

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

<hr/> <p>IN RE</p> <p>JEFFREY BARON</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Case No.: 12-37921-7</p> <p>Involuntary Chapter 7 Petition</p>
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FILED

JAN 16 2013

TAWANA G. MARSHALL, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

AD

**JEFFREY BARON’S OBJECTION TO AND MOTION FOR CONTINUANCE OF
HEARING ON INTERIM TRUSTEE**

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

I. Objection

1. The record establishes that the alleged debtor, Jeffrey Baron, was never served with the motion to appoint an interim trustee. According to the certificate of counsel for the petitioners, the motion was sent by the movant to an incorrect mail address.

2. There is no necessity to appoint an interim trustee to preserve the property of the estate or to prevent loss to the estate, because the property is currently held under the control of the District Court of the Northern District of Texas, through the Court’s receiver. Thus, the standard under section 701 of title 11 to appoint an interim receiver has not been met. The District Court has ruled (Dkt. 1172 in case 3:09-cv-00988-F at page 2) that **“it will take no further action to make any distributions from the Receivership until the involuntary bankruptcy has been resolved”**. Accordingly, as a matter of law there is no showing of necessity to appoint a trustee to preserve the property of the estate.

3. Further, there is no evidence that the alleged debtor would take any action to risk the loss of his assets. The alleged debtor has maintained a frugal lifestyle and does not gamble.

4. In addition to the forgoing, the alleged debtor is being denied his Constitutional right to Due Process by the denial of his right to hire paid counsel of his choice to defend himself. The Fifth Amendment prohibits depriving any person of property without due process of law. The Fifth Circuit has ruled that “The right to the advice and assistance of retained counsel in civil litigation is implicit in the concept of due process.” *Mosley v. St. Louis Southwestern Ry.*, 634 F. 2d 942, 946 (5th Cir. 1981). Moreover, “This right inheres in the very notion of an adversarial system of justice, and is indispensable to the effective protection of individual rights.”. *Id.*

5. The District Court has enjoined the alleged debtor from receiving wages, from engaging in any business transactions, and from access to the alleged debtor’s savings and other assets. The alleged debtor was substantially restricted in his choice of counsel because he was unable to access his money to pay an up-front retainer. No attorney could be found to work without an up-front retainer. An attorney was found who was willing to apply to the district court for funding (ie, release of the alleged debtor’s funds to pay his lawyer up-front), but access to the alleged debtor’s money to hire an attorney has been denied by the district court. The alleged debtor has thus been denied the right to hire counsel.

6. Hopefully, this Honorable Court will postpone proceedings in this case until arrangements can be made between this Court and the District Court to provide for sufficient funding for the legal counsel desired by the alleged debtor, to be paid

with the debtor's own money, and including local counsel and expert fees.

Currently the alleged debtor is being denied his Constitutional right to confer with and be represented by paid counsel. Any proceeding under those

circumstances—where the alleged debtor is deprived the right to hire counsel of his choice to defend himself, is a violation of Due Process. *E.g. Chandler v. Freitag*, 348 U.S. 3, 10 (1954); *Texas Catastrophe Property Ins. Ass'n v. Morales*, 975 F.2d 1178, 1181 (5th Cir. 1992); *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1118 (5th Cir. 1980).

7. Finally, whatever the provisions of the Bankruptcy Code and Rules are, they must be subservient to the Constitution. *See Stern v. Marshall*, 131 S.Ct. 2594, 2615 564 U.S. __ (2011).

8. First, the alleged debtor demands that an Article III judge rule on the question of whether the alleged debtor should be stripped of all of his non-exempt assets, and have them seized and placed in the hands of a Trustee. In a voluntary bankruptcy case, the debtor voluntarily places his assets into the hands of the bankruptcy court. The alleged debtor contends that in the context of an involuntary petition, to seize all of an alleged debtor's non-exempt assets is a "prototypical exercise of judicial power" reserved for the Article III judiciary. *See Id.*

9. Second, as a matter of well-established law rooted in the Constitution, when an objection to jurisdiction has been raised, **"it must be considered and decided, before any court can move one further step in the cause"**.

Rhode Island v. Massachusetts, 37 U.S. 657, 718 (1838). The Supreme

Court has ruled that once raised, the question of jurisdiction must be decided before a court may “exercise any judicial power” over a matter. *Id.*

- a. The Supreme Court has ruled that “**the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue.**” *Allen v. Wright*, 468 U.S. 737, 752 (1984). This requirement is a Constitutional requirement of Article III. *Id.*
 - b. “A petitioning creditor does not have standing when its debt is subject to a bona fide dispute.” *Bartmann v. Maverick Tube Corp.*, 853 F.2d 1540, 1543 (10th Cir. 1988); 11 U.S.C. § 303(b)(1). The alleged debtor asserts that the alleged debt claimed by the petitioning creditors is subject to a bona fide dispute and therefore the creditors lack standing. The petitioning creditors have the burden to establish their standing, as a preliminary constitutional matter. Accordingly, this Honorable Court must address the jurisdiction issue prior to taking any further action in the case, including considering the appointment of an interim trustee.
10. Third, as a matter of Constitutional Due Process, the Supreme Court has ruled that where the deprivation of property rights is sought prior to the determination of an underlying claim in the property, “Without a bond, ... the danger that these property rights may be wrongfully deprived remains unacceptably high even with such safeguards as a hearing”. *Connecticut v. Doehr*, 501 U.S. 1, 19 (1991). Accordingly, as a matter of Constitutional Due Process, a bond must be required of the petitioners sufficient to secure the costs, including trustee’s fees and damages which may be incurred

should an interim trustee be appointed and the petition for involuntary bankruptcy then denied. *Id.* Demand is therefore made that prior to the appointment of any interim trustee, the petitioners be required to post a bond to protect the alleged debtor against damages that may be sustained by the alleged debtor from the appointment of an interim trustee. *See also* 11 U.S.C. §303(f).

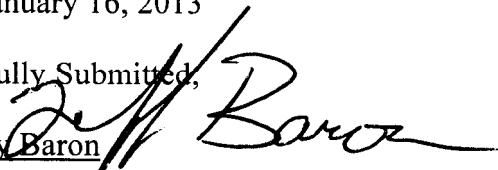
11. Finally, the Constitution also requires that the consideration of the interests of alleged creditors must be **balanced** by consideration of (1) the interests of the alleged debtor that will be effected by the court's action and (2) the risk of an erroneous deprivation of the alleged debtor's property interests. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Accordingly, the alleged debtor contends that, as a Constitutional requirement of Due Process, the imposition of an interim trustee must be predicated on a finding of the likely success of the petitioners on the ultimate merits, which specifically requires a finding that the alleged debtor is generally not paying his debts (not subject to a bona fide dispute) as they become due. 11 U.S.C. § 303(h)(1). The petitioners cannot meet this burden because all the alleged debts are both disputed and old. There is no evidence that for more than the past two years, the debtor has not generally been paying his debts (not subject to a bona fide dispute as to liability or amount) as such debts became due. As a Constitutional matter of Due Process, there must be an "initial determination of the validity" of the petitioners' underlying grounds of relief to protect the alleged debtor against an erroneous seizure of his property. *See Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). The petitioners cannot meet that standard.

WHEREFORE based on the foregoing, the alleged debtor objects to the appointment of an interim trustee¹ and respectfully requests that the hearing on the motion to appoint an interim trustee, and any other matters, be reset until the alleged debtor has been allowed to retain hired counsel to represent him in this case and at the hearing, and that counsel has had sufficient time to properly prepare for the hearing.

FURTHER, the alleged debtor requests that prior to the appointment of any interim trustee, the petitioners be required to (1) establish a preliminary showing of the validity of their right to relief and (2) post a bond sufficient to protect the alleged debtor against the costs and damages that may be sustained from the appointment of an interim trustee, including the trustee's fees and expenses.²

Dated: January 16, 2013

Respectfully Submitted,


/s/ Jeffrey Baron

Jeffrey Baron

PO BOX 111501

Carrollton 75011

972-535-4155

email: jeffbaron1@gmail.com

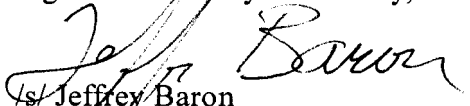
Alleged Debtor

¹ Especially, in the circumstances of this case—where the assets of the alleged debtor are held by the District Court in receivership—there is no exigent circumstance requiring the appointment of a trustee.

² The petitioners have represented through their counsel that **the appointment of a trustee would allow the “trustee and his or her counsel to be paid 6 or 7 figure fees, and keeps Jeff’s assets tied up for the next 3 years”**. Since the petitioners expect the trustee fees could be Millions of Dollars, appropriate bond sufficient to cover that cost is a Constitutional prerequisite to the imposition of an interim trustee over the assets of the alleged debtor.

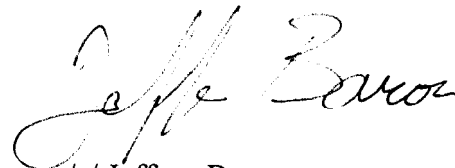
I declare under penalty of perjury that the foregoing is true and correct.

Signed this 16 day of January, 2013, in Dallas, Texas.


/s/ Jeffrey Baron
Jeffrey Baron

CERTIFICATE OF SERVICE

The undersigned certifies that, on January 16, 2013, a true and correct copy of the foregoing document was filed with the Clerk of Court and thereby filed in the CM/ECF electronic system and thereby served upon all parties receiving service through the CM/ECF system.


/s/ Jeffrey Baron
Jeffrey Baron