

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

NETSPHERE, INC., ET. AL.	§	
Plaintiffs	§	
	§	Civil Action No. 3-09CV0988-F
v.	§	
JEFFREY BARON, ET. AL.	§	
Defendants.	§	

**MOTION FOR LEAVE TO FILE:
MOTION TO REQUEST CORRECTION OF THE RECORD AND
CLARIFICATION REGARDING SECRET *EX PARTE* PROCEEDINGS TO
INSTALL VOGEL AS RECEIVER OVER BARON AND TO CONFIRM
AND APPROVE A STATEMENT OF THE SECRET *EX PARTE*
PROCEEDINGS THAT WERE HELD**

JEFFREY BARON respectfully moves this Court to grant leave to file the following motion for the Court to (1) confirm and clarify that an *ex parte* hearing **was** held to install Peter Vogel as receiver over Baron, (2) to clarify certain issues regarding the *ex parte* proceedings, and (3) to confirm and approve a statement of the secret *ex parte* proceedings which were held.

1. This Honorable Court has ordered [Doc 359] that Baron is required to file motions for leave in order to file motions. Further, this Court has directed that the undersigned shall not present matters to the Court on behalf of Novo Point LLC or Quantec LLC [Doc 392 at p. 28].

2. This Honorable Court has previously entered findings of record inconsistent with the possibility that an *ex parte* hearing was held to impose a receivership over Baron, and instead has indicated that the receivership order installing Vogel as receiver over Baron was entered after Sherman filed his motion [Doc 123] to appoint Vogel receiver. Similarly, Sherman has expressly and emphatically **denied** that

any *ex parte* proceedings were held, and Vogel has accused Counsel of suggesting 'wild eyed' theories with regard to the assertion that *ex parte* proceedings were held to place Baron into receivership.

3. However, despite the statements to the contrary, at this point there is a reasonable basis to believe that, in fact, prior to Sherman's filing of his motion [Doc 123] an *ex parte* hearing was held involving both Sherman (and/or his counsel) and Vogel, and that a concerted effort has been made to maintain the secrecy of those proceedings, including Sherman's fraudulent statements that no such proceedings were held, and Vogel's argument that allegations of such secret, *ex parte* proceedings are 'wild eyed' 'unsubstantiated allegation'.

4. Thus, **if a secret *ex parte* hearing to install Vogel as receiver over Baron was in fact held with the participation of this Honorable Court, request is hereby made to correct the record to reflect that such a hearing was held, and when.**

5. Notably, if this Honorable Court corrects the record and confirms that an *ex parte* hearing was held involving this Honorable Court and Sherman and/or his counsel, that will establish that Sherman has been dishonest in his pleadings relating to this case and the receivership. It will also establish that Vogel has breached his duty of candor to the Court of Appeals by failing to apprise the Court of Appeals of the truth regarding the proceedings in this case.

6. The briefing deadline for Baron on appeal is currently set at June 29, 2012. If leave is granted by this Honorable Court, request is made for the Court to enter the requested correction and clarifications, and approval of the statement of the *ex parte* proceedings, at least four days prior to that date. Accordingly, request is respectfully

made that the clarification and approval of the statement of the proceedings be entered no later than June 25, 2012.

7. If leave is granted, motion is made for an order clarifying the following issues:

- a. *Was an ex parte hearing held to install Peter Vogel as receiver over Jeffrey Baron?*
- b. *What is the reason the ex parte proceedings were held off the record ?*
- c. *What is the reason Baron was not notified of the hearing, prior to the hearing or after the hearing was held ?*
- d. *Did the Court issue ex parte directives as to the hearing or the receivership motion ?*
- e. *Who attended the hearing, when was it held, and how long did it last ?*
- f. *What was said at the hearing, and by whom ?*
- g. *What material was provided to the Court at the hearing ?*
- h. *What was Vogel's role at the hearing ?*
- i. *Whether the Court has had other ex parte communication with Sherman, Vogel, or the Bankruptcy Judge over the course of the Netsphere litigation, and if so, when, and what was discussed ?*

8. Jointly, request is made for the Court to confirm and approve the following statement of the proceedings, as follows:

- a. **On 11/24/10 at approximately 12pm, secret *ex parte* proceedings were held involving this Court, Peter Vogel, and Daniel Sherman.**
- b. **At that time, Vogel and Sherman requested this Court to install Vogel as receiver over Baron.**

c. During the *ex parte* proceedings Vogel and Sherman represented to the Court the following:

- i. That Baron had caused the Court Ordered mediation, undertaken to resolve various former attorney fee disputes, to fail.**
- ii. That as a matter of bankruptcy law, a creditor was responsible to reimburse the Bankruptcy Estate for the 'substantial contribution' claims made by his attorneys.**
- iii. That Baron had not paid many of his attorneys and they were making 'substantial contribution' claims which would place the bankruptcy estate at risk.**
- iv. That as a matter of Bankruptcy Law, Baron would be required by law to indemnify the bankruptcy estate for any payments made to his attorneys under their substantial contribution claims.**
- v. That because under Bankruptcy Law Baron was obligated to indemnify the Bankruptcy Estate for any payments made by the estate in payment of Baron's attorneys substantial contribution claims, this Court needed to maintain jurisdiction over Baron's assets so that the Bankruptcy Estate could be repaid.**
- vi. That Baron had not paid his Bankruptcy Attorney Martin Thomas, and thereby caused Thomas to withdraw as his bankruptcy counsel.**
- vii. That the Bankruptcy Judge recommended a receiver be placed over Baron if he fired Thomas.**

d. During the *ex parte* proceedings Vogel and Sherman failed to disclose to the Court the following matters:

- i. The attempt to place Baron into receivership began in response to Baron's filing an objection to Sherman's attorney fee request in the Bankruptcy Court.**
- ii. That Baron had, through the 'global settlement agreement' funded approximately two million Dollars into the Ondova estate, and had also waived his claim for more than a million Dollars due him for repaying a loan he guaranteed for Ondova, on which Ondova had defaulted.**

- iii. That Sherman had promised to immediately pay off all of the creditors and return Ondova to Baron with approximately one million Dollars in the bank, and all its assets intact.
 - iv. That instead of doing what he promised in order to induce Baron to fund the Ondova estate with a net three million dollar cash infusion, Sherman failed to pay the creditors and ran up hundreds of thousands of dollars in attorneys fees, to which Baron objected.
 - v. That when Baron objected to Sherman's attorneys' fee application, Sherman immediately responded by working to have Vogel installed as receiver over Baron.
 - vi. That they had had *ex parte* communications regarding the receivership prior to contacting the Court.
 - vii. That the plan was for Vogel to immediately withdraw the objection to Sherman's attorneys' fee application, if installed as receiver.
 - viii. That the Ondova had more than sufficient funds in the bank to pay all of the Ondova creditors, and approximately a million dollar cash surplus beyond that.
 - ix. That Sherman and/or Vogel had actively solicited attorneys to make 'claims' against Baron, attempting to persuade attorneys to submit claims even after the attorneys explained that Baron owed them no money.
- e. The Court signed the Order installing Vogel as receiver over Baron [Doc 124] at the *ex parte* hearing. The Order was provided to the Court, *ex parte* by Sherman.

WHEREFORE Jeffrey Baron respectfully prays that this Honorable Court grant the relief requested.

Respectfully submitted,

/s/ Gary N. Schepps

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**APPELLATE COUNSEL
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CERTIFICATE OF SERVICE

This is to certify that this document 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

Exhibit A

3. The statements in paragraph 3 of the Response are also false. There is no "special relationship" between Judge Ferguson and the Trustee, and there have been no ex parte secret proceedings of any kind.

4. Mr. Schepps, the attorney who filed this appeal, has filed dozens of papers in the Bankruptcy Court, the District Court and the Fifth Circuit Court of Appeals in which he repeats these and other lies. They are all part of a strategy by which Mr. Schepps and his client, Jeffrey Baron, are attempting to interfere with the administration of justice and continue a series of frauds on the courts that has been in progress for at least six years, the highlights of which are described below.

5. On February 4, 2011 Judge Ferguson entered his order confirming the appointment of a receiver for all of Jeffrey Baron's assets, finding that Baron had engaged in fraud and vexatious litigation conduct over a period of many years. (Docket No. 268 in Case Number 3:09-cv-00988-F).

6. On June 27, 2011 the Fifth Circuit Court of Appeals denied one of several Motions to Stay filed by Mr. Schepps on behalf of Mr. Baron and cautioned him that further frivolous filings might lead to the imposition of sanctions. (Order of June 27, 2011 in Consolidated Appeals 10-11202 and 11-10113).²

7. During a hearing before Bankruptcy Judge Jernigan held on December 5, 2011, Mr. Schepps refused to answer questions about his deliberately obstructive conduct, pleading the Fifth Amendment. A few of the questions and his answers allow the Court to infer, as Judge Jernigan inferred, that Mr. Schepps' conduct was and is in deliberate defiance of the orders of the court and done with the worst possible motives:

² The Court should note that these appeals are part of Mr. Schepps efforts to create confusion and delay. At present Mr. Schepps has filed seven appeals from more than 60 orders entered in Case No. 3:09-cv-00988-F. He files a notice of appeal for every order, no matter what its substance in that case. More recently Mr. Schepps began filing appeals from orders in the Bankruptcy – this is one of six such appeals. Three were struck by Judge Ferguson because Mr. Schepps had no authority to file them. One of the remaining three has already been transferred to Judge Ferguson. The other was only recently docketed and the Trustee has not yet filed a Motion to Transfer, though a motion will be filed shortly.

Transcript at page III-15

5 . . . you filed the notices of appeal and other documents in
6 deliberate defiance of Judge Jernigan's orders; isn't that true?

7 A. This is a criminal contempt proceeding, and I'm not
8 testifying. I'm asserting my Fifth Amendment privilege.

9 Q. Your intention, when you filed these orders, was to create
10 disruption, confusion, and expense in the bankruptcy process;
11 isn't that true?

12 A. This is a criminal contempt proceeding, and I'm not
13 testifying. I'm asserting my Fifth Amendment privilege.

Transcript at page III-16

6 . . . Petfinders, LLC was a Texas limited liability company that
7 you created; isn't that true?

8 A. This is a criminal contempt proceeding, and I'm not
9 testifying. I'm asserting my Fifth Amendment privilege.

10 Q. When you created Petfinders, LLC you did it at the direction
11 of Jeff Baron; isn't that true?

12 A. This is a criminal contempt proceeding, and I'm not
13 testifying. I'm asserting my Fifth Amendment privilege.

14 Q. It's also true, isn't it, that when you created Petfinders,
15 LLC it was a strategy that you personally devised in order to
16 find a way to create additional disruption of the bankruptcy
17 proceedings?

18 A. This is a criminal contempt proceeding, and I'm not
19 testifying. I'm asserting my Fifth Amendment privilege.

Transcript at page III-19 to III-20

25 Q. Mr. Schepps, you have filed several Rule 2019 disclosures in
1 this court. It's true, isn't it, that the information in it is
2 all false?

3 A. This is a criminal contempt proceeding, and I'm not
4 testifying. And I'm asserting my Fifth Amendment privilege.

Of course the proceedings before Judge Jernigan were not criminal contempt proceedings because the Bankruptcy Court does not have the power conduct such proceedings. The simple truth is that Mr. Schepps would not answer these questions because he knows that he is acting without authority as part of a scheme that he and his client have devised to drive up the costs of litigation and obstruct proceedings in the Bankruptcy Court, in this Court, and in the Court of Appeals.

8. On December 15, 2011 Bankruptcy Judge Jernigan found the Mr. Schepps had no authority to represent the Appellants and barred him from filing any further pleadings and/or

appeals on their behalf. (Docket No. 728 in Case Number 09-34784-sgj11 in the Bankruptcy Court for the Northern District of Texas, a copy of which is attached as Exhibit "A"). Within two weeks Mr. Schepps violated that order by filing a Notice of Appeal and related documents, purportedly on behalf of Appellants. (Docket No. 742, 755 in Case Number 09-34784-sgj11 in the Bankruptcy Court for the Northern District of Texas). Mr. Schepps' conduct proves that he has no respect for the truth and will misrepresent things whenever he is given the opportunity, and that he has no respect for the orders of any court and will defy those orders when it suits him or his client to do so.

II. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that this Court enter an order: (i) transferring this Appeal to Judge Furgeson; and (ii) granting the Trustee such other relief to which he is justly entitled.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Raymond J. Urbanik
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**ATTORNEYS FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE**

Schepps - Cross/MacPete

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Exhibit B

THE COURT: I overrule that objection.

THE WITNESS: This is a criminal contempt proceeding,

3 and I'm not testifying. I'm asserting my Fifth Amendment
4 privilege.

5 BY MR. MacPETE:

6 Q. And isn't it true that you are a participant in the postings
7 on the LawandJustice.com website?

8 MR. SCHEPPS: Your Honor, may I object on the grounds
9 of relevance?

10 THE COURT: Overrule the objection.

11 THE WITNESS: This is a criminal contempt proceeding,
12 and I'm not testifying. I'm asserting my Fifth Amendment
13 privilege.

14 BY MR. MacPETE:

15 Q. And isn't it true that you have no legal or factual basis
16 for the offensive allegations that have been made on that
17 website regarding Mr. Vogel and the Honorable Judge Furgeson?

18 MR. SCHEPPS: Your Honor, may I object on the grounds
19 of relevance?

20 THE COURT: Overrule the objection.

21 THE WITNESS: This is a criminal contempt proceeding,
22 and I'm not testifying. I'm asserting my Fifth Amendment
23 privilege.

24 BY MR. MacPETE:

25 Q. In fact isn't it true, sir, that you have absolutely no

Schepps - Cross/MacPete

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1 proof that there has ever been an ex parte meeting between Peter
2 Vogel, the receiver, and Judge Royal Furgeson?

3 MR. SCHEPPS: Your Honor, may I object on the grounds
4 of relevance?

5 THE COURT: I overrule the objection.

6 THE WITNESS: This is a criminal contempt proceeding,
7 and I'm not testifying. I'm asserting my Fifth Amendment
8 privilege.

9 BY MR. MacPETE:

10 Q. And isn't it true that, in fact, you've conspired with Mr.
11 Baron to continually engage in vexatious litigation conduct both
12 in this Court and the District Court and in the Fifth Circuit
13 for the purpose of costing my client, among others, more than \$2
14 million in unnecessary fees defending the settlement agreement?

15 MR. SCHEPPS: Your Honor, may I object on the grounds
16 of relevance?

17 THE COURT: Overrule -

18 MS. LeBOEUF: And I object on the same.

19 THE COURT: Overrule the objection.

20 THE WITNESS: This is a criminal contempt proceeding,
21 and I'm not testifying. I'm asserting my Fifth Amendment
22 privilege.

23 BY MR. MacPETE:

24 Q. And isn't it true, sir, that Mr. Baron remains in breach of
25 the settlement agreement almost a year after it was entered by

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:) Case No. 09-34784-sgj11
)
) VOLUME III of the
ONDOVA LIMITED COMPANY,) SHOW CAUSE HEARING for
) CHRISTOPHER PAYNE and GARY
) SCHEPPS; RECEIVER'S MOTION
Debtor.) to STRIKE PLEADING and
) SECOND MOTION on the SHOW
) CAUSE ISSUE
)
) Monday, December 5, 2011
_____) Dallas, Texas

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