

No. 12-10444
**In the
United States Court of Appeals
for the Fifth Circuit**

In re: NOVO POINT LLC,
Petitioner

NOVO POINT LLC,
Petitioner

v.

DANIEL J. SHERMAN,
Real Party In Interest

On Petition for Writ of Mandamus to
The United States Bankruptcy Court
Northern District of Texas, Dallas Division
Bankruptcy Case No. 09-34784-sgj11

Honorable Stacey G. C. Jernigan, Judge Presiding
and
Tawana C. Marshall, Clerk of Court

**MOTION FOR LEAVE TO FILE REPLY
TO RESPONSE OF HON. STACEY G. C. JERNIGAN**

TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT COURT OF APPEALS

COMES NOW Novo Point LLC, Petitioner, and moves for leave to file the attached proposed Reply to the Response filed by Respondent Hon. Stacey G. C. Jernigan, and in support shows the following:

Summary of Grounds

The Respondent, Hon. Stacey G. C. Jernigan, has made to this Honorable Court a series of representations that are not supported by the record and appear to be designed to attack the credibility of counsel personally. The erroneous representations include the following examples:

1. That Counsel acted with an “utter lack of candor” and did not explain, present argument, or present evidence to the Bankruptcy Court as to his authority.

The Respondent Hon. Stacey G. C. Jernigan erroneously represents that:

“[T]he bankruptcy court gave ample opportunity for ‘Novo Point’ to ... present argument and evidence as to its standing, and it failed to do so.” (Response page 12)

and,

“Gary Schepps behaved with an utter lack of candor and respect to the bankruptcy court by asserting the Fifth Amendment privilege not to testify, rather than explain how he had any corporate or legal authority to file court papers for Novo Point.” (Response pages 10-11)

Contrary to the erroneous factual assertions of the Respondent, the undersigned was direct, forthright, and affirmatively:

(1) Provided the formal documentation of corporate authority requested by the Bankruptcy Court, (Exhibit “A”, Doc. 651);

(2) Explained to the Bankruptcy Court how he had corporate and legal authority to act, (Exhibit “C”, Doc. 637 pages 43-47); and

(3) Formally briefed the issue of legal authority, (Exhibits “B”, Doc. 718 page 4).

Further, Counsel refused to testify only when called as a witness during contempt proceedings brought against Counsel for filing the appeals at issue. At issue in the contempt proceedings was whether Counsel had contemptuously violated a Bankruptcy Court order, not whether Counsel had authority to act for any party. Significantly, the Respondent announced the purpose of the contempt proceedings as follows:

“This [the filing of appeals from the Bankruptcy Court’s orders], in my view, looks so blatantly like vexatious litigation and harassment. And I’m thinking of a very high monetary sanction in addition to other remedial things. ... I don’t think anything short of 50,000 or so is going to get people’s attention here. ... because I’m very, very offended”

Doc. 637 at page 71.

Accordingly, as Counsel explained to the Bankruptcy Court, to the undersigned’s understanding of the law, in seeking to impose high punitive sanctions to vindicate the Court’s authority, the contempt hearing was criminal in character.

2. That Counsel falsely represented Lisa Katz was an attorney for Novo Point LLC and its manager.

The Respondent Hon. Stacey G. C. Jernigan erroneously asserts that:

“Schepps had represented at earlier hearings that Lisa Katz was the current manager and an attorney for Novo Point, based in Dallas, who had apparent authority to direct attorneys to take positions for Novo Point” (Response page 9)

The record simply does not support the Respondent's assertion. The undersigned neither represented that Lisa Katz was an attorney for Novo Point, nor that she was the manager of the LLC or had apparent authority to take positions for it. The undersigned, moreover, repeatedly explained to the Bankruptcy Court that he was retained by Corporate Director Management Services, LLC ("CDMS"), the corporate manager of Novo Point LLC pursuant Cook Islands' law. See e.g., Doc. 651 and Doc. 637 pages 43-53, attached as Exhibit "C". Notably, Novo Point LLC exists as a legal entity pursuant to the laws of the Cook Islands and by virtue its sovereign authority.

3. Counsel represented that Lisa Katz controlled Novo Point and he took his instructions from her, all of which is a "sham".

The Respondent Hon. Stacey G. C. Jernigan erroneously asserts that:

"[T]he alleged client-representative (Lisa Katz) for Novo Point, wholly emasculate the position of attorneys Gary Schepps .. that she was in control of Novo Point and had given them instructions for Novo Point" (Response page 10);

and that Counsel was

"... falsely purporting to take instructions from someone [Lisa Katz] on behalf of Novo Point that had no authority to give instructions; and (c) were orchestrating a sham"

(Response page 11)

There is simply no record support for the Respondent's assertions. Contrary to the Respondent's assertions, the undersigned neither offered Ms. Katz as the client-representative of Novo Point, nor represented that Ms. Katz controlled Novo

Point or gave instructions to the undersigned on behalf of Novo Point. Rather, as Ms. Katz herself explained to the Bankruptcy Court, she was hired by the Cook Islands' corporate management company (CDMS) to take over management of U.S. operations when the company's assets were released from receivership. Since that had not happened yet, Ms. Katz was not yet actively working for Novo Point. (Doc. 716, pages 33-34). The undersigned never represented anything contrary or inconsistent to the Bankruptcy Court. Rather, the undersigned fully disclosed to the Bankruptcy Court that the Cook Islands' corporate management of Novo Point LLC retained him in January, 2011. (Doc. 651). Notably, the undersigned was retained as appellate counsel for Novo Point LLC in January, 2011, before the District Court issued any orders to purportedly install Ms. Nelson as "manager" of the Cook Islands' LLC. Notably too, the District Court's orders attempting by fiat to change the lawful manager of the Cook Islands LLC – a position existing and controlled by the dictates of Cook Islands' law – were notably void and without legal effect pursuant to Cook Islands' and U.S. law. See Doc. 718 at page 4.

CONCLUSION

In relation to the issue of authority, the Response of Hon. Stacey G. C. Jernigan tells of scenario that is not supported by the record, of an attorney that:

(1) Behaved “with an utter lack of candor and respect” and refused to “explain how he had any corporate or legal authority”;

(2) When questioned by the Court asserted his “Fifth Amendment privilege not to testify, rather than explain” the basis of his authority; and

(3) Falsely represented that his actions were directed by one “Lisa Katz” a ‘substitute math teacher’ who Counsel falsely represented was an attorney and the manager of the purported client.

That scenario, however, is completely unsupported by the record. Rather, the record tells a very different story, as follows:

(1) Counsel exercised his Fifth Amendment rights with respect to criminal contempt proceedings and *not* in relationship to disclosing corporate and legal authority;

(2) Counsel provided the formal documentation of authority requested by the Bankruptcy Court;

(3) Counsel was retained and directed to act *not* by the Dallas ‘math teacher’ Lisa Katz, but by CDMS, the Cook Islands corporate manager of Novo Point LLC;

(4) Counsel both explained to the Bankruptcy Court how he had corporate and legal authority to act, and also formally briefed the Court on the legal issues involved.

As shown by the record, at every stage of the proceedings Counsel was forthright. However, all of the above factual details, including the existence and authority of the Cook Islands corporate management CDMS, and the full and repeated disclosure thereof by Counsel, was withheld from this Honorable Court in the Respondents' factually erroneous and, frankly, misleading Reply.

PRAYER

Wherefore, motion is made to allow the filing of the attached proposed reply in order to address the erroneous factual assertions made by Hon. Stacey G. C. Jernigan with respect to the issue of authority that are not supported by the record and which erroneously personally attack the conduct and credibility of Counsel.

Respectfully submitted,

/s/ Gary N. Schepps

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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 CONFERENCE

This is to certify that the Respondents have been contacted and have not stated /
oppose / agree to the relief requested.

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

Exhibit A

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

In re:

ONDOVA LIMITED COMPANY,

Debtor

§
§
§
§
§
§

Case No. 09-34784-SGJ
(Chapter 11)

**R2019 DISCLOSURES BY GARY N. SCHEPPS AND CHRISTOPHER A. PAYNE AS
REQUIRED BY THE BANKRUPTCY COURT'S ORDER DATED SEPTEMBER 6, 2011**

TO THE HONORABLE JUDGE:

NOW COME Gary N. Schepps and Christopher A. Payne, co-counsel in the appeal of various orders from this Honorable Court, and hereinafter “the attorneys”. The attorneys hereby file their R2019 Disclosures as required by this Court’s Order dated September 6, 2011, and would show the Court as follows:

- A. The attorneys’ only joint representation is the above described appeal. The attorneys’ client is the Cook Islands LLC “Novo Point” by and through the manager of that company pursuant to laws of the sovereign government of the Cook Islands. The address of the company is ANZ House, Main Road, Avaruna, Rarotonga, Cook Islands. The nature and amount of any claim or interest and the time of acquisition is not known to the attorneys beyond the rights provided for in the “Global Settlement” and the property rights of the company in domain names registered via Ondova, and/or transferred to the company or a predecessor in interest to the company. Gary N. Schepps was separately retained directly by the Cook Islands manager of the company to represent the company on or about January 2011. Christopher A. Payne was retained by the company’s local

operations manager to represent the company on or about June, 2011. Unrelated to any appearance or representation in the Bankruptcy Court, Gary N. Schepps has been ordered by the US District Court to represent Jeff Baron and has also been retained to represent the Cook Islands Company Quantec, LLC; and Christopher A. Payne has been retained to represent the Cook Islands Company Quantec, LLC.

- B. The empowering instrument for Gary N. Schepps to act on behalf of the Cook Islands entity Novo Point, LLC., is attached, and the empowering instrument for Christopher A. Payne will be filed in a supplemental filing when the instrument is received from the Cook Islands.

Respectfully submitted,

/s/ Gary N. Schepps

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/s/Christopher A. Payne

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Certificate of Service

On this date I electronically submitted the foregoing document using the electronic case filing system of the Bankruptcy Court. I hereby certify that I have served all counsel and/or *pro se* parties of record who receive notice through the PACER system.

/s/ Gary N. Schepps

NOVO POINT, LLC
Manager's Resolution
13 January, 2011

1. The Company has been served with documentation in a proceeding with reference 3: 09CV00988-F; *Netsphere Inc., et al., v. Baron, et al.*; in the US District Court for the Northern District of Texas (the "Case") in which the Company is purportedly made subject to a receivership and freezing order (the "Order").
2. The Company is not a party to the proceeding. It was never served any documents relating to the Case prior to receipt of the Order. The Company is not incorporated in the United States and the basis on which jurisdiction is asserted is unknown.
3. The Company wishes to employ counsel to challenge the validity of the Order insofar as it names the Company.
4. The Company has consulted with and requested Gary N. Schepps, Esq., Attorney & Counselor (the "Attorney") of Dallas in the State of Texas in the United States of America to represent the Company in the Case.
5. The Attorney has agreed to represent the Company on the terms and conditions set out in a certain letter of engagement ("Engagement Letter") sighted by the Manager prior to passing this resolution.

Resolved

To engage the Attorney to represent the Company in the Case by signing the Engagement Letter and forwarding the same to the Attorney.



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Counsel for Petfinders, LLC

Exhibit B

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

In re: § Case No. 09-34784-SGJ
§ (Chapter 11)
ONDOVA LIMITED COMPANY, §
Debtor §

**RESPONSE AND BRIEF IN SUPPORT RE: VOGEL MOTION AND SUPPLEMENT TO
STRIKE PETFINDERS, LLC OBJECTIONS TO SALE OF PETFINDERS.COM
DOMAIN**

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COMES Petfinders, LLC, and makes the following response:

I. OVERVIEW

The following issues are presented:

- 1. Vogel's Motion is predicated on erroneous factual and legal grounds.**
- 2. Schepps has been respectful of this Honorable Court and its orders.**
- 3. Vogel has admitted his purpose in his motion: "The Receiver seeks fees."**
- 4. SouthPac's interest as owner of Novo Point LLC.**
- 5. Vogel is following Sherman's example.**
- 6. Victim blaming is a well-known technique of Prejudice.**
- 7. Conclusion.**

II. ARGUMENT & AUTHORITIES

1. Vogel's Motion is predicated on erroneous factual and legal grounds.

This Honorable Court did not order Schepps to do or not do anything. Rather this Honorable Court entered an order that did not name Schepps. Moreover, the order was issued after a hearing held at which Schepps was not present nor a party, nor noticed. Further, Schepps only received a copy of the order after he was accused of violating it. Notably, Schepps is a non-party who had no opportunity to be heard with respect to the order and injunction imposed. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 fn 7 (1979) (“It is a violation of due process for a judgment to be binding on a litigant who was not a party”); *PCI Transp., Inc. v. Fort Worth & Western R. Co.*, 418 F. 3d 535, 546 (5th Cir. 2005) (“[N]o preliminary injunction shall be issued without notice to the adverse party.”). At the time of the Order, Schepps was not co-counsel with Payne, and was not in any way involved in the Bankruptcy proceedings. Finally, the Order was limited to directing which attorney could file pleadings for the client Novo Point, LLC in this Honorable Court.

2. Schepps has been respectful of this Honorable Court and its orders.

As a preliminary matter, the time to object to a motion is calculated pursuant the Rules based on when the notice of the hearing is provided. *See* L.B.R. 7007-1(e). Based on the notice of the hearing, Petfinder's objection was timely. *Id.*; Bankr.R.P. 9006(a)(1)(C).

As to the more substantive issue, this Honorable Court has explained:

“Parties who are aggrieved by that Order have standing to appeal it and take legal positions to protect their interests. Such parties might include stakeholders of Novo Point, LLC (such as creditors or shareholders).”

Doc 548 p.6.

3. Vogel has admitted his purpose in his motion: “The Receiver seeks fees.”

Clearly Vogel seeks fees. While the motion provides and seeks a personal benefit to Vogel and his partners, Vogel’s motion provides **no benefit to the receivership estate of Novo Point, LLC**, but rather seeks injury to the estate by waiving the receivership estate’s rights in the extremely valuable domain name Petfinders.com.

4. SouthPac’s interest as owner of Novo Point LLC.

As discussed above, this Honorable Court expressly recognized SouthPac’s interest as owner of Novo Point LLC with relationship to the domain name issues, and invited those interests to be heard in the Bankruptcy Court proceedings. Southpac accepted the Bankruptcy Court’s invitation and for tax purposes and to maintain clear demarcation of the ownership rights involved, incorporated a subsidiary, Petfinders, LLC, and assigned to the LLC its interests as the owner of Novo Point LLC with respect to the domain name. In making its appearance before the Bankruptcy Court, Petfinders LLC was explicit as to the rights it was asserting. Contrary to Vogel’s erroneous averments, Petfinders, LLC has never claimed to own the Petfinders.com domain. Rather, Petfinders, LLC expressly asserted the interests assigned to it– SouthPac’s interest as the owner of Novo Point LLC, as the Bankruptcy Court had expressly stated would be accepted. Petfinders, LLC moreover, requested the Bankruptcy Court turn the domain over to the receiver.

Petfinders, LLC sought to **protect receivership assets of Novo Point LLC that Vogel, as receiver, refused and failed to defend**. Even in statutory SEC receivership cases (which the instant receivership is not) the Fifth Circuit has recognized the right of ‘some sort’ of derivative

action to enforce the rights of a company that the receiver has failed or refused to protect. *See e.g., Securities & Exch. Com'n v. Spence & Green Chemical*, 612 F.2d 896, 903 (5th Cir. 1980), citing with approval *Landy v. Federal Deposit Insurance Corporation*, 486 F.2d 139 (3rd Cir. 1973).

In the case at bar: as a legal matter Novo Point LLC as a Cook Islands' entity was not seized by Vogel because (1) as a preliminary matter, the receivership order is void for want of subject matter jurisdiction and is therefore is incapable of binding persons or property in any other tribunal, *Pennoyer v. Neff*, 95 US 714, 722-723 (1878); (2) Novo Point LLC, as a Cook Islands' entity, can not be seized by the District Court because of the District Court's territorial jurisdictional limits, *e.g., Booth v. Clark*, 58 U.S. 322, 333, 17 How. 322, 15 L.Ed. 164 (1854); and (3) Novo Point LLC as a legal entity exists by virtue of the laws of the Cook Islands, and pursuant to those laws (which U.S. treaty obligations require be respected), absent an application for ancillary receivership filed with the courts of the Cook Islands, Novo Point LLC is immune from seizure by the U.S. District Court. Moreover, even if Novo Point LLC had been a company incorporated in the U.S., over which the district court had territorial jurisdiction, and the company was seized pursuant to SEC statutory receivership authority arising out of a controversy pled in the district court (and thus supporting subject matter jurisdiction of the District Court in relation to the LLC), **derivative stakeholders would still have the standing to assert the company's rights in court when (1) the receiver refuses to bring suit or 'where it would be a vain thing to make a demand upon [it]'** . *E.g., Landy* at 148.

This Honorable Court has explicitly recognized this legal reality that Vogel's argument ignores— “Parties who are aggrieved by that Order have standing to appeal it and take legal positions to protect their interests. Such parties might include stakeholders of Novo Point,

LLC (such as creditors or shareholders).” Doc 548 p.6. The Shareholders of Novo Point LLC have the legal right to assign their rights to a subsidiary LLC, which they formed for tax purposes and to maintain clear demarcation of the ownership rights involved. That Subsidiary LLC, Petfinders, LLC, has appeared in this Court and asserted the rights assigned to it from SouthPac– the rights of the shareholder stakeholders.

5. Vogel is following Sherman’s example.

Vogel is following Sherman’s example– seeking fees. In September 2010, the bankruptcy estate of Ondova was flush with cash— and not including the interest in servers, Inc.— the estate had well over a million dollar surplus over all of the claims against the estate. Sherman should have closed the bankruptcy, but instead has run up a total trustee and attorneys’ fee of around **TWO MILLION DOLLARS**.

It is clear, after off-the-record *ex parte* conversations about this case with Hon. Judge Furgeson, this Honorable Court is not pleased with the personality or testimony style of Mr. Baron. In fact, Mr. Baron’s name appears to have become a magic wand that when waived around, opens the purse strings, and ‘justifies’ hundreds and hundreds of thousands of dollars of more and more billings for Sherman and his attorneys (including his own firm).

6. Victim blaming is a well-known technique of Prejudice.

This Honorable Court has appeared to accept Sherman’s blaming of Baron, and has accepted without any admonition Sherman’s racial comments about Baron such as that “Baron’s DNA is rooted in some 2,000 year old trading culture but he is constantly searching for the best deal.” Moreover, this Honorable Court appears to have gotten on the ‘beat up Jeff Baron Blaming Bandwagon’ and has made groundless accusations about Mr. Baron committing or

potentially committing “crimes” against his former counsel. This Honorable Court has stated, for example, that “If Jeffrey Baron is constantly engaging lawyers without ever intending to pay them the full amounts that they charge, and then terminating them when they demand payment, this court is troubled that there are possibly criminal implications for Jeffrey Baron.” This Honorable Court went as far as stating “The bankruptcy court has announced that it will not allow this pattern to occur any further in these proceedings,” even though the allegations of such a ‘pattern’ were entirely groundless and no hearing was held by this Honorable Court on the issue.

Prejudice has no place in these proceedings. However, Vogel’s motion appears to play on a clear prejudice against Jeff Baron that has invaded these proceedings. **Baron has nothing what-so-ever to do with the Petfinders litigation in this Court**, and Vogel has no grounds to aver otherwise. Yet, Baron’s name is mentioned over and over in Vogel’s motion.

Further, Vogel appears to feel at liberty in his filings before this Honorable Court to make groundless accusations directed personally against counsel, including accusations that have no relevance to the issues at bar. Vogel groundlessly alleges, for example, that the undersigned is “hiding” money from the receiver, which is “sitting in Mr. Baron’s client IOLTA account with Mr. Schepps.” The allegation is groundless, and Mr. Baron does not even have a client IOLTA account with the undersigned counsel. Significantly, the allegation and Vogel’s entire motion is an *ad hominem* attack against counsel and has no place in these proceedings.

7. Conclusion.

Wherefore, the orders of this Honorable Court have been respectfully followed by the undersigned counsel, and the objection of Petfinders LLC should not be stricken.

Respectfully submitted,

/s/ Gary N. Schepps

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Certificate of Service

On this date I electronically served the foregoing document using the electronic case filing system of the Bankruptcy Court, and served every party receiving service through the official PACER system.

/s/ Gary N. Schepps

1 with respect to appeals that were being filed by Novo Point.
2 The judge said he didn't have jurisdiction to do that. And I
3 think the same applies here, Your Honor, that once that notice
4 of appeal has been filed, it's beyond your jurisdiction. And
5 with that, I'll sit down, Your Honor.

6 THE COURT: I think there's a Fifth Circuit case on
7 point for that. Do you happen to know the name?

8 MR. PAYNE: As I sit here, I do not, Your Honor.

9 THE COURT: Okay.

10 All right, Mr. Schepps, what did you want to say?

11 Laura, I'm trying my darndest to remember the name of
12 that case.

13 THE CLERK: I'll see if I can find it.

14 THE COURT: Well, it's not until the appeal is
15 docketed.

16 MR. PAYNE: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. SCHEPPS: Your Honor, my role here today is
19 strictly in prosecuting the appeal. I don't think it's --

20 THE COURT: Well, what do you mean by that? Because
21 you have filed --

22 MR. SCHEPPS: I filed the --

23 THE COURT: -- pleadings in this court.

24 MR. SCHEPPS: I don't believe that I filed any
25 pleadings in this court.

Exhibit C

Colloquy

1 THE COURT: You did.

2 MR. SCHEPPS: I don't believe that a notice of appeal
3 is a pleading. And I don't believe that a motion is a
4 pleading.

5 THE COURT: Okay. What does that mean?

6 MR. SCHEPPS: I don't understand the question.

7 THE COURT: I don't understand the comment. What do
8 you mean a notice of appeal and a motion are not pleadings?

9 MR. SCHEPPS: A notice of appeal is not filed with
10 the court. A notice of appeal is filed with the clerk, under
11 Bankruptcy Rule 8001.

12 THE COURT: That makes no sense.

13 MR. SCHEPPS: I have the rule right here.

14 THE COURT: I know what the rule says. That makes no
15 sense. What are you saying? Unless you hand it across the
16 bench and bench file it, it's not filed with the court?

17 MR. SCHEPPS: A notice is not a pleading in my
18 understanding, Your Honor.

19 THE COURT: Okay. Well, you're wrong.

20 MR. SCHEPPS: Okay. Thank you.

21 And I don't think that it's appropriate for this
22 Court to attempt to prevent the appeal or appellate review of
23 the court order -- of the orders of this court. And I
24 don't --

25 THE COURT: Okay. What about Mr. Urbanik's comments

1 that there were ways around the problem that we're now faced
2 with today? You could have filed a motion for authority.

3 MR. SCHEPPS: I don't understand --

4 THE COURT: To file the notice of appeal, the Court
5 set a roadmap for you, if you wanted to file future pleadings:
6 file a motion for authority, show up with your evidence,
7 including Brian Mason and Lisa Katz. What about that?

8 MR. SCHEPPS: My authority has been thoroughly
9 fleshed out in the district court, Your Honor, to represent
10 Novo Point and Quantec.

11 THE COURT: I don't know --

12 MR. SCHEPPS: The receiver --

13 THE COURT: -- what that means.

14 MR. SCHEPPS: -- well, the receiver filed an
15 emergency motion for me to show authority and an emergency
16 motion to strike the notices of appeal for Quantec and Novo
17 Point in the district court. And I showed my authority to the
18 district court in a filing. And the district court denied the
19 motion to strike and they denied the motion for me to show
20 authority, because I showed authority.

21 THE COURT: Okay. What was that authority?

22 MR. SCHEPPS: The authority was -- I explained in a
23 filing who hired me.

24 THE COURT: And who is that?

25 MR. SCHEPPS: Corporate Director Management Services.

1 THE COURT: Okay. And who are the human beings
2 behind that?

3 MR. SCHEPPS: It's been a long time since they hired
4 me. But I believe that the individual associated with that is
5 named Nary (ph.) -- and I'm not sure of her last name.

6 THE COURT: How could you not know the human being
7 that is giving you instructions?

8 MR. SCHEPPS: It's been nine months or more and --

9 THE COURT: Okay. But you're here today. You filed
10 a notice of appeal.

11 MR. SCHEPPS: Yes.

12 THE COURT: Who instructed you to do these things?

13 MR. SCHEPPS: Corporate Director Management Services.

14 THE COURT: What human being? That's a piece of
15 paper. What human being?

16 MR. SCHEPPS: Nary. The person's name is Nary
17 Crowe -- let me think a minute, Your Honor.

18 THE COURT: Okay. What human --

19 MR. SCHEPPS: I think it's Crowe --

20 THE COURT: -- being in the past few days, has
21 instructed you to file notice of appeal and show up here
22 today?

23 MR. SCHEPPS: That's Lisa Katz.

24 THE COURT: Okay.

25 MR. SCHEPPS: She didn't hire me. The Corporate

1 Director Management Services did.

2 THE COURT: Well, I know. But human beings speak for
3 corporations, okay? I need to know human beings.

4 MR. SCHEPPS: I think attorneys speak for
5 corporations.

6 THE COURT: All right. Well, we don't need to get
7 into a lecture about corporate governance. Go ahead and
8 respond to the motion.

9 MR. SCHEPPS: Okay. Thank you, Your Honor.

10 I don't feel that it's appropriate use of the
11 contempt power to prevent or chill appeal of orders of this
12 court. Appeal is part of the congressional system of
13 bankruptcy that Congress set up, and this court should welcome
14 the appeal of its orders.

15 If there is issue as to authority of a party to hire
16 an attorney to represent them, that can be taken up by the
17 appellate court once the issue is on appeal. And I don't
18 believe it's really an issue for this Court to decide. And I
19 believe that this Court has no power to prevent a party from
20 appealing the orders of this Court. And that's for the court
21 of appeals to decide.

22 And I haven't filed any substantive motions. And I
23 haven't sought any substantive motions. And I don't want to
24 be involved in the substantive bankruptcy. My role is solely
25 as appellate counsel. And I'm solely here today as appellate

1 counsel for Novo Point and Quantec, and not in an individual
2 capacity.

3 And if this Court doesn't want me to make any motions
4 relating to the appeal with respect to Novo Point, I'm happy
5 to oblige the Court. I offered to stipulate with Mr. Urbanik
6 and Mr. Vogel if they would stipulate that I'm not authorized
7 or barred by a court order for making a motion for stay, I
8 offered to withdraw the motion, because that's sufficient for
9 my purpose.

10 If there's a stipulation that I'm barred by court
11 order from raising the motion before the Court that explains
12 to the Fifth Circuit why I didn't raise the motion before you
13 under Rule 8005 in the first instance, before I raise it
14 before them. And under Rule 8005, I'm obligated by that rule
15 to raise a motion for stay to the bankruptcy court in the
16 first instance.

17 And my colleagues were not willing to stipulate that
18 I'm barred by court order from raising it to you first. And I
19 can't find any court order that bars me or that I understand
20 bars me from filing anything in this court. Obviously, if you
21 say I'm barred, I'm happy not to be contemptuous of the judge.
22 I respect your orders and I don't believe that appealing your
23 orders is not contempt for your orders. I don't have contempt
24 for the Court and I don't have contempt for Your Honor.

25 And the management company in the Cook Islands

1 believes that they're entitled to retain counsel. And from a
2 legal position, I believe that they're entitled to retain
3 counsel, and they retained me to prosecute these appeals. And
4 the management company in the Cook Islands, which according to
5 Cook Island law, is the legal manager of the companies, and
6 they retained me. So I represent them. If this Court feels
7 that they have no authority to act, that's a view that the
8 Court can take. And I don't agree with it legally, and that's
9 why we have appeals.

10 And furthermore, I believe that the district court is
11 limited to the jurisdictional limits of the Northern District
12 of Texas. And I believe it doesn't have any authority to
13 control an entity that exists pursuant to sovereign Cook
14 Island law. And that's our legal argument. And we believe
15 that there's been a failure procedurally and some issues
16 substantively. And that's why the issues are on appeal right
17 now.

18 And furthermore, I'm going to reurge the objection
19 under the authority of Stern v. Marshall which was handed
20 down -- which is 564 U.S., no page cite, handed down on June
21 23, 2011, by the Supreme Court. And although that case deals
22 with state law issues, I believe the same principles apply
23 here.

24 This is not an Article III court. And I don't
25 believe that this Court has contempt power, at least under the

1 new holding in Stern v. Marshall that was just recently handed
2 down a couple months ago. So we're reurging our objection.

3 And I know that there's some case law in the Fifth
4 Circuit that suggests there is contempt power in the
5 bankruptcy court. But those cases were decided before Stern
6 v. Marshall were handed down -- was handed down. And it
7 appears that Stern V. Marshall clearly delineated the power of
8 Article III courts versus the power of bankruptcy courts.

9 And so we made our objection for the record. And if
10 it comes to it, we'll raise it to the Fifth Circuit's
11 attention. And obviously it's not clear that I was barred
12 from filing any motion in this court. And if I was barred,
13 opposing counsel should have stipulated that I was barred.
14 And I offered to withdraw the motion -- I would offer to
15 withdraw the motion if they would stipulate. And they
16 wouldn't stipulate. So that's a pretty good indication that
17 I'm not barred from filing a motion in this court. And at
18 least it raises a very big question about whether I'm
19 factually barred from filing any motions in this court,
20 because they wouldn't stipulate.

21 And I'd like to offer into evidence a true and
22 correct copy of my e-mail communication to Mr. Urbanik and to
23 Mr. Golden which I've marked for identification as Exhibit 1.
24 I would like to enter that into the record. May I approach,
25 Your Honor?

Colloquy

1 THE COURT: What is it?

2 MR. SCHEPPS: It's my offer to stipulate that if I'm
3 barred from making any motions in this court, that if they
4 would stipulate that I'm barred from making motions in the
5 court, that I would immediately withdraw the motion for stay.

6 THE COURT: Explain again? I had an order barring
7 you. How can someone stipulate around my order?

8 MR. SCHEPPS: I didn't see my name in the order
9 anywhere.

10 THE COURT: Okay. I get the distinction you're
11 making. You can hand it up -- well, I think they were
12 standing up. Were you going to make an objection to this?

13 MR. LOH: Other than I'd like to just see what
14 they --

15 MR. SCHEPPS: Sure. I have a copy for counsel, Your
16 Honor.

17 THE COURT: Okay.

18 MR. SCHEPPS: As soon as there were some indications
19 that there may be a contempt motion filed, I immediately sent
20 this e-mail correspondence to Mr. Golden, who's counsel for
21 the receiver, and to Mr. Urbanik, who's counsel for the
22 trustee, saying that if they'll stipulate that I'm barred, I
23 will immediately withdraw the motion -- immediately. The
24 first indication that there may be some contempt motion --
25 motion for a show cause order being filed.

1 So if they wouldn't stipulate, then evidently, I must
2 not be barred. May I approach?

3 MR. LOH: I don't have any objection to this exhibit.

4 THE COURT: Okay.

5 MR. LOH: This is a neat little rhetorical trick.
6 I'd be happy to respond later --

7 THE COURT: All right.

8 MR. LOH: -- when Mr. Schepps is done.

9 THE COURT: Later. Okay. Mr. Schepps.

10 MR. SCHEPPS: Thank you, Your Honor.

11 THE COURT: This is Exhibit 1.

12 MR. SCHEPPS: And we move to admit Exhibit 1.

13 THE COURT: It's admitted.

14 (Letter from Mr. Schepps to Mr. Urbanik and Mr. Golden was
15 hereby received into evidence as Mr. Schepps' Exhibit 1, as of
16 this date.)

17 MR. SCHEPPS: Thank you, Your Honor. And I didn't do
18 anything intentionally. If I'm barred, I accept that. And I
19 have no problem not making any further motions in this court.
20 And if the Court doesn't want me to make motions to you first,
21 I'll make them to the Fifth Circuit first.

22 And if you have a problem with me not representing my
23 clients and tell me not to appear, I won't appear. I'm not
24 here to force myself on the Court. I'm here only as a
25 courtesy, and in my role to allow you to rule on the motion

1 for stay pending appeal, in the first instance, as required by
2 Rule 8005. And that's all I've got to say, Your Honor.

3 THE COURT: Before you sit down, I'd like you to
4 respond to the question I keep asking people.

5 MR. SCHEPPS: Okay, what's the question?

6 THE COURT: Why are we here? What is the rational
7 motivation for appealing See Do's attempt to auction and gain
8 the highest possible price for Mondial?

9 MR. SCHEPPS: I don't believe that the -- that
10 Mondial is an asset of the bankruptcy estate, and I don't
11 believe that it can be sold by the trustee. I believe that
12 Mondial was quitclaimed to Novo Point, and Novo Point is a
13 receivership asset and not a trustee asset. And that's the
14 glaring difference.

15 And if Mondial -- we believe that Mondial is a very
16 valuable name, and Mr. Payne mentioned to you that it's the
17 equivalent in Europe and France of the word "Superbowl".

18 THE COURT: Okay.

19 MR. SCHEPPS: So that's the --

20 THE COURT: So the client that you purport to speak
21 for is just worried about unfair allocation of value between
22 the receivership and the Ondova bankruptcy estate?

23 MR. SCHEPPS: Yes. Why should the receiver -- why
24 should the bankruptcy estate be allowed to sell an asset that
25 it doesn't own? That's the key substantive issue. And other

Colloquy

1 than there's been some --

2 THE COURT: All right.

3 MR. SCHEPPS: -- we believe there's been some
4 procedural breakdowns as well, Your Honor.

5 THE COURT: You know, I guess this could all get much
6 more expensive than it already has been. You know --

7 MR. SCHEPPS: Well, we offered to withdraw --

8 THE COURT: -- my bankruptcy brain can't help but
9 jump down, you know, the trail of an assignment that you rely
10 on that was within four years of the Ondova bankruptcy case
11 being filed, being potentially avoidable under Chapter 5 of
12 the Bankruptcy Code anyway.

13 MR. SCHEPPS: Well, we believe that --

14 THE COURT: I guess if we had --

15 MR. SCHEPPS: -- everything was --

16 THE COURT: -- to make it more complicated and
17 expensive than it already has been, we could --

18 MR. SCHEPPS: -- we believe that this Court blessed
19 it when it approved the global settlement agreement.

20 THE COURT: All right.

21 MR. SCHEPPS: Thank you, Your Honor.

22 THE COURT: All right. Who else wants to be heard
23 today?

24 MR. URBANIK: We have a response whenever it's ripe.

25 THE COURT: Okay. Anyone else want to be heard? Mr.