Case No. 11-10113

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Netsphere, Inc. et. al.,

Plaintiffs

v.

Ondova Limited Company, et. al.,

Defendants

Novo Point, LLC and Quantec, LLC

Appellants

v.

Peter S. Vogel, receiver

Appellee

Appeal of Order Adding Novo Point, LLC and Quantec, LLC into Receivership
From the United States District Court
Northern District of Texas, Dallas Division
Civil Action No. 3-09CV0988-F

MOTION TO STAY ORDER PLACING NOVO POINT, LLC and QUANTEC, LLC INTO RECEIVERSHIP

Respectfully submitted,

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For NOVO POINT and QUANTEC

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. Defendant: JEFFREY BARON

b. Defendant: DANIEL J. SHERMAN, Trustee
for ONDOVA LIMITED COMPANY

c. Appellee: Peter S. Vogel, receiver

d. Intervenor: Rasansky, Jeffrey H. and Charla G. Aldous

e. Intervenor: VeriSign, Inc.

f. Plaintiffs: (1) Netsphere Inc
(2) Manila Industries Inc
(3) Munish Krishan

g. Appellant: (1) Novo Point, LLC
(2) Quantec, LLC

2. ATTORNEYS

a. For Appellant: Gary N. Schepps
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Dallas, Texas 75240

b. For Appellee: Gardere Wynne Sewell LLP

(1) Peter Vogel
(2) Barry Golden
(1) Peter L. Loh
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Dallas, Texas 75201

c. For Intervenor VeriSign: DORSEY & WHITNEY (DELAWARE) LLP
(1) Eric Lopez Schnabel, Esq.
(2) Robert W. Mallard, Esq.

d. For Intervenor Rasansky and Aldous: Charla G. Aldous

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d. For Plaintiffs:

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

3. OTHER

a. Other Companies and trusts also placed into the same receivership:

(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.,
(9) Shiloh LLC
(10) Novquant, LLC

(11) Manassas, LLC
(12) Domain Jamboree, LLC
(13) Genesis, LLC
(14) Novo Point, LLC
(15) Quantec, LLC
(16) Iguana Consulting, LLC
(17) Diamond Key, LLC
(18) Quasar Services, LLC
(19) Javelina, LLC
(20) HCB, LLC, a Delaware limited liability company
(21) HCB, LLC, a U.S. Virgin Islands limited liability company
(22) Realty Investment Management, LLC, a Delaware limited liability company
(23) Realty Investment Management, LLC, a U.S. Virgin
(24) Islands limited liability company
(25) Blue Horizon Limited Liability Company
(26) Simple Solutions, LLC
(27) Asiatrust Limited
(28) Southpac Trust Limited
(29) Stowe Protectors, Ltd.
(30) Royal Gable 3129 Trust

c. Non-parties with potential unadjudicated fee disputes with Jeff Baron:

1. **Garrey, Robert (Robert J. Garrey, P.C.)**
2. **Pronske, Gerrit (Pronske & Patel)**
3. **Taylor, Mark (Powers Taylor)**
4. **Coale, David (Carrington Coleman)**
5. **Bickel, John**
6. **Friedman, Larry (Friedman & Feiger)**
7. **Nelson, Michael**
8. **Broome, Stanley (Broome Law Firm)**
9. **Randy Schaffer**
10. **Vitullo, Anthony "Louie"**
11. **Ferguson, Dean**
12. **Pacione, David L.**
13. **Motley, Christy (Nace & Motley)**
14. **Shaver, Steven R. (Shaver & Ash)**
15. **Hall, Jeffrey**
16. **Jones, Steven**
17. **Lyon, Gary**

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

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

COMES NOW NOVO POINT, LLC ("Novo Point"), and QUANTEC, LLC ("Quantec"), non-party Appellants, and pursuant to Federal Rule of Appellate Procedure 8(a)(2) move this Court to stay the district court's order adding the companies into receivership signed December 17, 2010 [Doc#176], and jointly and alternatively to stay the receivership over the companies.

II. SUMMARY

Novo Point and Quantec, ("the companies"), have been placed in receivership with an absence of (1) due process, (2) subject matter jurisdiction, and (3) authority.

The companies were never sued. They are not parties to the lawsuit below. No motion set out any grounds to place the companies into receivership. No findings were entered to support a receivership over the companies. There is clear Fifth Circuit precedent directly on point holding that the receivership order should be vacated.

Unless a stay is granted, Novo Point and Quantec will be broken beyond repair, and millions of dollars of their unique assets will be lost. Additionally, because the receiver operates in the shadows of a cloak of immunity, there is a barrier to recover the damages being suffered by the companies. Accordingly, the damages are irreparable. *See e.g.*, *Allied Marketing Group, Inc. v. CDL Marketing, Inc.*, 878 F.2d 806, 810 (5th Cir. 1989)(footnote 1).

The district court below has ordered appellate counsel not to file any motions in that court on behalf of the companies. Accordingly, moving first for a stay in the district court is not possible nor practicable. Relief is needed from this Court.

III. STANDARD IN GRANTING STAY PENDING APPEAL

The Fifth Circuit has adopted four factors to determine whether stay pending appeal should be granted: (1) substantial showing of probable success on the merits; (2) irreparable injury if not granted; (3) whether a stay would substantially harm the other parties; and (4) whether the granting would serve the public interest. *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968).

Additionally, the Fifth Circuit will not hear a motion to stay that has not been ruled on first by the trial court, absent a showing that moving first in the district court would be impracticable. Fed.R.App.P. 8(a)(2)(A)(i).

IV. MOVING FIRST IN THE DISTRICT COURT IS IMPRACTICABLE

The district court does not recognize the authority of the companies to hire legal counsel to represent them to appeal the court's receivership order, and has ordered Mr. Schepps not to file any motions on behalf of the companies in that court. (Ex. A). Accordingly, it is not possible, nor practicable to seek a stay in the district court.

V. SUCCESS ON THE MERITS

No Subject Matter Jurisdiction (Jurisdiction Divested by Appeal)

As discussed below, on December 17, 2010, Novo Point, LLC and Quantec, LLC were 'added' by the district court to a receivership order after the order had been appealed. Jeff Baron, an original receivership party, filed a notice of appeal from the receivership order on December 2, 2010. (Ex. B).

The filing of a notice of appeal is an event of jurisdictional significance– it confers jurisdiction on the court of appeals and divests the district court of its control

over the order. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The divesture of jurisdiction of the trial court involves all those aspects of the case appealed. *Id*. Accordingly, the district court below had no jurisdiction over the receivership order after the appeal was filed.

The Fifth Circuit has established that **"[T]he district court lacks jurisdiction 'to tamper in any way with the order then on interlocutory appeal' "** ***Coastal Corp. v. Texas Eastern Corp.*****, 869 F.2d 817, 820 (5th Cir. 1989).** Accordingly, as a principle of well established law, the district court lacked the authority to alter the status of a receivership on appeal. *Dayton Indep. School Dist. v. US Mineral Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir. 1990).

Therefore, the December 17, 2010 order to modify the original receivership order to include Novo Point, LLC and Quantec, LLC is void for the district court's lack of post-appeal subject matter jurisdiction over the appealed order. *Id*. (Ex. C).

No Subject Matter Jurisdiction II (No Claims were Pled)

In addition to lacking jurisdiction over the receivership because it was divested of jurisdiction over the matter by the filing of an appeal, the trial court lacked subject matter jurisdiction over Novo Point, LLC and Quantec, LLC because they are not parties to the lawsuit and no claims were pled against them.

The order adding Novo Point and Quantec to the receivership is thus void for lack of subject matter jurisdiction because no pleadings put their subject-matter at issue. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931) (absent pleadings asserting a claim to support the receivership, an order appointing a receiver is void for

lack of subject matter jurisdiction, in fact, "their proceedings are absolutely void in the strictest sense of the term").

Novo Point and Quantec are not parties to the lawsuit below. As Justice Hand explained nearly a century ago, "[N]o court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law …. its jurisdiction is limited to those who therefore can have their day in court". *Alemite Mfg. Corporation v. Staff*, 42 F.2d 832 (2nd Cir.1930).

Imposing a Receivership without Findings in Support is an Abuse of Discretion

If the district court would have had subject matter jurisdiction, the district court abused its discretion by appointing a receiver over Novo Point and Quantec without any evidence having been presented to explain or support the receivership, and without making any findings showing the necessity, or grounds of a receivership over the companies.

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). A receivership is moreover 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, a 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 (emphasis). No evidence was offered nor findings entered to support the imposition of a receivership over Novo Point or Quantec.

Alter Ego Theory: Neither pled nor applicable

It appears that the receivership was intended as a pre-judgment collection device for un-pled, un-liquidated fee disputes concerning Jeff Baron not pending before the district court.[1] If that is the case, the receiver's "grab" of Novo Point and Quantec is an attempt to treat the corporate form of the companies as a complete nullity.

No alter ego claim was pled, and the companies are not parties to the lawsuit below. Even if an alter ego claim had been pled, **receivership cannot be used to determine (or bypass the determination) of an alter ego claim.** It is long settled law that receivership "determines no substantive right; nor is it a step in the determination of such a right." *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923).

Bollore SA v. Import Warehouse, Inc.

The very same issue was presented to the Fifth Circuit in *Bollore SA v. Import Warehouse, Inc.*, 448 F.3d 317 (5th Cir. 2006). In *Bollore*, the district court entered an order appointing a receiver over an alleged 'alter ego' entity. *Id*. at 321. The Fifth Circuit vacated the receivership and ruled that turnover orders do "not allow for a determination of the substantive rights of involved parties" and may not be used "as a vehicle to adjudicate the substantive rights of non-judgment third

[1] Since the fee disputes against Mr. Baron were not pled in the trial court, the district court lacks subject matter jurisdiction over the disputes. Had they been pled, since the disputes involve state law claims between non-diverse parties, the district court would still not have subject matter jurisdiction over the fee disputes. *Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010). If the court had subject matter jurisdiction over the claims, there is still no basis in law to use a receivership to enforce unsecured creditors' claims before they have been reduced to judgment. *E.g.*, *Pusey,* 261 U.S. at 497.

parties". *Id*. at 323. As explained by the Fifth Circuit, the rule forbidding turnover orders to be used to adjudicate substantive rights ultimately springs from due process concerns. *Id.* (such a remedy "completely bypasses our system of affording due process.").

Moreover, if Novo Point and Quantec had been served with citation and appeared as parties in a lawsuit seeking to impute liability upon them under an alter ego or reverse piercing theory (neither of which has occurred), as explained by the Fifth Circuit in *Bollore*, "Texas courts will not apply the alter ego doctrine to directly or reversely pierce the corporate veil unless one of the 'alter egos' owns stock in the other." *Id*. at 325. Since Jeff Baron owns no stock in either Novo Point, LLC, nor Quantec, LLC, alter-ego liability simply does not apply.[2]

Receivership is not Authorized as an Independent Remedy

Receivership is a special remedy that is authorized only as a step to achieve a further, final disposition of property. This fundamental rule was established by the Supreme Court in *Gordon v. Washington*, 295 U.S. 30, 37 (1935). The Supreme Court ruled in *Gordon* that "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." *Id*. (emphasis).

[2] Since Novo Point and Quantec are not parties to a lawsuit, and no alter-ego theory has been pled, extensive analysis is beyond the scope of this motion. A more proper analysis would be to first determine which jurisdiction's law controls the issue. *E.g.*, *Sommers Drug Stores Co. Emp. P. Sharing Trust v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989). As discussed in the main text below, the companies are incorporated under the laws of the Cook Islands. The law of the Cook Islands therefore applies. *See e.g., Alberto v. Diversified Group, Inc.*, 55 F.3d 201, 203 (5th Cir. 1995); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Pursuant to Cook Islands law, there is no basis to impose reverse alter-ego liability.

In the district court below, no other remedy has been sought against Novo Point and Quantec. No claim was pled against them,[3] and no other motion sought relief from them.

The law is clear and well established– the appointment of a receiver may not be used as a means to provide substantive relief. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941) (**"This Court has frequently admonished that a federal court of equity should not appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought**"); *Tucker*, 214 F.2d at 631-2.[4]

The Receiver's Authority Extends only to the Northern District of Texas

It is a longstanding principle of receivership that the authority of a receiver is confined to the jurisdiction in which he is appointed. *E.g.*, *Sterrett v. Second Nat. Bank of Cincinnati*, 248 U.S. 73,77 (1918). The principle is simple, but significant. The receiver is without authority to take possession of Novo Point LLC and Quantec LLC, foreign entities.[5]

[3] Novo Point and Quantec were not parties in the lawsuit below. The case below was a 'business divorce'. One defendant, Ondova, filed for bankruptcy. Domain names owned by Novo Point and Quantec were tangentially involved because Ondovo was the domain name registrar. Novo Point and Quantec's interests were resolved by a global settlement agreement, approved by order of the Ondova bankruptcy court in July, 2010. The agreement resolved a multitude of non-litigant's rights including those involving Novo Point and Quantec and resolved about half a dozen lawsuits including the lawsuit below. (Ex. D, E).

[4] In *Tucker* the Fifth Circuit ruled that a court "may appoint a receiver to preserve and protect the property pending its final disposition" only where "a final decree involving the disposition of property is appropriately asked". *Tucker* at 631.

[5] See page 19, below.

VI. SUMMARY OF IRREPARABLE INJURY

The receiver has ordered the deletion of over 10,000 of Novo Point and Quantec's unique domain name assets. (Ex. F). The least valuable of these have been appraised at $300+, such as "cheatsme.com", "deerbrooks.com", "dsguides.com", "designers-mall.com", "dinogym.com", "billswholesale.com", "luckycosmetics.com", "exoticbid.com", "lowpricejeweler.com" and literally thousands more.

For example, "lowpricejeweler.com" presents a business opportunity to partner with local jewelers (and provide web content based on locale of the viewer), or with one or more nationwide jewelers. The specific income is unknown and thus irreparable, but clearly such a site could generate thousands of dollars of revenue annually, perhaps millions of dollars of income.

This chaotic destruction of the companies' assets is occurring because the receiver consistently interfered with the company's operations manager, and he quit. (Ex. G). As a result, attorneys of the receiver are in essence attempting to run a company that they have no understanding or experience in handling. Immediate relief is required.

If the wrongful actor, a receiver, is entitled to judicial immunity for his actions, there is no party for the Novo Point and Quantec to recover their damages from. The damages are therefore irreparable. **These damages can be prevented by this Court, with no risk of injury to any other party.**

VII. NO HARM TO OTHER PARTIES

No party is harmed by preventing the receiver's deletion of company assets with an appraised value of over $3,000,000.00. No party is harmed by allowing the company to manage its own affairs. (There is no claim or lawsuit against the company.).

VIII. PUBLIC INTEREST

The rule of law is fundamental to a free society. Seeking to enforce unliquidated pre-judgment, un-pled claims against an individual by seizure of entities not named as parties in the underlying lawsuit, would be to treat the law and to "treat the corporate form .. as a complete nullity". *See, e.g.*, *Futura Development v. Estado Libre Asociado*, 144 F.3d 7, 10-12 (1st Cir. 1998) (citing *Peacock v. Thomas*, 516 U.S. 349, 357 (1996) holding a court is "never authorized [to] exercise [enforcement] jurisdiction … to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment.").

A company over which a district court exercises its jurisdiction or imposes a remedy in error should not be shut down and made to suffer literally millions of dollars in irreparable loss pending appeal.

IX. STAY NEEDED TO PREVENT IRREPARABLE INJURY

Deletion of 10,000+ Domain Name Assets

The receiver has ordered the deletion of domain names that have a listed appraised market value exceeding $3,200,00.00.[6] (Ex. F, J). Once deleted and released to the general public, the names will be lost forever as they are snapped up by the companies' competitors. (Ex. J).

Management and commercial operation of Novo Point and Quantec needs to be in the hands of a dedicated professional trained to develop a wide range of business opportunities with the companies' vast domain portfolio. The receivership attorneys are simply not equipped to run the companies and view the portfolio as liquidation assets instead of technology assets with which to provide web based services. (Id.).

In the receiver's hands, no domains are being developed through content activation, joint ventures, or effective content programming. Every day in receivership represents more missed opportunity for the companies. (Id.).

Causing Loss of Key Company Personnel

By a series of hostile threats of contempt, the receiver has interfered with the companies' operations manager to the extent that the manager has now quit. (Ex. G).

Loss of the companies' key employee represents an irreparable injury– no monetary figure can be attached to the loss, and can only be prevented by immediate

[6] Limited domain *'weed pulling'* for domains names with no income potential and no market value is a normal business operation for the companies. What the receiver is doing is something very different– he is deleting domains with a listed market value exceeding three million dollars. The inexplicable act, deleting names such as "lowpricejeweler.com", is either one of gross incompetence or intentional spite. In either case, control of the companies must be removed from the receiver's and his "receiver professional's" hands.

cessation of the receiver's interference with the companies' operations. (Ex. J). A motion seeking such relief [Doc#269] was denied by the district court [Doc#315]. Currently, revenue development has ceased, and instead of increasing revenue and growing, the company has started to cannibalize itself. (Ex. J). The very ability to do business (such as entering new joint ventures), has been usurped by the receiver.

Causing Damage to Companies' Reputation

The receiver has now effectively hijacked control of the companies by ousting the companies' manager. (Ex. G). The companies' lawful manager in the Cook Islands no longer controls the direction of the company, the content of the websites, or the quality of the services being provided by the companies. (Ex. J). The companies' reputation is no longer in the hands of the companies' management. The reputations of the companies are being damaged by the receiver's shutting down development of the domain name development and domain joint ventures. (Id.). That damage is irreparable. *See e.g.*, *Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3rd Cir. 2004).

X. DETAILED FACTUAL AND PROCEDURAL BACKGROUND

The Appellants Novo Point and Quantec

Novo Point, LLC and Quantec, LLC, exist as legal entities pursuant to the laws of the Cook Islands. (Ex. K, L). A treaty between the United States and the Cook Islands obligates the United States to recognize Cook Islands' sovereignty.[7]

The companies are not parties to the lawsuit below, and no claims were pled against them. The motion to place the companies into receivership failed to specify any substantive grounds or legal basis to place a receivership over the companies. (Ex. H). Similarly, the district court made no findings supporting a receivership over the companies. (Ex. C).

Together, the companies' assets included approximately 200,000 unique domain names conservatively valued at $20,000,000.00.[8] Pursuant to the court approved settlement agreement in the Ondova bankruptcy, **all other parties' rights in the domain names owned by Novo Point and Quantec were quitclaimed to the two companies, and all parties to the lawsuit below, including the Appellee, released the companies from all potential rights, claims, actions, and liabilities. (Ex. D, E)**. Approximately $1,500,000.00 was paid on the companies' behalf in order to secure the releases and quit claims. (Id.). The companies have not been sued, and no party has filed any claim that the companies have breached the global settlement in any way.

[7] Paragraph five of the Treaty on friendship and delimitation of the maritime boundary between the United States of America and the Cook Islands", signed at Rarotonga on 11 June 1980, ratified by the US Senate June 21, 1983.

[8] Based on the receiver's valuation reports, which appear to value the companies' assets at around $60,000,000.00.

SouthPac Trust International

The companies are owned by a Cook Islands trustee, Southpac Trust International, Inc. ("SouthPac") (Ex. M, K, L). SouthPac, is an internationally recognized and well respected trustee, recognized as a proper and lawful litigant by the Federal Circuit Court of Appeal and multiple US Federal Courts. *E.g.*, *Prima Tek II LLC v. Polypap, SaRL*, 318 F. 3d 1143 (Fed. Cir. 2003).[9] SouthPac took ownership of Novo Point and Quantec under the supervision of the Ondova bankruptcy court, and with the approval of all parties in the lawsuit below. (Ex. Q).

Jeff Baron is a beneficiary of the trust agreement defining SouthPac's obligations as trustee with respect to its ownership of the companies.[10] This fact is of record and was express and known by all parties and the bankruptcy court, and was express in the global settlement agreement approved by the bankruptcy court. (Ex. E, D).

The Appellee

The Appellee is attorney Peter Vogel. Peter Vogal is not a party to the lawsuit but is both the receiver and the movant for the companies to be placed under ***his own*** receivership. (Ex. H).

Peter Vogel is a colleague of the district judge and the two blog together on Karl Bayer's blog site.[11] (Ex. S). In July 2009 the district court decided to employ

[9] SouthPac is not a party and has not been served with any process in the lawsuit at bar.
[10] The trust was designed to eventually act as a foundation to support research on a cure for Type I, juvenile onset Diabetes (a disease which has afflicted Jeff Baron since early childhood).
[11] The lawsuit below is also a topic of that blog site.

Peter Vogel as a special master in the case. (Ex. U).[12]

In July 2010, the lawsuit fully and finally settled and in August, 2010, a stipulated dismissal of all claims was executed by all parties to the suit. (Ex. E, D, I).

Yet, on October 13, 2010, after ex-parte conferences with the district judge (Ex. X), the Ondovo bankruptcy court filed a report recommending that Peter Vogel be appointed mediator to resolve disputed attorney's fees claims with regard to some of Jeff Baron's former attorneys. (Ex. Y). There is no explanation why Peter Vogel would be an appropriate mediator with respect to the disputed attorneys fees—the disputes have no connection with the discovery issues Vogel presided over as special master. Still, on October 19, 2010, the district court ordered that Peter Vogel would be paid as a mediator between Mr. Baron and non-party attorneys. (Ex. Z)

On November 24, 2010, the day non-party attorney statements regarding the mediation were ordered to be provided to Peter Vogel in his new role as mediator, the district judge suddenly placed Jeff Baron in the hands of Peter Vogel in his new role as receiver. (Ex. C, AA). [13]

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[12] Peter Vogel's employment as special master was unusual in that the district judge and Mr. Vogel disregarded Rule 53(b)(3), and Peter Vogel was appointed without filing a disclosure affidavit. Fed.R.Civ.P. 53(b)(3). Had Mr. Vogel filed the mandatory affidavit, he would have been forced to disclose his long, personal entanglement with Jeff Baron, and particularly his firm's repeated suits against Jeff and related companies, including *Emke v. Compana*. The *Emke* dispute was still being litigated at that time of Vogel's appointment as special master, and involved part of the same subject matter as the case below. Notably, this was not the first time that ethical issues relating to Peter Vogel came up with respect to Jeff Baron. (Ex. R). Jeff had consulted with Peter Vogel seeking legal services and in confidence disclosed private information about his registration of domain names. Vogel's firm then started suing Jeff and related companies for improper domain name registration.

[13] Peter Vogel appears legally ineligible to be appointed receiver because at the time he was employed by the judge as a special master. 28 U.S.C. § 958. Notably, on multiple occasions over the previous year, in addition to the role of special master, and mediator, the district judge desired

Peter Vogel and the $20,000,000.00

By the time Jeff Baron was placed in Peter Vogel's hands, the domain names were clearly not owned by Jeff. By virtue of the execution and consummation of the global settlement agreement, and **pursuant to the order of the bankruptcy court approving the agreement**, the domain names are owned by Novo Point, LLC and Quantec, LLC, and all claims against the domain names were fully and finally released. (Ex. E, D).

As discussed above, a stipulated dismissal of all claims in the lawsuit had been entered into in August, 2010. (Ex. I).

Still, Peter Vogel sought to get the domain names into his hands, and accordingly, on December 3, 2010, filed a motion to make himself receiver of

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to give Peter Vogel the role of receiver over Jeff Baron and/or Ondova, and offered various, changing justifications for doing so. (Ex. V, W, T).

The justification for the receivership is odd, at best. The asserted 'ground' of the unverified motion to impose a receivership over Jeff Baron, was to stop him from hiring lawyers, because the mediation of non-party fee disputes with Peter Vogel mediator had 'failed'. [Doc#123]. The mediation had not yet started, and no impasse was declared. The justification that 'the mediation failed' makes no sense factually. The justification of imposing a receivership to stop an individual from hiring an attorney lacks rationality. If the concern was payment of disputed fees, the district court could have simply ordered Mr. Baron to pay them, if the district court had authority and jurisdiction over the matter—which does not seem to be the case.

Notably, the order appointing Peter Vogel as receiver was not file stamped and was filed initially by Peter Vogel, himself, personally. [Doc#124, entered by "Vogel, Peter" 11/24/2010]. The order was issued *ex-parte* and without notice, hearing, supporting affidavits, or the entry of any findings in support. Peter Vogel immediately had Jeff Baron threatened that he could be held in contempt if he tried to hire an attorney to appeal the order.

Post-appeal, various new justifications for the receivership (not appearing as grounds in any motion) have been offered by the district court: that Jeff Baron defrauds lawyers, that Jeff is in contempt of court (no show cause order ever issued, no contempt hearing was ever held), that the global settlement is in danger (what term of the agreement was breached, or how the district court has subject matter jurisdiction, or why a party's right to trial would be waived if breach were alleged is not explained), that Jeff is vexatious (but has never been sanction by any court), etc.

Mr. Baron sought stay of the receivership order on his own behalf with respect to his separate appeal, but his request for stay was denied.

the companies owned by SouthPac, Novo Point, LLC and Quantec, LLC. (Ex. H). The district court obliged. (Ex. C).

The Timeline: Post-Appeal Tampering with the Receivership Order

Mr. Baron appealed from the receivership order and his notice of appeal was filed on December 2, 2010. The next day, Mr. Baron filed a motion for emergency relief pursuant to Federal Rule of Appellate Procedure 8(a)(1).[14] [Doc#137]. At that point– after an appeal had been taken, Peter Vogel filed his motion to take possession of Novo Point, Quantec, and their domain names by having the district court 'clarify' the original receivership order. (Ex. H).

The companies filed a formal objection to being added to Peter Vogel's receivership. An expedited hearing was set for December 17, 2010. **At the hearing, no evidence was offered, yet, the district court ruled early that the companies "are going to be receiver parties"**. (Ex. AC).

By 'fiat', not based on any evidence, the companies were thus ordered to be receivership parties. Notably, (1) The companies are not parties to the lawsuit below; and (2) No claims were filed against the companies in the district court—just Peter Vogel's motion to make himself receiver of the companies. (Ex. H). No clerical error was alleged in the motion, and Novo Point LLC and Quantec LLC were added to the receivership, not substituted for companies that were removed.[15] (Id.).

[14] The motion was express in its specific designation as to who was bringing the motion and of the provision of the Rule of Procedure under which the motion was filed: "NOW COMES Jeffrey Baron, Appellant, and files pursuant to Federal Rule of Appellate Procedure 8(a)(1), this Emergency Motion".

[15] The receiver, in seeking to expand his own receivership, noted that the original receivership order purported to apply generally to "any entity under the direct or indirect control of Jeffrey

Pursuant to the district court's ruling, counsel for the companies cooperated with the receiver to draft an order conforming to the district court's oral ruling. It was agreed that there was to be a memorandum of understanding to allow the companies to operate with minimum interference from the receiver. (Ex. AD).

Peter Vogel failed to honor that agreement and directly interfered with the operations of the companies to the extent of forcing out the operations manager, and giving rise to the pressing necessity for this motion. (Ex. G).

Receiver's Efforts to prevent this Appeal

Peter Vogel has made strenuous efforts to prevent the companies' appeal to this Court, including the following:

(1) Peter Vogel moved for the district court simply to strike the companies' notice of appeal. [Doc#234]. That motion was denied, however, the district judge ruled that appellate counsel was forbidden from filing any motions on behalf of the companies in his court. (Ex. A).

(2) **Peter Vogel went on an 'acquisitions spree'** for his receivership. Following his acquisition of Novo Point and Quantec, Peter Vogel moved for the district court to place over a dozen additional entities into his hands, including SouthPac Trust Limited, and the companies' current manager, Corporate Director Management Services, LLC (CDMS). (Ex. AE, N). Again the district court obliged Peter Vogel, and on February 3 and 4, 2011,

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Baron, whether by virtue of ownership, beneficial interest, a position as officer, director, power of attorney or any other authority to act." In other words, Vogel argued that the receivership order placed an undetermined about of unnamed companies into receivership, without service upon them or notice to them.

without service of process, pleadings, notice, subject matter jurisdiction, any allegation of grounds, supporting affidavits, hearing, or the entry of any findings in support, SouthPac Trust Ltd., CDMS, and almost a dozen additional companies from various jurisdictions around the world were ordered added to Peter Vogel's receivership. (Ex. AG, AG).[16]

[16] In his motion attempting to place the Novo Point and Quantec's manager into receivership (Ex. N), Peter Vogel boldly represents that "Mr. Baron has created a new legal entity" (CDMS) and has done so for the purpose of 'obstruction'. The assertions are groundless and appear to be simply fabricated by Vogel and his firm. His motion is also replete with representations which are not supported by the record. For example, Vogel represents that Novo Point and Quantec did not object to being included in the receivership, and entered into an agreed order to be placed in receivership. (Id.). Contrary to Peter Vogel's representation, Novo Point and Quantec filed a formal objection. (Ex. P). Further, while counsel cooperated in drafting the order they did so only after the court ruled that the companies would be included in the receivership (see main argument above). (Ex. C).

In his motion for a *Fourth* clarification (Ex. N), Vogel attempts to pass off as a 'clerical error' the inclusion of Novo Point, INC, et.al., *in place* of Novo Point, LLC. This was not claimed in the original 'clarification' motion. Vogel now argues that a "Inc" simply appeared by mistake where a "LLC" was intended. (Ex. N, p2). However, Vogel's position is not supported by the record.

There are two very distinct sets of companies. One set are corporations based in the US Virgin Islands. The other set are limited liability companies based in the Cook Islands. The original order appointing receiver explicitly identified the corporations (with the word corporation spelled out), and expressly identified the US Virgin Islands (e.g., "Novo Point, Inc., a USVI Corporation"). (Ex. O). Those corporations, Novo Point, Inc. and Quantec, Inc. are both parties to the global settlement agreement. (Ex. E). The identities of each company is clearly laid out in the settlement agreement, and the movant for the original receivership, the Ondova trustee Sherman, was himself a party.

There was no typographical error. The Cook Islands LLCs were simply not included in the original order. The 'clerical error' argument falls flat as Novo Point, Inc. and Quantec, Inc., were not *replaced* in the receivership by the LLCs. Rather, the LLCs were added. Peter Vogel is currently the receiver for Novo Point, Inc. and Quantec, Inc., and has filed motions relating to those entities.

Perhaps the issue of names seems so important because no motion ever set out substantive grounds to place Novo Point, LLC or Quantec, LLC into receivership. Since there is no complaint, service of process, or answer, the entire receivership is as flimsy and arbitrary as the name written down in an order.

In Peter Vogel's Fourth motion to clarify (filed after this appeal was taken), **Peter Vogel admits that the motivation to seize the LLC companies was that they owned 200,000 domain names**, ie., not any conduct on the part of the companies. (Ex. N, p2). In his motion, Vogel also avers that the district judge in a phone call *instructed him* to file a motion to include the companies into his receivership. Notably, no such order appears on the record or in writing, no such allegation was made by Vogel in his original motion to add the companies to his receivership, and no evidence of such instruction was offered at the hearing held on his motion on December 17, 2010.

Notably, Peter Vogel and his firm have been on a billing frenzy with his receivership, with a team of lawyers billing literally around the clock. The income to Peter Vogel and his law firm from this receivership is staggering. They appear to have eaten through all of Jeff Baron's non-exempt assets and are now seeking to feast on Novo Point and Quantec. Critically, there is no judgment nor claim pending in the district court (against *any* party) pursuant to which Peter Vogel's billing feast has been in service of.

XI. PRAYER

Wherefore, Novo Point, LLC and Quantec, LLC jointly request the Court to stay or vacate the district court's order placing the companies into receivership. Jointly and in the alternative the companies request a partial stay, preventing the sale, deletion, or taking of their assets from the companies, pending this Court's determination of this appeal. If possible, a ruling is requested within two weeks.

Respectfully submitted,

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For NOVO POINT and QUANTEC

XII. TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

FEDERAL RULES

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

XIV. CERTIFICATE OF CONFERENCE

Counsel for Appellant has attempted to confer with counsel for Appellee regarding the Appellee's position on this motion. Counsel for Appellee have not stated whether they intended to file an opposition.

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