UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	CHAPTER 11
	:	(Jointly Administered)
NEW CENTURY TRS HOLDINGS, INC, *et al.*[1]	:	Case No. 07-10416 (KJC)
Debtors	:	(Re: D.I. 11043, 11127)
HELEN GALOPE,	:	Adv. Pro. No 12-51000 (KJC)
Plaintiff,	:	
v.	:	
NEW CENTURY TRS HOLDINGS, INC, *et al.*	:	
Defendants	:	

MEMORANDUM ORDER DENYING MOTION FOR RECUSAL AND DISCLOSURE MOTION

On December 27, 2012, Helen Galope filed the ""Answer to AP Response Motion to Recuse" (Main Case D.I. 11043), which included, among other things, a request that I recuse myself from the "proceedings of [her] case."(the "Motion for Recusal").[2] The Trustee for the New Century Liquidating Trust filed an objection to the Motion for Recusal (D.I. 11050).[3] On

[1] The Court approved joint administration of the chapter 11 cases of New Century TRS Holdings, Inc. and fourteen related entities by Order dated April 3, 2007 (D.I. 52). New Century Warehouse Corporation, a California corporation, filed a chapter 11 bankruptcy petition on August 3, 2007. The jointly administered debtors and New Century Warehouse Corporation are referred to jointly herein as the "Debtors."

[2] Ms. Galope has a number of matters before the Court, including (without limitation) the Motion for Removal of Trustee (D.I. 10833), the Second Motion for Reconsideration (D.I. 10917), the Motion to Reopen Adversary Proceeding No. 11-53893, and Adversary Proceeding No. 12-51000.

[3] On November 20, 2009, the Court entered an Order confirming the Modified Second Amended Joint Chapter 11 Plan of Liquidation (the "Modified Plan") (D.I. 9905). The Modified Plan adopted, ratified and confirmed the New Century Liquidating Trust Agreement, dated as of August 1, 2008, which created the Trust and appointed Alan M. Jacobs as Liquidating Trustee of New Century Liquidating Trust and Plan Administrator of New Century Warehouse Corporation.

April 2, 2013, Ms. Galope filed a motion to demand further disclosures (the "Disclosure Motion") (D.I. 11127) in connection with the Motion for Recusal. On April 5, 2013, the Trustee filed an objection to the Disclosure Motion (D.I. 11130).

An evidentiary hearing to consider the Motion for Recusal was held on April 10, 2013, at which Ms. Galope appeared and offered evidence and argument in support of her motions. For the reasons stated on the record at the April 10, 2013 hearing and for the reasons stated herein, both the Motion for Recusal and the Disclosure Motion will be denied.[4]

Legal Standard

28 U.S.C. §455(a) states that:

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

"The purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Da Silva Moore v. Publicis Groupe*, 868 F.Supp.2d 137, 148 (S.D.N.Y. 2012).

"The test for recusal under § 455(a) is whether a reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned. *United States v. Wecht*, 484 F.3d 194, 213 (3d Cir. 2007) quoting *In re Kensington Int'l Ltd.*, 353 F.3d 211, 220 (3d Cir.2003). *See also Moore*, 868 F.Supp.2d at 149 ("In determining whether Section 455(a) requires recusal, the appropriate standard is objective reasonableness - - whether an objective, disinterested observer, fully informed of the underlying facts, [would] entertain

[4]My reasoning for denial of the Disclosure Motion was sufficiently set forth on the record at the April 10, 2013 evidentiary hearing, so I do not repeat it here.

significant doubt that justice would be done absent recusal.").

"To establish a basis for recusal, movants must overcome a presumption of impartiality, and the burden for doing so it substantial." *Moore*, 868 F.Supp.2d at 150 (internal quotation and citation omitted). *See also United States v. Denton*, 434 F.3d 1104, 1111 (8th Cir. 2006) ("A judge is presumed to be impartial, and the party seeking disqualification bears the substantial burden of proving otherwise.").

"[A] judge has an affirmative duty . . . not to disqualify himself unnecessarily, particularly 'where the request for disqualification was not made at the threshold of the litigation and the judge has acquired a valuable background of experience.'" *Nat'l Auto Brokers Corp. v. Gen. Motors Corp.,* 572 F.2d 953, 958 (2d Cir. 1978) *cert. denied* 439 U.S. 1072 (1979). In *Moore*, the District Court for the Southern District of New York further noted:

> Moreover, the public interest mandates that judges not be intimidated out of an abundance of caution into granting disqualification motions: "A trial judge must be free to make rulings on the merits without the apprehension that if he makes a disproportionate number in favor of one litigant, he may create the [appearance] of bias," and "a timid judge, like a biased judge, is intrinsically a lawless judge."

Moore, 868 F.Supp.2d at 151 quoting *Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. Int'l Union,* 332 F.Supp.2d 667, 670 (S.D.N.Y. 2004).

Discussion

Ms. Galope argues that I should recuse myself from her proceedings for the following reasons:

(a) Failure to grant judicial notice or state its position on the Wright v. Owens Corning case after more than 8 months and repeated requests for its notice,

(b) failure to allow due process rights to discovery on the fraudulent transfers of the loans

(c) failure to act on mere requests for hearing dates

(d) failure to decide favorably for the borrower-creditor-litigants

(e) failure to grant or facilitate the creation of a borrowers committee to streamline the process of claims and provide representation for the borrowers-creditors-litigants when many repeated verbal requests and discussions have been made at hearings

(f) Permitting the lion's share of the funds to go to the Unsecured Creditors being granted senior and secured claims granting 100% share to the dollar - the same banks who now purport to own our mortgages despite repeated calls to evidence their legal standing. Many robo-signed documents proliferate the county recordings that were instrumental in many foreclosures of homes

(g) Failure to allow for trials to proceed despite the preponderance of evidence against New Century

(h) Permitting a Liquidating Plan that is structured where the Liquidating Trustee is beholden to the Unsecured Creditors' Committee, (being one and the same as the Plan Advisory Committee as stated in the Liquidating Plan) when Rules of Federal Bankruptcy require the Liquidating Trustee to be a disinterested party,

(i) Permitting intertwined representations by Counsels

(j) Failure to judge as inappropriate the Trust Counsel Indelicato['s] intertwined representations as Counsels for the Debtors and the Unsecured Creditors Committee and the Trustee. Clearly reflecting the overt suggestion in his February 2002 Article that Originator and Unsecured Creditors Committee as beneficiaries of the Special Purpose Vehicles can be disguised to evade the scrutiny of the bankruptcy Courts.

. . .

The Trust Counsels awarded themselves with $3 million and $7 million in Administrative and Professional fees in December 2011 on top of $50+ Million in professional fees that year

The Unsecured Creditors were awarded the lion's share of the $131 Million pot.

The Debtor New Century continue[s] to be in operation in California

(k) Engaging in Ex-Parte Communication with Counsels as evidenced by many photographs that flood the internet from symposia, seminars, and lobster dinners.

(l) Failure to disclose former affiliations with Financial Institutions from prior representations in Court, and

(m) Failure to disclose conflicting interest in Mortgage Backed Securities[5]

Motion to Recuse, pp. 10 - 12.

The foregoing allegations can be grouped into the following categories: (i) allegations based upon prior rulings and case administration decisions, (ii) attendance at "symposia, seminars and lobster dinners" at which Trustee's counsel was present and engaging in *ex parte* communications at such events, (iii) failure to disclose financial interests in lenders or mortgage backed securities, and (iv) "allowing New Century to continue to be in operation in California." At the evidentiary hearing, Ms. Galope offered no discernable legal basis or factual support for the allegations in categories (iii) and (iv). The allegations in (i) and (ii) are discussed in more detail below.

(i) Prior rulings and decisions regarding case administration

"Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.... [They] can only in the rarest circumstances evidence the degree of favoritism or antagonism required ... when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. *Wecht,* 484 F.3d at 218 quoting *United States v. Liteky*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.3d.2d 474 (1994).

In *Liteky*, the United States Supreme Court considered the "extrajudicial source doctrine," which developed from a 1966 decision *United States v. Grinnell Corp*., 384 U.S. 563, 583, 86 S.Ct. 1698, 16 L.Ed.2d 778 stating that "the alleged bias and prejudice to be

[5] The Motion for Recusal, as is apparent, raises issues not directly related to any conduct of the Court, but of the Liquidating Trustee and his counsel. I address, here, only that relief directed to recusal of the Court.

disqualifying [under §144] must stem from an extrajudicial source." *Id.* This means a source outside the judicial proceeding at hand. The *Liteky* Court held that the "extrajudicial source" doctrine applies to §455(a), but limited it to a *factor* to be considered. *Liteky*, 510 U.S. at 554-55.

The *Liteky* Court determined that the grounds alleged for recusal were inadequate because:

> They consist of judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses. All occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquire outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible.

Id. at 556. Similarly, a number of the grounds alleged by Ms. Galope are based upon prior decisions of this Court (such as plan confirmation, allowance of claims, and approval of fee applications), or case administration efforts (such as discovery rulings, scheduling hearings, or *not* immediately scheduling hearings with respect to a particular motion).[6] The allegations do not provide any basis for recusal.

(ii) Attendance at symposia, seminars and lobster dinners

Generally, a judge's participation on an educational panel with counsel is not a basis for recusal, for sound policy reasons. *Moore*, 868 F.Supp.2d at 160 (citing cases). Cannon 4 of the Code of Conduct for United States Judges expressly provides that a "judge may engage in extrajudicial activities that are consistent with the obligations of judicial office" and "[a] judge

[6]Ms. Galope complains that the Court has not scheduled hearings as and when every motion is filed. Ms. Galope - - and several other pro se litigants - - have filed repetitive motions in an apparent effort to air identical or similar arguments as often as possible. I concluded that this process was time consuming, inefficient and caused unnecessary expenses, and was an inappropriate use of the Court's time. I, therefore, ordered that when such motions were filed and responses submitted, I would then decide when a hearing should be held.

may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects."

In Advisory Opinion No. 93 (Extrajudicial Activities Related to the Law), the Committee on Codes of Conduct states that "a judge's participation in law-related activities is encouraged because '[a]s a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute" to such endeavors.'" (quoting Commentary to Canon 4).

However, in the *School Asbestos Litigation* case, the Third Circuit held that a judge must recuse himself from presiding over complicated asbestos litigation after attending a scientific conference about the danger of asbestos. The Third Circuit decided that a reasonable person might question the judge's ability to remain impartial based on attendance at that particular conference, noting:

> [The judge] attended a predominantly pro-plaintiff conference on a key merits issue; the conference was indirectly sponsored by the plaintiffs, largely with funding that [the judge] himself had approved; and his expenses were largely defrayed by the conference sponsors with those same court-approved funds. Moreover, he was, in his own words, exposed to a Hollywood-style "pre-screening" of the plaintiff's case: thirteen of the eighteen expert witnesses the plaintiffs were intending to call gave presentations very similar to what they expected to say at trial. We need not decide whether any of these facts alone would have required disqualification, for, . . . we believe that together they create an appearance of partiality that mandates disqualification.

In re School Asbestos Litig., 977 F.2d 764, 782 (3d Cir. 1992). The New York judge in *Moore* distinguished his participation at conferences from *School Asbestos Litigation*, writing:

> [T]he conference were not one-sided, but concerned ediscovery issues, including search methods in general. . . while [the software company] was one of thirty-nine sponsors and one of 186 exhibitors contributing to [the conference] revenue. . ., I had no part in approving the sponsors or exhibitors . . . and received no expense reimbursement or teaching fees from [the software company or

> conference], as opposed to those companies that sponsored the panel on which I spoke. . . . [also], there was no "pre-screening" of [the defendant's] case or ediscovery protocol; the panel discussions only covered the subject of computer-assisted review in general.

Moore, 868 F.Supp.2d at 162.

I have attended or have spoken at a number of educational programs, but those programs are not one-sided presentations on issues related directly to New Century. I have no input into choosing fellow panelists or sponsors at such programs. The bankruptcy educational programs that I have attended provide no basis for recusal under 28 U.S.C. §455.

Ms. Galope also alleges that my participation on panels that include bankruptcy attorneys, including - - on occasion - - counsel for the Trustee, are improper and allow for *ex parte* communications. Canon 3(A)(4) provides that "a judge should not initiate, permit or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers." In *Moore*, the judge noted that, while he participated in programs at which opposing counsel was present, he had no *ex parte* communications about the pending matter and, therefore, had nothing to disclose to the plaintiffs. *Moore*, 868 F.Supp.2d at 160. The same is true here. Although I may interact with counsel in a variety of professional settings, I have not had any *ex parte* communications about pending cases with counsel.[7] Judges are not required to recuse themselves when they have a casual, professional relationship with an attorney, victim, witness or litigant appearing before them in court. *United States v. Adams*, No. 08-CR-0242, 2009 WL 62170, *3 (M.D.Pa. Jan.8, 2009) quoting *United States v. Olis*, 571 F.Supp.2d 777, 786

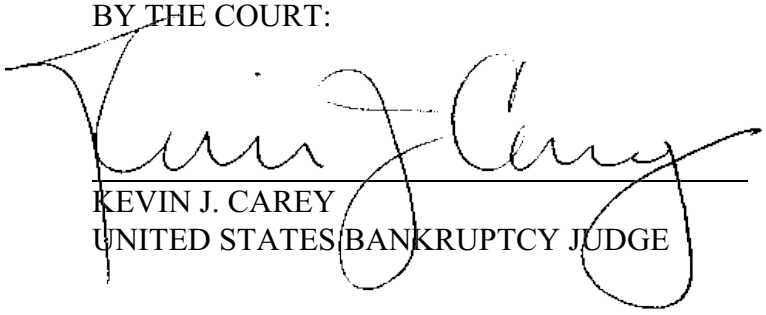
[7] One exhibit (Ex. 48) offered by Ms. Galope includes a photograph depicting Mr. Indelicato, me and others at a June 2012 award ceremony, at which Mr. Indelicato and I each received unrelated awards. I received the Hon. Conrad B. Duberstein Memorial Award bestowed by the New York Institute of Credit ("NYIC"), a group from whom I have accepted several invitations to participate in educational programs. I am not a member of NYIC, nor did I play any part in the award process concerning Mr. Indelicato.

(S.D.Tex. 2008).

Conclusion

For the reasons set forth above and at the hearing on April 10, 2013, it is hereby ORDERED that the Motion for Recusal is **DENIED** and the Disclosure Motion is **DENIED**.

BY THE COURT:



KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: April 15, 2013
cc: Alan M. Root, Esquire[8]

[8]Counsel shall serve a copy of this Memorandum Order upon all interested parties and file a Certificate of Service with the Court.