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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: §
§
JEFFREY BARON, § **Bankr. No. 12-37921-SGJ**
§
Alleged Debtor. §

**JEFFREY BARON’S REQUEST FOR LEAVE TO SEEK LIMITED RELIEF FROM
ORDER CLARIFYING APPLICATION OF STAY TO CERTAIN APPEALS**

Jeffrey Baron (the “Alleged Debtor”), by and through counsel, and pursuant to the Court’s Order Clarifying Application of Automatic Stay to Certain Appeals [Doc. 81, the “Order”], and Bankruptcy Rule 8003, requests leave of this Court to seek limited relief to file an appeal of this Court’s Order: Continuing to April 4, 2013 at 2:30 PM the Joint Status Conference and Hearings Set for 3/19/13 at 10:30 AM on various motions filed by the Receiver; Requiring Mandatory, Good Faith, in-Person Global Settlement Conferences Among Parties and Lawyers During Next Two Weeks; (c) Authorizing Payment of Court Reporter Fees; and (d) Addressing Miscellaneous Issues. A copy of the Order is attached as Exhibit A.

In support of his request for relief from the Order Clarifying Application of Automatic Stay to Certain Appeals, Alleged Debtor provides a summary of the following issues:

I. The Order and Issues on Appeal

Specifically, the Alleged Debtor wishes to appeal from that portion of the Order [Dkt. 96] that orders as follows:

there shall be no wind-down plan considered by the district Court for the Receivership at this time for two reasons: the automatic stay of the Jeff Baron involuntary bankruptcy case; and (b) no mandate has been issued by the Fifth Circuit with regard to its ruling invalidating the Receivership (which is not final at this time). There will be no hearing on a wind-down of the Receivership unless and until both of the following occur: (a) the automatic stay of the Jeff Baron involuntary bankruptcy order is terminated; and (b) a mandate has been issued by the Fifth Circuit with regard to its ruling invalidating the Receivership. [Dkt. 96 at 4].

The Alleged Debtor does not seek leave to appeal from any other provisions of the subject Order.

This portion of the Order interferes with the jurisdiction of the Fifth Circuit Court of Appeals over the receivership property and the District Court's ability to coordinate the activities of both the involuntary bankruptcy and the receivership. The order assumes subject matter jurisdiction over a petition for involuntary bankruptcy that has been brought on disputed claims. Mr. Baron understands that the Bankruptcy court has ruled that the claims are bona fide undisputed claims that can be the subject of an involuntary bankruptcy.¹ The Bankruptcy Court's conclusion was based on the argument that the Compromise Order entered by the District Court (Dist. Dkt. 575) was a final, binding order. As set out below, the order was not final or binding.

Finally, the Bankruptcy Court has entered an order abating the bankruptcy proceeding until the Fifth Circuit's mandate, the timing of which is unknown and potentially lengthy. The District Court has, on at least two occasions, requested that the parties devise a plan to wind down the receivership. Further delay of winding down, or at least discussing a wind down plan

¹ A proposed order has been uploaded for the Court's consideration as well as an Order Denying Alleged Creditor Jeffrey Baron's Motion to Dismiss.

will materially delay potential settlement of the case, increase the costs of administration for two estates and delay termination of the receivership. For these reasons, the Alleged Debtor respectfully requests the Court grant leave to appeal the order. Subject to further order of this court, the Notice of Appeal is filed contemporaneously with this Motion.

II. Res Judicata Should be Applied Against Jeff Baron.

As set out in pleadings and oral argument on the Creditors' Motion for Partial Summary Judgment, the Alleged Debtor maintains that Judge Furgeson's order in Docket No. 575 was not final as the District Court specifically held: (a) that Mr. Baron had a right to litigate counterclaims against all claimants; (b) entered an order stating that funds to be paid under the Compromise Order could not be paid until the Fifth Circuit ruled on the appeals; and (c) the Order did not state that it was final. This Court has concluded that the Compromise Order was final and binding on the parties based on the doctrine of res judicata, and precludes any bona fide dispute as to the Petitioning Creditors' claims.

The doctrine of res judicata (claim preclusion) requires the following elements: (1) The parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded to a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions. *Swate v. Hartwell*, 99 F.3d 1282, 1286 (5th Cir.1996). The Fifth Circuit expressly held that the claims were not decided on the merits, and ruled that the appointment of the Receiver - - pursuant to which authority the Compromises embodied in that order were reached - - was improper. Thus, the Alleged Debtor maintains that res judicata should not be applied to preclude bona fide disputes.

III. The Bankruptcy Ruling Conflicts with the Fifth Circuit Decision.

As a practical matter, the Bankruptcy Court's ruling is in *direct conflict* with the Fifth Circuit's decision holding that the claims of the attorney claimants in the receivership were not determined by the district court on the merits. This places the Bankruptcy Court in the anomalous position of actually or effectively overruling a decision by the Fifth Circuit by holding that a Compromise Order entered by the District Order somehow supersedes an order of the Fifth Circuit. While appeals for the parties are not completed, the *reasoning* and *conclusions* of the Fifth Circuit should not be disregarded. The Fifth Circuit ordered that the District Court proceed with the wind-down of the receivership. The Alleged Debtor respectfully submits that this portion of the Order must, as a matter of law, be reversed.

IV. The Fifth Circuit Ordered the District Court to Wind Down the Receivership. The District Court Should Withdraw the Reference and Comply with that Order.

As a matter of judicial economy, the Receiver and the Alleged Debtor's motion to withdraw the reference should be decided prior to any further proceedings in the Bankruptcy Court. Local Bankruptcy Rules 5011-1.

The Order interferes with the jurisdiction of the Fifth Circuit Court of Appeals in ordering a wind-down of the receivership and also with the District Court's ability to comply with the Fifth Circuit's order to wind down the receivership. The District Court referred the matter to the Bankruptcy Court but previously entered an order that any interference with the District Court's enforcement of its order would violate its order. Both the Receiver and the Alleged Debtor believe the involuntary constitute a violation of the receivership order and should be the subject of a show cause order.

The Receiver filed a motion to withdraw the reference to the bankruptcy, and the Alleged Debtor joined in that motion [DC Docket No. 1187, Dkt. 1199 at 5]. The wind down plans filed

by the Receiver and the Alleged Debtor seek withdrawal of the reference to the bankruptcy court to eliminate the duplication of effort leading to the reason for the joint status conference.

WHEREFORE, the Alleged Debtor requests an Order Granting Relief from Order Clarifying Application of Stay to Certain Appeals and granting leave to appeal the Order [Dkt. 96].

Very respectfully,

STROMBERG STOCK, PLLC

/s/ Mark Stromberg

Mark Stromberg

Texas Bar No. 19408830

CERTIFICATE OF SERVICE

This is to certify that, on April 1, 2013, a copy of this document was served on all counsel through the Court's ECF system.

/s/ Mark Stromberg

Mark Stromberg