

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:08-bk-16204-FMD
Chapter 7

Lawrence N. Petricca, Sr.,

Debtor.

**ORDER DENYING
MOTIONS FOR RECUSAL**

THIS CASE came on for consideration, without a hearing, on the *Motion of Lawrence N. Petricca, Sr., Pro Se, to Recuse Judge Caryl E. Delano* (Doc. No. 547) and the *Motion to Recuse Judge Caryl E. Delano filed by Frederick Hutchings, Pro Se* (Doc. No. 553) (the “Motions”). As set forth below, the Court finds the Motions to be without merit because no disinterested observer would entertain significant doubt as to the Court’s impartiality in this case.

This case was commenced in October 2008 when Frederick Hutchings (“Hutchings”) filed a Chapter 7 involuntary petition against Debtor.¹ Diane Jensen is the duly appointed Chapter 7 Trustee. This case was assigned for all purposes to Judge Caryl E. Delano on July 1, 2012, although she presided over at least one hearing in a related adversary proceeding in June, 2010.²

Over the past seven and one-half years, the 557 docket entries in this case reflect that Hutchings, Debtor, and various other parties, including John Wilson (“Wilson”), Ara Eresian, Jr. (“Eresian”), and Attorney Israel Sanchez (“Sanchez”), have appeared before the Court on numerous matters, resulting in at least seven appeals to the District Court³ and six appeals to

the Eleventh Circuit Court of Appeals.⁴ The Trustee has completed the liquidation of the assets of the estate. It appears that the Trustee is now preparing to close the case; the only substantive matters now pending before the Court are amended applications for compensation filed by Jensen as Trustee⁵ and as counsel for Trustee.⁶

In their Motions, Hutchings and Debtor request that the Court recuse itself for the following four alleged reasons:⁷

(1) the Court has a “close relationship” with Diane Jensen (“Jensen” or “Trustee”)⁸ as Jensen has appeared before the Court “hundreds and hundreds of times and for years,” which “produces familiarity, even if it is an unintentional one, which favors [Jensen] greatly over a Pro Se litigant;”⁹

(2) the Court has adversely ruled against Hutchings;

(3) the Court has ruled upon Hutchings’ motions without affording him the opportunity to present oral argument; and

(4) the Court has failed to uphold the predecessor judge’s orders that were entered in this case.¹⁰

The Court will address each of the grounds stated for the Motions in turn. But as a threshold matter, under 28 U.S.C. § 455(a), a federal judge

2:13-cv-298-SPC; 2:14-cv-615-SPC; and 2:14-cv-727-SPC.

⁴ See Eleventh Circuit Case Nos.: 11-15181; 12-12883; 13-11155; 15-10381; 15-10505; and 15-13612. (Most of the appeals to the Eleventh Circuit were dismissed for failure to prosecute.)

⁵ Doc. No. 528.

⁶ Doc. No. 529.

⁷ Debtor raises substantively the same points as Hutchings in requesting that a recusal be granted, although Hutchings’ Motion is more detailed than Debtor’s. While the Court’s discussion refers to Hutchings’ Motion, the reasoning applies equally to Debtor’s Motion.

⁸ Doc. No. 553, p. 2.

⁹ Doc. No. 553, p. 3.

¹⁰ Doc. No. 553, p. 2.

¹ Doc. No. 1.

² *John Wilson v. Lawrence N. Petricca, Sr.*, Adv. Pro. No. 9:09-ap-668-ALP.

³ See District Court Case Nos.: 2:09-cv-690-SPC; 2:11-cv-493-JES; 2:12-cv-232-UA; 2:12-cv-471-JES;

must disqualify himself if his “impartiality might reasonably be questioned.”¹¹ Section 455 provides an objective standard, requiring the court to consider “whether a disinterested observer, fully informed of the facts underlying the grounds on which recusal [is] sought, would entertain a significant doubt about the judge’s impartiality.”¹² “[J]udicial rulings alone almost never constitute valid basis for a bias or partiality motion.”¹³ This is because a judge’s adverse ruling or delay in ruling on pending matters generally does not “constitute the sort of ‘pervasive bias’ that necessitates recusal.”¹⁴ Judicial rulings instead are proper grounds for appeal.¹⁵

Section 455(b) also mandates disqualification where a judge “has a personal bias or prejudice concerning a party.”¹⁶ The judge’s bias or prejudice must be personal and extrajudicial.¹⁷ In other words, the bias or prejudice must stem from something other than what the judge learned by participating in the case.¹⁸ Thus, opinions formed by a judge based on events occurring during a pending proceeding do not constitute a bias mandating recusal unless the opinions “display a deep-seated favoritism or antagonism that would make fair judgment impossible.”¹⁹

1. The Court’s Relationship with Trustee Jensen.

It is inherent in the bankruptcy process that a Chapter 7 trustee, who is charged with administering Chapter 7 debtors’ estates, appears

regularly before the Court.²⁰ The fact that Jensen appears regularly before this Court does not, standing alone, create a bias or prejudice that would warrant recusal.²¹ Instead, Hutchings must demonstrate that the Court actually has a personal bias favoring Jensen.²² Hutchings has failed to point to any extrajudicial personal bias on behalf of the Court that would “display a deep-seated favoritism” towards Jensen “that would make fair judgment impossible.”²³ Therefore, to the extent Hutchings is alleging a personal bias under § 455(b)(1), this Court finds his argument without merit.

Furthermore, the District Court has already ruled on Hutchings’ claim that the Court’s rulings were tainted in favor of the Trustee, stating:

Hutchings further argues that Judge Delano’s mind was made up before the hearing which shows bias in favor of the Trustee’s position. The Trustee responds there is nothing improper about a judge reading the parties’ briefs and formulating an opinion prior to the commencement of a hearing based upon those briefs

The mere fact that Judge Delano made an adverse ruling against Hutchings does not indicate bias in favor of the Trustee Thus, the objection that Judge Delano’s rulings were tainted is overruled.²⁴

¹¹ 28 U.S.C. § 455(a).

¹² *Liebman v. Deutsche Bank Nat'l Trust Co.*, 462 F. App'x 876, 879 (11th Cir. 2012).

¹³ *Liteky v. United States*, 510 U.S. 540, 555 (1994).

¹⁴ *Loranger v. Stierheim*, 10 F.3d 776, 780-781 (11th Cir. 1994).

¹⁵ *Liteky*, 510 U.S. at 555.

¹⁶ *Curves, LLC v. Spalding Cty., Ga.*, 685 F.3d 1284, 1288 (11th Cir. 2012) (quoting *United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007)).

¹⁷ *Liebman*, 462 F. App'x 876, 879 (11th Cir. 2012) (citing *Amedeo*, 487 F.3d at 828).

¹⁸ *McWhorter v. City of Birmingham*, 906 F.2d 674 (11th Cir. 1990).

¹⁹ *Liteky*, 510 U.S. at 555.

²⁰ The Court sits in the Fort Myers Division for one week each month. Generally, hearings in Chapter 7 cases are conducted on Wednesday mornings. Thus, Jensen regularly appears in person before the Court on a single Wednesday morning of each month, and occasionally for other hearings or trials in Fort Myers. Jensen also appears in court on occasion by video or telephone when the Court conducts hearings in Fort Myers cases from her Tampa Division courtroom.

²¹ *Blalock v. United States*, 844 F.2d 1546, 1552 (11th Cir. 1988) (finding that a favorable professional relationship with a party does not destroy a judge’s impartiality, without a showing that a reasonable person knowing all the facts would conclude that the judge’s impartiality might reasonably be questioned).

²² *Amedeo*, 487 F.3d at 828.

²³ *Liteky v. United States*, 510 U.S. at 555.

²⁴ Doc. No. 521, p. 12.

To the extent that Hutchings now attempts to renew his argument that the Court is biased in favor of the Trustee, the District Court has already considered this argument and rejected it.

2. The Court's Adverse Rulings.

Hutchings cites to two rulings made by the Court against him. The first relates to the Trustee's sale of Debtor's interest in RA Realty Trust and other assets (the "Assets"). The Court's ruling on this issue (the "Sale Order"²⁵) was affirmed on appeal by the United States District Court;²⁶ Hutchings' appeal of the District Court's ruling to the Eleventh Circuit Court of Appeals was recently ordered dismissed.²⁷

Contrary to Hutchings' contentions that the Court was unfair in permitting the sale of the Assets and that the sale was solely to generate fees for the Trustee, the record reflects that Hutchings himself was positioned to benefit from the sale. The Trustee conducted an auction for the sale of Debtor's interests and received multiple bids, including Hutchings' winning bid of \$59,500.00. However, Hutchings failed to close on the sale and, as a result, forfeited his \$1,000.00 deposit. The Trustee then sought permission from the Court to reopen the auction and to solicit new bids.²⁸ The Court entered an order establishing bidding procedures and allowing the Trustee to accept new bids.²⁹ Hutchings, and all other creditors, were served with the order establishing bidding procedures.³⁰ The Trustee received multiple bids and filed a report of sale stating that she had sold the property for \$25,050.00.³¹ Hutchings' lack of success in purchasing the Assets does not serve as grounds for a recusal motion or cast doubt about the Court's impartiality.

²⁵ Doc. No. 469.

²⁶ Doc. No. 521.

²⁷ District Court Case No. 2:14-cv-615-SPC, Doc. No.

³².

²⁸ Doc. No. 438.

²⁹ Doc. No. 444.

³⁰ Doc. No. 444.

³¹ Doc. No. 457.

Hutchings' second example of an adverse ruling that demonstrates the Court's bias is the Court's *Order Denying Motion to Compel*³² entered in connection with Debtor's *Motion to Compel Trustee Diane L. Jensen to Produce All Correspondence Between Her [Her Office, and Her Aide Sue Hedges], to and from, Demetrious G. Venetis* (the "Motion to Compel").³³ But the Court's order merely states that that the Court lacked jurisdiction to consider the Motion to Compel due to Debtor's appeal of the Sale Order reference above. This does not qualify as an "adverse ruling."

And Hutchings and Debtor overlook this Court's ruling in Debtor's favor in a related adversary proceeding, *John Wilson v. Lawrence N. Petricca, Sr.*, Adv. Pro. No. 9:09-ap-668-ALP. In that case, this Court denied Plaintiff Wilson's *Motion to Vacate Order Granting Motion to Dismiss the Complaint Objecting to Discharge of Debtor, Lawrence N. Petricca, Sr. and Closing Adversary Proceeding*.³⁴

In any event, adverse rulings alone are not enough to constitute the form of pervasive bias that mandates recusal.³⁵ The Court's rulings do not "display a deep-seated favoritism or antagonism that would make fair judgment impossible."³⁶

3. Oral Argument before the Court.

Without citation to the record or referencing any specific hearing, Debtor and Hutchings both argue that the Court has ruled adversely against them without the benefit of oral argument. Specifically, Hutchings claims that "Judge Delano has refused to allow [Hutchings] to present any, not even one, oral argument for any of his pleadings."³⁷

³² Doc. No. 507.

³³ Doc. No. 497.

³⁴ Adv. Pro. No. 9:09-ap-668-ALP Doc. No. 23; Transcript, Doc. No. 25; affirmed on appeal, Doc. No. 43 (District Court Case 2:10-cv-534-FtM-36; appeal to the Eleventh Circuit, Case No. 11-15181 dismissed for lack of prosecution.)

³⁵ *Loranger*, 10 F.3d at 780.

³⁶ *Liteky*, 510 U.S. at 555.

³⁷ Doc. No. 553, p. 3.

The record reflects numerous hearings before this Court that were attended by Hutchings or Debtor, or both: February 28, 2013; April 24, May 15, June 19, July 24, August 27, and August 28, 2014; and May 26, 2016.³⁸ The record does not reflect the filing of any transcripts from these hearings, and the Court does not recall the extent to which Hutchings or Debtor, who attended the hearings by telephone, presented their arguments.

The matters on which the Court has ruled include Hutchings' *Objection to Trustee's Interim Report*³⁹ (the Court's ruling, which is now on appeal to the District Court, was made after a hearing attended by Hutchings); Hutchings' applications to proceed on appeal *in forma pauperis*,⁴⁰ the *Motion to Vacate Order Denying Applications of Frederick Hutchings to Proceed on Appeal in Forma Pauperis*⁴¹ (the Court's rulings, made without a hearing, were affirmed by the District Court⁴²); and the Sale Order, made after a hearing, and which was, as stated above, affirmed on appeal.⁴³ Whether or not the Court permitted or limited oral argument in connection with its rulings, the Court carefully considered the papers filed by Hutchings or Debtor and clearly explained the reasons for her ruling.

4. Orders of Predecessor Judges.

Lastly, both Debtor and Hutchings allege that the Court has failed to uphold court orders entered by the predecessor judges in this case, thereby demonstrating the Court's prejudice towards them. More specifically, Hutchings argues that the Court failed to uphold the orders entered by the Honorable Alexander L. Paskay that barred Ara Eresian, Jr., from filing any further motions until such time as he proves that he is a creditor, striking the pleadings filed by John Wilson and dismissing the adversary proceeding unless Wilson obtained local counsel, and disqualifying

Attorney Israel Sanchez.⁴⁴ Hutchings also argues that the Court failed to uphold the order of the Honorable Jeffrey P. Hopkins that imposed sanctions against Ara Eresian, Jr., and prohibited him from filing any pleadings in the present case without prior Court approval.⁴⁵

With respect to Attorney Sanchez, Hutchings' argument again relates to an adverse ruling. Debtor filed a motion to bar Attorney Sanchez from representing Legal Resolve, LLC, in its bid for the Assets.⁴⁶ The Court denied Debtor's motion⁴⁷ because while Judge Paskay's order disqualified Attorney Sanchez from representing a party in this case because of a conflict of interest arising from Sanchez's allegedly having previously represented Debtor in Massachusetts litigation,⁴⁸ his order did not extend to Sanchez's presenting an offer for the purchase of the Assets on behalf of Legal Resolve LLC.⁴⁹ This Court's ruling was affirmed on appeal to the District Court.⁵⁰ And despite Hutchings' contention the Court has failed to uphold her predecessor judges' rulings with respect to Eresian and Wilson, he has cited to nothing in the record to support this claim.

5. Conclusion.

In conclusion, the Court finds that a disinterested observer would not entertain significant doubts as to the Court's impartiality based upon the allegations raised in motions stemming predominately from adverse rulings, and as a consequence, there are no grounds warranting the Court's recusal.

Accordingly, it is

ORDERED:

1. The Motions are DENIED.

³⁸ Doc. Nos. 383, 418, 425, 435, 446, 465, 467, and 530.

³⁹ Doc. No. 525.

⁴⁰ Doc. No. 488.

⁴¹ Doc. No. 492.

⁴² Doc. No. 510.

⁴³ District Court Case No. 2:14-cv-615-SPC; Doc. No. 521.

⁴⁴ Doc. Nos. 145, 176, 196.

⁴⁵ Doc. No. 342.

⁴⁶ Doc. No. 463.

⁴⁷ Doc. No. 469.

⁴⁸ Doc. No. 196.

⁴⁹ Doc. No. 469.

⁵⁰ Doc. No. 521.

2. The preliminary hearing on Debtor's Motion scheduled for July 28, 2016, at 9:30 a.m. is **CANCELLED**.

DATED: July 18, 2016.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge