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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	Civil Action No. 3-09CV0988-F
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

MOTION FOR LEAVE TO FILE: SUR-REPLY TO STAN BROOME'S FALSE, MISLEADING, AND FRAUDULENT REPLY [DOC 478] AND AFFIDAVIT [DOC 478-1]

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following sur-reply to Stan Broome's false, misleading, and fraudulent reply [DOC 478] and affidavit [DOC 478-1]:

A. AGAIN A FALSE AND MISLEADING ATTORNEY'S AFFIDAVIT, AGAIN A FRAUDULENT ATTORNEY'S CLAIM

1. Mr. Broom asserts on page 1 of his reply [DOC 478] that:

> "Baron states that his contract with the Broome Law Firm, pllc was capped at $10,000.00 per month. **This is simply not true.**"

2. Mr. Broom then swears in his affidavit [DOC 478-1] that:

> "4. Jeff Baron signed an engagement letter with Broome Law Firm, pllc. **The engagement letter stated** that

> Broome Law Firm, pile **would not <u>invoice</u> more than $10,000.00 in fees in anyone calendar month**. If the fees in any one month were to exceed $10,000.00, **those fees would not be waived, but would <u>rollover</u> and be invoiced the next month,** or the next month in which fees did not exceed $10,000.00."

3. Mr. Broome's assertions – sworn to under oath – are straightforward. There is no ambiguity in his claim. Mr. Broome swears that there was no cap on his fees. Mr. Broome swears he was authorized to work as much as he desired, and the only limit was the amount he could **invoice** in any one month for "cash flow" considerations. Mr. Broome swears that he was authorized to work as much as he desired, and could "roll over" fees for as many months as necessary. Notably, Mr. Broome does not dispute that he was paid $10,000.00 per month for the months he worked, but swears his agreement with Mr. Baron did not cap his fees at that amount.

4. Jeff Baron's practice, as should now be clear to the Court, was to set a fixed monthly fee cap with each lawyer he retained so that he could control the fee obligation incurred in any month. The attorneys were paid at their <u>agreed</u> rates. Stan Broome is no different. **Stan Broome's sworn statements to the contrary are false, misleading, and fraudulent.**

THE PROOF AGAINST STAN BROOME:

5. If Mr. Broome's own *original* claim affidavit is examined closely, we see

that on page 3 of his contract with Mr. Baron (produced by Mr. Broome as evidence) that what the agreement actually provides is:

> 2. **BLF will <u>not</u> *incur* fees in anyone calendar month that exceed $10,000.00 without obtaining the written permission** (through e-mail or some other writing) **from Client.** Client agrees to promptly respond to any notification that the projected fees may exceed **<u>this capped amount</u>** in any calendar month, and give clear instructions on how to proceed.

6. In other words, **directly contrary to Mr. Broome's latest <u>sworn affidavit</u>, his contract <u>expressly</u> "capped" the amount of fees to be incurred in any calendar month. The contract is explicit.** "BLF will <u>not incur fees</u> in any one calendar month that exceed $10,000 without obtaining the written permission .. from Client".

7. Since Broome drafted the agreement, any ambiguity is construed as a matter of law against him. However, there is no ambiguity. The contract is clear and explicit. Broome agreed to "cap" his "fees" not to exceed $10,000.00 in any calendar month. This provision is distinct from the provision limiting per month invoicing.[1]

[1] The per month invoicing limit for cash flow purposes is numbered "1". The separate invoicing provision states "Fees <u>invoiced</u> in anyone calendar month shall not exceed $10,000.00. If the fees in anyone month shall exceed $10,000.00, those fees shall not be waived, but shall roll over and be invoiced the next month, or the next month in which fees do not exceed $10,000.00." That provision, numbered "1", is clearly distinct from the provision numbered "2" capping the amount of fees which could be ***incurred*** in any one month.

8. Stan Broome, wants to collect for more than the capped $10,000.00 fee limit he agreed to. Accordingly, Mr. Broom did not disclose nor mention the second paragraph of his fee cap terms, which expressly capped fees at $10,000.00 monthly. Instead, Mr. Broome mentioned only the first part of the fee terms, relating to invoicing. Mr. Broome is an attorney, and his trick is a sophisticated one. But it is still a trick. Mr. Broome's affidavit is false, misleading and fraudulent. His claim is based on fraud. There is no other word to describe it. Mr. Broome is an attorney, and clearly knows what he agreed with Jeff. Broome simply falsely represented the terms of that agreement.

9. Notably, there is a clear pattern with respect to 'claims' against Mr. Baron. Attorneys worked for flat fees or capped monthly rates. They 'aver—under oath– various facts which, an examination of their own records proves to be false.

THE KEY ETHICAL ISSUES:

10. Mr. Broome feigns unawareness as to any 'ethical' violation on his part. The issue is as follows: As was established in evidence during the January 4, 2011 FRAP 8(a) evidentiary hearing, Mr. Chesnin vigorously attempted to secure Mr. Broome's cooperation to substitute in as counsel for Broome. It was clear this Court and the bankruptcy court were concerned with allegations that Jeff was firing lawyers. An attorney has the duty not to work against their client's interest, or take steps to the injury of their client. Broome refused to allow substitution, and

insisted on filing a motion to withdraw. That was used to the detriment of his client, as an express 'basis' of the receivership motion. **Most disturbing, as testified to in the February 4, 2011 hearing, the receivership motion was filed <u>less than 60 minutes</u> after Mr. Broome filed his motion to withdraw.**

11. It is simply not credible that Mr. Urbanik could prepare, and present his receivership motion– based in part on Mr. Broome's withdrawal– less than 60 minutes after notice of that withdrawal was filed. The circumstances evidence that Mr. Broome had sold out his client, and was working in coordination with Mr. Urbanik. **There is no rational basis for Broome to refuse allowing Mr. Chesnin (an AV rated trial lawyer) to file for substitution.** The only **apparent motivation for Broome's refusing to allow substitution was that Mr. Broome desired, apparently to serve as grounds for Mr. Urbanik's motion, to file a motion for *withdrawal*.** Broome was clearly under the ethical duty to avoid taking actions detrimental to his client. He clearly breached that obligation.

Respectfully submitted,

<u>/s/ Gary N. Schepps</u>

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CERTIFICATE OF SERVICE

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

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