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CHAPTER 11 TRUSTEE

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

NETSPHERE, INC., ET AL., §
PLAINTIFFS §
v. § Case No. 3:09-CV-0988-F
JEFFREY BARON, ET AL., §
DEFENDANTS. §

**EMERGENCY MOTION OF TRUSTEE FOR
APPOINTMENT OF A RECEIVER OVER JEFFREY BARON**

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

COMES NOW Daniel J. Sherman (the "Trustee"), the duly-appointed Chapter 11 trustee of Ondova Limited Company ("Ondova"), and files his *Emergency Motion of Trustee for Appointment of a Receiver over Jeffrey Baron* (the "Motion"), respectfully stating as follows:

I. BACKGROUND

1. On October 13, 2010, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Case") entered its *Report and Recommendation to District Court (Judge Royal Furgeson): That Peter Vogel, Special Master, Be Authorized and Directed to Mediate Attorneys Fees Issues* [Docket No. 484] (the "Bankruptcy Court's Report and Recommendation") in the bankruptcy case of Ondova, styled *In re Ondova Limited Company*, Case No. 09-34784 (the "Bankruptcy Case"). A copy of the Bankruptcy Court's Report and Recommendation is attached hereto as Exhibit "A." On the same day, the Bankruptcy Court

filed its Report and Recommendation with this Court. On October 19, 2010, this Court adopted the Bankruptcy Court's Report and Recommendation in its entirety.

2. The Bankruptcy Court's Report and Recommendation addressed Mr. Jeffrey Baron's continuing and disturbing pattern of hiring and firing attorneys. In the Bankruptcy Court's Report and Recommendation, the Bankruptcy Court stated that it would no longer tolerate such behavior and that it would not allow Mr. Jeffrey Baron ("Baron") to hire any additional lawyers. In fact, the Bankruptcy Court gave Baron two options: (1) retain Gary Lyons and Martin Thomas through the end of the Bankruptcy Case, or (2) proceed *pro se*. If Baron chose the latter opinion, the Bankruptcy Court advised Baron that it would recommend to this Court that it appoint a receiver over Mr. Baron and all of his assets.

II. RECENT DEVELOPMENTS

3. At a hearing on Wednesday, November 17, 2010, Martin Thomas advised the Bankruptcy Court that he was terminating his legal representation of Mr. Baron. Mr. Thomas advised the Bankruptcy Court that he had not been paid, that Mr. Baron had filed a grievance against him and that Mr. Baron had committed to attend the hearing on November 17, 2010 but failed to show up. The failure of Mr. Baron to show up on November 17, 2010 was disruptive for several reasons including that Mr. Baron was advised by Mr. Thomas that he needed to attend in order to raise objections to the Trustee's Motion for Authority to Reject Executory Contracts with The Internet Corporation for Assigned Names and Numbers ("ICANN") filed by the Trustee ("ICANN Motion") in the Bankruptcy Case, at Mr. Baron's request, on November 3, 2010. Mr. Thomas had advised Mr. Baron that he was withdrawing and would not make the objections Mr. Baron was requesting be made to the ICANN Motion. Mr. Thomas has recently advised the Trustee that he himself has had to engage counsel to handle matters with Mr. Baron.

4. Additionally, on November 19, 2010, one of Mr. Baron's other attorneys, Gary Lyon, advised the undersigned counsel for the Trustee that Baron has hired a new attorney to represent Baron in connection with matters pertaining to the Bankruptcy Case. That attorney is

Sydney Chisnen. This new attorney may have assisted Mr. Lyon in the pleading filed on November 19, 2010 entitled: Jeffrey Baron's Limited Objection to the Third Interim Fee Application of Munsch Hardt Kopf & Harr, P.C.

5. On November 22, 2010, the undersigned counsel received by email a copy of a lawsuit brought by a new attorney for Mr. Baron named Robert J. Garrey. A true and correct copy of Mr. Garrey's First Amended Petition filed in Collin County, Texas, 366th Judicial District Court is attached as Exhibit "B". Mr. Garrey's lawsuit raises serious allegations against Mr. Baron.

6. Finally, undersigned counsel has been contacted by two attorneys participating in the mediation efforts regarding unpaid attorney fees incurred by Baron. One attorney has advised that Baron and his legal team have failed to communicate with him regarding the mediation procedure. That particular attorney has also advised the Trustee that Stan Broome, an attorney who Baron hired to participate for Baron with respect to the attorney fee mediations, has resigned effective November 22, 2010. Mr. Broome has advised other parties that he has not been paid for his services. A copy of the motion filed by Mr. Broome to withdraw in the adversary proceeding is attached as Exhibit "C".

7. Another former Baron attorney, who is owed a smaller amount of attorney fees, has contacted counsel for the Trustee frustrated that Mr. Baron's attorneys are not being responsive to him in efforts in trying to settle the legal fee claim without participating in the mediation sessions with Peter Vogel. It is clear that Baron is not cooperating in the process outlined by this Court in its Order of October 13, 2010 regarding the mediation process. Attorneys who may otherwise seek to participate in the mediation process are reluctant to do so because they believe Mr. Baron will not fully cooperate, will delay mediation efforts by engaging new attorneys unfamiliar with the background of matters and will be generally uncooperative.

8. Mr. Baron is continuing to hire and fire attorneys. The Trustee believes that Mr. Baron has hired new attorneys who act as personal counsel to interfere with Mr. Martin and Mr.

Lyon who are Mr. Baron's attorneys in the Bankruptcy Case.

9. The Trustee believes that Baron's behavior will continue and will delay the wind down of the bankruptcy estate of Ondova and the Bankruptcy Case, which will, in turn, delay and, depending on the administrative costs of continuing to fight Baron and the Trusts, potentially reduce distributions to the Ondova's creditors

III. RELIEF REQUESTED

10. In accordance with the Bankruptcy Court's Report and Recommendation, the Trustee respectfully requests the appointment of a receiver over Jeffery Baron and all of his assets – including all the entities and trusts that he either controls or is a beneficiary of – pursuant to Rule 66 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 754 and 1692.

11. Admittedly, the appointment of a receiver is an extraordinary remedy. However, this Court has broad discretion to analyze the circumstances at hand and, if appropriate, to appoint a receiver even if there is no allegation of fraud. *See, e.g., Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (8th Cir. 1993) (court's decision to appoint a receiver is discretionary and does not require proof of fraud as support); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1184 (11th Cir. 1991).

12. As set forth above, Baron has continually disregarded the Bankruptcy Court's warnings and orders and has continued to hire and fire lawyers at an alarming rate. Such actions have, and will continue, to frustrate the administration of the Bankruptcy Case and the bankruptcy estate of Ondova. Furthermore, Baron's actions will also continue to place Ondova's bankruptcy estate (and, thus, recoveries to its rightful creditors) at risk due to a continued stream of Baron's attorneys' making claims against Ondova and its bankruptcy estate.

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.

14. The Trustee recommends to this Court that Peter Vogel, currently the Special Master in this case, be appointed receiver in light of his involvement and experience in this case.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that the Court appoint a receiver over Baron and all of his assets, effective immediately.

Respectfully submitted this 24th day of November, 2010.

MUNSCH HARDT KOPF & HARR, P.C.

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CHAPTER 11 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that, on November 24, 2010, a true and correct copy of the foregoing document was sent to all parties requesting electronic service through the Court's ECF system as well as the following parties via e-mail:

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/s/ Raymond J. Urbanik
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