

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

PETITION FOR WRIT OF MANDAMUS

Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 200-0000 - Telephone
(972) 200-0535 - Facsimile
Email: legal@schepps.net
For Petitioner

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. PRINCIPAL PARTIES IN THE BANKRUPTCY CASE

- a. **DEBTOR:** Ondova Ltd.
- b. **Beneficial Equity holder of Debtor:** Jeffrey Baron
- c. **Chapter 11 Trustee:** Daniel J. Sherman

2. PARTIES OF INTEREST IN THIS PETITION

- a. **Petitioner:** Novo Point LLC
- b. **Real Party in Interest:** Daniel J. Sherman
- c. **Respondents:**
 - a. Honorable Stacey G. C. Jernigan
 - b. Tawana C. Marshall, Clerk of Court

3. ATTORNEYS & THEIR PARTIES

Daniel J. Sherman
representing **Daniel J. Sherman (Trustee)**
Sherman & Yaquinto
509 N. Montclair Ave.
Dallas, TX 75208-5498
(214) 942-5502
djsherman@syllp.com

Jay Ong
representing **Daniel J. Sherman Trustee Munsch Hardt Kopf Harr, P.C.**
& Lee Jacob Pannier
Munsch, Hardt, Kopf & Harr, P.C.

3800 Lincoln Plaza
500 N Akard St
Dallas, TX 75201
(214) 855-7500

Raymond J. Urbanik

representing **Daniel J. Sherman; Munsch Hardt Kopf & Harr, P.C.**
Munsch, Hardt, Kopf & Harr PC
500 N. Akard St., Ste. 3800
Dallas, TX 75201-6659
214-855-7590
214-978-4374 (fax)
rurbanik@munsch.com

Charla Aldous

representing **Aldous Law Firm**
Aldous Law Firm
2305 Cedar Springs, Suite 200
Dallas, TX 75201
214-526-5595

Mark Edward Andrews

representing **Grupo Andrea, S.A. de C.V.**
Cox Smith Matthews Incorporated
1201 Elm Street, Suite 3300
Dallas, TX 75270
(214)698-7800
(214)698-7899 (fax)

Stanley D. Broome

representing **Jeffrey Baron**
The Broome Law Firm, PLLC
105 Decker Court
Suite 850
Irving, TX 75062
(214)574-7500
(214)574-7501 (fax)
sbroome@broomelegal.com

Gerrit M. Pronske
representing **Pronske & Patel, PC**
Pronske & Patel, P.C.
2200 Ross Avenue
Suite 5350
Dallas, TX 75201
214 658-6500
214-658-6509 (fax)

Craig Alan Capua
representing **Iguana Consulting, LLC, Novo Point, LLC, Quantec, LLC**
West & Associates, LLP
320 South R.L. Thornton Fwy.,
Ste. 300
Dallas, TX 75203
(214) 941-1881
(214) 941-1399 (fax)
craig.c@westllp.com

Jeanne Crandall
representing **Reyna Hinds & Crandall**
Reyna, Hinds & Crandall
1201 Elm Street, Suite 3850
Dallas, TX 75270
(214) 760-8100 x103
(214) 760-8109 (fax)
jeannecrandall@sbcglobal.net

Angela B. Degeyter
representing **VeriSign, Inc.**
Vinson & Elkins, LLP
2001 Ross Ave., Ste. 3700
Dallas, TX 75201-2975
(214) 220-7763
(214) 999-7763 (fax)
adegeyter@velaw.com

James Michael Eckels
Purportedly representing **"Quantec, LLC Novo Point, LLC, The Village Trust"**
7505 John Carpenter Freeway
Dallas, TX 75247
(972) 439-1882
(817) 704-4489 (fax)

jamesmeckels@gmail.com

William Lloyd Foreman

representing **Owens, Clary & Aiken, LLP**
Owens, Clary & Aiken, L.L.P.
700 N. Pearl St., No. 1600
Dallas, TX 75201
(214)698-2107
214-698-2121 (fax)
wforeman@oca-law.com

Michael A. Grow

representing **Grupo Andrea, S.A. de C.V.**
Arent Fox LLP
1050 Connecticut Ave, NW
Washington, DC 20036
202-857-6395

Michael S. Haynes

representing **Peter S. Vogel**
Akin Gump Strauss
Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas, TX 75201
(214)969-2845
(214)969-4343 (fax)
mhaynes@akingump.com

Melissa S. Hayward

representing **Manila Industries, Inc. ; Netsphere, Inc.; Franklin Skierski Lovall Hayward LLP**
Franklin Skierski Lovall Hayward LLP
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
972-755-7104
972-755-7114 (fax)
MHayward@FSLHlaw.com

Edwin Paul Keiffer

representing **Ondova Limited Company; Wright Ginsberg Brusilow, P.C.**

Wright Ginsberg Brusilow P.C.
Republic Center, Suite 4150
325 North St. Paul Street
Dallas, TX 75201
(214) 651-6517
(214) 744-2615 (fax)
pkeiffer@wgblawfirm.com

Bradley Clay Knapp

representing **Locke Lord Bissell & Liddell LLP**
Locke Lord Bissell & Liddell
2200 Ross Avenue, Suite 2200
Dallas, TX 75201
(214)740-8586
(214)756-8586 (fax)
bknapp@lockelord.com

Ryan Kenneth Lurich

representing **Friedman & Feiger, L.L.P.**
Friedman & Feiger, L.L.P.
5301 Spring Valley Rd. Ste 200
Dallas, TX 75254
(972) 788-1400
(972) 788-2667 (fax)
rlurich@fflawoffice.com

Gary G. Lyon

representing **Gary G. Lyon**
Gary G. Lyon, Attorney at Law
P.O. Box 1227
Anna, TX 75409-1227
972-977-7221
214-831-0411 (fax)
glyon.attorney@gmail.com

Dennis Oliver Olson

representing **Novo Point, LLC**
Olson, Nicoud & Gueck, LLP
1201 Main Street, Suite 2470
Dallas, TX 75202
(214) 979-7300
(214) 979-7301 (fax)
denniso@dallas-law.com

Franklin H. Perry

Representing **Payne and Blanchard, LLP; HCB, LLC; Marshden, LLC;
Realty Investment Management, LLC; Denis Kleinfeld
Payne and Blanchard, LLP
Plaza of the Americas
700 N. Pearl St.
Ste 500, North Tower
Dallas, TX 75201-7424**

Patrick W. Powers

representing **Powers Taylor LLP
Cash Powers Taylor, LLP
Powers Taylor LLP
8150 N. Central Expressway, Suite 1575
Dallas, TX 75206
(214) 239-8900
(214) 239-8901 (fax)
patrick@cptlawfirm.com**

Jeffrey H. Rasansky

representing **Rasansky Law Firm
Rasansky Law Firm
2525 McKinnon, Suite 725
Dallas, TX 75201
214-651-6100
rwolf@jrlawfirm.com**

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
(214)777-4200
(214)777-0049 (fax)
dritter@krcl.com**

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
(214) 999-4250
(214) 999-3250 (fax)
druckman@gardere.com

Eric Lopez Schnabel
representing **VeriSign, Inc.**
Dorsey & Witney (Delaware) LLP
300 Delaware Ave., Ste 1010
Wilmington, DE 19801
302-425-7171
302-425-7175 (fax)

Doug D. Skierski
representing **Manila Industries, Inc.; Netsphere, Inc.;**
Franklin Skierski Lovall Hayward LLP
10501 N. Central Expwy, Suite 106
Dallas, TX 75231
(972) 755-7100
(972) 755-7110 (fax)
dskierski@fslhlaw.com

Eric J. Taube
representing **Asia Trust Limited, as Trustee of The, Village Trust;**
Iguana Consulting, LLC; Novo Point, Mark C. Taylor LLC; Quantec,
LLC; Hohmann, Taube & Summers, L.L.P
Hohmann, Taube & Summers, L.L.P.
100 Congress Ave., 18th Floor
Austin, TX 78701
512-472-5997

512-472-5248 (fax)

erict@hts-law.com,markt@hts-law.com,sherris@hts-law.com,annmariej@hts-law.com

Martin Keith Thomas

purportedly representing **Jeffrey Baron**

Thomas & Sobol

P.O. Box 36528

Dallas, TX 75235

214-951-9466

214-951-9007 (fax)

thomas12@swbell.net

Gary N. Schepps

Drawer 670804

Dallas, Texas 75367

(972) 200-0000 - Telephone

(972) 200-0535 - Facsimile

legal@schepps.net

For Petitioner

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

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS3

TABLE OF CONTENTS11

TABLE OF AUTHORITIES.....14

RELIEF SOUGHT18

(1) The Clerk of the Bankruptcy Court of the Northern District of Texas, Dallas Division to process and deliver to the U.S. District Clerk for the Northern District of Texas for docketing and random assignment to a District Court, the appeals taken pursuant to the following notices of appeal filed in Bankruptcy Case 09-34784-sgj11:..... 18

- a. Notice of Appeal [DE # 610], filed 8/16/11;..... 18
- b. Notice of Appeal [DE # 612], filed 8/18/11;..... 18
- c. Notice of Appeal [DE # 613], filed 8/18/11; and 18
- d. Amended Notice of Appeal [DE # 614], filed 8/18/11..... 18

(2) The Bankruptcy Judge to Vacate the Bankruptcy Judge’s orders striking the above listed Notices of Appeal and Ordering counsel for the Petitioner to Show Cause why they should not be sanctioned and held in Contempt for appealing orders of the Bankruptcy Judge..... 18

STATEMENT OF THE FACTS19

The Bankruptcy Court Proceedings19

Novo Point LLC, not the debtor Ondova, owns the domain name asset “mondial.com”19

The Value of “Mondial.com” is Substantial.....21

Novo Point LLC and the Vogel ‘Receivership’22

REASONS WHY THE WRIT SHOULD ISSUE31

ISSUE 1: Notices of Appeal were timely filed from decisions of the Bankruptcy Court. The right to file such notices is granted pursuant Federal Rule of Bankruptcy Procedure 8001, and 29 U.S.C. §158. The Bankruptcy Court Judge found (without a noticed hearing) that the appeals were not properly authorized, and struck the notices of appeal from her orders. The Bankruptcy Clerk has accordingly refused to process the appeals or docket them with the District Clerk. The Bankruptcy Judge, however, lacks both the authority and jurisdiction to strike the notices of appeal or to otherwise prevent the filing of appeals from her orders. 31

ISSUE 2: Bankruptcy Court Judges are not Article III judges and the right to seek appeal from the orders of a Bankruptcy Court Judge is fundamental to the constitutionality of proceedings before the Bankruptcy Court. Further, the threat of imposition of a penalty for having pursued a right of appeal is a violation of due process of law. The Bankruptcy Judge has ordered attorneys not to appeal her orders and has cited the attorneys who filed notices of appeal from her orders to appear at contempt hearings for having appealed her orders. In order to protect the integrity of the appellate process, litigants and their counsel must be free of apprehension of retaliation and sanction from the Bankruptcy Judge in exercising their right to appeal from orders of the Bankruptcy Court. 33

A. The Bankruptcy Court has Attempted to Divest Article III Courts of their Supervisory Jurisdiction Over the Bankruptcy Court's Orders33

B. The Bankruptcy Court's Attempt to Penalize a Party for Appealing its Orders is also a Violation of Due Process35

ISSUE 3: This Honorable Court has authority to issue the requested writ..... 37

PRAYER.....38

a. Notice of Appeal [DE # 610], filed 8/16/11;..... 38

b. Notice of Appeal [DE # 612], filed 8/18/11;..... 38

c. Notice of Appeal [DE # 613], filed 8/18/11; and 38

d. Amended Notice of Appeal [DE # 614], filed 8/18/11..... 38

CERTIFICATE OF COMPLIANCE40

CERTIFICATE OF SERVICE40

EXHIBITS.....41

TABLE OF AUTHORITIES

FEDERAL CASES

Armstrong v. Manzo,
380 U.S. 545, 552 (1965)..... 29

Boddie v. Connecticut,
401 U.S. 371, 379 (1971)..... 29

Booth v. Clark,
58 U.S. 322, 333, 17 How. 322, 15 L.Ed. 164 (1854)..... 30

Cochrane v. WF Potts Son & Co.,
47 F.2d 1026, 1029 (5th Cir. 1931) 28

Cooter & Gell v. Hartmarx Corp.,
496 U.S. 384, 407-408 (1990) 36

Gannett Co. v. DePasquale,
443 U.S. 368, 412 (1979)..... 29

Goss v. Lopez,
419 U.S. 565, 579 (1975)..... 29

Griggs v. Provident Consumer Discount Co.,
459 U.S. 56, 58 (1982)..... 31

Hardwick v. Doolittle,
558 F.2d 292, 299-300 (5th Cir. 1977)..... 36

Hogg v. United States,
411 F.2d 578, 579-580 (6th Cir. 1969)..... 31

Stern v. Marshall,
131 S.Ct. 2594..... 33

United States v. Krezdorn,
718 F.2d 1360, 1363 (5th Cir. 1983) 32

Webster v. Sowders,
846 F.2d 1032, 1040 (6th Cir. 1988) 36

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286, 291 (1980)..... 30

FEDERAL STATUTES

28 U.S.C. §2075 32

28. U.S.C. §158 32, 34

ISSUES PRESENTED

ISSUE 1: Notices of Appeal were timely filed from decisions of the Bankruptcy Court. The right to file such notices is granted pursuant Federal Rule of Bankruptcy Procedure 8001, and 29 U.S.C. §158. The Bankruptcy Court Judge found (without a noticed hearing) that the appeals were not properly authorized, and struck the notices of appeal from her orders. The Bankruptcy Clerk has accordingly refused to process the appeals or docket them with the District Clerk. The Bankruptcy Judge, however, lacks both the authority and jurisdiction to strike the notices of appeal or to otherwise prevent the filing of appeals from her orders.

ISSUE 2: Bankruptcy Court Judges are not Article III judges and the right to seek appeal from the orders of a Bankruptcy Court Judge is fundamental to the constitutionality of proceedings before the Bankruptcy Court. Further, the threat of imposition of a penalty for having pursued a right of appeal is a violation of due process of law. The Bankruptcy Judge has ordered attorneys not to appeal her orders and has cited the attorneys who filed notices of appeal from her orders to appear at contempt hearings for having appealed her orders. In order to protect the integrity of the appellate process, litigants and their counsel must be free of apprehension of retaliation and sanction from the Bankruptcy Judge in exercising their right to appeal from orders of the Bankruptcy Court.

ISSUE 3: This Honorable Court has authority to issue the requested writ.

RELIEF SOUGHT

The Petitioner, Novo Point, LLC, a limited liability company chartered pursuant to laws of the Cook Islands, respectfully petitions the Justices of this Honorable Court to issue a Writ of Mandamus (requested by May 15, 2012) jointly and in the alternative directing:

(1) The Clerk of the Bankruptcy Court of the Northern District of Texas, Dallas Division to process and deliver to the U.S. District Clerk for the Northern District of Texas for docketing and random assignment to a District Court, the appeals taken pursuant to the following notices of appeal filed in Bankruptcy Case 09-34784-sgj11:

- a. Notice of Appeal [DE # 610], filed 8/16/11;
- b. Notice of Appeal [DE # 612], filed 8/18/11;
- c. Notice of Appeal [DE # 613], filed 8/18/11; and
- d. Amended Notice of Appeal [DE # 614], filed 8/18/11.

(2) The Bankruptcy Judge to Vacate the Bankruptcy Judge's orders striking the above listed Notices of Appeal and Ordering counsel for the Petitioner to Show Cause why they

should not be sanctioned and held in Contempt for appealing orders of the Bankruptcy Judge.

STATEMENT OF THE FACTS

The Bankruptcy Court Proceedings

The Bankruptcy Court has attempted to prevent appellate review of a series of its orders regarding the sale of property by ordering [DE # 648] that the notices of appeal from its orders be stricken. Because the Bankruptcy Court has ordered the appeals stricken, mandamus is necessary.

The stricken appeals seek review of orders of the Bankruptcy Court relating to the liquidation of a substantial asset not owned by the Ondova bankruptcy estate, as follows:

Novo Point LLC, not the debtor Ondova, owns the domain name asset “mondial.com”

As a matter of law, Novo Point LLC owns the domain name “mondial.com”. The chain of title to the domain name discussed briefly below. On December 30, 2005, Ondova Limited Company (“Ondova”) owned the domain name and transferred it, along with all other domain

names it owned not then in litigation, to Macadamia Management, LLC (“Macadamia”). Pursuant to the terms and conditions of the Assignment, Ondova conveyed all right, title and interest which it had in “All domain names owned by Assignor on December 29, 2005, as registrant, less those domain names that are currently subject to active claims ...” The domain name mondial.com was registered with Ondova Limited Company before December 29, 2005 and was not then subject to any active claim against Ondova. Accordingly, the domain name was conveyed pursuant to the Assignment from Ondova to Macadamia on December 30, 2005, and Ondova has no ownership interest in this name.

Macadamia, a US Virgin Islands limited liability company, filed a Change of Name Certificate with the Secretary of State's office of the US Virgin Islands on March 10, 2006, pursuant to which it changed its name to Blue Horizon Limited Liability Company (“Blue Horizon”). Novo Point LLC is the successor in interest to all Blue Horizon domain names pursuant to the Mutual Settlement and Release Agreement which was approved by the Bankruptcy Court on or about July 28, 2010

and which became a final Order on or about August 28, 2010 (“the Settlement Agreement”). Pursuant to the Settlement Agreement, Ondova and the Trustee quitclaimed “any interest in any and all domain names that were previously registered through Ondova, exclusive of the Even Group Portfolio, the Odd Group Portfolio, and any domain name not registered through or at Ondova as of February 22, 2010, pokerstar.com and servers.com and the Excluded Disputed Domains.” As Ondova had previously assigned all of its right, title and interest in these names, neither it nor the Trustee had any ownership interest to quitclaim in such names. Accordingly, ownership was transferred to NovoPoint LLC by virtue of the quitclaim from Blue Horizon as a part of the Global Settlement Agreement.

The Value of “Mondial.com” is Substantial

In Europe, and much of the world, “Mondial” means the World Cup, which is equivalent to something along the line of the Super Bowl and Olympics combined. Accordingly, the domain name has been appraised in value as high as \$6,000,000.00.

Novo Point LLC and the Vogel 'Receivership'

The overall background of the Vogel 'receivership' is as follows:¹

- (1) The Ondova Chapter 11 bankruptcy Trustee, Sherman, induced Jeffrey Baron, the equity owner of Ondova, to fund the Ondova Bankruptcy Estate with an approximate net three million Dollars by promising to immediately pay off all the creditor claims and return Ondova to Baron with around \$1 million Dollars in the bank and all the non-cash assets intact. In the words of Sherman's counsel: "The negotiation was to pay the debts and give the keys back to Mr. Baron. But that didn't happen." R. 4598:11-12.
- (2) Instead of using the funding provided by Baron to pay off Ondova's creditors and close the bankruptcy, Sherman started using the Baron funding to run up hundreds of thousands of Dollars in attorneys' fees.
- (3) Using the normal, legally proper channels, Baron objected by having his counsel file a formal objection with the Bankruptcy

¹ The legal authority discussed in this section is presented as background relating to various positions asserted by the relevant parties and is not offered as argument for the underlying relief sought in this Petition.

Court. Instead of using the normal, legally proper channels to reply to Baron's objection, Sherman went to work **behind closed doors** at the federal courthouse. Within three business days of Baron's objection, Sherman privately consulted *ex parte* with the Special Master Peter Vogel over in the District Court, to have the District Judge act in secret, without notice or an opportunity for Baron to be heard, to issue a complete and total receivership order over Baron and to use Vogel to seize all of Baron's exempt and non-exempt assets, and to prevent Baron from hiring an attorney to defend himself.

(4) Sherman then participated in private off-the-record *ex parte* proceedings before the District Court to implement the plan worked out with Vogel and to convince the District Court that Baron was a menace to society (or at least to Attorneys) by constructing, *ex parte*, a false picture for the District Court by:

- a. Falsely representing to the District Court that the Bankruptcy Judge recommended a receiver be placed over Baron should his bankruptcy lawyer Thomas withdraw;

- b. Falsely representing to the District Court that Baron didn't pay Thomas' fees and thus forced Thomas to withdraw (whereas, in reality Thomas was neither owed unpaid fees nor withdrew);
- c. Falsely representing that Baron caused a Court ordered mediation to fail (Vogel was *also* the mediator and, in reality, had not even scheduled the mediation);
- d. Failing to disclose to the District Court that Ondova had more than sufficient cash in the bank to pay ALL of the creditors who filed claims with Ondova, plus ALL of the attorney 'claimants' who had not so filed; and
- e. Participating in a concerted effort to mislead the District Court into falsely believing that under the bankruptcy code, a creditor such as Baron was liable to indemnify the bankruptcy estate for the substantial contributions of his counsel—when no such law exists and the law is exactly opposite, i.e., the bankruptcy estate and not the creditor must ultimately pay for qualifying substantial contributions.

- (5) Then, after obtaining the *ex parte* Vogel receivership order in the private off the record *ex parte* proceedings, Sherman and Vogel made concerted efforts to cover-up and deny the existence of the *ex parte* proceedings and to conceal the fact that the Vogel receivership order [Doc 124] had been signed hours before Sherman's motion for such an order was filed [Doc 123]; and
- (6) Since Baron has been held down by the District Court and prohibited from retaining trial counsel to defend himself and the property of Ondova, Sherman has engaged in a non-stop blizzard of billing. The billing is so massive that it has used up the two million Dollar funding Baron had provided and has completely emptied the bank account of Ondova, leaving only an escrow amount deposited by Baron. At the same time, Vogel, as receiver, has completely emptied Baron's personal savings accounts into his firm's pockets by billing more than a million Dollars from Baron's personal lifetime Savings accounts as 'fees'. In addition, Vogel also gutted Novo Point LLC by liquidating millions of Dollars of assets of Novo Point LLC to pay for

additional million Dollar 'fees'.

(7) Thus, after using private off the record *ex parte* proceedings to secure an *ex parte* order preventing Baron from having any paid counsel to represent him, Sherman and Vogel have vigorously gone after the assets of Baron, Ondova, and the other receivership entities, emptying the estate of Ondova and lining their and their firms' pockets with over **five million Dollars in 'fees'**. Notably, all the litigation Baron was involved with had settled prior to the Vogel 'receivership' order. Yet, although Baron funded the bankruptcy with a net multi-million Dollar cash infusion, no claimant has received a penny. Instead, the multi-million dollar funding of Ondova has been completely drained by Sherman for 'fees'. Sherman and Vogel, of course, attempt to place the blame on the whipping boy, Baron who has been tied down helplessly by the District Court's 'receivership' order— without any property or basic legal rights, and prohibited from hiring any paid counsel to defend himself while Sherman and Vogel have their way with him and the estates' assets.

- (8) Sherman argues that his and Vogel's actions cannot be challenged because in addition to Baron, the management and rights of Novo Point LLC, a Cook Islands entity, were also seized by the District Court's November 2010 Vogel receivership order (that Novo Point LLC was neither a party to, nor served any process for). Sherman argues that because of the *ex parte* Vogel Receivership order, Novo Point LLC is, like Baron, helpless to defend itself and that Sherman and Vogel can have their way with the assets, legally unimpeded by any party. Further, Sherman argues that because Novo Point LLC, its owner, SouthPac Trust, and its trustor, Baron, have all been ordered into the Vogel 'receivership' that Vogel and Sherman are free to act with impunity as no one has the authority to complain.
- (9) However, Novo Point LLC of the Cook Islands was not named in the Vogel receivership order. Sherman responsively argues that after the receivership order was appealed (and the District Court was **divested** of jurisdiction over the matter), the District Court then had the power to seize control of the Cook Islands' entity

“Novo Point LLC” by a subsequent order that “the Receiver Order’s definition of Receivership Parties has always included Novo Point, LLC [sic, with address and nation of origin undefined]”.

(10) Novo Point LLC’s position is that the *ex parte* receivership order and subsequent ‘clarification’ are void *ab initio*, as follows:

- a. The Vogel ‘receivership order’ is void *ab initio* for **lack of subject matter jurisdiction**. The district court lacked subject matter jurisdiction as Novo Point LLC was not a party to the lawsuit and no claim for relief regarding the Novo Point LLC or its property was pled before that court. *See Cochran v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931) (absent pleadings asserting a claim in and to the property subject of the receivership, an order appointing a receiver over that property is “absolutely void in the strictest sense of the term”).
- b. Further, an *ex parte* order such as the ‘receivership order’ that was signed without a motion on file to support it, and without notice, opportunity to be heard, sworn affidavits, or bond to

protect the rights of those adversely affected by the order, etc., is an order fundamentally devoid of due process and **void as a matter of law**. Failure to afford a party the opportunity to be heard on a motion seeking relief against them is fundamentally inconsistent with the notion of due process. *See e.g., Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971); *Phillips v. Vandygriff*, 711 F.2d 1217, 1227 (5th Cir. 1983); *Registration Control Systems v. Compusystems, Inc.*, 922 F.2d 805, 807 (Federal Cir. 1990). Similarly, the Supreme Court has described secret judicial proceedings as “**a menace to liberty**”. *Gannett Co. v. DePasquale*, 443 U.S. 368, 412 (1979). Because the Vogel ‘receivership order’ was entered without the most basic aspects of Due Process, it is subject to collateral attack in the Bankruptcy Proceedings as being void *ab initio*. *See e.g., Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) (“such proceeding is void as not being by due process of law”); *World-*

Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980) (“rendered in violation of due process is void in the rendering”).

- c. Even had the District Court been vested with subject matter jurisdiction and respected the requirements of fundamental Due Process, Novo Point LLC, as a Cook Islands' entity, can not be seized by the U.S. 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). Further, 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.²

² Novo Point has also noted that even if its assets had been subject to seizure after Due Process in legally authorized receivership proceedings by a U.S. court with subject matter jurisdiction over the property, derivative stakeholders such as the Cook Islands' management still have standing to assert the company's rights in court when the receiver refuses to bring suit or 'where it would be a vain thing to make a demand upon [it]' . See e.g., *Securities & Exchg. 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).

REASONS WHY THE WRIT SHOULD ISSUE

ISSUE 1: Notices of Appeal were timely filed from decisions of the Bankruptcy Court. The right to file such notices is granted pursuant Federal Rule of Bankruptcy Procedure 8001, and 29 U.S.C. §158. The Bankruptcy Court Judge found (without a noticed hearing) that the appeals were not properly authorized, and struck the notices of appeal from her orders. The Bankruptcy Clerk has accordingly refused to process the appeals or docket them with the District Clerk. The Bankruptcy Judge, however, lacks both the authority and jurisdiction to strike the notices of appeal or to otherwise prevent the filing of appeals from her orders.

The Supreme Court has held that the filing of a notice of appeal is an event of jurisdiction significance and divests the trial court of its control over those aspects of the case involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). This Honorable Court has held that “This rule applies with equal force to bankruptcy cases.” *In re Transtexas Gas Corp.*, 303 F.3d 571, 579 (5th Cir. 2002). Accordingly, the Bankruptcy Court lacked jurisdiction to strike the notices of appeal after they were filed. *Hogg v. United States*, 411 F.2d 578, 579-580 (6th Cir. 1969) (This rule applies even where the lower court was of the opinion that the appeal was not properly authorized).

Secondly, this Honorable Court has held that where the right to appeal has been granted a litigant, constitutional rights of Due Process in the free exercise of that right are invoked. *Myers v. Collins*, 8 F.3d 249, 252 fn 4 (5th Cir. 1993); *and see United States v. Krezdorn*, 718 F.2d 1360, 1363 (5th Cir. 1983) (recognizing the right to appeal as a due process right invoking constitutional protection). Congress has vested district courts with jurisdiction to hear appeals from the bankruptcy court. 28 U.S.C. §158. Similarly, the Supreme Court established the right to appeal from orders of the Bankruptcy Court as a procedural right. Fed.R.Bankr.P. 8001; 28 U.S.C. §2075. However, the Bankruptcy Judge has failed to respect this clear legal right of appeal from her orders. Rather, in clearly unauthorized action outside of the Bankruptcy Judge's jurisdiction, the Bankruptcy Judge has attempted to reach up into the appellate process and divest the Article III courts of jurisdiction over appeals from her orders by striking the notices of appeal.

Accordingly, the Petitioner has the clear legal right to have its timely filed notices of appeal processed by the Bankruptcy Clerk, and to proceed with its appeals before an Article III court.

ISSUE 2: Bankruptcy Court Judges are not Article III judges and the right to seek appeal from the orders of a Bankruptcy Court Judge is fundamental to the constitutionality of proceedings before the Bankruptcy Court. Further, the threat of imposition of a penalty for having pursued a right of appeal is a violation of due process of law. The Bankruptcy Judge has ordered attorneys not to appeal her orders and has cited the attorneys who filed notices of appeal from her orders to appear at contempt hearings for having appealed her orders. In order to protect the integrity of the appellate process, litigants and their counsel must be free of apprehension of retaliation and sanction from the Bankruptcy Judge in exercising their right to appeal from orders of the Bankruptcy Court.

A. The Bankruptcy Court has Attempted to Divest Article III Courts of their Supervisory Jurisdiction Over the Bankruptcy Court's Orders

In examining the constitutionality of non-Article III judges adjudicating bankruptcy claims, the Supreme Court has held that the Constitution requires that “[T]he functions of the adjunct must be limited in such a way that ‘the essential attributes’ of judicial power are retained in the Art. III court.” *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 US 50, 81. The Supreme Court held in *Stern v. Marshall*, 131 S.Ct. 2594, 564 U.S. __ (2011), that where “[The] exercise of judicial power may nonetheless be taken from the Article III Judiciary ... then Article III would be transformed from the guardian of

individual liberty and separation of powers we have long recognized into mere wishful thinking.” *Stern* at 2615. Allowing a bankruptcy court to ‘declare independence’ from review by the Article III Judiciary, engenders the bankruptcy court with the power to exercise all of the attributes of judicial power as a fully independent judiciary. As a matter of constitutional separation of powers, Congress is not authorized to create an independent, non-Article III Judiciary. Thus, the fundamental premise of the constitutionality of the present system of bankruptcy court judges rests on the direct supervision of their orders by Article III judges. *See e.g.*, 28 U.S.C. §158. Accordingly, an attempt by a bankruptcy court to prevent review of its orders by Article III courts is a usurpation of authority and a violation of the U.S. Constitution.

Moreover, a bankruptcy court’s attempt to deprive Article III courts of jurisdiction over an appeal is **a threat to the integrity of the appellate process**. This risk has been recognized by the Seventh Circuit, in a case cited with approval by this Honorable Court in *Matter of Transtexas Gas Corp.*, 303 F.3d 571 (5th Cir. 2002). The Seventh

Circuit held as follows:

“[T]he **integrity of the appellate process is at serious risk** if a bankruptcy court can deprive a district court of jurisdiction over an appeal”.

Matter of Statistical Tabulating Corp., Inc., 60 F.3d 1286, 1289 (7th Cir. 1995)(emphasis).

B. The Bankruptcy Court’s Attempt to Penalize a Party for Appealing its Orders is also a Violation of Due Process

The Supreme Court has held that the imposition of a penalty for having pursued a statutory right of appeal is a violation of due process of law. *North Carolina v. Pearce*, 395 U.S. 711, 724 (1969). Further, Due Process requires that litigants be freed even of apprehension of retaliatory motivation on the part of the judge when exercising their right to appeal. *Id.* at 725. The Supreme Court has held that allowing a trial court to sanction a litigant for exercising their statutory right to appeal would:

“[C]reate doubt, ambiguity, and uncertainty, making it impossible for citizens to know which one of the two conflicting laws to follow, and would thus violate one of the first principles of due process.”

Id. at 738-739.

Similarly, this Honorable Court has held that due process of law requires that the potential for “judicial vindictiveness” must not enter into the appellate process. *Hardwick v. Doolittle*, 558 F.2d 292, 299-300 (5th Cir. 1977). Likewise, the Supreme Court has cited with approval the Sixth Circuit’s holding in *Webster v. Sowders*, 846 F.2d 1032, 1040 (6th Cir. 1988), that “Appeals of district court orders **should not be deterred by threats** from district judges”. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 407-408 (1990). Further, the Supreme Court has held that due process requires that litigants can exercise the right to appeal from a trial court’s orders free from the apprehension of a penalty imposed by the trial court. *Pearce*, 395 U.S. at 724-725.

Accordingly, for the reasons discussed above, the Bankruptcy Court exceeded its authority and violated the petitioner’s constitutional rights to due process by subjecting the petitioner’s counsel to contempt proceedings for seeking appellate relief from the Bankruptcy Court’s orders pursuant to the Federal Rules of Bankruptcy Procedure. Similarly, as a constitutional matter of due process, the Bankruptcy Court exceeded its authority in ordering the petitioner and its counsel not to appeal its orders.

ISSUE 3: This Honorable Court has authority to issue the requested writ.

The Supreme Court has held that the extraordinary writ of mandamus is appropriate “[T]o confine an inferior court to a lawful exercise of its prescribed authority, or to compel it to exercise its authority when it is its duty to do so”. *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 18 (1983). As discussed above, the Bankruptcy Court clearly exceeded its jurisdiction and authority and the Bankruptcy Clerk has failed to act on the notices of appeal filed with the Clerk, when the Bankruptcy Clerk has a clear legal duty to do so. Further, because the Bankruptcy Clerk has refused to process the appeals, the issues raised on the noticed appeals can only be addressed if the requested mandamus relief is granted.

PRAYER

Petitioner, jointly and in the alternative prays that a Writ or Writs be issued directing:

- (1) The Clerk of the Bankruptcy Court of the Northern District of Texas, Dallas Division to process and deliver to the U.S. District Clerk for docketing and random assignment to a District Court, the appeals taken pursuant to the following notices of appeal filed in Bankruptcy Case 09-34784-sgj11:
 - a. Notice of Appeal [DE # 610], filed 8/16/11;
 - b. Notice of Appeal [DE # 612], filed 8/18/11;
 - c. Notice of Appeal [DE # 613], filed 8/18/11; and
 - d. Amended Notice of Appeal [DE # 614], filed 8/18/11.

- (2) The Bankruptcy Judge to Vacate the Bankruptcy Judge's order [DE # 648] striking the above listed Notices of Appeal and Ordering counsel for the Petitioner to Show Cause why they should not be sanctioned and held in Contempt for appealing orders of the Bankruptcy Judge.

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 200-0000 - Telephone
(972) 200-0535 - Facsimile
Email: legal@schepps.net

**FOR PETITIONER
NOVO POINT LLC**

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 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 20, 2012.

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

COUNSEL FOR APPELLANTS

CERTIFICATE OF SERVICE

This is to certify service this day of this Petition on the Respondents and real parties in interest by US Mail and 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/ Gary N. Schepps
Gary N. Schepps
COUNSEL FOR PETITIONER

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

Exhibit A



The following constitutes the ruling of the court and has the force and effect therein described.

Henry G. C. Gann
United States Bankruptcy Judge

Signed September 06, 2011

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

IN RE: §
§
ONDOVA LIMITED COMPANY, § Case No. 09-34784-SGJ-11
§
Debtor. §

ORDER: (A) GRANTING, IN SUBSTANTIAL PART, TRUSTEE'S MOTION TO:
(I) SHOW CAUSE WHY CHRISTOPHER PAYNE AND GARY SCHEPPS SHOULD NOT
BE HELD IN CONTEMPT AND SANCTIONED; AND (II) STRIKE NOTICES
OF APPEAL AND MOTION TO STAY SALE ORDER [DE # 637]; AND
(B) SETTING SHOW CAUSE HEARING ON OCTOBER 24, 2011, AT 10:30 A.M.,
AS TO ACTIONS OF LAWYERS CHRISTOPHER PAYNE AND GARY SCHEPPS

I. INTRODUCTION.

The court held a hearing on September 1, 2011 on the Trustee's Motion to: (I) Show Cause Why Christopher Payne and Gary Schepps Should Not Be Held in Contempt and Sanctioned; and (II) Strike Notices of Appeal and Motion to Stay Sale Order (the "Motion") [DE # 637]. Appearing at the hearing, among others, were: (a) the Chapter 11 Trustee for Ondova Limited Company ("Ondova"), Daniel Sherman ("Trustee"); (b) the Trustee's

counsel; (c) counsel for the Receiver, Peter Vogel (the "Receiver"), who was appointed, in 2010, by United States District Judge Royal Furgeson in Civil Action No. 3:09-CV-0988-F, as receiver over Jeffrey Baron, the former principal of Ondova, and related entities (the "Baron Receivership Action"); (d) Joshua Cox, counsel for Novo Point, LLC, which entity is a Baron-related entity that is subject to the Baron Receivership Action (Mr. Cox's authority to act as counsel for Novo Point, LLC was previously approved and/or acknowledged in the Baron Receivership Action); (e) Christopher Payne, an attorney appearing for himself, and who has recently purported to represent Novo Point, LLC in the above-referenced bankruptcy case; and (f) Gary Schepps, an attorney appearing for himself, and who purports to be appellate counsel for Jeffrey Baron and perhaps Baron-related entities.

In the Motion, the Trustee requested that the bankruptcy court strike five pleadings (the "Five Pleadings") that were signed by Christopher Payne and, in all but one case, electronically filed by Gary Schepps. The Five Pleadings were allegedly filed by Payne/Schepps on behalf of **Novo Point, LLC**, which entity—as mentioned above—is related to Jeffrey Baron and is under the control of the Receiver, pursuant to Orders signed by District Judge Royal Furgeson on November 24, 2010, and December 17, 2010. In fact, the main purpose of Judge Furgeson's

Order dated December 17, 2010 was to specifically clarify that the entity Novo Point, LLC was a part of the Baron Receivership Action and any individuals allegedly representing it were to comply with all instructions given to them by the Receiver.¹ Such December 17, 2010 Order was agreed to by Joshua Cox and James Eckles—who were then attorneys for Novo Point, LLC. The Trustee has requested that the Five Pleadings be stricken, since Christopher Payne and Gary Schepps had no authority from the Receiver to file them on behalf of Novo Point, LLC. The Trustee also asked for a Show Cause Order why Christopher Payne and Gary Schepps should not be sanctioned and held in contempt of the bankruptcy court, since the bankruptcy court has previously ruled that Christopher Payne, his firm, Dennis Olson, and Dennis Olson's firm may not appear in the bankruptcy court on behalf of Novo Point, LLC *without first filing a motion for authority to do so, which motion must be supported by compelling evidence, including live testimony from a Brian Mason and Lisa Katz-i.e., the ones who have allegedly given instructions to Christopher Payne to take legal positions for Novo Point, LLC.* See DE ## 605 & 609.

II. THE FIVE PLEADINGS.

The Five Pleadings that the Trustee asked to have stricken

¹ The December 17, 2010 Order contained similar clarification provisions concerning a Baron-related entity known as Quantec, LLC.

were:

1. Notice of Appeal² [DE # 610], filed 8/16/11.
2. Notice of Appeal³ [DE # 612], filed 8/18/11.
3. Notice of Appeal⁴ [DE # 613], filed 8/18/11.
4. Amended Notice of Appeal⁵ [DE # 614], filed 8/18/11.
5. Motion for Stay Pending Appeal⁶ [DE # 615], filed 8/18/11.

² This Notice of Appeal pertained to an Order [DE # 605] granting the Receiver's Motion for Show of Authority, in which the bankruptcy court ruled that Christopher Payne, his firm, Dennis Olson, and Dennis Olson's firm had no authority to appear in the bankruptcy court for the entities Novo Point, LLC and Quantec, LLC, and that they may not appear before the bankruptcy court in the future for these entities without filing first a motion for authority to do so, which is supported by compelling evidence including live testimony from Brian Mason and Lisa Katz (the human beings who supposedly gave authority to Payne/Olson to take legal positions for Novo Point, LLC and Quantec, LLC).

³ This Notice of Appeal pertained to an Order [DE # 607] granting the Trustee's Motion to Sell Property of the Estate ("Sale Motion"), in which the bankruptcy court ruled that the Trustee may engage in efforts to sell a certain Internet domain name owned by Ondova called "mondial.com."

⁴ This Notice of Appeal pertained to an Order [DE # 609] granting the Trustee's Motion to Strike the objection to the Trustee's Sale Motion, which objection had been filed purportedly on behalf of Novo Point, LLC by attorneys Christopher Payne and Dennis Olson.

⁵ This Amended Notice of Appeal (like the Notice of Appeal found at DE #610), pertained to the Order [DE # 605] granting the Receiver's Motion for Show of Authority, in which the bankruptcy court ruled that Christopher Payne, his firm, Dennis Olson, and Dennis Olson's firm had no authority to appear in the bankruptcy court for the entities Novo Point, LLC and Quantec, LLC and that they may not appear before the bankruptcy court in the future for these entities without filing first a motion for authority to do so, which is supported by compelling evidence including live testimony from Brian Mason and Lisa Katz (the human beings who supposedly gave authority to Payne/Olson to take legal positions for Novo Point, LLC and Quantec, LLC). It is unclear what necessitated the amendment.

⁶ This Motion for Stay Pending Appeal pertained to the Order [DE # 607] granting the Trustee's Motion to Sell Property of the Estate (the "Sale Motion"), in which the bankruptcy court ruled that the Trustee may engage in efforts to sell a certain Internet domain name owned by Ondova called "mondial.com."

All of the Five Pleadings were signed by Christopher Payne. Additionally, all of the Five Pleadings except DE #610 were filed electronically by attorney Gary Schepps who, as mentioned above, describes himself as appellant counsel to Jeffrey Baron and Baron's related entities (DE # 610 was hand-filed by Christopher Payne who represented that he is not an E-Filer).

III. EXPLANATIONS AND ARGUMENTS GIVEN BY CHRISTOPHER PAYNE AND GARY SCHEPPS.

Christopher Payne represented to the bankruptcy court at the September 1, 2011 hearing that he did not believe a Notice of Appeal fell within the scope of the bankruptcy court's orders banning him from appearing in the bankruptcy court on behalf of Novo Point, LLC, since a Notice of Appeal is essentially directed to the district court. He also represented that he had no choice but to file the Motion for Stay Pending Appeal at the bankruptcy court level, due to Bankruptcy Rule 8005. Gary Schepps allegedly only became entangled in all of this because Christopher Payne does not have the ability to E-File in the bankruptcy court and Schepps agreed to help him. Additionally, Gary Schepps (somehow) does not believe that Notices of Appeal are "pleadings," nor that filing documents with the Bankruptcy Clerk is the same as filing documents with the court.

IV. RULING.

The positions now taken by Messrs. Payne and Schepps appear weak at best. The court is more inclined to believe that

vexatious litigation tactics and gamesmanship are at play. As pointed out by the Trustee, Messrs. Payne and Schepps could have filed motions for authority to file the Notices of Appeal and the Motion for Stay Pending Appeal, and presented evidence and testimony from Brian Mason and Lisa Katz explaining their basis for taking legal actions on behalf of Novo Point, LLC. Mr. Payne and Mr. Schepps do not seem to understand basic notions of corporate governance (at least where this Baron Receivership Action is concerned). Multiple entities cannot speak for or be in control of Novo Point, LLC. Right now, pursuant to a District Court Order, the Receiver has governance and control over Novo Point, LLC. The District Court Order is on appeal. The District Court Order may be overturned. But meanwhile, the Order is not stayed and it controls. 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). But Novo Point, LLC—unless and until the District Court's Receivership Orders are reversed—speaks through only one master. The bankruptcy court—despite this seemingly unrefutable fact—gave Mr. Payne the opportunity to file a motion for authority to file pleadings on behalf of Novo Point, LLC, if he wanted to try and convince the bankruptcy court that there is some legal way for Novo Point, LLC to appear and file pleadings in the bankruptcy court absent

instructions to do so from the Receiver. But, rather than file such a motion, Payne decided to ignore that opportunity and attempt an appeal. Even when the court held a hearing on the Trustee's Motion, Messrs. Payne and Schepps showed up in the bankruptcy court with no witnesses and no documentation that might somehow support their authority to act for Novo Point, LLC.

WHEREFORE, the court now **ORDERS** as follows:

1. The court has jurisdiction over the Trustee's Motion pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b).⁷ The court overrules the arguments of Messrs. Payne and Schepps that the case of *Stern v. Marshall* 131 S. Ct. 63 (2011) deprives a non-Article III court from policing activity of lawyers and parties before the court through mechanisms such as sanctions and contempt.⁸

2. The Five Pleadings are hereby **STRICKEN**.

3. Even if it is somehow not appropriate to strike the

⁷ While this court recognizes that the filing of a notice of appeal is an event of jurisdictional significance, which event has sometimes been stated as divesting a trial court over those aspects of the case involved in the appeal, e.g., *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004), *Bradford-Scott Data Corp. Physician Computer Network, Inc.*, 128 F.3d 504, 505 (7th Cir. 1997), this court interprets the relevant rules and case law in this regard to mean that once an appeal is actually docketed, such jurisdiction of the trial court is divested. See, e.g., Fed. R. Civ. P. 60(a) (last sentence).

⁸ Accepting the arguments of Messrs. Payne and Schepps, apparently an attorney could strip naked and scream obscenities in the courtroom and there would not be a thing that a non-Article III judge could do about it (except, perhaps, call law enforcement so that the attorney could be arrested).

Motion for Stay Pending Appeal, it is hereby denied since the movant (even if the "movant" had authority) cannot show a likelihood or probability of success on the merits in an appeal; nor that the movant faces irreparable injury if the stay is not granted; nor that a stay would not substantially harm other parties; nor that a stay would serve the public interest.

4. Christopher Payne and Gary Schepps shall file, within 5 days, a statement making the disclosures contemplated by Bankruptcy Rule 2019 (for every entity that Christopher Payne and Gary Schepps allege that they represent in connection with the Ondova bankruptcy matters, the Baron Receivership Action matters, and appeals—and regardless of whether they represent more than one entity).

5. Christopher Payne and Gary Schepps shall appear before this bankruptcy court on October 24, 2011, at 10:30 a.m., and **SHOW CAUSE** why they should not be held in contempt of court and sanctioned for filing the Five Pleadings in apparent violation of the court's Orders appearing at DE ## 605 & 609, and for otherwise purporting to appear and take legal positions for the entity Novo Point, LLC without any legal authority.⁹

⁹ The court acknowledges that Gary Schepps was not named in the Orders that appear at DE ## 605 & 609, but he assisted Christopher Payne in violating those Orders and would in all ways appear to have the same standing problem of Christopher Payne, in that the Receiver has not directed Mr. Schepps to take actions on behalf of Novo Point, LLC.

IT IS SO ORDERED.

###END OF ORDER###

Exhibit B

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

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

Plaintiffs,

vs.

JEFFREY BARON and
ONDOVA LIMITED COMPANY,

Defendants

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3-09CV0988-F

ORDER APPOINTING RECEIVER

The Court hereby appoints a receiver and imposes an ancillary relief to assist the receiver as follows:

APPOINTMENT OF RECEIVER

IT IS HEREBY ORDERED that Peter S. Vogel is appointed Receiver for Defendant Jeffrey Baron with the full power of an equity receiver. The Receiver shall be entitled to possession and control over all Receivership Assets, Receivership Parties and Receivership Documents as defined herein, and shall be entitled to exercise all powers granted herein.

RECEIVERSHIP PARTIES, ASSETS, AND RECORDS

IT IS FURTHER ORDERED that the Court hereby takes exclusive jurisdiction over, and grants the Receiver exclusive control over, any and all "Receivership Parties", which term shall include Jeffrey Baron and the following entities:

- Village Trust, a Cook Islands Trust
- Equity Trust Company IRA 19471
- Daystar Trust, a Texas Trust
- Belton Trust, a Texas Trust
- Novo Point, Inc., a USVI Corporation
- Iguana Consulting, Inc., a USVI Corporation
- Quantec, Inc., a USVI Corporation
- Shiloh, LLC, a Delaware Limited Liability Company
- Novquant, LLC, a Delaware Limited Liability Company

Manassas, LLC, a Texas Limited Liability Company
Domain Jamboree, LLC, a Wyoming Limited Liability Company
ID Genesis, LLC, a Utah Limited Liability Company

and any entity under the direct or indirect control of Jeffrey Baron, whether by virtue of ownership, beneficial interest, a position as officer, director, power of attorney or any other authority or right to act. The Court hereby enjoins any person from taking any action based upon any presently existing directive from any person other than the Receiver with regard to the affairs and business of the Receivership Parties, including but not limited to proceeding with the transfer of a portfolio of internet domain names ("Domain Names") for which Ondova Limited Company ("Ondova") acted as registrar. Specifically, but without limitation, VeriSign Inc and The Internet Corporation for Assigned Names and Numbers ("ICANN"), and any other entity connected to the transfer of the Domain Names, shall immediately cease such efforts and shall terminate any movement of the Domain Names.

IT IS FURTHER ORDERED that the Court hereby takes exclusive jurisdiction over, and grants the Receiver exclusive control over, any and all "Receivership Assets", which term shall include any and all legal or equitable interest in, right to, or claim to, any real or personal property (including "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code)), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located, and further including any legal or equitable interest in any trusts, corporations, partnerships, or other legal entities of any nature, that are:

1. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to, any Receivership Party;
2. in the actual or constructive possession of any Receivership Party; or
3. in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any

other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Receivership Party, including, but not limited to, any assets held by or for any Receivership Party in any account at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house processor, network transaction processor, bank debit processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, retirement fund custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind, either within or outside of the State of Texas.

IT IS FURTHER ORDERED that the Receiver shall be entitled to any document that any Receivership Party is entitled to possess as of the signing of this order ("Receivership Documents").

IT IS FURTHER ORDERED that all persons who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Receivership Assets.

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Receivership Party, or subject to access by any Receivership Party or under any Receivership Party's control, without providing the Receiver prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;

C. Cashing any checks or depositing any payments from customers or clients of a Receivership Party;

D. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Receivership Party; or

E. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Receivership Party or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Receivership Party.

F. The funds, property, and assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

IT IS FURTHER ORDERED that any financial institution, business entity, or person maintaining or having custody or control of any account or other asset of any Receivership Party, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Receivership Party, which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the assets, funds, documents, or other property held by, or under its control:

1. on behalf of, or for the benefit of, any Receivership Party;
2. In any account maintained in the name of, or for the benefit of, or subject to withdrawal by, any Receivership Party; and
3. that are subject to access or use by, or under the signatory power of, any Receivership Party.

B. Deny any person other than the Receiver or his designee access to any safe deposit boxes or storage facilities that are either:

1. titled in the name, individually or jointly, of any Receivership Party; or
2. subject to access by any Receivership Party.

C. Provide the Receiver an immediate statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Receivership Party, or held on behalf thereof, or for the benefit thereof, including all trust accounts managed on behalf of any Receivership Party or subject to any Receivership Party's control;

2. The balance of each such account, or a description of the nature and value of such asset;

3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Receivership Party, whether in whole or in part; and

4. If the account, safe deposit box, storage facility, or other asset has been closed or removed, the date closed or removed and the balance on said date.

D. Immediately provide the Receiver with copies of all records or other documentation pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. Immediately honor any requests by the Receiver with regard to transfers of assets to the Receiver or as the Receiver may direct.

DUTIES OF DEFENDANTS REGARDING ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Defendants shall:

A. Within three business days following service of this Order, take such steps as are necessary to turn over control to the Receiver and repatriate to the Northern District of Texas all Receivership Documents and Receivership Assets that are located outside of the Northern District of Texas and are held by or for the Receivership Parties or are under the Receivership Parties' direct or indirect control, jointly, severally, or individually;

B. Within three business days following service of this Order, provide Plaintiff and the Receiver with a full accounting of all Receivership Documents and Receivership Assets wherever located, whether such Documents or Assets held by or for any Receivership Party or are under any Receivership Party's direct or indirect control, jointly, severally, or individually, including the addresses and names of any foreign or domestic financial institution or other entity holding the Receivership Documents and Receivership Assets, along with the account numbers and balances; and

D. Immediately following service of this Order, provide Plaintiff and the Receiver access to Defendants' records and Documents held by Financial Institutions or other entities, wherever located.

POWERS AND DUTIES OF RECEIVER

IT IS FURTHER ORDERED that the Receiver shall immediately present a sworn statement that he will perform his duties faithfully and shall post a cash deposit or bond in the amount of \$1,000.

IT IS FURTHER ORDERED that in addition to all powers granted in equity to receivers, the Receiver shall immediately have the following express powers and duties:

A. To have immediate access to any business premises of the Receivership Party, and immediate access to any other location where the Receivership Party has conducted business and where property or business records are likely to be located.

B. To assume full control of the Receivership Party by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee or agent of the Receivership Party, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Party;

C. To take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody or under the control of, the Receivership Party, wherever

situated, including without limitation all paper documents and all electronic data and devices that contain or store electronic data including but not limited to computers, laptops, data storage devices, back-up tapes, DVDs, CDs, and thumb drives and all other external storage devices and, as to equipment in the possession or under the control of the Receivership Parties, all PDAs, smart phones, cellular telephones, and similar devices issued or paid for by the Receivership Party.

D. To act on behalf of the Receivership Party and, subject to further order of the Court, to have the full power and authority to take all corporate actions, including but not limited to, the filing of a petition for bankruptcy as the authorized responsible person as to the Receivership Party, dissolution of the Receivership Party, and sale of the Receivership Party.

E. To divert mail.

F. To sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Party and other persons or entities whose interests are now held by or under the direction, possession, custody or control of the Receivership Party.

G. To investigate, conserve, hold, and manage all Receivership Assets, and perform all acts necessary or advisable to preserve the value of those assets in an effort to prevent any irreparable loss, damage or injury to consumers or to creditors of the Receivership Party including, but not limited to, obtaining an accounting of the assets, and preventing transfer, withdrawal or misapplication of assets.

H. To enter into contracts and purchase insurance as advisable or necessary.

I. To prevent the inequitable distribution of assets and determine, adjust, and protect the interests of creditors who have transacted business with the Receivership Party.

J. To manage and administer the business of the Receivership Party until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which include retaining, hiring, or dismissing any employees, independent contractors, or agents.

K. To choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists (collectively, "Professionals"), as each Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.

L. To make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order.

M. To institute, compromise, adjust, defend, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that each Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Party or that each Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, the filing of a petition for bankruptcy.

N. To conduct investigations and to issue subpoenas to obtain documents and records pertaining to, or in aid of, the receivership, and conduct discovery in this action on behalf of the receivership estate.

O. To consent to the dissolution of the receivership in the event that the Plaintiff may compromise the claim that gave rise to the appointment of the Receiver, provided, however, that no such dissolution shall occur without a motion by the Plaintiff and service provided by the Plaintiff upon all known creditors at least thirty days in advance of any such dissolution.

LIMITATION OF RECEIVER'S LIABILITY

IT IS FURTHER ORDERED that except for an act of gross negligence, the Receiver and the Professionals shall not be liable for any loss or damage incurred by any of the Receivership Parties, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the Receiver and the Professionals in connection with the discharge of his or her duties and responsibilities. Additionally, in the

event of a discharge of the Receiver either by dissolution of the receivership or order of this Court, the Receiver shall have no further duty whatsoever.

PROFESSIONAL FEES

IT IS FURTHER ORDERED that each Receiver and his professionals, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, which compensation shall be derived exclusively from the assets now held by, or in the possession or control of, or which may be received by the Receivership Party or which are otherwise recovered by the Receiver, against which the Receiver shall have a first and absolute administrative expense lien. The Receiver shall file with the Court and serve on the parties a fee application with regard to any compensation to be paid to professionals prior to the payment thereof.

COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that the Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic account, or digital file or telephonic data in any medium; turning over all accounts, files, and records including those in possession or control of attorneys or accountants; and advising all persons who owe money to the Receivership Party that all debts should be paid directly to the Receiver. Defendants are hereby temporarily restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Party;

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Party including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other papers of any kind or nature;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Party or the Receiver;

D. Drawing on any existing line of credit available to Receivership Party;

E. Excusing debts owed to the Receivership Party;

F. Failing to notify the Receiver of any asset, including accounts, of the Receivership Party held in any name other than the name of any of the Receivership Party, or by any person or entity other than the Receivership Party, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody or control of such assets;

G. Doing any act that would, or failing to do any act which failure would, interfere with the Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Party; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court; and

H. Filing, or causing to be filed, any petition on behalf of the Receivership Party for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (2002), without prior permission from this Court.

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, Defendants or any other person or entity shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Party, including, without limitation, bank accounts, web sites, buildings or office space owned, leased, rented, or otherwise occupied by the Receivership Party;

2. All documents of the Receivership Party, including, but not limited to, books and records of accounts, legal files (whether held by Defendants or their counsel) all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents, and other papers;

3. All of the Receivership Party's accounting records, tax records, and tax returns controlled by, or in the possession of, any bookkeeper, accountant, enrolled agent, licensed tax preparer or certified public accountant;

4. All loan applications made by or on behalf of Receivership Party and supporting documents held by any type of lender including, but not limited to, banks, savings and loans, thrifts or credit unions;

5. All assets belonging to members of the public now held by the Receivership Party; and

6. All keys and codes necessary to gain or secure access to any assets or documents of the Receivership Party including, but not limited to, access to their business premises, means of communication, accounts, computer systems or other property;

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable

writs requested by the Receivers. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document or other thing and to deliver it to the Receivers.

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, leasing companies, landlords, ISOs, credit and debit card processing companies, insurance agents, insurance companies, commodity trading companies or any other person, including relatives, business associates or friends of the Defendants, or their subsidiaries or affiliates, holding assets of the Receivership Party or in trust for Receivership Party shall cooperate with all reasonable requests of each Receiver relating to implementation of this Order, including freezing and transferring funds at his or her direction and producing records related to the assets of the Receivership Party.

STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, 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;

attempting to foreclose, forfeit, alter or terminate any interest in any asset, whether such acts are part of a judicial proceeding or are acts of self-help or otherwise;

3. Executing, issuing, serving or causing the execution, issuance or service of, any legal process including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; and

4. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Party;

B. This Order does not stay:

1. The commencement or continuation of a criminal action or proceeding;
and

2. Except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver, and, if such request has not been responded to within 30 days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 24th day of November, 2010



JUDGE/PRESIDING