

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

NETSPHERE, INC.,	§	
MANILA INDUSTRY, INC.,	§	
AND MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	CIVIL ACTION NO. 3:09-cv-0988-L
v.	§	
	§	
JEFFREY BARON AND	§	
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS	§	

**JEFFREY BARON’S CORRECTED RESPONSE TO VOGEL’S STATUS
REPORT [DOC 1352]**

TO THE HONORABLE SAM A. LINDSAY,
UNITED STATES DISTRICT JUDGE:

NOW COMES, Jeffrey Baron (“Baron”) and files this Corrected Response to Vogel’s Status Report [Doc 1352], and in support thereof would respectfully show this Court as follows:

INTRODUCTION

1. On November 24, 2010, the District Court established a Receivership (“Receivership”). Pursuant to the Order creating the Receivership, the Receiver, Peter Vogel, took possession of the assets of Jeffrey Baron, and took control of over two dozen entities, including Novo Point, LLC (“Novo Point”) and Quantec, LLC (“Quantec”), two limited liability companies organized under the laws of the Cook Islands. Novo Point and Quantec, in turn, have

always been owned by a trust called the Village Trust, also an entity organized under the laws of Cook Islands.

2. The Receivership and the appointment of the Receiver in this case for the purpose of marshalling Mr. Baron's personal assets has turned into an unmitigated disaster for everyone but the Receiver and his attorneys, who have stripped all of Baron's personal assets from him, including all of his exempt assets—IRA accounts and 401k accounts—and the assets of Quantec and Novo Point, and have used Baron's assets to pay themselves approximately \$5,200,000 in fees and expenses. Not one creditor of Baron has been paid in this case. Baron was deprived of the basic right to engage counsel to defend himself against the actions taken by the Petitioning Creditors¹ and the Receiver. *See* true and correct copy of an email dated December 2, 2010, from the Receiver's attorney, Barry Golden, attached hereto and made a part here of as **Appendix Item "1"**.

3. Two years later, and after the payment of approximately \$5,200,000 in fees and expenses incurred by the Receiver and his attorneys, the Fifth Circuit found that the appointment of the Receiver was an abuse of discretion, and that "[e]stablishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority." *Netsphere, Inc. v. Baron*, 703 F.3d 296, 308 (5th Cir. 2012).

4. The Fifth Circuit found no basis to support the Receiver's and Petitioning Creditors' contention that Baron was attempting to secret away from the jurisdiction of the Court any assets that were subject to the settlement in *Netshpere, Inc. v Baron*:

We do not, though, find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's

¹ The Petitioning Creditors are: Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione's.

jurisdiction. Accordingly, the receivership cannot be justified in this instance on the basis that it was needed to take control of the property that was the subject of the litigation. Rather, the receivership was established to pay the attorneys and to control vexatious litigation. We will now examine each of those reasons.

Id. at 308. Nor could the Receiver or the Ondova Trustee point to one order that Baron violated in the District Court that might have resulted in a contempt of court:

If the district court entered a sufficiently specific order, it could have held Baron in contempt, imposed a fine or imprisoned him for “disobedience ... to its lawful ... command.” 18 U.S.C. § 401. At oral argument in the appeal, it seemed conceded that no clear order existed. Instead, the receiver and trustee cited only to hearings at which the district court admonished Baron not to hire or fire any more attorneys.

Id. at 311. All of the “mud slinging” of the Receiver was laid bare by the Fifth Circuit, and the Court vacated the Receivership Order. Yet in his Status Report, Vogel continues the “mud slinging”.

5. Within two hours of the Fifth Circuit’s issuance of the *Netsphere, Inc. v. Baron* opinion on December 18, 2012, instead of going to state court to liquidate their claims, as the Fifth Circuit so admonished them, the Petitioning Creditors filed an involuntary bankruptcy proceeding against Mr. Baron in an effort to circumvent the Fifth Circuit decision in *Netsphere v. Baron* and keep his assets frozen. Thus these Petitioning Creditors, unhappy with the ruling they had just received from the Fifth Circuit, decided to take action that was intentionally designed to circumvent, emasculate, and defy the decision of the Fifth Circuit. Their mission was to keep Jeff Baron’s personal assets frozen and to continue to deprive him of his “day in court,” where he might have an impartial trial by a court and jury with respect to the attorney fee claims being asserted against him. It appears that the Receiver and his attorneys actively participated in the meretricious efforts of the Petitioning Creditors to keep Baron’s assets frozen.

6. Then, in attempting to prove up their involuntary bankruptcy claims as being liquidated, and non-contingent in nature, the Petitioning Creditors again attempted to avoid a full blown trial on the merits by relying on the May 18, 2011 Fee Order to support a summary judgment motion, making the unsupported argument that such order should have preclusive effect obviating the need to liquidate their claims for purposes of satisfying the requirements of 11 U.S.C. § 303. Again, Baron believes that ultimately he will be able to prove that the Receiver and his attorneys actively participated in the design of the Petitioning Creditors' tactics, which, again, "blew up in their faces."

7. One thing is for certain: at no time did the Receiver ever attempt to protect Baron and the Receivership Estate's assets from the specious claims of the Petitioning Creditors and related claimants. Having left Baron totally crushed financially, and barred from defending himself, even using his exempt assets to do so, the Receiver and his attorneys frittered away \$5,200,000 of Baron's assets.

8. "Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims." *In re FEMA Trailer Formaldehyde Products Liability Litigation*, 668 F.3d 281, 286 (5th Cir. 2012) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). The Fifth Circuit in *Netsphere, Inc. v. Baron* held that the District Court neither had the jurisdiction to appoint the Receiver in this case,² nor the authority to do so,³ and then vacated the receivership order.⁴ This Honorable Court should adhere to the

² In *Netsphere, Inc. v. Baron*, 703 F.3d at 310, the Fifth Circuit stated, "A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy." 703 F.3d 296, 310 (5th Cir. 2012) (citing *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir.1931)).

³ "A court has undeniable authority to control its docket but not through creating a receivership over assets, including personal assets, that were not the subject of the litigation." *Netsphere, Inc.*, 703 F.3d at 311.

mandate of the Fifth Circuit in *Netsphere, Inc. v. Baron* and not countenance any further delays in winding up this Receivership and discharging this Receiver and his attorneys. This Court should not award this Receiver and his professionals one additional penny in fees and expenses.⁵

9. As important, this Court should enforce its own Mandate in the Court's Order dated January 6, 2014 directing the Receiver to take necessary steps to wind down and terminate the Receivership created in this case and return all Receivership assets to the parties from which the assets were received. (ECF Document 1351).

10. Finally, this Court should keep in mind the limited nature of this Court's jurisdiction as enunciated by the Fifth Circuit in the *Netsphere, Inc. v Baron*. This Court should not be lured into the abyss of ruling on matters over which it has no jurisdiction.

QUANTEC AND NOVO POINT

11. On April 22, 2011, Judge Furgeson entered an Order Granting the Receiver's Motion to Appoint Damon Nelson as Permanent Manager of the LLCs and for Turnover of LLC Materials to Damon Nelson. (ECF Document 473). Said order has never been vacated.

12. Novo Point and Quantec are Cook Islands limited liability companies that are owned by the Village Trust, which is also organized under the laws of the Cook Islands.

13. The current trustee of the Village Trust is RPV Limited. RPV Limited replaced Southpac Trust International Inc. as the trustee of the Village Trust on or about June 15, 2013,

⁴ "We conclude that the receivership improperly targeted assets outside the scope of litigation to pay claims of Baron's former attorneys and control Baron's litigation tactics. This was an improper use of the receivership remedy. The order appointing a receiver is vacated." *Netsphere, Inc.*, 703 F.3d at 311.

⁵ Indeed, with the sweep of a pen this Court can and should, *sua sponte*, order the Receiver to unfreeze Jeffrey Baron's exempt property IRA and Retirement Accounts within 24 hours. Absent specific proof of a conversion of non-exempt property into exempt personal property for the purpose of defrauding, hindering, or delaying a creditor, a person's exempt property should never be placed under the control of a receiver at the request of alleged creditors. *See* Tex. Prop. Code § 42.004; *see also id.* §§ 42.001, 42.0021 (exempting IRA and tax deferred retirement accounts "from garnishment, attachment, execution, or other seizure").

approximately six months after the receivership was vacated. RPV Limited is also the sole member of Quantec and the sole member of Novo Point. All of these matters are established by the Assignments attached hereto as Appendix Items “2” & “3”. If the Court requires additional documents proving authority, the trustee of the Village Trust has indicated that it is willing to provide these.

14. As directed by the April 22, 2011 Order, the Receiver, Damon Nelson and/or their respective agents, attorneys, other professionals, or employees, took possession of Novo Point’s and Quantec’s bank accounts, assets, and books and records.

15. For more than three years, the Receiver, Damon Nelson and/or their respective agents, attorneys, other professionals or employees, have been engaged in the control and operation of Novo Point and Quantec by virtue of the April 22, 2011 Order and the now vacated Receivership Order. During their tenure, they have accumulated documents,⁶ including documents reflecting communications, as agents for and/or on behalf of Novo Point and Quantec (the “LLC Documents”). The Receiver and or Damon Nelson may claim that some of these documents are subject to an attorney–client or other privilege, but such privileges would be owned by Novo Point or Quantec, and to the extent Damon Nelson and Vogel have acquired the LLC Documents, and/or the LLC Documents have been acquired by their respective agents, attorneys, other professionals or employees, they were acting as the agents for Novo Point and Quantec. During this three year plus period, the Receiver, Damon Nelson and/or their respective agents, attorneys, other professionals or employees have acquired and/or purchased assets such

⁶ The term “documents” shall have the same meaning ascribed to such term in Rule 34 of the Federal Rules of Civil Procedure.

as computers and computer peripherals, if any, including storage devices, using the funds of Novo Point and Quantec (the “LLC Hard Assets”).

16. In winding up the affairs of the Receivership, the following simple tasks should be accomplished immediately:

- a. RPV Limited as the sole manager of Quantec and Novo Point advised that it intends to designate an entity in the United States to act as the local manager for Novo Point and Quantec (the “US LLC Manager”), and intends to provide such resolutions to the Receiver and Damon Nelson.
- b. As the Fifth Circuit reversed and remanded the April 22, 2011 Order, this Court should enter an order vacating said order –
 - i. removing Damon Nelson as a manager of Novo Point and Quantec;
 - ii. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, other professionals or employees, within two business days, to turn over the bank accounts of Novo Point and Quantec, together with all bank statements and cancelled checks, to the US LLC Manager;
 - iii. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, other professionals or employees to remove themselves as the signatories on such bank accounts;
 - iv. directing the banks where such bank accounts exist to accept the US LLC Manager or a duly authorized representative of RPV Limited as a signatory on such accounts;
 - v. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, other professionals or employees to turn over to the US LLC Manager in an orderly fashion (boxes to be numbered and a summary document to be prepared identifying the numbered boxes and a description of the contents within each box) within five business days all originals of the books and records of Novo Point and Quantec (or copies if originals are not available) that are in their possession or subject to their control;
 - vi. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, other professionals or employees to turnover to the US LLC

Manager the LLC Documents, including all LLC Documents they allege are subject to the attorney-client or other privilege; and

- vii. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, other professionals or employees to turnover to the US LLC Manager the LLC Hard Assets.
- viii. directing the Receiver, Damon Nelson or any of their respective agents, attorneys, and other professionals to fully cooperate with US LLC Manager or other entity authorized by RPV Limited in transitioning the assets and control of Quantec, LLC and NovoPoint, LLC and in the wind down process.
- ix. Directing the Receiver, Damon Nelson or any of their respective agents, attorneys, and other professionals to notify all third parties with whom they have been corresponding or instructing, that they no longer have authority to act on behalf of NovoPoint, LLC., Quantec, LLC or any receivership party and instruct such third parties to take directions from the respective receivership party whom the Receiver was acting in its stead.

JEFFREY BARON'S ASSETS

17. As directed by the now vacated Receivership Order, the Receiver, and or his agents, attorneys, other professionals or employees, have taken possession of Jeffrey Baron's bank accounts, assets, and books and records.

18. For more than three years, the Receiver, and or his agents, attorneys, other professionals or employees, have been engaged in the control and operation of Jeff Baron assets and his businesses by virtue of the now vacated Receivership Order. During their tenure, they have accumulated documents,⁷ including documents reflecting communications, as agents for and/or on behalf of Jeff Baron (the "Baron Documents"). The Receiver may claim that some of these documents are subject to an attorney-client or other privilege, but such privileges would be owned by Jeff Baron, and to the extent Vogel has acquired the Baron Documents, and/or the

⁷ The term "documents" shall have the same meaning ascribed to such term in Rule 34 of the Federal Rules of Civil Procedure.

Baron Documents have been acquired by the Receiver's agents, attorneys, other professionals or employees, they were acting as the agents for Baron.⁸ During this three year plus period, the Receiver and his agents, attorneys, other professionals or employees have acquired and/or purchased assets such as computers and computer peripherals, including storage devices, using the funds of Baron (the "Baron Hard Assets").

19. The Court should enter an Order In Aid of Winding Down the Receivership (the "Wind Down Order").

20. The Wind Down Order should:

- a. direct the Receiver or any of his agents, attorneys, other professionals or employees, within two business days, to turn over the bank accounts of Jeff Baron, together with all bank statements and cancelled checks, to Jeff Baron;
- b. direct the Receiver or any of his agents, attorneys, other professionals or employees to remove themselves as the signatories on such bank accounts;
- c. direct the banks where such bank accounts exist to accept Jeff Baron as a signatory on such accounts;
- d. direct the Receiver or any of his agents, attorneys, other professionals or employees to turn over to Jeff Baron in an orderly fashion (boxes to be numbered and a summary document to be prepared identifying the numbered boxes and a description of the contents within each box) within five business days all originals of the books and records of Jeff Baron (or copies if originals are not available) that are in their possession or subject to their control;
- e. direct the Receiver or any of his agents, attorneys, other professionals or employees to turnover to Jeff Baron the Baron Documents, including all Baron Documents they allege are subject to the attorney-client or other privilege; and
- f. direct the Receiver or any of his agents, attorneys, other professionals or employees to turnover to Jeff Baron the Baron Hard Assets.

⁸ Indeed, the Receiver has admitted under oath that he has been acting as Jeff Baron's counsel. See Appendix Item "4", page 27, line 5-6.

- g. direct the Receiver and any of his agents, attorneys, other professionals or employees to fully cooperate with Jeff Baron in the transition of his assets and documents and in the wind down process.
- h. Directing the Receiver and any of his agents, attorneys, and other professionals to notify all third parties with whom they have been corresponding, that they no longer have authority to act on behalf of Jeffrey Baron or any receivership party and instruct such third parties to take directions from the respective receivership party whom the Receiver was acting in its stead.

DOMAIN NAME DISPUTES AGAINST NOVO POINT LLC AND QUANTEC LLC
SHOULD BE ENJOINED FOR TWELVE MONTHS

21. Novo Point and Quantec will require a short period to find and hire competent counsel to respond to the UDRP domain name disputes and other domain name disputes. The Receiver has wholly failed to respond to the UDRP domain name disputes.

22. Because Vogel has failed to respond to any UDRP disputes and, pursuant to his report, has allowed 800 disputes to accumulate over the past three years, it is estimated that a minimum of 12 months will be required for a staff of three attorneys, working solely on UDRP claim responses, to handle the backload of 800 claims resulting from Vogel's refusing to prepare responses to any of the claims over the past three years.

**RECEIVERSHIP FEES AND EXPENSES ALLOWED BY THIS COURT
PURSUANT TO INTERLOCUTORY ORDERS SHOULD BE REVIEWED AND
EXAMINED, PARTICULARLY THOSE FEES AND EXPENSES INCURRED
AFTER THE FIFTH CIRCUIT'S DECISION IN DECEMBER 2012**

23. The Fifth Circuit held in the *Netsphere v Baron* case as follows:

In light of our ruling that the receivership was improper, equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expenses must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate.

We also conclude that everything subject to the receivership other than cash currently in the receivership, which Baron asserts in a November 26, 2012 motion amounts to \$1.6 million, should be expeditiously released to Baron under a schedule to be determined by the district court for winding up the receivership. The new determination by the district court of reasonable fees and expenses to be paid to the receiver, should the amount be set at more than has already been paid, may be paid from the \$1.6 million. To the extent the cash on hand is insufficient to satisfy fully what is determined to be the reasonable charges by the receiver and his attorneys, those charges will go unpaid. No further sales of domain names or other assets are authorized.

Netsphere v. Baron, 703 F.3d at 313–14. Under any set of circumstances, the fees and expenses of the Receiver and his attorneys from and after December 18, 2012, should be limited to the \$1,600,000 on hand as of November 26, 2012. Any additional fees and expenses should go unpaid, as clearly articulated by the Fifth Circuit. From a review of the docket, it appears that more than \$1,600,000 has been distributed since December 18, 2012, and the Receiver should be ordered to account for such payments.

24. Furthermore, this Court should revisit the fees and expenses of the Receiver and his attorneys and other professionals based on the failure of the Receiver to protect the Quantec and Novo Point assets, the damages incurred by Baron as a result of the Receiver's conduct in this proceeding, and the failure of the Receiver to accomplish much of anything other than the payment of his fees and expenses and the fees and expenses of his professionals.

CONCLUSION AND PRAYER

This Honorable Court should not rely upon Vogel's report and should not open new proceedings. Vogel been paid approximately \$5.2 million after representing to this Court that he completely fulfilled his duties and obligations to marshal assets and fully investigate their source. Assuming arguendo that Vogel's representations to these representations to the Court were truthful, Vogel knows whom the property belongs to and to whom it should be returned. Within the timeframe outlined above, the receivership assets belonging to Baron should be returned to

Baron and the receivership assets belonging to Novo Point and Quantec should be returned to the United States Manager for Novo Point and Quantec duly appointed by RPV Limited, the current Cook Islands manager for Novo Point and Quantec. There is no dispute and no other party that can lay claim to these assets. This Honorable Court should promptly terminate the receivership estate and discharge Vogel, without prejudice to a review and final approval of his fees and expenses and the fees and expenses of his professionals, and without prejudice to potential claims that Baron, Novo Point and Quantec may have against him and his agents and attorneys, all of this being in conformity with the mandate of the Court of Appeals.

Dated: February 11, 2014

Respectfully submitted,

/s/ Stephen R. Cochell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving ECF Notices in the above-captioned case on February 11, 2014.

/s/ Stephen R. Cochell