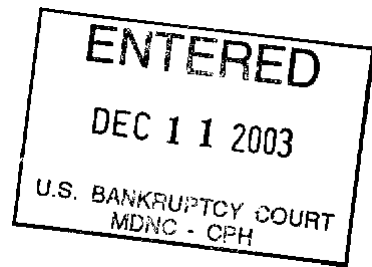


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE: )  
 )  
1103 Norwalk Street, L.L.C., ) Case No. 01-10059C-7G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on December 9, 2003, for hearing upon a "Motion for Judicial Recusal pursuant to 28 U.S.C. § 144 or in the alternative pursuant 28 U.S.C. § 455(a) (b) (1)" filed by Gary I. Terry ("Movant"). Appearing at the hearing were Gary I. Terry in support of the motion and Sara F. sparrow, Chapter 7 Trustee, in opposition to the motion. In the motion which purportedly was filed on behalf of the Debtor, Movant asserts that the undersigned judge should disqualify himself pursuant to 28 U.S.C. § 144 or in the alternative disqualify himself pursuant to 28 U.S.C. § 455(a) or § 455(b) (1). For the reasons that follow, the court has concluded that the **motion** should be denied.

Under 28 U.S.C. § 144, "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." In order to proceed under this provision, a party must file "a timely and

sufficient affidavit" which "shall be accompanied by a certificate of counsel of record stating that it is made in good faith." The Movant in the present case has failed to comply with these requirements. Although the Movant has filed an affidavit, such affidavit is not sufficient for purposes of § 144. While the affidavit is critical of the rulings or opinions which have been made by the court in this case and asserts that such rulings or opinions are contrary to law, there is no statement in the affidavit of "a personal bias or prejudice either against [the Movant] or in favor of any adverse party" as required under 28 U.S.C. § 144, nor does the affidavit contain any statement of facts that would support a belief that bias or prejudice exists in this case. An affidavit "must allege personal bias or prejudice caused by an extrajudicial source other than what the judge has learned or experienced from his participation in the case." Sine v. Local No. 992 Int'l Bhd. of Teamsters, 882 F.2d 913, 914 (4th Cir. 1989). To be sufficient under § 144, an affidavit must aver facts that if true would convince a reasonable person that such personal bias exists and the averments must be more than 'mere conclusions, opinions or rumors" and must be "stated with particularity . . . as to times, places, persons, and circumstances." United States v. Balistrieri, 779 F.2d 1191, 1199 (7th Cir. 1985). Apart from not satisfying these requirements regarding content, Movant's affidavit is not accompanied by a

certificate from the counsel of record for the Debtor in this case stating that the affidavit submitted by the Movant is made in good faith. The affidavit submitted by the Movant therefore is insufficient and denial of the motion to recuse pursuant to 28 U.S.C. § 144 is appropriate. See Morrison v. United States, 432 F.2d 1227, 1229 (5th Cir. 1970).

Under 28 U.S.C. § 455(a), a judge is required to recuse himself or herself in any proceeding where the judge's impartiality may be reasonably questioned, even if there is no actual bias. 28 U.S.C. § 455(a). In deciding whether recusal is appropriate, an objective standard should be applied, asking whether the "judge's impartiality might be questioned by a reasonable, well-informed observer" looking at all the facts and circumstances. United States v. DeTemple, 162 F.3d 279, 286 (4th Cir. 1988). "[T]he hypothetical reasonable observer is not the judge himself or a judicial colleague but a person outside the judicial system." Id. at 287. The reasonable outside observer is not, however, 'a person unduly suspicious or concerned about a trivial risk that a judge may be biased," since a presiding judge is not required to recuse himself solely because of "unsupported, irrational or highly tenuous speculation." Id. See also United States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003). Recusal is required under 28 U.S.C. § 455(a) where a reasonable person would have reason to question whether the judge "relied on knowledge acquired outside

such proceedings" or "displayed deep-seated and unequivocal antagonism that would render fair judgment impossible". Liteky v. United States, 510 U.S. 540, 556, 114 S.Ct. 1147, 1158, 127 L.Ed.2d 474 (1994). In the present case, the only evidence submitted in support of the motion is the affidavit of the Movant. Having carefully reviewed the assertions contained in the affidavit, most of which pertain to rulings by the court in this case, the court is satisfied that a reasonable, well-informed observer, looking at all the facts and circumstances involved in this case, including the rulings which have been made by the court, would not question the impartiality of the court and that recusal is not required pursuant to 28 U.S.C. § 455(a).

Under 28 U.S.C. § 455(b) (1), a judge is required to recuse himself or herself where the judge has an actual personal bias or prejudice concerning a party. 28 U.S.C. § 455(b) (1). The standard for determining whether recusal is required under § 455(b) (1) is "whether a reasonable person would be convinced the judge was biased." Brokaw v. Mercer County, 235 F.3d 1000, 1025 (7th Cir. 2000). To succeed on a § 455(b) (1) motion, the moving party must demonstrate compelling evidence of personal animosity or malice. *Id.* As with § 144, § 455(b) (1) requires the moving party to show the judge holds a personal bias or prejudice which is caused by an extrajudicial source other than what the judge has learned or experienced from his participation in the case. See

Liteky at 548-52, 114 S.Ct. at 1153-56, 127 L.Ed.2d 474 (1994). "[J]udicial rulings alone **almost never constitute** a valid basis for a bias or partiality motion ." Id. at 555, 114 S.Ct. at 1157. Where a motion for recusal is based on the rulings in a case, in order for recusal to be required there **must** be evidence such that a reasonable person would believe that the judge either "relied on knowledge acquired outside such proceedings" or "displayed deep-seated and unequivocal antagonism that would render fair judgment impossible". Id. at 556, 114 S.Ct. at 1158. Debtor's affidavit in support of the motion to recuse is based almost entirely upon rulings which have been made by the court which the Movant disagrees with and which the Movant characterizes as being contrary to law. Having carefully reviewed all of the rulings referred to in the affidavit, the court is satisfied that a reasonable person, upon reviewing such rulings, would not believe that this court relied on knowledge acquired outside this proceeding or conclude that the rulings display deep-seated and unequivocal antagonism that would render fair judgment impossible. Having carefully reviewed the affidavit, the court is satisfied that the Movant has not shown any grounds for recusal under § 544(b)(1).

NOW, therefore, the "Motion for Judicial Recusal pursuant to 28 U.S.C. § 144 or in the alternative pursuant 28 U.S.C. § 455(a)(b)(1)" filed by Gary I. Terry shall be and the **same** hereby

is overruled and denied.

This 10 day of December, 2003.

**William L. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge