

**Case No. 13-10120**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

In the Matter of: ONDOVA LIMITED COMPANY,

Debtor.

-----

PETFINDERS, L.L.C.,

Appellant

v.

CHAPTER 11 TRUSTEE DANIEL J. SHERMAN,

Appellee

-----

Cons. w/ 13-10121

In the Matter of: ONDOVA LIMITED COMPANY,

Debtor.

-----

JEFFREY BARON,

Appellant

v.

DANIEL J. SHERMAN,

Appellee

-----

Cons. w/ 13-10122

In the Matter of: ONDOVA LIMITED COMPANY,

Debtor.

---

GARY N. SCHEPPS,

Appellant

v.

DANIEL J. SHERMAN, Chapter 11 Trustee

Appellee

---

Appeal from the United States District Court  
for the Northern District of Texas, Dallas Division,  
The Honorable Royal Ferguson, Presiding

---

**APPELLEE'S MOTION TO DISMISS  
APPEAL FOR LACK OF APPELLATE JURISDICTION  
AND, IN THE ALTERNATIVE, TO STRIKE APPELLANT'S  
BRIEF FOR LACK OF APPELLATE JURISDICTION**

---

Raymond J. Urbanik, Esq.  
Isaac J. Brown, Esq.  
**MUNSCH HARDT KOPF & HARR, P.C.**  
500 North Akard Street  
Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

**ATTORNEYS FOR APPELLEE**

---

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case:

**1. Appellant:**

Jeffrey Baron

Counsel for the Appellant:

Stephen R. Cochell, Esq.  
5555 West Loop South, Ste. 200  
Bellaire, Texas 77401  
Telephone: (832) 767-1065  
Facsimile: (832) 767-1686

**2. Appellee:**

Daniel J. Sherman, Chapter 11 Trustee

Counsel for the Appellee:

Raymond J. Urbanik, Esq.  
Isaac J. Brown, Esq.  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard Street  
Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

**3. Persons with Indirect Interests in Appeal:**

Jeffrey N. Rothleder  
representing Discovery Communications  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, D.C. 20036-5339

Daniel J. Sherman  
representing Daniel J. Sherman (Trustee) (Appellee)

Sherman & Yaquinto  
509 N. Montclair Ave.  
Dallas, TX 75208-5498

Charla Aldous  
representing Aldous Law Firm  
Aldous Law Firm  
2305 Cedar Springs, Suite 300  
Dallas, TX 75201

Mark Edward Andrews  
representing Grupo Andrea, S.A. de C.V.  
Cox Smith Matthews Incorporated  
1201 Elm Street, Suite 3300  
Dallas, TX 75270

Stanley D. Broome  
formerly representing Jeffrey Baron  
The Broome Law Firm, PLLC  
105 Decker Court  
Suite 850  
Irving, TX 75062

Gerrit M. Pronske  
representing Pronske & Patel, PC  
2200 Ross Avenue  
Suite 5350  
Dallas, TX 75201

Craig Alan Capua  
formally representing Iguana Consulting, LLC,  
Novo Point, LLC, Quantec, LLC  
West & Associates, LLP  
320 South R.L. Thornton Fwy., Ste. 300  
Dallas, TX 75203

Jeanne Crandall  
representing Reyna Hinds & Crandall  
Reyna, Hinds & Crandall

1201 Elm Street, Suite 3850  
Dallas, TX 75270

Angela B. Degeyter  
representing VeriSign, Inc.  
Vinson & Elkins, LLP  
2001 Ross Ave., Ste. 3700  
Dallas, TX 75201-2975

James Michael Eckels  
7505 John Carpenter Freeway  
Dallas, TX 75247

William Lloyd Foreman  
representing Owens, Clary & Aiken, LLP  
Owens, Clary & Aiken, L.L.P.  
700 N. Pearl St., No. 1600  
Dallas, TX 75201

Michael A. Grow  
representing Grupo Andrea, S.A. de C.V.  
Arent Fox LLP  
1050 Connecticut Ave, NW  
Washington, DC 20036

Michael S. Haynes  
representing Peter S. Vogel  
Akin Gump Strauss  
Hauer & Feld LLP  
1700 Pacific Avenue  
Suite 4100  
Dallas, TX 75201

Melissa S. Hayward  
representing Manila Industries, Inc. ;  
Netsphere, Inc.; Franklin Skierski Lovall Hayward LLP  
10501 N. Central Expwy., Ste. 106  
Dallas, TX 75231

Edwin Paul Keiffer  
Formally representing Ondova Limited Company;  
Wright Ginsberg Wright Ginsberg Brusilow P.C.  
Republic Center, Suite 4150  
325 North St. Paul Street  
Dallas, TX 75201

Bradley Clay Knapp  
representing Locke Lord Bissell & Liddell LLP  
Locke Lord Bissell & Liddell  
2200 Ross Avenue, Suite 2200  
Dallas, TX 75201

Ryan Kenneth Lurich representing Friedman & Feiger,  
L.L.P.  
Friedman & Feiger, L.L.P.  
5301 Spring Valley Rd. Ste 200  
Dallas, TX 75254

Gary G. Lyon  
representing Gary G. Lyon  
Gary G. Lyon, Attorney at Law  
P.O. Box 1227  
Anna, TX 75409-1227

Dennis Oliver Olson  
Formally representing Novo Point, LLC  
Olson, Nicoud & Gueck, LLP  
1201 Main Street, Suite 2470  
Dallas, TX 75202

Franklin H. Perry  
representing Payne and Blanchard, LLP; HCB,  
LLC;  
700 N. Pearl St.  
Ste. 500, North Tower  
Dallas, TX 75201-7424

Patrick W. Powers and Mark Taylor  
representing Powers Taylor LLP

Cash Powers Taylor, LLP  
Powers Taylor LLP  
8150 N. Central Expressway, Suite 1575  
Dallas, TX 75206

Jeffrey H. Rasansky  
representing Rasansky Law Firm  
Rasansky Law Firm  
2525 McKinnon, Suite 725  
Dallas, TX 75201

David D. Ritter  
representing Grupo Andrea, S.A. de C.V.  
Kane, Russell, Coleman & Logan  
3700 Thanksgiving Tower  
1601 Elm St.  
Dallas, TX 75201-7207

Alec P. Rosenberg  
representing Grupo Andrea, S.A. de C.V.  
Arent Fox LLP  
1050 Connecticut Ave N.W.  
Washington, DC 20036  
202-857-6395

Deirdre B. Ruckman  
representing Peter S. Vogel  
Gardere, Wynne & Sewell  
1601 Elm St., Suite 3000  
Dallas, TX 75201

Eric Lopez Schnabel  
representing VeriSign, Inc.  
Dorsey & Witney (Delaware) LLP  
300 Delaware Ave., Ste. 1010  
Wilmington, DE 19801

Eric J. Taube  
representing Asia Trust Limited

100 Congress Ave., 18th Floor  
Austin, TX 78701

Martin Keith Thomas  
representing Jeffrey Baron  
Thomas & Sobol  
P.O. Box 36528  
Dallas, TX 75235

Certified By: /s/ Raymond J. Urbanik  
Raymond J. Urbanik, Esq.  
Counsel for the Appellee



Appellee Daniel J. Sherman (“Trustee” or “Appellee”), the trustee in the underlying Bankruptcy Case, hereby files this Motion to Dismiss Appeal for Lack of Appellate Jurisdiction and, in the Alternative, to Strike Appellant’s Brief for Lack of Appellate Jurisdiction (the “Motion”), and respectfully states as follows:

**I. RELIEF SOUGHT**

1. The Trustee requests that the Court dismiss this appeal for lack of appellate jurisdiction in accordance with 28 U.S.C. §§ 158 and 1291. Jeffrey Baron (“Baron”) is appealing an order administratively closing a district court case. This type of order is not a final order and, as such, is not an act of jurisdictional significance with respect to the underlying issues. Because the District Court has not ruled on the underlying issues, this Court does not have jurisdiction and the appeal should be dismissed.

2. In the alternative, if the Court decides it does have jurisdiction over this appeal, the Trustee requests that the Court strike Appellant’s Brief in its entirety. Pursuant to 28 U.S.C. §§ 158 and 1291, this Court lacks jurisdiction to adjudicate any of the underlying substantive issues in the District Court Appeal because the order administratively closing the case did not address or decide any of those issues. The material briefed by Baron was not the subject of a final order by the District Court.

## II. BACKGROUND

3. This appeal originates from a dispute over the ownership, and corresponding right to sell, the Internet domain name Servers.com. There were a series of court cases over ownership of Servers.com between Ondova Limited Company (“Ondova”), the entity in the underlying bankruptcy case, and an individual named Mike Emke (“Emke”). On July 6, 2009, a settlement agreement was entered into between the two parties (the “Settlement Agreement”).<sup>1</sup>

4. Ondova later filed for Chapter 11 bankruptcy protection on July 27, 2009, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”), and the Appellee became the Chapter 11 trustee of Ondova by order entered on September 17, 2009.<sup>2</sup> Because of disagreements between the Trustee and Emke with respect to the Settlement Agreement, an adversary proceeding was filed by the Trustee on March 22, 2011 (Case No. 11-03181).<sup>3</sup> The Bankruptcy Court conducted a trial and, on October 18, 2011, entered its Findings of Fact, Conclusions of Law and Order by which it found that Ondova had an undivided equitable interest in Servers.com, and the domain name could be sold by Appellee.<sup>4</sup>

---

<sup>1</sup> ROA.268.

<sup>2</sup> ROA.49.

<sup>3</sup> ROA.187. The Trustee’s Complaint and Amended Complaint are APSR E and F.

<sup>4</sup> ROA.626.

5. The Bankruptcy Court approved the Trustee’s request to sell Servers.com on November 14, 2011.<sup>5</sup> Baron filed his Notice of Appeal of the same on November 28, 2011, which appeal was docketed as Case No. 12-cv-00367 (the “District Court Appeal”) in the District Court for the Northern District of Texas (the “District Court”).<sup>6</sup> As of May 25, 2012, all briefing, including supplemental letter briefs on domain name ownership requested by the District Court Judge, was submitted in the District Court Appeal.<sup>7</sup>

6. On January 7, 2013, the District Court entered its Order Closing Case in the District Court Appeal (the “Order”),<sup>8</sup> noting that, because of the Fifth Circuit opinion in an unrelated case, No. 10-11202, “there are no further issues for [the District Court] to address concerning the sale of Servers.com. Accordingly, the Clerk of the court is instructed to **CLOSE** this case.” (emphasis original). The Order was entered as Docket Number 22 in the District Court Case with the heading: “Order Administratively Closing Case.” Nothing in the District Court’s Order of January 7, 2013 addressed or ruled on the merits of Baron’s appeal from the Bankruptcy Court or any of the matters raised in the parties’ briefing.

---

<sup>5</sup> ROA.160.

<sup>6</sup> ROA.161.

<sup>7</sup> ROA.5.

<sup>8</sup> ROA.1566.

7. On February 6, 2013 Baron filed his Notice of Appeal, initiating the above-captioned appeal of the Order.<sup>9</sup>

### **III. SUMMARY OF BASIS FOR DISMISSAL**

8. Pursuant to 28 U.S.C. §§ 158 and 1291 this Court does not possess jurisdiction to review non-final orders of the District Court. Applicable case law holds that orders administratively closing cases are not final. They are not of jurisdictional significance with respect to the substantive issues of the appeal.

9. Baron's Notice of Appeal only pertains to Docket No. 22, the Order administratively closing the case. By both the content of the Order and the clerk's entry on the record, that Order is an administrative closure only. This Court is thus without jurisdiction and the appeal should be dismissed. Baron's relief lies in filing a Motion to Reopen the District Court Case. The Trustee believes that an appeal solely on matters this Court lacks jurisdiction over is frivolous and should be dismissed per 5th Circuit Rule 42.2.

10. If the Court determines that has jurisdiction over the Order in some manner, Baron's Brief should still be struck. Baron's Brief addresses the substantive matters of the District Court Appeal (an order of the Bankruptcy Court approving the sale of Servers.com), none of which were decided by the District Court. Because the Order simply administratively closed the case, jurisdiction over

---

<sup>9</sup> ROA.5.

those issues has not been transferred to this Court and briefing on those matters is immaterial to this appeal. Accordingly, in the alternative to dismissal of the appeal, the Court should strike Appellant's Brief in its entirety and order Baron to submit a new brief addressing matters related to an appeal of Docket No. 22.

#### IV. DISCUSSION

##### A. The Court Should Dismiss the Appeal for Lack of Jurisdiction

###### a. *The Order was Not a Final Decision*

11. Both 28 U.S.C. §§ 158 and 1291 confer appellate jurisdiction on this Court over appeals from "final decisions" of the district courts. A district court's order administratively closing a case is not a final decision. Because Baron's Notice of Appeal requests this Court to review a non-final order, the Court should dismiss the appeal.

12. The Fifth Circuit, along with other circuit courts, has held that orders administratively closing cases are not appealable final decisions. *See Mire v. Full Spectrum Lending Inc.*, 389 F.3d 163, 167 (5th Cir. 2004) (holding that an administrative closure "is the functional equivalent of a stay, not a dismissal and thus not an appealable order"); *S. La. Cement, Inc. v. Van Aalst Bulk Handling, B.V.*, 383 F.3d 297, 302 (5th Cir. 2004) (holding that "administratively closing a case is not a dismissal or a final decision"); *Am. Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 715 (5th Cir. 2002) (Dennis, J., concurring) (clarifying that an

“administrative closure . . . has no jurisdictional significance”); *Dees v. Billy*, 394 F.3d 1290, 1294 (9th Cir. 2005) (noting that, while it was a new issue to the Ninth Circuit, “those circuits that have confronted the issue have unanimously echoed the Fifth Circuit’s conclusion that an administrative closing has no jurisdictional effect”); *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389, 392 (1st Cir.1999) (“Properly understood, an administrative closing has no effect other than to remove a case from the court's active docket and permit the transfer of records associated with the case to an appropriate storage repository.”).

13. In 2002 the Fifth Circuit held, in *American Heritage*, that when a district court that has “nothing before it but whether to compel arbitration and stay state court proceedings” rules on those matters and administratively closes the case it will be a “final” decision for the purposes of Section 16 of the Federal Arbitration Act. *See Am. Heritage*, 294 F.3d at 708; 9 U.S.C. § 16 (providing that an appeal may be taken from “a **final decision** with respect to an arbitration that is subject to this title” (emphasis added)). The Court based its holding on the fact that a series of district court rulings “effectively end[ed] the entire matter on the merits” and, per the traditional definition of a “final” decision, left only the enforcement of the judgment. *See id.* Thus, if every substantive issue has been ruled on, then an order administratively closing a case takes on the character of a final order.

14. The concurring opinion to *American Heritage* clarified that the administrative closure itself “has no jurisdictional significance” and to hold otherwise “would be attributing jurisdictional significance to a designation not sanctioned by the Federal Rules.” *See id.* at 715 (Dennis, J., concurring). *American Heritage* has since been frequently cited for the proposition that an order administratively closing a case that does not dispose of the entirety of the substantive material is not an appealable final decision. *See S. La. Cement, Inc.*, 383 F.3d at 302; *Mire*, 389 F.3d at 165-66; *Dees*, 394 F.3d at 1293-94 (providing a review of relevant Fifth Circuit cases on the issue of whether administrative closures could be appealed).

15. In the Third Circuit case *Penn West Associates, Inc. v. Cohen*, the appellate court examined whether it had jurisdiction under a substantially similar district court order to the one at issue in this appeal and held that it was not a final decision. *See Penn W. Assocs., Inc. v. Cohen*, 371 F.3d 118 (3d Cir. 2004); *see also Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240 (3d Cir. 2013) (also examining a district court order with the language that the case “be marked CLOSED” and “reject[ing] . . . attempts to characterize an administrative closing as a final order in disguise.”).

16. The relevant portion of the district court order read: “there are no further matters pending before the Court, IT IS HEREBY ORDERED that the

Clerk of the Court mark the above captioned matter closed.” *Penn W. Assocs., Inc.*, 371 F.3d at 121. The Third Circuit held that this order “did not resolve, or even purport to resolve, any of the claims . . . presented to the District Court. Rather, its purpose was solely to direct the Clerk of the Court to mark . . . [the] case as closed.” *Id.* at 125. As such, it was “an administrative closing that has no legal consequence other than to remove that case from the district court’s active docket.” *Id.* Thus the Third Circuit, faced with a district court order in substantially the same language as the order in this case, and citing, in part, this Court’s decision in *American Heritage*, held that, even where the district court who made the order thought otherwise, an administrative closing order is not a final decision.

17. There is clear judicial precedent in this Circuit that only when an administrative closing is combined with the substantive disposition of each and every matter on appeal does it become a final order. *See Am. Heritage*, 294 F.3d at 708. The Order on appeal here dealt with none of the substantive matters and was marked an order “Administratively Closing” the case on the docket. This Court should dismiss the appeal for lack of appellate jurisdiction over this non-final decision.

*b. The Court Should Strike Baron’s Brief*

18. All of the subject matter briefed by the Appellant relates to substantive matters form the underlying appeal for which the District Court has



made no final decision or ruling. Because of this, even if the Court finds that it does have jurisdiction over this appeal, the Court still does not have appellate jurisdiction over the matters briefed. Accordingly, the Court should strike the Appellant's Brief in its entirety.

19. This Court, in *Ali v. Quarterman*, held that “the appellate court may decide the merits so long as concerned only with the order from which the appeal is taken.” 607 F.3d 1046, 1048 (5th Cir. 2010). Here, the appeal was taken from the Order administratively closing the case; an order that contained no ruling on any of the matters or issues briefed by the Trustee. In *Ali*, the Court only had jurisdiction because the appeal had to do with the denial of injunctive relief, and the order administratively closing the case was “inextricably intertwined.” *See id.* at 1048.

20. For the reasons and based on the case law already stated, this Court does not have jurisdiction over the issues briefed by the Appellant. If the Court does not dismiss the appeal it should strike the Appellant's Brief and order new briefing on such subject matter as the Court considers it to have jurisdiction over.

#### V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully request that the Court enter an order: (i) dismissing the Appeal in its entirety for

lack of appellate jurisdiction; (ii) alternatively, striking Baron's Appellant's Brief in its entirety; (ii) awarding the Trustee his attorneys' fees and costs incurred in this Appeal and this Motion; and (iv) granting to the Trustee all such other and further relief to which they may be justly entitled either at law or in equity.

Respectfully submitted this 12th day of May, 2014.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Raymond J. Urbanik  
Raymond J. Urbanik, Esq.  
Texas Bar No. 20414050  
Isaac J. Brown, Esq.  
Texas Bar No. 24087219  
3800 Lincoln Plaza  
500 N. Akard St.  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
E-mail: rurbanik@munsch.com  
E-mail: ibrown@munsch.com

**ATTORNEYS FOR APPELLEE,  
DANIEL J. SHERMAN**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 12th day of May, 2014, he caused a true and correct copy of this Motion to be served on Counsel for Appellant.

Stephen Rudolph Cochell  
The Cochell Law Firm  
7026 Old Katy Road, Suite 259  
Houston, TX 77024  
srcochell@cochellfirm.com

By: /s/ Raymond J. Urbanik  
Raymond J. Urbanik, Esq.

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that he contacted Stephen R. Cochell to determine if Appellant consented to or opposed this Motion on May 12th, 2014. Mr. Cochell has not responded as of the time this Motion was filed.

/s/ Raymond J. Urbanik  
Raymond J. Urbanik, Esq.