

No. DC-10-11915

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE, Individually,
AND PRONSKE, GOOLSBY &
KATHMAN, P.C. f/k/a PRONSKE &
PATEL, P.C.,

Defendants.

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IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

193RD JUDICIAL DISTRICT

SECOND OBJECTION TO PROPOSED FINAL SUMMARY JUDGMENT

TO THE HONORABLE CARL GINSBERG:

Jeffrey Baron files this Second Objection to Proposed Final Summary Judgment proposed by Mr. Pronske and his firm for the following reasons:

A. The Letter of Mr. Pronske (Attached)

Baron has never had the opportunity to respond to any summary judgment evidence or argument regarding prejudgment interest issue. Had Baron the opportunity to do so, Baron would have pointed out that prejudgment interest was inappropriate for a variety of reasons. Most important, the captioned case was abated by the Bankruptcy Court because the parties were enjoined by the Receivership Order from proceeding forward with the case. Pronske sought to un-abate the case in March of this year. *See* Exhibit “2”. In such motion filed with the Bankruptcy Court, Pronsek stated:

11 There is no longer cause to abate the adversary proceeding because of intervening proceedings that address the subject matter of the parties’ dispute. The adversary proceeding was first abated after the appointment of the Receiver by the District Court, and the abatement continued throughout the duration of the Baron Receivership. Yet the circumstances have changed substantially since November 2010. The Fifth Circuit has reversed and vacated the appointment of the Receiver, and the District Court is taking steps to expeditiously wind-down the Receivership, includ-

ing the return of Baron's assets on or before March 14, 2014. As a result, Baron is soon to be in possession of his assets, and the Receiver will soon be discharged from his duties under the Receivership Order. These significant changes in circumstances support lifting the abatement of the removed State Court lawsuit so that the parties may be free to pursue their claims against each other.

12. Although never expressly articulated by the Court, the abatement of the adversary proceeding continued past the Fifth Circuit's reversal of the Receivership Order because of the intervening involuntary bankruptcy petition filed against Baron immediately after the Fifth Circuit's opinion reversing the Receivership Order was released. As before, the circumstances of the involuntary bankruptcy against Baron have also materially changed. The District Court reversed the Order for Relief on appeal entered against Baron in the involuntary matter, and although that reversal has been appealed to the Fifth Circuit, the Fifth Circuit has declined to stay the reversal pending resolution of the appeal. Although the involuntary case is still open, all that remains to be resolved prior to dismissal of the case is the potential assessment of attorneys' fees against the Petitioning Creditors under 11 U.S.C. § 303(i). The Defendants have filed a motion for relief from the bankruptcy automatic stay in Baron's individual bankruptcy case contemporaneously with the filing of this Motion, although the Defendants believe Baron is judicially estopped from opposing relief from the automatic stay given his prior positions and arguments during the course of the appeal of the Order for Relief. For these reasons, the intervening involuntary bankruptcy case against Baron no longer supports abatement of the adversary proceeding.

Baron should not be responsible for paying prejudgment interest for a period in time when this case was abated. In fact, after filing the Motion to Abate, Pronske then withdrew the Motion to Abate. The case was then remanded in May 2014. Baron did not ask for the Adversary Proceeding (this case) to be abated. The Bankruptcy Court did so due to the injunction entered by the District Court in the Receivership Proceedings. Baron should not be charged prejudgment interest under such circumstances. Baron cannot properly research such issue unless the Court provides further time to do so, and since it was never asserted in the Amended Summary Judgment Motion, no briefing was done by Baron at the time.¹

¹ Of course, it is because of this abatement and the injunction that Baron has argued that the substantial contribution claim could not have been res judicata or collateral estoppel, but such arguments will be made in a Motion for Reconsideration and on appeal.

Respectfully Submitted,

Pendergraft & Simon, LLP
2777 Allen Parkway, Suite 800
Houston, TX 77019
Tel. (713) 528-8555
Fax. (713) 868-1267

/s/ William P. Haddock

By: Leonard H. Simon
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William P. Haddock
Texas Bar No. 00793875
whaddock@pendergraftsimon.com

Counsel for Jeff Baron

Certificate of Service

I hereby certify that a true and correct copy of the above SECOND Objection to Proposed Final summary Judgment has been served on the following counsel/parties of record in accordance with TEX. R. CIV. P. 21a and local rules for electronic filing and service on this 3rd day of September 2014.

Gerrit M. Pronske
Jason P. Kathman
Melanie P. Goolsby
Pronske Goolsby & Kathman, PC
2200 Ross Ave., Suite 5350
Dallas, TX 75201
Fax. 214-658-6509

/s/ William P. Haddock

William P. Haddock

EXHIBIT "1"

Gerrit M. Pronske
214-658-6501
gpronske@pgkpc.com

September 3, 2014

Honorable Carl Ginsberg
193rd District Court
Dallas County
600 Commerce Street
Dallas, TX 75248

Re: Jeff Baron v. Gerrit M. Pronske, Individually, et al; Case No. DC-10-11915

Dear Judge Ginsberg:

I am in receipt of the Objection to Proposed Final Summary Judgment submitted yesterday by counsel for Jeff Baron, Leonard Simon. His Objection is incorrect, and this letter is in response.

Mr. Simon raises essentially 2 objections to the Proposed form of Final Summary Judgment that I submitted to the Court yesterday. Mr. Simon cites the Court to no law and no cases that support his incorrect positions.

First, Mr. Simon argues that the proposed Judgment provides for prejudgment interest "when the Amended Motion for Summary Judgment made such request." I believe he meant to say "did not make such a request." The Defendant's First Amended Answer and Counterclaim filed in this case on May 16, 2014, specifically requested, in the prayer for relief, "pre-judgment and post-judgment interest on all monetary relief sought herein at the highest rates allowed by law." In the Amended Motion for Summary Judgment, filed on July 25, 2014, we requested, in the prayer for relief, "any such other and further relief, whether based in law or equity, that Defendants may be lawfully entitled." Under Texas law, the Texas Supreme Court holds that statutory or contractual interest may be predicated on a prayer for general relief. *Benavidez v. Isles Constr. Co.*, 726 S.W.2d 23, 25 (Tex. 1987); *see also Olympia Marble & Granite v. Mayes*, 17 S.W.3d 437 (Tex. App. — Houston [1st Dist.] 2000, no pet.). In the present case, our request in the Counterclaim was specific, and the request in the Motion for Summary Judgment was general. This is more than sufficient under Texas law for an entitlement to prejudgment interest.

Second, Mr. Simon argues that the "proposed order impermissibly allows for prejudgment interest at the State Rate of Interest," instead of the federal rate for the time that the case was pending in the federal court. Again, Mr. Simon cites no law and, again, he is incorrect. It is ironic that Mr. Simon claims that he should be entitled to the rate of interest in the federal court that he caused to remand this case to the state court. However, the law provides that what court the case is in is irrelevant. Even if this case had remained in the federal court, the Texas

PGK | PRONSKE GOOLSBY & KATHMAN, P.C.

Honorable Carl Ginsberg
September 3, 2014
Page 2

State prejudgment interest rate would have governed. The Fifth Circuit Court of Appeals has held that prejudgment interest is determined according to the substantive law of the state governing the claim giving rise to the damages. *Bott v. American Hydrocarbon Corp.*, 458 F.2d 229, 231 (5th Cir. 1972); *Wood v. Armco, Inc.*, 814 F.2d 211, 213 n.2 (5th Cir. 1987).

Based on the above, I respectfully request this Court to enter the form of Final Summary Judgment submitted yesterday, September 2, 2014. Thank you for your consideration of this matter.

Very truly yours,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

GMP:slm
Enclosure

cc: Leonard Simon
William P. Haddock
Via Email: lsimon@pendergraftsimon.com
Via Email: whaddock@pendergraftsimon.com

Alan L. Busch
Via Email: busch@buschllp.com
Via Email: albert@buschllp.com

Mark Stromberg
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Jonathan B. Bailey
Via Email: jbaileylaw@hotmail.com

Gary Lyon
Via Email: glyon.attorney@gmail.com

EXHIBIT "2"

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Melanie P. Goolsby
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**COUNSEL FOR GERRIT M. PRONSKE AND
PRONSKE GOOLSBY & KATHMAN, PC,
F/K/A PRONSKE & PATEL, PC**

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

In re:	§	
	§	CASE NO. 09-34784-SGJ-11
ONDOVA LIMITED COMPANY,	§	
	§	CHAPTER 11
Debtor.	§	
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JEFF BARON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	ADVERSARY NO. 10-03281-SGJ
GERRIT M. PRONSKE,	§	
INDIVIDUALLY, AND PRONSKE &	§	
PATEL, P.C.,	§	
	§	
Defendants.	§	
<hr/>		
GERRIT M. PRONSKE AND	§	
PRONSKE & PATEL, P.C.,	§	
	§	
Counter-Plaintiffs and Third-	§	
Party Plaintiffs,	§	
	§	
v.	§	
	§	
JEFF BARON,	§	
	§	
Counter-Defendant, and	§	

THE VILLAGE TRUST,

Third-Party Defendant.

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DEFENDANTS’ EMERGENCY MOTION TO LIFT ABATEMENT

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

Gerrit M. Pronske (“Pronske”) and Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, PC (“PGK” and, together with Pronske, the “Defendants”), defendants, cross-plaintiffs, and third party plaintiffs in the above-captioned adversary proceeding, hereby file this Emergency Motion to Lift Abatement (the “Motion”), and in support of this Motion, state as follows:

I. BACKGROUND

A. The Involuntary Case

1. On December 18, 2012 (the “Petition Date”), PGK and other petitioning creditors (together, the “Petitioning Creditors”) filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron” or the “Debtor”) under Chapter 7 of the Bankruptcy Code [Docket No. 1, later amended at Docket No. 45].

2. On June 26, 2013, after conducting an involuntary trial over two days, the Court entered an Order for Relief in an Involuntary Case (the “Order for Relief”) [Docket No. 240].

3. On January 2, 2014, the United States District Court for the Northern District of Texas (the “District Court”) entered an Amended Memorandum Opinion and Order reversing this Court’s Order for Relief and remanding the matter to this Court the

limited purpose of considering potential claims for attorney's fees under 11 U.S.C. § 303(i) and dismissal of the case.

4. PGK and the other Petitioning Creditors have appealed the District Court's reversal of the Order for Relief to the United States Court of Appeals for the Fifth Circuit. They also requested stay of the District Court's order pending appeal, which was denied by the Fifth Circuit on March 6, 2014.

5. The District Court has recently entered an order requiring the Baron Receiver to return receivership assets to Baron, Novo Point LLC, and Quantec LLC on or before March 14, 2014. *See* Order entered February 28, 2014 at Document No. 1368 in *Netsphere, Inc., et al v. Baron, et al*, Civil Action No. 3:09-CV-0988-L.

B. The Ondova Adversary Proceeding

6. Prior to the Petition Date, on September 15, 2010, Baron filed his Original Petition for Declaratory Judgment, Original Petition, Application for Temporary Restraining Order and Request for Disclosure (the "Complaint") against Gerrit M. Pronske, individually, and Pronske & Patel, PC (together, the "Defendants") in the 193rd Judicial District Court of Dallas County, Texas (the "State Court").

7. On that same date, the Defendants filed a Notice of Removal of the Complaint to the United States Bankruptcy Court for the Northern District of Texas in the bankruptcy case styled *In re Ondova Limited Company*, Case. No. 09-34784-SGJ-11 (the "Ondova Case").

8. On September 27, 2010, the Defendants filed their Original Answer and Counter-Claim and Third Party Complaint (the "Answer"). The Answer states claims against Baron and The Village Trust for theft of services, breach of contract, quantum meruit, attorney's fees, fraud, and alter ego.

9. On November 3, 2010, this Court entered its Order Abating Adversary Proceeding and Setting Status Conference temporarily abating the adversary proceeding to December 16, 2010.

10. The adversary proceeding has continued to be abated and/or stayed by the intervening involuntary bankruptcy case against Baron since November 3, 2010, and the Court has not conducted a hearing or entered an order on Baron's Motion to Remand and Motion to Strike Notice of Removal.

II. REQUEST FOR RELIEF

11. There is no longer cause to abate the adversary proceeding because of intervening proceedings that address the subject matter of the parties' dispute. The adversary proceeding was first abated after the appointment of the Receiver by the District Court, and the abatement continued throughout the duration of the Baron Receivership. Yet the circumstances have changed substantially since November 2010. The Fifth Circuit has reversed and vacated the appointment of the Receiver, and the District Court is taking steps to expeditiously wind-down the Receivership, including the return of Baron's assets on or before March 14, 2014. As a result, Baron is soon to be in possession of his assets, and the Receiver will soon be discharged from his duties under the Receivership Order. These significant changes in circumstances support lifting the abatement of the removed State Court lawsuit so that the parties may be free to pursue their claims against each other.

12. Although never expressly articulated by the Court, the abatement of the adversary proceeding continued past the Fifth Circuit's reversal of the Receivership Order because of the intervening involuntary bankruptcy petition filed against Baron immediately after the Fifth Circuit's opinion reversing the Receivership Order was released. As before, the circumstances of the involuntary bankruptcy against Baron have also materially

changed. The District Court reversed the Order for Relief on appeal entered against Baron in the involuntary matter, and although that reversal has been appealed to the Fifth Circuit, the Fifth Circuit has declined to stay the reversal pending resolution of the appeal. Although the involuntary case is still open, all that remains to be resolved prior to dismissal of the case is the potential assessment of attorneys' fees against the Petitioning Creditors under 11 U.S.C. § 303(i). The Defendants have filed a motion for relief from the bankruptcy automatic stay in Baron's individual bankruptcy case contemporaneously with the filing of this Motion, although the Defendants believe Baron is judicially estopped from opposing relief from the automatic stay given his prior positions and arguments during the course of the appeal of the Order for Relief. For these reasons, the intervening involuntary bankruptcy case against Baron no longer supports abatement of the adversary proceeding.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant this Motion, lift the abatement of the above-captioned adversary proceeding, and grant Defendants such other, further relief to which they may be entitled.

Dated: March 13, 2014.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

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State Bar No. 24059841

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**COUNSEL FOR GERRIT M. PRONSKE
AND PRONSKE GOOLSBY &
KATHMAN, PC, F/K/A PRONSKE &
PATEL, PC**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on March 11, 2014, I conferred with Leonard Simon, proposed counsel for Baron, regarding the relief sought in this Motion, who indicated that Baron is opposed to the relief requested herein.

/s/ Gerrit M. Pronske

Gerrit M. Pronske

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on March 13, 2014, a true and correct copy of the above and foregoing Motion was served upon the Debtor via email as identified below, and also via ECF email on all parties accepting such service. Any party may request a copy of the attached exhibits to the undersigned counsel.

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COUNSEL FOR THE DEBTOR

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**PROPOSED COUNSEL FOR THE
DEBTOR**

/s/ Melanie P. Goolsby
Melanie P. Goolsby