No. 13-10121
(and Consolidated Cases)

In the
United States Court of Appeals for
the Fifth Circuit

No. 13-10121
JEFFREY BARON,
Appellant v.
DANIEL J. SHERMAN
Chapter 11 Trustee
Appellee

Appeal from Order Closing Case
(Civil Action No. 3:12-cv-00367-F)

On Appeal from
United States Bankruptcy Court
Northern District of Texas, Dallas Division
Bankruptcy Petition No. 09-34784-sgj11

APPELLANT'S CORRECTED REPLY TO TRUSTEE'S RESPONSE TO EMERGENCY MOTION FOR STAY PENDING APPEAL

Appellant, Jeffrey Baron, hereby files his Corrected Reply to Appellee's Response to his Emergency Motion for Stay Pending Appeal.[1]

[1] The sole change in Appellant's Reply corrects a factual statement concerning the timing of the Trustee's filing of a suggestion of bankruptcy, which is located at the bottom of page 2 through the top of page 3.

First, the Trustee accurately states that there was a suggestion of bankruptcy filed with this Court by the Trustee's counsel. However, Mr. Baron has a substantial Fifth Amendment interest in protecting his assets while he is appealing the Order for Relief entered by the Bankruptcy Court. This is true despite the fact that both courts have denied a stay pending appeal of the involuntary bankruptcy proceeding.[2] The Trustee urges the Court to adopt a position that basically deprives litigants of the right to oppose the imposition of an involuntary bankruptcy and then sell his assets while he is pursuing the judicial process. This violates fundamental principles of due process.

The Appellee is attempting to create confusion by confusing the two orders at issue and the two separate and distinct bankruptcies. The Appellee accurately states that he filed a suggestion of bankruptcy in this Court, but his suggestion of bankruptcy appears to have been made as part of a strategy to circumvent the bankruptcy process and sell <servers.com> as part of the Ondova bankruptcy and circumvent the Chapter 7 process.

While the instant appeal was pending, the Appellee moved to sell the <servers.com> asset for the second time[3], in violation of the automatic stay in

[2] Mr. Baron anticipates taking further action regarding the district court's denial of the stay, for reasons set out below.
[3] Appellee's motion was filed on August 14, 2013.

Appellant's personal involuntary bankruptcy case[4] and undermining this Court's jurisdiction in the subject matter of this appeal. Approximately one month later, the Trustee came to this Court and filed a suggestion of bankruptcy attempting to to stay this appeal concerning sale of <servers.com> the very same asset that he had just asked the *Ondova* bankruptcy court to liquidate. Appellee cannot have it both ways, taking offensive action against Appellant in the *Ondova* case and then requesting that the appeal of such action be stayed because Mr. Baron is in a Chapter 7 bankruptcy.

Further, the Appellee's argument is misleading in that he incorrectly refers to a different order than the order on appeal, suggesting that Appellant did not request a stay. As set out in Appellant's motion to this Court, a motion for stay the First Sale Order, the order on appeal in the instant case, was requested in the District Court and was summarily denied (Appendix J). The District Court gave no reason for denying the motion.

The Appellee avoids discussion of the First Sale Order because the Second Sale Order (entered on Appellee's motion a year after the order on appeal was filed in this Court) seeks to modify the order while on appeal, which interferes with the jurisdiction of this Court and cannot be allowed. Indeed, appellate courts can

[4] The Ondova bankruptcy is separate and distinct from the personal involuntary bankruptcy brought against Baron and pending appeal in the Northern District of Texas.

hardly allow appeals to be filed and then have the order modified at the request of litigants in such a way as to moot an appeal.

Although the stay motion in the Chapter 7 case is irrelevant to a determination of the instant motion, Appellee apparently suggests that Baron will not obtain relief from the involuntary bankruptcy. In making this assertion, however, Appellee falsely states that Appellant "failed to seek a stay of the Order For Relief" (Response at 2). The Trustee's assertion contradicts the *facts* recounted by Judge O'Connor's in his Order recognizing that a stay was requested from the bankruptcy court and his Court.[5]

In attempting to focus this Court on Appellant's involuntary bankruptcy, the Trustee fails to distinguish the Chapter 7 case from the Ondova bankruptcy case, from which the order in this case was appealed. The Trustee's motion to sell Appellant's individual property in the *Ondova* bankruptcy violated the automatic stay in the separate, personal involuntary bankruptcy case. This smacks of gamesmanship designed to circumvent the bankruptcy process to sell an asset in the wrong case but simultaneously undermining this Court's jurisdiction. As argued in Appellant's motion, a Section 363 sale denies the parties due process in

[5] Appellant has just filed his opening brief in support of reversing the order for relief. The Trustee in Appellant's involuntary bankruptcy case has not taken any action in the instant appeal.

determining the ownership of an asset. Ownership must be determined first and then a Section 363 sale conducted, if appropriate. The Court should require the Trustee to file the right procedure in the right case. While Mr. Baron has been castigated for alleged "vexatious" litigation tactics, the Trustee's litigation tactics are inappropriate and reveals bad faith.

Moreover, this Court, in the *Netsphere* case, did stay the sale of all domain names subject to the receivership order indefinitely, and the receivership order applied to all of Jeff Baron's assets, including his ownership interest in servers.com. Exhibit G. *See Netsphere*, 703 F.3d at 305, 309 ("The receivership ordered in this case encompassed all of Baron's personal property…."). The Court ultimately made the stay on sale of the domain names permanent. Id. at 314 n.2 (stay on sale of domain names made "permanent").

Finally, the Trustee's argument regarding on the order denying the stay in the Chapter 7 case is irrelevant to the instant appeal for another reason. The district court simply got the *basic* facts wrong. The District Court incorrectly concluded that the district court's earlier interlocutory May 18, 2011 order in the *Netsphere* case held that the receivership creditors were entitled to over $800,000 in unpaid fees and was not affected by this Court's reversal. 3:13-0461, Dkt. 22 at 11-12. Simply stated, this Court held that these claimants were "non-judgment

creditors," held "disputed claims" not subject to the equitable jurisdiction of a federal court and reversed and vacated this order. *Netsphere,* 703 F.3d at 305-306.

The root problem presented in the involuntary case involves the imposition of an involuntary bankruptcy by non-judgment creditors with disputed claims, that were and are collaterally estopped by this Court's decision in *Netsphere, Inc. v. Jeff Baron, et.al.*, 703 F.3d 296 (2012). This Court found that these creditors were non-judgment creditors. If the petitioning creditors were non-judgment creditors in *Netsphere*, it strains credulity to believe that these same non-judgment creditors somehow became judgment creditors that allows relief in a federal bankruptcy court. The filing of the involuntary petition was nothing more than an attempt to circumvent this Court's judgment and mandate in the *Netsphere* decision.

Respectfully submitted,

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Certificate of Service

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

CERTIFIED BY: /s/ Stephen R. Cochell
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