

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 MOTION TO HAVE
THE PROPRIETY OF HIS ACTIONS CONFIRMED
AND MOTION FOR EVIDENTIARY 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, make this response with respect to the 8-16-11 Sealed MOTION filed by Appellee Mr. Peter S. Vogel in 11-10113 to Confirm Propriety of Domain Name Deactivations and sealed appendix. Appellants move that an evidentiary hearing be allowed prior to the entry of an order confirming the propriety of the receiver's actions.

I. ARGUMENT AND AUTHORITY

Vogel offers no legal authority to support the relief he requests. Vogel does not seek court *approval*, but seeks a preemptive finding that his actions have been proper.

Background of Peter Vogel and Jeff Baron

Several years ago, Jeff Baron personally consulted with Vogel, and shared important trade secrets regarding the domain name registration process of Ondova. Baron's consultations with Vogel were clearly with a view towards Vogel's and his firm's representation of Baron and Ondova. Accordingly, Vogel was under a strict duty to maintain the confidentiality of Baron's disclosures to him. *See Nolan v. Freeman*, 665 F.2d 738, 739 n.3 (5th Cir. 1982). Vogel, however, violated that confidence and used the information to turn his law firm into a 'specialist' at suing Jeff Baron and Ondova. Pursuant to Federal law, all of this should have been disclosed by Vogel before he was appointed special master in the District Court

proceedings below.¹ It was not. Then, while acting as special master, Vogel held secret consultations with respect to having himself appointed receiver over Jeff Baron. SR. v5 p238. Vogel then personally filed an order signed by Judge Furgeson appointing Vogel receiver *ex parte*. Vogel, while still employed as special master in the case, then filed a motion to have himself appointed receiver over the assets of Novo Point, LLC, and Quantec, LLC. R. 1717.

DOMAIN NAME DISPUTES: What Should Be Happening

Novo Point, LLC and Quantec, LLC own together around two hundred thousand unique domain name assets. The domains were registered in good faith, based on a computer algorithm as to what pragmatically are key generic terms that web surfers would be interested in. The focus of the companies' business model is providing multiple users access to common domain names. While sites are being developed, domain monetization services are used to provide additional income streams. Many of the domain names are extremely valuable, and third parties occasionally attempt to take over the domains by filing domain name disputes. Additionally, sometimes a domain name intended to be generic is not, and due to an error in the computer algorithm a domain name might have been registered that clearly is not generic.

¹ Federal Rule of Civil Procedure 53(b)(3) strictly requires that a court may issue an order appointing a special master only after the master files an affidavit disclosing any ground for disqualification under 28 U.S.C. §455.

When a third party raises to the attention of the companies that they have an issue with the companies' ownership of any particular domain, there is a fundamental legal question that must be answered as a preliminary matter: Was the registration of the domain name lawful? Because the computer algorithm used to register the domain names was designed to register lawful generic names, the answer to this question should in the usual course of events be "Yes".

DOMAIN NAME DISPUTES: What Is Happening

Here Vogel has a serious conflict of interest. He and his law partners have in the past filed a substantial number of lawsuits alleging that the registration of domain names (including specifically those owned now by Novo Point, LLC and Quantec, LLC) was not lawful. If Vogel were to assert— as is his fiduciary duty as receiver for the companies— that the registrations are lawful, he would be undermining a significant portion of the lawsuits his firm would otherwise undertake. Accordingly, **in direct and gross violation of his fiduciary duties to the companies, Vogel has prevented the companies from asserting that their registration of the domains was lawful.** The results have been disastrous for the companies.

As Vogel is well aware (he and his law partners have alleged this fact in prior lawsuits), a company that has lost prior domain name dispute arbitrations is presumed to have registered domains in bad faith. The more prior domain name registrations that have been lost, the greater and more significant the presumption

of bad faith. To contest a domain name dispute in arbitration, a simple form needs to be filled out, explaining why the domain registration was proper pursuant to the international rules. A staff attorney at \$8,000.00 per month cost would normally perform this function for the companies.

Vogel has prevented this from happening, and has instead DEFAULTED on every single domain name dispute brought against the companies. Because he does not want to take the position that the registrations were lawful, **Vogel has refused to defend the companies' assets.** Instead, Vogel has attempted to intimidate those with domain name disputes to 'honor' the District Court stay. This has worked for some claimants, but many, realizing that the District Court has no jurisdictional authority to stay international arbitration proceedings, have continued with their disputes. The companies have BY DEFAULT lost those disputes. Vogel has for the time being hidden the result of his gross and intentional neglect by pushing the domain name registrar to ignore the international arbitration panel results—but only while the receivership is pending. What will happen the second the receivership is dissolved? Due to Vogel's multiple defaults, it appears that hundreds of thousands of dollars (and potentially millions of dollars) in domain name assets will be instantly lost as the registrar then complies with the completed arbitration panel decisions against the companies (which Vogel intentionally defaulted on).

Notably, Vogel has caused severe reputation damage to the companies by allowing multiple defaults of domain name disputes. This serves his personal

interest and the interest of his law firm, but it is in direct violation of Vogel's fiduciary duties to the companies.

Vogel Seeks to Be Relieved of Liability for His Gross Violation of Duty

Accordingly, what Vogel is really seeking is a court order he can later use to absolve himself of liability for his gross violation of his fiduciary duty as receiver. Notably, Vogel has failed to disclose to this Honorable Court that he has prevented the companies from substantively responding or defending before the arbitration panels *any* of the multiple domain name disputes brought against the companies' assets. Vogel notably offers no legal authority as to why an international arbitration panel, clearly outside the territorial jurisdiction of a US District Court, would be suspended by a district court's receivership order. Notably too, Vogel has taken no action to reverse the arbitration awards against the companies that have been granted in the past 9 months.

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