

**CIVIL ACTION NO. 3:13-cv-03461-O**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
Dallas Division**

**JEFFREY BARON,  
Appellant**

**v.**

**ELIZABETH SHURIG, et. al.  
Appellees**

**ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

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**EMERGENCY MOTION FOR RECONSIDERATION OF APPELLANT’S MOTION  
FOR STAY PENDING APPEAL OF ORDER OF RELIEF AND BRIEF IN SUPPORT**

Comes now Appellant Jeffrey Baron (“**Baron**”) and, pursuant to Federal Rule of Civil Procedure 54(b), files this Emergency Motion for Reconsideration of Baron’s Motion for Stay Pending Appeal of the Order of Relief in Involuntary Case and Brief in Support. In support hereof, Baron would respectfully show as follows:

1. Even though the attorney fee order (the “**Fee Order**”), which serves the sole basis for the Petitioning Creditors’ standing and the determination that Baron is insolvent, has never been enforced and was permanently stayed by the issuing court (Judge Ferguson), the Bankruptcy Court has decided to essentially unstay the Fee Order and enforce it in an involuntary bankruptcy case. Indeed, the Fee Order was entered over 2 years ago, and no Petitioning Creditor has ever been paid a nickel under such Order in any court or in any proceeding.

2. Why not? Because the Fifth Circuit unequivocally ruled that the Petitioning Creditors held merely unresolved claims against Baron and therefore could not seek the imposition of an extreme equitable remedy, like the freezing of assets or the imposition of receivership, and the Fee Order arose from an illegal receivership. The Petitioning Creditors have taken the illogical position that the Fifth Circuit never considered the Fee Order in reversing the receivership, but they know full and well that the appeal of the Fee Order was consolidated with the appeal of the receivership order and both sides spent over 50 pages fully briefing the Fifth Circuit on the merits of the fee award. Thus, the Fifth Circuit necessarily considered the merits of the Fee Order and still found that the Petitioning Creditors held unresolved claims.

3. The fact that the Fifth Circuit did not specifically vacate the Fee Order—along with 60+ other interlocutory orders that were involved in the consolidated appeal—is of no event, because the reversal of the receivership had the effect of vacating the Fee Order and any other interlocutory order entered pursuant to the illegal receivership (unless otherwise directed by the Fifth Circuit). That is precisely why, after the Fifth Circuit mandate issued, Judge Furgeson denied the renewed request by the Petitioning Creditors to enforce the Fee Order. As a result of losing before the Fifth Circuit and Judge Furgeson on their fee requests, the Petitioning creditors forum shopped the Fee Order in a more friendly forum, the Bankruptcy Court.

4. Ignoring entirely that the Petitioning Creditors had previously lost, the Bankruptcy Court took the position that a clarification order entered by the Fifth Circuit thirteen days after it entered its opinion reversing the receivership (the “**Reversal Opinion**”) somehow proved that the Fifth Circuit wanted the Fee Order to remain effective and in place. Contrary to the Bankruptcy Court’s misunderstanding, the clarification order was only entered to remind the

parties of Federal Rule of Appellate Procedure 41 and prevent the irreparable harm caused by the Petitioning Creditors' commencement of the involuntary case. If anything the clarification order enforced the original receivership order by Judge Furgeson, which clearly enjoined the Petitioning Creditors from filing the involuntary case.

5. The stay pending appeal is certainly warranted in this case, as Baron has already suffered an enormous injury at the request of the Petitioning Creditors. He has already incurred over \$5 million in damages paying for the costs of an illegal receivership and paying a trustee in Ondova Limited Company's bankruptcy case (the "**Ondova Trustee**") to satisfy creditor claims. His assets have dwindled to virtually nothing. But that is not the full extent of his loss, as the Receiver and current chapter 7 trustee in his Involuntary Case (the "**Involuntary Case**") have, and continue, to use Baron's remaining assets and, more importantly, waive Baron's valuable constitutional rights in connection with challenging the Petitioning Creditors' claims. In fact, while this appeal is pending and no stay is in effect, the Receiver has recently requested to be paid approximately \$1.3 million from Baron's remaining assets.

6. On the other hand, the Petitioning Creditors—who have already been paid over \$3 million in fees by Baron, who seek to satisfy their claims in Ondova Limited Company's bankruptcy, who have never posted a bond for anything and who have relied on trustees and receivers to make their arguments for them—have suffered little or no harm in fighting against Baron. Indeed, the Petitioning Creditors have never gone to trial on their claims and have manipulated the civil process to ensure that Baron has no rights or assets to dispute their claims.

7. Even though Baron has already lost way more than any other party, he understands the real danger of exhausting his remaining assets by the litigation tactics employed by the Petitioning Creditors, with the aid of others. Baron therefore requests a modified stay

pending appeal, where he will agree to deposit most of his assets with this Court, provided he be allowed access to, sufficient funds to properly prosecute this Appeal and address other proceedings affecting his substantive rights.

8. Federal Rule of Civil Procedure 54(b) allows the Court to reconsider prior interlocutory orders that it has entered. This Court previously based its denial of Baron's motion for stay pending appeal on (a) technical noncompliance with Bankruptcy Rule 8005 and (b) many of the factual and legal findings previously made by the Bankruptcy Court in issuing her order for relief. In the *Memorandum in Support of Emergency Motion for Reconsideration of Appellant's Motion for Stay Pending Appeal of Order of Relief and Brief in Support* ("**Brief in Support**"), Baron corrected the technical non-compliance with Bankruptcy Rule 8005 and demonstrated how the Bankruptcy Court's prior findings resulted in manifest errors of law and facts and therefore should not be relied on by this Court. Accordingly, pursuant to Federal Rule 54(b), this Court has sufficient cause to reconsider its prior denial of Baron's request for a stay pending appeal. The irreparable harm that Baron stands to suffer in the near future certainly warrants such reconsideration.

9. For all the foregoing reasons, as well as the reasons set forth in his Brief in Support, Appellant Jeffrey Baron requests this Court reconsider its Stay Order and grant a stay of the Order of Relief pending an appeal.

Dated: November 22, 2013

Very respectfully,

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**CERTIFICATE OF SERVICE**

On this date, I electronically submitted the foregoing document with the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ H. Joseph Acosta  
H. Joseph Acosta