

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 EX PARTE MOTION
TO PREVENT FINANCING OPTIONS**

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, and subject to the responses and motion previously filed with respect to Vogel's motion to sell the assets of Novo Point, LLC and Quantec, LLC, Appellants make this response to Vogel's "ex parte motion" 7/01/2011 SEALED MOTION for reconsideration of order regarding financing Options.

I. ARGUMENT AND AUTHORITY

Vogel's Motion is Clearly Not of an "Indifferent" Receiver as Required by Law

As a matter of well-established law, a receiver is an officer of the court which appoints him and must be "an indifferent person between parties". *E.g.*, *Booth v. Clark*, 58 US 322, 331 (1855); *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."). From the prospective of an indifferent receiver, it should not matter whether a party obtains a loan in order to have a receivership stayed or dissolved. In simple language, it is none of the receiver's business. Yet, Vogel has invested an extraordinary amount of effort to prevent the dissolution or stay of the instant receivership.

Vogel's Arguments Are Not Credible

Vogel makes the absurd argument that secret, private sales¹ will generate higher sales prices than a public auction. Vogel, however, can offer no explanation as to why a purchaser who is willing to pay a set price in a private sale would not pay that same price in a public auction. At a minimum, assets for which there is a private bidder can be placed on auction with a reserve price equal to the private sale price. Public auction is not some crazy idea thought up by Appellants' counsel. Rather, public auction is the Congressionally mandated and long accepted means of selling property by court decree. Pursuant to 28 U.S.C. §2004, the requirements of 28 U.S.C. §2001 (including the requirement of sale through public auction), apply to personality.²

Vogel makes the similarly absurd argument that the Appellants would seek to minimize the return of the liquidation of receivership assets in order to 'prevent' "claimants" from being paid. Vogel's argument makes no sense. Since the assets of Novo Point, LLC, and Quantec, LLC, if sold at reasonable value, have been valued by the receiver's own reports at around \$80 Million, it would make no sense to liquidate all of the assets to pay \$600,000.00 in contested claims. Similarly, it makes no sense to liquidate \$30 Million in unique domain assets for 3

¹ Vogel has not disclosed his relationship to the proposed purchasers, or the relationship between his law firm and its clients to the proposed secret purchasers.

² Notably, Vogel's "professional", Mr. Nelson, set up a procedure to sell domains through auctions that included specific marketing and advertising of the domains before holding the auction. Vogel has had months to engage in such marketing, but has refused, insisting that the assets should be sold to his personally selected buyers in secret, private sales.

cents on the dollar to ‘friendly’ purchasers, as Appellants strongly suspect Vogel desires to do. Notably, although the District Court ORDERED Vogel to do so, he refused to disclose the names of the domains he desires to sell, the amounts, or the identity of the purchasers. (See page 1 of Vogel’s motion). Vogel clearly does not want this information uncovered, nor does Vogel want to allow the Appellants to secure alternative purchasers, nor to allow the Appellants avoid liquidation of the assets by posting bond. Vogel raises all sorts of accusations against Appellants’ counsel, and makes all sorts of unsupported claims and allegations. Still Vogel cannot explain why the Appellants would prefer the liquidation of \$80 Million in assets to pay \$600,000.00 in alleged claims. More naturally, if assets are to be liquidated, a single asset worth \$1 Million should be sold for \$1 Million, instead of 30 assets worth \$30 Million being sold for \$1 Million to insiders in private, secret sales.

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

Respectfully submitted,

/s/ Gary N. Schepps

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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