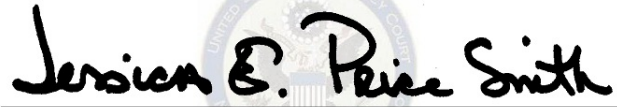


IT IS SO ORDERED.

Dated: 28 March, 2014 11:36 AM



Jessica E. Price Smith

JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:

MURRAY D. BILFIELD, et al,
Debtors.

CHAPTER 7

CASE NO. 11-18474

ADV. NO. 12-01251

MURRAY D. BILFIELD
Counterclaim Defendant,

v.

JUDGE JESSICA E. PRICE SMITH

OHIO COMMERCE BANK,
Counterclaim Plaintiff.

ORDER

The matter before the Court is the Motion of Murray David Bilfield for Recusal of Judge Jessica E. Price Smith Pursuant to 28 U.S.C. § 455. (Doc. No. 86). Ohio Commerce Bank opposes the Motion. In his reply, Mr. Bilfield clarified that he seeks recusal pursuant to 28 U.S.C. § 455(a). The Court denied the Motion from the bench on January 10, 2014 with a written ruling to follow. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334

and General Order No. 2012- 7 of this District. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A), (I) and (O).

Mr. and Mrs. Bilfield (collectively, the “Debtors”) filed this action on August 21, 2012, alleging that Ohio Commerce Bank and its counsel, William Strachan, violated the automatic stay through actions taken in a state court proceeding filed by Ohio Commerce against Mr. Bilfield’s business entities, Bilfield & Associates Co. L.P.A. (the “LPA”) and Midwest Tax Relief, LLC (the “LLC”). Ohio Commerce and Mr. Strachan each answered the complaint and Ohio Commerce asserted a counterclaim against Debtor Murray Bilfield. At the initial pretrial hearing on the matter, the Debtors were granted leave to amend the complaint since the discharge had been granted and the allegation for violation of the automatic stay was not the appropriate cause of action. In the amended complaint, it was alleged that Ohio Commerce and Mr. Strachan violated the discharge injunction of Section 524(a)(2) of Title 11 of the United States Code (the “Bankruptcy Code”).

The amended complaint was answered and a counterclaim filed. In its counterclaim, Ohio Commerce alleged that Mr. Bilfield had converted its collateral by transferring client matters and the proceeds thereof due to the LPA to himself. Ohio Commerce further alleged that Mr. Bilfield concealed the transfers by failing to disclose them on his Schedules or Statement of Financial Affairs when he filed his bankruptcy petition. Finally, Ohio Commerce alleged that Mr. Bilfield’s discharge should be revoked as to its debt.

The Debtors sought judgment on the pleadings on the counterclaim (Doc. No. 16), alleging that the Ohio ethical rules prohibited Ohio Commerce from having a security interest in client matters. On April 10, 2013, Debtors filed a Motion to Disqualify Jeffrey Levinson as counsel for Defendants Ohio Commerce Bank and William Strachan (Doc. No. 23) alleging that

Mr. Levinson and his clients continued to “lie” to the Court about the existence of a creditor with a lien superior to that of Ohio Commerce Bank. On that same day, Debtors filed a Motion to Compel Joinder of Lorain National Bank (Doc. No. 24) and a Notice of Intent to file Motion for Sanctions Pursuant to FRCP 11 and FRBP 9011 (Doc. No. 25). On May 14, 2013, the Debtors filed a Motion for Rule 11 Sanctions (Doc. No. 39) seeking sanctions against Mr. Levinson for taking an allegedly inappropriate legal position that Ohio Commerce could have a lien in the LPA’s client files.

On May 21, 2013, the Court held a hearing on the Motion for Judgment on the Pleadings, Motion to Disqualify Jeffrey Levinson and Motion to Compel Joinder of Lorain National Bank. At that hearing, Mr. Bilfield, acting as counsel for the Debtors, argued that the Trustee had abandoned the property that Ohio Commerce alleged it had a lien in and that the transfer of the client matters was fully discussed at the § 341 meeting. He further argued that Lorain National Bank has a superior lien interest and that client files and IOLTA funds cannot be the subject of a security interest under Ohio ethical rules. The Court found that Ohio Commerce had asserted a colorable claim that its collateral had been transferred and denied the Motion for Judgment on the Pleadings. The Court also denied the Motion for Compulsory Joinder on the basis that the existence of another lien holder was not relevant to the issue of whether Mr. Bilfield had granted Ohio Commerce a security interest in certain assets of the LPA and whether a transfer of those assets had occurred.¹ The Motion to Disqualify was denied as demonstrating no basis for

¹The Debtors have continued to serve Lorain National Bank with the pleadings in this matter but it has never made an appearance.

disqualifying opposing counsel and the Rule 11 notice was stricken. The Debtors then withdrew the Motion for Sanctions (Doc. No. 47).

On July 31, 2013, Ohio Commerce filed a Motion to Compel Production of Documents and for Sanctions (Doc. No. 55). Ohio Commerce alleged that Mr. Bilfield had refused to produce information on client matters because of privilege, despite Ohio Commerce stating it would accept coded information. Ohio Commerce also alleged that Mr. Bilfield had failed to produce banking information, including banking information post-discharge. In response, Mr. Bilfield stated that Ohio Commerce was not entitled to his banking information for accounts at Ohio Commerce because it was the keeper of those records and could access them. He further stated that Ohio Commerce was not entitled to banking statements from the IOLTA accounts because he was not the owner of the accounts and had a fiduciary obligation to protect his clients' information. Finally, Mr. Bilfield argued that post-discharge banking information was irrelevant to the counterclaim and Ohio Commerce was not entitled to his client files. At the hearing on the matter, Mr. Bilfield reiterated that although he had the banking statements from Ohio Commerce, he should not have to produce them because Ohio Commerce also had them. He also repeatedly stated that IOLTA accounts were not discoverable because they did not belong to him. The Court granted the Motion to Compel and ordered that the information be produced by specific dates.

On September 20, 2013, Ohio Commerce and Mr. Strachan filed a joint motion for summary judgment. It sought judgment in their favor on the complaint for violating the discharge injunction. It also sought judgment in favor of Ohio Commerce on the counterclaim. In their response, the Debtors agreed that summary judgment should be granted in favor of the defendants on the claim for violation of the discharge injunction. Resolution of the complaint

resulted in Mrs. Bilfield and Mr. Strachan no longer being parties to the adversary proceeding. The action was therefore proceeding with Ohio Commerce as the Counterclaim Plaintiff and Mr. Bilfield as the Counterclaim Defendant.

Mr. Bilfield opposed summary judgment on the counterclaim, alleging again that the rules of professional conduct prohibit a security interest in the IOLTA accounts and that certain terms of art, such as collateral, client files and client matters were defined incorrectly. He also stated that any client work as of the petition date had been billed, collected and spent.

At the hearing on the motion for summary judgment, Mr. Bilfield orally moved to dismiss the case because Ohio Commerce failed to disclose that it had merged with another bank and no longer existed after the merger. He again argued that he did not own the client files or the IOLTA accounts and therefore Ohio Commerce could not have a security interest in them. He reiterated that all work had been billed, collected and spent as of the petition date. With respect to the accounting, Mr. Bilfield stated that he had already produced thousands of documents and spent considerable time responding to document requests from Ohio Commerce. Ohio Commerce stated that the information it had received was not complete.

The Court granted the motion of Ohio Commerce, in part, and denied it, in part. Summary judgment was granted with respect to Counts Two and Three of the counterclaim, with the Court finding that Ohio Commerce had been granted a security interest in the client matters and proceeds of those matters, that those assets were the collateral of Ohio Commerce and that they were entitled to an accounting of their collateral. The issues of fact to be determined at trial were whether there were files and proceeds of the LPA that had been transferred to Mr. Bilfield and whether those transfers constituted a conversion of Ohio Commerce's collateral. In addition, whether Mr. Bilfield's discharge, with respect to the debt owed to Ohio Commerce, should be

revoked, was also to be decided at trial. Mr. Bilfield was ordered to provide the accounting to Ohio Commerce no later than December 2, 2013.

On December 1, 2013, Mr. Bilfield filed his Motion to Dismiss the Counterclaim of Ohio Commerce Bank based on the merger of Ohio Commerce with People's Bank. On December 2, 2013, the date the accounting was due, Mr. Bilfield filed a Motion for Reconsideration and Clarification of the Order relating to Summary Judgment. In his Motion to Dismiss, Mr. Bilfield alleged that prosecution of the counterclaim could not continue because Ohio Commerce no longer existed and the Ohio statute that allowed the continued prosecution was unconstitutional. In his Motion for Reconsideration, Mr. Bilfield also stated that his accountant could not produce the accounting by the December 2 deadline. In support, Mr. Bilfield attached a letter from his accountant, stating that the process would be a considerable undertaking, that the accountant was occupied with other matters, and questioning who would be paying for the work.

On December 11, 2013, the Court conducted a final pretrial hearing and ruled on the Motion to Dismiss and Motion for Reconsideration. The Motion to Dismiss was denied because there was no inconsistency, as alleged by Mr. Bilfield, between the Ohio statute that allowed for continued prosecution of a cause of action post-merger and the federal rule of civil procedure that addressed the same. Mr. Bilfield's claim of material misrepresentation by failing to disclose the merger was also found to be without merit. The Motion for Reconsideration was denied because it failed to state a valid basis for reconsideration of the Court's order.

Despite the fact that the hearing was a final pretrial, and not an evidentiary hearing, Mr. Bilfield attempted to present his accountant, T. Craig Eschrich, to testify regarding the difficulty in producing the accounting. The Court advised Mr. Bilfield, that his accountant could not

testify, but would be allowed to address the Court regarding the accounting, since Mr. Bilfield and his co-counsel Edward Snyder both stated that they were unable to explain the difficulty with producing the information as ordered. However, when Mr. Eschrich, who presented himself as both a member of the bar and a financial analytic, began yelling at the Court, he was directed to return to his seat. The pretrial concluded with the Court extending the deadline to produce the accounting to December 31, 2013 and confirming that the trial would go forward on January 13, 2014.

On December 22, 2013, Mr. Bilfield filed his Motion to Recuse, alleging that the Court had shown a bias toward him through its conduct at hearings and rulings on his motions. Mr. Bilfield asks that the Court recuse itself pursuant to 28 U.S.C. 455(a), which states that “(a)ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

A judge “must recuse himself if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge’s impartiality.” *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990). However, “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Easley v. University of Michigan Board of Regents*, 853 F.2d 1351, 1356 (6th Cir. 1988)(citation omitted). Adverse judicial “rulings alone almost never constitute [a] valid basis for a bias or partiality motion” and are “[a]lmost invariably . . . proper grounds for appeal, not for recusal.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Further, disqualification “must be predicated . . . upon extrajudicial conduct rather than on judicial conduct.” *Young v. Track, Inc.*, 324 F.3d 409, 423 (6th Cir. 2003). The decision whether to recuse is within the sound discretion of the sitting judge. *Green v. Nevers*, 111 F.3d 1295, 1303 (6th Cir. 1997).

The matters raised in the Motion to Recuse relate to events that have taken place in this adversary proceeding and the rulings on motions before this Court.² The fact that Mr. Bilfield's motion practice in this case has been unsuccessful is not a basis for recusal. Accordingly, the Motion to Recuse is denied. The objection filed by Ohio Commerce is sustained.

IT IS SO ORDERED.

²In his motion, Mr. Bilfield references the Ohio Lawyers' Assistance Program. OLAP is a confidential resource available to assist practitioners, not a disciplinary entity. This Court is not aware of Mr. Bilfield availing himself of the resources provided by OLAP, and any interaction with OLAP is not relevant to the issues being decided in this adversary proceeding.