

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

NETSPHERE, INC.,)
MANILA INDUSTRIES, INC., and)
MUNISH KRISHAN,)
Plaintiffs,)
)
vs.) Civil Action No. 3-09CV0988-F
)
JEFFREY BARON, and)
ONDOVA LIMITED COMPANY,)
Defendants.)

DECLARATION OF GARY SCHEPPS

1. My name is Gary Schepps. I am the appellate counsel for Jeff Baron and have been ordered by Judge Furgeson to act as trial counsel as well. I am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct. I have personal knowledge of the stated facts, which I learned as the result of being subjected to the facts and events stated herein.

2. I formally requested that the receiver produce the material as stated in the exhibit attached to Jeff's Response, and Amended Response to the Assessment of Former Attorney Claims, previously filed in this cause. A very limited amount of material was requested, including for example, all fee agreements, all correspondence between the attorneys and their client relating to the fee and specifically (1) a copy of the actual billing sent to the client, and (2) the correspondence sent by each attorney making any demand for payment, and any return correspondence. The receiver agreed to produce this material in the format requested (OCR'd tabbed PDF files) and I spoke with a copy service hired by the receiver explaining specifically what material was requested. The receiver refused to produce the material they had promised to produce. There were several exchanges with the receiver, including the receiver's claim that the failure of their production was my fault because I failed to contact their copy service. I did contact their copy service and had a detailed conversation setting out specifically what was requested (the exact thing which was requested in writing to the receiver). I discussed the request at a formal 'meet and confer' meeting with the

receiver. Still, the receiver refused to produce what they had promised to produce, and I was forced to make a formal motion. The withheld material is necessary to fairly evaluate and respond to claim for unpaid attorney's fees.

3. The rules of ethics require that an attorney's fee be limited to reasonable fees for the services rendered. An attorney is prohibited from charging unreasonable fees and fee forfeiture of the entire fee paid the attorney is the remedy for an attorney's excess fee demand. As a matter of law, proof of the reasonable of an attorney's fee requires expert opinion. I formally requested from the receiver access to some of Jeff's funds to hire an expert on the fees issue. I requested this even in a formal 'meet and confer' session with the receiver. The receiver refused to provide any such funding. I attempted to find an expert who would work on a contingency basis, and was unable to find any qualified expert agreeing to do so. As a matter of law, without an expert's opinion is not possible at this time to present evidence that any attorney's fee is unreasonable. Accordingly, it is not possible to offer evidence in defense of the attorney's claims with respect to that aspect of the claim's defense. It is my opinion there are grounds to assert the defense of unreasonable fees on Jeff's behalf.

4. Proof of Malpractice requires expert opinion. In order to present evidence of malpractice an expert's opinion is required. The facts stated above apply to an expert on malpractice. If Jeff is prohibited from using his own money to hire an expert, as a matter of law he is unable to present evidence to establish a defense of malpractice. It is my opinion there are grounds to assert the defense of malpractice, on Jeff's behalf.

5. I handle federal appeals, not federal trials. I have never on my own handled a federal trial, bench or jury, and have always relied upon hired trial counsel for trials in the federal court. I am not qualified on my own to appear in federal court and defend multiple claims against multiple teams of attorneys. I require assistance to handle the organization of the files, tracking of admission of evidence, preparation and tracking of objections, and many other aspects of the appearance. If I was up against a single attorney who also had no support, I think I could manage. It is simply not possible for me to properly represent Jeff's interests by myself. My engagement was express and clear that I was not accepting employment to make any appearance as trial counsel. An AV rated trial attorney was representing Mr. Baron at the time I was retained as appellate counsel, but he was 'fired' by

the receiver. From the moment this Court ordered me to be trial counsel for Jeff, I have been flooded by the receiver and the trustee with a mountain of paperwork. I have been working well over 65 hours per week on the trial court issues, for around four months now. As the Court is aware, I have not been paid because the Court has not allowed Jeff to pay me.

6. Even a minimal evaluation of an attorney's claim would take a week of work. Some of the larger claims will take a couple weeks of work to properly evaluate. Working on my own it will take me over 24 weeks, approximately half a year, dedicated strictly to that job, to evaluate the 'claims' presented. If I were allowed the funds to hire sufficient attorneys and staff to assist me, the evaluation could be completed in less than a month.

7. Basic discovery is necessary to properly investigate and respond to the claims. This includes an opportunity to conduct depositions, and obtain disclosures from the claimants. An opportunity to serve admissions would also be helpful. For example, Mr. Ponske at one time swears under oath that there was no engagement agreement, but at another time swears that there was an engagement agreement. While some attorneys may be quick on their feet and have sufficient experience to put on a hearing with live witnesses without the need to conduct formal discovery, I am not one of those attorneys. I need to question a witness in a deposition, and then spend considerable time figuring out how to admit the relevant evidence I desire. I am not qualified to prove up a foundation 'from the seat of my pants'. My ability to put on a hearing is based on hard work and preparation. Without the opportunity to conduct the underlying discovery I am not qualified to defend the claims against Jeff. I am not able to 'shoot from the hip' and reliably hit a target. In order to put on a defense at a hearing I must be allowed to prepare for it. As discussed in this affidavit, I have not been allowed to prepare a defense in this case.

8. Because this Court has ordered that the undersigned counsel must work without payment, for the past four months the undersigned has been forced to work over 65 hours a week on trial court matters reviewing, researching and responding to a mountain of paperwork generated by two teams of attorneys billing often over 24 hours a day. The overwhelming workload without pay, has forced counsel to turn away and defer other work, and go without material income for four months. Frankly, I am also tired.

9. It is notable, that the claimant attorneys have been paid nearly two million dollars while by court order the undersigned has worked on this case as court ordered trial counsel for months and has been paid no money. Instead, this court has taken Jeff's own money, most of his liquid funds, and paid the receiver who has engaged in a blizzard of work in fabricating claims against Jeff, and against me personally as his attorney. In addition to being unpaid, I have been subject to personal insults by the Court's receiver and his law partners (for example, accusing me of being "despicable").

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

Signed this 28th day of April, 2011, in Dallas, Texas.

/s/ Gary N. Schepps
Gary N. Schepps