UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

PAUL S. HUDSON, Case No. 00-11683

Debtor(s).

WASHINGTON 1993, INC.,

Plaintiff(s),

-against- Adversary No. 00-90091

PAUL S. HUDSON,

Defendant(s).

APPEARANCES:
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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Court Judge

MEMORANDUM-DECISION AND ORDER

Currently before the court is the motion of Paul S. Hudson ("Hudson"), pro se,[1] pursuant to 28 U.S.C. § 455(a) and (b) and Federal Rule of Bankruptcy Procedure 5004(a) filed September 17, 2008,[2] seeking recusal of the court in *Washington 1993, Inc. v. Paul S. Hudson* (the "Adversary Proceeding") and withdrawal of this court's decisions of August 21, 2001, and December 30, 2005.[3] In his motion, Hudson claims that there exists an apparent bias on the part of the court towards him based upon the court's alleged alteration of the Complaint filed in the Adversary Proceeding.

BACKGROUND

Much litigation has ensued from Hudson's bankruptcy case, which has been pending for over 8 ½ years. While the Adversary Proceeding and Hudson's underlying bankruptcy case have a long history, the court will only focus on the procedural history germane to this motion.

On November 12, 1999, Hudson filed a voluntary petition for relief under Chapter 7 in the United States Bankruptcy Court for the District of Maryland (the "Maryland Bankruptcy Court"). (Bankr. D. Md. Case No. 99-64788.) Richard Corvetti ("Corvetti"), as the principal of

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[1]Although Hudson filed his motion on his own behalf, Hudson is an attorney.

[2]Hudson originally sought his relief by letter to the court. (No. 190.) Prior to reviewing Hudson's letter, the court indicated at a conference that it would consider the same and adjourned the matter to give Defendant's counsel the opportunity to respond. After reviewing the letter, and given the seriousness of Hudson's accusations, in an oral ruling issued on August 29, 2007, the court advised Hudson that he would need to seek the relief requested in a formal motion supported by a sworn affidavit as contemplated by the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Northern District of New York. (Hr'g Tr. 3-5, Aug. 29, 2007 (No. 193).)

[3]Hudson's motion erroneously refers to a December 30, 2006 decision.

Washington 1993, Inc., commenced the Adversary Proceeding against Hudson on February 10, 2000, in the Maryland Bankruptcy Court. (Bankr. D. Md. Adv. Pro. No. 00-5207.) The cover sheet filed with the Complaint indicates the relief being sought was a determination of nondischargeability under 11 U.S.C. § 523 and a denial of discharge under § 727.[4] (No. 1.) The first four causes of action address the dischargeability of Hudson's debt to Corvetti pursuant to § 523, while the fifth cause of action addresses the denial of Hudson's discharge pursuant to § 727.[5] The Adversary Proceeding and Hudson's underlying bankruptcy case were transferred to this court by the Maryland Bankruptcy Court pursuant to order entered March 14, 2000. Hudson filed an answer addressing *all five* causes of action on March 23, 2000, including the § 727 cause of action. (No. 4.)

It does appear that despite the five causes of action set forth in the Complaint and the information contained on the adversary proceeding cover sheet, the Maryland Bankruptcy Court Clerk erroneously docketed the Complaint on February 10, 2000, as follows:

> Complaint (00-5207) Washington 1993, Inc. vs. Paul S. Hudson. NOS 426 Dischargeability 523. (Filing Fee $150.00 Receipt # 371501) (former employee) (Entered: 02/11/2000)

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[4]This case was filed before October 17, 2005, when most provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereafter BAPCPA) became effective. Thus, all statutory references are to the Bankruptcy Code, 11 U.S.C.A. §§ 101-1330 (2004), unless otherwise specified.

[5]An objection to dischargeability under § 523 assumes that the debtor is allowed a discharge and exempts from the general discharge a specific debt. The rationale for excluding a specific debt from discharge is that the debtor acted in an improper manner at the time that he incurred the specific debt. *See* 11 U.S.C. § 523. In contrast, if a debtor is denied a discharge, all claims against the debtor, regardless of their nature, will survive bankruptcy. *See* 11 U.S.C. § 727.

(M. for Recusal (No.196) Ex. D-1.)

As a result of the omission of any reference to the § 727 cause of action on the docket, the Maryland Bankruptcy Court Clerk's Office mistakenly issued Hudson a discharge on February 23, 2000. This was confirmed during a March 10, 2000 hearing before the Maryland Bankruptcy Court (Derby, B.J.) in connection with Motions for Relief From Stay and a Motion For Change of Venue filed by Corvetti in Hudson's bankruptcy case. At the March 10, 2000 hearing, Judge Derby granted Corvetti's Motion For Change of Venue and directed that Hudson's bankruptcy case and the Adversary Proceeding be transferred to this court. Hudson was represented by counsel at the March 10, 2000 hearing. The transcript from the hearing indicates Hudson was also present at the hearing and gave testimony. (Hudson Reply Affirmation (No. 203) Ex. B at 2.) Hudson's Exhibit 13, the Complaint, was identified and received into evidence by Judge Derby at some point during the hearing on March 10, 2000 hearing.[6] (*Id*.)

At the hearing, Judge Derby acknowledged Hudson's discharge was entered in error and would be stricken as a § 727 cause of action was pending before the court. (*Id*. at 4.) Judge Derby indicated that he spoke with the case administrator and the confusion seemed to arise over the language of the "wherefore clause" of the Complaint. (*Id*. at 5.) The prayer for relief reads:

> WHEREFORE, plaintiff respectfully requests that this court enter a judgment on its first claim for relief in the amount of $155,123.27 and for an order determining the debt to be nondischargeable under 11 U.S.C. § 523(a)(2)(a) and 523(a)(2)(b); on its second claim for relief the sum of $54,632.32 and an order determining the debt to be nondischargeable under 11 U.S.C. § 523(a)(4); on its third claim for

[6]Hudson's exhibits from the March 10, 2000 hearing became part of the court's file upon transfer of Hudson's bankruptcy case and the Adversary Proceeding to this court.

> relief in the amount of $60,968.69 and an order determining the debt to be nondischargeable under 11 U.S.C. § 523(a)(4); on its fourth claim for relief in the amount of $91,705.00 and an order determining the debt to be nondischargeable under . . . 11 U.S.C. § 523(a)(6); and on its fifth claim for relief for an order denying a discharge to debtor.

(Complaint unnumbered 8-9.) Judge Derby points out that the prayer for relief did not specifically mention the applicable Bankruptcy Code section, namely § 727, with respect to the fifth cause of action, which is what the Clerk looked at in classifying the Complaint. (Hudson Reply Affirmation Ex. B at 5.) Judge Derby stated, however, that the fifth cause of action was a § 727 cause of action. (*Id.*) As a result, Judge Derby indicated that he would be reclassifying the Adversary Proceeding to include the fact that it contains an objection to discharge as a fifth count in the Complaint. (*Id.*) Judge Derby vacated the discharge by order entered on March 14, 2000.[7] Prior to the docket being corrected pursuant to Judge Derby's instructions, the Adversary Proceeding and Hudson's bankruptcy case were transferred to this court. The Maryland Bankruptcy Court's docket indicates it closed Hudson's bankruptcy case on May 4, 2000. (M. for Recusal Ex. D-1.) The transcript of the March 10, 2000 hearing, however, was docketed on October 12, 2001. (*Id.*)

After the Adversary Proceeding was transferred to this court, a member of the Clerk's staff noticed during routine due diligence that the docket did not accurately reflect that the Complaint contained both §§ 523 and 727 causes of action. (*See* M. For Recusal Hr'g Tr. 3-5, Oct. 10, 2007 (No. 210).) The court authorized the docket be updated and amended on May 1,

[7]The proceeding memorandum from the March 10, 2000 hearing, signed by Judge Derby, indicates, "[d]ischarge stricken as mistake b/c 00-5207 includes § 727 count (v)." (Bankr. D. Md. Case No. 99-64788, No. 38.) The proceeding memorandum became part of the court's file upon transfer of Hudson's case and the Adversary Proceeding to this court.

2000 to accurately reflect the Complaint as filed in the Maryland Bankruptcy Court alleged both §§ 523 and 727 causes of action. (*Id*.)

After a six-day trial, and upon consideration of the voluminous pre-trial submissions, trial testimony, documentary evidence, and post-trial memoranda, the court denied Hudson a discharge pursuant to § 727(a)(4)(A).[8] *Washington 1993, Inc. v. Hudson*, Case No. 00-11683, Adv. Pro. No. 00-90091 (Bankr. N.D.N.Y. Aug. 21, 2001) (the "August 21, 2001 Decision & Order"). Specifically, the court found that: (1) "[Hudson] made a false statement under oath by signing his Statement of Financial Affairs under the penalty of perjury and omitting several lawsuits . . ." (*id*. at 19.); (2) Hudson "knowingly made the sworn, false statement" (*id*. at 20); (3) Hudson did so with the requisite fraudulent intent (*id*. at 20-22); and (4) Hudson's omissions were material because the fraudulent conveyance suit "might have yielded a recovery for the creditor of his estate . . ." (*id*. at 22). In addition, the court faulted Hudson for failing to include on his Statement of Financial Affairs pre-petition lawsuits filed against him by Corvettti *(id*. at 3). The court was also disturbed by Hudson's lack of specificity regarding his pre-petition wrongful death action — "he did not state where the lawsuit had been filed [or identify] what the other parties to the lawsuit received" *(id*. at 4).

Hudson timely appealed and then moved for reconsideration of the affirmance of the court's decision by the United States District Court for the Northern District of New York based, in part, on an alleged settlement reached with the bankruptcy trustee. The district court, on

[8]"The court shall grant the debtor a discharge, unless the debtor knowingly and fraudulently, in or in connection with the case, made a false oath or account." 11 U.S.C. § 727(a)(4)(A).

reconsideration, determined that the matter should be remanded for further consideration. *Hudson v. Washington 1993, Inc.*, No. 3:01-CV-1474, slip op. at 4 (N.D.N.Y. June 13, 2003), *as referenced in*, No. 3:01-CV-1474 (N.D.N.Y. Oct. 3, 2003). On remand, the court affirmed its denial of Hudson's discharge, concluding that "[t]he potential settlement with the Trustee that never materialized has not altered this court's specific findings of malfeasance on the part of [Hudson] that were affirmed by the District Court." *Washington 1993, Inc. v. Hudson*, Case No. 00-11683, Adv. Pro. No. 00-90091, slip op. at 14 (Bankr. N.D.N.Y. Dec. 30, 2005). Hudson timely appealed, and the district court again determined that the matter should be remanded for this court to determine in the first instance what effect, if any, the subsequent decisions of the district court in two related adversary proceedings have on the court's August 21, 2001 Decision & Order denying Hudson a discharge. *Hudson v. Washington 1993, Inc.*, 1:06-CV-253 (N.D.N.Y. Aug. 2, 2007).

THE CURRENT RECUSAL MOTION

In his current motion, Hudson indicates that in reviewing the court's file in connection with an appeal to the district court, he discovered post-it notes on the Adversary Proceeding cover sheet and the Complaint. The post-it note on the cover sheet reads, "5/1/00 added relief 727 per chambers direction." (M. for Recusal Ex. A.) The post-it note on the Complaint reads, "added 727 relief for this complaint per chambers 5-01-00 CEB." (*Id*. Ex. B.) Hudson asserts that it is apparent that the Complaint in the court's file was altered because the typeface of a portion of the "wherefore clause," namely "and on its fifth claim for relief for a order denying discharge to debtor," differs from the rest of the Complaint and appears to be typewritten as opposed to printed from a computer like the balance of the pleading. (*Id*. Ex. C.) Hudson

further postulates that the alteration of the Complaint was done by the court ex parte and sua sponte.

Hudson also notes that the docket contains two entries for the Complaint. The first corresponds with the original filing of the Complaint with the Maryland Bankruptcy Court and indicates relief was sought pursuant to § 523. (*Id*. Ex. D.) The second entry indicates relief was sought under § 727 as well. (*Id*.) The second entry was entered on the docket on May 1, 2000, but references the original filing date of February 10, 2000. (*Id*.) As the second entry was made after the bar date for filing objections to discharge, namely February 12, 2000, Hudson argues the court's alleged ex parte alteration of the Complaint cannot be considered trivial. Based upon the foregoing, and the reasons for recusal set forth in three prior applications filed by Hudson, he seeks recusal of the court from the Adversary Proceeding. In the event the court denies Hudson's motion, Hudson seeks, in the alternative, limited discovery to develop more fully both the court's apparent bias and possibly actual bias.

Corvetti's counsel filed a letter with the court on September 21, 2007, indicating that in light of the July 9, 2007 Decision & Order of Judge Scullin,[9] it was Corvetti 's intention to stand

[9]Corvetti commenced a second adversary proceeding seeking, *inter alia*, a declaratory judgment as to his standing to be heard in this matter and in other pending actions before the United States District Court for the Northern District of New York and Second Circuit Court of Appeals. *See Covetti v. Hudson*, Case No. 00-11683, Adv. No. 04-90005 (Bankr. N.D.N.Y. filed Jan. 5, 2004) (the "Declaratory J. Proceeding"). On December 8, 2004, Corvetti moved for summary judgment in the Declaratory Judgment Proceeding. (Declaratory J. Proceeding No. 30.) The court issued a bench ruling in connection with Corvetti's summary judgment motion on March 10, 2005, wherein, based on District Court Judge McAvoy's prior appellate decision, the court granted Corvetti's cause of action for standing to be heard in this proceeding. (*See* Declaratory J. Proceeding, Second Hr'g Tr. at 44-47, Mar. 10, 2005 (No. 66).) On appeal, the district court reversed and specifically held that "Corvetti cannot oppose . . . Hudson's discharge pursuant to the Settlement Agreement, which Judge McAvoy approved in its entirety on

silent and not take positions on any matters pending before the court touching on the denial of Hudson's discharge. *Hudson v. Corvetti*, 1:05-CV-472 (lead) (N.D.N.Y. July 9, 2007). On October 5, 2007, counsel to Corvetti's attorney filed a letter with the court reiterating that Corvetti takes no position with respect to the motion. (No. 204 (the "Siegal Letter").) Counsel also felt it appropriate to alert the court of the existence of the transcript of the proceedings held before Judge Derby on March 10, 2000, at which Corvetti's § 727 cause of action was specifically addressed, and to provide the court with a copy of the relevant portion of the transcript. The transcript from the hearing deflates Hudson's arguments that the court somehow assisted Corvetti in maintaining a § 727 cause of action against Hudson after the expiration of the bar date.

Hudson filed a Reply Affirmation on October 9, 2007. (No. 203.) Given the relevance of the March 10, 2000 hearing before Judge Derby to the accusations in Hudson's Recusal Motion and the fact that Hudson was present at that hearing, it is telling that nowhere in his reply does Hudson address why he failed to (1) advise the court of what transpired before Judge Derby at the March 10, 2000 hearing, and/or (2) provide the court with a copy of the transcript of the March 10, 2000 hearing or, at least, alert the court of its existence. Instead, Hudson criticizes Corvetti for providing the court with the transcript five days before the return date of the motion. (Hudson Reply Affirmation ¶¶ 5-7.) After his memory was apparently refreshed with the transcript of the March 10, 2000 hearing, Hudson indicates in his reply that Judge Derby's remarks, "explain and

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November 20, 2003. *Hudson v. Corvetti*, 1:05-CV-472 (lead) (N.D.N.Y. July 9, 2007). Corvetti timely appealed; however, he subsequently agreed to the voluntary dismissal of the appeal. (Declaratory J. Proceeding No. 186)

arguably avoid the appearance of bias by Judge Littlefield." (Hudson Reply Affirmation ¶ 11.) Hudson continues, however, to accuse the court of altering the "wherefore clause" of the Complaint either upon a surmised ex parte request by Corvetti or sua sponte. In his reply, Hudson also asserts that the Siegal Letter is in violation of Judge Scullin's July 9, 2007 Decision & Order and requests the court find Corvetti and his attorney in contempt.

The court heard oral argument from Hudson on October 10, 2007. Neither Corvetti or his attorneys appeared at the October 10, 2007 hearing. At the hearing, the court reiterated what occurred with respect to the court's docket after the Adversary Proceeding was transferred from the Maryland Bankruptcy Court. (*See* M. for Recusal Hr'g Tr. Oct. 10, 2007 (No. 210).)

Hudson filed a Supplemental Reply Affirmation on October 19, 2007, to further clarify his position.[10] (No. 208.) Despite the transcript of the March 10, 2000 hearing before Judge Derby and the court's colloquy with Hudson on October 10, 2007, Hudson continues to assert that based upon the post-it notes on the Adversary Proceeding cover sheet and the Complaint, the court directed that a § 727 cause of action be added to the cover sheet, the Complaint, and the docket. However, in light of the transcript from the March 10, 2000 hearing before Judge Derby, Hudson asserts that his motion is not based upon the alleged alterations of the Adversary Proceeding cover sheet or the docket, but upon the court's alleged alteration of the "wherefore clause" of the Complaint and a conjectured ex parte communication by Corvetti and/or his attorney seeking the alteration of the Complaint.

DISCUSSION

[10]Although Hudson did not obtain the court's permission to file his Supplemental Reply Affirmation, so that Hudson's position is fully developed, the court will consider the pleading.

Prior Motions for Recusal

This is the fourth time Hudson has sought to have the court recuse itself or, in the alternative, transfer his bankruptcy case or a related adversary proceeding.[11] On December 12, 2003, Hudson filed a motion for intradistrict transfer of the Adversary Proceeding and his underlying bankruptcy case or, in the alternative, for recusal of the court (the "Prior Recusal Motion"). (No. 108.) By Memorandum-Decision & Order dated January 30, 2004 (the "January 2004 Decision & Order"), the Prior Recusal Motion was denied. *Washington 1993, Inc. v. Hudson*, Case No. 00-11683, Adv. Pro. No. 00-90091 (Bankr. N.D.N.Y. January 30, 2004). The court denied Hudson's motion for reconsideration of the January 2004 Decision & Order pursuant to Federal Rule of Civil Procedure 59, made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9023. *Washington 1993, Inc. v. Hudson*, Case No. 00-11683, Adv. Pro. No. 00-90091 (Bankr. N.D.N.Y. July 23, 2004). Hudson's petition for a writ of mandamus to review the two decisions was denied by order of the Second Circuit Court of Appeals entered May 25, 2005, based upon Hudson's failure to appeal the court's decisions to the district court in the first instance. (No. 170.)

Hudson filed a "suggestion for recusal" on February 6, 2002, seeking to have the court recuse itself in an adversary proceeding commenced by the Chapter 7 trustee against Hudson, Paul J. Hudson, William David Hudson, William B. Hudson, as trustee of William David Hudson, an infant, and Stephen Hudson. *See Harris v. Hudson,* Case No. 00-11683, Adv. Pro. No. 01-90322 (Bankr. N.D.N.Y. filed Nov. 9, 2001). The request for recusal was denied, *Harris v.*

[11]While Hudson seeks recusal of the court from the Adversary Proceeding based upon the appearance of partiality, he does not seek the court's recusal in his underlying bankruptcy case.

Hudson, Case No. 00-11683, Adv. Pro. No. 01-90322 (Bankr. N.D.N.Y. Mar.12, 2002), and the decision was not appealed.

Hudson also filed a motion for intradistrict transfer or, in the alternative, for recusal of the court on March 22, 2004, in a second adversary proceeding commenced by Corvetti seeking a declaration of his rights regarding his standing in matters relating to the denial of Hudson's discharge.[12] (*Corvetti v. Hudson*, Case No. 00-11683, Adv. Pro. No. 04-90005 (Bankr. N.D.N.Y. filed January 5, 2004). Hudson's motion was denied, *Corvetti v. Hudson*, Case No. 00-11683, Adv. Pro. 04-90005 (Bankr. N.D.N.Y. Feb. 18, 2005), and the decision was not appealed.

The Siegal Letter

Prior to addressing the substance of Hudson's pending recusal motion, the court will address the procedural issue raised by Hudson, namely what consideration, if any, will be given to the Siegal Letter. In light of Judge Scullin's July 9, 2007 Decision & Order and Corvetti's representations that he would not be filing a response to the recusal motion, the Siegal Letter will not be considered by the court as opposition to the motion. The court will, however, consider the Siegal Letter as a letter from an officer of the court advising the court of a filed transcript so that the court has a complete picture of the proceedings in another court relevant to the accusations in Hudson's motion. While the motion is unopposed, this does not mean that the matter need not be adjudicated. To the contrary, Hudson is accusing the court of altering a filed pleading in violation of 18 U.S.C. § 1519[13] and/or New York Penal Law §§ 175.20 and 195.[14] Given the seriousness of

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[12]*See supra* note 9.

[13]Section 1519 of Title 18 of the United States Code provides:
Destruction, alteration, or falsification of records in Federal investigations

Hudson's accusations and the nature of the motion, it would be inappropriate for the court not to address the substance of the motion.

At the conclusion of oral argument on October 10, 2007, the court advised Hudson that it would not attempt to gauge what Judge Scullin intended by his July 9, 2007 Decision and Order. If Hudson believes Corvetti and/or his counsel violated Judge Scullin's order by submitting the

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and bankruptcy.

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519.

[14]Section 175.20 of the New York Penal Law provides:

Tampering with public records in the second degree

A person is guilty of tampering with public records in the second degree when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a Class A misdemeanor.

New York Penal Law § 175.20 (McKinney's 1999).

Section 195.00 of New York Penal Law provides:

Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

New York Penal Law § 195.00 (McKinney's 1999).

Seigal Letter to the court, the proper court to address that would be Judge Scullin. Therefore, that portion of Hudson's motion seeking to hold Corvetti and his attorney is contempt is denied.

The Complaint

The court does not take Hudson's accusations that it committed a crime lightly. Given the grave nature of Hudson's allegations and their implications, the court reviewed not only its own docket and file for the Adversary Proceeding and Hudson's underlying bankruptcy case, but also the Maryland Bankruptcy Court's dockets (Bankr. D. Md. Case No. 99-64708, Adv. Pro. No. 00-5207), and the District Court's docket and file in connection with Hudson's appeal of the denial of his discharge (N.D.N.Y. Case No. 3:01-CV- 01474). After reviewing this matter fully, the court is able to confirm that the Complaint in the court's file, the copy of the Complaint that **Hudson introduced** at the hearing before Judge Derby on March 10, 2000 as Exhibit 13, and the copy of the Complaint **Hudson included** in the record on appeal filed with the district court as part of Appendix 4 (N.D.N.Y. Case No. 3:01-CV- 01474 No. 36, "Related Court Proceedings in Maryland and New York") all contain the "wherefore clause" with the dual font that was allegedly altered by the court. Exhibit 13 and the copy of the Complaint contained in Appendix 4 filed with the district court, however, are copies of the Complaint as originally filed with the Maryland Bankruptcy Court. This is evidenced by the fact that both copies contain the bankruptcy case number assigned by the Maryland Bankruptcy Court (Bankr. D. Md. Case No. 99-64788). In contrast, upon transfer of the Adversary Proceeding to this court in March 2000, the Complaint was stamped "RECEIVED 2000 MR 28 AM 10:36 CLERK OF THE BANKRUPTCY COURT N.D.N.Y. ALBANY," and a Northern District of New York adversary proceeding case number was affixed (Bankr. N.D.N.Y. Adv. Pro. No. 00-90091). Thus, the dual

font "wherefore clause" existed in the Complaint before it reached Albany as that portion of the Complaint filed in this court is identical to the Complaint as originally filed with the Maryland Bankruptcy Court.

Recusal

Recusal motions are entrusted to the discretion of the judge who is being asked to recuse himself. *See Apple v. Jewish Hosp. & Med. Ctr*., 829 F.2d 326, 333 (2d Cir. 1987). Section 455 of Title 28 of the United States Code is made applicable to bankruptcy judges by way of Federal Rule of Bankruptcy Procedure 5004.[15] Hudson originally sought recusal of the court from the Adversary Proceeding pursuant to 28 U.S.C. § 455 (a) and (b). Section 455(a) provides "[a]ny justice, judge, or magistrate . . . of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C.§455(a). Section 455(b) addresses the problem of actual bias by mandating recusal in certain specific circumstances where partiality is presumed. *United States v. Bayless*, 201 F.3d 116, 126 (2d Cir. 2000). Section 455(b)(1) provides that a judge shall disqualify himself if he has "a personal bias or prejudice concerning a party. . . ." 28 U.S.C.§ 455(b)(1). Hudson, however, withdrew that portion of his motion premised upon the court's alleged personal bias based upon Judge Derby's remarks at the March 10, 2000 hearing.[16] As the other subsections of 28 U.S.C. § 455(b) are not applicable to the case *sub judice*,[17] the court will turn its attention to Hudson's 28 U.S.C. § 455(a) argument.

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[15]All further Rule references are to the Federal Rules of Bankruptcy Procedure.

[16] *See* pp. 9-10 *supra*.

[17] The remaining subsections of 28 U.S.C. § 455(b) are as follows:
(b) [A Judge] shall also disqualify himself in the following circumstances:
. . . .

Judges are required to avoid the appearance of bias or partiality and to recuse themselves if their "impartiality might reasonably be questioned." 28 U.S.C. § 455. Although a court has a duty to recuse itself when any of the § 455 factors exist, there is a corresponding duty not to recuse when it is not called for. *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988), *cert. denied*, 490 U.S. 1102 (1989). Courts must exercise great care in considering motions for recusal so as to discourage their use for purposes of judge shopping or delay. *In re Allied-Signal, Inc*., 891 F.2d 967, 970 (1st Cir.1989). "[S]ection 455(a) must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice." *United States v. Hines*, 696 F.2d 722, 729 (10th Cir.1982). The test for recusal is an objective one which assumes that a reasonable person knows and understands all the relevant facts. *In re Drexel Burnham Lambert, Inc.*, 861

> (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
> (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
> (ii) Is acting as a lawyer in the proceeding;
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
> (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

28 U.S.C. § 455(b)(2)-(5).

F.2d at 1313. As articulated by the Second Circuit, the inquiry is whether "'an objective, disinterested observer fully informed of the underlying facts, [would] entertain sufficient doubt that justice would be done absent recusal,' or alternatively, whether 'a reasonable person, knowing all the facts,' would question the judge's impartiality." *United States v. Yousef*, 327 F.3d 56, 169 (2d Cir. 2003)(quoting *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

Documentary evidence supports the conclusion that the Complaint contained in the court's file is identical to the Complaint as it existed while in the possession of the Maryland Bankruptcy Court prior to the Adversary Proceeding being transfered to this court. Thus, Hudson's claim that the court altered the Complaint is utterly baseless. As to Hudson's reassertion of his alleged grounds for recusal set forth in his prior recusal motions, the court's prior decisions speak for themselves.[18] In light of all the facts and circumstances that are known, the court finds that a reasonable person would not conclude that the court's impartiality could reasonably be questioned under 11 U.S.C. § 455(a). Accordingly, the court declines to recuse itself from the Adversary Proceeding.

The court is greatly distressed by the tactics Hudson is willing to employ in attempts to have the court recuse itself from this matter, especially given that Hudson is an attorney. There simply was no foundation for Hudson to falsely accuse this court of a crime. Given the seriousness of the allegations combined with the lack of any evidentiary support or minimal investigation, sanctions against Hudson appear to be warranted. Because Rule 9011(c)(1)(B) requires that the court give parties who are subjected to potential sanctions specific notice of the

[18]*See* Discussion at pp. 11-12 *supra*.

conduct alleged to violate Rule 9011(b), this Memorandum-Decision and Order shall serve as the requisite notice for the imposition of sanctions in this proceeding.

Rule 9011 Sanctions

The court must determine if Hudson's recusal motion was so unwarranted as to merit sanctions pursuant to Rule 9011 and § 105. The relevant portions of Rule 9011 provide:

> **(b) REPRESENTATIONS TO THE COURT.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstance, —
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> **(c) SANCTIONS.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.
>
> (1) How Initiated.
>
> . . . .
>
> (B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

FED. R. BANKR. P. 9011.

Here Hudson' s motion meets the preliminary requirement of Rule 9011 that there be a signed pleading, motion, or other document as the foundation for the sanctionable conduct.

Based upon the record, it would appear that Hudson violated subsections (b)(1) and (3) of Rule 9011. Accordingly, the court will address each separately.

A. "Improper Purpose"

Although litigants are entitled to an unbiased judge, they are not entitled to a judge of their choosing. *In re Drexel Burnham Lambert, Inc*., 861 F.2d at 1312. Based upon the nature of Hudson's allegations and Hudson's advocating what appears to be an entirely unfounded position, the court can only assume Hudson's motion was filed for an improper purpose — "judge shopping" for the remanded matter before the court in the Adversary Proceeding. As is required by Rule 9011, further proceedings are warranted on this issue to provide Hudson with an opportunity to show cause why he has not violated Rule 9011(b)(1).

B. "Evidentiary Support"

The recusal motion was made and pursued by Hudson despite lacking an adequate factual foundation. Furthermore, Hudson knew or should have known that the factual recitations offered in support of his motion were simply false. The documents that support the conclusion that the Complaint in this court's file with the dual font "wherefore clause" is identical to the Complaint as originally filed in the Maryland Bankruptcy Court were Hudson's own documents, namely Hudson's Exhibit 13 from the March 10, 2000 hearing before Judge Derby and the copy of the Complaint Hudson included in his Appendix filed with his appeal to the district court. In addition, Exhibit 13 is part of the court's file — the same court file where Hudson apparently found his smoking gun to build his alleged criminal case against the court. Hudson obviously failed to conduct a reasonable inquiry prior to filing his motion. Seemingly, if one was going to accuse the court of altering a pleading the first piece of evidence one would gather to support this

claim would be an unaltered copy of the pleading. In addition to pleading the court altered the Complaint, Hudson repeatedly asserted the court engaged in ex parte communications with Corvetti. Those allegations also lack factual support and are as baseless as the claim that the court altered the Complaint.

As detailed herein, Hudson's recusal motion was filed without any evidentiary support and minimal, if any, inquiry by Hudson. Therefore, pursuant to the procedural devices of Rule 9011(c)(1)(B), the court will provide Hudson with an opportunity to show cause why sanctions are not warranted under Rule 9011(b)(3).

11 U.S.C. § 105

The court has an additional means at its disposal for sanctioning improper conduct — its inherent power under 11 U.S.C. § 105. Section 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

Under standards well-established in the Second Circuit, the court's inherent power must be exercised with restraint and utilized only when the challenged conduct is "entirely without color" and "motivated by improper purposes." *In re Garcia*, 260 B.R. 622, 635 (Bankr. D. Conn. 2001) (citing *Milltex Indus. Corp. v. Jacquard Lace Co., Ltd*, 55 F.3d 34, 35 (2d Cir. 1995); *see In re 72nd Street Realty Associates*, 185 B.R. 460, 475 (Bankr. S.D.N.Y. 1995). For the reasons more fully detailed above, based on the totality of the circumstances, it appears that this standard

is also met in this case. Hudson, therefore, will be provided with the opportunity to prove otherwise.

CONCLUSION

Based upon the foregoing, Hudson's motion for recusal is denied. The court will issue a separate Briefing Order in connection with the district court's remand before the court. In addition, Hudson is directed to show cause why he should not be sanctioned pursuant to Federal Rule of Bankruptcy Procedure 9011(b)(1) and (3), and 11 U.S.C. § 105. Accordingly,

IT IS HEREBY ORDERED, that the Motion for Recusal is **Denied**; and it is further

ORDERED, that Hudson appear on **Wednesday, October 29, 2008, at 9:00 a.m.** at the United States Bankruptcy Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 306, and **SHOW CAUSE** as to why he should not be sanctioned, for the reasons set forth herein, pursuant to Rule 9011 and/or Bankruptcy Code § 105, including, but not limited to, an admonishment, a monetary sanction, and/or referral to the Committee on Professional Standards; and it is further

ORDERED, that any written response to the court's Order to Show Cause Hudson wishes to file shall be filed with the court on or before **October 22, 2008.**

Dated: September 25, 2008
Albany, New York

/s/ Robert E. Littlefield, Jr.

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge