

June 1, 2007

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Re: James W. Keenan
Bankruptcy Case No. 96-00871-B11

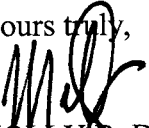
Dear Sirs:

On December 21, 2006, we forwarded a copy of the original Opinion in the above entitle case. Enclosed you will find an amended Opinion dated June 1, 2007.

The Court has directed me to advise you that this Opinion has only one technical change found at line 9, page 6, where the word "partiality" is substituted for "impartiality" found in the original Opinion.

If you have any questions regarding the foregoing, please contact the undersigned. Thank you for your attention to this matter.

Yours truly,


MOLLY B. DISHMAN
Judicial Assistant to
James W. Meyers

Enclosure

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ENTERED JUN - 1 2007
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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

JAMES W. KEENAN,

Debtor.

Bankruptcy No. 96-00871-B11
Adversary No. 06-90341-B11

JAMES W. KEENAN and JUDY M.
KEENAN,

Plaintiffs,
v.
ROSS M. PYLE; PROCOPIO, CORY,
HARGREAVES & SAVITCH, a business
entity form unknown, JEFFREY
ISAACS, an individual, and DOES
1 - 50, inclusive,

Defendants.

AMENDED OPINION

I

On October 13, 2006, the Plaintiffs filed a motion to recuse or disqualify Judge Peter Bowie under 28 U.S.C. § 144 and 28 U.S.C. § 455 (a) and (b) (1). Motions for recusal or disqualification are normally

1 left to the sound discretion of the judge who is the subject of the
2 motion, as the person in the best position to appreciate the
3 implications of the matters alleged, so Judge Bowie heard the motion
4 on November 13, 2006. Judge Bowie indicated on the record that he
5 would not stay in the case unless he thought he could be fair to both
6 sides. However, out of an abundance of caution, Judge Bowie sought
7 a second opinion on the matter through an order he issued after the
8 November 13 hearing. The motion was transferred to the undersigned
9 for consideration and the matter was heard on December 14, 2006, and
10 taken under submission. For the following reasons, the motion to
11 disqualify Judge Peter Bowie is denied.

12
13 **II**

14 **BACKGROUND**

15 The Debtor, James Keenan, and his non-debtor wife, Judy Keenan,
16 ("Plaintiffs" or "Keenans") filed this complaint against the
17 liquidating Trustee Ross Pyle and his lawyer Jeff Isaacs, as well as
18 the law firm of Procopio, Cory, Hargreaves & Savitch ("Defendants").
19 The complaint asserts claims for violations of racketeering statutes
20 and the Plaintiffs' civil rights, for breach of fiduciary duty, breach
21 of contract and negligence, and seeks an award of monetary damages as
22 well as for declaratory and injunctive relief.

23 To support these claims, the Plaintiffs allege that the
24 Defendants conspired with one another to deprive the Keenans of their
25 assets through Mr. Pyle's actions in unlawfully seizing and
26 liquidating the assets of the Keenans and their partnerships.

27 This case began almost eleven years ago. In late 1995, the state
28 court entered a judgment against James Keenan for over \$18 million.

1 In lieu of posting a bond, James Keenan filed a voluntary Chapter 11
2 petition in January 1996, to prevent the judgment creditor from
3 executing the judgment against his assets while the matter was on
4 appeal.

5 In August 1996, Ross Pyle was appointed Chapter 11 Trustee by the
6 U.S. Trustee. The Keenans contend the Defendants conspired to sell
7 far more assets than necessary to pay creditors in order to earn
8 additional fees. They allege that they were damaged by various
9 settlements reached in the case, sales of property and the terms of
10 the Plan of Reorganization. They seek a declaration that the orders
11 entered by Judge Bowie were void because the court lacked jurisdiction
12 over the subject matter and separate assets of Judy Keenan and valid
13 partnerships. They also contend that all orders entered by Judge
14 Bowie after his reappointment in March 2002 are void because he failed
15 to take the judicial and constitutional oaths required by 28 U.S.C.
16 §453 and 5 U.S.C §3331.

17 The Keenans also seek a declaration that ALL orders entered in
18 the case are void or should be vacated "because they were obtained by
19 extrinsic and/or intrinsic fraud, they are the product of extra
20 judicial acts, because they were illegally issued due to bias and
21 prejudice against Plaintiffs individually and because of a prejudice
22 against judgment debtors in general in violation of the equal
23 protection clause, because Judge Bowie was without subject matter and
24 personal jurisdiction, because they were done in furtherance of the
25 criminal conspiracy to unlawfully deprive Plaintiffs of their property
26 and because they were done without due process and are otherwise
27 void."

28 In response to the complaint, the Defendants filed an Anti-SLAPP

1 motion to strike pendent state law claims, and a motion to dismiss the
2 complaint or for summary judgment. ("Dismissal Motions"). To support
3 the Dismissal Motions, Defendants filed two briefs and a Request for
4 Judicial Notice that attaches 167 documents containing approximately
5 1500 pages of pleadings, rulings and transcripts filed in this case
6 and the appeals resulting from this case. ("Defendants' RJN 1"). A
7 review of Defendants' RJN 1 and the supporting exhibits provides an
8 overview of ten years of history of James Keenan's Chapter 11 case.
9 Included are copies of the orders authorizing the Trustee to enter
10 settlements, to sell or abandon assets and enter leases. The forty
11 two orders concerning the interim fees awarded to the Defendants are
12 there. Orders concerning claims, adversary actions, appeals and the
13 confirmed plan of reorganization are provided. Copies of appeals by
14 Plaintiffs, a request for a writ of mandamus and complaints they filed
15 against the Defendants in District Court for fraud, breach of
16 fiduciary duty and negligence are attached. The series of
17 transcripts, orders and appeals concerning the protocol established
18 to allow Plaintiffs' adequate discovery of any facts to support their
19 claims of fraud, breach of fiduciary duty, negligence and judicial
20 cronyism are supplied. These were entered in an attempt to satisfy
21 the Plaintiffs' requests for discovery and provide them with a forum
22 to bring any actions against the Trustee and his professionals, so the
23 case could be closed. While reviewing these documents could be
24 considered a daunting task to one who is unfamiliar with the lengthy
25 history of this case, it appears to be a walk down memory lane filled
26 with repetitious refrains for the Plaintiffs and their attorney, the
27 Defendants or Judge Bowie.

28 Plaintiffs did not file a timely response to the Dismissal

1 Motions, but instead on September 28, they submitted an ex parte
2 application for a 90 day continuance and extension of time to respond
3 based on the size of the motions and supporting documents and to
4 provide them a chance to conduct discovery. Defendants objected and
5 the motion to extend time was not granted.

6 On September 25, the Keenans filed a pro se complaint in District
7 Court against Judge Bowie both individually and in his "alleged"
8 capacity as bankruptcy judge. Other than the omission of a request
9 for monetary damages, the complaint against Judge Bowie is very
10 similar to the one filed in this matter against the Defendants,
11 seeking declaratory and injunctive relief to void all rulings in the
12 Chapter 11 on the grounds that Judge Bowie conspired with Ross Pyle
13 and his professionals to enrich Mr. Pyle. The Keenans also claim
14 violations of their civil rights and RICO statutes due to Judge
15 Bowie's personal bias against them and in favor of Ross Pyle.

16 Finally, they contend that Judge Bowie continues to cause
17 irreparable harm by issuing Orders in the absence of personal and
18 subject matter jurisdiction, and without having taken the oath of
19 office, which are the product of bias and prejudice and deprive them
20 of their constitutional rights. They want an order enjoining
21 enforcement of all orders and ordering immediate return of the estate.

22 23 III

24 DISCUSSION

25 Section 144 is only applicable to District Court judges, so that
26 part of the motion is legally deficient. In re Smith, 317 F.3d 918,
27 932 (9th Cir. 2002).

28 Section 455 applies to bankruptcy judges in accordance with

1 Fed.R.Civ.P. 5004(a). In re Goodwin, 194 B.R. 214, 221 (9th Cir. BAP
2 1996). Section 455 provides:

3 (A) Any justice, judge, or magistrate judge of the
4 United States shall disqualify himself in any proceeding in
5 which his impartiality might reasonably be questioned.

6 (B) He shall also disqualify himself in the following
7 circumstances:

8 (1) Where he has a personal bias or prejudice
9 concerning a party, or personal knowledge of disputed
10 evidentiary facts concerning the proceeding..."

11 The standard for disqualification is whether the charge of
12 partiality is sufficiently grounded in facts to create in the mind of
13 the fully informed objective disinterested observer of our community
14 a reasonable or significant doubt concerning the judge's impartiality.
15 United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986). Judicial
16 rulings alone almost never constitute a valid basis for a bias or
17 partiality motion. Liteky v. United States, 510 U.S. 540, 555, 114
18 S.Ct. 1147, 1157 (1994). Opinions formed or judicial remarks made
19 during court proceedings "do not constitute a basis for a bias or
20 partiality motion unless they display a deep-seated favoritism or
21 antagonism that would make fair judgment impossible." Id.

22 Plaintiffs argue:

23 1. Clearly, the Courts' impartiality might reasonably be
24 questioned because this complaint includes claims that Judge Bowie
25 deprived the Keenans of their constitutional rights and colluded with
26 the Defendants to deplete the estate;

27 2. The complaint filed against Judge Bowie has undoubtedly
28 created a sense of antagonism against the Keenans; and

29 3. Judge Bowie has personal knowledge of the facts sought to be
30 litigated - whether he took the oath of office, is a properly seated
31 judge and whether he has bias or prejudice against the Keenans which

1 affected his prior rulings.

2 Bias or prejudice connotes a favorable or unfavorable disposition
3 or opinion that is somehow wrongful or inappropriate, either because
4 it is undeserved, or because it rests upon knowledge that the subject
5 ought not to possess, or because it is excessive in degree. Liteky,
6 supra, 510 U.S. at 550; 114 S.Ct. at 1154. If the circumstances do
7 not establish a personal bias or prejudice under Section 455(b), they
8 are not sufficient by themselves to raise a "reasonable question" as
9 to the judge's impartiality for recusal under §455(a). United States
10 v. Sibla, 624 F.2d 864, 865 (9th Cir. 1980).

11 Rumors, innuendo and unsupported allegations are not sufficient
12 for recusal. A judge is presumed qualified to hear a proceeding and
13 the Plaintiffs have the burden of proving otherwise. First Interstate
14 Bank v. Murphy, Weir & Butler, 210 F.3d 983, 987 (9th Cir. 2000). The
15 motion or affidavit must allege with particularity the facts that
16 would convince a reasonable person that a bias exists of a personal,
17 not judicial nature. Disqualification based on adverse rulings in a
18 case is limited to only rare and extreme circumstances.

19 Alleged professional or social relationships between a party and
20 the court are not a basis for disqualification. See, Cheney v. The
21 United States District Court for the District of Columbia, 541 U.S.
22 913, 124 S.Ct. 1391, 1394-95 (2004).

23 The filing of a complaint against the judge in another court is
24 also not automatically grounds for recusal. United States v. Studley,
25 783 F.2d 934, 939-40 (9th Cir. 1986). To hold otherwise would allow
26 a litigant to simply file an action against the court, and then bring
27 a motion to disqualify as a vehicle for "judge shopping".

28 The timing of this motion and the filing of the complaint against

1 Judge Bowie support an inference that the Plaintiffs are engaging in
2 forum shopping and trying to find a method to circumvent the orders
3 of the Court and the doctrines of res judicata and collateral
4 estoppel. These are not the first allegations of judicial misconduct
5 in this case. The Defendants' Request for Judicial Notice in
6 opposition to this motion ("RJN II") supplies copies of complaints and
7 memos filed with the District Court as far back as September 1999,
8 which make the same allegations of judicial cronyism and bias in favor
9 of a former presiding judge.

10 Despite making the same allegations for seven years, the Keenans
11 have supplied NO facts to support their suggestion of some close or
12 improper relationship between Judge Bowie and Ross Pyle, that there
13 was any conspiracy to enrich Mr. Pyle at the expense of the Keenans
14 or that Judge Bowie has some wrongful or inappropriate bias against
15 the Plaintiffs and in favor of Mr. Pyle. James Keenan filed the
16 Chapter 11 petition voluntarily. Mr. Pyle was appointed by the U.S.
17 Trustee, not by Judge Bowie. NONE of Judge Bowie's rulings have been
18 overturned on appeal - which is the appropriate route to take if one
19 is unhappy with a decision - not to sue the Judge for conspiracy.
20 Other than filing a complaint against Judge Bowie which contains the
21 same unsupported allegations, the Plaintiffs have provided no basis
22 for disqualification. That action by the Plaintiffs is an
23 insufficient basis to disqualify a bankruptcy judge from presiding
24 over this adversary proceeding. Finally, the Plaintiffs have not
25 presented any authority for the proposition that their unsubstantiated
26 allegation that Judge Bowie failed to take an oath upon reappointment
27 would be the basis for disqualification under § 455.

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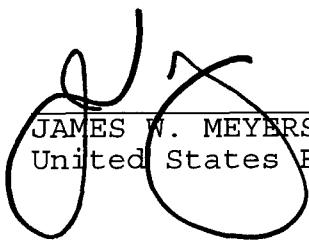
IV

CONCLUSION

By implication in the record, Judge Bowie has determined that he does not consider himself to hold a bias or prejudice toward the parties that would make fair judgment impossible. This Court also finds that Judge Bowie is not subject to disqualification under §455. Plaintiffs have not asserted any facts to support their allegations of bias or prejudice. The motion is an attempt to get a fourth or fifth bite at the apple to undermine ten years of final rulings. The motion and underlying complaint result in a waste of judicial resources on issues that have already been decided under slightly different pleadings. The Plaintiffs have failed in their burden "to create in the mind of the fully informed objective disinterested observer a reasonable or significant doubt concerning the judge's impartiality".

The motion to disqualify Judge Peter Bowie is denied, and this Opinion constitutes the Court's findings of fact and conclusions of law. The Court will enter a separate Order this same date.

Dated: JUN 01 2007



JAMES W. MEYERS, Judge
United States Bankruptcy Court