

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Hakim Abdullah,

Case No.: 3:13-bk-00601-JAF

Debtor.

Chapter 7

**ORDER DENYING DEBTOR’S MOTION FOR SANCTIONS, MOTION FOR CHANGE
OF VENUE AND MOTION TO RECUSE**

This case is before the Court upon Hakim Abdullah’s (the “Debtor”) Motion for [Sanctions] against Creditor Jacksonville Housing Auth[ority] (the “JHA”) [for Violation of Automatic Stay] (the “Motion for Sanctions,” Doc. 19), Motion for Change of Venue Auth. [sic] 28 U.S.C. §[§] 1404(a), 1406(a), 1631 (the “Motion for Change of Venue,” Doc. 118), and Memorandum of Law to Support Debtor[’s] Motion to Disqualify Judge Jerry A. Funk Auth. [sic] 28 U.S.C. [§] 455¹ (the “Motion to Recuse,” Doc. 114). After consideration of the Debtor’s arguments raised in his motions and at the evidentiary hearing, the Court concludes that the motions should be denied.

I. Background

In November of 2012, the JHA filed a complaint in Duval County Court seeking to evict the Debtor (the “Eviction Action”). (Doc. 29 at 1). In the complaint, the JHA alleged that the Debtor was holding a machete in his hand, walking toward another individual in a threatening manner, and subsequently, upon the search of the Debtor’s apartment, the machete was found under a

¹ It should be noted that the Debtor previously filed a Motion to Disqualif[y] . . . Judge Jerry A. Funk [Due to] Bias, (Doc. 33); however, he subsequently withdrew it. (Doc. 41). Accordingly, the motion is no longer pending and for this reason the Court cannot reach its merits. Thus, the Court will treat this paper, a memorandum in support of the Debtor’s motion to disqualify, as a second motion to disqualify the presiding judge over his chapter 7 case.

mattress. (Doc. 29 at 1). The JHA claimed that such conduct constituted a violation of the Debtor's lease. (Doc. 29 at 1). The JHA proceeded with the eviction proceeding, and the County Court entered a default and final judgment in favor of the JHA (the "Final Judgment of Eviction") on February 6, 2013. (Doc. 97 at 2-3).

However, on February 1, 2013, five days before the Final Judgment of Eviction was entered, the Debtor filed this bankruptcy petition thereby invoking the automatic stay pursuant to 11 U.S.C. § 362. (Doc. 1 at 1). On February 26, 2013, the Debtor filed a Motion to the Court to Resume Apartment Lease with the JHA . . . [and] Debtor[']s Request for an Evidentiary Hearing (the "Motion to Resume Apartment Lease"), to which the JHA filed an objection. (Docs. 11, 29). On April 12, 2013, the Court issued an Order granting the Debtor's Motion to Resume Apartment Lease (the "Order on Debtor's Motion to Resume Apartment Lease") and ordered the JHA to resume its lease with the Debtor until further order of the Court. (Doc. 47 at 1). The Court also ordered the Debtor to make all outstanding rental payments to the JHA within thirty days of the date of the Order. (Doc. 47 at 1). Subsequently, the Debtor filed a Motion for Sanctions. (Doc. 19). In the Motion for Sanctions, the Debtor asserted that the JHA violated the automatic stay by mailing him a notice of taking deposition, which harassed him, and by "prosecuting the eviction proceeding within the bankruptcy court . . . to harass the debtor Hakeem Abdullah. See meeting of creditors." (Doc. 19 at 2). For this reason, the Debtor requested that the Court hold the JHA in contempt and sanction the JHA in the amount of \$50,000². (Doc. 19 at 2).

On June 10, 2013, the JHA filed a Motion for Annulment or Removal of Automatic Stay Nunc Pro Tunc to Petition Date, or in the alternative, Motion for Relief from Stay. (Doc. 97). In

² At the evidentiary hearing on October 23, 2013, the Debtor indicated that he was now seeking a sanction award in the amount of \$50,000,000.00.

this motion, the JHA explained that it proceeded with the eviction proceeding and the County Court entered a default and Final Judgment of Eviction in favor of the JHA on February 6, 2013, because the Debtor failed to file a Suggestion of Bankruptcy in the County Court, which would have notified the JHA of the filing of his chapter 7 petition. (Doc. 97 at 3). Thus, the JHA argued that the automatic stay should be lifted as to the JHA pursuant to 11 U.S.C. § 362(b)(4) or, in the alternative, the automatic stay should be annulled pursuant to 11 U.S.C. § 362(d)(1). (Doc. 97 at 3). The Debtor filed his objection. (Doc. 104)

After holding an evidentiary hearing on this motion, the Court entered two orders: 1) an Order Lifting the Automatic Stay as to the JHA for Limited Purpose of Scheduling an Evidentiary Hearing in [the] Eviction Action in County Court of Duval County (the “Order Lifting Automatic Stay”), and 2) an Order Continuing Evidentiary Hearing on Debtor’s Motion for Sanctions Against the JHA for Violations of Automatic Stay (the “Order Continuing Evidentiary Hearing”). (Docs. 100, 121). In the Order Lifting Automatic Stay, the Court found that the Debtor did not appear at the Eviction Action hearing because he had filed for bankruptcy and did not anticipate the County Court would issue a ruling in that action. (Doc. 121 at 1-2). Nevertheless, the Court concluded that the Final Judgment of Eviction was entered in violation of the automatic stay and was void. (Doc. 121 at 2). The Court observed that the Final Judgment of Eviction was based not upon a monetary default, but instead upon a violation of a condition of the lease, and for this reason, the County Court was better suited to make a determination as to that issue. (Doc. 121 at 2). Thus, the Court lifted the automatic stay for the limited purpose of permitting the JHA to schedule and conduct another evidentiary hearing in the Eviction Action in the County Court and cautioned the JHA that if it obtained another final judgment in the Eviction Action in its favor, it must return to the Court to obtain further relief from the automatic stay.

(Doc. 121 at 2-3). In the Order Continuing Evidentiary Hearing, the Court continued the evidentiary hearing on the issue of the Debtor's request for an award of sanctions against the JHA so that the Debtor could produce evidence to establish that he suffered damages resulting from the alleged wilful violation of the automatic stay by the JHA. (Doc. 100 at 3).

Motion to Recuse

On July 3, 2013, the Debtor filed his Motion to Recuse. (Doc. 114). In this motion, the Debtor argued that the undersigned is biased against the Debtor because in the Order on the Debtor's Motion to Resume Apartment Lease, the Court ordered the Debtor to pay prepetition rent within thirty days from the date of the order "contrary to Bankruptcy Code 525(2), which is a violation of due process of law [and] 5th Amendment [right] of U.S. Const."³ (Doc. 114 at 1).

The statute which governs disqualification of bankruptcy judges is 28 U.S.C. § 455. 3 Cattle Co. v. Kelley, 07-52547-jdw, 2009 WL 927749 at *3 (M.D. Ga., 2009). Section 455 indicates, in pertinent part, that a judge must disqualify himself "in any proceeding in which his impartiality might reasonably be questioned," or "[w]here he has a personal bias or prejudice concerning a party." § 455(a),(b)(1). "Disqualification under section 455(a) is required only when the alleged bias is personal in nature. . . ." Loranger v. Stierheim, 10 F.3d 776, 780 (11th Cir. 1994). "[F]or a bias to be personal, and therefore disqualifying, it must stem from an extrajudicial source. Thus, as a general rule, a judge's rulings in the same case are not valid grounds for recusal." Id. (internal citations and quotations omitted, alteration in original); see also Jaffree v. Wallace, 837 F.2d 1461, 1465 (11th Cir. 1988) (upholding a denial of a recusal motion based on the adverse rulings by the trial judge); United States v. Eisenberg, 734 F.Supp.

³ The Debtor also filed an Affidavit of Prejudice, in which he argued that the undersigned should be disqualified pursuant to 28 U.S.C. § 455 because he fears that he "will not receive due process of law on account of bias . . . [or] prejudice of the judge." (Doc. 115 at 1).

1137, 1153 (D.N.J. 1990) (“[P]rior judicial exposure to [a party] or prior judicial rulings adverse to [a party] in the same or different cases” do not obligate a judge to recuse under § 455.).

Here, the Debtor bases his motion to recuse on the fact that the undersigned issued a ruling on another motion in this case. The Debtor did not allege any other facts that could possibly support his motion. Based upon the authority cited above, the Court concludes that the Debtor’s allegation of bias is insufficient to prevail on a motion to recuse and denies it on this ground.

Motion for Change of Venue

On July 3, 2013, the Debtor filed a Motion for Change of Venue⁴ and requested that the Court change venue of his case to the United States Bankruptcy Court for the Southern District of Florida, Miami Division, because he has been “denied the use of the Federal Law Library.” (Doc. 118 at 1). The Debtor alleges that on August 5, 2011, he was escorted out of the law library located in the Bryant Simpson United States Courthouse in Jacksonville, FL by the U.S. Marshall without due process. (Doc. 118 at 2). The Debtor asserts that because of this incident, he is frightened for his life whenever he enters the United States Courthouse located in Jacksonville, FL. (Doc. 118 at 1). The Debtor also submitted the affidavit of Jolanda Parrott, in which she testified as follows. Parrott went to the law library located in the United States Courthouse in Jacksonville, FL with the Debtor and two other individuals. (Doc. 118 at 4). The Debtor approached the front desk librarian to inquire when “their lunch break” would be over, and the front desk librarian became hysterical, stating that she felt threatened and called the U.S. Marshall’s Office. (Doc. 118 at 4). The librarian further lied about the Debtor’s behavior by claiming that he was violent and raising his voice. (Doc. 118 at 4). The U.S. Marshall then shouted at them to get out and escorted them out of the federal building. (Doc. 118 at 4). The

⁴ This motion is opposed by the JHA.

Debtor asserts three grounds for his request of change of venue i.e, 28 U.S.C. §§ 1404(a), 1406(a), 1631. The Court will address each basis in turn.

Change of Venue pursuant to § 1404(a)

Venue is different from jurisdiction in that “[j]urisdiction is the power to adjudicate, while venue, which relates to the place where judicial authority may be exercised, is intended for the convenience of the litigants.” Still v. Rossville Crushed Stone Co., 370 F.2d 324, 325 (6th Cir. 1966); see also Robert E. Lee & Co. v. Veatch, 301 F.2d 434, 436 (4th Cir. 1961) (“Venue is a concept old in our jurisprudence. As opposed to jurisdiction, which relates to the territorial power of a court to hear a controversy, venue relates only to the place where a litigant may require the case to be heard. It is a privilege which permits the one in whose favor it runs to have the case tried at a convenient place.”). 28 U.S.C § 1408 specifies venue of cases under title 11 and provides that a bankruptcy case may be filed in the court for the district within which the debtor’s domicile, residence, principal place of business, or principal assets have been located for at least the greater portion of the 180-day period preceding commencement of the case.

“‘For the convenience of parties and witnesses,’ section 1404(a) allows the courts to transfer an action to another proper venue if such a transfer will be in the interest of justice.” In re Ricoh Corp., 870 F.2d 570, 572 (11th Cir. 1989) (internal quotations omitted). Thus, the movant for transfer under section 1404(a), bears the burden to establish that the suggested forum is more convenient. Id. at 573. It is undisputed that the Debtor filed his petition within the bankruptcy court for the Middle District of Florida, Jacksonville Division. Likewise, the property at issue, which is leased by the Debtor, the parties and the witnesses are also located in Jacksonville, FL. Nevertheless, the Debtor requests transfer of venue to the Southern District of Florida, Miami Division. At the hearing, the Debtor indicated that he fears for his life when he enters the

courthouse in Jacksonville, FL, and believes it would be better if the case was heard by the bankruptcy court in Miami because “Miami has a bigger Muslim community.” Such explanation supporting the request to transfer venue pursuant to § 1404(a) is insufficient and the Court finds that the Debtor failed to provide any evidence to establish why his suggested forum, the bankruptcy court in Miami, is more convenient for the parties than the forum of this Court. Thus, the Debtor’s motion to change of venue is denied on this ground.

Transfer of Venue pursuant to § 1406(a)

Section 1406(a) provides for change of venue in the following manner: “The . . . court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Here, the Debtor never argued that the venue of the Court was improper; thus, he does not prevail on this basis and his motion to transfer venue on this ground is denied.

Change of Venue pursuant to § 1631

Section 1631 provides as follows:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed

Pursuant to section 1631, courts have an authority to transfer a case when they lack jurisdiction or if venue is improper. See Dornbusch v. C.I.R., 860 F.2d 611, 614-15 (Cir. 5th 1988). However, the Debtor never argued that the venue was improper. Thus, the Debtor’s motion to change venue is denied.

Motion for Sanctions

The Court previously continued the hearing on the Debtor's Motion for Sanctions to allow him to present the evidence establishing the damages he sustained due to the JHA's alleged willful violation of the automatic stay. 11 U.S.C. § 362(k)(1) provides that "[e]xcept as provided in paragraph (2)⁵, an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) "In order to recover damages [under § 362(k)] a debtor must show that there was a willful violation of the automatic stay and that he or she was injured by the violation. In re Hedetneimi, 297 B.R. 837, 841 (Bankr. M.D. Fla. 2003). A creditor's conduct in violation of the automatic stay is willful if the creditor: 1) knew that the automatic stay was invoked, and 2) intended the actions, which violated the stay. Jove Eng'g, Inc. v. I.R.S., 92 F.3d 1539, 1555 (11th Cir. 1996). In order to sustain a recovery of damages for emotional distress resulting from a violation of the automatic stay, a debtor must prove that his emotional distress is more than fleeting, inconsequential, and medically insignificant. In re Hedetneimi, 297 B.R. at 842. In the absence of conduct of such an egregious or extreme nature that emotional distress would be expected to occur, a debtor must present some medical or other corroborating evidence showing they suffered more than fleeting and inconsequential distress, embarrassment, humiliation, and annoyance. Id. at 843.

At the hearing, the Debtor refused to present any evidence proving that he suffered any damages as the result of the JHA's actions. Accordingly, the Court can deny the Motion for Sanctions without addressing the issue of whether the JHA's actions were a valid exercise of its regulatory powers to be excepted from the automatic stay. Without any evidence establishing the Debtor suffered damages, he does not prevail on the merits of the Motion for Sanctions. The Debtor explained that he will not proceed with presenting his evidence until the Court rules on

⁵ Section 362(k)(2) does not apply to the instant matter.

the Motion for Change of Venue; however, the Debtor failed to ask for another continuance of the evidentiary hearing on the Motion for Sanctions. For these reasons, the Debtor's Motion for Sanctions is denied.

Oral Motions Raised at the Hearing

At the hearing, the Debtor requested that the Court enter an order authorizing him to use the law library of the United States Courts for the Eleventh Judicial Circuit located at the Bryant Simpson United States Courthouse in Jacksonville, FL. Upon its own motion, the Court takes judicial notice of the law library's internal document establishing that the Debtor is allowed to use the law library to research his current pending case if he is accompanied by a Court Security Officer.⁶ As the Debtor is allowed to use the law library, his request is denied. The Debtor also orally requested that the Court mail him "the law" authorizing the Court to "remand his [Eviction] Action to the state court. . ." The Debtor's request does not constitute a cognizable request for relief under the law. For this reason, the Debtor's request is denied.

Accordingly, it is **ORDERED**:

1. The Debtor's Motion for Sanctions (Doc. 19) is denied.
2. The Debtor's Motion to Change Venue (Doc. 118) is denied.
3. The Debtor's Motion to Recuse (Doc. 114) is denied.
4. To the extent the Debtor requested any other relief at the hearing, it is denied.

DATED this 7 day of January, 2014 in Jacksonville, Florida.

/s/ _____
JERRY A. FUNK
United States Bankruptcy Judge

⁶ This internal document is attached to the Order.