

No. 10-11202
In the
United States Court of Appeals
for the Fifth Circuit

NETSPHERE, INC. Et Al,
Plaintiffs

v.

JEFFREY BARON,
Defendant-Appellant

v.

ONDOVA LIMITED COMPANY,
Defendant-Appellee

Appeal of Order Appointing Receiver in Settled Lawsuit

Cons. w/ No. 11-10113

NETSPHERE INC., Et Al, Plaintiffs

v.

JEFFREY BARON, Et Al, Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,
Appellants

v.

PETER S. VOGEL,
Appellee

Appeal of Order Adding Non-Parties Novo Point, LLC
and Quantec, LLC as Receivership Parties

From the United States District Court
Northern District of Texas, Dallas Division
Civil Action No. 3-09CV0988-F

**RESPONSE TO VOGEL SEALED FIFTH MOTION TO PLACE
ANOTHER ENTITY INTO RECEIVERSHIP EX PARTE AND
WITHOUT SERVICE OF PROCESS, NOTICE OR HEARING**

TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW Appellants, and subject to the preliminary Fifth Amendment objection and motion previously filed in this cause, Appellants make this response with respect to Vogel's 7-06-11 Motion to clarify receiver order to place yet another entity into receivership ex parte and without service of process, notice, or hearing.

I. ARGUMENT AND AUTHORITY

Vogel's factual assertions are not supported by the record or affidavits offered by Vogel. Most notably, Jeff Baron does not own nor manage the entity Vogel seeks to be appointed receiver over. Further, Vogel has a fundamental misunderstanding of the law, and offers no authority for the relief he has requested.

As a fundamental principle of well-established law, a court rendering a ruling against a party must first acquire jurisdiction over that party by personal service or voluntary appearance. *St. Clair v. Cox*, 106 U.S. 350, 353 (1882). Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied. *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). Orders issued without personal jurisdiction are void. *Pennoyer v. Neff*, 95 U.S. 714, 728 (1878). Accordingly, as a fundamental and preliminary step, service of process and notice should be served on the entity Vogel desires to be appointed receiver over, and hearing held on the grounds by which Vogel asserts he is entitled to such remedy.

Vogel's Wild-West view of the law where fundamental Due Process is ignored should be rejected out of hand by this Honorable Court.

Similarly, since there was no claim or controversy concerning the non-party Vogel seeks to be made the receiver over, the District Court below and this Honorable Court lack subject matter jurisdiction to place the company into receivership. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931); *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 89 (1998); and see *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986); *Middle South Energy, Inc. v. City of New Orleans*, 800 F.2d 488, 490 (5th Cir. 1986) (without an actual case or controversy between the parties within the meaning of Article III of the Constitution there is no subject matter jurisdiction). Accordingly, Vogel's request should be denied.

WHEREFORE, Vogel's motion should be in all things denied and overruled.

Respectfully submitted,

/s/ Gary N. Schepps

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Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 89 (1998)..... 2

CERTIFICATE OF SERVICE

This is to certify that this motion 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
COUNSEL FOR APPELLANT