

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 TO QUASH SUBPOENAS AND DEPOSITION NOTICE
SERVED BY RECEIVER UPON MEDIA LIAISON**

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

COMES NOW Jeffrey Baron, Appellant, who respectfully requests an order quashing subpoenas served by the receiver upon Jeff Baron's media liaison in order to protect Mr. Baron's First Amendment rights as discussed below. Because the material sought in the subpoenas may be disclosed at any time prior to the deadline of August 10, 2011, a ruling on this motion is respectfully requested by August 7, 2011, or sooner if practicable.

I. BACKGROUND

The District Judge and the Receiver blog together on an internet blog site <<http://www.karlbayer.com/blog/>>. The blog site reported about the case below in a way that placed Mr. Baron in a negative light. Because the District Judge and the receiver are both listed prominently on the blog site's masthead, the impression is created that the District Judge endorsed the story about Mr. Baron.

Mr. Baron turned in confidence to a media liaison to try to clear his name in future media reports about him. Use of a media liaison to try to express his side of the story when media reports are made about him should be protected as a basic First Amendment right— both as a right to free speech, and as a right to free association, as discussed below.

Although it is clearly beyond the scope of the receiver's appointment, the receiver is now attempting to chill Mr. Baron's right to free speech, and invade the

confidential relationship between Mr. Baron and his media liaison. The receiver is using his position as receiver and the power of judicial process available to him to interfere with Mr. Baron's ability to exercise his First Amendment rights to free speech—rights Mr. Baron seeks to exercise, in part, to insure accurate reporting of the actions and conduct of the receiver. The relationship between a citizen and a media liaison is by necessity a very personal relationship. Private material must be discussed in order to determine what material should be expressed publicly. If the communications and work product of a media liaison are freely discoverable without any showing of need or purpose for the discovery, then people will be less likely to freely communicate and discuss different options and forms of expression that they may wish to make in the media. In effect, there would not be a private option to consider and refine speech before its public expression. The right to discuss in confidence different possible expressions before they are made public, can be central to effective communication and ultimate expression. The right to have an expert shape, edit, and develop content before it is expressed publicly should be recognized as a component of free speech and expression.

The receiver has served both subpoenas and a deposition notice upon Jennifer Gronwaldt and Hellerman Baretz Communications, and seeks to intrude upon all private and confidential communications between and about Jeff Baron. See Exhibits A-1 and A-2. Such an intrusion threatens to chill Mr. Baron's First

Amendment rights to free speech. There is no legitimate interest or lawful purpose served by the receiver's actions, other than to increase the amount of the receiver's fees and to chill Mr. Baron's ability to express himself when media reports are published about him.

II. ARGUMENT

The Supreme Court has held in *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984), that there is a right to associate for the purpose of engaging in those activities protected by the First Amendment such as free speech. The Supreme Court in *Roberts* held that:

“The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.”

Id.

Further, the Supreme Court held that:

“[T]he formation and preservation of certain kinds of highly personal relationships [must be afforded] a substantial measure of sanctuary from unjustified interference”.

Id.

The Fifth Circuit has held that a person affected by a subpoena can file a motion to quash based on his standing to protect a personal right with respect to the materials subpoenaed. *Brown v Braddick*, 595 F.2d 961, 967 (5th Cir. 1979). Mr. Baron requests that the Court protect his right to associate with a media liaison in order to exercise his right to free speech. The Fifth Circuit has recognized that

the right of privacy must be carefully guarded because once an infringement has occurred it cannot be undone by monetary relief. *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981)(even a threat to the right of privacy “mandates a finding of irreparable injury).

III. Prayer

Wherefore Jeffrey Baron requests this Honorable Court¹ to enter an order:

(1) Quashing the subpoenas and deposition notice served by the receiver upon Jennifer Gronwaldt and Hellerman Baretz Communications, and to grant such other and further relief as the Court finds appropriate.

(2) Jointly and in the alternative, prayer is made that the receivership be dissolved or stayed because it serves no articulable purpose authorized by law and clearly is causing irreparable injury to Jeff Baron as discussed above, with the receiver’s intrusion into Mr. Baron’s most basic rights of freedom of speech, association, and privacy.

(3) Jointly and in the alternative, prayer is made that the receivership be partially dissolved or stayed so that Mr. Baron be allowed to (A) work freely, (B) engage in business transactions, (C) receive wages, (D) receive and cash checks, (E) retain counsel of his choice, (F) associate freely with media liaisons without interference from a receiver, and to exercise all other rights of a free citizen of the

¹ This District Court ordered that motions relating to the receivership be filed with the Fifth Circuit. [Doc 616].

United States. If the Court considers granting this relief and finds need to retain Mr. Baron's non-exempt, or even exempt and non-exempt property in receivership, at least a partial stay or dissolution of the receivership, as prayed for herein, will restore some fundamental rights to Mr. Baron, such as the right to privacy, the right to work, the right to unimpaired freedom of speech that has been threatened by the receiver's latest actions as discussed above.

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 JEFFREY BARON

IV. 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.

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

V. CERTIFICATE OF CONFERENCE

Counsel for the receiver has not stated whether they are opposed or not opposed.

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