

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NETSPHERE, INC.,
MANILA INDUSTRIES, INC., and
MUNISH KRISHAN,
Plaintiffs.

v.

JEFFREY BARON, and
ONDOVA LIMITED COMPANY,
Defendants.

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Civil Action No. 3-09CV0988-F

MOTION FOR **EMERGENCY RELIEF**

**WAIVER OF REPLY AND MOTION FOR IMMEDIATE RULING ON
MOTION TO VACATE RECEIVERSHIP AND ALTERNATIVE MOTION
TO STAY PENDING APPEAL**

TO THE HONORABLE ROYAL FURGESON, U.S. DISTRICT COURT JUDGE:

COMES NOW, Jeffrey Baron, Appellant, and requests the Court to rule on his Motion to Stay.

This Court has found Mr. Baron's motion warrants expedited consideration and accordingly ordered the Trustee to file a response to the motion by today, December 10, 2010.

This Court generously allowed 5 days for Mr. Baron to reply to any response. **Mr. Baron waives his reply to the Trustee's response in order that the Court can enter a ruling today.**

This Court considered and issued a ruling on the Trustee's motion to appoint the receiver the same day it was filed. This Court considered and ruled on Verisign's motion to vacate within 1 day of its filing.

Attached hereto is a copy of the Motion for Stay filed in the Court of Appeals, providing a clear briefing of Mr. Baron's statement of the relevant law. Mr. Baron is entitled to relief on grounds established as a matter of law. Because the order involves the impingement of constitutional rights, irreparable injury is established *as a matter of law*.

Attached hereto and incorporated herein are two declarations. The first establishing that as a very real matter Mr. Baron is ill. **The stress of the seizure of all his property has led to the point that Mr. Baron is now experiencing heart problems.** This is not a 'self- report'. This is a medical diagnosis based on an EKG and requiring referral of Mr. Baron to the immediate care of a cardiologist.

The second declaration establishes that domain names subject of this lawsuit are now under immediate threat of liquidation.

WHEREFORE Jeffrey Baron prays that this Honorable Court:

- (1) Rule today on Mr. Baron's motion to Vacate and in the alternative Stay pending appeal the receivership order entered in this case.

- (2) Jointly and in the alternative issue an order today prohibiting the liquidation of any property seized or controlled by the receiver pending ruling by this Court and an opportunity, if applicable, for a ruling by the Court of Appeals on Mr. Baron's motion to stay.

Respectfully submitted,

/s/ Gary N. Schepps
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State Bar No. 00791608
Drawer 670804
Dallas, Texas 75367
(214) 210-5940
(214) 347-4031 Facsimile

**APPELLATE COUNSEL FOR
JEFFREY BARON**

CERTIFICATE OF SERVICE

This is to certify that this was served on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps
Gary N. Schepps

CERTIFICATE OF CONFERENCE

This is to certify that the undersigned conferred with Mr. Raymond J. Urbanik, attorney for DANIEL J. SHERMAN, Trustee for ONDOVA LIMITED COMPANY, and he is opposed to this motion for expedited consideration of the motion for stay.

/s/ Gary N. Schepps _____
Gary N. Schepps

DECLARATION OF JEFFREY BARON

1. My name is Jeffrey Baron. I am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct. I have knowledge of the stated facts which I learned as the result of witnessing the facts and events stated herein.

2. Attached is a true and correct copy of a medical report about me with private information redacted.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 10 day of December, 2010, in Dallas, Texas.



Jeffrey Baron

Trinity Marsh Medical Clinic



3355 Trinity Mills Suite 211
Dallas, TX 75287
Phone: (972) 862-8600
Fax: (972) 307-5963[-???-]
Contact Person: Angeline Fernandez
Contact Phone: 972-416-6360

Full Name: JEFFREY BARON
Date of Birth: [REDACTED]

[REDACTED]

[REDACTED]

Friday, December 3, 2010

REFERRAL TO:

Dr. [REDACTED]
Cardiology
[REDACTED] 000
Plano, TX 75093

[REDACTED]

Dear Dr. B [REDACTED]

I am referring JEFFREY BARON for:

- Palpitation (785.1) [REDACTED]
- [REDACTED]
ekg though shows short pr syndrome. will get cardiology consult

Patient current meds:

JEFFREY BARON

Patient #: 66864

DOB: [REDACTED]

Friday, December 3, 2010

1. PARoxetine HCl 10MG Tablet 1 Tablet PARoxetine HCl 10MG, 1 Tablet two times daily, #60, 30 days starting 12/03/2010, No Refill. Active.
2. Omeprazole 20MG Capsule DR 1 capsule(s) Omeprazole 20MG, 1 capsule(s) once daily, #30, 30 days starting 12/03/2010, Ref. x1. Active.
3. Atacand HCT 16-12.5MG Tablet 1 (one) Tablet Atacand HCT 16-12.5MG, 1 (one) Tablet daily, #60, 30 days starting 12/03/2010, Ref. x3. Active.
4. NovoLOG 100UNIT/ML Solution 400 unit(s) NovoLOG 100UNIT/ML, 400 unit(s) daily, 12 bottle(s), 30 days starting 11/19/2010, No Refill. Active.

5. [REDACTED]

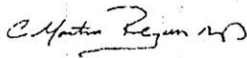
6. Lantus 100UNIT/ML Solution 200 unit(s) Lantus 100UNIT/ML, 200 unit(s) daily, 10 bottle(s), 30 days starting 10/04/2010, Ref. x6. Active.

7. [REDACTED]

Activ

1. Palpitation (785.1)
2. [REDACTED]
3. SYMPTOM, INSOMNIA NOS (780.52)
4. [REDACTED]
5. DM W/NEURO MNFST, [REDACTED], UNCONTROLLED (250.62)
6. [REDACTED]
7. [REDACTED]
8. Thrombocytopenia (289.9)
9. Immunoglobulin deficiency (279.03)
10. [REDACTED]
11. hx seizures
12. NAUSEA WITH VOMITING (787.01)
13. HYPOKALEMIA (276.8)
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]

Thanks for your participation in the care of JEFFREY BARON
Sincerely;



Dr. C. Martin Regan

PERTINENT LABS:

DECLARATION OF JEFFREY BARON

1. My name is Jeffrey Baron. I am competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct. I have knowledge of the stated facts which I learned as the result of witnessing the facts and events stated herein.

2. Pursuant to the 'global settlement agreement' in this case, agreed to by the Ondova Chapter 11 Trustee and approved by the Ondova bankruptcy court, a very specific group of unique domain names was to be transferred to Quantec, LLC and NovoPoint, LLC.

3. The receiver appointed by the District Court has taken control of the registration of those unique domains, and now immediate steps are being taken by the receiver to liquidate the names.

4. There are more than 200,000 unique domain names involved, many of which are extremely valuable. Each domain names is unique and once lost cannot be replaced. Each domain presents a unique business opportunity based upon the uniqueness of the name.

5. There is no legitimate or lawful basis to liquidate the domain names, since I am not a judgment creditor. The receiver has already seized more than sufficient assets to cover whatever its needs are. The Bankruptcy Court has also previously ordered me to put hundreds of thousands of dollars in trust with the Chapter 11 Trustee, which money is still being held.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 10 day of December, 2010, in Dallas, Texas.



Jeffrey Baron

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Netsphere, Inc. et. al.,

Plaintiffs

v.

Jeffrey Baron,

Defendant / Appellant

Daniel J. Sherman
(Ondova Limited Company)

Defendant / Appellee

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

**EMERGENCY MOTION TO STAY ORDER APPOINTING
RECEIVER OVER JEFFREY BARON PENDING APPEAL**

Respectfully submitted,

/s/ Gary N. Schepps

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(214) 210-5940 - Telephone
(214) 347-4031 - Facsimile
Email: legal@schepps.net

COUNSEL FOR JEFFREY BARON

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. PARTIES

- a. Appellant/Defendant:** JEFFREY BARON
- b. Appellee/Defendant:** DANIEL J. SHERMAN, Trustee
for ONDOVA LIMITED COMPANY
- c. Intervenor:** VeriSign, Inc.
- d. Plaintiffs:**
 - (1) Netsphere Inc
 - (2) Manila Industries Inc
 - (3) Munish Krishan

2. ATTORNEYS

- a. For Appellant: Gary N. Schepps
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
- b. For Appellee: Munsch Hardt Kopf & Harr, P.C.
 - (1) Raymond J. Urbanik, Esq.
 - (2) Lee J. Pannier, Esq.

 - 3800 Lincoln Plaza
500 N. Akard Street
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
- c. For Intervenor: DORSEY & WHITNEY (DELAWARE) LLP
 - (1) Eric Lopez Schnabel, Esq.
 - (2) Robert W. Mallard, Esq.

d. For Plaintiffs:

- (1) John W MacPete, Locke Lord Bissell & Liddell
- (3) Douglas D Skierski, Franklin Skierski Lovall Hayward
- (4) George M Tompkins, Tompkins PC
- (5) Melissa S Hayward, Franklin Skierski Lovall Hayward

3. OTHER

a. Companies and trusts Siezed:

- (1) VillageTrust
- (2) Equity Trust Company
- (3) IRA 19471
- (4) Daystar Trust
- (5) Belton Trust
- (6) Novo Point, Inc.
- (7) Iguana Consulting, Inc.
- (8) Quantec, Inc., Shiloh
- (9) LLC, Novquant, LLC
- (10) Manassas, LLC
- (11) Domain Jamboree, LLC
- (12) Genesis, LLC.

b. Receiver: Peter Vogel

c. Counsel for Receiver: Gardere Wynne Sewell LLP

- (1) Peter Vogel
- (2) Barry Golden
- (3) Peter L. Loh

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

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TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW JEFFREY BARON, Appellant, and pursuant to Federal Rule of Appellate Procedure 8(a)(2) moves this Honorable Court to stay the District Court's Order Appointing Receiver over Mr. Baron and all his assets signed on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010] in the District Court below, pending appeal of that order to this Court pursuant to 28 U.S.C. §1292(a)(2).

The granting of this motion is appropriate because the Appellant Jeffrey Baron has substantial likelihood of success on appeal, and is suffering immediate and irreparable injury from the District Court's order.

II. SUMMARY

The relevant law is clear and longstanding. There is no basis in law to appoint a receiver in this case and the law expressly prohibits such an appointment.

Moreover, the District Court's order appointing receiver was issued without due process for a clearly improper and unconstitutional purpose, and squarely violates the Constitution of the United States. The damages being inflicted upon Mr. Baron by virtue of the order are very real, harsh, and irreparable.

III. STATEMENT OF THE CASE

This motion and appeal arise out of a breach of contract lawsuit filed in the District Court.¹ In this lawsuit Netsphere sought to enforce an alleged contract entered into with Jeffrey Baron and Ondova Limited Company. (Exhibit B). Subsequent to the

¹ Netsphere, Inc., et.al., v. Jeffrey Baron, and Ondova Limited Company, Civil action no. 3-09CV0988-F in the Northern District of Texas.

filing of the lawsuit, Ondova was forced to file for bankruptcy protection. Thereafter, all claims and controversies in the District Court lawsuit settled. (Exhibit C).

Jeffrey Baron is not in bankruptcy. Mr. Baron is a defendant in the District Court lawsuit and the beneficial owner of the equity of Ondova, the company in bankruptcy.

Mr. Baron became concerned that the attorney for the trustee in the Ondova bankruptcy, Mr. Raymond J. Urbanik, was charging grossly excessive fees². Mr. Baron filed an objection to Mr. Urbanik's latest fee application (over three hundred thousand dollars) in the bankruptcy court. (Exhibits A, D).

Mr. Urbanik then filed in the District Court breach of contract lawsuit a motion *to appoint a particular receiver over Mr. Baron*. Mr. Urbanik sought to have Mr. Baron stripped of all his possessions and for that receiver to take possession of Mr. Baron in the nature of a guardianship so that Mr. Baron would be unable to hire legal counsel. (Exhibit E).

Mr. Urbanik cited as the sole necessity for his motion that **“13. Therefore, the appointment of a receiver is necessary under the circumstances in order to remove Baron from control of his assets and end his ability to further hire and fire a growing army of attorneys.”**³ (Exhibit E).

² Cloaked with authority and legitimacy as the attorney for the bankruptcy trustee, Mr. Urbanik has effectively drained all the assets of Ondova through massive attorney fee billings. Mr. Urbanik has billed about a million dollars in fees, a sum greater than all of the combined creditors' claims against the small company. In other words, it would have been cheaper just to pay all the claims than Mr. Urbanik's bill. Notably, Mr. Urbanik's incredible fees did not remove most of the claims. (Exhibit D).

³ Mr. Urbanik offered the unusual theory that some of Mr. Baron's former counsel were making

Without providing any notice and the opportunity for Mr. Baron to be heard, without any supporting affidavits, and without the entry of any findings, the District Court below entered an order stripping Mr. Baron of all his possessions and appointed the receiver requested by Mr. Urbanik over Mr. Baron's person and property.⁴ (Exhibit F).

The receiver then **seized all of Mr. Baron's assets**, appeared in the bankruptcy court asserting to hold all of Mr. Baron's rights, and withdrew the objection to Mr. Urbanik's fee application. (Exhibit G). The bankruptcy court then sealed Mr. Urbanik's fee application so that it could not be examined by the public. (Exhibit H).

Appellant filed a motion in the District Court seeking an order vacating the appointment of a receiver over Jeffrey Baron and in the alternative the issuance of a stay pending appeal. (Exhibit I). Appellant twice requested from the District Court, at a three day interval, emergency consideration of his request for emergency relief. (Exhibit J). Appellant's counsel has phoned the chambers of the District Court and has now for several days attempted to secure a ruling. According to the District Court's law

claims in Ondova's bankruptcy case (which has no connection to the district court action) asserting they benefited Ondova, and therefore Mr. Baron needed to be stripped of all his assets. Assuming, *arguendo* that Mr. Baron has any control over what his former attorneys do in the bankruptcy court, an order by the bankruptcy court that claims from former counsel of Mr. Baron will not be allowed as claims against Ondova Limited, would solve the problem.

⁴ The order appointing receiver and seizure actions of the receiver actually go further, seizing the assets of retirement and spendthrift trusts for which Mr. Baron is the beneficiary, as well as the assets of the companies owned by the spendthrift trusts. **Again, Mr. Baron is not in bankruptcy and is not a judgment debtor.** A court is moreover absolutely prohibited from attempting to appoint a receiver in a bankruptcy case. 11 U.S.C. §105(b).

No party has made any claim to any property right in any of Mr. Baron's assets. Rather, the *express* and only purpose of the receivership and summary confiscation of all of Mr. Baron's property is to prevent Mr. Baron from being able to hire legal counsel. (Exhibit E).

clerk the District judge has been off traveling, and they were not able to contact him.

Mr. Baron is currently being deprived of most of his civil rights. (Exhibit F). All his assets, bank accounts, and credit cards have been seized. Mr. Baron's right to a jury trial with respect to other's claims against him (and his claims against them) has been suspended, and it is the receiver who now decides what claims will be paid from Mr. Baron's money. The receiver has already waived Mr. Baron's rights with regard to the objection to Mr. Urbanik's fees. Daily more money is being siphoned from Mr. Baron's assets as more and more 'costs of receivership' are incurred.

The emotional and physical impact on Jeffrey Baron has been debilitating. The impact to his health from the stress and restricted access to food and treatment has reached the point that further delay in waiting for the District Court is no longer an option. Emergency relief is necessary. (Exhibit A).

IV. STANDARD IN GRANTING STAY PENDING APPEAL

The Fifth Circuit has adopted the four standards set out in *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 259 F.2d 921 (DC Cir. 1958) to determine whether stay pending appeal should be granted. *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968). Those factors are: (1) Whether the movant has made a showing of likelihood of success on the merits; (2) Whether the movant has made a showing of irreparable injury if the stay is not granted; (3) Whether the granting of the stay would substantially harm the other parties; and (4) Whether the granting of the stay would serve the public interest. *Id.*

V. ARGUMENT & AUTHORITY

A. LIKELIHOOD OF SUCCESS ON APPEAL

Appointment of a receiver in this case is prohibited by law

As a matter of longstanding Federal law, an unsecured contract creditor⁵ has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor and may not be granted an order of receivership against the debtor. *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923).

Mr. Sherman (in whose putative name Mr. Urbanik filed the motion for receivership) is neither individually nor as trustee a judgment creditor of Jeffrey Baron. Mr. Sherman neither individually nor as trustee has any ownership interest in Mr. Baron's property. Accordingly, as a matter of law Mr. Sherman lacks standing to bring a motion for appointment of a receiver under Federal law. *Williams Holding Co. v. Pennell*, 86 F. 2d 230 (5th Cir. 1936). As *Pusey* explains “[A]n unsecured simple contract creditor ... has no right whatsoever in equity until he has exhausted his legal remedy. After execution upon a judgment recovered at law has been returned unsatisfied he may proceed in equity by a creditor's bill.” *Pusey* at 497.

The Fifth Circuit has recognized three grounds under Federal law pursuant to which a District Court may appoint a receiver: (1) the appointment of a receiver can be sought “by anyone showing an interest in certain property or a relation to the party in

⁵ The putative movant for receivership below, Daniel J. Sherman, is not a creditor of Mr. Baron's. The opposite, Mr. Baron is a *creditor* of the bankruptcy estate. Further, with respect to any actual claims Mr. Sherman or Ondova Limited might have against Mr. Baron (none have been asserted), the District Court notably lacks subject matter jurisdiction as there is no diversity of citizenship.

control or ownership thereof such as to justify conservation of the property by a court officer”; (2) receivers may be appointed “to preserve property pending final determination of its distribution in supplementary proceedings in aid of execution”; and (3) receivership may be an appropriate remedy for a judgment creditor who: (a) “seeks to set aside allegedly fraudulent conveyances by the judgment debtor”, (b) “has had execution issued and returned unsatisfied”, (c) “proceeds through supplementary proceedings pursuant to Rule 69”, (d) “seeks to subject equitable assets to the payment of his judgment”, or (e) “otherwise is attempting to have the debtor's property preserved from dissipation until his claim can be satisfied.” *Santibanez v. Wier McMahon & Co.*, 105 F. 3d 234, 241 (5th Cir. 1997)(emphasis).

The appointment of a receiver to prevent a defendant from hiring legal counsel is not one of the three grounds recognized by the Fifth Circuit, nor by the Supreme Court.

The appointment of a receiver is subject to close scrutiny by the appellate court. *Tucker v. Baker*, 214 F. 2d 627, 631 (5th Cir. 1954). Appointment of a receiver where there is no claim to the assets seized is strictly prohibited— there is no occasion for a court to appoint a receiver of property of which it is asked to make no further disposition. *Id.* Accordingly, to prevent an individual from being able to hire an attorney can never be a lawful purpose for the appointment of a receiver.

Similarly, the appointment of a receiver can not be used as a means to provide substantive relief. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941). The Supreme Court has frequently admonished that a federal court should not

appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought. *Id.* As explained by this, and the Supreme Court, Receiverships “are to be watched with jealous eyes lest their function be perverted.” *Id.*; *Tucker* at 631. The appointment of a receiver in order to force an individual to do something having nothing to do with the property seized is a gross perversion of Receivership.

The purpose for which the receiver was sought is also clearly unconstitutional

The Fifth Amendment to the United States Constitution establishes that a civil litigant has a constitutional right to retain hired counsel. *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1104 (5th Cir. 1980). Moreover, “the right to counsel is one of constitutional dimensions and should thus be freely exercised without impingement.” *Id.* at 1118; *Mosley v. St. Louis Southwestern Ry.*, 634 F.2d 942, 946 (5th Cir. 1981).

An individual's relationship with his or her attorney “acts as a critical buffer between the individual and the power of the State.” *Johnson v. City of Cincinnati*, 310 F.3d 484, 501 (6th Cir. 2002). A defendant must be afforded a fair opportunity to secure counsel “of his own choice” and that applies “in any case, civil or criminal” as a due process right “in the constitutional sense”. *Powell v. Alabama*, 287 U.S. 45, 53-69 (1932).

If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. *Chandler v. Fretag*, 348 U.S. 3, 10 (1954). A

necessary corollary is that “a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.” *Id.*

The means of the receivership order is clearly unconstitutional

The seizure clause of the Fourth Amendment prohibits the unreasonable interference with possession of a person’s property. *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 2009). The seizure ordered by this Court was purely arbitrary—based on no case law or statute, ordered without a trial on the merits of any claim, and entered based on no objective guidelines or guiding principles.

The application for receivership was grossly defective

Most Federal courts of appeal have held that a receivership is an “extraordinary” equitable remedy to be “employed with the utmost caution” and “granted only in cases of clear necessity.” See e.g., *Solis v. Matheson*, 563 F.3d 425, 437 (9th Cir. 2009); *Rosen v. Siegel*, 106 F.3d 28, 34 (2d Cir. 1997); *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993); *Consolidated Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322, 326-27 (1st Cir. 1988).

Accordingly, the circuits that have addressed the issue have held that the district court has discretion to appoint a receiver “only after evidence has been presented and findings made showing the necessity of a receivership.” *E.g., Solis*, 563 F.3d at 438. ,

The Fifth Circuit has noted six factors considered as indicating the need for a receivership in those circumstances where the appointment of a receiver is permitted by

Federal law, (e.g., supplementary proceedings in aid of execution, etc.). *Santibanez*, 105 F. 3d at 241-242. Those factors are:

- (1) A valid claim by the party seeking the appointment;
- (2) The probability that fraudulent conduct has occurred or will occur to frustrate that claim;
- (3) Imminent danger that property will be concealed, lost, or diminished in value;
- (4) Inadequacy of legal remedies;
- (5) Lack of a less drastic equitable remedy; and
- (6) Likelihood that appointing the receiver will do more good than harm.

In addition for failing to allege a lawful grounds for the issuance of an order appointing receiver, the application for receivership below failed to allege⁶ any of the six factors recognized by the Fifth Circuit. There is no claim against Mr. Baron by the party seeking the appointment. There is no allegation of fraudulent conduct. There is no danger of property being concealed or lost. There is no allegation of inadequacy of legal remedies. There is no allegation that a less drastic equitable remedy was not available. There is no reference in the application to the harm that appointing a receiver would do. (Exhibit E).

In sum, a legally groundless motion⁷ sought for an unlawful purpose by a party lacking standing as a matter of law. The result has been the suspension of almost every civil liberty of Mr. Baron, taking all his property, suspending his right to contract, his right to privacy, his right to privileged communications with his attorneys, and, by design, impairing his right to travel and to hire legal counsel to defend and protect his

⁶And the District Court below failed to enter supporting findings as to.

⁷ Brought in a court lacking subject matter jurisdiction over the non-diverse parties.

rights.

While those who have inflicted this upon Mr. Baron are now gorging themselves on his money, Mr. Baron is effectively imprisoned in Dallas, dependent like an indentured servant on the whims and desires of a Receiver that the District Court below has ordered may lord over him. (Exhibits A, F).

And Mr. Baron's 'crime' ? Jeffrey Baron tried to object to Mr. Urbanik's milking of almost all the equity—almost one million dollars for attorney's fees for the bankruptcy trustee— from the small company in which Baron is the beneficial equity holder. Of course, there are two sides to every story. As Mr. Urbanik expressly stated in his motion, appointing a receiver over Mr. Baron and all his assets is one sure way to stop Mr. Baron from hiring an "army of lawyers" to defend his rights against what he was concerned were improper, unlawful actions on the part of Mr. Urbanik.⁸

⁸ Mr. Urbanik's motion makes the seemingly supported, but totally irrelevant complaint that Mr. Baron hired quite a few lawyers and didn't pay his bill. Firstly, that is not a legal basis to appoint a receiver and seize an individual's assets. Mr. Baron is not in bankruptcy. If he owed money to his former counsel they can sue and recover for any fees due. But Mr. Urbanik's claims don't stand up to a close examination. Firstly, he conflates the counsel retained for Ondova and other companies with Mr. Baron's counsel. Secondly, although not in short supply, when each is individually examined the attorney's claims against Mr. Baron seem dubious at best. For example, the attorney that Mr. Urbanik highlighted by attaching a lawsuit to his motion for receivership (exhibit b to Mr. Urbanik's motion) is suing Mr. Baron for one million dollars. Close reading of the petition reveals that the attorney had no contract, and worked less than two weeks. Notably, that same attorney's *previous* employer has sued the attorney in an unrelated lawsuit, alleging fraud, theft, breach of fiduciary duty, and other grossly unethical practices. (Exhibit K).

The order appointing receiver was issued without even minimal procedural due process and should be declared void

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing the order violates the fundamental principles of due process. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). Even the temporary taking of property that is not in execution of a final judgment is a “deprivation” as contemplated by the constitution and “had to be *preceded* by a fair hearing”. *Fuentes v. Shevin*, 407 U.S. 67 (1972). Notably, due process requires an evidentiary hearing *prior* to the deprivation of some type of property interest even if such a hearing is provided thereafter. *Mathews v. Eldridge*, 424 U.S. 319, 333.

The District Court’s order appointing receiver was not preceded by any type of hearing prior, and was not even supported by affidavit. It is therefore void for lack of procedural due process. See *Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) (“such proceeding is void as not being by due process of law”); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (“rendered in violation of due process is void in the rendering”); *Margoles v. Johns*, 660 F. 2d 291,295 (7th Cir. 1981)(“void only if the court that rendered it lacked jurisdiction ... or if it acted in a manner inconsistent with due process of law”). (Exhibit L).

B. IRREPARABLE INJURY

Deprivation of constitutional rights is irreparable injury as a matter of law

It is well settled that the loss of constitutional freedoms for even minimal periods of time constitutes irreparable injury. *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Accordingly, the receivership order—expressly designed to interfere with Mr. Baron’s constitutional right to hire legal counsel— involves irreparable injury as a matter of law.

Similarly, each day, in fact each hour that Mr. Baron is deprived of property taken by an unreasonable seizure, as a matter of law he is suffering irreparable injury.

Similarly, with each piece of private and personal information about his private life and affairs that Mr. Baron is compelled to disclose, his constitutional right to privacy is either threatened or in fact being impaired. This “mandates a finding of irreparable injury”. *Deerfield* at 338.

When a persons’ very right to control assets is stripped from them, a cascade of constitutional rights are impaired. It is the right to own and control property that is the cornerstone of a democratic society. For example, suspending an individual’s right to possess property directly acts to impair their First Amendment interests by depriving them of access to the primary medium of public expression—paid advertisements. Such an impairment of an individual’s First Amendment freedoms, for even minimal periods of time constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-4 (1976).

Serious and irreparable harm to Mr. Baron personally

As detailed in Mr. Baron's declaration attached hereto as Exhibit A, and incorporated herein by reference, the receivership is imposing acute and irreparable injury to Mr. Baron personally :

1. He is living in constant fear, day and night. Threatened with contempt, is a prisoner to the constant demands and threats of the receiver. He is forced, by threat of jail for contempt of the order, to comply with the whims of the receiver.
2. He is being, against his will, forced to reveal all sorts of private, personal information.
3. He is suffering emotionally, is becoming despondent, and feels constantly threatened with contempt and even jail.
4. He is suffering from attacks of shortness of breath and dizziness to the extent that he cannot stand upright.
5. The loss of all of his assets without a trial is causing Mr. Baron to become severely depressed, compounded by the fact that his freedom, *and privacy* to freely seek medical and psychological care and support has been stripped from him.
6. With every piece of private and attorney-client information that the receiver and his adversary obtain from him, Mr. Baron feels that he is being exploited.

7. MR. BARON’S SENSE OF SELF CONTROL HAS BEEN TAKEN FROM HIM, NO LESS THAN IF HE HAD BEEN THROWN IN JAIL.

8. Mr. Baron cannot travel – his money has been taken from him.

9. Mr. Baron cannot hire lawyers to defend himself.

10. Mr. Baron’s health and medical condition as a very real matter are rapidly deteriorating under the stress of the receivership order.

11. Mr. Baron is not able to sleep and is suffering from frequent panic attacks, and nausea.

12. Mr. Baron’s diabetes is worsening under the stress of the District Court’s order and he is no longer able to control his blood sugar level causing his blood glucose levels to jump over 500 (normal readings are less than 100).

13. Mr. Baron is deprived of the fundamental right to manage his own affairs, and make decisions about his own assets.

There is no way to quantify the damage done to Jeffrey Baron’s veins and arteries each day caused by his inability to control his blood sugar levels due to the stress naturally arising out of being stripped of his assets and control over his life. Similarly, there is no way to prove the amount of damages Mr. Baron is suffering from being unable to choose how his money is invested and his assets managed. Jeffrey Baron is suffering irreparable injury.

No party from which to recover damages

Mr. Baron is faced with a situation where the wrongful actors carry a mantle of immunity. *E.g. Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981). To the extent that absolute judicial immunity attaches to the actions of Mr. Urbanik in his capacity as attorney for a bankruptcy trustee, Mr. Baron has no party from which to seek redress for his damages.

Since Mr. Baron is the equitable owner of Ondova (the entity ultimately in who's name Mr. Urbanik has acted), any recovery against Ondova would just be taken out of Mr. Baron's own pocket. Accordingly, as a very real matter the damages being caused to Mr. Baron, including the ever-increasing costs of the receiver and the receiver's attorney, are irreparable.

C. NO SUBSTANTIAL HARM TO OTHER PARTIES

This case has settled. Moreover, no party has a legitimate interest in denying Mr. Baron his constitutional right to legal counsel of his choice. If such an interest could be constitutionally served, an injunction prohibiting Mr. Baron from retaining counsel would serve the same interest, without taking away Mr. Baron's constitutional right to own and possess property.

D. PUBLIC INTEREST

There is a compelling public interest in upholding the US Constitution. Protecting an individual's rights in his property and his privacy, and his right to hire legal counsel of his choice, are important public interests served by granting the relief requested by Mr. Baron.

It is frightening to think that if an individual refuses to pay the excessive demands of an attorney or desires to object to grossly excessive fees sought by an attorney in a bankruptcy case, that instead of a right to trial by jury or impartial hearing before a judge, he can have all his assets and private documents stripped from him, and become a ward of the court— incarcerated in 'house arrest' in one city, and prohibited from hiring legal counsel to protect his rights.

The actions taken against Mr. Baron shock the conscious. Prior to the filing of this appeal his attorneys were told by the receiver that they were fired, and Mr. Baron was warned— including warnings made in writing—that he faced contempt and going to jail if he dared attempt to hire an attorney to protect his rights. (Exhibit A).

Appellate counsel believes the deprivations Mr. Baron's has been—and at this hour is still subject to— are grave. Appellant prays this Court agrees.

VI. CONCLUSION

The District Court below suspended Mr. Baron's constitutional right to own, access, and control his own property, for the purpose of denying Mr. Baron the ability to retain counsel. Such an order is unlawful and violates the US Constitution.

VII. PRAYER

Wherefore, Jeffrey Baron prays that this Honorable Court consider and grant this motion on an expedited basis, and Stay pending appeal the Order Appointing Receiver over the person and property of Mr. Baron signed by the District Court below on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010].

Respectfully submitted,

/s/ Gary N. Schepps

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VIII. TABLE OF AUTHORITIES

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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 and by e-mail to:

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CERTIFICATE OF NOTICE

This is to certify that notice of the filing of this request for emergency relief was provided by telephone to the Clerk of the Fifth Circuit Court of Appeals and to counsel for the Appellee.

CERTIFIED BY: /s/ Gary N. Schepps
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