CIVIL ACTION NO. 3:13-cv-03461-O

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division

JEFFREY BARON,
Appellant

v.

ELIZABETH SHURIG, *et. al.*
Appellees

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

CONSOLIDATED REPLY OF APPELLANT TO OPENING BRIEFS OF INTERVENOR AND PETITIONING CREDITORS

Comes now Appellant Jeffrey Baron ("**Baron**") and files this Consolidate Reply to the Opening Briefs of Intervenor, John H. Litzler (the "**Trustee**"), and the petitioning creditors in the involuntary bankruptcy case of Baron (collectively, the "**Petitioning Creditors**").[1] In support hereof, Baron would respectfully show the Court as follows:

I. Preliminary Statement

Instead of demonstrating that they obtained final judgments against Baron through a fair trial—or at least rebutting that an interlocutory fee order is not akin to a final judgment under Federal Rules of Civil Procedure—the Petitioning Creditors and Trustee make repetitive arguments that Baron is a vexatious litigant, in an attempt to convince yet a fourth court that they are entitled to extraordinary equitable relief. Setting aside that this allegation is baseless, as

[1] Capitalized terms not otherwise defined herein have the same ascribed to them in Baron's Brief in Support of Appeal of Bankruptcy Court Orders Granting Petitioning Creditors Partial Summary Judgment and Order for Relief (Dkt. No. 25.)

demonstrated below, section 303 of the Bankruptcy Code contains absolutely no provision that allows alleged creditors to force an individual into bankruptcy because he or she is "vexatious." Rather, section 303 requires petitioning creditors to hold claims that are not subject to bona fide dispute as to liability or amount. And the reasoning behind this requirement makes perfect sense, as the Bankruptcy Code was not intended to be used as a tool by plaintiffs to obtain a litigation advantage over defendants by placing them into bankruptcy. For these and other reasons, the Involuntary Case should be dismissed.

II. Violation of Due Process

Receivership Order Precluded Involuntary Case

The Trustee and Petitioning Creditors first contend that the reversal of the Receivership Order did not preclude the remedy of involuntary bankruptcy. (Tr. Br. at 19; PC's Br. at 11.) They argue that "[a] federal court's equitable power to appoint a receiver in order to restrict a debtor's use of his unencumbered property before judgment may not be viable, but involuntary bankruptcy certainly provides a method for creditors to force a debtor into bankruptcy proceedings if certain statutory criteria are met." (Tr. Br. at 19.) They are fundamentally incorrect for several reasons.

First, the Trustee and Petitioning Creditors mistake the different effects of the Reversal Opinion and the Fifth Circuit mandate in determining what remedies were available to the Petitioning Creditors at different points in time. At the time the Reversal Opinion was entered, the Petitioning Creditors had absolutely no right to commence the Involuntary Case because the original Receivership Order contained a broad injunction against the commencement of any such remedy. As demonstrated in the Baron's Motion for Reconsideration [Dkt. No. 40], the Receivership Order banned the Petitioning Creditors from, among other things:

- "[c]ommencing, prosecuting, continuing, entering, or enforcing any suit or

proceeding . . .;"

- "taking or attempting to take possession, custody or control of any asset"
- "[e]xecuting, issuing, serving or causing the execution, issuance or service of, any legal process . . . whether specified in this Order or not;"
- "[d]oing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to the receivership."

(*See* App. 6, 139-140.) Federal Rule of Appellate Procedure 41, as well as the Fifth Circuit's Clarification Order, ensured that this broad injunction remained in place when the Involuntary Case was commenced. While Baron had an absolute right to the protections of the Receivership Order, this right was stripped away, without due process, when the Petitioning Creditors ignored it and pursued the illegal remedy of bankruptcy.

Second, even if the Receivership Order had not been in place—which it was—the Petitioning Creditors still had no remedy available to them regarding the Fee Order because that Order had been stayed by Judge Furgeson—at the instruction of the Fifth Circuit—six days after it was entered. (App. 28, p.214.) Judge Furgeson's initial stay order unequivocally provided that: "[H]aving consulted with the Clerk of the U.S. Court of Appeals for the Fifth Circuit, the Court advises the parties that it is STAYED from taking any action in the various matters [including the Fee Order (Dkt. No. 575)] involved in the instant appeal." (*Id.*) A month later, Judge Furgeson reiterated in another Order that he had "**stay[ed] orders concerning . . . fees to be paid to Baron attorneys pending appeal**." (App. 31, p. 217.) After the Fifth Circuit mandate on the Reversal Opinion issued, Judge Furgeson then made the stay permanent—despite renewed requests by the Petitioning Creditors to be paid—stating **"the Fifth Circuit found this Court could not order the payment of these fees from the Receivership estate."** (App. 34, p. 0443.) Moreover, Judge Furgeson had no authority to ever enforce the Fee Order (a) after the

Fifth Circuit mandate pursuant to established case law regarding reversed receiverships[2] and the law of the case and mandate rule.[3] Thus, the Petitioning Creditors never had any right to enforce the Fee Order; rather Baron had a right to enforce the Fifth Circuit mandate and Judge Furgeson's nullification of such Order.

Moreover, section 303(b) of the Bankruptcy Code itself precluded any remedy for the Petitioning Creditors, because it requires the Petitioning Creditors to hold claims that are not subject to a bona fide dispute. While the Trustee and Petitioning Creditors spend an inordinate amount of time in their Opening Briefs arguing that the claims were not "contingent" (Tr. Br. at 25-26; PC's Br. at 16-18), this argument misses the mark entirely, as section 303(b) separately requires petitioning creditors to hold claims that are not subject to "bona fide dispute as to liability or amount." *See* 11 U.S.C. § 303(b). And any reasonable person who reviews the Fee Order will notice that Judge Furgeson specifically acknowledged in his Order that Baron's held claims against all of the Petitioning Creditors—and *visa versa*—that were preserved for future litigation. In that Order, Judge Furgeson stated:

> [T]he Court understands that certain of the claimants of the Former

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[2] *See Jacksonsville, T. & K. W. RY. CO. v. American Const. Co.*, 57 F. 66 (5th Cir. 1893); *Coskery v. Roberts & Mander Corp.*, 189 F.2d 234 (3rd Cir. 1951); *Coburn v. Hill*, 103 F. 340, 340-41 (6th Cir. 1900); *Sclafani* v. *Sclafani,* 870 S.W.2d 608,611 (Tex. App.-Hous. [1 Dist.] 1993); *Christie v. Lowrey,* 589 S.W.2d 870, 873 (Tex. Civ. App.-Dallas 1979, no writ).

[3] Given that the only assets that were the subject of the Netsphere Litigation were the domain names that were to be transferred to Netsphere under the settlement agreement between Ondova and Netsphere (R. 183), the Fifth Circuit unequivocally ruled that Judge Furgeson did not have subject matter jurisdiction to impose a receiver over property—the personal assets of Baron, Novo Point and Quantec—that was not the subject of the Netsphere Litigation. (R. 179; *see also* R. 185-86, 188.) ("The receiver was granted exclusive control over assets, including Baron's personal property, that were not at issue in the underlying litigation over the domain names. We find no authority to permit establishing a receivership for this purpose.") The Fifth Circuit further held that "[e]stablishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority." (R. 185-86.) **These rulings were binding on Judge Furgeson.** *See United States v. Lee*, 358 F.3d 315, 321 (5th Cir.2004) ("Absent exceptional circumstances, the mandate rule compels compliance on remand with the dictates of a superior court and forecloses relitigation of issues expressly or impliedly decided by the appellate court."); *see also Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 184 (5th Cir. 2012) (the mandate rule "'provides that a lower court on remand must implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court.") (*quoting United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002)). Thus, Judge Furgeson had no authority to ever enforce the Fee Order after the Fifth Circuit mandate issued.

> Attorney Claims are claiming that, in addition to the amounts of the Former Attorney Claims, they are entitled to bring Punitive Claims. Furthermore, the Court understands that eight of the claimants of the Former Attorney Claims are seeking the amounts that are not being awarded to them because of the Fee Cap Reduction (and which these claimants have a right to challenge through motion before this Court or through an appeal). **The Court also understands that Baron claims that certain of the claimants of the Former Attorney Claims are allegedly liable for legal malpractice or other civil claims (collectively, "Baron Claims")**.

(R. 1327) That is precisely why Judge Furgeson stated that "[t]hrough this Order, Baron maintains any and all rights to bring, after the end of the Receivership, the Baron Claims." (R. 1328.) This ruling is consistent with the representations made by the Receiver and Petitioning Creditors during the Summary Proceeding—in arguing that Baron was not entitled to counsel—that the Summary Proceeding was "not a mini-trial," "a trial on fees" or a "strict evidentiary hearing" and **"is not extinguishing [Baron's] right to dispute these [attorneys'] fees."** (R. at 1357, 1359, 1373.)

Baron was stripped of his property without the due process protections under the various stay orders entered by Judge Furgeson and under the prophylactic protections contained in section 303(b) of the Bankruptcy Code. If Baron was not able to adequately demonstrate this lack of due process during the Involuntary Case, then it was entirely due to the fact that the Bankruptcy Court handcuffed Baron from hiring adequate representation, as demonstrated below.

Lack of Representation

As much as the Trustee and Petitioning Creditors try to convolute the arguments on due process, they fails to rebut that the Involuntary Case proceeded while Baron was wrongly stripped of his assets (despite section 303(f) of the Code) and was denied right to counsel of choice and the Involuntary Case had the effect of continuing this deprivation. The Trustee's and

Petitioning Creditors' incredulous claims that Baron "was represented by counsel and participated in the proceedings" (Tr. Br. at 16.) and "the Alleged Debtor was afforded every opportunity to appear before the Bankruptcy Court and offer controverting evidence" belies what really happened.

As a start, it is un-refuted that, ever since the commencement of the Involuntary Case, Baron was unrepresented by counsel of choice. One month after the Involuntary Petition was filed, Baron requested that Mr. Matt Probus be retained with a requested retainer of $100,000. (R. 361, 382-83). The Bankruptcy Court denied this request at a January 17, 2013 status conference, and instead only approved a $25,000 fee for Baron's bankruptcy counsel. (R. 329). As a result, Mr. Baron's choice of counsel immediately declined to represent Baron, **Baron was, in fact, unrepresented at the January 17, 2013 status hearing** and Baron was subsequently forced to hire substitute counsel, Mark Stromberg, who had originally agreed only to be local counsel and subsequently agreed to represent Baron on a limited basis. (R. 444, 1593-99). And this substitute engagement was doomed to fail (even though Mr. Stromberg did the best he could). One month after being retained, and after briefing summary judgment arguments in a protracted litigation dispute—Mr. Baron's substitute counsel, Mr. Stromberg, informed the Bankruptcy Court that he needed more funds to adequately represent Baron; to conduct discovery, to hire experts, etc. (R. 1592-97.) This request was denied, thereby further hampering Baron's representation. (R. 1598-1603.)

The Petitioning Creditors recite the normal procedural protections afforded under the Bankruptcy Code for the appointment of a trustee (PC's Br. at 15), but ignore that those procedures could not provide Baron with a meaningful opportunity to be heard at the January 17, 2013 status hearing, because he had no assets in which to hire counsel (due to the Receivership),

and, in fact, had to request that the Bankruptcy Court recommend to Judge Furgeson that some amount of money should be allowed for representation. Only after the January 17, 2013 status hearing was an amount recommended by the Bankruptcy Court and that amount proved too late to save Baron from an interim trustee and too little to afford counsel of choice (Matt Probus) or even adequate representation during the seven month involuntary proceeding (before trial on the involuntary petition). Thus, the Trustee's and Petitioning Creditors' claims that Baron was always represented and given an adequate an opportunity to participate in hearings is a distortion of the truth and contrary to the law. *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (finding "the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner.")

Representation in the Involuntary Case was certainly going to require adequate resources and adequate counsel. The complexity of the various proceedings leading up to the Involuntary Case (e.g., the Netsphere Litigation, the multiple appeals to the Fifth Circuit, the Ondova bankruptcy and pending state court litigation) are easily demonstrated by the amount of funds expended by the Receiver, the Ondova Trustee, the Petitioning Creditors and the Trustee. For example, the Receiver's counsel, Dykema Gossett, requested approximately $240,000 during the first month of working on the Netsphere Litigation to get caught up to speed, and Judge Furgeson approved these fees. (*See* Ex. A, Dykema July 2012 Fee Application, at 1-4; Ex. B, Order Approving Dykema Fee Application, at 1.) During the one year period after being engaged, the Receiver's counsel (Dykema) requested fees and expenses of approximately $1,473,183.12; on top of the $1,250,680 requested by the Receiver; the $1,219,775.68 requested by the Ondova Trustee; and the $2,010,862.22 requested by the Receiver's prior counsel. (*See*

App. 34, p. 424, 425, 434, 437.)[4] While the Receiver, Ondova Trustee and current Trustee (who applied to retain bankruptcy counsel and accountants as early as March 2013) astutely have not filed recent fee applications in the Bankruptcy Court for the work performed during the Involuntary Case (so that no one can scrutinize their fees), the Petitioning Creditors themselves (who have been involved in the litigation for many years) exemplified how complicated the Involuntary Case is by filing a fee application requesting approximately $250,000 for work performed during the Case.[5]

But, Baron's new bankruptcy counsel, Mr. Stromberg, needed substantially more resources than Dykema during its first month of engagement, as Baron was facing opposition by several parties, including the Petitioning Creditors, Receiver, Ondova Trustee and Trustee who have extensive bankruptcy experience (over 200 years) and/or had three years' worth of experience with the various civil, bankruptcy and appellate proceedings that surrounded the Involuntary Case. Moreover, the complexities of an involuntary case itself demanded a right to be adequately represented. *See In re Robert J. Mason*, 709 F.2d 1313, 1316-17 (9th Cir. 1983) ("[t]he procedure on a petition for an order for relief has many of the attributes of 'adversary proceedings' governed by Part VII of the Bankruptcy Rules" and "the rules contemplate a procedure much like any other lawsuit.") Under these circumstances, the Bankruptcy Court's $25,000 allowance of fees for bankruptcy counsel was nothing short of a token gesture and clearly prevented Baron from being adequately represented during the bankruptcy case, in violation of his due process rights.[6]

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[4] References to the Appendix in this Reply Brief refer to the Appendix filed in connection with Baron's Opening Brief found at District Court Docket No. 26.

[5] While the Ondova Trustee's and Trustee's fee are indeterminable, because neither has yet to file a fee application, the Receiver and his professionals are currently seeking $1.3 million in fees (which were reduced from the original request by Judge Furgeson) after the commencement of the Involuntary Case and after the Receivership Opinion had been entered.

[6] Judge Furgeson similarly has rejected Baron's multiple attempts to have access to Receivership funds

More than ever, **at this time**, Baron is in urgent need of funds to hire counsel to adequately represent him. Despite the recent flurry of activity, as demonstrated below, the Bankruptcy Court denied Baron' renewed request for funding to hire counsel (after Mr. Stromberg quit after the Order of Relief) and, again, limited Baron to $25,000.00 for any new counsel representation. (*See* Ex. D., Mtn. to Reconsider [Dkt. No. 40]).[7] As demonstrated in Baron's recent Memorandum in Support of Motion to Reconsider the Court's Prior Stay Order [Dkt. No. 40, at pgs. 8-11], the Trustee is marching full steam ahead to extinguish whatever remaining rights Baron may have to his assets in a complex proceeding. Specifically,

- The Trustee has waived Baron's rights to valuable domain names in the Ondova bankruptcy and to challenge the Receiver's $4 million in total fees (*See* Baron Mtn. to Reconsider [Dkt. No. 40] at 8 and Exhibits E and F thereto);
- The Trustee has filed a motion to preserve the ability to bring fraud allegations against Baron in the future (*See* Ex. G., Baron Mtn. to Reconsider [Dkt. No. 40]);
- The Trustee has filed a motion to thoroughly examine Baron's current appellate counsel regarding its representation of Baron (*See* Ex. H, Baron Mtn. to Reconsider [Dkt. No. 40]);
- The Trustee has filed a motion to examine Baron on any topic and force him to produce thousands of pages of personal records (many of which are in the hands of the Receiver or third-party attorneys) (*See* Ex. I, Baron Mtn. to Reconsider [Dkt. No. 40]);
- The Trustee has filed a motion to examine a Petitioning Creditor, Elizabeth Schurig, for the purpose of waiving Baron's attorney-client privilege and extracting useful testimony to prove that certain trusts (established by Baron many years ago) should be brought into the bankruptcy estate (*See* Ex. J, Baron Mtn. to Reconsider [Dkt. No. 40]);
- The Trustee has objected to Baron's retention of bankruptcy counsel to adequately represent him (*See* Ex. K, Baron Mtn. to Reconsider [Dkt. No. 40]);
- The Trustee is supporting a motion by the Receiver to immediately turnover assets of Novo Point and Quantec, two entities the Fifth Circuit held did not belong in

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during the Involuntary Case to hire counsel to adequately represent him. (*See* App. 22.3, p. 159-64; App. 22.4, p. 166-68; App. 22.5, 169-74; App. 22.6, p. 176-79.)

[7] The Bankruptcy Court held a hearing on Baron's recent retention application on October 28, 2103, and orally ruled that she would limit the amount for Baron's bankruptcy counsel to $25,000. No formal order has been entered to date. Of course, Baron's proposed counsel (with over 35 years of bankruptcy experience) refused to represent Baron for the allotted amount.

receivership, to the Trustee (*See* Ex. M, Baron Mtn. to Reconsider [Dkt. No. 40]);

- The Receiver has filed numerous confidential and privileged documents of Baron with the Bankruptcy Court, and has provided them to who else knows (*See* Bk. Dkt. Nos. 408-413.); and
- At the direction of Judge Furgeson's successor (Judge Lindsay), Novo Point, Quantec, the Receiver and Trustee are all prosecuting motions to withdraw the reference of certain aspects of the Involuntary Case affecting Baron to federal district court. (*See* Exs. P, O, OO, R, and S, Baron Mtn. to Reconsider [Dkt. No. 40].)

And so far, while Baron is admittedly unrepresented (*See* Bk. Dkt. No. 426),[8] the Bankruptcy Court has granted every motion that the Trustee has presented and issued a Recommendation to Judge Lindsay not withdraw the reference in the Involuntary Case. (*See* Bk. Dkt. Nos. 373-375, 389-90 and 427.) Indeed, as requested by the Trustee**, Elizabeth Schurig's 2004 examination (which will assuredly result in a waiver of Baron's attorney client privilege) is currently scheduled for the week of December 10, 2013**.

Thus, without this Court's immediate intervention, Trustee will very shortly cause Baron to waive important attorney-client privileges and thereafter make a record in the Involuntary Case that (a) assets belonging to Novo Point and Quantec belong in the bankruptcy estate, (b) Baron holds no assets, like retirement funds, that are exempt from creditors and (c) the Petitioning Creditors' claims and Receiver's requested fees are valid. This will occur without Baron being adequately represented, in violation of his due process rights.

Denial of Property Without Due Process

The Trustee's claim that a "standby" trustee did not deprive Baron of property without due process is equally unavailing. As an initial matter, there is no such thing as a "standby" trustee under the Bankruptcy Code. Section 303(g) only authorizes a Bankruptcy Court to

[8] On December 4, 2013, Baron filed a *pro se* letter with the Court that proposed bankruptcy counsel refused the engagement and he does not have current bankruptcy counsel, considering the retention constraints imposed by the Court. A true and correct copy of this letter is attached hereto as Exhibit I. (*See* Bk. Dkt. No. 427.)

appoint an interim trustee or nothing at all. *See* 11 U.S.C. § 303(g). The concept of a standby trustee is so foreign that it appears nowhere in the Bankruptcy Code—especially under section 303—and there is no case law recognizing the existence of such a creature. Thus, the Bankruptcy Court only had authority to appoint—and did, in fact appoint—an interim trustee bankruptcy under section 303(g). The only reason why the Bankruptcy Court called the interim trustee a "standby" trustee was that she was aware—after the Receiver testified at the January 17, 2013 status conference—that all of the property belonging to Baron was in the possession of the Receiver at the time of the bankruptcy filing and therefore Baron had no access to it.

By citing portions of the Bankruptcy Court's order, the Trustee tries to suggest that the "standby" interim trustee was only appointed to prevent the Receiver from having to turn over the Receivership assets to the trustee pursuant to section 543 of the Bankruptcy Code. However, section 543(d) of the Code independently authorized the Bankruptcy Court to waive the turnover requirements, so there was no necessity to appoint a "standby" trustee to comply with the Code. The only purpose to impose an interim trustee then was to **ensure** that the Receiver could never deliver assets to Baron, despite whatever the Fifth Circuit mandate required and despite section 303(f)'s provision that an alleged debtor normally remains in possession of its assets during the Gap Period in an involuntary proceeding. In this respect, the Bankruptcy Court's own order clarifies the intent of the appointment of the interim trustee:

> [T]he Court hereby requests that the U.S. Trustee immediately appoint an interim trustee, with the proviso that such trustee, when appointed, shall not take possession of the Receivership assets***. It is the Court's intention that the interim trustee will be on "standby" and in place to receive the Receivership assets during the Gap Period should a higher court issue an order requiring delivery of Receivership assets to Mr. Baron or any other person before this Court concludes the Trial.***

(R. at 329.) While granting such an extraordinary request, the Bankruptcy Court, however, never held an evidentiary hearing before and never issued any findings regarding the

appointment of a trustee (Tr. Br. at 20-21)—even though the Fifth Circuit had found that Baron was entitled to his assets despite the disputed claims of the Petitioning Creditors. Instead, the Bankruptcy Court only appointed the interim trustee after a mere status conference, where no evidence was taken and where Baron was notably unrepresented.[9]

The Trustee and Petitioning Creditors also are argue that "[t]he Fifth Circuit Opinion and subsequent Clarification Order made no promise that the Alleged Debtor was to immediately receive his assets from the Receivership" (PC's Br. at 13) and "at no time did the Trustee have possession or control of any assets (Tr. Br. at 22.) They conveniently ignore that the involuntary filing enabled the Receiver and Bankruptcy to effectively persuade Judge Furgeson that he could not wind down the Receivership because of the effect of the automatic stay in the Involuntary Case. This occurred on too many occasions to ignore. On January 10, 2013, in response to Judge Furgeson's order requesting that the Receiver show cause why it should not return the assets of Novo Pont and Quantec to Baron, the Receiver responded by stating the Bankruptcy Court cautioned the return of any assets to Baron pursuant to sections 362 (automatic stay) and 543 (turnover of custodian assets) of the Code. (*See* Ex. C hereto, at 1-2.) On the same date, Judge Furgeson adopted the recommendations of the Bankruptcy Court "that no further action [in the Netsphere Case] is warranted, except necessary maintenance of the Receivership and Bankruptcy estates such as renewal of domain names, until the Bankruptcy Court reaches its conclusion as to the propriety of the involuntary bankruptcy case." (Ex. D hereto at 2.) On March 18, 2013, after an application by the Receiver to maintain the status quo in the Netsphere Litigation, the Bankruptcy Court entered an order declaring that Judge Furgeson could not

[9] While Mr. Stomberg and Mr. Probus made a limited appearance at the January 17, 2013 status conference, the Trustee incorrectly asserts that they represented Baron. In fact, they only appeared so that they could obtain a retainer to represent Baron in the future. When the Bankruptcy Court denied Mr. Probus' request for $100,000, it is un-refuted that he declined to represent Baron, leaving Baron searching for bankruptcy counsel.

proceed with returning Baron's property until the automatic stay in the Involuntary Case was terminated. (R. 2033.)[10] On May 16, 2013, in response to Baron's request for renewed funds to retain counsel, Judge Furgeson ruled that the automatic stay in the Involuntary Case prevented him from releasing fees from the Receivership estate to pay Baron's proposed counsel. (App. 22.3, p. 167-68.) After the Fifth Circuit mandate issued, the Receiver filed a brief with Judge Furgeson suggesting that the assets of Novo Point and Quantec—which were not part of the Involuntary Case—should remain in the possession of the Receiver, considering the automatic stay, until the Bankruptcy Court determined whether such assets belonged in the bankruptcy estate. (Ex. E hereto at 2-3.) These are only a few of the examples of when the automatic stay in the Involuntary Case precluded the ability of the Receiver to return assets to Baron. In order to cite to all of the examples, Baron's appellate counsel—which has limited monetary constraints itself—would be required to carefully review and decifer months of briefings, orders and docket entries in four separate proceedings (in Baron's bankruptcy, Ondova's bankruptcy, the Netsphere Litigation and related Fifth Circuit appeals).

In short, it is disingenuous to say that the various requests by the Receiver and orders by the Bankruptcy Court and Judge Furgeson did not consider the effects of the automatic stay and interim trustee in the Involuntary Case in winding down the receivership and returning assets to Baron. The automatic stay and interim trustee unquestionably prevented the Receiver from winding down the Receivership, even after the April 2013 mandate by the Fifth Circuit. The net effect was that Baron was denied access to his property—which was desperately needed to defend against the claims by the Petitioning Creditors. What makes this due process violation even worse is that it occurred within the context of a civil dispute between two parties, where one party (i.e., the Petitining Creditors) sought to take advantage of Baron's unique

[10] Admittedly, the Order also states that a Fifth Circuit mandate needed to be issued.

circumstances (under the Receivership) and a friendly forum (i.e., the Bankruptcy Court) to tip the scales significantly in its favor. *See Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972) ("The constitutional right to be heard . . . is to protect the use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party.) Due process might as well be re-defined.

III. Petitioning Creditors Were Ineligible

No Final Judgment Proving Undisputed Claims

In an attempt to bolster the Bankruptcy Court's decision, the Trustee and the Petitioning Creditors go to great lengths to prove that (a) an allegedly "fully litigated" summary proceeding—if that is not oxymoronic—can result in a final judgment and (b) a resulting unstayed judgment is not the subject of a bona fide dispute under section 303(b) of the Code. The fundamental problem with these contentions is that the Summary Proceeding was never fully litigated, with full due process protections for any party. Moreover, the Summary Proceeding never resulted in any final judgment. Rather, it resulted in an interlocutory order, which only (a) partially resolved only one side's claims and (b) was never enforceable under various orders by the issuing court. Barring a final judgment, the Bankruptcy clearly erred in enforcing the interlocutory order on collateral estoppel grounds.

The Bankruptcy Court, Trustee and Petitioning Creditors contend that "the Petitioning Creditors' claims against the Alleged Debtor were fully adjudicated by the District Court in the Attorneys Fee proceeding" and this "leaves no room for the Alleged Debtor to now to assert a bona fide dispute to the claims under applicable Fifth Circuit authority." (R 2331; Tr. Br. at 18.) Setting aside that the Bankruptcy Court, Trustee and Petitioning Creditors (a) fail to cite any

authority for the proposition that this "fully litigated" (whatever that term means) proceeding results in a final judgment, (b) ignore entirely that that "a partial disposition of a multi-claim or multi-party action is ordinarily not a final appealable order"[11] (which the Fee Order reflects) and (c) ignore that Federal Rule 54(b) and Fifth Circuit authority required the Fee Order to indicate an "unmistakable intent" to be final,[12] this Court should carefully examine what the Bankruptcy Court, Trustee and Petitioning Creditors consider to be "fully litigated."

The Petitioning Creditors attempt to mislead this Court by suggesting the Summary Proceeding occurred over a six month period after the Receivership Order and involved multiple hearings. (PC's Br. at 18 and 20.) That is misleading. The facts reveal that the Receiver filed his three motions to assess and pay former attorneys' fees on March 17, 18 and 24, 2011 (Apx. 21, p. 180-88.)[13] The hearing on the Receiver's second fee assessment motion was original scheduled to be heard on April 11, 2011 (*See* Dkt. No. 408), but was subsequently rescheduled for, and heard on, April 28, 2011. (App. 20, p. 1330-32.) Thus, the Summary Proceeding entailed a two month period in which Baron and Judge Furgeson were allowed to be involved.

Within this short time period, it was very apparent that Baron's constitutional rights were completely ignored. Baron had filed two motions with Judge Furgeson requesting a release of Receivership funds to allow him to retain counsel, but both motions were denied. (App. 21, p. 142-149; App. 22, p. 149-151; App. 22.1, p. 152-156; App. 22.2, p. 157-58.) During the Summary Proceeding itself, the Receiver admitted that despite several requests by Baron, he

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[11] *See Quinn v. Miller*, No. 12-20726, 2013 WL 3475117, at *2 (5th Cir. July 11, 2013); *Tower v. Moss*, 625 F.2d 1161, 1164-65 (5th Cir. 1980).

[12] *See Gray ex rel. Rudd v. Beverly Enterprises-Mississippi, Inc.*, 390 F.3d 400, 404 (5th Cir. 2004) (order must show district court's "unmistakable intent"); *Briargrove Shopping Ctr. v. Pilgrim Enters., Inc.*, 170 F.3d 536, 539 (5th Cir.1999) (same); *see also Kelly,* 908 F.2d at 1219 (holding that an order captioned "F.R.C.P. 54(b) JUDGMENT" and including language "that there be a final judgment entered pursuant to Federal Rule of Civil Procedure 54(b)" sufficiently indicated an intent that it be a final judgment).

[13] Subsequently, Judge Furgeson ordered the Receiver to cap the attorney fee requests, which order resulted in a fourth motion to assess fees that was filed on April 26, 2011. (*See* D. Ct Dkt. No. 487.)

would not provide Baron with any funds to hire counsel, hire an expert or conduct discovery on the attorney fee claims. (R. 1345-46.) The record also clearly establishes that the Receiver was in possession of all of Baron's personal property and books and records at the time. (App. 6, p. 128-132.) The record further reflects that Baron's alleged counsel at the Summary Proceeding, Mar. Gary Schepps, made a very limited appearance simply to advise Judge Furgeson that (a) he was not being paid to represent Baron and (b) he could not represent Baron during this evidentiary hearing, because he was not a qualified trial lawyer. (R. at 001549, 001550.) Moreover, the record clearly reflects that Judge Furgeson denied Baron's request to hire proposed trial counsel at the Summary Proceeding. (R. 1347, 1376.) And a very large part of the reason why Judge Furgeson did so was that the Receiver and Petitioning Creditors assured Judge Furgeson—in response to Baron's request for counsel—that the Summary Proceeding was not a "mini-trial," "trial on fees" or "strict evidentiary hearing" and would not prejudice Baron from later challenging those fees in front of a jury. (R. 1357, 1359, 1373.) In the words of one counsel at the Summary Hearing, "**[w]e are not here to try claims that have been brought by the attorneys in a pleading and to try them today.**" (R. 1357.)

Thus, while the Trustee and Petitioning Creditors argue that Baron had a fair trial during the Summary Proceeding, with a full opportunity to cross-examine witnesses and provide contravening evidence, the record reflects that Baron had no ability to do so because he had no funds and was not represented by adequate counsel.[14] The irreparable injury to Baron soon became a reality—and serves to haunt him this day. Prior to the proceeding, Baron had properly filed a contravening affidavit with Judge Furgeson that detailed the numerous defects with all of the former attorney fee claims, including every one of the Petitioning Creditors' claims. (App.

[14] *See Goldberg v. Kelly*, 397 U.S. 254, 270-71 (finding counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient.)

24.) However, when Judge Furgeson instructed Baron that, if he relied on his affidavit to contest the fee claims, he would be subject to cross-examination by certain Petitioning Creditors who, the day before, had made false allegations against him of criminal charges, Baron declined to testify and was forced to withdraw his contravening affidavit, because he was not represented by counsel. (R. 1399-1400, 1402, 1404-05.) As a result, with no opposition, the illicit Fee Order was entered by Judge Furgeson, and the rest is history. But such order was not entered because Baron did not actually contest the fees or because he plead the Fifth Amendment;[15] rather, it was entered because Baron was rightfully concerned about making an even worse record against an army of full of attorneys (20+), without adequate representation.

The second reason collateral estoppel clearly does not apply is that the Fee Order was never enforceable. As mentioned above, Judge Furgeson instantly stayed this order pending its appeal and permanently stayed this Order after the Fifth Circuit mandate issued. (App. 28, p. 214; App. 31, p. 217; App. 34, p.443.) Judge Furgeson even denied two requests by the Receiver and the Petitioning Creditors to enforce the Fee Order. (App. 32, p. 220; App. 34, p. 443.) Moreover, as discussed in Baron's Opening Brief, the reversal of the Receivership Order had the effect of vacating the Fee Order (a) pursuant to Fifth Circuit precedent preventing a lower court from enforcing related orders after a receivership order is reversed and (b) the law of the case and mandate rule, which required Judge Furgeson to enforce the spirit of the Fifth Circuit mandate that clearly did not endorse the receivership proceedings. (*See* Baron Br. at 27, 31-32.) On top of that, the Bankruptcy Court should have applied federal collateral estoppel principles, which preclude collateral estoppel in instances where there are special circumstances that would make an application unfair. *See, e.g., Winters v. Diamond Shamrock Chemical Company*, 149

[15] Contrary to the Bankruptcy Court's findings, Baron never took the stand at the Summary Proceeding and Judge Furgeson specifically acknowledged that in Baron's refusal to do so, he was **not** asserting his Fifth Amendment privileges. (R. 1406.)

F.3d 387 (5th Cir. 1998). Here, setting aside how the one-sided Summary Proceeding denied Baron numerous procedural rights, guiding case law provides that stayed judgments create a bone dispute over claims,[16] suggesting special circumstances did exist for which the Bankruptcy Court should have ruled that the stayed Fee Order could not be given preclusive effect.

As expected, the Trustee and Petitioning rely on the Clarification Order to demonstrate the Fifth Circuit intended the Fee Order to remain in place. As previously demonstrated in his Motion for Reconsideration, the Clarification Order was of no event because all it did was unnecessarily explain the effect of Federal Rule of Appellate Procedure 41 on the Reversal Opinion. The reason for this unnecessary explanation was that the Receiver filed a motion claiming that the Petitioning Creditors wrongly commenced the Involuntary Case in order to circumvent the Reversal Opinion, and this action was premature (given FRAP 41) and caused confusion, unnecessary expenses and jeopardized the Receivership estate. (App. 48, pgs. 450-51, 53.) It was therefore clear error to use the Clarification Order to justify giving effect to the Fee Order, which was not the intent of the Clarification Order. **Moreover, the Bankruptcy Court clearly erred in giving effect to on interlocutory fee order, while refusing to enforce the broad injunctions in the Receivership Order as well as the various stays of the such fee order by the issuing court**.

No Special Circumstances Excusing Eligibility Requirements

The Trustee also claims that there are "special circumstances" that sometimes allow a bankruptcy court to excuse the eligibility requirements under section 303(b), in cases of trick artifice, scam or fraud. (Tr. Br. at 27.) Setting aside that the Trustee cites no guiding precedent

[16] *See, e.g., In re Norris*, 183 B.R. 437, 453 (Bankr. W.D. La. 1995), *aff'd*, 114 F.3d 1182 (5th Cir. 1997); *In re Placid Oil Co*., 1989 Bankr. Lexis 334 (N.D.Tex. March 13, 1989) (*citing In re Drexler*, 56 B.R. 960, 967 (Bankr. S.D.N.Y. 1986)); *In re Raymark Indus., Inc.*, 99 B.R. 298, 299 (Bankr. E.D. Pa. 1989) (holding "a creditor who holds a stayed judgment holds a claim which is subject to a bona fide dispute, and hence, lacks standing to institute an involuntary bankruptcy case.")

for this Court, the Trustee ignores that the Bankruptcy Court made no findings ever that such special circumstances existed in this case. There was also never an evidentiary hearing where the Bankruptcy Court considered such special circumstances. Rather, the Bankruptcy Court granted summary judgment for the Petitioning Creditors based solely on collateral estoppel principles, finding that, as a matter of law, the Fee Order should be given preclusive effect on the issue of whether the Petitioning Creditors' claims were subject to a bona fide dispute. (R. at 002325.)[17]

The Trustee nonetheless raises arguments about an alleged spendthrift trust (Tr. Br. at 28), which coincidentally was created over several years ago before Baron had any creditors. Regardless of these frivolous allegations, there has been absolutely no finding that Baron created a spendthrift trust to defraud creditors—and the Trustee fails to cite to any portion of the record to suggest otherwise. While the Trustee is currently furiously marching forward to make a case against Baron—while Baron is unrepresented—as of yet there is absolutely no factual basis for this baseless allegation.

"The other two factor cited by the Trustee—violating court orders and hiring and firing attorneys—are red herrings intended to bias the Court. These two factors—which are false and unproven—fall well beyond the special circumstances that lower courts in this jurisdiction may employ and clearly are being used to do an end run on section 303(b)'s requirement that petitioning creditors demonstrate specific criteria. Nonetheless, Baron will address both factors. With respect to violating court orders, there has never been one instance where it was found that Baron violated a court order. The Trustee tries to cite to only one instance (Tr. Br. at. 6), but he recites the facts incorrectly. On July 28, 2009, Judge Furgeson did schedule a contempt hearing

[17] In the same respect, the Petitioning Creditors and Trustee are entirely off the mark by arguing that the Bankruptcy Court applied the objective test under *In re Sims*, 994 F.2d 210, 221 (5th Cir. 1993). The Bankruptcy Court never did apply such test in granting the Petitioning Creditors' summary judgment motion.

based on allegations that Baron was not complying with a previously-issued injunction to maintain the status quo. However, Judge Furgeson subsequently cancelled the contempt hearing, and instead conducted a status conference regarding the Netsphere Litigation. (*See* Ex. F, at 2-3.**)** During the status conference, Judge Furgeson became disturbed when he discovered that Baron had placed Ondova into chapter 11 bankruptcy because he felt it might complicate the litigation and could result in uncompliance with his orders. (*Id*. at 18-20, 31.)[18] Judge Furgeson therefore admonished Baron at the hearing, but never found him to be in contempt of any order. (*id*. at 31.) In fact, Baron has never been found to be in contempt of, or sanctioned for violating, any court order. In reversing the Receivership, **the Fifth Circuit even rejected the Petitioning Creditors' claims that Baron constantly violated Judge Furgeson's orders**. (R. 190)[19] And several years after suggesting the illegal Receivership, the Ondova Trustee even admitted that Baron did not breach any terms under the global settlement between the parties, thereby facilitating the conclusion of the Netspere Litigation. (App. 5.8, p.124.) Nonetheless, the Petitioning Creditors continue to frivolously allege that Baron has a history of violating court orders. There, in fact, is no such history in the record.

With respect to hiring and firing lawyers, as previously mentioned in his Opening Brief (Baron Br. at 41-42), there is no evidence, and there has never been an evidentiary hearing to establish, that Baron hired and fired multiple attorneys. Significantly, none of the affidavits by the Petitioning Creditors or any of the other former attorneys allege that Baron fired his attorneys. The Bankruptcy Court cannot even cite to one instance in her Order of Relief opinion,

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[18] Unfortunately**,** Judge Furgeson never considered Baron's justification for the Ondova bankruptcy; that it was absolutely necessary because the Judge had previously ordered all of Ondova's operating revenues to be directed towards counsel (Apx. 7 at 38; Ex. F**,** at 31.). Nor did he consider that chapter 11 still allowed Ondova to continue with the Netsphere Litigation and follow through with court orders.

[19] The Fifth Circuited stated: "If the district court entered a sufficiently specific order, it could have held Baron in contempt, imposed a fine or imprisoned him for "disobedience . . . to its lawful . . . command." 18 U.S.C. § 401. At oral argument in the appeal, it seemed conceded that no clear order existed. Instead, the receiver and trustee cited only to hearings at which the district court admonished Baron not to hire or fire any more attorneys."

and merely makes the generic statement that "Mr Baron had retained and jettisoned a staggering number of lawyers." (R. at 003902.)[20] As mentioned in the Opening Brief, Baron, who has been stripped of virtually all of his assets since the Netsphere Litigation commenced, has had virtually no resources to pay counsel to represent him on any continuing basis. (Baron Br. at 41.) As a result, most of his former counsel have elected to leave him once their retainers have been depleted, instead of the other way around. Moreover, the inability to pay counsel has left Baron with having to resort to begging attorneys such as Gary Schepps and current appellate counsel to represent him during a variety of proceedings, on the off chance that Mr. Baron may some day recoup his assets. Meanwhile, the parties who have been in control of his assets, the Receiver and Ondova Trustee, have been paid over $5 million—and none of this money has been used to pay a penny to Baron's creditors.

IV. Insolvency Standard Not Met

In lieu of any final judgment from a state or federal court and based solely on the interlocutory Fee Order that has never been enforceable, the Trustee and Petitioning Creditors' claim that Baron was not paying his debts as they come due, pursuant to section 303(h). All of the arguments made by the Trustee and Petitioning Creditors have already been thoroughly addressed by the record cited in Baron's Opening Brief and Motion to Reconsider this Court's Stay Order.[21] To summarize this record, (a) Baron has always admittedly paid his ordinary trade creditors on time, (b) Baron has paid over $5 million, and may pay over $6 million, to the Receiver and/or Ondova Trustee to specifically pay, and for the benefit of, the Petitioning Creditors and other former counsel covered by the Fee Order, (c) all the Petitioning Creditors

[20] The Bankruptcy Court cites to an example of debt owed to Mr. Gary Schepps, but there is absolutely no evidence that Baron fired this counsel.

[21] To the extent necessary and for the convenience of the Court, Baron incorporates by reference all of his previous arguments into the Reply Brief.

have admittedly been paid over $3 million by Baron prior to the Fee Order, (d) since November 24, 2010, Judge Furgeson's Receivership Order has stripped Baron of all his assets and enjoined the Petitioning Creditors from collecting their fees, (e) Judge Furgeson has consistently entered orders—despite demands by the Receiver and Petitioning Creditors—that the Fee Order was not enforceable, (f) the leading Petitioning Creditor, Pronske & Patel, has never produced an engagement letter by Baron, individually, and has filed duplicate claims against Ondova, (g) the Petitioning Creditor (Elizabeth Schurig) with the longest (seven-plus years) relationship with Baron and affiliated entities admittedly was owed only $1,300 by Baron (as opposed to affiliated entities) before the Netsphere Litigation commenced, and (h) the remaining Petitioning Creditors were hired after the Netsphere Litigation commenced and after Baron's assets were sequestered by either Judge Ferguson's injunction, the Ondova bankruptcy or the Receivership Order. Based on this record and the totality of the circumstances, the evidence clearly shows that Baron (or his supposed representatives) would have, could have, and should have paid--and did pay (to the extent possible)—all of his creditors their debts as they come due.

Moreover, the Trustee and Petitioning Creditors are misleading this Court in suggesting that Baron was on the hook for the entire amount awarded under the Fee Order. Indeed, the graphic pie that the Petitioning Creditors use in their Opening Brief, while showing the slices, fails to show the ingredients used to bake the pie. Indeed, the Petitioning Creditors and other former attorneys represented multiple different entities besides Baron and all the assets of these entities were included in the Receivership estate. That is why the original Receivership Order listed 12 Receivership Parties (R. 128-129), and subsequent orders by Judge Furgeson increased the amount to 26 Receivership Parties, all of whose assets fell into the Receivership estate (*See* Ex. H & G hereto.) More importantly, the Fee Order never adjudicated Baron to be solely

responsible for all the debts claimed by the Petitioning Creditors and other former counsel. Rather, it only provided that the Petitioning Creditors and former counsel could look to the Receivership estate (which was comprised of assets from multiple entities) to satisfy their debts. Clearly, the entire $870,000 awarded by Judge Furgeson to twenty two former law firms is not something that Baron is solely responsible for, and thus the entire award cannot be used to prove that he was not paying his debts on time.

V. Violation of Article III of the Constitution

The Trustee and Petitioning Creditors mis-analyze the Article III—separation of powers—argument Baron has raised. The issue here is not whether under the current statutory framework Baron has a right to a jury trial on the merits of the Involuntary Petition. He clearly does not. The issue here is whether the current statutory framework passes constitutional muster—and it clearly does not. This is not the fault of the Bankruptcy Court or any federal district court within the Northern District of Texas. Rather, what Baron has demonstrated is that Congress has violated Article III of the Constitution by illegally delegating authority to a bankruptcy court that is exclusively reserved for Article III courts. Using this unconstitutional delegation of authority, the Bankruptcy Court adjudicated Baron bankrupt under section 303 of the Bankruptcy Code. Once the arguments are carefully parsed out, this Court should reach the same conclusion that the Bankruptcy Code and 28 U.S.C § 1411 are unconstitutional and therefore the Involuntary Case must be dismissed.

Ignoring that until 1978 all bankruptcy laws in the United States provided jury trials in involuntary cases, the Trustee and Petitioning Creditors cite *In re McNaughten*, 171 B.R. 65 (W.D. Mo. 1994), for the proposition that involuntary proceedings have always been considered summary proceedings where no jury trials have been permitted. However, *McNaughten* only

analyzed current U.S. statutory law and never took into consideration English common law. The Trustee eventually concedes, however, that under prevailing Supreme Court precedent, constitutional scrutiny of Bankruptcy Code must take into consideration—after first considering statutory law—whether bankruptcy laws consume "common-law causes of action ordinarily decided in English Law courts in the late 18th century." (Tr. Br. at 42.) (citing *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 106 L. Ed. 2d 26, 109 S. Ct. 2782 (1989).) If they do consume those common law claims, those bankruptcy laws constitute an unconstitutional delegation of authority because such claims are normally afforded jury trial rights, which are protected under the Seventh Amendment of the Constitution and which only Article III courts are authorized to protect. *See Stern v. Marshall,* 131 S. Ct. 2094, 2596 (2011).

Ultimately, neither the Trustee nor the Petitioning Creditors adequately refutes the proper scrutiny test established by the Supreme Court in *Granfinanciera* and *Stern*. Indeed, the Supreme Court's analysis in *Stern v. Marshall* could not be any clearer. In applying constitutional scrutiny, a court must first start with statutory authority, and then compare English common law to the claims at issue and then determine whether these exists a public rights exception to Article III. The critical flaw in Petitioning Creditors and Trustee's remaining arguments is that they fail to take into consideration the second step of constitutional scrutiny. Specifically, they fail to refute the English common law authority that establishes that involuntary bankruptcy issues were commonly decided by English courts of common law as of 1791 (when the 7th Amendment was enacted.)[22]

The only chance of the Trustee and the Petitioning Creditors prevailing then is to prove that there exists a public rights exception that enables Congress to delegate to bankruptcy courts

[22] *See In re Gulston*, 26 Eng. Rep. 125 (1743); *Bourne v. Dodson*, 26 Eng. Rep. 100 (1740); *Hankey v. Jones*, 2 Cowp. 745 (K.B. 1778); *In Worseley v. Demattos & Slader*, 96 E.R. 1160, 1161 (1758); In *Ex parte Cottrell*, 2 Cowp. 742 (K.B. 1778).

the ability to resolve traditional English common law issues, like those raised in involuntary proceedings. In this respect, the Trustee's and Petitioning creditors remaining argument are unimpressive.

While citing to no authority, the Trustee argues that "[a] trial on an involuntary petition where the court will determine if the alleged debtor should be adjudicated bankrupt is a public right and central to the bankruptcy process." (Tr. Br. at 45.) This is the same argument that the Supreme Court previously rejected when debtors and trustees argued that counterclaims to proofs of claim and fraudulent conveyance actions—ordinarily handled by bankruptcy courts during the administration of a case—are quintessentially to the bankruptcy process. *See Granfinanciera, S.A. v. Nordberg*, 494 U.S.33 (1989) (rejecting a fraudulent conveyance claim and reasoning that "if a statutory right is not closely intertwined with a federal regulatory program Congress has power to enact, and if that right neither belongs to no exists against the Federal Government, then it must be adjudicated by an Article III court."); *Stern v. Marshall*, 131 S. Ct. 2094, 2614 (2011) (rejecting a counterclaim to a proof of claim, reasoning that "[the debtor's] claim is a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of claim in bankruptcy.") Notably, Congress deemed that both fraudulent conveyance claims and counterclaims to proofs of claim are "core" bankruptcy matters that a bankruptcy court could specifically adjudicate under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(C), (H). The Supreme Court nonetheless found none of these core matters appropriate for a bankruptcy court to adjudicate pursuant to Article III of the Constitution.

In *Northern Pipeline Construction Company v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), which was decided after the enacted of the current Bankruptcy Code, the Supreme Court clearly set forth the constitutional limitations of the Bankruptcy Code. There, the Supreme Court held that the Bankruptcy Code cannot vest an Article I bankruptcy judge with jurisdiction to

decide a state-law contract claim against an entity that was not otherwise part of the bankruptcy proceeding. *Id.* at at 53, 87, n. 40. This Involuntary Case fundamentally is nothing more than a civil dispute between two parties involving purely contractual, state law causes of action. As much as the Petitioning Creditors argue before this Court, this civil dispute has never been resolved. Moreover, Baron is not a voluntary party to this proceeding, and he never elected to resolve the creditors' claims before a bankruptcy court. This two party dispute—not involving any governmental entity—therefore cannot fall under any public rights exception to Article III. To hold otherwise would invite any civil litigant with an unliquidated state law claim to come knocking on a bankruptcy court's doors. Clearly, such a remedy does not pass constitutional muster. The Involuntary Case should be dismissed.

Very respectfully,

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CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ H. Joseph Acosta
H. Joseph Acosta