

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

NETSPHERE, INC.,	§
MANILA INDUSTRIES, INC., and	§
MUNISH KRISHAN,	§
Plaintiffs.	§
	§ Civil Action No. 3-09CV0988-F
v.	§
	§
JEFFREY BARON, and	§
ONDOVA LIMITED COMPANY,	§
Defendants.	§

**RESPONSE, OBJECTION, MOTION FOR LEAVE TO FILE, AND
MOTION FOR RELIEF WITH RESPECT TO SHERMAN'S MOTION TO
BE GIVEN HUNDREDS OF THOUSANDS OF DOLLARS OF JEFF
BARON'S MONEY [DOC 467]**

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, Appellant, and makes this response, and jointly moves this Court to grant leave to file the included motion for relief to allow Jeff access to his money to hire expert witnesses to offer evidence as to the reasonableness and necessity of the claimed fees, to provide funding for the employment of trial counsel and legal assistants to assist in investigating and responding to Sherman's motion, to provide funding for legal research on westlaw and lexis, to allow discovery including for disclosures, document production and depositions.

1. Jeff Baron moves for access to his money sufficient to hire experienced and qualified federal trial counsel to defend Sherman's motion [DOC 467], to hire experts to offer testimony as to the reasonableness of the fees demanded by

Sherman, and to pay expenses such as for legal research.

2. Sherman's motion is lengthy, but lacks any statement of the legal grounds for the relief requested by the movant. See Fed.R.Civ.P. 7(b)(1)(B); *Intera Corp. v. Henderson*, 428 F.3d 605, 611 (6th Cir. 2005). Jeff Baron accordingly moves to strike the motion, and jointly and in the alternative to require a more definite statement so that a more specific response can be made.

3. Notably, the district court has been divested of jurisdiction over the receivership, and lacks jurisdiction to award attorneys fees with respect to work on the matter on appeal. As a matter of established law, when Jeff appealed the receivership order the District Court was divested of jurisdiction as to matters relating to the receivership orders and subsequent orders and, for that reason, fees cannot be recovered in the district court for work relating to those orders. *Taylor v. Sterrett*, 640 F.2d 663, 668 (5th Cir. 1981).

4. In our country, absent statutory authority the "American Rule" applies with respect to attorney's fees. *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 602 (2001) ("a general practice of not awarding fees to a prevailing party absent explicit statutory authority."); *KeyTronic Corp. v. United States*, 511 U.S. 809, 815 (1994) (attorney's fees are not a recoverable cost of litigation "absent explicit congressional authorization.").

5. No provision of the bankruptcy code, authorized the Trustee to seek a receivership in order to reduce the amount of 'claims' that might be made in the

bankruptcy court. The fees requested are also grossly excessive and unreasonable.

6. The trustee's admission that the receivership was intended to extend the power and jurisdiction of the bankruptcy proceeding is new evidence which reveals the clear unlawfulness of the original motion and order. Congress has expressly prohibited a court from imposing receivership as an extension of a bankruptcy proceeding. 11 U.S.C. §105(b).

7. The Trustee's further admission is shocking— he secretly collaborated ex-parte with Peter Vogel who was employed as a Special Master to have Peter Vogel appointed as receiver over Jeff Baron (by which Peter Vogel and his law firm have been allowed to bill what is now around a million dollars in fees to 'administer' the receivership). Upon his appointment, Peter Vogel withdrew the fee objection Jeff Baron had made to the Trustee's grossly excessive attorney's fee application in the bankruptcy court. Jeff Baron moves that an independent investigator be appointed to investigate the apparent gross misconduct on the part of Peter Vogel as special master—engaging in secret ex-parte communications with Sherman in collaboration over the filing of a motion to appoint himself as receiver over Jeff Baron from which he and his firm would be able to bill approximately a million dollars in fees. Jointly and in the alternative Jeff moves for access to his funds to be allowed to retain counsel to protect and prosecute Jeff's interests with respect to the conduct of Peter Vogel and Mr. Sherman. Jeff Baron further moves that the Court enter an order for Peter Vogel to disclose the full contents of all ex-parte communications he engaged in while employed as special master. Jeff Baron further respectfully moves the

Court to disclose the contents of all ex-parte communications, if any, between Peter Vogel and the Court or Court personnel. Jeff Baron jointly and respectfully moves the Court to disclose the contents of all ex-parte communications regarding this case, Peter Vogel, the trustee, or Jeff Baron, that was conducted between this Court and the bankruptcy judge.

Respectfully submitted,

/s/ Gary N. Schepps

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FOR JEFFREY BARON

CERTIFICATE OF SERVICE

This is to certify that this filing 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
COURT ORDERED TRIAL COUNSEL
FOR JEFFREY BARON