter Vogel, Receiver was also contacted by the Chapter 7 Trustee attorneys, and no objection has been expressed to the undersigned.

By: /s/ Mpatanishi Tayari Garrett

Mpatanishi Tayari Garrett

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing and all attachments have been served on Appellees and all other parties who have entered their appearance electronically in this case, this August 21, 2013.

By: /s/ Mpatanishi Tayari Garrett  
Mpatanishi Tayari Garrett



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August 14, 2013

**Via Email and Facsimile**

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**RE: *Netsphere, Inc., et al. v. Jeffrey Baron, et al.*, Case No. 13-106963 in the United States Court of Appeals for the Fifth Circuit (the "Appeal").**

Dear Ms. Tayari Garrett:

As you know, on June 26, 2013, an Order for Relief was entered in the bankruptcy case styled *In re Jeffrey Baron*, Case No. 12-37921-SGJ in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. This firm represents John H. Litzler, the Chapter 7 Trustee appointed in the bankruptcy case (the "Trustee").

Two days after the Order for Relief was entered, you filed the notice of appeal initiating the above-referenced appeal. The Appeal was taken in violation of the automatic stay provision of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides:

- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –
  - (1) the commencement or *continuation*, including the issuance or employment of process, *of a judicial*, administrative, or other action or *proceeding against the debtor* that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; . . .

11 U.S.C. § 362 (emphasis added).

August 14, 2013

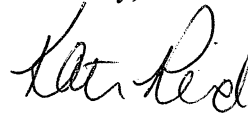
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By the terms of 11 U.S.C. § 362(a), the automatic stay applies to proceedings “against the debtor.” Courts determine whether a proceeding is “against the debtor” by “examin[ing] the posture of the case at the initial proceeding.” *McMillan v. MBank Fort Worth, N.A.*, 4 F.3d 362, 366 (5th Cir. 1993) (citing *Freeman v. Comm’r of Internal Revenue*, 799 F.2d 1091, 1092-93 (5th Cir. 1986) (per curiam)). “[S]ection 362 should be read to stay all appeals in proceedings that were *originally brought* against the debtor, regardless of whether the debtor is the appellant or appellee. Thus, whether a case is subject to the automatic stay must be determined at its inception. That determination should not change depending on the particular stage of the litigation at which the filing of the petition in bankruptcy occurs.” *Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982) (emphasis in original).

The Appeal is undoubtedly subject to the automatic stay, and until the Bankruptcy Court enters an order granting relief from the stay, any further legal proceeding in the Appeal must be stayed. Accordingly, the Trustee hereby requests that you file a Suggestion of Bankruptcy in the Appeal, which will immediately abate the proceeding. If the Suggestion of Bankruptcy is not filed by Monday, August 19, 2013, the Trustee will have no alternative but to file a motion for leave to intervene in the Appeal. In that case, the Trustee reserves all legal and equitable rights to seek fees and costs for doing so.

Should you have any questions concerning the foregoing, please contact me. I appreciate your attention and anticipated cooperation.

Sincerely,



Kathryn Reid

Cc: John H. Litzler, Trustee

David J. Schenck, via facsimile 214.462.6401  
*Counsel to Appellee, Peter S. Vogel, Receiver*