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

MOTION FOR STAY OF RECEIVERSHIP AND CIVIL LOCKDOWN ORDER BASED UPON RECENT DEVELOPMENTS

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

COMES NOW Jeffrey Baron, Appellant, who respectfully requests a stay of the receivership and civil lockdown imposed against him since November 2010, because the recent developments in the case make the continued receivership and lockdown injunction unreasonable and grossly unjust.

I. SUMMARY

At this point, continuation of the receivership serves no legitimate end, substantially and unjustly harms Jeff Baron, and could erode public confidence in the Federal court system.

II. BACKGROUND

In an act unprecedented in the history of the Federal judiciary, the District Court below entered an *ex parte* order seizing all of Jeff Baron's assets in order to prevent him from hiring an attorney. [Doc 123 & 124]. As explained by the District Judge, "[T]he receivership is an effort to stop the parade of lawyers trying to wiggle out of lawful injunctions from judicial officers. Yes, sir." [Doc 233 pages 217-218].

Mr. Baron was warned that he was "prohibited from retaining any legal counsel" and that if he did "the Receiver may move the Court to find you in contempt". Exhibit C. In case that threat against hiring any legal counsel was not sufficient, in order to stop Jeff from having any money to hire a lawyer, all of Jeff's

assets (exempt and non-exempt) were seized[1], as were all of his future earnings[2]. Jeff was ordered not to cash any checks[3] or enter into any business transactions[4]. Jeff has been in a civil lockdown ever since, unable to transact business, unable to earn income, and has been forced to live off a monthly sustenance stipend from his life savings controlled by the receiver, to pay for food, shelter, local transportation and clothing. Exhibit C.

After the receivership order was appealed, upon cooler reflection, the District Court's retrospective purpose for the receivership became something different: "The primary purpose of the Court's Receivership Order, was to gain access to Baron's funds to ensure that the unpaid attorneys claims against him could be resolved ...". [Doc 338]. However, the civil lockdown injunction imposed against Jeff was not lifted.

For six months, Jeff Baron has been subject to the severe restrictions listed above and forbidden from entering into any business transaction, and all his earnings and property have been seized. This civil lockdown of Jeff Baron is in place right now. Yet, no jury has found that Mr. Baron acted improperly in any way.

---

[1] Doc 124, Page 2.
[2] Doc 124, Page 4 paragraph F.
[3] Doc 124, Page 2 and page 4 paragraph C.
[4] Doc 124, Pages 2 and 4, and page 9 paragraph A.

The sole purpose of the receivership at this point is to serve former attorneys[5] by attempting to use receivership as a vehicle to bypass the District Court's lack of subject matter jurisdiction over un-pled, non-diverse, claims and side-step the Constitutional requirements of Due Process[6] and jury trials. **The disbursement of Jeff Baron's assets to the attorney 'claimants' was to be the last act of the receivership.** Exhibit A. The District Court has been stayed from taking further action on that order pending appellate review. [Doc 586].

III. WHAT IS GOING ON HERE ?

Six months ago, the retrospective post-seizure justification for the receivership argued to the District Court was that Jeff Baron was engaged in a "Ponzi scheme and getting free legal services" by bringing "a lawyer in and get them to work for free as long as they are willing to do that, and when they protest he brings in a new lawyer. And thereby continuing a Ponzi scheme and getting free legal services". [Doc 410, page 67].

When the solicited 'claims' of the 'abused' former counsel were submitted in the District Court's extemporaneous adjudication process, a very different picture emerged. That picture is of a series of claims so starkly groundless that after reviewing one clearly groundless claim after another, a compelling question is

[5] At best simple creditors whose 'claims' were actively solicited by the receiver.

[6] Such as: (1) the opportunity to retain experienced trial counsel, (2) the right to conduct discovery, (3) a reasonable time to review the allegations and material presented by 'claimants', (4) the application of the rules of procedure, etc.

raised: Why did so many attorneys believe that their clearly groundless claims would be well received by Peter Vogel[7], the District Court's receiver ?

For example, Mr. Stan Broome wants more than the $10,000.00/month capped fee he was paid by Mr. Baron. Broome's argument– Jeff Baron paid him based on a $10,000.00 monthly fee cap but his contract does not contain any term limiting the amount of fees that may be incurred in any month. [Doc 478]. Broome's claim is **groundless**. His written contract (submitted by Broome) clearly contains an explicit and unambiguous provision limiting the amount of fees which may be incurred to $10,000.00 per month without express written authorization to exceed that capped amount.[8] Exhibit B and [Doc 522].

In the context of the limited space and scope of this motion, seven additional 'claims' are briefly examined. These 'claims' (together with Broome's) make up over 70% of the total fees the District Court seeks to award 'claimants'.[9] Specifically:

---

[7] Vogel has played an unusually pervasive role in the proceedings below. Vogel was also a special master in the proceedings. [Doc 37]. Vogel was acting in that role (special master) when he consulted with Mr. Sherman *ex parte* with respect to the filing of the motion to appoint himself as a private receiver over Jeff Baron's assets. [Doc 467, page 3].

[8] No allegation was made or evidence offered that Mr. Baron authorized the capped amount to be exceeded. Rather, Stan Broome swore that his contract only contained a provision to cap the fees billed each month, and did not contain a provision to cap the fees incurred. [Docs 478, 522].

[9] The remaining 30% of the 'claims' are just as groundless, but beyond the limited scope of this motion to address in detail. Those 'claims' include, for example, the 'claim' of Sidney Chesnin. The only reason Mr. Chesnin is owed money is because the receiver seized all of Mr. Baron's funds and assets and refused to pay Mr. Chesnin when his bill came due. Mr. Baron has formally requested on multiple occasions for the receiver and the District Court to pay Mr. Chesnin, but the receiver appears to prefer to list Mr. Chesnin as a 'claimant', bill fees for 'investigating' and not pay him. Another 'claimant', for example, is Robert Garrey. Mr. Garrey

1. Ms. Crandall wants more than the flat rate she contracted at and was paid at. Her argument– she was billing hourly at $300.00/hour. Ms. Crandall was 'unable' to locate the written contract she acknowledges exists, but swears her work was billed at an hourly fee of $300. However, her own invoice proves the completely groundless nature of her claim. Per her own invoice, Ms. Crandall billed, (and was paid), at a flat monthly fee. [Doc 523, exhibit A]. There is no ambiguity. Ms. Crandall's invoice clearly states that 60.1 hours of work were performed and the "Flat Rate" due is $5,000.00.

2. Mr. Pronske was paid $75,000.00 up front. Mr. Pronske wants more. His argument is that $75,000.00 was just an initial retainer. However, Pronske has admitted that "There are no engagement agreements relating to the representation" and for almost a year after receiving a $75,000.00 fee and working on the case, Pronske sent no contract, no engagement letter, no bill, no invoice, no demand for payment, and no hourly work report alleging that the flat fee payment was actually a 'retainer'. Exhibit E.

---

claims to have worked two weeks for Mr. Baron and demanded a one million dollar fee. Mr. Garrey admits that he agreed to a fixed rate employment (at $8,500.00/month for the two weeks he claims to have worked). Recently, Mr. Garrey has lowed his million dollar 'claim' to an equally groundless $52,275.00 fee for the alleged two weeks work at $8,500/month. Mr. Garrey's claim is notable for containing **the stupidest lie sworn to under oath in the group**, claiming that he expended a significant amount of time in representing Mr. Baron in part because he was "asked to object to the fee requests of the Receiver's counsel, and I was asked to devise a strategy to remove the Receiver and the Receiver's counsel." Exhibit D. Mr. Garrey admitted, however, his alleged two week representation ended on November 16, 2010, well before the receiver was even appointed. With Mr. Chesnin and Garrey the total amount of claim discussed in this motion covers approximately 80% of the total fees that the receiver and district court have sought to pay out to 'claimants' in the extemporaneous proceedings below.

3. Mr. Ferguson wants more than the $22,000.00 capped fee he agreed to (in writing) and was paid. His latest argument– he is allowed to violate his engagement agreement and charge more than the agreed upon (and paid in full) capped fee because he was 'defrauded'. Ferguson's claim is that Jeff 'fraudulently' represented that the money would be paid from Jeff's million dollar trust and not from Jeff's pocket because Jeff was personally "destitute" (according to Ferguson). Exhibit G. Ferguson's allegation of fraud, however, is legally groundless because it lacks materiality. The trust's money is just as green and in US Dollars just the same as if it had come from Jeff's pocket. Even if Ferguson's story were true and he was led to believe that Jeff's million dollar trust was going to pay the bill instead of Jeff, that is not material to the billing cap of $22,000.00.[10]

4. Mr. Lyon wants more than the $40/hour fee he charged and was paid. His argument– his fee was really $300/hour and around $260/hour is due him. However, Lyon's own email proves his rate was the $40/hour he was

[10] In his original sworn testimony before the District Court at the FRAP 8(a) hearing, Dean Ferguson offered a very different story. At that time Ferguson testified that his cap was only for work to August 21, and did not apply because it was based on his working only 33% of his time not 99% of his time. [Doc 233, pages 67, 69]. Ferguson's hearing testimony is completely discredited by his 'claim' affidavit and exhibits that prove clearly that the cap was for all of his work and expressly through August 31. Exhibit G. That date (August 21 vs August 31) is substantial. Ferguson claims $67,800.00 is owed for the two weeks work *preceding* August 31. Id. At the FRAP 8(a) hearing, to explain the additional fee in light of the agreed fee cap, Ferguson claimed the cap was only to August 21 and based on a 33% time demand. Now Ferguson tells a new story to avoid the cap. The new story is that the cap was to August 31 at a full time demand, but should not apply since Baron 'fraudulently' represented the money was coming from his million dollar trust.

paid. Lyon bragged– in writing– that his rate of $40/hour gave Jeff 'more bang for the buck' so that Lyon should be given more work to do. [Docs 507, 507-1].

5. Ms. Schurig wants more than the million dollar fee she has been paid and submitted a claim for work performed– without any contract– for the company owned by her colleague, AsiaTrust. Exhibit H. However, AsiaTrust is neither owned nor controlled in any way by Jeff, and has itself filed a claim against Jeff and/or Ondova. Jeff never agreed or undertook to pay the debts of AsiaTrust, nor has anyone alleged that he has.

6. Mr. Taylor was paid pursuant to the $10,000.00 per month fee cap expressly called for in his written contract. Unlike Mr. Broome, Mr. Taylor does not deny his fees were capped at $10,000/month and that he was paid. Rather, Mr. Taylor claims entitlement to a contingency fee even though the contingency provided for in his contract was not met. When the global settlement was entered into, Taylor made no claim that the contingency in his contract was met, and made no disclosure of any contingency amount which would be due. After settlement Taylor confirmed in writing that only a very small (hourly) fee would be billed. [Docs 507, 507-1, ex. B]. Subsequently, Mr. Taylor decided he wanted a contingency fee payment after all, and asked for around $40,000.00, and then $80,000.00. Id.

7. Bickel & Brewer want more than the $200,000.00+ fee they were paid nearly half a decade ago. The current amount claimed due is around $40,000.00– the amount of the work billed, without explanation, for fees preceding their representation of Jeff Baron, plus fees for seeking payment of the claimed fees. Bickel & Brewer's contract does not call for payment of any pre-engagement work, and no explanation has been offered as to what the work was for, or why Jeff is in any way liable to pay it. Exhibit I.

In summary: Jeff Baron was *accused* of conducting a "Ponzi scheme and getting free legal services" by bringing "a lawyer in and get them to work for free". Based on that *accusation,* the District Court retrospectively justified the previous seizure all of Mr. Baron's assets. The receiver then solicited attorneys to make claims against Mr. Baron.[11] Now that the solicited claims have been 'submitted', it is clear that the accusation against Jeff Baron was groundless. However, by this point the District Court was already locked in to proceeding forward.

V. STAY BY THIS COURT OF THE RECEIVERSHIP AND LOCKDOWN INJUNCTION IS NECESSARY

Background in the District Court

There is a reason that we have jury trials. Often, a person who looks guilty is guilty. However, sometimes a person who may look guilty at first but after the facts are examined is clearly not guilty. Sometimes, someone else for his or her

[11] E.g., Exhibit K, pages 3-4.

own purposes has constructed a frame to place an innocent individual in a wholly false light. By affording due process, we protect the innocent. The District Judge erred in failing to afford due process. When it became clear in the record that the 'claims' were groundless, the District Court was already locked in to proceeding forward.

Additionally, the District Court views appeal of its orders to the Fifth Circuit as against a party's self interest and has explained:

> "Mr. Baron does what he does in ways that are so detrimental to his own self interest because what Mr. Baron is about to do here -- whether there is a receiver or not. Say you win [the appeal] and there is no receiver. It doesn't make any difference. This is going on and on and on until Mr. Baron has nothing. I mean actually everything is depleted."
>
> [Doc 394, page 45]

Since the receivership order was appealed to the Fifth Circuit Court of Appeals, the District Court has been distributing Jeff Baron's life savings to the receiver and his law partners at the rate of around $9,000.00 per day-- every day, day after day. That's $90,000.00 after 10 days, and around a million dollars since the receivership was appealed six months ago. The continuous 'cost' of the receivership has literally emptied Jeff Baron's savings accounts and filled the coffers of the receiver and his law partners. Exhibit J. In light of the recent procedural and factual developments in the case, there is no reason that additional cost should be incurred– by any party– to sustain the receivership.

The District Court Denied Relief Moved for in Light of the Recent Procedural and Factual Developments in the Case

In light of the recent procedural and factual developments in the case, the District Court was requested to stay the civil lockdown of Jeff Baron. The District Court denied the requested relief. [Docs 590, 591]. Mr. Baron requested a stay in order to (1) regain his right to own and control property, (2) to enter into business transactions, (3) to earn money, (4) to hire attorneys with his own money, (5) to represent himself or direct his representation in legal proceedings, (6) to be able to travel freely and, if he desires, to relocate from the Northern District of Texas, and (7) to have all the other rights of a free citizen. [Docs 590, 591, 592]. The District Court denied granting the stay on the grounds that the District Judge considered Mr. Baron "to be free to exercise his constitutional rights." [Doc 591].

An order by this Court to stay the receivership and civil lockdown injunction is necessary to prevent a growing and manifest injustice and mounting irreparable injury. Without any reasonable or legitimate basis, Jeff Baron is continuing to be deprived of his basic Constitutional freedoms. Some specific material examples include the following:

1. Mr. Baron is currently prohibited from engaging in business transactions and earning any wages.[12]

[12] Doc 124, Page 2, page 4 paragraph F, page 9 paragraph A.

2. Mr. Baron is being forced to choose between his right to privacy with respect to his private medical care, and the ability to obtain that care. The District Court will not allow Mr. Baron access to $2,000.00 of his own money to pay his insurance deductible necessary to obtain care, unless he waives his doctor/patient confidentiality and discloses the identity of his treating physicians to the receiver. [Doc 551]. Because the doctor's specialty and area of practice make clear the condition for which Mr. Baron is being treated, Mr. Baron is being forced to forego needed medical care in order to maintain the privacy of the personal medical issues involved.

3. Mr. Baron is being prohibited from defending his interests as the company's equitable owner in the bankruptcy case Ondova company. Exhibit K. In that case; Ondova was funded with nearly two million dollars– more than double the amount of funds necessary to pay the creditors in full. However, instead of paying the creditors a motion was made to pay thousands of dollars for Mr. Sherman's attorney's fees. When Jeff Baron objected to that, he was immediately (within 3 business days) placed into receivership on Sherman's *ex parte* motion. The receiver and Sherman then represented to the bankruptcy court that Mr. Baron was 'replaced' in that case by the receiver, and the

receiver was withdrawing the objection to Sherman's attorney's fees.[13] As a very real matter, Jeff has been removed from the bankruptcy court by the receivership and is being deprived of his right to protect his own interests—ie., object to Sherman's nearly two million dollar attorney's fee request which emptied the coffers of Ondova.[14]

4. Mr. Baron is prohibited from hiring experienced trial counsel to represent him in the District Court, and from hiring additional counsel to assist the undersigned with this appeal. Exhibit C.

5. Significantly, Mr. Baron is also being prevented from retaining legal counsel to represent and advise him with respect to his substantial reporting obligations to the IRS. Mr. Baron is not an accountant. The tax issues involved are complex in light of the global settlement agreement entered into in the lawsuit below.

VI. ALTERNATIVES TO THE RECEIVERSHIP PENDING APPEAL

Mr. Baron respectfully requests joint and alternative relief as follows:

1. That the lockdown injunction against Mr. Baron be stayed—it serves no reasonable or legitimate purpose.

2. That the receivership order be stayed and if the Court finds it

[13] Those fees have been run up to nearly two million dollars since Mr. Baron was placed in receivership.

[14] Just as Mr. Vogel's firm's million dollar fees have emptied Mr. Baron's personal savings.

necessary to provide security for the former attorney's "claims", the total dollar amount of 'claims' at issue is $852,940.14. Mr. Baron requests the opportunity to furnish sufficient security to stay the receivership. Notably, Mr. Baron has $630,000.00 of his personal funds held in 'in escrow' by the bankruptcy court. Additionally, although the District Judge has distributed around a million dollars of the receivership assets post appeal and emptied Mr. Baron's savings accounts, Mr. Baron still has $450,000.00 of stock held in the receivership (along with his other property such as his exempt IRAs). Further, NovoPoint and Quantec have offered to secure a loan against their domain name portfolios, or to grant a lien in their portfolios to provide additional security if needed to stay the receivership.

3. In the alternative Mr. Baron requests this Court to enter an order that all (or part) of the receivership assets be returned to Mr. Baron (or released the parties from who the property was seized) and if security is required that it be provided in lieu of the receivership by an order freezing the assets subject to court approval of any disbursements.
4. Jointly and in the alternative, Mr. Baron requests the receivership and lockdown injunction be stayed and the property held by the receiver at the time the appeal of the receivership divested the District Court of

jurisdiction over the matter be restored to Mr. Baron (or to the parties from who the property was seized).

VII. NO HARM IN GRANTING STAY

The lockdown injunction serves no legitimate interest. Mr. Baron should be allowed to transact business, receive wages, cash checks, earn a living, travel freely, retain counsel, and defend his interests in the Ondova bankruptcy. Allowing Mr. Baron to defend his rights in the bankruptcy court and to challenge Mr. Sherman's attorney's fee request will not harm any party and will protect the integrity of the proceedings. Similarly there is no legitimate interest served in holding in receivership all of Mr. Baron's property (including his exempt IRAs) and property rights.

The former attorneys' "claims" are at best claims in law. As such, they are not entitled to prejudgment seizure in order to 'secure' those claims. *In re Fredeman Litigation*, 843 F.2d 821, 822 (5th Cir. 1988). The claims are also outside of the subject matter jurisdiction of the District Court. If there is cause to provide security for the 'claims' pending appeal, that security can be provided by a cash bond taken from Mr. Baron's money now held by the bankruptcy court and/or the receivership, or jointly and in the alternative by a loan obtained by the NovoPoint and/or Quantec, or jointly and in the alternative by returning Mr. Baron's property to him subject to a freeze order.

Notably, receivership is not authorized as a means of providing ultimate relief or remedy. *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923) ("A receivership is not final relief."). The District Court has discretion to impose a receivership only where it is ancillary to some other final equitable remedy sought in the property which is pending before the court. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941). No request for relief outside of the receivership is pending in the District Court. Accordingly, Jeff Baron has a substantial likelihood of success on the merits of this Appeal. As the Supreme Court established nearly a hundred years ago, "There is no occasion for a court of equity to appoint a receiver of property of which it is asked to make no further disposition." *Gordon v. Washington*, 295 U.S. 30, 37 (1935).

WHEREFORE Jeff Baron respectfully requests that the lockdown injunction against him [Doc 124] be stayed pending appeal, and jointly and in the alternative that the receivership order be stayed pending appeal as requested herein.

Respectfully submitted,

/s/ Gary N. Schepps
Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(214) 210-5940 - Telephone
(214) 347-4031 - Facsimile
Email: legal@schepps.net
FOR JEFF BARON

VIII. 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:

Raymond J. Urbanik and Richard Hunt
Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard Street
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps

IX. CERTIFICATE OF CONFERENCE

This is to certify that the Appellee has stated he opposes the relief requested.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps