

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

IN RE

JEFFREY BARON

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Case No.: 12-37921-7

Involuntary Chapter 7
Petition

JEFFREY BARON’S 12(B) MOTIONS & PROVISIONAL ANSWER

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

**I. Motion to Dismiss for Failure to State a Claim upon which Relief Can be
Granted and Lack of Jurisdiction**

1. A claim under 11 U.S.C. §303 against a debtor with more than 12 creditors and the Court’s jurisdiction thereunder, requires and is contingent upon a petition by three or more entities, each of which holds a claim against such debtor **“that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount”**. 11 U.S.C. §303(b)(1).

2. Entities alleging a debt which is contingent or the subject of a bona fide dispute as to liability or amount **lack standing** to petition for the commencement of an involuntary case under §303 of Chapter 11. *Id.* A person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue. *E.g., Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990).

3. **None of the petitioners in this case holds a claim against the alleged debtor that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount. Rather, the petitioners are attempting to invoke the power of the federal bankruptcy court for the improper purpose of securing a pre-judgment**

seizure of the alleged debtor's property to secure a hoped for judgment on their disputed claims, and in a concerted effort to attempt to deny the alleged debtor of his Constitutional right to trial by Jury on their claims.

4. The petitioners have previously been rebuffed by the Fifth Circuit Court of Appeals for attempting precisely the same tactic through the improper and unauthorized use of a receivership to secure resolution of their disputed claims. In finding that the receivership imposed to resolve the attorneys' disputed claims was unauthorized by law and an abuse of the court's discretion, the Fifth Circuit noted that "the claims had not been reduced to judgment such that a receiver would have been proper to set aside allegedly fraudulent conveyances" *Netsphere, Inc. v. Baron*, no. 10-11202, 2012 WL 6583058, *9, 18 (5th Cir. 2012). The Fifth Circuit reversed the receivership and the District Court's order¹ for the receiver to settle the disputed claims of the petitioners. *Id.*

5. The petitioners filed this case in bad faith, based on claims (1) which are all more than two years old and irrelevant to the question of whether a debtor is now generally paying his debts as they become due; and (2) which the petitioners know are subject to a bona fide dispute and for which the disputes have been extensively briefed in prior proceedings.

6. The petitioners claim for relief also cannot be granted because their petition and request for relief is barred and enjoined by order of the US District Court. On November 24, 2010 the US District Court issued a receivership order which at page 12 orders that "during the pendency of the receivership ordered herein, all other persons and entities aside from the Receiver are hereby stayed from

¹ See Dkt. 575 in Case 3:09-cv-00988-F, filed in the Northern District of Texas.

taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or In the name of, the Receivership Party, any of their partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions: 1, Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations; 2, Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody or control of any asset". Subsequent to issuing its opinion, the Fifth Circuit has clarified that, although its opinion vacates the receivership order, its opinion will not go into effect until the mandate is issued by that Court.

7. Accordingly, the petitioners' actions are in direct violation of the order of the US District Court, and the relief requested by the petitioners is prohibited by that order. The petitioners' attempt to avoid Jury trials on their contested claims through the unauthorized use of a receivership was rejected by the Fifth Circuit. Within hours of that ruling, the petitioners then sought to use the power of *this* Court for the same improper, unauthorized purpose that was expressly rejected by the Fifth Circuit.

8. The petitioners have acted in bad faith in attempting to improperly use the bankruptcy court to collect on disputed claims which fall outside the jurisdictional threshold for §303. Moreover, the petitioners' underlying claims are meritless and frivolous. A summary of the disputed claims is as follows:

- 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.
- d. **Mr. Ferguson** claims a debt based on fraud occurring more than two years ago and which is barred by the Statute of Limitations. Mr.

Ferguson, moreover, was paid in full under the terms of his written agreement with Mr. Baron even though Ferguson has failed to produce any work reports detailing his purported work hours.

- 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.
- f. **Mr. Pronske** was awarded a substantial contribution claim against Ondova for the same work he seeks to recover against Mr. Baron. As Mr. Pronske is not entitled to a double payment for his work, the claim against Baron is contingent upon the disposition of the Ondova fee award. Notably, Pronske admitted under oath the Mr. Baron did not negotiate to pay Mr. Pronske's fee. Pronske admitted under oath that "There are no engagement agreements relating to the representation" and that he did not expect Mr. Baron to pay for his services, rather Pronske claims that payment was to come from the Village Trust. Pronske swears he received a \$75,000.00 initial retainer from the Village Trust and admitted under oath he was to bill against that pre-paid retainer. Despite his legal and fiduciary duties to do so, Pronske failed to send monthly billing statements, failed to send monthly reports detailing the status of the retainer, and failed to

request a replenishment of the retainer. Pronske further forfeited his fee by violations of his fiduciary duties to Mr. Baron.

- g. **Mr. Garrey** appears to be, at best, a pathological liar. Mr. Garrey admits he has no contract, and claims he worked for two weeks. Garrey testified under oath that he was “asked by Jeff Baron to prepare and file a Special Appearance on behalf of The Village Trust in a lawsuit pending in Dallas State District Court. I performed all of the tasks.” As a matter of public record, no such special appearance exists. Moreover, Garrey’s own emails establish that contrary to his testimony, he solicited the Village Trust to be retained to file the special appearance and the Trust rejected his offer and did not retain him. Similarly, Garrey claims that he was retained by Mr. Baron to “object to the fee requests of the Receiver’s counsel, and I was asked to devise a strategy to remove the Receiver and the Receiver’s counsel”. As Mr. Garrey’s sworn testimony is that he stopped working for Baron *prior to any motion to appoint the receiver*, it is impossible for Mr. Garrey to have performed the services he claims.

9. The forum to adjudicate the petitioners’ disputed claims is not as petitioning creditors in an involuntary bankruptcy case. The petitioners’ attempt to do so is an abuse of the bankruptcy code, and wastes the limited resources of the bankruptcy court.

10. Based on the foregoing, Jeffrey Baron moves that the petition be dismissed for failure to state a claim upon which relief can be granted and for lack of jurisdiction.

II. Objection to Proceeding before non-Article III Judge

11. Jeffrey Baron objects to any proceeding on the petition before a non-Article III Judge. The determination and adjudication of the substantive merits of the issues involve the “prototypical exercise of judicial power” contemplated by the Supreme Court in *Stern v. Marshall*, 131 S.Ct. 9594 (2011). Unlike in the case of a voluntary petition, the alleged debtor has not consented to hearing of the matter by a non-Article III judge.

III. Motion to Dismiss for Insufficient Process and Insufficient Service of Process

12. Mr. Baron has never been served with process or a summons, (and his counsel in other cases have not been served with a copy of the processes or summons issued by the Clerk of this Court in this case). The rules allow for service by first class mail. If the rules are interpreted to provide that service is complete not when delivered by the US Post Office but rather when deposited with the Post Office, and that is the basis of service in this case, such service fails to meet the minimum requirements of Due Process set out by the Supreme Court. This motion is filed before Mr. Baron has received the summons issued by this Court. The summons, however, has legal effect and is time limited. Accordingly, while Mr. Baron comes before this Court and addresses the matters raised herein, the case should properly be dismissed for insufficient service of process.

IV. Motion for a More Definite Statement

13. The only statement of the petitioners’ standing and claims is listed as a claim for ‘attorneys fees’ and amount. The statement provides no basis in fact as to any detail, time, or basis of the claim.

14. The petition fails to specify the relationship between Mr. Baron and the alleged affiliate, Ondova.

15. Based on the foregoing, Jeffrey Baron moves that a more definite state of the petitioners' claims be provided and that Baron be allowed an opportunity thereafter to further answer.

V. Provisional Answer and Counter-Claim

16. Subject to the forgoing, if not allowed additional time to answer, the following is the answer of Jeffrey Baron:

17. This case should be dismissed because the petitioning creditors' claims are all in bona fide dispute.

18. This case should be dismissed because Mr. Baron is paying his debts as they become due. The petitioning creditors' claims are over two years old and are disputed and have been the subject of litigation.

19. Jeffrey Baron denies the allegations contained in the Involuntary Petition.

a. The Petitioners are not eligible to file the petition pursuant to 11 U.S.C. § 303(b).

b. The alleged debtor is generally paying his debts as they become due (unless such debts are the subject of a bona fide dispute as to liability or amount).

c. The petitioners' claims are all disputed. The factual allegations and legal defenses stated above are incorporated herein.

20. The petitioners, Pronske, Hall, Lyon, Garrey, Ferguson, Shurig and Taylor have violated their fiduciary duties to the alleged debtor, and

such violation negates their right to payment for any attorneys fees and negates the relief requested in their petition and their standing to seek such relief. Baron makes this COUNTERCLAIM for breach of fiduciary duty, and forfeiture of all fees, including previously paid fees, for those attorneys. Demand for jury trial on these counter-claims is hereby made.

21. The alleged debtor is being denied due process of law because his assets, including future wages, have been seized in a receivership and he has been prevented from hiring counsel of choice to represent him in answering the petition. The alleged debtor consulted with attorneys who wanted to help, but were unable to undertake the representation because the receiver controls Mr. Baron's funds and the automatic stay may prevent the receiver from disbursing those funds to Mr. Baron to pay for counsel to defend himself. Thus a 'catch-22' situation has been created (since the petitioners violated the District Court stay against filing actions interfering with the receivership res). The receiver has the alleged debtor's assets and money and has been, apparently, restrained by the filing of the petition from releasing those funds to the alleged debtor to hire an attorney to defend the petition. 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. Fretag*, 348 U.S. 3, 10 (1954); *Texas Catastrophe Property Ins. Ass'n v. Morales*, 975 F.2d 1178, 1181 (5th Cir. 1992);

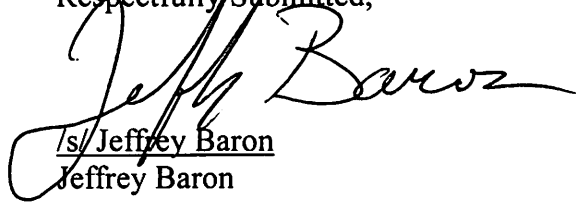
Potashnick v. Port City Const. Co., 609 F.2d 1101, 1118 (5th Cir. 1980).

22. Jeffrey Baron requests that the case be dismissed for the above and foregoing reasons, jointly and alternatively.

23. Demand is made for trial by jury.

Dated: January 9, 2013

Respectfully Submitted,



/s/ Jeffrey Baron
Jeffrey Baron
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972-535-4155
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Alleged Debtor

CERTIFICATE OF SERVICE

The undersigned certifies that, on January 9, 2013, a true and correct copy of the foregoing document was served by fax or email, where known, as shown below, and otherwise by first class mail, postage prepaid upon the parties listed below.

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/s/ Jeffrey Baron
Jeffrey Baron