

FILED

April 13, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90086

MEMORANDUM

Complainant, a bankruptcy creditor, has filed a complaint alleging that the subject United States Bankruptcy Judge treated him in a “demonstrably egregious, hostile, and retaliatory” manner and “used his office to render special favors to [a] select few” in the underlying bankruptcy and adversary proceedings.

Hearing in bankruptcy proceeding

The court held a Plan Confirmation Hearing during which complainant’s Proof of Claim and his objections to the Debtor’s Confirmation Plan were addressed. Complainant alleges that the judge “ridiculed [me] for writing him a letter that debtors’ bankruptcy was a sham.” He further protests that the judge “berated me without reason” based on the Debtor’s claim that “[I] didn’t cooperate in discovery” whereas, if the judge “had cared to be impartial,” he would have reviewed the case record “that clearly showed that I had indeed produced the documents requested by Debtor’s counsel.” Referring to various remarks made by the judge, complainant claims that he “became terrified” after being “berated,” “rebuked,” “abused,” and “harassed” during the hearing.

A review of the audio-recording and transcript of the hearing indicates that the judge attempted to clarify complainant’s responses to his initial questions by asking further questions. When complainant objected that he

felt “personally belittled” by the intensive questioning, the judge tried to reassure complainant that the questions were not intended in any way to “belittle” him, rather the judge was trying to understand what outcomes he was seeking.

Regardless, a review of the audio-recording shows that nothing in the judge’s demeanor, inquiries, and remarks appears consistent with complainant’s claim that he was “ridiculed,” “berated,” “rebuked,” “abused,” and “harassed”. To the extent, if any, that the judge was stern or occasionally displayed frustration, the Supreme Court of the United States has held that judicial bias is not established by a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge’s ordinary efforts at courtroom administration—even a stern and short-tempered judge’s ordinary efforts at courtroom administration—remain immune.” *Liteky v. U.S.*, 510 U.S. 540, 555-556 (1994).

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of bias and hostility are insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Hearing in adversary proceeding

The judge held a hearing in the adversary proceeding on a motion for approval of a settlement agreement between complainant and certain defendants. Complainant submits that the judge’s “outright abusive” conduct during that hearing, including finding that complainant lacked standing to cross-examine the Liquidating Trustee, “confirmed for [me] for the first time that there was indeed a concerted effort by [the judge] to disrupt

and destroy [my] claims and deny [me] my day in court and deprive [me] of [my] constitutional rights of a fair judiciary.”

A review of the audio-recording and transcript of the hearing shows that when complainant told the court that he felt he had no choice but to agree to settle his claims, the judge explained that the financial and other concerns complainant described did not constitute “legal duress” and, if the court approved the agreement, complainant would be bound by it. Complainant concurred. The judge asked complainant if he had any further questions, and complainant indicated that he had none. The judge approved the settlement agreement.

The discussion between complainant and the judge lasted less than four minutes. Nothing in the record supports complainant’s claims of “abuse,” “disruption” of his claims, or denial of his due process rights.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

Biased rulings and conduct in both proceedings

Complainant recounts that he filed numerous motions and notices, and wrote directly to the judge, alleging that the Debtor’s bankruptcy petition was fraudulent, and the defendants and defense counsel in the adversary proceeding had knowingly filed “fake pleadings” for the express purpose of misleading the court. Complainant complains that the judge “labeled [my] notice of a fake bankruptcy petition as *alerting the court*,” treated the judicial notice “as [my] having a spat with Debtor’s counsel,” and “disregarded” the motions and letter. He contends that the judge intentionally “covered

up” the allegations because they were “adverse to Debtor’s bankruptcy, Debtor’s counsel, the Liquidating Trustee, and the chief restructuring officer,” and thereby showed “deep favoritism for certain parties.”

Complainant also complains that the judge relied on the “false pleadings and actions” of defense counsel in deciding to deny complainant leave to file an amended complaint in the adversary proceeding. In addition, he asserts the judge lacked jurisdiction “to release non-parties” under the settlement agreement. Apparently referring to a pending motion to expunge from the docket filings that contain defamatory statements against the Liquidating Trust Releasees, complainant—who signed the agreed motion—speculates that “[the judge] and his attorney friends” are attempting to “collectively destroy . . . the evidence I was going to use in my trial against the remaining 10 defendants.”

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of “deep seated favoritism” appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

Intentional delay

Complainant complains that the judge has never ruled on his October 2019 objections to the defendants’ motions to dismiss his second amended complaint in the adversary proceeding. He submits that the delay “show[ed] deep favoritism to [the law firm representing the Liquidating Trustee]” and “made [me] weak, helpless and scared of [the judge] . . . [who] was aware and understood well that I had lost my life savings on the fraud perpetrated by the defendants, [and] used that as a weapon . . . to force [me] into submission.”

To the extent that complainant is complaining that the judge did not rule on his October 2019 objections before the settlement agreement was approved in August 2020, a review of the docket indicates that any “delay” was likely due to complainant’s filing multiple motions between November 2019 and June 2020 seeking leave to file a further amended complaint. Regardless, complainant’s conclusory assertion that the judge intentionally delayed ruling on his objections “as a weapon to force [me] into submission” lacks sufficient evidence to raise an inference that misconduct has occurred, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

April 13, 2021