

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

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|---------------------------|---|-------------------------|
| BAC HOME LOANS SERVICING, |) | |
| FKA COUNTRYWIDE HOME |) | C.A. No. 09L-12-117-PLA |
| LOANS SERVICING LP |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| ALICIA A. BROOKS, |) | |
| |) | |
| Defendant. |) | |

**ON DEFENDANT’S MOTION FOR RECUSAL
DENIED**

Submitted: January 20, 2012
Decided: February 2, 2012

Before this Court is a Motion to Recuse this Judge from presiding over any further matters in this lawsuit based solely upon a series of rulings adverse to the defendant in this matter. The defendant, who is acting *pro se* in this litigation, contends that this Court’s pretrial rulings, together with the nature of the Court’s interaction with her, demonstrate the Court’s personal bias and prejudice towards her and require the removal of this Judge from this case. Since the Defendant’s claim of prejudice or bias on the part of this Judge is wholly unfounded and unsupported, the Motion to Recuse is hereby denied.

PROCEDURAL BACKGROUND

This is a mortgage foreclosure action brought by Plaintiff BAC Home Loans Servicing, f/k/a Countrywide Home Loans Servicing, LP (“BAC Home Loans”) to collect on a mortgage taken by the defendant, Alicia A. Brooks (“Brooks”) on residential property in New Castle, Delaware. A one-day bench trial was originally scheduled for February 6, 2012. The trial was continued, however, due to the Court’s error in setting the dispositive motion deadline too close to the trial date, and the plaintiff’s filing of a motion for summary judgment.

The continuance of the trial set in motion a series of events leading to the present Motion to Recuse. The defendant, believing that counsel for Plaintiff had orchestrated the continuance without her knowledge or consent, alleges that she wrote a letter to this Judge and to the President Judge of the Superior Court objecting to the continuance on January 3, 2012.¹ On January 11, 2012, the defendant filed a motion to extend the time for filing answers, claims, counterclaims, and a motion to dismiss.² According to the Trial Scheduling Order in this matter, the deadline for filing dispositive motions in this case was January 6,

¹ See Defendant’s Motion Requesting Recusal at ¶ 5. A copy of this letter cannot be found in the Court’s record of this case.

² Brooks originally attempted to file the motion by sending it directly to Chambers on January 9, 2012.

2012.³ The Trial Scheduling Order states in bold font that the deadline for dispositive motions is not subject to extension.⁴

The defendant's motion for an extension of time was rejected by the Prothonotary's Office because it exceeded the page limitations for dispositive motions set forth in the Superior Court Civil Case Management Plan.⁵ After the Court's secretary received several telephone calls complaining about the rejections of her non-compliant proceedings, the Court subsequently issued an Order expressly authorizing the Prothonotary's Office to reject any pleadings from the defendant that are not in compliance with the Superior Court Civil Rules and the Superior Court Civil Case Management Plan. In particular, the Order noted that "the page limitations for motions and responses that apply to attorneys apply equally to *pro se* litigants" and directed the Prothonotary not to accept "any filings that exceed the page limit."⁶ In essence, it was hardly fair to allow a *pro se* defendant to file excessively long motions while limiting counsel's ability to

³ *BAC Home Loans v. Brooks*, C.A. No. 09L-12-117-PLA (Del. Super. Oct. 24, 2011) (ORDER) ("Trial Scheduling Order").

⁴ *Id.*

⁵ See Super. Ct. Civ. R. 107 and Superior Court New Castle County Civil Case Management Plan, §IV.A.2.c. Superior Court Civil Rule 107 requires parties to file briefs with the Prothonotary in the county where the case is pending. The Prothonotary will then deliver the original copy of each brief to the Judge or Judges hearing the case. Rule 107 also permits parties a maximum of thirty-five pages for an opening brief. However, the Superior Court Civil Case Management Plan limits parties to a four-page brief for dispositive motions, unless the parties have sought leave of the Court to bypass the four-page requirement. *Brooks* did not seek leave of the Court to bypass the four-page requirement in filing her motion.

⁶ *BAC Home Loans v. Brooks*, C.A. No. 09L-12-117-PLA (Del. Super. Jan. 12, 2012) (ORDER) ("the January 12 Order").

respond in the same manner. The Order further directed that filings made directly to Chambers, rather than to the Prothonotary, would be deemed not to have been made.⁷

The defendant then filed a motion seeking certification of an interlocutory appeal challenging the Court's decision not to consider her motion for an extension of time. The Court denied certification on January 18, 2012. In its Order denying certification, the Court explained that the defendant's motion did not meet the stringent standards for granting certification of an interlocutory appeal under Delaware Supreme Court Rule 42 because the defendant did not show that the Court's Order determined a substantial issue or legal right.⁸ The Interlocutory Appeal Order went on to address the defendant's claims that the Court had "neglected" to deliver her pleadings to the Prothonotary's office, "inscrutably" ruled that her pleadings were time-barred and thereby left her "defenseless" in a complex civil suit. The Court described the recent history of the defendant's interaction with the Court and noted that the defendant and an unidentified associate had repeatedly "thwarted the Court's efforts to manage this litigation in an orderly and effective manner" by refusing to follow the Court's filing rules and stonewalling efforts by the Court to communicate with the defendant regarding

⁷ *Id.*

⁸ *BAC Home Loans v. Brooks*, C.A. No. 09L-12-117-PLA (Del. Super. Jan. 18, 2012) (ORDER) ("the Interlocutory Appeal Order").

scheduling matters.⁹ The Court further surmised, based on the fact that the defendant had filed an interlocutory appeal, that the defendant was likely receiving legal assistance from someone, even though no one had entered an appearance as counsel in this matter.¹⁰ The defendant has now filed this Motion Requesting Recusal.

CONTENTIONS OF THE PARTIES

Counsel for Plaintiff has not taken a position on the defendant's motion for recusal. In her motion, the defendant takes exception to the Court's recent pretrial rulings denying her motion for an extension of time and denying certification of an interlocutory appeal, arguing that such rulings could only be the result of personal prejudice or improper conduct on the part of the Judge. The defendant presents herself as the victim of a conspiracy between counsel for Plaintiff and this Court. She alleges, *inter alia*, that the Court rejected various motions that she filed in this litigation, culminating in the rejection of her motion to extend time as untimely. She further alleges, without supporting evidence, that the continuance of the trial date could only be the result of improper communication between counsel for BAC Home Loans and the Court.¹¹ Finally, the defendant contends that the Court's

⁹ See *Interlocutory Appeal Order* at *8.

¹⁰ *Id.* The Court's suspicion is the result of an educated guess. The Court finds it highly unlikely that a person unskilled in the law, as Brooks claims to be in her various supplications to the Court, would be familiar with the concept of an interlocutory appeal.

¹¹ The Court has never once participated in an *ex parte* communication with BAC's lawyer. All communications regarding scheduling have been with the Court's secretary.

order denying certification of an interlocutory appeal demonstrates the Court's prejudice against her. The defendant denies the existence of a male associate who may be providing her with advice, then argues that if the Court's secretary did overhear a conversation with such an individual, the Court violated the attorney-client privilege to use that knowledge and based its rulings on improperly acquired "personal knowledge of disputed evidentiary facts concerning the [underlying] conduct."¹² Furthermore, the defendant complains that the tone of the Court's Orders are "condescending, scolding, and conspiratorial in effect clearly illustrating antipathy toward defendant that [militates] against required judicial impartiality."¹³

DISCUSSION

Judicial impartiality "is a fundamental principle of the administration of justice."¹⁴ To that end, well-settled Delaware law requires a judicial officer to recuse herself if "there is a reasonable basis to question her impartiality."¹⁵ The Delaware Judges' Code of Judicial Conduct sets forth a non-exhaustive list of situations where a judge "should" disqualify himself or herself, including where "[t]he judge has a personal bias or prejudice concerning a party, or personal

¹² Defendant's Motion Requesting Recusal ¶ 9.

¹³ Defendant's Motion Requesting Recusal at ¶ 13.

¹⁴ *Los v. Los*, 595 A.2d 381, 383 (Del. 1991).

¹⁵ *Edelstein v. Goldstein*, 2011 WL 2791270, *3 (Del. Super. Jul. 13, 2011).

knowledge of disputed evidentiary facts concerning the proceeding.”¹⁶ The Delaware Supreme Court has held that alleged personal bias or prejudice against the party seeking recusal is not a basis for per se or automatic disqualification.¹⁷ Disqualification is only required where the alleged bias or prejudice of the judge stems from “an extrajudicial source and result[s] in an opinion on the merits on some basis other than what the judge learned from his participation in the case.”¹⁸

The Delaware Supreme Court has established the following two-part test for determining whether a judge should recuse himself or herself where a party has alleged personal bias or prejudice under Rule 2.11(A)(1):

First, the judge must, as a matter of subjective belief, be satisfied that she or he can proceed to hear the cause free of bias or prejudice concerning the party. Second, even if the judge believes that she or he has no bias, situations may arise where, actual bias aside, there is the appearance of bias sufficient to cast doubt as to the judge’s impartiality.¹⁹

In the *Los* case, applying the above test, the Delaware Supreme Court found that a Family Court judge had acted properly in declining to recuse himself from a contentious divorce proceeding even though one of the parties had named him, as well as his ex-wife, her attorney, and the Attorney General of Delaware, as defendants in a lawsuit in the United States District Court for the District of Delaware. The Supreme Court held that the Family Court judge’s refusal to recuse

¹⁶ Delaware Judges’ Code of Judicial Conduct Rule 2.11(A)(1)(2008).

¹⁷ *Los*, 595 A.2d at 384.

¹⁸ *Id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)) (internal quotation marks omitted).

¹⁹ *Los*, 595 A.2d at 384-85.

himself was supported “by his subjective belief that he could be impartial and there was no requirement that he disqualify himself where he was sued in his judicial capacity in an action instituted during the course of the proceedings before him.”²⁰

(1) Subjective Analysis

Under the first prong of the *Los* test, the Court can unequivocally state that it has no feelings of bias, prejudice, or ill-will against the defendant personally, and that nothing the defendant has done during the course of the litigation gives rise to any such feelings. The Judge has never met the defendant and has no reason to harbor personal animosity towards her. The defendant alleges, in conclusory fashion, that the continuance of the trial date in this matter and subsequent adverse pretrial rulings reveal the Court’s personal prejudice against her, or alternatively, show that the Court has made decisions based on personal knowledge of disputed evidentiary facts. However, the defendant provides no evidence of personal animus on the part of the Court, of conspiracy with counsel for the plaintiff, or of improper knowledge obtained by the Court and used in making its rulings. Since the defendant has failed to identify any specific evidence of actual bias or prejudice, or of personal knowledge of disputed evidentiary matters in the proceeding, and the Court is absolutely satisfied that it is free of bias or prejudice,

²⁰ *Id.* at 385.

and that it can be fair and neutral, this first part of the *Los* analysis does not require disqualification.

(2) Objective Analysis

Under the second prong of the recusal inquiry under *Los*, the Court cannot find an objective appearance of bias that would require this Judge's recusal from the case. The Delaware Supreme Court has held that "the mere fact that a Judge has made some pretrial rulings against a given defendant is not in itself sufficient to require his disqualification."²¹ Furthermore, the Supreme Court recognized that "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge."²²

The Delaware Supreme Court addressed similar issues to those raised by the present motion in *Gattis v. State*, in which a defendant convicted of first-degree murder and sentenced to death sought the recusal of this Judge based in part upon the Court's denial of motions for the extension of time and of the page limitations for a postconviction motion brief. The defendant in *Gattis* argued that he was

²¹ *Gattis v. State*, 955 A.2d 1276, 1284 (Del. 2008); *see also Stiegler v. State*, 277 A.2d 662, 668 (Del. 1971); *accord Weber v. State*, 547 A.2d 948, 952 (Del. 1988) ("[T]he bias envisioned by [the Delaware Code of Judicial Conduct] is not created merely because the trial judge has learned facts or made adverse rulings during the course of a trial."); *Jackson v. State*, 684 A.2d 745, 753 (Del. 1996) ("To require a judge to disqualify himself or herself from further participation in a case where the judge acts as a gatekeeper for the admissibility of evidence would impose an unreasonable and totally impracticable standard."). The Court notes that the motion for recusal in the *Gattis* case concerned this Judge.

²² *Gattis*, 955 A.2d at 1284 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

harmful by the Judge's bias against his defense attorney.²³ The Delaware Supreme Court rejected the defendant's argument and affirmed this Judge's decision not to recuse herself, declaring:

Judicial rulings alone, such as the denial of a motion to recuse or disqualify or of a request to increase the time limitation on the briefing schedule or the length of the briefs, are insufficient bases for a recusal. To an objective observer, these particular rulings would carry little weight.²⁴

The same reasoning applies to the present motion for recusal. The defendant's motion for recusal rests upon (1) the Court's denial of her motion to extend time and page limitations for briefing; (2) the Court's Order stating that the Court would not accept filings not in conformity with the guidelines set forth in the Superior Court Civil Case Management Plan; (3) the Court's refusal to certify an interlocutory appeal of those decisions; and finally, (4) the "scolding" and "condescending" tone of the Court's orders, which the defendant contend reflect the Court's contempt for her.

To an objective observer, none of these grounds would give the impression of personal prejudice or bias on the part of the Court against her. From the standpoint of the objective observer, the Court's rulings on pretrial matters such as page limitations for dispositive motions would likely carry little significance. Furthermore, an objective observer could readily conclude that the Court's rulings

²³ *Id.* at 1285.

²⁴ *Id.*

against the defendant are the result of the Court's interest in enforcing its procedural requirements and managing this litigation in a fair and efficient manner, rather than the result of extrajudicial prejudice. Finally, the defendant's claims that the Court has dealt with her in a harsh and possibly unfair manner are without merit. The defendant has repeatedly attempted to use her status as a *pro se* litigant to circumvent the rules of this Court and has been rude and disrespectful to the Court's staff in doing so.²⁵ Viewed objectively, it is apparent that the Court's orders are not the product of personal animosity towards the defendant but the result of the Court's efforts to enforce its rules – the same rules to which all litigants appearing in this Court are subjected – against an uncooperative litigant. As such, the Court concludes that there is no objective basis for a finding of improper bias in this litigation.

As the Supreme Court suggested in the *Los* case, there is a compelling policy reason for a judge not to disqualify herself at the behest of a party who claims an appearance of prejudice, without a factual or reasonable objective basis to do so. In the absence of genuine bias, a litigant should not be permitted to “shop” for a judge of his or her choosing.²⁶ If this defendant seriously believes

²⁵ The defendant has telephoned this Court on several occasions and has accused the Court's secretary and case manager of being impostors. Moreover, during these telephone conversations, the Court's secretary was exposed to offensive and foul language from a man in the background while the defendant was speaking. The Court instructed its secretary that she was not to have any further conversations with the defendant if the abusive language persisted.

²⁶ *Los*, 595 A.2d at 385.

that any judge would have handled her case differently or provided her with the accommodations that she has requested, she will be hard-pressed to find such an individual. Furthermore, if unfavorable rulings were a basis for recusal, as claimed here, then virtually every litigant in this Court could request a new judge every time they were displeased with a ruling. In short, the orderly administration of justice cannot be subject to a party's self-created, unsupported claims of prejudice or the appearance of bias.

CONCLUSION

Applying the two-part *Los* analysis, the Court can find no reason for recusal in this case. The Court is absolutely convinced that it can continue to hear the proceedings in this case without bias or prejudice against the defendant. Moreover, the Court is satisfied that there is no basis from which a reasonable observer could conclude that the Court is biased or prejudiced against the defendant. For all of the foregoing reasons, the Motion to Recuse is therefore DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Lisa R. Hatfield, Esquire
Alicia A. Brooks