

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

NETSPHERE, INC.,
MANILA INDUSTRIES, INC., and
MUNISH KRISHAN,
Plaintiffs.

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Civil Action No. 3-09CV0988-F

v.

JEFFREY BARON, and
ONDOVA LIMITED COMPANY,
Defendants.

**MOTION FOR LEAVE TO FILE: MOTION TO STAY RECEIVERSHIP
PENDING APPEAL**

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion to stay the receivership pending appeal because there is no reasonable basis to keep the receivership in place in light of the procedural posture of the case.

1. On May 24, 2011, this Court entered an Order [Doc 586] advising the parties that this Court is stayed from taking further action in the matters involved in the appeals taken on May 18, 2011.

2. This Court previously entered an Order on March 2, 2011 [Doc 338], advising that the primary purpose of continuing the receivership was to “ensure that the unpaid attorneys claims against him could be resolved so that the bankruptcy action could be closed”. That matter is included in the appeal.

3. The bankruptcy trustee has filed an adversary action in the bankruptcy court against Mr. Emke regarding “servers.com”.¹ The filing of the new adversary action and the shortly expected counterclaims will prevent the closing and resolution of the bankruptcy case for some time to come—until discovery is completed and a trial is held on that adversary action. Resolution of the attorneys fees claims will therefore not allow the immediate closing of the bankruptcy case (assuming *arguendo* the claims would otherwise have an impact on the closing of the bankruptcy case).²

4. Accordingly, in light of the current procedural posture of this case, there is no reasonable basis to continue the receivership.

5. This Court may take security for staying the receivership, if this Court determines such security appropriate.

6. The claims currently listed total \$853,000.00 [Doc 562].

7. Jeff has \$630,000.00 of his money held in escrow in the bankruptcy court,

¹ Note should be taken that Mr. Emke had been represented by Mr. Vogel’s law firm when he sued Ondova with respect to “servers.com”, and that dispute was still pending when this Court decided to appoint Mr. Vogel as special master in this case. The twisted interrelations between Vogel, Gardere, Ondova, Baron, and Emke have become untenable with respect to Mr. Sherman’s latest litigation. Because of the clear conflict of interest involved, it is not possible for Vogel to properly act to defend Jeff Baron’s interests in the bankruptcy court with respect to Sherman’s new litigation over the prior “servers.com” litigation. Since Gardere represented Emke against Ondova and Jeff Baron, Gardere and Vogel cannot now represent any party’s interest against Emke relating to the very same matter.

² **Notably, since November 2010 Jeff Baron has been 100% neutralized in the bankruptcy court,** and the bankruptcy court recognizes no rights in that court on Mr. Baron’s behalf recognizing only the receiver as holding all of Mr. Baron’s rights in that court. Yet, in the more than 6 months that have passed, Mr. Sherman has not closed down the bankruptcy, and has instead made great pains to expand the bankruptcy and prevent it from being closed, for example by recently initiating an adversary action against Mr. Emke.

with approximately half of the sum specifically held as security with respect to resolution of the Pronske claim. Accordingly, in addition to the \$630,000.00 currently held in the bankruptcy case, an injunction prohibiting the liquidation of \$223,000.00 in Jeff's stocks would provide full security for the entire claims total.³

8. There are also grounds that security in a substantially reduced amount would also be reasonable, if security is required. Although no discovery, no expert to provide an opinion in support of Mr. Baron, and no investigation has been allowed, over \$672,000.00 of the \$853,000.00 in 'claims' have already been shown groundless as a matter of law:⁴

- a. With respect to the Broome claim, **Broome's own evidence clearly establishes that he agreed to a \$10,000.00 per month cap on fees incurred in any month.** Broome's claim is based on the irrefutably false representations of Broome that his contract contained no such provision.
- b. With respect to the Crandall claim, **Crandall's invoice that explicitly states Crandall is billing at a flat rate proves that she was working at a flat rate (for which she was fully paid) and not the hourly \$300/hour rate she now claims.**

³ Jeff had more than a million dollars in cash in the bank, that appears to have been distributed by this Court for other purposes.

⁴ In reviewing groundlessness of the claims a compelling question is raised: **Why did so many attorneys believe that their clearly groundless claims would be well received by Mr. Vogel ?**

c. With respect to the Pronske claim, **Mr. Pronske admitted that he was paid a fee of \$75,000.00 up front, and provided no contract or engagement letter.** Pronske states in his claim affidavit “There are no engagement agreements relating to the representation”. **For almost a year after receiving a \$75,000.00 fee and working on the case, Pronske sent no bill, no invoice, no demand for payment, no hourly work report, and no other document of any type alleging that the flat fee payment was actually a ‘retainer’.** Almost a year after he had been paid, Pronske suddenly decided that some two hundred thousand dollars in fees which had never been billed or even reported, were suddenly past due and owing.

d. With respect to the Ferguson claim, Ferguson’s claim submission clearly establishes that Ferguson perjured himself when he testified before the Court. In his live testimony Ferguson falsely testified his agreement to be paid a flat rate covered the period only to August 21, and after August 21, Ferguson’s rate was \$300/hour. **However, Ferguson’s own contract – produced by him as part of his ‘claim’– establishes unambiguously that the flat rate was through August 31.** That rate (pursuant to the clear and express written contract terms, for all of Ferguson’s work from inception) was \$22,000.00, and Ferguson admits

he was paid that amount in full. Ferguson's claim submission offers a very different story from Ferguson's prior sworn live testimony. No longer does Ferguson claim he is entitled to more money than the flat fee he contracted for because he was required to work 99% of his time rather than 33% of his time. Instead, Ferguson now claims he is entitled to more money than he contracted for because he was 'defrauded'. Ferguson's claim is that Jeff 'fraudulently' represented that the money would be paid from Jeff's million dollar trust and not from Jeff's pocket because Jeff was personally "destitute" (according to Ferguson). However, the trust's money is just as green and in US Dollars just the same as if it had come from Jeff's pocket. The 'fraud' alleged as to where the money to pay the bill came from (the million dollar trust or Jeff's pocket) has no materiality as to rate agreed to by Ferguson.⁵

e. With respect to the Powers and Taylor claim for a 'contingency fee', pursuant to their own contract such a fee is not due. Moreover, Mr. Taylor's own email to Jeff proves they had not claimed the contingency fee at the time or immediately after the global settlement. Taylor only started suggesting that a 'contingency' fee was due

⁵ Notably, Ferguson has been sued on multiple occasions and was repeatedly found guilty of wrongfully causing literally millions of dollars in losses to others. Ferguson at the time he approached Jeff for work, was in the process of escaping ultimate liability for the damages he caused and was adjudged to have caused, by his use of the bankruptcy rules to obtain a discharge of his liability.

(originally for half the current amount claimed) after Pronske began his ‘scorched earth’ policy against Jeff.

f. With respect to the Lyon claim for \$300/per hour (ie, seeking \$260/hour above the \$40/hour he was paid), **Lyon’s own email⁶ proves without ambiguity that his hourly rate was the \$40/hour he was paid and not the \$300/hour now claimed.**

g. With respect to the Schurig claim, **Schurig’s ‘claim’ affidavit admits that 99% of her ‘claim’ is for work done on behalf of “Asiatrust”, (a company owned by Ms. Schurig’s colleague) that is neither owned, nor controlled by Jeff Baron, and has itself filed claims against Jeff and/or Ondova. Notably, Ms. Schurig has, per her ‘claim’ no contract with Asiatrust for the \$100,000+ fees claimed due from them.⁷**

h. With respect to the Garrey claim, Mr. Garrey’s own claim evidence establishes that he worked at most two weeks and that **his monthly billing rate was capped at \$8,500.00. \$1,000,000.00 (one Million) was originally claimed as the amount of Garrey’s claim for two weeks of alleged work, and the current claim of \$52,000.00 is equally as frivolous.**

⁶ Bragging about his \$40/hour fee providing ‘more bang for the buck’ and seeking more work on Baron’s behalf.

⁷ The gross failure to provide a documented accounting for the \$2,000,000.00 Mr. Baron placed with Ms. Schurig to hold in trust and which has now been reported “gone” has been addressed in prior motions.

i. With respect to the Friedman and Hall claims, not a single page of documentation was provided to the undersigned counsel in support of the claims. Mr. Vogel and his partners have represented that all of the materials they received were turned over to the undersigned. Accordingly, the Friedman claim and the Hall claim are wholly unsupported.

9. For further cause, the argument of Mr. Baron's appellate briefing is attached hereto as Exhibit "A" and incorporated herein by reference.

WHEREFORE, Jeff Baron requests the Court to immediately stay the receivership pending resolution of the issues on appeal to the Fifth Circuit.

Respectfully submitted,

/s/ Gary N. Schepps

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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

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned conferred with counsel for: (1) Mr. Vogel by email and the receiver takes no position and does not oppose the relief requested, and (2) Mr. Sherman by email and they oppose.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps