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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 In re:) Case No. 06-22225-D-7
11)
12 BETSEY WARREN LEBBOS,)
13)
14 Debtor.)
15)
16)
17 LINDA SCHUETTE,) Adv. Pro. No. 07-2006-D
18)
19 Plaintiff,) Docket Control No. TC-1
20)
21 v.)
22)
23 BETSEY WARREN LEBBOS,)
24 et al.,)
25)
26 Defendants.) DATE: September 12, 2007
27) TIME: 10:00 a.m.
28) DEPT: D

20
21 This memorandum decision is not approved for publication and may
22 not be cited except when relevant under the doctrine of law of
23 the case or the rules of claim preclusion or issue preclusion.

23 MEMORANDUM DECISION

24 Thomas Carter, Co-Trustee of the Aida Madeleine Lebbos No. 2
25 Trust, a defendant in this action ("Defendant"), seeks to
26 disqualify the undersigned as the bankruptcy judge in this
27 adversary proceeding. For the reasons set forth below, the court
28 will deny the Defendant's request.

1 Disqualification Affidavit For Honorable Robert Bardwil Due to
2 His Interest in the Outcome, Partisanship, Bias, Prejudice, And
3 Prejudgment Against The Disabled." Finally, on September 6,
4 2007, the Debtor filed a document bearing the same title in this
5 adversary proceeding.

6 On August 29, 2007, the court issued orders on the first
7 three matters, the Debtor's affidavit in the parent case and Mr.
8 Gold's request and Mr. Carter's affidavit in this adversary
9 proceeding, construing the matters as motions, setting them for
10 hearing on September 12, 2007, and setting a deadline of
11 September 5, 2007, for the filing of responses. The Plaintiff,
12 through her counsel, Michael Dacquisto, filed opposition in all
13 three matters on August 30, 2007.

14 On September 12, 2007, the court heard oral argument. The
15 following parties appeared and presented argument: Jason Gold on
16 his own behalf, John Read (by telephone), making a special
17 appearance for the Debtor, and Michael Dacquisto (by telephone),
18 for the Plaintiff. Defendant Carter did not appear.

19 No objection was made to any evidence offered. The motion
20 having been briefed and argued by those parties wishing to be
21 heard, the court took the motion under submission.

22 II. ANALYSIS

23 A. Legal Standards for Disqualification

24 This court has jurisdiction over the motion pursuant to 28
25 U.S.C. sections 1334 and 157(b)(1). The motion is a core
26 proceeding under 28 U.S.C. section (b)(2)(A) & (0); In re Betts,
27 143 B.R. 1016, 1018 (Bankr. N.D. Ill. 1992).

28 / / /

1 "A bankruptcy judge shall be governed by 28 U.S.C. § 455,
2 and disqualified from presiding over the proceeding or contested
3 matter in which the disqualifying circumstance arises, or, if
4 appropriate, shall be disqualified from presiding over the case."
5 Fed. R. Bankr. P. 5004(a).

6 Section 455 of Title 28 provides in part as follows:

7 (a) Any justice, judge, or magistrate of the United
8 States shall disqualify himself in any proceeding in
which his impartiality might reasonably be questioned.

9 (b) He shall also disqualify himself in the following
10 circumstances:

11 (1) Where he has a personal bias or prejudice
12 concerning a party, or personal knowledge of
disputed evidentiary facts concerning the
proceeding.

13 * * *

14 (4) He knows that he . . . has a financial
15 interest in the subject matter in controversy
16 or in a party to the proceeding, or any other
interest that could be substantially affected
by the outcome of the proceeding.

17
18 The disqualification statute was comprehensively revised in
19 1974, to provide for disqualification not only where a judge
20 holds a personal bias or prejudice, but also to spell out a list
21 (not fully reproduced above) of various interests and
22 relationships that require the judge to disqualify himself from
23 hearing a proceeding; such interests and relationships were only
24 generally stated in the prior statutory language. Liteky v.
25 United States, 510 U.S. 540, 546-48 (1994). Section 455(a) was
26 added to include objective, "catch-all" grounds for
27 disqualification, in addition to the earlier "interest or
28 relationship" grounds and "bias or prejudice" grounds, which are

1 now specifically stated and set forth in the various subsections
2 making up § 455(b). Liteky, 510 U.S. at 548. Under § 455(a),
3 "[the standard for recusal is clearly objective: 'whether a
4 reasonable person with knowledge of all of the facts would
5 conclude that the judge's impartiality might reasonably be
6 questioned'." In re Georgetown Park Apts., Ltd., 143 B.R. 557,
7 559 (B.A.P. 9th Cir. 1992), quoting United States v. Nelson, 718
8 F.2d 315, 321 (9th Cir. 1983) (other citations omitted).

9 The Code of Conduct for United States Judges (the "Code of
10 Conduct") mirrors the provisions of 28 U.S.C. § 455. The Code of
11 Conduct requires that "every judicial officer must satisfy
12 himself that he is actually unbiased towards the parties in each
13 case and that his impartiality is not reasonably subject to
14 question." In re Bernard, 31 F.3d 842, 843 (9th Cir. 1994).
15 Under this standard, the judge must not only be subjectively
16 confident that he is unbiased; it is also objectively necessary
17 that "an informed, rational, objective observer would not doubt
18 his impartiality." Id. at 844, citing United States v. Winston,
19 613 F.2d 221, 222 (9th Cir. 1980). However, "to say that §
20 455(a) requires concern for appearances is not to say that it
21 requires concern for mirages." United States v. El-Gabrowni, 844
22 F. Supp. 955, 961 (S.D.N.Y. 1994). As such, recusal must be
23 based on factors in the record and in the law. Id. at 962.

24 Cases applying recusal statutes apply a presumption of
25 impartiality. E.g. In re Larson, 43 F.3d 410, 414 (8th Cir.
26 1994) (judge presumed impartial; parties seeking recusal bear
27 "substantial burden" of proving otherwise); First Interstate Bank
28 v. Murphy, Weir & Butler, 210 F.3d 983, 987 (9th Cir. 2000)

1 ("Judicial impartiality is presumed"); In re Spirtos, 298 B.R.
2 425, 431 (Bankr. C.D. Cal. 2003) ("A judge is presumed to be
3 qualified to hear a matter and the burden is upon the moving
4 party to prove otherwise").

5 In addition, "[j]udges have an obligation to litigants and
6 their colleagues not to remove themselves needlessly . . .
7 because a change of umpire in mid-contest may require a great
8 deal of work to be redone . . . and facilitate judge-shopping."
9 In re Betts, 143 B.R. 1016, 1020 (Bankr. N.D. Ill. 1992), quoting
10 In re National Union Fire Ins. Co., 839 F.2d 1226, 1229 (7th Cir.
11 1988) (omitting citation); see also In re Computer Dynamics,
12 Inc., 253 B.R. 693, 698 (E.D. Va. 2000) (judge equally obligated
13 not to remove himself when there is no necessity and to do so
14 when there is), aff'd 10 F. App'x 141 (4th Cir. 2001).

15 B. The Defendant's Arguments

16 1. Contentions re Factual Allegations of the Complaint

17 The Defendant begins with three paragraphs outlining his
18 contentions regarding the factual allegations in the Plaintiff's
19 complaint. It is not necessary or appropriate that the court
20 consider these contentions in ruling on the Affidavit, and the
21 court therefore will not address or consider them.

22 2. Allegations Previously Considered

23 In paragraphs 4 through 9 of the Affidavit, the Defendant
24 recites a variety of conclusions based on his "understandings" of
25 previous rulings in this case. There is no evidence the
26 Defendant has personal knowledge of any of these rulings, or of
27 the evidence on which the rulings were based. The Defendant does
28 not identify the source of his understandings. The particular

1 arguments raised in these paragraphs have been previously
2 considered by the court and addressed in the court's Memorandum
3 Decision filed April 13, 2007 (DN 250 in the parent case)² and
4 its Memorandum Decision issued herewith in connection with the
5 Debtor's second request for disqualification of the undersigned,
6 Docket Control No. BWL-9. The court's responses will not be
7 repeated here except to say that the court finds the Defendant's
8 conclusions to be unfounded.

9 3. Alleged Intention to "Take Trust Property"

10 The Defendant refers to a transcript in which the
11 undersigned is alleged to have said that he "is barring [the
12 defendants] from defending [the Debtor's] daughter's trust
13 property,"³ and that he "is going to take my property from me
14 without letting me defend."⁴ The Defendant has failed to provide
15 a copy of any transcript, and the court is aware of no instance
16 in which any such remarks were made.

17 The contention is without support. In fact, the court set
18 aside the default of the three co-trustees, Ms. Lebbos, Mr.
19 Carter, and Mr. Gold, and has allowed them repeated extensions of
20 the deadline to file an answer or other responsive pleading. The
21 Defendant, through counsel, filed a motion to set aside his
22 default on February 20, 2007. Yet it was almost six months
23 later, on August 17, 2007, that the Defendant filed his first
24 responsive pleading, a motion to dismiss. (At a hearing on

25
26 2. The abbreviation "DN" refers to the docket number of the
particular entry on the court's docket.

27 3. Affidavit at ¶ 6.

28 4. Affidavit at ¶ 11.

1 August 1, 2007, the court had granted the most recent extension
2 of time, to August 17. DN 187.) The facts do not support the
3 conclusion that the court has been anything less than completely
4 fair to the Defendant.

5 4. Remarks of Unidentified Persons

6 A second paragraph 9 recites the purported remarks of
7 "people [the Defendant] has talked to." The court assumes these
8 alleged conversations are included to support a finding that "an
9 informed, rational, objective observer" would doubt the court's
10 impartiality. See In re Bernard, supra, 31 F.3d at 844. The
11 court concludes that an informed, rational, objective observer
12 would find no reason to doubt the court's impartiality toward the
13 Defendant in this action. The alleged comments of unidentified
14 individuals, derived from their hearsay discussions with the
15 Defendant, in turn based on the Defendant's "understandings," add
16 nothing helpful to the analysis.

17 III. CONCLUSION

18 For the reasons stated above, the court finds that the
19 Defendant has not met his burden under 28 U.S.C. § 455(a) of
20 overcoming the presumption of impartiality and demonstrating that
21 the impartiality of the undersigned might reasonably be
22 questioned. Neither has the Defendant demonstrated grounds for
23 disqualification under 28 U.S.C. § 455(b).

24 The court will issue an order consistent with this
25 memorandum.

26
27 Dated: September 24, 2007

/s/
ROBERT S. BARDWIL
United States Bankruptcy Judge