

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.

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**MOTION FOR APPOINTMENT AS COUNSEL AND TO APPROVE COMPENSATION
AND REQUEST FOR HEARING**

Pursuant to this Court’s Order dated May 16, 2012 [Dkt. 904], Stephen R. Cochell (the “Applicant”) moves for appointment as trial counsel for Jeffrey Baron in the above captioned matter and further moves for an order approving compensation. In support of this motion, counsel states:

1. On or about July 2, 2010, this lawsuit was fully and finally settled.
2. In Paragraph 23 of the ‘Global Settlement Agreement’, the parties expressly agreed that:
“In each of the Underlying Cases, each of the Parties shall bear its own respective attorneys’ fees and costs.”
3. On November 24, 2010, a receivership order was imposed on Jeffrey Baron.. [Dkt. 130]
4. Since on or about November 2010, when the receiver fired Mr. Baron’s trial counsel, Mr. Baron has been without trial counsel and is currently unrepresented in the trial court.

5. On May 3, 2012, this Court entered an order ordering that Mr. Baron should retain counsel by or before June 1, 2012. [Dkt. 904]
6. Mr. Baron has requested the undersigned counsel to represent him as trial counsel in this matter.
7. Upon review of the record in this case, it is apparent that there are significant legal issues raised in the pleadings, in addition to numerous factual issues that will require significant time and effort.
8. However, there is *significant* uncertainty as to whether counsel for Mr. Baron will be compensated. In its May 3, 2012 order, the Court stated: "Funds are available in the receivership for this purpose [retaining counsel], although said funds are not unlimited and how to pay and how much can be paid to said attorney remain to be determined." [Dkt. 904].
9. In a case of this sort, where a client has been without trial counsel in a complex receivership, all the client's assets seized and placed under the control of a Receiver, an attorney must ensure that he will be compensated for his services, and not step into a case where his compensation will be unexpectedly terminated after he has devoted substantial time and financial resources to undertake the case.
10. In that vein, counsel requests that the Court schedule a hearing to address the issue of compensation and the scope of representation in this case. The Court's order required Mr. Baron to retain counsel by or before June 1, 2012. [Dkt. 904]. After Plaintiffs filed their Amended Complaint on May 23, 2012, the Court entered an order that same day, staying the litigation. It is unclear whether Mr. Baron still must retain counsel to handle the underlying suit.

11. Counsel therefore applies for appointment as counsel for Mr. Baron to ensure that he is compensated for his efforts from the estate, and that such compensation is secured by a non-refundable retainer and that any additional fees are accorded the same priority for payment as that accorded the Receiver in this case.
12. The issues raised in the Amended Complaint [Dkt. 944] raise significant issues that will require a review of prior pleadings and the circumstances and details of the settlement previously reached in this case, drafting a motion to dismiss based on lack of jurisdiction, and potentially filing an answer, counterclaim and taking depositions of various witnesses. Although the answer date has been stayed, immediate formal and informal discovery may be necessary to preserve evidence and secure witness testimony while memories of the events are still fresh.
13. While the Court has stayed filing a response to the Amended Complaint, counsel respectfully submits that admissions made by counsel for Plaintiffs in the underlying suit negate the existence of subject matter jurisdiction. It does not appear that Plaintiffs can satisfy the requirements of diversity jurisdiction in that the claims do not exceed \$75,000.
 - a. The Second, Third and Fourth Claims for Relief assert that Mr. Baron breached a written agreement for violation of a provision of the settlement agreement that required Defendant to pay a portion of revenue from phone cards to the Netsphere parties and converted the proceeds of the revenues that allegedly should have been paid to Netsphere, therefore resulting in unjust enrichment to Mr. Baron. At a hearing on January 4, 2011 However, Mr. McPete, counsel for Plaintiffs, *admitted* that the amount in controversy was less than \$2,500.00. [Dkt. 233]. In pertinent part, the transcript reflects at pages 218-219:

THE COURT: By the way, Mr. MacPete, maybe you can tell me. What's the status of the settlement that was affirmed by Judge Jurnigan?

MR. MACPETE: My clients have fully complied with the settlement. As you heard Mr. Urbanik say, on behalf of the trustee we paid the amount -- actually early the amount we were supposed to pay. The phone cards, as you heard testimony about from Mr. Lyon, is still in breach of agreement. There were payments that were supposed to be paid to my clients that have not been made for six months.

THE COURT: How many?

MR. MACPETE: A small amount which is what's so maddening. It's less than twenty-five hundred dollars.

- b. Plaintiffs' Fifth Claim for Relief seeks recovery of costs and attorneys fees for vexatious litigation tactics. However, Plaintiffs' claim fails to state a cause of action. Moreover, if there were such a cause of action, any claim for fees appears to be barred by the Global Settlement Agreement, which specified the parties' agreement that costs and attorneys fees were to be paid by the parties. Discovery is necessary to secure evidence relating to the allegations while the matter is fresh. To that end, counsel must determine when the allegedly vexatious litigation occurred, the identity of the alleged victims and related information. The adversary system requires that Mr. Baron have counsel appointed to request that the issues to be defined temporally and then to secure discovery in defense of the allegations while the material is still available. Every day that passes without allowing a defendant to engage in formal and informal discovery potentially works a substantial prejudice to the defendant.
- c. Plaintiff's Claim for contacting taxing authorities seeks recovery for damages that appear to be unsupported and without merit. Moreover, the alleged contractual provision is void as a matter of law and public policy. A party cannot lawfully

contract to bind another party to violate mandatory tax reporting laws. The Plaintiff's complaint appears to suggest that accurate tax reports were filed as mandated by law, but against the wishes of the Plaintiff.

d. It appears that the Amended Complaint is defective as a matter of law. If the Amended Complaint is allowed to proceed, counsel must have the resources to effectively represent his client and defend the case. Additionally there is a fundamental unfairness of allowing allegations to be made of record, but staying and denying a defendant the opportunity to defend those allegations.

14. The undersigned counsel is prepared to enter an appearance on behalf of Mr. Baron if Court approval is granted and financial arrangements are secured. Counsel further requests the Court provide guidance as to whether Mr. Baron is still allowed to retain counsel. If so, counsel requests leave to supplement this motion prior to hearing to provide specifics as to a proposed retainer. In light of Mr. Baron's rights to protect information pursuant to the attorney-client privilege, it is requested that the retainer agreement and financial terms be submitted to the Court at the hearing, for *in camera* review.

WHEREFORE, Applicant, Stephen R. Cochell, requests that the Court set a hearing on this Motion for Appointment as Counsel and to Determine Compensation and to appoint Applicant as counsel for Jeffrey Baron in the above-captioned matter and to determine compensation on terms

to be proposed by Applicant prior to, or at the time of hearing on this motion.

Very respectfully,

/s/Stephen R. Cochell
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic on June 1, 2011.

/s/ Stephen R. Cochell

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ORDER GRANTING HEARING ON MOTION FOR APPOINTMENT AS COUNSEL FOR
JEFFREY BARON AND TO DETERMINE COMPENSATION

The Court, having reviewed Stephen R. Cochell, Esq.'s Motion for Appointment as
Counsel and to Determine Compensation, and the responses thereto:

IT IS HEREBY ORDERED that the a hearing shall be held on the ___ day of _____,
2012 at _____ a.m./p.m. to address the issue of appointment of counsel and to determine
compensation for counsel.

Hon. Royal Fergeson