UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

BRUCE GRANT BONAVENTURE,

Debtor.
_____/

Case No. 6:09-bk-18649-ABB
Chapter 7

ORDER

This matter came before the Court on the Motion for the Judge's Recusal (Doc. No. 156) ("Motion") filed by the *pro se* Debtor Bruce Grant Bonaventure seeking recusal of the undersigned Judge and reconsideration of the May 17, 2010 Order (Doc. No. 136) granting Aurora Loan Services, LLC ("Aurora") relief from the automatic stay. A hearing was held on June 30, 2010 at which the Debtor and counsel for Aurora appeared.

The Debtor cites no legal basis for the relief requested. It appears his recusal request is based upon 28 U.S.C. Sections 455(a) and 455(b)(1) and his reconsideration request is based upon Federal Rule of Civil Procedure 59.

Background

The Debtor filed a Chapter 13 petition on December 7, 2009 and his motion to convert the case to Chapter 11 was granted on February 9, 2010. He was granted an extension of time to pay the Chapter 11 filing fee to June 5, 2010; the fee has not yet been paid in full.

Aurora holds a first-priority mortgage on the Debtor's real property located at 1781 Choctaw Trail, Maitland, Florida 32751 ("Property") and it filed a secured proof of

claim for $455,900.11, Claim No. 3-2, based upon the Summary Final Judgment of Foreclosure entered in favor of Aurora by the Florida State Court prepetition.

The Debtor filed a motion seeking to use his prepetition bank account as his debtor-in-possession account (Doc. No. 75). An evidentiary hearing on the motion was scheduled for April 8, 2010 (Doc. No. 91).

The evidentiary hearing on the Debtor's bank account motion was held on April 8, 2010 at which the Debtor, counsel for Aurora, and counsel for the UST appeared. The UST advised the Court the Debtor had failed to provide proof of general comprehensive liability and fire and theft insurance coverage for the Property despite the UST's numerous requests for such proof.[1]

The Court, in open Court with the Debtor present: (i) advised the Debtor he has an obligation to obtain insurance coverage for the Property and directed him to have insurance coverage in place by April 26, 2010; (ii) directed the Debtor to meet with counsel for the UST and provide to her proof of insurance; (iii) directed the UST to file a motion to dismiss or convert this case; and (iv) continued the hearing to April 26, 2010.

Aurora's and UST's Motions to Dismiss:

Aurora filed a motion to dismiss this case for cause pursuant to 11 U.S.C. Section 1112(b), or in the alternative for relief from the automatic stay of 11 U.S.C. Section 362(d), for the Debtor's alleged bad faith in filing this case to thwart Aurora's foreclosure sale. The UST filed a motion to convert or dismiss this case pursuant to 11 U.S.C. Section 1112(b) for the Debtor's failure to provide proof of insurance and his other

[1] The UST Guidelines for Chapter 11 Debtors-in-possession require the Debtor, as soon as practicable, to provide to the UST, among other things, proof of general comprehensive liability insurance in addition to fire and theft insurance as to the Debtor's property. Insurance is required to ensure the Debtor and the estate, and by extension its creditors, are protected.

failings to fulfill the Chapter 11 requirements. Notices were issued to the parties setting an evidentiary hearing on the UST's and Aurora's motions for May 6, 2010.

April 26, 2010 Hearing:

The continued hearing on the Debtor's motion to use his prepetition bank account was held on April 26, 2010 at which counsel for Aurora and counsel for the UST appeared. The Debtor did not appear. The UST advised the Court the Debtor had not provided proof of insurance for the Property. The Debtor had filed no documents establishing the Property is insured. The Court dismissed the case for the Debtor's failure to obtain insurance and an Order Dismissing Case was entered on April 30, 2010.

May 6, 2010 Hearing:

The Court kept the previously scheduled May 6, 2010 evidentiary hearing on the dismissal motions filed by the UST and Aurora on the calendar to provide the Debtor an opportunity to appear before the Court. The Debtor, counsel for the UST, and counsel for Aurora appeared at the May 6, 2010 evidentiary hearing.

The Court inquired of the Debtor whether the Property is insured. He informed the Court he made an initial payment for an insurance policy for the Property, but the policy does not become effective until he makes two additional installment payments. He conceded he did not provide proof of insurance to the UST.

The Debtor, in open Court, made an *ore tenus* motion to convert the case to Chapter 7. The Court granted his motion in open Court. The Debtor filed a written Notice of Voluntary Conversion on May 7, 2010 (Doc. No. 134).

The Court entered an Order on May 17, 2010 (Doc. No. 136): (i) vacating the Dismissal Order; (ii) converting the case to Chapter 7; and (iii) granting Aurora relief

from the automatic stay for cause pursuant to 11 U.S.C. Section 362(d) for the Debtor's failure to obtain insurance coverage for the Property.

I. Recusal Request

The Debtor contends in his Motion recusal is required because the undersigned Judge has: (i) demonstrated "prejudice and bias against" the Debtor; (ii) "has not remained an impartial decision-maker"; and (iii) "has remarkably pursued a Rush To Judgment in violation of U.S.T.'s Guidelines for that which would be 'practicable.'"[2]

The Debtor, at the hearing, explained his recusal request is based upon: (1) the Court has repeatedly failed to address his equitable subordination claim against Aurora; and (2) Aurora was not entitled to relief from the automatic stay. None of these contentions constitutes a proper basis for a recusal motion. These are matters that should have been addressed through a motion for reconsideration and/or the appeal process. The Debtor is displeased with the Court's rulings and filed the Motion.

A judge's recusal is required pursuant to 28 U.S.C. Section 455(a) where "in any proceeding in which his impartiality might reasonably be questioned" and pursuant to Section 455(b)(1) "[w]here he has a personal bias or prejudice concerning a party . . . ." The standard for recusal pursuant to a claim of lack of impartiality is objective reasonableness. Parker v. Connors Steel Co., 855 F.2d 1510, 1524 (11th Cir. 1988). A recusal inquiry based upon a perceived lack of impartiality must be made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. Cheney v. U.S. Dist. Court for D.C., 124A S. Ct. 1391, 1400 (2004). The decision to recuse or not recuse is in the sound discretion of the judge being asked to recuse himself. Bernard v. Coyne (In re Bernard), 31 F.3d 842, 843 (9th Cir. 1994).

[2] Doc. No. 156, p.1.

The Debtor did not address the reasonable observer standard in his Motion or in open Court. He did not present any substantiation for recusal pursuant to either 28 U.S.C. Section 455(a) or Section 455(b)(1). All rulings and Orders issued in this case were based upon pleadings, evidence, and arguments duly considered by the Court.

Aurora's foreclosure action against the Debtor's property in Maitland, Florida is pending before the Florida State Court and any claims against Aurora, including any equitable subordination claim, may be relevant to that proceeding. Aurora was granted relief from the automatic stay because the Debtor failed to obtain insurance coverage and the Property is not adequately protected.

A reasonable person with knowledge of all the facts would conclude the undersigned Judge is impartial. No basis for recusal exists. The Debtor's recusal request is due to be denied.

II. Reconsideration Request

The Debtor's request for reconsideration of the May 17, 2010 Order granting Aurora relief from the automatic stay is governed by Federal Rule of Civil Procedure 59, which is applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. Sussman v. Salem, Saxon & Nielson, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). "[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly." Id. The only grounds for granting a motion for reconsideration pursuant to Federal Rule of Bankruptcy Procedure 9023 "are newly-discovered evidence or manifest errors of law or fact." Kellogg v. Schreiber (In re Kellogg), 197 F.3d 1116, 1119 (11th Cir. 1999).

The Debtor has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the May 17, 2010 Order. The Debtor's reconsideration request is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtor's Motion (Doc. No. 156) is hereby **DENIED**.

Dated this 2nd day of July, 2010.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Court