

No. 10-11202  
**In the  
United States Court of Appeals  
for the Fifth Circuit**

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NETSPHERE, INC. Et Al,  
Plaintiffs

v.

JEFFREY BARON,  
Defendant-Appellant

v.

ONDOVA LIMITED COMPANY,  
Defendant-Appellee

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Appeal of Order Appointing Receiver in Settled Lawsuit

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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

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Appeal of Order Adding Non-Parties Novo Point, LLC  
and Quantec, LLC as Receivership Parties

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From the United States District Court  
Northern District of Texas, Dallas Division  
Civil Action No. 3-09CV0988-F

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**EMERGENCY MOTION TO STAY ORDER APPOINTING  
RECEIVER OVER JEFFREY BARON PENDING APPEAL TO  
PROTECT FIRST AND FIFTH AMENDMENT RIGHTS**

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**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. Intervenor:** Rasansky, Jeffrey H. and Charla G. Aldous
- d. Intervenor:** VeriSign, Inc.
- e. Plaintiffs:** (1) Netsphere Inc  
(2) Manila Industries Inc  
(3) Munish Krishan
- f. Appellants:** (1) Novo Point, LLC  
(2) Quantec, LLC
- g. Appellee:** Peter S. Vogel

**2. ATTORNEYS**

- a. For Appellant:** Gary N. Schepps  
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(1) Barry Golden  
(2) Peter L. Loh

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c. For Intervenor VeriSign: Dorsey & Whitney (Delaware)

- (1) Eric Lopez Schnabel, Esq.
- (2) Robert W. Mallard, Esq.

d. For Intervenor Rasansky and Aldous: Aldous Law Firm

- (1) Charla G Aldous

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. Companies and entities purportedly seized by the 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) Nova 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 Islands limited liability company
- (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

**b. Receiver / Mediator / Special Master:** Peter Vogel

**c. Non-party attorneys seeking fees from the receivership res:**

- 1. Garrey, Robert (Robert J. Garrey, P.C.)**
- 2. Pronske and Patel**
- 3. Carrington, Coleman, Sloman & Blumenthal, LLP**
- 4. Aldous Law Firm (Charla G. Aldous)**
- 5. Rasansky Law Firm (Rasansky, Jeffrey H.)**
- 6. Schurig Jetel Beckett Tackett**
- 7. Powers and Taylor (Taylor, Mark)**
- 8. Gary G. Lyon**
- 9. Dean Ferguson**
- 10. Bickel & Brewer**
- 11. Robert J. Garrey**
- 12. Hohmann, Taube & Summers, LLP**
- 13. Michael B. Nelson, Inc.**
- 14. Mateer & Shaffer, LLP (Randy Schaffer)**
- 15. Broome Law Firm, PLLC**
- 16. Fee, Smith, Sharp & Vitullo, LLP (Vitullo, Anthony "Louie")**
- 17. Jones, Otjen & Davis (Jones, Steven)**
- 18. Hitchcock Evert, LLP**
- 19. David L. Pacione**
- 20. Shaver Law Firm**
- 21. James M. Eckels**
- 22. Joshua E. Cox**

- 23.Friedman, Larry (Friedman & Feiger)**
- 24.Pacione, David L.**
- 25.Motley, Christy (Nace & Motley)**
- 26.Shaver, Steven R. (Shaver & Ash)**
- 27.Jeffrey Hall**
- 28.Martin Thomas**
- 29.Sidney B. Chesnin**
- 30.Tom Jackson**

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

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TO THE HONORABLE FIFTH CIRCUIT COURT OF APPEALS:

COMES NOW JEFFREY BARON, Appellant, and pursuant to Federal Rule of Appellate Procedure 8(a)(2) moves this Honorable Court to stay the District Court's Order Appointing Receiver over Mr. Baron and all his assets signed on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010] in the District Court below, pending appeal of that order to this Court pursuant to 28 U.S.C. §1292(a)(2). The granting of this motion is appropriate because the Appellant Jeffrey Baron has substantial likelihood of success on appeal, and is suffering immediate and irreparable injury from the District Court's order. If relief is not granted immediately Mr. Baron will be prohibited from exercising his Constitutional right to retain counsel with his own money to file motions to protect his right to freedom of speech and associate which are threatened August 10, and August 15. Additionally, Mr. Baron's right to freedom of speech and freedom of association will be compromised by the disclosure of confidential communications between Mr. Baron and a media liaison with respect to counsel relating to public expressions of speech considered by Mr. Baron, and contacts made by the press to Mr. Baron.

## **II. SUMMARY**

The relevant law is clear and longstanding. There is no basis in law to appoint a receiver in this case and the law expressly prohibits such an appointment. The District Court's order appointing receiver was issued without due process for a

clearly improper and unconstitutional purpose, and squarely violates the Constitution of the United States. The relevant law is clear and longstanding:

- (1) A district court is not authorized to appoint a receiver to seize property unless there is claim seeking further disposition of that property pled before the court. *Gordon v. Washington*, 295 U.S. 30, 37 (1935); *Tucker*, 214 F.2d at 631.
- (2) A district court is not authorized to appoint a receiver, as a matter of subject matter jurisdiction, where no pleadings puts the property subject to the receivership at issue. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931).
- (3) A district court is not authorized to seize or freeze a party's assets when the disposition of these assets is not an issue in the underlying lawsuit. *In re Fredeman Litigation*, 843 F.2d 821, 822 (5th Cir. 1988); *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 221-223 (1945).
- (4) A district court is not authorized to interfere with a litigant's assets in which no lien or equitable interest was claimed *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 310 (1999).
- (5) Issuance of an order for prejudgment seizure without prior notice or hearing, violates Due Process when issued without a showing



of extraordinary circumstances and the posting of a bond to pay the damages for wrongful seizure. *Connecticut v. Doehr*, 501 U.S. 1, 18 (1991).

The damages being inflicted upon Mr. Baron by virtue of the order are very real, and are irreparable— Mr. Baron’s right to privacy with respect to his association with press contacts in a relationship basic to Mr. Baron’s right to public expression is at threat today. Further, Mr. Baron is barred from taking out newspaper advertisements with his own money. Mr. Baron is also being denied his right to retain counsel with his own money, and cannot defend himself in seeking relief from the current intrusion being attempted into his private and constitutionally protected affairs. **The District Court below requires Mr. Baron to file motions in different district courts around the country if he desires to protect his rights, but the receivership order prevents Mr. Baron from hiring legal counsel with his own money.** *Exhibit AC.*

### **III. STATEMENT OF THE CASE AND FACTS**

This motion and appeal arise out of a breach of contract lawsuit filed in the District Court.<sup>1</sup> In this lawsuit Netsphere sought to enforce an alleged contract entered into with Jeffrey Baron and Ondova Limited Company. (Exhibit B). Subsequent to the filing of the lawsuit, Ondova was forced to file for bankruptcy protection. Thereafter, all claims and controversies in the District Court lawsuit

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<sup>1</sup> Netsphere, Inc., et.al., v. Jeffrey Baron, and Ondova Limited Company, Civil action no. 3-09CV0988-F in the Northern District of Texas.

settled. (Exhibit C).

Jeffrey Baron is not in bankruptcy. Mr. Baron is a defendant in the District Court lawsuit and the beneficial owner of the equity of Ondova, the company in bankruptcy. Mr. Baron became concerned that the attorney for the trustee in the Ondova bankruptcy, Mr. Raymond J. Urbanik, was charging grossly excessive fees. Mr. Baron filed an objection to Mr. Urbanik's latest fee application (over three hundred thousand dollars) in the bankruptcy court. (Exhibit D).

Mr. Urbanik then filed in the District Court breach of contract lawsuit a motion *to appoint a particular receiver over Mr. Baron*. Mr. Urbanik sought to have Mr. Baron stripped of all his possessions and for that receiver to take possession of Mr. Baron in the nature of a guardianship so that Mr. Baron would be unable to hire legal counsel. (Exhibit E). Mr. Urbanik cited as the sole necessity for his motion that **"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."** (Exhibit E).

Without providing any notice and the opportunity for Mr. Baron to be heard, without any supporting affidavits, and without the entry of any findings, the District Court below entered an order stripping Mr. Baron of all his possessions and appointed the receiver requested by Mr. Urbanik over Mr. Baron's person and

property.<sup>2</sup> (Exhibit F). The receiver then **seized all of Mr. Baron's assets**, appeared in the bankruptcy court asserting to hold all of Mr. Baron's rights, and withdrew the objection to Mr. Urbanik's fee application. (Exhibit G). The bankruptcy court then sealed Mr. Urbanik's fee application so that it could not be examined by the public. (Exhibit H).

Mr. Baron is currently being deprived of most of his civil rights. (Exhibit F). All his assets, bank accounts, and credit cards have been seized. Mr. Baron is prohibited from the most basic elements of freedom. For example, Baron has been prohibited from taking out advertisements in newspapers to tell the world what the US government (through the US District Court and its receiver) have done to him, and from hiring legal counsel to represent him. Exhibit AB.

### **Current Developments**

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

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<sup>2</sup> The order appointing receiver and seizure actions of the receiver actually go further, seizing the assets of retirement and spendthrift trusts for which Mr. Baron is the beneficiary, as well as the assets of the companies owned by the spendthrift trusts. **Again, Mr. Baron is not in bankruptcy and is not a judgment debtor.** No party has made any claim to any property right in any of Mr. Baron's assets. Rather, the *express* and only purpose of the motion for receivership and summary confiscation of all of Mr. Baron's property was to prevent Mr. Baron from being able to hire legal counsel. (Exhibit E).

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 not relating to financial concerns 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 Exhibit A.* 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 with respect to non-financial communications, notes and other materials of media and media liaisons with whom Mr. Baron has communicated, 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.

Mr. Baron's motion to quash the subpoenas has been denied by the district court below. *See Exhibit AC*. Mr. Baron is prohibited from using his own money to hire an attorney to represent him in the districts where the subpoenas have been served, and therefore cannot enforce his rights unless stay is immediately granted and he is allowed to hire an attorney to represent him in those districts. *Id.* The District Court ordered that motions relating to the receivership be filed with the Fifth Circuit. [Doc 616].

#### **IV. STANDARD IN GRANTING STAY PENDING APPEAL**

The Fifth Circuit has adopted the four standards set out in *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 259 F.2d 921 (DC Cir. 1958) to determine whether stay pending appeal should be granted. *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968). Those factors are: (1) Whether the movant has made a showing of likelihood of success on the merits; (2) Whether the movant has made a showing of irreparable injury if the stay is not granted; (3) Whether the granting of the stay would substantially harm the other parties; and (4) Whether the granting of the stay would serve the public interest. *Id.*

## **V. ARGUMENT & AUTHORITY**

### A. LIKELIHOOD OF SUCCESS ON APPEAL

#### **Appointment of a receiver in this case is not authorized by law**

As a matter of longstanding Federal law, an unsecured contract creditor<sup>3</sup> has, in the absence of statute, no substantive right, legal or equitable, in or to the property of his debtor and may not be granted an order of receivership against the debtor. *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923).

Mr. Sherman (in whose putative name Mr. Urbanik filed the motion for receivership) is neither individually nor as trustee a judgment creditor of Jeffrey Baron. Mr. Sherman neither individually nor as trustee has any ownership interest in Mr. Baron's property. Accordingly, as a matter of law Mr. Sherman lacks standing to bring a motion for appointment of a receiver under Federal law. *Williams Holding Co. v. Pennell*, 86 F. 2d 230 (5th Cir. 1936). As *Pusey* explains "[A]n unsecured simple contract creditor ... has no right whatsoever in equity until he has exhausted his legal remedy. After execution upon a judgment recovered at law has been returned unsatisfied he may proceed in equity by a creditor's bill." *Pusey* at 497.

The Fifth Circuit has recognized three grounds under Federal law pursuant to which a District Court may appoint a receiver: (1) the appointment of a receiver

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<sup>3</sup> The putative movant for receivership below, Daniel J. Sherman, is not a creditor of Mr. Baron's. The opposite, Mr. Baron is a *creditor* of the bankruptcy estate. Further, with respect to any actual claims Mr. Sherman or Ondova Limited might have against Mr. Baron (none have been asserted), the District Court notably lacks subject matter jurisdiction as there is no diversity of citizenship.

can be sought “by anyone showing an interest in certain property or a relation to the party in control or ownership thereof such as to justify conservation of the property by a court officer”; (2) receivers may be appointed “to preserve property pending final determination of its distribution in supplementary proceedings in aid of execution”; and (3) receivership may be an appropriate remedy for a judgment creditor who: (a) “seeks to set aside allegedly fraudulent conveyances by the judgment debtor”, (b) “has had execution issued and returned unsatisfied”, (c) “proceeds through supplementary proceedings pursuant to Rule 69”, (d) “seeks to subject equitable assets to the payment of his judgment”, or (e) “otherwise is attempting to have the debtor's property preserved from dissipation until his claim can be satisfied.” *Santibanez v. Wier McMahan & Co.*, 105 F. 3d 234, 241 (5th Cir. 1997)(emphasis).

**The appointment of a receiver to prevent a defendant from hiring legal counsel is not a grounds recognized by the Fifth Circuit, nor by the Supreme Court.** 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). Appointment of a receiver where there is no claim to the assets seized is strictly prohibited— there is no occasion for a court to appoint a receiver of property of which it is asked to make no further disposition. *Id.* Accordingly, to prevent an individual from being able to hire an attorney can never be a lawful purpose for the appointment of a receiver.

Similarly, the appointment of a receiver can not be used as a means to provide substantive relief. *Kelleam v. Maryland Casualty Co. of Baltimore*, 312 U.S. 377, 381 (1941). The Supreme Court has frequently admonished that a federal court should not appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought. *Id.* As explained by this, and the Supreme Court, Receiverships “are to be watched with jealous eyes lest their function be perverted.” *Id.*; *Tucker* at 631. The appointment of a receiver in order to force an individual to do something having nothing to do with the property seized is clearly a perversion of the remedy of Receivership.

**The purpose for which the receiver was sought is also clearly unconstitutional**

The Fifth Amendment to the United States Constitution establishes that a civil litigant has a constitutional right to retain hired counsel. *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1104 (5th Cir. 1980). Moreover, “the right to counsel is one of constitutional dimensions and should thus be freely exercised without impingement.” *Id.* at 1118; *Mosley v. St. Louis Southwestern Ry.*, 634 F.2d 942, 946 (5th Cir. 1981). An individual's relationship with his or her attorney “acts as a critical buffer between the individual and the power of the State.” *Johnson v. City of Cincinnati*, 310 F.3d 484, 501 (6th Cir. 2002). A defendant must be afforded a fair opportunity to secure counsel “of his own choice” and that applies “in any case, civil or criminal” as a due process right “in the constitutional sense”. *Powell v. Alabama*, 287 U.S. 45, 53-69 (1932).



### **The means of the receivership order is clearly unconstitutional**

The seizure clause of the Fourth Amendment prohibits the unreasonable interference with possession of a person's property. *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 2009). The seizure ordered by this Court was purely arbitrary—based on no case law or statute, ordered without a trial on the merits of any claim, and entered based on no objective guidelines or guiding principles.

### **The application for receivership was grossly defective**

Most Federal courts of appeal have held that a receivership is 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, the circuits that have addressed the issue have held that the 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. ,

The Fifth Circuit has noted six factors considered as indicating the need for a receivership in those circumstances where the appointment of a receiver is

permitted by Federal law, (e.g., supplementary proceedings in aid of execution, etc.). *Santibanez*, 105 F. 3d at 241-242. Those factors are:

- (1) A valid claim by the party seeking the appointment;
- (2) The probability that fraudulent conduct has occurred or will occur to frustrate that claim;
- (3) Imminent danger that property will be concealed, lost, or diminished in value;
- (4) Inadequacy of legal remedies;
- (5) Lack of a less drastic equitable remedy; and
- (6) Likelihood that appointing the receiver will do more good than harm.

In addition for failing to allege a lawful grounds for the issuance of an order appointing receiver, the application for receivership below failed to allege<sup>4</sup> any of the six factors recognized by the Fifth Circuit. There is no claim against Mr. Baron by the party seeking the appointment. There is no allegation of fraudulent conduct. There is no danger of property being concealed or lost. There is no allegation of inadequacy of legal remedies. There is no allegation that a less drastic equitable remedy was not available. There is no reference in the application to the harm that appointing a receiver would do. (Exhibit E).

In sum, the motion for receivership is a legally groundless motion<sup>5</sup> sought for an unlawful purpose by a party lacking standing as a matter of law. The result has been the suspension of almost every civil liberty of Mr. Baron, taking all his

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<sup>4</sup>And the District Court below failed to enter supporting findings as to.

<sup>5</sup> Brought in a court lacking subject matter jurisdiction over the non-diverse parties.

property, suspending his right to contract, his right to privacy, his right to privileged communications with his attorneys, and, by design, impairing his right to travel and to hire legal counsel to defend and protect his rights.

**The order appointing receiver was issued without even minimal procedural due process and should be declared void**

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing the order violates the fundamental principles of due process. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). Even the temporary taking of property that is not in execution of a final judgment is a “deprivation” as contemplated by the constitution and “had to be *preceded* by a fair hearing”. *Fuentes v. Shevin*, 407 U.S. 67 (1972). Notably, due process requires an evidentiary hearing *prior* to the deprivation of some type of property interest even if such a hearing is provided thereafter. *Mathews v. Eldridge*, 424 U.S. 319, 333.

The District Court’s order appointing receiver was not preceded by any type of hearing prior, and was not even supported by affidavit. It is therefore void for lack of procedural due process. *See Pennoyer v. Neff*, 95 U.S. 714, 737 (1878) (“such proceeding is void as not being by due process of law”); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (“rendered in violation of due process is void in the rendering”); *Margoles v. Johns*, 660 F. 2d 291,295 (7th Cir. 1981)(“void only if the court that rendered it lacked jurisdiction ... or if it acted in a manner inconsistent with due process of law”). (Exhibit L).

## B. IRREPARABLE INJURY

### **Deprivation of constitutional rights is irreparable injury as a matter of law**

It is well settled that the loss of constitutional freedoms for even minimal periods of time constitutes irreparable injury. *Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Accordingly, the receivership order—expressly designed to interfere with Mr. Baron’s constitutional right to hire legal counsel and to express himself freely through advertisements in public media— involves irreparable injury as a matter of law. Such violations “mandates a finding of irreparable injury”. *Deerfield* at 338.

When a persons’ very right to control assets is stripped from them, a cascade of constitutional rights are impaired. It is the right to own and control property that is the cornerstone of a democratic society. For example, suspending an individual’s right to possess property directly acts to impair their First Amendment interests by depriving them of access to the primary medium of public expression—paid advertisements. Such an impairment of an individual’s First Amendment freedoms, for even minimal periods of time constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-4 (1976).

### **No party from which to recover damages**

Mr. Baron is faced with a situation where the wrongful actors carry a mantle of immunity. *E.g. Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981). To the extent that absolute judicial immunity attaches to the actions of Mr. Urbanik in his

capacity as attorney for a bankruptcy trustee, Mr. Baron has no party from which to seek redress for his damages.

Since Mr. Baron is the equitable owner of Ondova (the entity ultimately in who's name Mr. Urbanik has acted), any recovery against Ondova would just be taken out of Mr. Baron's own pocket. Accordingly, as a very real matter the damages being caused to Mr. Baron, including the ever-increasing costs of the receiver and the receiver's attorney, are irreparable.

#### C. NO SUBSTANTIAL HARM TO OTHER PARTIES

This case has settled. Moreover, no party has a legitimate interest in denying Mr. Baron his constitutional right to legal counsel of his choice. If such an interest could be constitutionally served, an injunction prohibiting Mr. Baron from retaining counsel would serve the same interest, without taking away Mr. Baron's constitutional right to own and possess property.

#### D. PUBLIC INTEREST

There is a compelling public interest in upholding the US Constitution. Protecting an individual's rights in his property and his privacy, and his right to hire legal counsel of his choice, are important public interests served by granting the relief requested by Mr. Baron. It is frightening to think that if an individual refuses to pay the excessive demands of an attorney or desires to object to grossly excessive fees sought by an attorney in a bankruptcy case, that instead of a right to trial by jury or impartial hearing before a judge, he can (1) have all his assets and

private documents stripped from him, (2) become a ward of the court— incarcerated in ‘house arrest’ in one city, (3) lose his right to purchase advertisements and communicate in private with respect to public expressions of speech, and (4) be prohibited from hiring legal counsel to protect his rights.

## **VI. CONCLUSION**

The District Court below suspended Mr. Baron’s constitutional right to own, access, and control his own property, for the purpose of denying Mr. Baron the ability to retain counsel. Such an order is unlawful and violates the US Constitution. Mr. Baron is currently prohibited from engaging in business transactions, from taking out advertisements, from hiring a lawyer, etc. On an emergency basis Mr. Baron is in need of legal counsel, in order to protect his rights to associate freely with media contacts and protect his right to free speech.

## **VII. PRAYER**

Wherefore, Jeffrey Baron prays:

(1) That this Honorable Court consider and grant this motion on an expedited basis, and Stay pending appeal the Order Appointing Receiver over the person and property of Mr. Baron signed by the District Court below on November 24, 2010 [Docket #124, and Docket #130, Entered 11/30/2010].

(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 United States including the right to retain counsel with his own money. 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

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**COUNSEL FOR MOVANT,  
JEFFREY BARON**

**VIII. TABLE OF AUTHORITIES**

FEDERAL CASES

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**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  
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**CERTIFICATE OF NOTICE**

This is to certify that notice of the filing of this request for emergency relief was provided by telephone to the Clerk of the Fifth Circuit Court of Appeals and to counsel for the Appellee.

CERTIFIED BY: /s/ Gary N. Schepps  
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