

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

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

**RESPONSE OF QUANTEC LLC TO VOGEL'S MOTION TO RISK
QUANTEC'S ASSETS FOR NO CORPORATE BENEFIT BECAUSE
VOGEL WANTS TO BE INVOLVED IN PROSECUTING DAUBEN**

Cons. w/ No. 11-10289
NETSPHERE, INC., ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant- Appellant
v.
DANIEL J SHERMAN, Appellee

Cons. w/ No. 11-10290
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, ET AL, Defendants
v.
QUANTEC L.L.C.; NOVO POINT L.L.C., Non-Party Appellants
v.
PETER S. VOGEL, Appellee

Cons. w/ No. 11-10390
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – Appellant
v.
QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants
v.
ONDOVA LIMITED COMPANY, Defendant – Appellee
v.
PETER S. VOGEL, Appellee

Cons. w/ No. 11-10501
NETSPHERE, INC. ET AL, Plaintiffs
v.
JEFFREY BARON, Defendant – Appellant
QUANTEC L.L.C.; NOVO POINT L.L.C., Appellants
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.,
Appellant
v.
PETER S. VOGEL; DANIEL J. SHERMAN, Appellees

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TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW Quantec LLC, Appellant, and makes this Response to Vogel's motion seeking to risk Quantec's assets for no Corporate benefit because Vogel wants to be involved in prosecuting Joey Dauben.¹ The attached Exhibit "A" is incorporated herein by reference.

ARGUMENT & AUTHORITIES

I. Response Overview

There are two parts to Vogel's motion. One part, as discussed below, is Vogel's false representations designed to materially mislead this Honorable Court regarding Baron and having nothing to do with the substance of Vogel's requested relief. For example, Vogel's argument falsely represents to this Honorable Court that (1) "Mr. Baron's livelihood largely involves profiting off the Sex Names, the Hate Names, and the Child Sexual Assault Names";² (2) "Dauben [has] been a close friend and business associate of Jeff Baron."³ that (3) "Dauben regularly serves as Baron's media outlet"; and (4) that Baron joked about a website named "deathtojews.com".⁴

¹ "1-04-12 SEALED MOTION filed by Appellee Mr. Peter S. Vogel in 11-10113, 11-10290, 11-10390, 11-10501 to disclose evidence to district attorney." (Document 00511713784 filed on 12/23/2011 in case 10-11202).

² Vogel's Motion at page 8.

³ *Id.* at page 5.

⁴ *Id.* at page 6.

As discussed below, the other part of Vogel's motion is a request to recklessly place, for absolutely no legitimate corporate interest or business purpose, the value of Quantec LLC's asset at catastrophic risk, as follows: (1) Vogel's argument fails to inform this Honorable Court that the likely result of the disclosure Vogel so eagerly seeks would be **the catastrophic loss** in value of the domain name assets; (2) Vogel's argument misleadingly misrepresents to this Honorable Court the context of the 'offending' domain names (they are not a "large extent" of the portfolio as misleadingly misrepresented by Vogel, but make up less than one fourteenth one-hundredths of one percent of the domains managed by Dauben), and (3) Vogel's argument substantially errs with respect to a fiduciary's ethical duties regarding disclosure of the trade secrets of a company for which an attorney acts as a fiduciary.

II. Vogel's Material Misrepresentations Regarding Jeff Baron

With respect to Vogel's misrepresentations that "Mr. Baron's livelihood largely involves profiting off the Sex Names, the Hate Names, and the Child Sexual Assault Names", Vogel's argument makes two conflated material misrepresentations to this Honorable Court, as follows:

A. Vogel Materially Misrepresents the Scale of 'Offending' Names

First, Vogel misrepresents to this Honorable Court that the domain name income "largely" involves 'Sex names', "hate names", and "child sexual assault names". According to his reports, Dauben managed over 700,000 domain names.

Of those domains, based on Vogel's listing, **less than one fourteen one-hundredths of one percent** are 'sex names' or so called 'hate names'. Vogel's attempt to pass off one fourteen one-hundredth of one percent of Dauben's managed domain name inventory as a "large" portion of the inventory is materially misleading.

B. Vogel Materially Misrepresents Baron's Role

Secondly, Vogel misrepresents Baron's involvement with Quantec LLC. Baron has received zero (none) livelihood from Quantec LLC or the Quantec LLC domain names. More than half a decade ago Baron in order to fund medical research to find a cure for Type I diabetes created and funded the Village Trust with an asset base that was valued at over a hundred million dollars. Quantec LLC is an asset of the Village Trust and Baron neither owns Quantec LLC nor manages it. **Baron, moreover, has not taken one cent for himself personally from the independent diabetes research trust.** The trust, however, has attracted a very long line of attorneys' outstretched hands, and, incredibly, by brazen abuse of the court system such as that undertaken by Vogel, attorneys have diverted literally all of the multi-million dollar trust income away from medical research funding, and into their own pockets.

C. Vogel Materially Misrepresents that “Dauben been a close friend and business associate of Jeff Baron.” and “Dauben regularly serves as Baron’s media outlet”

i. Dauben is not a friend nor ‘outlet’ of Baron

Contrary to Vogel’s fictitious averments, Dauben is neither a friend of Baron, nor serves as his ‘media outlet’. **Baron has not spoken to Dauben more than three times (at most) in the past three years.** Baron has never employed Dauben nor been in business with Dauben. Instead, Dauben’s services were apparently used by the Virgin Islands management of Quantec in 2007, and Dauben has been befriended by Damon Nelson and employed by Vogel and Sherman.

ii. Dauben, not by coincidence, is intimately involved with the affairs of Sherman/Vogel/Nelson

Sherman/Vogel/Nelson have engaged in extensive communications and correspondence with Dauben, and Nelson has gone so far as to provide Dauben with free office space. Dauben appears to have acted on the instructions of Vogel and was going to submit a large claim against Baron for Vogel to pay as receiver, until it was pointed out in motions before this Honorable Court that Vogel was actually going to take the Dauben money for himself. When Dauben discovered this, apparently on the internet, he appears to have felt deceived by Vogel and published an article that Vogel is a “dirty filthy crook”. Vogel has since become involved in Dauben’s alleged criminal past, and immediately after the Vogel article

was published, charges that were rejected half a decade ago were revived, and within 30 days Dauben was indicted. The charges— for consensual sex with a 15 year old teenager during a church outing— have nothing to do with Quantec LLC.

Vogel appears to be preemptively attempting to distance himself from Dauben who appears to have been working at Vogel's direction (through Nelson who befriended Dauben) to publish offensive statements about court personnel so that Vogel could falsely accuse Baron of making the offensive statements (as Vogel has now done). Facts that suggest Dauben has been working with Vogel are as follows: (1) the extensive communications between Vogel and Dauben (through Nelson and Sherman/Urbanik) that were not disclosed by Vogel to this Honorable Court, (2) the favors provided Dauben (free office space provided by Nelson) that were not disclosed by Vogel to this Honorable Court, (3) apparently, cash payments made by, or requested by Sherman/Urbanik to Dauben, that were not disclosed by Vogel to this Honorable Court, (4) Vogel's attempt to have Dauben make a large 'claim' to be paid by Vogel, as receiver, (derailed when it was disclosed in court filings that the money would end up in Vogel's pocket, not Dauben's), (5) Baron's lack of contact with Dauben, and (6) Vogel's history of prior attempts to actively set-up the false appearance of Baron 'wrongdoing'.⁵

⁵ See, e.g., GENERAL RESPONSE TO MOTIONS FOR FEES FOR VOGEL, HIS PARTNERS, AND OTHER "RECEIVER PROFESSIONALS" (Document 00511600278 in case 10-11202 filed on 9/12/2011) (describing the Vogel's orchestrated attempt to falsely make it appear that Baron was harassing, intimidating, and 'obstructing' (at pdf page 14, et.seq.); and SR. v5 pp102-110 (the emails with Vogel' office' digital IDs proving the affair was an orchestrated set-up by Vogel).

D. Vogel Erroneously Argues that Baron joked about “deathtojew’s”

Contrary to Vogel’s erroneous averments, Baron has never had anything to do with, has no knowledge of, nor has he joked about “deathtojew’s”. If a client owned or joked about “deathtojew’s.com” any other so-called ‘offensive’ domain name, the undersigned would defend the fundamental First Amendment right of every American to free speech. Moreover, “deathtojew’s.com” could be a non-offensive historical site about the historic movements from the Biblical Story of ‘Ester’ and Persia, to the Nazi atrocities, etc. However, the reference in Vogel’s argument has no underlying factual basis— Baron did not own, discuss, or joke about “deathtojew’s”. Rather, Vogel’s argument is fictitious— and clearly irrelevant to the relief sought in Vogel’s motion.

III. Vogel Seeks to Place the Entire Asset Base of Quantec at very Real Danger of Catastrophic Loss

A. The Names would be at Material Risk

Vogel’s argument fails to disclose to this Honorable Court the incredible cost Vogel risks in satisfying his personal desire to be involved with the criminal prosecution of Joey Dauben. By placing the list of Quantec LLC’s names in the hands of the District Attorney, **the names would be at material risk of public disclosure** through a Freedom of Information request. *See e.g., Department of Justice v. Landano*, 508 U.S. 165 (1993). Such a disclosure of Quantec LLC’s domain list would be catastrophic for multiple reasons, as follows:

First, especially where the names have been listed as relevant to criminal activity, and where the domains have been grouped for monetizing, there is a high likelihood that Google would add the names in bulk to its domain name blacklist.

The names would no longer be allowed in search results and their value would be reduced by 95% to 99% in value. Accordingly, Vogel's request recklessly risks destruction of the company. Secondly, Vogel has deactivated all of the active site content, so that no name currently has commercial activity supporting trade name rights. Every name thus represents an 'undeveloped business idea'. By disclosing the secret list to the public and to Quantec LLC's competitors, if the domain list is made public, **every domain name idea could be stolen by competitors before Quantec LLC is able to develop the name.**

Thus, if competitors are allowed to see what names Quantec LLC owns, it will allow them to purchase around Quantec LLC's internet territory, and if the competitors develop those domains first, the domains owned by Quantec will be reduced in value to almost nothing. For example, if Quantec owns "fishshoes.com" "fishslippers.com" and "fishflops.com" it can develop a website presence based on the "Fish" label for shoes. However, if a competitor knows in advance what websites are owned, the competitor can pre-empt the 'Fish' label by (1) registering or purchasing competing domains, or (2) registering a tradename before the domains can be used. Thus, if "Fishflops" were yet undeveloped, a competitor could register the "Fish" label for shoe sales. Or, a competitor could register

“Fishsocks.com”, “Fishpuppies.com”, “Fishsandals.com”, etc. and go to market before Quantec. **Each domain name** in the company’s inventory of undeveloped domain names is a **valuable trade secret business idea**. Thus, **releasing the domain name list is gratuitously giving away to the world all of Quantec’s trade secret business ideas**. It is business suicide.

B. Quantec LLC’s Assets are not for Vogel’s Retaliation

Vogel may be personally offended that Dauben called him a dirty filthy crook after Dauben discovered that Vogel was not really his ‘friend’ and the money Dauben thought Vogel was arranging to go to him was really going to end up at Vogel’s law firm instead. However, the assets of Quantec LLC do not exist to serve the ego and personal retaliatory motives of Peter Vogel. Such a use of assets is a gross violation of a fiduciary’s duties.

C. No Nexus between the Names and the Crime

Further, There is no nexus between managing domains and Dauben’s alleged sex with a 15 year old teenager on a church picnic. Moreover, were the so called ‘hate’, and ‘sex’ names make up less than one fourteen one-hundredth of one percent of the domains Dauben managed, there is no probative nor logical relevance to the crime Dauben is accused of. Moreover, if the ‘sex’ names were relevant, only those names could be disclosed—there is clearly no need to needlessly disclose all of Quantec LLC’s trade secret domain names.

D. Ethical Duties do not Allow Disclosure by a Fiduciary for Prior Third Party Crimes

Vogel's argument errs in finding an ethical duty to disclose valuable corporate trade secrets to assist in prosecution of a potential crime of a third party. Contrary to Vogel's erroneous argument, the ethical duties allowing disclosure of information held by a fiduciary, require two key elements missing in the present circumstance, as follows: (1) that the criminal act was that of the client for whom the secrets are held by the fiduciary, and (2) that the disclosure is necessary to prevent commission of the crime, or if the attorney was involved in the commission, to rectify the harm from the crime. *See e.g.*, Texas Disciplinary Rule 1.05. Neither of these facts is present here. The alleged sex with an underage teen at a church outing was not committed by Quantec LLC or any employee thereof. Moreover, the disclosure of Quantec's trade secrets will not prevent the crime (allege to have occurred in 2007), nor 'rectify' the crime (which does not appear to have been aided by Vogel, in any case).

IV. Vogel's Selective Outrage

A. Vogel's Promotion of Pornography

Vogel suggests management of the names might have some relevance to the conduct of Dauben, but Vogel himself has happily managed the names, and has

actively provided the public pornographic content at <childrapeporn.com>, etc. for the past year.⁶

B. Vogel's Desire to 'Help' the Prosecution is Selective, he has not Sought to Help the Pedophilia and Child Rape Prosecutions against the Plaintiff's Counsel, MacPete

At about the same time frame as Joey Dauben is accused of sex with a 15 year old teenager, the plaintiff's attorney, MacPete has been accused and subject to multiple criminal proceedings for pedophilia and rape of a six year old boy. Yet, Vogel has made no motion to provide the authorities with a list of domain names closely supervised and effectively controlled by MacPete.⁷ We would hope that MacPete is not a pedophile and child rapist, just as we would hope that Dauben would not have used the poor judgment to have sex with a 15 year old teenager.

⁶ Notably, Quantec LLC wants the <childrapeporn.com> site to link to sex addiction treatment centers and victim resource groups. However, the District Court below has effectively hijacked the content provided at Quantec LLC's websites. In countries such as Argentina the government seizes media outlets and controls what information will be provided to the public. That should not be occurring in the United States. Receivership is a remedy that is limited to conserving property that is subject to some underlying remedy in equity sought *in rem* in that property. In the instant proceedings, there is no underlying *in rem* claim pled against the property of Quantec LLC. As a result, the District Court has effectively taken governmental control over the media content of Quantec LLC's internet assets.

For that past year Vogel has used the sites such as <childrapeporn.com> to actively promote pornography. Vogel is perfectly entitled to support whatever political or cultural agendas he chooses. However, that should not be done with the assets of Quantec LLC. Neither the District Court nor its receivers should be making content choices over the information distributed by Quantec LLC. Governmental takeover of private companies is unhealthy in a free society. Vogel's control of <childrapeporn.com> and choice to use the site to promote pornography is certainly a legitimate private value choice of Vogel. However, **the District Court and Vogel should not dictate the cultural and political values of the information distributed to the public by Quantec LLC.** If Quantec LLC wants to promote treatment of sex addiction instead of promoting pornography, that should be the choice of Quantec LLC, and not controlled by the District Court and its receiver.

⁷ MacPete was counsel for the domain name enterprise before it ended with MacPete turning on Baron and suing him on behalf of the plaintiff below (who it turns out is himself a convict with multiple indictments for fraud/forgery/theft).

But neither of these have anything to do with Quantec LLC's confidential domain name list, or with Jeffrey Baron. Vogel's new found sense of civic duty is notably selective— desiring to risk destruction of Quantec LLC, in order to retaliate against Dauben.

V. Vogel's Motion is a Manufactured Billing Exercise

A. Not Designed to Conserve the Receivership Assets

Vogel's present motion is another example, in a long line of prior examples, of a contrived motion based on a tenuous and constructed 'need' that was actively sought out by Vogel in order to have something to present and generate more and more billing. **Nothing in Vogel's motion is designed to conserve the assets of the receivership estates.**

B. Vogel's Seeking to Use Quantec LLC for His Personal Purposes

Notably, Vogel has solicited all of the 'claims' against Baron. Vogel also moved for Quantec LLC to be placed into receivership. Vogel and Gardere were also involved with litigation against Dauben, and now Vogel is involved in the prosecution of molestation charges against Dauben. **Everything with this receivership seems to turn on Vogel**— Vogel was the special master, Vogel was also the mediator in the mediation that had not yet started but for which the District Court was led by Vogel in *ex parte* proceedings to believe that Baron caused the mediation to fail (so that Vogel would be appointed receiver), Vogel filed the receivership order, Vogel moved for multiple parties to be added into his

hands as receiver, including Quantec LLC. Now, Vogel is offended by an article about him, and now finds a ‘civic duty’ to risk the value of Quantec LLC’s assets. There is no logical relationship between managing 700,000 domain names (less than one fourteen one-hundredths of one percent of which relate to sex) and the poor judgment in allegedly having sex with a 15 year old at a church picnic. Releasing the domain list of Quantec LLC involves great risk, is clearly against the best interest of the company, and provides he company no benefit.

PRAYER

Wherefore, Quantec LLC prays that this Honorable Court reject and deny Vogel’s motion.

Respectfully submitted,

/s/ Gary N. Schepps

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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.

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