No. 10-11202

In the United States Court of Appeals for the Fifth Circuit

NETSPHERE, INC. Et Al,
Plaintiffs
v.
JEFFREY BARON,
Defendant-Appellant
v.
ONDOVA LIMITED COMPANY,
Defendant-Appellee

Appeal of Order Appointing Receiver in Settled Lawsuit

Cons. w/ No. 11-10113
NETSPHERE INC., Et Al, Plaintiffs
v.
JEFFREY BARON, Et Al, Defendants
v.
QUANTEC L.L.C.; NOVO POINT L.L.C.,
Appellants
v.
PETER S. VOGEL,
Appellee

From the United States District Court
Northern District of Texas, Dallas Division
Civil Action No. 3-09CV0988-F

EMERGENCY MOTION FOR LIMITED STAY, DISSOLUTION OR OTHERWISE TO ALLOW JEFF BARON TO DEFEND HIS INTEREST IN THE "SERVERS.COM" DOMAIN IN THE ONDOVA BANKRUPTCY PROCEEDINGS

Cons. w/ No. 11-10289

NETSPHERE, INC., ET AL, Plaintiffs

v.

JEFFREY BARON, Defendant- Appellant

v.

DANIEL J SHERMAN, Appellee

Cons. w/ No. 11-10290

NETSPHERE, INC. ET AL, Plaintiffs

v.

JEFFREY BARON, ET AL, Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C., Non-Party Appellants

v.

PETER S. VOGEL, Appellee

Cons. w/ No. 11-10390

NETSPHERE, INC. ET AL, Plaintiffs

v.

JEFFREY BARON, Defendant – Appellant

v.

QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants

v.

ONDOVA LIMITED COMPANY, Defendant – Appellee

v.

PETER S. VOGEL, Appellee

Cons. w/ No. 11-10501

NETSPHERE, INC. ET AL, Plaintiffs

v.

JEFFREY BARON, Defendant – Appellant

QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P., Appellant

v.

PETER S. VOGEL; DANIEL J. SHERMAN, Appellees

Interlocutory Appeals of
Orders in Receivership on Appeal

From the United States District Court
Northern District of Texas, Dallas Division
Civil Action No. 3-09CV0988-F
Hon. Judge William R. Furgeson Presiding

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. PARTIES

a. Defendant/Appellant: JEFFREY BARON

b. Defendant/Appellee: DANIEL J. SHERMAN, Trustee
for ONDOVA LIMITED COMPANY

c. Intervenor: Rasansky, Jeffrey H. and Charla G. Aldous

d. Intervenor: VeriSign, Inc.

e. Plaintiffs: (1) Netsphere Inc
(2) Manila Industries Inc
(3) Munish Krishan

f. Appellants: (1) Novo Point, LLC
(2) Quantec, LLC

g. Appellee: Peter S. Vogel

2. ATTORNEYS

a. For Appellant: Gary N. Schepps
Suite 1200
5400 LBJ Freeway
Dallas, Texas 75240
Telephone: (214) 210-5940
Facsimile: (214) 347-4031

b. For Appellee Vogel: Gardere Wynne Sewell LLP
(1) Barry Golden
(2) Peter L. Loh
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Telephone (214) 999-3000
Facsimile (214) 999-4667
bgolden@gardere.com

c. For Appellee Sherman:

Munsch Hardt Kopf & Harr, P.C.
(1) Raymond J. Urbanik, Esq.
(2) Lee J. Pannier, Esq.
3800 Lincoln Plaza / 500 N. Akard Street
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584

c. For Intervenor VeriSign: Dorsey & Whitney (Delaware)
(1) Eric Lopez Schnabel, Esq.
(2) Robert W. Mallard, Esq.

d. For Intervenor Rasansky and Aldous: Aldous Law Firm
(1) Charla G Aldous

d. For Plaintiffs:

(1) John W MacPete, Locke Lord Bissell & Liddell
(2) Douglas D Skierski, Franklin Skierski Lovall Hayward
(3) Franklin Skierski, Franklin Skierski Lovall Hayward
(4) Lovall Hayward , Franklin Skierski Lovall Hayward
(5) Melissa S Hayward, Franklin Skierski Lovall Hayward
(6) George M Tompkins, Tompkins PC

3. OTHER

a. Companies and entities purportedly seized by the receivership:

(1) VillageTrust
(2) Equity Trust Company
(3) IRA 19471
(4) Daystar Trust
(5) Belton Trust
(6) Novo Point, Inc.
(7) Iguana Consulting, Inc.
(8) Quantec, Inc.,
(9) Shiloh LLC
(10) Novquant, LLC
(11) Manassas, LLC
(12) Domain Jamboree, LLC
(13) Genesis, LLC
(14) Nova Point, LLC
(15) Quantec, LLC
(16) Iguana Consulting, LLC
(17) Diamond Key, LLC
(18) Quasar Services, LLC
(19) Javelina, LLC
(20) HCB, LLC, a Delaware limited liability company
(21) HCB, LLC, a U.S. Virgin Islands limited liability company
(22) Realty Investment Management, LLC, a Delaware limited liability company
(23) Realty Investment Management, LLC, a U.S. Virgin
(24) Islands limited liability company
(25) Blue Horizon Limited Liability Company
(26) Simple Solutions, LLC
(27) Asiatrust Limited

(28) Southpac Trust Limited
(29) Stowe Protectors, Ltd.
(30) Royal Gable 3129 Trust

b. Receiver / Mediator / Special Master: Peter Vogel

c. Non-party attorneys seeking fees from the receivership res:

1. **Garrey, Robert (Robert J. Garrey, P.C.)**
2. **Pronske and Patel**
3. **Carrington, Coleman, Sloman & Blumenthal, LLP**
4. **Aldous Law Firm (Charla G. Aldous)**
5. **Rasansky Law Firm (Rasansky, Jeffrey H.)**
6. **Schurig Jetel Beckett Tackett**
7. **Powers and Taylor (Taylor, Mark)**
8. **Gary G. Lyon**
9. **Dean Ferguson**
10. **Bickel & Brewer**
11. **Robert J. Garrey**
12. **Hohmann, Taube & Summers, LLP**
13. **Michael B. Nelson, Inc.**
14. **Mateer & Shaffer, LLP (Randy Schaffer)**
15. **Broome Law Firm, PLLC**
16. **Fee, Smith, Sharp & Vitullo, LLP (Vitullo, Anthony "Louie")**
17. **Jones, Otjen & Davis (Jones, Steven)**
18. **Hitchcock Evert, LLP**
19. **David L. Pacione**
20. **Shaver Law Firm**
21. **James M. Eckels**
22. **Joshua E. Cox**
23. **Friedman, Larry (Friedman & Feiger)**
24. **Pacione, David L.**
25. **Motley, Christy (Nace & Motley)**
26. **Shaver, Steven R. (Shaver & Ash)**
27. **Jeffrey Hall**
28. **Martin Thomas**
29. **Sidney B. Chesnin**
30. **Tom Jackson**

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT

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TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW JEFFREY BARON, Appellant, and moves for an emergency order issued by Monday, November 7, allowing Baron to retain counsel of his choice and to file an objection to the sale of the domain name "servers.com" in the Ondova bankruptcy proceedings[1]. All Baron seeks by this motion is the opportunity to exercise his right as a citizen of the United States to be heard in court to defend his legal rights in the domain name "servers.com".

Sherman, the chapter 11 trustee in the Ondova bankruptcy, has filed a negative-notice motion to sell the "servers.com" domain. See Exhibit B. Unless Baron is allowed to object by Monday, November 7, he will be unable to stop the approval and sale of the name, and the purchaser of the name will cut off his rights. This motion does not seek to take anything out of the receivership res, but rather, **the emergency relief requested is necessary to protect a substantial receivership asset from liquidation and loss** and involves no cost to the receivership estate.

This Honorable Court has stayed the District Court below from liquidating or distributing any further receivership assets. Vogel, the receiver, and Sherman have therefore moved over to the Bankruptcy Court (which has not been stayed), in an **attempt to 'end run' the stay** imposed on the District Court and liquidate Baron's recently vested interest in "servers.com" via the bankruptcy proceedings.

[1] Northern District of Texas (Dallas) bankruptcy case 09-34784-sgj11.

BACKGROUND

The Emke-Vogel Connection

In 2003 a dispute arose between Mike Emke and Ondova (f/d/b/a Compana) over the domain "servers.com". Emke claimed he owned the name. Peter Vogel's law firm, Gardere, represented Emke in the dispute, and was attorney of record for Emke in at least two Federal suits spanning almost half a decade.[2] Then, in July 2009, Judge Furgeson announced that he was going to appoint Vogel as special master in the lawsuit below. Pressure was placed on Baron and he was intimidated into believing that if he did not immediately settle his lawsuit with Emke (involving "servers.com"), there would be consequences in the lawsuit below (involving half a million domain names). Accordingly, Baron settled the suit with Emke on July 6, 2009. Exhibit A. Three days later, the order appointing Vogel as special master was formally entered in the proceedings below. R. 394.

The Emke Settlement

The Emke settlement transferred most of the rights to "servers.com" to a new entity (Servers, Inc., a Nevada corporation). The new corporation's stock was owned 50/50 by Ondova and Emke. No one disputes Ondova's right to ownership of the Servers, Inc. stock. However, the Emke settlement expressly reserved an interest in the domain name for Emke and Baron personally. Pursuant to the agreement, **Baron and Emke reserved a security and reverter interest** in the

[2] Northern District of Texas cases: (1) *Compana, LLC v. Emke et al.* (3:03-cv-02372-M); and (2) *Compana, LLC v. Emke et al* 3:05-cv-00285-L.

domain name, reverting ownership on the condition that the corporation was ever placed into receivership. Specifically the Emke settlement agreement (Exhibit A) provides:

> "In the event of insolvency, receivership and/or other default of the jointly owned company, the domain name <servers.com> shall revert to Jeff Baron and Mike Emke, to be owned jointly and equally. To this degree, these two principals shall maintain a first lien and security interest in the domain name superior to any other investor, equity holder or creditor."

Recently, on October 18, 2011, the Ondova Bankruptcy Court Judge entered an order placing Servers, Inc. into receivership. Exhibit C. Accordingly, as a matter of Texas and Nevada state law, Baron and Emke became 50/50 owners of the domain name "servers.com". The domain name has been appraised at $1,400,000.00 to $4,200,000.0 in value. Accordingly, Baron's legal interest in 50% of the domain name is substantial— valued between $700,000.00 and $2,100,000.00.

Baron Prevented From Protecting his Property Rights

Baron, however, has been prohibited by the receivership order (challenged in this appeal) from exercising any of his legal rights. Sherman argues that Vogel (as receiver) holds all of Baron's rights. See Exhibit D. Yet, Vogel and his firm Gardere, have a clear conflict of interest litigating against Gardere's former client with respect to a matter for which Gardere represented that client against Ondova and Baron. Vogel, moreover, has taken positions that are clearly not in Baron's

interest nor reasonably calculated to protect Baron's interest. Rather, Vogel has actively attempted to orchestrate fabricated incidents to 'prove' that Baron is "despicable" (Vogel's term).[3]

Vogel Working Against Receivership Estates

Vogel has failed to take actions to protect receivership assets or to fulfill the duties normally associated with a receiver, such as defending arbitration claims against receivership assets, or filing tax returns and paying federal taxes for the multiple receivership entities under Vogel's receivership, etc.[4] This is also illustrated by Vogel's filings in the Bankruptcy Court, as shown by the following example: Prior to the global settlement, Sherman claimed ownership of about a dozen domains. That ownership was contested, and Baron's counsel sent a letter confirming that the domains listed in a letter (in which Sherman claimed ownership of the domains) were the domains considered to be in dispute. Vogel initially claimed these domains were owned by *Ondova*. Novo Point LLC's Cook Island manager hired counsel to move to have the domains turned over to the receivership. In that motion it was clearly established that Ondova did not have

[3] See, e.g., GENERAL RESPONSE TO MOTIONS FOR FEES FOR VOGEL, HIS PARTNERS, AND OTHER "RECEIVER PROFESSIONALS" (Document 00511600278 in case 10-11202 filed on 9/12/2011) (describing the Vogel's orchestrated attempt to falsely make it appear that Baron was harassing, intimidating, and 'obstructing') (at pdf page 14, et.seq.); and SR. v5 pp102-110 (the emails with Vogel's office's digital IDs proving the affair was an orchestrated set-up by Vogel).

[4] See Document 00511604732 filed on 9/16/2011 in case 10-11202 (Failure to pay any taxes or file any tax returns) and Document 00511618411 Filed 09/29/2011 in Case 10-11202 (Refusal to defend Domain Name arbitration disputes).

title to the names, and that title to those domain names was transferred to Novo Point LLC in the global settlement. See Exhibit E.

At the hearing related to that motion, it was admitted —on the record— that Sherman and Vogel had agreed that all of the domains except one (mondial.com) were the property of Novo Point, and would be turned over to Novo Point. Exhibit F. However, instead of enforcing the rights of Novo Point—even as were expressly agreed on the record, Vogel subsequently filed a motion making it look (falsely) like Baron's counsel had agreed that the disputed names belonged to Ondova. See Exhibit G. First, Vogel attached an affidavit that the whois information showed Ondova as the owner of "Petfinders.com". However, the whois information of nearly all of Ondova's domains listed Ondova as the owner as a privacy protection feature for the actual owner. ICANN (the international internet organization that regulates domain names) prohibits a registrar (such as Ondova) from registering its own names. It would have been impossible for Ondova to be both owner and registrar.

In any case, Ondova had quitclaimed all of its domain name inventory to Blue Horizon in 2005. Exhibit E. Blue Horizon then quitclaimed those names to Novo Point in the global settlement agreement. All of this Vogel hides from the Court. Instead, Vogel pastes a giant header "12 Domains that are registered and owned by Compana" to 'mock up' an e-mail from Gerrit Pronske to make it look like it is confirming that fact, when the Pronske letter is actually confirming the

opposite—that the 12 names are disputed names. See Exhibit G. In short, Vogel 'mocked up' a letter to **create false evidence** against the position and rights of the receivership parties, in an effort to support Sherman's sale of Petfinders.com in a private, non-auction sale for $25,000.00.[5]

Background of Sherman-Vogel and the Receivership

In September 2010 the Ondova bankruptcy estate had some $2,000,000.00 in cash and only around $900,000.00 in claims— **ie., more than a million dollar cash surplus.** This was achieved when Baron agreed for Ondova to take all of the settlement proceeds in the global settlement because he was promised by the Ondova chapter 11 trustee (Sherman) that:

> "[I]f I were going to be entering into this settlement agreement, that … once the creditors were paid, that there would be a significant amount of money that was left over, that would come back, that would stay, you know, in a company that I would have at the end of the day. … I was told that obviously if you look at the settlement agreement, I individually am not getting any, a penny from it myself. … the settlement agreement was that Ondova was going to be able to walk away out of the bankruptcy, after it paid its creditors, with a large amount of cash, and we were thinking maybe even a million dollars."
>
> Barons testimony before the Bankruptcy Court on 9/15/2010.
> Doc 470, Page 95 in Ondova Bankruptcy (case no. 09-34784-sgj11).

Sherman should have immediately closed the Ondova bankruptcy in September 2010 when **there was the MILLION DOLLARS CASH surplus.** Sherman's counsel let the truth slip out in the District Court, admitting "The

[5] "Petfinders.com" has been appraised at $2,000,000.00 to $6,000,000.00.

negotiation was to pay the debts and give the keys back to Mr. Baron. But that didn't happen." R. 4598:11-12. Instead, Sherman kept the bankruptcy open and ran up over $300,000.00 in additional attorney fees.

Baron eventually objected. Within three business days of Baron's objection, Sherman and Vogel had Baron placed into receivership (with Vogel as receiver) *ex parte* in the district court case (where Vogel was employed as special master). Sherman notably did not act on his own, but filed his motion seeking to appoint Vogel as receiver over Baron only after secret consultations with Vogel.[6] After consulting with Vogel, Sherman filed the receivership motion **falsely representing** that the Bankruptcy Judge ordered that **if Baron fired his counsel and proceeded *pro se*** that a receivership was to be placed over him.[7] What the Bankruptcy Judge actually stated was:

> "I am thinking very, very carefully about doing a Report & Recommendation to Judge Will Furgeson that he appoint a receiver over Mr. Baron and his assets pursuant to 28 U.S.C., 20 Section 754 and 1692 **so that a receiver can seize assets and perform the obligations of Jeff Baron under the settlement agreement.**"
>
> Ondova Bankruptcy Doc 470 at 58.

However, by November 2010 when Sherman and Vogel had Vogel appointed *ex parte* as receiver over Baron, Baron had already fully performed all of his settlement agreement obligations.[8] Thus, Sherman did not allege Baron was

[6] SR. v5 p238.
[7] R. 1576.
[8] It has been alleged that a *de minimis* $2,500.00 payment obligation had been skipped.

in breach of the settlement. Rather, Sherman's motion **falsely** represented the receivership was to be imposed merely if Baron fired his bankruptcy counsel and proceeded *pro se*. Yet, simply misrepresenting the Bankruptcy Court's order was not sufficient—Sherman and Vogel still had to show that Martin Thomas (who was Baron's counsel in the bankruptcy court) was fired. So **a fraudulent story was fabricated** that Baron filed an ethics complaint against Thomas, didn't pay him, and thereby caused Thomas to withdraw.[9] The story was false and fabricated, but it was not the only one.

Another story was also needed because Baron was also represented in the bankruptcy court by Stan Broome. Accordingly, with Broome's participation a false claim was fabricated that (1) Broome's fee contract contained no provision capping his monthly fees at $10,000.00 per month; (2) Baron wrongfully refused to pay more than that amount, and thus (3) Broome was owed tens of thousands of dollars and withdrew. The fabricated claim was sufficient to obtain the *ex parte* receivership order, but eventually Vogel was forced to produce Broome's contract. When that happened, the "claim" was shown to be completely fabricated. See SR. v8 p1212 (the written terms in Broome's contract, imposing a $10,000.00 per month cap on fees incurred and requiring express written authorization to exceed the cap); SR. v5 pp426-430 (Broome's fraudulent statements denying the existence

[9] R. 1576.

of such a term in his contract).[10]

Notably, Vogel was intimately involved in the *ex parte* proceedings to appoint himself as receiver over Baron, and Vogel personally filed the receivership order. R. 27, 1604. Baron appealed the receivership and Vogel then, on his own motions, moved for a long list of companies to be added as receivership parties and placed in his hands as receiver. Other than brutally punishing Baron— limiting his access to medical care, keeping him from owning an operating vehicle, keeping him from traveling outside of Dallas, keeping him from having heat or air-conditioning, prohibiting from being allowed to earn any money or engage in any business transactions, and burning up his COBRA coverage, etc.— literally, the receivership has achieved nothing other than to: (1) prevent Baron from hiring any legal counsel, (2) create a list of groundless, non-diverse state law attorney fee 'claims' against Baron (solicited by Vogel); and (3) provide a platform for Sherman and Vogel to run up fee demands to a combined total of over **FOUR MILLION DOLLARS**.

As a fundamental principle of equity, "Fraud vitiates everything it touches." *White v. Union Producing Co.*, 140 F.2d 176, 178 (5th Cir. 1944). Accordingly, the receivership over Baron should be dissolved. The undersigned counsel, unpaid by order of the District court, despite Herculean efforts to bring the matter to the

[10] The evidence is black and white. There is no ambiguity. However, **when confronted with the evidence** that the receivership had been procured through fabricated allegations, the District Court sealed that portion of the record. SR. v7 p379.

attention of this Honorable Court, has been apparently previously unable to sufficiently articulate the factual and legal situation involved in the proceedings below, and this Honorable Court has declined to grant a general stay or to dissolve the receivership. This Honorable Court, has, however, stayed the proceedings in the District Court below, preventing the further distribution of Baron's assets (and the assets of multiple more 'receivership entities' that were placed by the District Court into Vogel's hands upon Vogel's own motions) to attorneys fees for Vogel, Sherman and Vogel's "professionals".

Baron should not be denied the **fundamental right** of a citizen **to be heard in court to protect his own assets**. On paper, Baron is represented in the Bankruptcy Court by Martin Thomas, but Thomas has refused to take **any** action before the Bankruptcy Court on Baron's behalf. See Exhibit D. Notably, Thomas is one of the attorneys who participated in allowing the District Court to believe the fabricated allegations asserted in Sherman's motion to appoint a receiver over Baron, including, ironically, that Baron had filed an ethics complaint against Thomas, and that Thomas had withdrawn as Bankruptcy Court counsel.

STANDARD IN GRANTING STAY PENDING APPEAL

The Fifth Circuit has adopted the four factor test set out in *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 259 F.2d 921 (DC Cir. 1958) to determine whether stay pending appeal should be granted. *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968). Those factors are:

(1) Likelihood of success on the merits; (2) A showing of irreparable injury if the stay is not granted; (3) Whether granting the stay would substantially harm the other parties; and (4) Granting of the stay would serve the public interest. *Id.*

ARGUMENT & AUTHORITY

A. LIKELIHOOD OF SUCCESS ON APPEAL – LEGAL ANALYSIS

THE RECEIVERSHIP ORDER IS UNCONSTITUTIONAL

The seizure clause of the Fourth Amendment prohibits the unreasonable interference with possession of a person's property. *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 2009). The seizure ordered by the District Court was purely arbitrary—ordered without a trial on the merits of any claim, and entered based on no objective guidelines or guiding principles. *See e.g., Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 613-614 (1989) (Fourth Amendment guarantees the privacy, dignity, and security of persons against arbitrary acts by officers of the Government). Accordingly, the receivership order was issued in violation of the Fourth Amendment and should be declared void.

Further, the Supreme Court has held that where the taking of one's most basic property rights is so obvious, no extended argument is needed to conclude that absent notice and a **prior** hearing, the order violates the fundamental principles of due process. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). The Supreme Court has held that there is a "root requirement that an individual be given an opportunity for a hearing **before** he is

deprived of any significant property interest". *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971); *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 543 (1985). The Supreme Court has also held that the hearing must be granted before the deprivation of basic property rights, and no later hearing can cure the constitutional violation. *Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972). Further, where the property interest is not basic such that pre-trial deprivation may be constitutionally effected, the Supreme Court has held that a showing of exigent circumstances is mandatory and has suggested that a bond to compensate for wrongful deprivation and a detailed affidavit setting out the grounds are also required. *Connecticut v. Doehr*, 501 U.S. 1, 10, 18 (1991).

However, the District Court's order appointed a receiver and seized all of Baron's property and rights, without any bond to compensate Baron for wrongful deprivation, and without any type of hearing prior, and was not supported by affidavit nor showing of any exigent circumstance. The *ex parte* receivership order should therefore be declared void for lack of due process of law. *See Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) ("such proceeding is void as not being by due process of law"); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("rendered in violation of due process is void in the rendering"); *Margoles v. Johns*, 660 F. 2d 291,295 (7th Cir. 1981)("void only if the court that rendered it lacked jurisdiction ... or if it acted in a manner inconsistent with due process of law").

THE RECEIVERSHIP ORDER IS NOT AUTHORIZED IN EQUITY

The Supreme Court has held that receivership is not authorized as a stand-alone-remedy. *Gordon v. Washington*, 295 U.S. 30, 37-38 (1935). Accordingly, as a matter of established law, the district court lacks authority to administer receivership as a remedy for ultimate relief. *Id.* at 38. This Honorable Court has similarly held that equity receivership is authorized **only** to conserve property where distribution of that property is sought **pursuant to some other equitable form of relief**. *Tucker v. Baker*, 214 F.2d 627, 631 (5th Cir. 1954). No other equitable relief has been sought against Baron's property. Receivership in this case is therefore not a remedy authorized by law.

THE POST-APPEAL LEGAL JUSTIFICATIONS OFFERED FOR THE RECEIVERSHIP ARE LEGALLY GROUNDLESS

The basis offered to defend the receivership are legally groundless, as follows:

1. Baron is alleged to be a 'vexatious' litigant who fires attorneys to disrupt the court proceedings. An individual in a civil case, **as a matter of law, cannot interfere with a court's jurisdiction by firing his attorney**. The worst a party can do is hurt their own presentation by being forced to litigate without the assistance of counsel. Since that is the statutory right of every individual litigant in federal court— to proceed *pro se*, the act of firing an attorney, or a thousand attorneys can work no involuntary or improper cost on the court. *See Winkelman ex*

rel. Winkelman v. Parma City School Dist., 127 S. Ct. 1994, 2007 (2007). A court can simply decline to accept new counsel to appear before it. Further, substitution of counsel has no effect under the rules of procedure upon any deadline, time limit, etc. Finally, every substitution of counsel occurred with court approval. Even if Baron changed lawyers every week, the Court approved it. Accordingly, substitution of counsel, as a matter of law, cannot be 'vexatious litigation'. Baron submitted to the Court's authority and received permission for every substitution of counsel. The alleged conduct lacks the "stubborn resistance to authority" necessary to justify punishment by the court. *E.g., John v. State of La.*, 828 F.2d 1129, 1132 (5th Cir. 1987).

2. Baron is alleged to have defrauded attorneys. That is a state law issue outside of the jurisdiction of the District Court. It is a claim in law, and does not invoke receivership rights. The 'claims' have been discussed in recent appellate briefings and shown to have been solicited by Vogel and Sherman and to be groundless. These claims are not even 'good faith' disputes by lawyers. Rather, they are groundless and fraudulent claims, and have been shown to be so. **Up until today, the Fifth Circuit has required that a person be placed on trial and a verdict be entered against them before their property can be seized for alleged debts.** That is a healthy system. The Fifth Circuit should maintain it. Where a person is **denied the right to hire with their own money experienced trial counsel of their own choice**, and their property is seized, **and** then a **'summary**

hearing' is held on an expressly one-sided report excluding all exculpatory evidence, the system is unhealthy and **invites the filing of 'claims' of the type now seen in this case**.

3. Baron is alleged to risk the Ondova bankruptcy by firing his attorneys. This claim deserves careful attention. The Bankruptcy Code sets up the right of every creditor to have his reasonable attorneys' fees paid by the bankruptcy estate when the creditor has provided a substantial benefit to the estate. The creditor can seek reimbursement, or his attorneys can seek payment directly. 11 U.S.C. §503(b)(3)(D); *and see e.g., In re DP Partners Ltd. Partnership*, 106 F. 3d 667, 671-673 (5th Cir. 1997). The argument that somehow Baron should be put in receivership to prevent him hiring lawyers who will then make substantial contributions to the Ondova estate and seek payment for it, is legally frivolous and has no support in law. If the creditor has paid the professional who made the contribution, the creditor is entitled to reimbursement from the bankruptcy estate. Id. If the professional has not been paid by the creditor, the professional is entitled to be paid directly from the bankruptcy estate. 11 U.S.C. §503(b)(4); *and see e.g., In re Consolidated Bancshares, Inc.*, 785 F.2d 1249,1253 (5th Cir. 1986). In either case, by law the party responsible for paying the cost of any qualifying substantial contribution is the bankruptcy estate and not the creditor who makes the contribution. It should be noted that to qualify as a substantial contribution, the benefit provided to the estate must be greater than the expense of the claim. *E.g., In*

re DP Partners, 106 F. 3d at 673. In summary, the imposition of a receivership in order to force a creditor to pay the costs of substantial contributions to the bankruptcy estate—an obligation imposed by law upon the estate— involves the use of a prohibited means (see 11 U.S.C. §105(b)), to controvert the clear statutory framework of the Bankruptcy Code.

B. IRREPARABLE INJURY

It is well settled that the loss of constitutional freedoms for even minimal periods of time constitutes irreparable injury. *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981).

If the "servers.com" domain is allowed to be sold by the Bankruptcy Court, the buyer will cut off Baron's property right in the asset, and it cannot be subsequently restored. *See, e.g,. American Grain Ass'n v. Lee-Vac, Ltd.*, 630 F.2d 245, 247 (5th Cir. 1980). All Baron is seeking is to be restored his right to assert his legal right to protect his own property in court proceedings. The property is unique and represents a unique business opportunity selling internet server services via the internet at "servers.com". The Bankruptcy Court Judge will have the opportunity to determine the merits of the right asserted by Baron.

Notably, Baron cannot recover damages later against Ondova. Since Mr. Baron is the equitable owner of Ondova, any recovery against the Ondova estate would just be taken out of Baron's own pocket. Accordingly, as a very real matter the damages threatened are irreparable.

C. NO SUBSTANTIAL HARM TO OTHER PARTIES

Baron is seeking the right to assert his rights before the Bankruptcy Court. The Bankruptcy Court will determine the substantive issues in the first instance. No party can be harmed.

D. PUBLIC INTEREST

There is a compelling public interest in upholding the U.S. Constitution: Protecting an individual's rights in his property in court proceedings. There are important public interests served by granting the relief requested by Mr. Baron. It is frightening to think that after an individual objects to fees in a bankruptcy case, that the federal courts would allow that individual to: (1) have all his assets and private documents stripped from him, (2) become a ward of the court– incarcerated in 'house arrest' in one city, (3) be prohibited from earning a wage or engaging in business transactions, (4) be prohibited from hiring legal counsel to protect his rights, and (5) be prohibited from defending his rights to his own property in court.

CONCLUSION

The District Court below suspended *ex parte* Mr. Baron's constitutional right to own, access, and control, and defend his own property in court. The order exceeds the authority of a district court and violates the US Constitution. This Honorable Court Stayed the District Court from further liquidation or distribution of receivership assets. However, Vogel and Sherman have moved over to the Ondova Bankruptcy Court which was not stayed and are seeking to liquidate receivership assets via the Ondova bankruptcy proceedings. Next Monday, November 7, is the deadline for an objection to the sale of "servers.com". Baron requests the opportunity to assert his right to ownership of 50% of servers.com and prevent the irreparable sale of his interest in the asset, and the loss of that unique property.

PRAYER

Wherefore, Jeffrey Baron prays:

(1) That this Honorable Court consider and grant this motion on an expedited basis, and **enter a limited Stay** of the Order Appointing Receiver over the person and property of Mr. Baron signed by the District Court below on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010], or to fully or partially dissolve the receivership, and to allow Baron to be represented by counsel of his choice in the Ondova Bankruptcy proceedings in order **to object to**

the sale of the domain name "servers.com" and to protect Baron's property interest in that domain name.

(2) Jointly and in the alternative, prayer is re-urged that the receivership be dissolved or stayed because it serves no articulable purpose authorized by law and clearly is causing irreparable injury to Jeff Baron by suspending his constitutional rights, including fundamental rights such as his freedom of expression (he is prohibited from owning a website to tell his story); his right to earn wages, to conduct business transactions, to hire paid counsel, (all these are expressly prohibited by the District Court's order), etc.

(3) Jointly and in the alternative, prayer is again re-urged that the receivership be partially dissolved or stayed so that Mr. Baron be allowed to (A) work freely, (B) engage in business transactions, (C) receive wages, (D) receive and cash checks, (E) retain counsel of his choice, and to exercise all other rights of a free citizen of the United States including the right to retain counsel with his own money. If the Court considers granting this relief and finds need to retain Mr. Baron's non-exempt, or even exempt and non-exempt property in receivership, at least a partial stay or dissolution of the receivership, as prayed for herein, will restore some fundamental rights to Mr. Baron.

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(214) 210-5940 - Telephone
(214) 347-4031 - Facsimile
Email: legal@schepps.net

COUNSEL FOR APPELLANT, JEFFREY BARON

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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/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT

CERTIFICATE OF NOTICE

This is to certify that notice of the filing of this request for emergency relief was provided by telephone to the Clerk of the Fifth Circuit Court of Appeals and to counsel for the Appellee.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR APPELLANT