No. 10-11202
and Consolidated Cases

In the
United States Court of Appeals
for the Fifth Circuit

No. 10-11202

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

Appeal of Ex Parte Order Appointing Receiver
Where No Claims Were Pled in the Property Seized

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

MOTION FOR STAY

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*

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*

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*

Cons. w/ No. 12-10003
NETSPHERE, INC. ET AL, *Plaintiffs*
v.
JEFFREY BARON, *Defendant – Appellant*
QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*

GARY SCHEPPS, *Appellant*
v.
PETER S. VOGEL, *Appellee*

Cons. w/ No. 12-10444

In re: NOVO POINT LLC, Petitioner

Cons. w/ No. 12-10489
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

Cons. w/ No. 12-10657
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – *Appellant*

QUANTEC L.L.C.; NOVO POINT L.L.C., *Appellants*
v.
PETER S. VOGEL; DANIEL J. SHERMAN , *Appellees*

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TO: HON. SENIOR JUDGE HAROLD R. DEMOSS, JR.,
HON. JUDGE LESLIE H. SOUTHWICK, and
HON. JUDGE STEPHEN A. HIGGINSON,

Appellant Jeffrey Baron ("Baron") moves for a stay of proceedings to aid in the jurisdiction of the Court. Specifically, Appellant requests the Court to issue a brief stay of certain involuntary bankruptcy proceedings filed against Appellant that threaten to defeat and reverse the judgment of this Court and undermine its jurisdiction over the receivership assets. Similarly, Appellant requests that the Court stay issuance of the mandate for a period of up to 21 days to enable Appellant to investigate and fully brief the issue for this Court

I SUMMARY

On December 18, 2012, this honorable Court issued an opinion vacating a receivership imposed over Petitioner and all of his assets (hereinafter "Opinion"). In the Opinion, this Court reversed the appealed orders and remanded the case to the District Court in N*etsphere, Inc., et al. v. Jeffrey Baron, et al.*, Civil Action No. 3:09-CV-0988-F, instructing the District Judge to wind down the receivership. Document no. 00512087819.

On December 18, 2012, the very day that this Court issued its Opinion, an involuntary bankruptcy petition was filed against Appellant by

receivership participants, which, in purpose and effect, reinstates the receivership as a bankruptcy, threatens to proliferate the professional fees already incurred in this matter, and undermines this Court, and the district court's jurisdiction over the assets. While this Court's order allows Appellant to contest certain debts alleged in the receivership, the bankruptcy court has already entered orders holding that: (1) Appellant cannot dispute the alleged debts; (2) upon issuance of this Court's mandate, the receiver shall transfer all assets of the receivership to an interim trustee; and (3) has ordered further proceedings in the bankruptcy court that will potentially generate professional fees that *potentially* equal, if not surpass the approximate $5.9 million in fees incurred through the receivership process. Similarly, the bankruptcy court entered an order which prohibits the district judge from consideration of wind down plans proposed by Appellant and Receiver, as ordered by this Court.

A stay of the involuntary bankruptcy proceedings is necessary to ensure that any further actions are not undertaken until such time as this Court has had an opportunity to review the evidence and take action to protect its jurisdiction. Similarly, a stay of the mandate is filed on an emergency basis to immediately stop any attempt to transfer assets from the receivership to a trustee in bankruptcy, which is set to occur after issuance of the mandate. A stay will also slow down the flurry of activity ordered by the

bankruptcy court and will also defer, if not eliminate a substantial expenditure of time and resources for both counsel and the Court.

The undersigned counsel is evaluating whether to apply to this Court for relief under the All-Writs Act or to seek mandamus, as the circumstances appear to support either or both forms of relief. There has been enough rapid-fire litigation and appeals in this case, and counsel prefers to take a *measured* approach before seeking extraordinary remedies unless circumstances dictate otherwise. A stay of the litigation will give this counsel and the Court time to evaluate these new developments.

II STATEMENT OF RELEVANT FACTS

This Court found that the purpose of the receivership was to secure a fund for paying "unsecured claims of Baron's current and former attorneys" and further found that these claims had "not yet been reduced to judgment" (*Id.* at pp. 20-21) and further found that "establishing 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". (*Id.* at p. 18.). Moreover, this court found that "the claims had not been reduced to judgment" (emphasis added). (*Id.* at p. 18). This Court ordered that the assets be returned to their owners through a wind-down procedure. Thus, the domain names would be returned to Novo Point and Quantec while

certain property and funds from IRA accounts would be returned to Mr. Baron.[1]

Upon issuance of this Court's Opinion, however, seven claimant-attorneys from the receivership action (hereinafter "Alleged Creditors" or "Petitioning Creditors") immediately filed an involuntary petition in bankruptcy against Baron and all property held in the receivership. Exhibit A. Their claims are identical to the claims in the receivership case. The Alleged Creditors allege that their claims are bona fide debts, fully adjudicated and are not disputed as to validity or amount. However, this Court found that these *same* claims had not been reduced to final judgment which negates a good faith filing of involuntary bankruptcy by the Alleged Creditors.[2]

The bankruptcy court entered an order specifically providing that *all assets of the receivership* would be transferred to an interim trustee in bankruptcy should this Court issue an order requiring delivery of the Receivership assets to Mr. Baron or any other party before the bankruptcy court concluded the bankruptcy trial. Exhibit B at 3. The asset transfer

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[1] The domain names are owned by Novo Point, LLC and Quantec, LLC and are not owned or controlled by Jeff Baron. The bankruptcy court intends to transfer assets (domain names) of NovoPoint and Quantec, non-debtors, to a bankruptcy trustee.

[2] Section 303 of the Bankruptcy Code requires that the creditors present claims that are not disputed as to validity or amount, and that the claims are not being paid in the ordinary course of business.

would include domain names owned by Novo Point and Quantec, which this Court found to be improperly seized in the receivership and were not related to any dispute properly before the district court. Thus, a wind-down of the receivership and return of assets, as ordered by this Court, would not be possible because all receivership assets would be transferred to a bankruptcy trustee.

On December 19, 2012, the Alleged Creditors, moved for appointment of an interim Chapter 7 Trustee to "take possession of the property of the estate [Baron's] and to operate any business of the debtor" so that Baron's assets "remain in the jurisdiction of this Court [Bankruptcy Court] pending entry of an order for relief". Exhibit C. At hearing on January 16, 2013, the Alleged Creditors averred that an order entered by the district judge compromising claims (Exhibit D, the "Compromise Order") was final with *res judicata* effect, contrary to this Court's Opinion reversing the order.[3]

On December 31, 2013, this Court issued an Order stating, in pertinent part, that:

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[3] The vacated Compromise Order at issue essentially compromised claims of the Petitioning Creditors and authorized the Receiver to pay the claims subject to counterclaims that could be raised by Mr. Baron. SR. v7, p349. The District Court later entered an Order that made clear that no payments were to be made under the Compromise Order until such time as this Court resolved appeal of the receivership order. (hereinafter "Stay of Compromise Order) Exhibit E. However, despite this Order, the Bankruptcy Court ruled that "District Court Docket 987 did not stay, pending appeal, the Compromise Order." Exhibit F.

> Baron filed a motion to clarify who is to take custody of the receivership assets upon the dissolution of the receivership. The opinion stated that everything subject to the receivership other than cash "should be expeditiously returned to Baron under a schedule to be determined by the district court for winding up the receivership." Our utilization of a shorthand reference to Baron did not in any way affect the ownership of assets that were brought into the receivership. Assets are to be returned as appropriate to Baron or other entities that were subject to the receivership. (Emphasis supplied)

Mr. Baron filed a Motion to Dismiss the involuntary bankruptcy for lack of subject matter jurisdiction (Exhibit G), which was denied by the bankruptcy court. Exhibit F. The bankruptcy judge also entered an order allowing the petitioning creditors to file summary judgment on whether the District Court's vacated order, which summarily compromised claims of the attorney claimants, precluded Baron from disputing the validity and amount of the Petitioning Creditors" claims.

On January 15, 2013, the district court entered an order that effectively acceded to the Bankruptcy Court's jurisdiction. In the context of an emergency request for funds to retain bankruptcy counsel, the district judge stated:

> Even so, this Court is in an unusual position that prevents it from granting such a request in such a limited time frame. Trapped between the impending mandate to wind down the Receivership and the automatic stay, the Court has already concluded that it will take no further action to make any distributions from the Receivership until the involuntary bankruptcy has been resolved. Without any guidance from the Bankruptcy Court on this issue, the Court is not inclined to grant this motion; unfortunately, in filing this emergency motion, counsel has not permitted the Court

> the time necessary to obtain this guidance. Although an alleged debtor in an involuntary bankruptcy retains the right to use his property in the interim period before the bankruptcy is commenced, as this Court has not yet dissolved the Receivership, the property has not yet been returned to Mr. Baron. Although the Court will return this property to him once the Receivership is wound down, this has not happened and the Receivership assets remain property of the Receiver.(emphasis supplied) Exhibit H.

On January 16, 2013, the Bankruptcy Court: 1) recommended that the U.S. Trustee appoint an interim trustee to "be on "standby" and in place to receive the Receivership assets during the Gap Period should a higher court issue an order requiring delivery of Receivership assets to Mr. Baron or any other person before this Court concludes the Trial"[4]; and 2) Ordered the Petitioning Creditors to file a motion for summary judgment for the Court to determine whether the stayed Claimant Order, *now reversed*, precluded Mr. Baron from arguing that the Petitioning Creditor's Claims were subject to a bona fide dispute. Exhibit I at 2.

On January 31, 2013, after issuing its Opinion, this Court issued a stay (hereinafter "Receivership Stay") as follows:

> The import of our order of November 9, 2012, has not changed, which said this: 'Disbursement of any other assets of the Receivership should be as limited as possible until this Court resolves the appeals.' We have resolved the appeals, but the only expenditures should be those appropriate for the Receiver to make

[4] Notably, this provision intends to place assets belonging to receivership parties, other than Mr. Baron in the hands of the trustee instead of returning them to their owners, as ordered by this Court.

> until relinquishment of control of assets. Document 00512097486 at p. 7.

Receivership assets have been disbursed and expenses are being incurred to defend the involuntary bankruptcy proceedings. Exhibit H.

In January, 2013, the bankruptcy court held a hearing. At that time, the record reflects an apparent intention by the bankruptcy judge and the Receiver's counsel to "moot" this Court's ruling reversing and vacating the receivership through the involuntary bankruptcy proceedings. Exhibit I. A colloquy between counsel and the bankruptcy judge on January 16, 2013, reveal that the bankruptcy court actively supports a strategy that "moots" this Court's reversal of the receivership. The following exchange occurred between the Court and Receiver's counsel:

> THE COURT: -- is this all moot? Moot's not the
>
> right word, but --
>
> MR. FINE: -- Your Honor --
>
> THE COURT: -- I mean there's no reason for the Fifth Circuit --
>
> MR. FINE: -- our -- one of our basic arguments to the Fifth Circuit on the petition for re-hearing is that this is essentially form over substance that what the Fifth Circuit was saying to Judge Furgeson was you had a quiver of remedies that you could apply to this very difficult situation, and you essentially picked the wrong one.
>
> THE COURT: But now petitioning creditors have chosen a remedy.
>
> MR. FINE: Correct, Your Honor. And our point to the Fifth Circuit was, yes, you know, it's fundamentally the same thing. A bankruptcy trustee, receiver, they're both accomplishing essentially the same function and -- to carry forward the payment of just claims and to take care of this vexatious

> situation. And I don't know if I -- if it's really necessary for us to address whether or not the Fifth Circuit may consider an appeal.

Exhibit I. Similar discussions between counsel and the bankruptcy court reportedly occurred in two other hearings before the bankruptcy judge. [5]

On December 20, 2012, the district judge requested the parties submit wind-down plans for the Court's consideration, in accordance with this Court's Opinion. Exhibit J. Appellant filed a Motion for a Wind-Down Plan and for Withdrawal of the Reference and specifically objected to the bankruptcy court's exercise of authority over the district court receivership as it undermined the jurisdiction of the district court and this Court, and it further interfered with the ability of the district court to implement the directives of this Court. Exhibit K at 14-17.

On February 20, 2013, the bankruptcy court held a hearing on whether the Compromise Order entered by Judge Furgeson precluded Appellant from litigating whether the Alleged Creditors" claims were "non-contingent" or bona fide debts not disputed as to validity or amount under Section 303 of the Bankruptcy Code. The bankruptcy court orally announced that Appellant would not be permitted to dispute the claims despite the fact that this Court *specifically* held that the claims had not

[5] Two other transcripts of proceedings have been ordered and reportedly contain similar discussions between the court and counsel.

been determined on the merits and that there was no final judgment on the claims. Exhibit L.

On March 18, 2013, the Bankruptcy Judge ordered that the district judge not consider a wind-down plan until such time as the involuntary bankruptcy was dismissed and the Fifth Circuit issued its mandate in the case. Exhibit M at 4.

On April 4, 2013, the district court and bankruptcy court held a joint status conference. However, the conference agenda was issued by the bankruptcy judge and carefully delineated that the status conference would address issues on fee requests and scheduling of matters in the in voluntary bankruptcy proceeding. (Exhibit N). At the conclusion of the joint status conference, the district court and bankruptcy court issued a Mediation Order (Exhibit O), which requires the parties to attend a mediation to achieve a global resolution.[6] However, the "global resolution" includes a resolution that is not rooted in a wind down plan, as ordered by the Court, but based on an involuntary bankruptcy that is not grounded in law or fact.

At the April 4 conference, the bankruptcy court and district court:

1) ruled that "the res of the receivership shall be turned over to the jurisdiction of the bankruptcy court" (Exhibit P) ;

[6] Appellant does not seek to stay mediation.

2) set an expedited scheduling order for a trial on the merits in the involuntary bankruptcy case for May 22, 2013 (Exhibit Q);

3) ruled that a trial be held on April 4, 2011 on fee applications of any party seeking fees from the receivership res[7] (the deadline for Mr. Baron's objections to all fee application requests were set as April 25, 2011 ; and a pre-trial hearing for fee applications be held on April 29, 2013) (Exhibit R); and

4) ruled that certain receivership expenses be paid.

Notably, at the April 4 hearing, the district judge and bankruptcy judge also denied Mr. Baron's request for release of money to retain and pay counsel for pending matters in this Court and the district court.

III THE BANKRUPTCY COURT LACKS SUBJECT MATTER JURISDICTION

A. The Involuntary Bankruptcy Was Filed to Interfere with this Court's Jurisdiction.

On the *same* day that this Court issued its Opinion, seven receivership claimants filed a Petition for Involuntary Bankruptcy, seeking to involuntarily place Jeffrey Baron in bankruptcy. Exhibit A. Petition for Involuntary Bankruptcy. These seven Alleged Creditors were also alleged creditors in the receivership and the subject of the vacated Compromise Order.

The Petitioning Creditors, apparently dissatisfied with this Court's order reversing the receivership order, had a *pre-arranged plan* to file an

[7] The fee applications are expected to include over 10,000 entries, requiring hundreds of hours in attorney time to review and prepare, requiring substantial time and effort to prepare for a hearing.

involuntary petition to divest jurisdiction over the assets from the District Court. Notably, the Petitioning Creditors were well aware of the receivership order and aware that they were prohibited from interfering with the receivership. In pertinent part, the November 24, 2011 order of the District Court states that:

> "[During] the pendency of the receivership ordered herein, all other persons and entities aside from the Receiver are hereby stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Party, any of their partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions: 1, Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations; 2, Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody or control of any asset" R. 1619 at 12.

As to the Receivership Stay, this Court clarified that although its Opinion vacates the receivership order, its Opinion will not go into effect until the mandate is issued by this Court. It is readily apparent that the Receivership Order was in effect when the Petitioning Creditors filed the involuntary petition; thus, the Petitioning Creditors have been actively violating the order. It is also apparent that filing of the involuntary petition is a transparent attempt to end-run this Court's rulings on the receivership and to maintain a financial stranglehold over Mr. Baron's financial life and

to seize assets from Novo Point and Quantec that should have never been placed into the receivership.

Unfortunately, the bankruptcy court has supported the involuntary bankruptcy despite the fact that the Petitioning Creditors' key argument required to maintain the bankruptcy action—that the Compromise Order has res judicata effect—is not founded in law and fact[8].

B. Claims Under 11 U.S.C. §303 are required to be non-contingent

The Alleged Creditors' claims under 11 U.S.C. §303 against a debtor with more than 12 creditors and the Court's jurisdiction thereunder, requires and is contingent upon a petition by three or more entities, each of which holds a claim against such debtor "that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount". 11 U.S.C. §303(b)(l). Entities alleging a debt which is contingent or the subject of a bona fide dispute as to liability or amount lack standing to petition for the commencement of an involuntary case under §303 of Chapter 11. A person

[8] As further evidence that the Compromise Order was not a "final judgment", this Court observed in its Opinion that one of the claimants had a pending motion for reconsideration to the Compromise Order at the time of issuing the Opinion, resulting in this court dismissing the claimant's appeal to the Compromise Order: " This Court agreed with CCSB's contention that the court lacked jurisdiction over CCSB's appeal given that the firm filed a motion to reconsider that remains pending in the district court." Document no. 00512087819.

seeking to invoke the jurisdiction of the court must establish the requisite standing to sue. E.g., *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990).

C. None of the Petitioning Creditors hold a claim against the alleged debtor that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount.

The Alleged Creditors attempted to invoke the power of the federal bankruptcy court for the improper purpose of securing a pre-judgment seizure of the Petitioner's property to secure their *disputed* claims, just as they have done for the last two and a half years in the reversed receivership. Pursuit of their claims through bankruptcy deny Baron his Constitutional right to trial by jury on their claims.

As noted above, the Alleged Creditors have previously been rebuffed by this Court for attempting precisely the same tactic through the improper and unauthorized use of a receivership to secure resolution of their disputed claims. In finding that the receivership imposed to resolve the attorneys' disputed claims was unauthorized by law and an abuse of the court's discretion, this Court's noted that "the claims had not been reduced to judgment such that a receiver would have been proper to set aside allegedly fraudulent conveyances". Thus, the involuntary bankruptcy against Mr. Baron fails as a matter of law, and the Petitioning Creditors clearly are attempting to circumvent this Honorable Court's rulings.

D. The Bankruptcy Court erroneously relied on a contingent order from the District Court

To obtain jurisdiction, the Bankruptcy Court erroneously relies on the Compromise Order (Exhibit D), a non-determinative order from the district court,, which approved disbursements of former attorney claims. In the order, the district court acknowledged that the motion considered "a settlement and compromise of the Former Attorney Claims" *id*. at p. 5, ¶7, that his consideration was "summary" in nature, *id*. at pp. 6-7, ¶11, that the Receiver had the right to waive Baron's otherwise extant right to a jury trial, *id*. At pp. 9-11, ¶¶16-20, and that the Receiver was not required to collect or offer evidence or make arguments to controvert the Former Attorney Claims," referred to as "the Defense Obligation." *Id*. at p. 5, ¶8.

In addition to the clearly non-determinative language of the district court's ruling in the Compromise Order, the district court did not treat this order as a "final judgment" on the claims for FRCP Rule 54(a) purposes. To wit, there was no "judgment" entered; there was no final disposition of ***any*** of the claims; there was no "severance" of the claims of and the mandatory procedure for certification of fewer that all claims or all parties for finality in FRCP Rule 54(b) was not followed. Thus, it is impossible for the requirements under 11 U.S.C. §303 to have been met.

Perhaps most critically, the Compromise Order to pay the claims was stayed by the district court, as further explained below.

E. The Compromise Order was stayed by order of the District Court, and also upon this Court's reversal of the receivership

It is well-established that where creditors possess a stayed order, their claims are subject to a bona fide dispute. *In re Norris*, 183 B.R. 437, 453 (Bankr. W.D. La. 1995), *aff'd*, 114 F.3d 1182 (5th Cir. 1977); *In re Raymark Industries, Inc.*, 99 B.R. 298, 299 (Bankr. E.D. Pa. 1989) (holding that "a creditor who holds a stayed judgment holds a claim which is subject to a bona fide dispute, and hence, lacks standing to institute an involuntary bankruptcy case.") This Court has defined a "stay" as "[a] stopping; the act of arresting a judicial proceeding by the order of a court. Also, that which holds, restrains, or supports. A stay is a suspension of the case or some designated proceedings within it. It is a kind of injunction with which a court freezes its proceedings at a particular point *Tesfamichael v. Gonzales*, 411 F.3d 169 (5th Cir. 2005).

On June 18, 2012, the district court entered the Stay of Compromise Order. Exhibit E. In the order, the district court ordered that "no funds be distributed to the former Baron attorneys until the completion of the appeal**."** Exhibit E. Moreover, the district court expressly recognized that the claims were subject to a dispute, and ordered that "*Baron should be able to contest the decision before funds are distributed*." Id. at 3. (emphasis added).

In addition to the district court's stay, this Court imposed its own stay in its Receivership Stay order, even while acknowledging that the status quo,

and all prior orders of the district court (including its stay order above) remained in force. Document 00512097486.

IV This Court Should Delay Issuance of the Mandate and May Take Steps to Protect its Jurisdiction.

There has been enough rapid-fire litigation and appellate filings in this case, and counsel prefers to take a measured approach to seeking extraordinary remedies unless circumstances dictate otherwise. The Court's December 18, 2013 decision sparked off a flurry of litigation activity against Appellant that has interfered with winding down the receivership. The district court and bankruptcy court had deferred action pending this Court's resolution of the parties' petitions for rehearing, but issuance of a mandate by this Court will quickly result in transfer of the assets to a bankruptcy trustee instead of assets being returned to Appellant and other parties. That action clearly violates the letter and spirit of this Court's Opinion. A stay will provide some valuable "breathing space" for this Court to review whether the actions of the petitioning parties and rulings of the bankruptcy court undermine or divest this Court of the ability to render a meaningful decision.

The All Writs Act provides, in pertinent part, that: "courts established by … Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions. The act "empowers a federal court to employ procedures necessary to promote the resolution of issues in a case properly

before it." *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978); 28 U.S.C. § 1651. This authority, though, "is firmly circumscribed, its scope depending on the nature of the case before the court and the legitimacy of the ends sought to be achieved through the exercise of the power." *ITT Cmty. Dev. Corp.*, 569 F.2d at 1358-59. A court is limited to issuing orders "to curb conduct which threaten[s] improperly to impede or defeat the subject matter jurisdiction then being exercised by the court." Id. at 1359.

This Court has also recognized that the inherent powers doctrine ensures that a federal court, sitting in equity, possesses all the common law equity tools of a chancery court (subject only to congressional limitation) to process litigation to a just and equitable conclusion. Id at 1359. Simply stated, Appellant contends that the Petitioning Creditors intend to use a frivolous bankruptcy action to wrongfully perpetuate the receivership proceedings, in contradiction of this Court's mandate. The bankruptcy courts' apparent desire to "moot" this Court's decision is disturbing. Left unchecked, the bankruptcy court's imposition of involuntary bankruptcy will have the practical effect of destroying this Court's power to bring the receivership litigation to conclusion.

Mandamus also appears to be an appropriate remedy in this case, although counsel need more time to investigate this remedy. This Court has the authority to grant writs of mandamus under Rule 21(a) of the Federal Rules of Appellate Procedure; but the standard for issuance is stringent, and such writs are rarely

issued. Mandamus is not used simply to correct error. *See Will v. United States*, 389 U.S. 90, 98 n. 6, 88 S.Ct. 269, 275 n. 6, 19 L.Ed.2d 305 (1967); *In re Steinhardt Partners, L.P. (Salomon Bros. Treasury Litig. v. Steinhardt Partners, L.P.)*, 9 F.3d 230, 233–34 (2d Cir.1993). It is reserved for "judicial usurpation[s] of power" by inferior courts. *Will*, 389 U.S. at 95, 88 S.Ct. at 273 (citation and internal quotation marks omitted); *accord Mallard v. United States Dist. Court*, 490 U.S. 296, 309, 109 S.Ct. 1814, 1822, 104 L.Ed.2d 318 (1989).

The Court may issue mandamus to protect a superior court's mandate, *see General Atomic Co. v. Felter*, 436 U.S. 493, 497, 98 S.Ct. 1939, 1941, 56 L.Ed.2d 480 (1978), to assure that "the terms of the mandate [are] scrupulously and fully carried out," and that the inferior court's "actions on remand [are] not ... inconsistent with either the express terms or the spirit of the mandate," *In re Ivan F. Boesky Sec. Litig. (Kidder, Peabody & Co. v. Maxus Energy Corp.)*, 957 F.2d 65, 69 (2d Cir.1992) (citation and internal quotation marks omitted). Similarly, the Court may issue mandamus to restrain an inferior court from detours into areas in which it lacks jurisdiction. *see Ex parte Republic of Peru*, 318 U.S. 578, 583, 63 S.Ct. 793, 796–97, 87 L.Ed. 1014 (1943).

In addition, the filing of parallel litigation in the bankruptcy court is duplicative and wastes judicial resources. The appointment of an Interim Trustee will likely continue the waste of assets from the receivership estate[9]. Moreover, it appears that many of the orders being issued in the District

[9] The Interim Trustee has already filed motions to employ a law firm and accounting firm to represent himself, to be paid out of Baron's estate.

Court and the Bankruptcy Court will likely be appealed. Accordingly, these proceedings and appeals will cause unnecessary expenditure of judicial resources unless a stay is granted.

Finally, Appellant needs further time to obtain transcripts of the bankruptcy proceedings that have not yet been transcribed. If the Bankruptcy Court has been motivated by a desire to "moot" this Court's reversal of the receivership, such evidence should be presented to this Court.

V PRAYER

Appellant requests that a stay be issued staying all proceedings and orders involving Jeffrey Baron in the bankruptcy action until such time as the Appellant has time to submit briefs or to file appropriate pleadings to address the issues raised herein. Movant alternatively prays that the Court Stay issuance of the mandate for at least twenty-one days to allow Appellant to complete his investigation of the facts and apply for appropriate relief to this Court.

VI REQUEST FOR SHORTENED TIME FOR RESPONSE

Movants request the Court shorten the time for responses to this motion be shortened to four days from the date of service.

Respectfully submitted, ,

/s/ Stephen R. Cochell
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VII CERTIFICATE OF EMERGENCY

This is to certify that the facts giving rise to the need for emergency relief are true and complete. A ruling is requested by April 18, 2013

CERTIFIED BY: /s/ Stephen Cochell
COUNSEL FOR APPELLANT

VIII 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/ Stephen Cochell
COUNSEL FOR APPELLANTS

IX 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/ Stephen Cochell
COUNSEL FOR APPELLANTS

X CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because: this brief does not exceed 30 pages exclusive of the parts of the brief exempted by FED. R. APP. P. 21(d)

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using MS Word 2000 in 14 and 15 point century font.

DATED: April 11, 2013.

CERTIFIED BY: /s/ Stephen Cochell

XI CERTIFICATE OF SERVICE

This is to certify service this day of this Petition on the Respondents and real parties in interest by electronic service to counsel for all parties to the US District Case 3:09-CV-00988-F in the Northern District of Texas.

CERTIFIED BY: /s/ Stephen Cochell

XII INDEX OF EXHIBITS

Exhibit	Description
A	Petition for Involuntary Bankruptcy
B	Order: Setting Involuntary Petition for Trial; and (B) Granting Interim Gap Period Relief
C	Emergency Motion to Appoint Interim Trustee
D	Findings of Fact, Conclusions of Law and Order on Assessment and Disbursement of Former Attorney Claims (the Compromise Order")
E	Order Regarding Motion to Clarify Instruction to Receiver on Payments to Former Baron Lawyers ("Stay on Compromise Order")
F	Order Denying Jeffrey Baron's Motion to Dismiss
G	Jeffrey Baron's Motion to Dismiss
H	Order Denying Emergency Motion of Jeffrey Baron for Order Approving Payment of Retainer to Bankruptcy Counsel
I	Transcript of Proceedings, Bankruptcy Court, January 16, 2013
J	Order to Parties to Submit Views on Closing the Receivership
K	Jeffrey Baron's Motion to Wind Down Receivership with Proposed Plan, Motion to Withdraw Reference to the Bankruptcy Court, and Provided Resolution for all Disputed Attorneys Fee Claims
L	Partial Summary Judgment
M	Order: (A) Continuing to 4/4/13 at 2:30 pm the Joint Status Conference and hearings Set for 3/19/13 at 10:30 am On Various Motions Filed by the Receiver; (b) Requiring Mandatory, Good Faith, In-Person Global Settlement Conferene among Parties and Lawyers During Next Two Weeks; (C) Authorizing Payment of Court Reporter Fees; and (D) Addressing Miscellaneous Matters
N	Agenda for Joint Status Conference
O	Order Directing Mediation

P Sua Sponte Order Modifying Automatic Stay (Section 362) to Permit Adjudication of Allowable Receivership Fees and Expenses in District Court

Q Scheduling Order (District Court)

R Scheduling Order (Bankruptcy Court)