

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.	§

**MOTION FOR LEAVE TO FILE: MOTION TO RECONSIDER ORDER
ON RECEIVER’S RECORDS OF THE TWO INCRIMINATING EMAILS**

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion to reconsider the Court’s Order [DOC 471] declining to compel Peter Vogel to produce incriminating records. The undersigned counsel understands this Court does not want to hear accusations impugning the honesty of another attorney or that another attorney has attempted to defraud the Court. However, if a receiver has attempted to mislead the Court as to facts within the personal knowledge of the receiver and his law partners, the matter is serious and relevant.

The Matter is Relevant and Material

A copy of the original emails and server logs would establish whether the receiver has repeatedly misrepresented facts within their personal knowledge to this Court. The receiver claims that a single invitation was circulated on April 1 and that

Mr. Schepps objected to that invitation being sent directly to Mr. Baron, and that the receiver withdrew that invitation and did not make another to Mr. Baron. Even if the receiver's story about the *second* email were credible (that it was written and sent secretly and independently by their computer), the receiver still has admitted personal knowledge as to the first email, and clearly has a copy of that email in their sent mail. If the truth is different than the story told by the receiver, ie., if the truth is that the receiver sent the first e-mail on March 30 and then sent a second e-mail on April 1, directly to Jeff, the receiver has made an intentional and repeated effort to mislead the Court.

The second email– if it is authentic as claimed by Jeff– was addressed directly to Jeff, and not also to Schurig. In other words, Jeff was clearly intended to receive the email. If that is so, and the receiver directed Jeff to call the 'new' phone conference, then the receiver set Jeff up. **To fabricate an incident and submit false evidence to accuse a defendant of “despicable” (the receiver's words) conduct is a serious violation of the obligations of a receiver. If the receiver has engaged in such conduct they have lost all legitimacy.** The issue is significant.

As Judge Sanders expressed almost a quarter century ago:

The appearance of impropriety, whether real or not ... is quite worrisome, especially in light of the fiduciary duty owed by a receiver ... See *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (2d Cir.1946) ("A receiver ... owes a duty of strict impartiality, or ‘undivided loyalty,’ to all persons interested in the receivership estate, and must not ‘dilute’ that loyalty.").

Texas American Bancshares, Inc. v. Clarke, 740 F.Supp. 1243, 1253 (N.D.Tex.1990) (emphasis). A receiver must be an indifferent person between parties, appointed by the court to receive the rents, issues, or profits of land, or other thing in question in this court, pending the suit, where it does not seem reasonable to the court that either party should do it. He is an officer of the court appointed in behalf of all parties, and not of the complainant or of the defendant only. He is appointed for the benefit of all parties. *Booth v. Clark*, 58 US 322, 331 (1855).

This Court's current ruling makes the statement that this Court does not want to know if the receiver has filed false representations in an attempt to mislead the Court as to the receiver's actions. The Court's ruling also makes the statement that the Court will not allow Jeff to prove that the receiver set him up, and that the receiver misrepresented material facts within their personal knowledge to this Court.

Relief Requested

Jeff Baron requests the Court to reconsider the order allowing the receiver to refuse to produce the records of the incriminating emails, and to enter an order compelling the receiver's production of the requested material.

Respectfully submitted,

/s/ Gary N. Schepps

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**COURT ORDERED TRIAL
COUNSEL FOR JEFF BARON**

CERTIFICATE OF SERVICE

This is to certify that this brief was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFICATE OF CONFERENCE

This is to certify that I attempted but was unable to obtain the receiver's agreement to this motion.

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