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

NETSPHERE, INC., MANILA INDUSTRIES. INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	CIVIL ACTION NO. 3:09-CV-0988-F
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

NOTICE OF BARON'S ANTICIPATED REFUSAL TO HIRE NEW COUNSEL AND IMPACT OF SUCH REFUSAL ON THE RECEIVERSHIP LIABILITIES [*CORRECTED VERSION*[1]]

By May 23, 2012, Netsphere will be filing an amended complaint, presumably seeking damages exceeding $1.5 million. Although the Court has ordered Jeffrey Baron to retain trial counsel to defend against these claims, Mr. Baron has telegraphed an intention not to comply. Rather, Mr. Baron appears to want the Court to issue a default judgment, thereby creating new and substantial non-contingent liabilities for the Receivership to absorb. The Receiver brings this issue to the Court's attention in hopes of avoiding what would otherwise be the latest in a long line of Mr. Baron's acts against his own economic self-interests.

A. Mr. Baron has always been represented by trial counsel.

As this Court is well aware, Gary Schepps has represented Mr. Baron in this Court since at least December 2010. During that period, and on Mr. Baron's behalf, Mr. Schepps has filed dozens and dozens of pleadings and argued at numerous hearings. [*See* Docket No. 904 n. 1

[1] This corrected version corrects typographical, grammatical, and other minor errors or ambiguities from the original version [Docket No. 927] and is intended to replace and supplant the original version.

(acknowledging Mr. Schepps' longstanding representation of Mr. Baron before this Court).] In addition, and at various times during the course of the Receivership, Mr. Baron has also been represented in this Court by Mr. Peter Barrett. [Docket No. 457 (allowing Mr. Barrett to withdraw as trial counsel due to statements made by his co-counsel Mr. Schepps in a brief that the District Court struck because they were "unfounded and unprofessional").]

B. Mr. Baron has repeatedly asked that the Court let him hire additional trial counsel.

Despite always being represented by trial counsel in this Court, Mr. Baron has repeatedly accused this Court of denying him the right to counsel—ironically, through pleadings filed by Mr. Schepps, Mr. Baron's own trial counsel. [*See, e.g.*, District Court Docket Nos. 423, 525; Fifth Circuit Case No. 10-11202 at Document Nos. 511313862, 511326320, 511388246, 511389402, 511389465, 511426993.]

C. This Court granted Mr. Baron's request that he be permitted to hire additional trial counsel.

On April 16, 2012, the Court set a status conference to hear arguments regarding the underlying Complaint and what issues need to be addressed in order to close the case. [Docket No. 865.] In response to this Order, Mr. Schepps advised the Court that "Jeffrey Baron is not represented by counsel with respect to the underlying, settled lawsuit." [Docket No. 866.] On April 23, 2012, this Court held the status conference, at which time Mr. Schepps affirmed the statements from his letter and then proceeded to watch the hearing from behind the bar (rather than at counsel's table) [*See* Docket No. 904 (noting the occurrences at the April 23, 2012 status conference).]

On May 3, 2012, the Court issued an order (1) acknowledging Mr. Schepps' position that he will no longer appear as Mr. Baron's trial counsel and (2), permitting Mr. Baron to select new trial counsel of his choice (and ordering that said counsel file a notice of appearance on or before

June 1, 2012) (the "New Attorney Order"). [Docket No. 904.] In order to preempt Mr. Baron's anticipated complaint that he cannot hire additional counsel without funds, the Court specifically noted in the New Attorney Order that this attorney would be paid from funds held by the Receiver.[2]

D. The Court set up an orderly schedule for closing the underlying case.

On May 2, 2012, this Court ordered that plaintiff Netsphere, Inc. ("Netsphere") file amended pleadings on or before May 23, 2012. [Docket No. 895.] Under the Federal Rules, an amended complaint filed on May 23, 2012, would trigger a response deadline of June 6, 2012. [FED. R. CIV. P. 15(a)(3).] Thus, the Court envisions the underlying case to proceed as follows:

- May 23, 2012—Netsphere files an amended complaint.
- June 1, 2012—Mr. Baron's new attorney files an appearance.
- June 6, 2012—Mr. Baron's new attorney responds to the amended complaint.
- After June 6, 2012—The Court issues a trial schedule.

Importantly, and based on communications with Netsphere, the Receiver anticipates that the amended complaint will seek damages between $1.5 million and $ 2 million (based on Netsphere's allegations relating to Mr. Baron's vexatious litigation tactics). Given the magnitude of this financial exposure, it is obviously of paramount importance that Mr. Baron timely responds to the amended complaint and—assuming that Mr. Baron denies these claims—marshals a strong defense.

[2] In order that Mr. Baron could more easily hire trial counsel, the Court went out of its way to assure Mr. Baron that his new counsel would receive payment. Of course, this was not necessary. If there is one area in which the record clearly shows that Mr. Baron excels, it would be in recruiting counsel (dozens before the Receivership, and Messrs. Schepps and Barrett since the Receivership)—presumably without even paying a retainer.

E. Mr. Baron objects to the order allowing him to retain trial counsel.

On the very day that the Court issued the New Attorney Order, Mr. Baron (through Mr. Schepps, who previously announced that he was no longer representing Mr. Baron before this Court) filed with this Court an emergency motion to stay the New Attorney Order. [Docket No. 908.] He also filed a notice that he would be appealing the New Attorney Order. [Docket No. 909]. He even filed a second emergency motion to stay the New Attorney Order—this one with the Fifth Circuit. [Fifth Circuit Case No. 12-10489 at Document No. 511848491.] Clearly, Mr. Baron ***really*** did not like the New Attorney Order.

This made no sense to the Receiver. Why would Mr. Baron want to stay an order allowing him to retain new trial counsel? The Receiver (through counsel, Barry Golden), then approached Mr. Schepps about this. Through a series of e-mails (attached hereto as Exhibit A), the following bizarre dialogue occurred:

> Mr. Golden: "One of the orders that Mr. Baron is seeking to stay is the order saying that 'Mr. Baron should retain trial counsel' and 'funds are available in the receivership for this purpose' (attached for your convenience). Why would Mr. Baron want to stay this order?"
>
> Mr. Schepps: "The order requires an attorney to appear BEFORE BEING PAID and BEFORE PAYMENT ARRANGEMENTS ARE MADE. Qualified counsel is not going to accept the case under those terms, and you know it."
>
> Mr. Golden: "But didn't you?"
>
> Mr. Schepps: "No. As you are well aware, I have not accepted representation in the underlying lawsuit or trial court matters without payment, up front, of a sufficient retainer. This, as you are aware, was the situation from day one and you were, at the time, made expressly aware of that fact. Am not going to continue this banter with you. The level of your dishonesty is repulsive."

On May 11, 2012, in a brief, Mr. Schepps repeated the same sentiment to the Fifth Circuit (except, of course, for the part about the "repulsive" dishonesty):

> Notably the order of the District Court appealed from with respect to allowing trial counsel for Baron, set an impossible hurdle—an attorney would have to file an appearance in the case before any fee arrangement was worked out and before the amount of funds which would be permitted were not established. Moreover there are no claims currently pending so it is impossible for an attorney to know what he is even signing up for.

[*See* Baron's *Reply to Responses of Sherman & Vogel* [Fifth Circuit Case No. 12-10489 at Document No. 511852892], a true and correct copy of which is attached hereto as Exhibit B, at p.8, n.7.]

The Receiver surmises that there are two reasons why Mr. Baron does not intend to retain new counsel. First, retaining new counsel might be viewed by the Fifth Circuit as an acknowledgement that the underlying case was not already closed at the time this Court entered the Receivership Order (contradicting one of his lead appellate arguments). Second, retaining new counsel would be step towards ending the Receivership in an orderly fashion (contravening Mr. Baron's apparent goal of driving the Receivership into administrative insolvency).

F. Unless something changes, Mr. Baron will cause the Receivership to incur additional and substantial liabilities.

The Receiver expects that on June 1, 2012, no attorney will file a notice of appearance for Mr. Baron. If the Receiver is correct, then on June 6, 2012, Mr. Baron will be subject to default and expose the Receivership to additional huge liabilities in excess of $1.5 million.[3] The Receiver, therefore, seeks the Court's guidance on how to avoid Mr. Baron's latest attempt to act against his own economic self interests and those of his companies.

[3] If this Court were to enter a default, Mr. Baron will no doubt claim that the Receiver's failure to defend against Netsphere's claim was gross negligence. [*See* Docket No. 866 (Mr. Schepps writing to the Court that with respect to the underlying case, "[a]s currently set, the rights of Mr. Baron with respect to those matters are being represented by Mr. Vogel in his fiduciary capacity").]

Respectfully submitted,

/s/ Barry M. Golden
Barry M. Golden
Texas State Bar No. 24002149
Peter L. Loh
Texas Bar Card No. 24036982
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-4667 (facsimile)
(214) 999-3000 (telephone)
bgolden@gardere.com
ploh@gardere.com

ATTORNEYS FOR THE RECEIVER, PETER S. VOGEL

CERTIFICATE OF SERVICE

On May 15, 2012, Receiver served the foregoing notice via the Court's ECF system.

/s/ Peter L. Loh
Peter L. Loh

Exhibit A

BLAKLEY, JOHN DAVID

From: GOLDEN, BARRY
Sent: Tuesday, May 15, 2012 2:21 PM
To: BLAKLEY, JOHN DAVID
Subject: Fwd: Re[6]: 12-10489; Netsphere, Inc. v Jeffrey Baron, et al

Begin forwarded message:

From: Gary Schepps <legal@schepps.net>
Date: May 8, 2012 8:03:56 PM CDT
To: "GOLDEN, BARRY" <bgolden@gardere.com>
Subject: Re[6]: 12-10489; Netsphere, Inc. v Jeffrey Baron, et al

Barry Golden:

No. As you are well aware, I have not accepted representation in the underlying lawsuit or trial court matters without payment, up front, of a sufficient retainer. This, as you are aware, was the situation from day one and you were, at the time, made expressly aware of that fact.

Am not going to continue this banter with you. The level of your dishonesty is repulsive.

Tuesday, May 8, 2012, 6:35:40 PM, you wrote:

> But didn't you?
>
> On May 8, 2012, at 6:31 PM, "'Gary Schepps'" <legal@schepps.net> wrote:

BARRY GOLDEN:

The order requires an attorney to appear BEFORE BEING PAID and BEFORE PAYMENT ARRANGEMENTS ARE MADE. Qualified counsel is not going to accept the case under those terms, and you know it.

Tuesday, May 8, 2012, 3:16:22 PM, you wrote:

> Gary,
>
> We are not in agreement with the request for the stay.
>
> I wonder if you would please clarify one thing though. One of the orders that Mr. Baron is seeking to stay is the order saying that â€œMr. Baron should retain trial counselâ€□ and â€œfunds are available in the receivership for this purposeâ€□ (attached for your convenience). Why would Mr. Baron want to stay this order?
>
> Barry
>
> **From:** 'Gary Schepps' [mailto:legal@schepps.net]
> **Sent:** Tuesday, May 08, 2012 3:08 PM
> **To:** GOLDEN, BARRY
> **Subject:** Re[2]: 12-10489; Netsphere, Inc. v Jeffrey Baron, et al
>
> Barry Golden:
>
> The purpose of the email was to notify you of the filing.
>
> If you have changed your position and would agree to a stay, please let me know. It would certainly be helpful.
>
> Gary Schepps
>
> Tuesday, May 8, 2012, 1:07:27 PM, you wrote:
>
> > Gary,
> >
> > What is the purpose of sending me such an e-mail twelve minutes before filing the motion?

Barry

From: Gary Schepps [mailto:legal@schepps.net]
Sent: Tuesday, May 08, 2012 12:24 PM
To: GOLDEN, BARRY; Urbanik
Subject: 12-10489; Netsphere, Inc. v Jeffrey Baron, et al

Gentlemen,

This is to advise you that we will be filing an emergency motion for stay in the 5th Circu in this case.

Gary Schepps

Exhibit B

No. 12-10489

In the United States Court of Appeals for the Fifth Circuit

NETSPHERE, INC. Et Al,
Plaintiffs

v.

JEFFREY BARON,
Defendant – Appellant

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,
Non Party – Appellants

v.

ONDOVA LIMITED COMPANY,
Defendant – Appellee

v.

PETER S. VOGEL,
Appellee

Appeal of Asset Disposal Orders in Ex Parte Receivership
Imposed to Prevent Jeff Baron from Hiring Counsel and
to Force Settlement of Non-Diverse Unpled
Non-Party Former Attorney Fee Claims Alleged against Jeff Baron

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

PROPOSED
REPLY TO RESPONSES OF SHERMAN & VOGEL

TO THE HONORABLE JUSTICES OF THE FIFTH CIRCUIT COURT OF APPEALS

COME NOW Appellants and make this Reply to the Responses filed by Appellees Sherman and Vogel, and in support show the following:

1. The personally directed attempt to discredit Counsel.

Vogel's argument attacking Counsel is fundamentally misleading. For example, contrary to Vogel's argument, the first three 'findings' of Hon. William Royal Furgeson cited at the top of Page 4 of Vogel's response do not involve the undersigned. Rather, those 'findings' relate to versions of the 'vexatious litigation' story painted against Baron and counsel, well ***before*** the undersigned was engaged. Vogel's allegation that those statements were made about the undersigned is clearly less than forthright. Further, while it is true the District Court found that statements made in a motion about 'Barrett' (an attorney retained by the undersigned to assist at one hearing) were "unfounded", the District Court had no basis to make such a findings. No hearing was held and no evidence was heard or considered.

Vogel similarly raises the response of Hon. Stacey Jernigan to a pending mandamus petition to which she is Respondent. In the Response, the Hon. Stacey Jernigan attacked the credibility of Counsel, just as Vogel and Sherman are doing now. However, **this Honorable Court found meritorious and granted the undersigned's motion in those proceeding** made on the grounds **that the record directly contradicted Hon. Stacey Jernigan's factual assertions** regarding

Counsel. See Document 511849698 filed on 5/09/2012 in case 12-10444. Similarly, a review of the appellate briefing in the appeals Vogel and Sherman characterize as "vexatious", clarifies the illegitimacy of the Appellees' argument and provides a clear picture of the proceedings below. See briefing in Case No. 10-11202 (with consolidated cases) and Case No. 12-10003.[1]

2. The merits of the issues raised in this motion have not been ruled on by this Honorable Court.

Unlike the orders challenged in the instant appeal, the previous liquidation order for which stay pending appeal was sought, involved motions remanded to the District Court by this Honorable Court.[2] While this Honorable Court declined to stay the District Court's rulings on matters remanded to the District Court, **to date this Honorable Court has declined to remand any further such matters to the District Court.** Precisely because this Honorable Court has not allowed the District Court to do so, the District Judge has attempted to bypass the jurisdiction of this Honorable Court.

Notably, since the matters were pending before this Honorable Court when the District Judge ruled on them, the merits of the substantive issues involved in

[1] For example, **Baron funded the Ondova bankruptcy with a net injection of $3 Million**, in return for Sherman's agreement use the funding **to immediately pay off all the creditors** and return Ondova to Baron with approximately $1 Million in cash remaining. That didn't happen. Instead **Sherman took the funds for his generated fees**, and no creditor has received a penny. See Document 511672923 filed on 11/21/2011 in case 10-11202. **Baron objected** and the *ex parte* meetings between Sherman and Vogel and **receivership over Baron followed**.

[2] Document 00511739739 filed on 1/27/2012 in case 10-11202.

the matters on appeal have been briefed to this Honorable Court. Thus for example, the issues relating to Thomas and Jackson (who is not Baron's counsel) have been fully briefed in motion responses before this Honorable Court.[3] Notably, based on the motions and responses, this Honorable Court, to this point, has not allowed the District Court to exercise jurisdiction over those matters.

Similarly, while the matter was pending before this Honorable Court,[4] the District Court took matters into his own hands and entered an order finding that the undersigned "concealed information" needed to file tax returns for Novo Point LLC and Quantec LLC. However, just like with the 'Barrett' findings discussed above, no hearing was held by the District Court and no evidence was considered.

The District Court erred in its actions. As a matter of controlling precedent:

> "**The filing of a timely and sufficient notice of appeal transfers jurisdiction over matters involved in the appeal from the district court to the court of appeals. The district court is divested of jurisdiction to take any action with regard to the matter except in aid of the appeal**."
> *United States v. Hitchmon*, 602 F.2d 689, 692 (5th Cir. 1979)

[3] E.g., Document 511765027 filed on 2/22/2012 in case 10-11202; Document 511629701 filed on 10/12/2011 in case 10-11202.

[4] E.g., Document 511837047 filed on 4/26/2012 in case 10-11202.

3. Like Vogel's Response, Sherman's Response is in almost every respect materially misleading.

Item by item deconstruction of Sherman's argument reveals a Response that is in almost every respect materially misleading. A typical example is as follows: Binding precedent requires that *ex parte* seizure orders protect the rights of the property owner by requiring a bond to compensate the owner if the seizure is later found to be wrongful. *Connecticut v. Doehr*, 501 U.S. 1, 19 (1991). No such bond was required by the District Court. Yet, Sherman argues that "of course there was a bond required". What Sherman does not tell is that while there was a "bond required" it was not a bond to compensate the defendant and no-parties for wrongful seizure as mandated by *Doehr*. Instead, Sherman's argument hides the critical fact that the "bond" referenced by Sherman was a fidelity bond requiring the receiver faithfully perform the orders of the court and has nothing to do with compensating the defendant should the receivership order be found to have been wrongfully obtained.

As another example, Sherman argues that the litigation has been extended because Baron has appealed the orders of the District Court. However, the only substantive orders of the District Court have been to liquidate receivership assets– by the millions– and place the assets into the pockets of Vogel and his partners, and now Sherman and his counsel. **There is no underlying claim** or case pending involving Baron. Novo Point LLC and Quantec LLC are non-parties and no claim

has ever been asserted against them in the lawsuit below. **There is no underlying lawsuit awaiting resolution**. There is only the receivership and the only issue raised is the emptying of receivership assets as "fees" for imposing the receivership.

A careful examination of each part of Sherman's argument reveals its hollowness.[5] For example, Sherman cites *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006 (5th Cir. 1977) as authority for a party's right to recover attorneys for seeking and defending a receivership. The case, however, held that "the district judge had the power to award compensation to the Committee to be paid by other plaintiff counsel out of the fees they were entitled to receive". *Id.* at 1008. The reasoning of this Honorable Court in *In re Air Crash Disaster* regarding equitable duties of the beneficiaries of funds, is as follows: This Honorable Court held that "[W]hen such a fund is for all practical purposes created for the benefit of others, the formalities of the litigation — the absence of an avowed class suit or the creation of a fund, as it were, through stare decisis rather than through a decree — hardly touch the power of equity in doing **justice as between a party and the beneficiaries of his litigation**." *Id.* at 1018. Pointedly,

[5] This applies equally to the argument of Vogel. A typical example is shown in Vogel's reliance on *Resolution Trust Corp. v. Smith*, 53 F.3d 72 (5th Cir. 1995). First, *Smith* directly counters Vogel's previous argument (Vogel at pages 6-7) that the orders of liquidation and disposal of receivership *res* are not appealable. *Id.* at 77 fn2. Second, Vogel misleadingly argues *Smith* holds the trial court is not divested of jurisdiction over the matters appealed and retains jurisdiction over "maintenance" of a receivership. *Smith*, however, holds "[u]ntil the judgment has been properly stayed or superseded, the district court may **enforce it through contempt** sanctions." *Id.* at 76-77.

obviously **Baron, Novo Point LLC, Quantec LLC, etc., are not the beneficiaries of Sherman's litigation.** *Air Crash Disaster* relates to the equitable distribution of funds as between claimants and does not purport to carve out an exception to the "American Rule" and as between a plaintiff and a defendant to allow an award of attorney's fees in order to "do justice" between a party and the defendant it has sought relief from. Moreover, in its holding, this Honorable Court held that:

> "The district court **must set and conduct a hearing in the full sense of the word and must address the fee issue under the *Johnson* standards.** The Committee and its counsel **must offer relevant evidence and must be available for cross-examination.** The court should enter **findings of fact and conclusions of law setting out the basis for the fee award** and adequately presenting the issue for further appellate review should this be necessary"
>
> *Id.* at 1021.

Clearly, with respect to the fee awards challenged in the instant appeal, there was no hearing, no evidence, no opportunity for cross-examination, and no discussion by the District Court of the *Johnson* standards. Thus, the relevant part of the holding of the case cited by Sherman firmly establishes the likelihood of reversal on appeal of the orders challenged in the instant appeal.

4. The limits of receivership authority.

As a matter of controlling precedent, a federal court's inherent and 'all writs' powers are bounded by the same constraints as a Court's exercise of its equitable

power– a federal court's authority is limited to the powers exercised by the Court of Chancery at the time of the enactment of the Judiciary Act. *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978); *Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1409 (5th Cir. 1993). As matter of well-established law, the Court of Chancery's exercise of receivership power over private property was strictly limited to aid in enforcement of a judgment or to conserve property pending resolution of competing claims in the property pled before the Court. *E.g. Gordon v. Washington*, 295 U.S. 37 (1935). Thus, Receivership is a limited *in rem* remedy and not an 'everyday' equitable power that can be used as desired by a federal court.[6] Receivership is not authorized to as a tool empty the pockets of a litigant and deny them hired counsel because they are accused of vexatious litigation.[7]

[6] Sherman and Vogel's arguments attempt to recast for private use the 'constitutional power' found in a minority of circuits as a basis for a court to take *any* reasonable measure to control co-branches of government. However, with respect to private persons, every circuit recognizes that federal courts are not free to exercise any power desired. Rather, outside of a specific statutory grant of authority, a federal court's authority to act is limited to the powers exercised by the Court of Chancery at the time of the enactment of the Judiciary Act. Moreover, the minority view that with respect to "substitution of a court's authority for that of elected and appointed officials" the only limitation on a court's power is "reasonableness under the circumstances" allowing governmental receivership for "constitutional purposes" against co-branches of government (*Morgan v. McDonough*, 540 F.2d 527, 533, 535 (1st Cir. 1976)) appears to have been rejected by the Supreme Court. *See Milliken v. Bradley*, 433 U.S. 267, 288 (1977) (court's power against co-branches is limited to the "traditional attributes of equity power").

[7] Notably the order of the District Court appealed from with respect to allowing trial counsel for Baron, set an impossible hurdle—an attorney would have to file an appearance in the case before any fee arrangement was worked out and before the amount of funds which would be permitted were not established. Moreover, there are no claims currently pending so it is impossible for an attorney to know what he is even signing up for.

5. Sherman and Vogel have constructed a fictitious conception of 'vexatious litigation'.

"Vexatious litigation" as a legal principle means the "filing and processing frivolous and vexatious lawsuits". *E.g.*, *Gordon v. US Department of Justice*, 558 F.2d 618, 618 (1st Cir. 1977). The controlling standard of this Honorable Court is that "[W]here monetary sanctions are ineffective in deterring vexatious filings, enjoining such filings would be considered" *Farguson v. MBank Houston, NA*, 808 F.2d 358, 360 (5th Cir. 1986). Additionally, "[A] broader injunction, prohibiting any filings in any federal court without leave of that court … may be appropriate if a litigant is engaging in a widespread practice of harassment against different people." *Id.* Baron is a defendant in the lawsuit below and Novo Point LLC and Quantec LLC are non-parties. The two dozen other companies also in Vogel's receivership are also non-parties. There has been no finding that Baron has ever filed a frivolous lawsuit. Rather, 'Vexatious Litigation' in Vogel and Sherman's constructed conception, involves, for example, challenging trial court orders on appeal.

Even if a party was truly contumacious and stubbornly resisted the authority of a court, the federal court is not empowered to punish that party (and non-parties) by seizing all of their assets! Rather, "dismissal with prejudice is the <u>ultimate</u> penalty". *John v. State of La*., 828 F.2d 1129, 1131 (5th Cir. 1987)(emphasis).

6. The Surreal allegation of "continued disruption of the Bankruptcy and District Court proceedings"

Sherman argues[8] that the emergency *ex parte* receivership addressed Baron's "disruption" of the Bankruptcy and District Court proceedings. However, well prior to the imposition of the *ex parte* receivership, the District Court lawsuit settled and all parties entered a stipulated order of dismissal with prejudice as to all claims. R. 2109, et.seq., 2346-2356. The only thing Baron had done in the Bankruptcy Court prior to the imposition of the emergency receivership was to file an objection to Sherman's massive attorneys' fee application. Sherman himself cited that as a ground for the imposition of a receivership over Baron. R. 1577, lines 1-3. At the time, the stated need in Sherman's motion for the receivership was "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." R. 1578, paragraph "13".

Respectfully submitted,

/s/ Gary N. Schepps

Gary N. Schepps
Texas State Bar No. 00791608
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240
(972) 200-0000 - Telephone
(972) 200-0535 - Facsimile
Email: legal@schepps.net
COUNSEL FOR APPELLANTS

[8] Sherman Response page 3.

TABLE OF AUTHORITIES

FEDERAL CASES

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
COUNSEL FOR APPELLANTS