

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

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In re:	:	
	:	
JIE XIAO	:	Chapter 7
	:	Case No. 13-51186 (JJT)
DEBTOR	:	RE: ECF Nos. 463, 469
-----X		
DOW CORNING CORPORATION	:	
AND HEMLOCK SEMICONDUCTOR	:	
CORPORATION	:	
PLAINTIFF,	:	
	:	Adv. Pro. 14-05054 (JJT)
V.	:	RE: ECF Nos. 161, 164
	:	
JIE XIAO	:	
	:	
DEFENDANT.	:	
-----X		
RONALD I. CHORCHES, TRUSTEE	:	Adv. Pro. 14-05019 (JJT)
	:	
PLAINTIFF,	:	RE: ECF Nos. 148, 161
	:	
V.	:	
	:	
XIN CHEN,	:	
DEFENDANT	:	
-----X		

ORDER AND RULING DENYING DEFENDANTS’ MOTIONS TO RECUSE

I. INTRODUCTION

Before the Court are various recusal applications (“Recusal Motions”, Case No. 13-51186 ECF No. 463, Adv. No. 14-05054 ECF No. 151, Adv. No. 14-05019 ECF No. 148) and responsive objections implicating the interrelated proceedings in this Chapter 7 case.

Ronald I. Chorches, Trustee v. Xin Chen, AP 14-05019, is an adversary proceeding, wherein the Chapter 7 Trustee (“Trustee”) alleges in its first Count that the Xin Chen

(“Defendant” or “Chen”) was the recipient of a fraudulent transfer, pursuant to § 548(a)(1)(A), arising from her divorce settlement with the Debtor, Jie Xiao (“Debtor” or “Xiao”). *Dow Corning Corporation and Hemlock Semiconductor Corporation v. Jie Xiao* is an adversary proceeding where the plaintiff (“Dow Corning”), in its first count, seeks a judgment disallowing the Debtor’s discharge under § 727(a)(2)(A), based on the same allegation in the Trustee’s fraudulent transfer case against Chen. On May 18, 2015, the Court consolidated Dow Corning’s § 727(a)(2)(A) claim against Xiao with the Trustee’s claim against Chen under § 548(a)(1)(A), and these cases were set for trial commencing April 18, 2017.

The Recusal Motions also pertain to the Trustee’s pending summary judgment motion (“Summary Judgment Motion”, ECF No. 393) and related objection thereto in the Debtor’s Chapter 7 case, regarding a disputed pension exemption. That matter is now fully briefed and set for oral argument on April 10, 2017.

The various applications were filed by the Debtor and the Defendant on March 24, 2017. The Chapter 7 Trustee, together with Dow Corning, filed a joint objection to the Recusal Motions on March 27, 2017. A hearing was held on March 28, 2017 wherein all parties, including the United States Trustee, were heard.

This Court has reviewed the motions, objections and related authorities, and for the reasons set forth herein, the Recusal Motions are denied.

II. RELEVANT LAW

The framework of the Court’s deliberation is 28 U.S.C. § 455 made applicable to these proceedings pursuant to Federal Rule of Bankruptcy Procedure 5004. The pertinent section reads:

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

(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

28 U.S.C. §§ 455(a)-(b)(1).

The Court of Appeals for the Second Circuit has made clear that the analysis for recusal under § 455(a) “is not mechanical, but requires an exercise of reasoned judgment”. *In re Certain Underwriter*, 294 F. 3d 297, 305 (2d Cir. 2002). “[T]he grounds asserted in a recusal motion must be scrutinized with care, and judges should not recuse themselves solely because a party claims an appearance of partiality.” *Id.* Accordingly, the Second Circuit has observed:

Section 455(a) requires a showing that would cause an objective, disinterested observer fully informed of the underlying facts [to] entertain significant doubt that justice would be done absent recusal. Where a case...involves remote, contingent, indirect or speculative interests, disqualification is not required. Moreover, where the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.

Id.

With regard to § 455(b)(1), the Second Circuit has further stated,

what a judge learns or comes to believe in his judicial capacity is a proper basis for judicial observations, and the use of such information is not the kind of matter that results in disqualification. A determination of bias under this section must be based on extrajudicial conduct, not conduct arising in a trial setting.

In re Drexel Burnham Lambert Inc., 861 F. 2d 1307, 1314 (2d Cir. 1988), *cert. denied*, 490 U.S. 1102 (1989) (internal citation and quotation omitted). In assessing the claim of bias against a party, the Second Circuit has repeatedly held that a judge’s conduct and rulings in the case “form no basis for a finding of extrajudicial bias.” *In re International Business Machine Corp.*, 618 F.2d 293, 928 (2d Cir. 1980). As the United States Supreme Court has also stated, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion”, and it would be only in the “rarest circumstance” that recusal would be warranted in the absence of an extrajudicial source of prejudice or bias. *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct.

1147, 1157, 127 L. Ed. 2d 474 (1994). Finally, a judge's opinions based on the facts introduced in the current proceeding or a prior proceeding "do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make a fair judgment impossible." *Id.*

III. DISCUSSION

A. Debtor Jie Xiao's Recusal Motion

The Debtor does not contend that an extrajudicial source of prejudice or bias exists here; instead, the Debtor asserts that the following judicial conduct evinces improper bias and demonstrates that the Court has decided ultimate issues to be tried in the consolidated cases. The material allegations asserted by the Defendant to be grounds for recusal are as follows: 1) the Court's inquiry of the Debtor's attorney, Luis A. Medina, regarding his disbarment, reinstatement and current good standing in the state and federal bars of Connecticut; 2) the Court's refusal to credit arguments regarding the Debtor's alleged financial constraints, absent supporting evidence; 3) the Court's inquiry of Attorney Medina, on two occasions, regarding the citizenship of the Debtor; 4) the Court's acceptance of Attorney Cuevas's testimony concerning Attorney Medina's improper practices; and 5) the Court's scheduling of argument on the Summary Judgment Motion in proximity to that of the consolidated trial. With regard to each allegation, the Court finds the following:

1. The Court's Inquiry Regarding Attorney Medina's Good Standing

Attorney Medina has argued that it was improper for this Court to inquire about his standing to practice law, and also requested that it be bound by Judge Shiff's previous deference to him, during which time he secured belated admission to the bar. This Court finds that the Defendant's arguments are misconceived. This Court has supervisory powers over the conduct of

hearings and the lawyers who appear before it. The terms of Attorney Medina's Order of Reinstatement (3:08-GP-00008-AWT, Doc. 14) issued by Judge Alvin Thompson not only make such supervisory powers clear, but also make it the prerogative of a sitting judge to, under the right circumstance, condition his practice before a court. This Court will also note that such inquiries, notwithstanding Judge Shiff's deference, duly respected here, appear to be appropriate given the history of grievances and the allegations of improper conduct that have been made during the course of these proceedings.

2. The Court's Refusal to Credit Arguments About the Debtor's Alleged Financial Constraints

The Court finds that in several motions and hearings, the Debtor has made contentions about his alleged strained financial condition, most recently in response to the Debtor's compliance with a Court Order (Adv. No. 14-05054 ECF No. 145) directing his payment of a mediator fee. As of the date of that hearing, the Debtor had failed to present any evidence or current affidavit of his financial condition to this Court. Not only was such information germane to the motion, it was also appropriate to address his financial condition given the Debtor's demonstrable pre-petition earning power and accumulation of assets in excess of \$ 2 million.

3. The Court's Inquiry of Attorney Medina Regarding the Citizenship of the Debtor

This Court has surveyed Attorney Medina during the course of these proceedings to remind him that, at issue here, is an alleged fraudulent transfer in connection with an alleged "sham divorce", and subsequent transfers of funds in excess of \$1 million by the Debtor's former wife to China, where the Debtor now lives and works. The Court notes that all of the money at issue remains indisputably in China where it is in the possession Chen's parents, or has been otherwise disposed of. The Court finds that the residency and national origin of the parties

involved relate to the very core of the claims of fraud, and are germane to a wide variety of other issues related to the use and prospect of return of monies that will likely be addressed at trial.

4. The Court's Acceptance of Attorney Cuevas's Testimony

The Court finds that the testimony given by Attorney Cuevas about a "sham divorce" and Attorney Medina's practices was relevant to the issues involved in the litigation. Additionally, it was subject to cross examination and rebuttal by Attorney Medina, who made no sustainable objection to any portions of it at the hearing.

5. The Court's Scheduling of Oral Argument on the Motion for Summary Judgment

This Court has indulged the Debtor's explanations for the late response to the Motion for Summary Judgment, and has extended Attorney Medina every opportunity to be fully heard notwithstanding that this Court, under substantive law and the Rules of Civil Procedure, could have issued a decision in favor of the movants in light of the Debtor's lack of responsive papers. If the Defendant should need a continuance of the oral argument on the Motion for Summary Judgment, or should want any other relief, his attorney should timely file appropriate motions making those requests. The claims of unfair treatment are groundless.¹

B. Defendant Xin Chen's Recusal Motion

The material grounds for recusal asserted by the Defendant are as follows: 1) the Preliminary Order Restraining International Travel of the Defendant Xin Chen ("Travel Order", ECF No. 142) lacks due process, is fundamentally unfair and shows that the Court has made up its mind on ultimate issues; 2) the Court's issuance of the Travel Order, in whole or in part, and reliance upon a prior order establishing probable cause (Adv. No. 14-05019 ECF No. 30) is inappropriate; and 3) the Court's observations about whether the Defendant received notice at

¹ Attorney Medina appeared to have apologetically withdrawn this claim prior to the conclusion of the hearing on March 28, 2017, stating that his arguments were not well founded.

the adversary proceeding is somehow indicative of bias or prejudice. The Court finds the following:

1. The Travel Order

The Court believes that the Defendant misconceives the nature, scope and purpose of that Order. The Travel Order was indeed a preliminary order under 11 U.S.C. § 105 and the Federal Rules of Civil Procedure. It expressly provides for the immediate right to be heard and to seek modification or vacation of the order. The Court further notes that in addition to its reliance on the reasons articulated therein, there is well founded jurisprudence which establishes that in the conduct of proceedings before a court, it has the right and prerogative to manage its hearings and trials, and to assure the appearance of witnesses and defendants, particularly during an ongoing proceeding.

The Court did not issue the Travel Order without due consideration, as reflected by its context and its preliminary nature, as well as its invitation to the Defendant to be seasonably heard. Furthermore, the Order was not issued without reference to the record. The record regarding the entry of a prejudgment remedy, the preliminary hearing record, and the pleadings, affidavits and testimony that took place prior to the Court's bench ruling on the Travel Order required a balanced, expeditious and preliminary remedy.

In the estimation of the Court, a failure to issue the Travel Order, under the circumstances and state of the evidence, would likely have resulted in irreparable harm to the proceedings and Chapter 7 estate and left the estate without an adequate remedy. As the Travel Order provided, the Defendant was subsequently allowed to present her evidence, rebuttal, argument and to seek modification of the restrictions imposed during the hearing.

2. The Court's Issuance of the Travel Order and Its Reliance Upon a Prior Finding of Probable Cause

The Court's authority to issue prejudgment remedies is premised upon substantive law. In particular, C.G.S. § 52-278a et seq., provides the source of the extraordinary statutory power of a court to, in effect, freeze a Defendant's assets upon a finding of probable cause. When Judge Shiff entered that Order, he necessarily or implicitly found probable cause, notwithstanding that the relief was stipulated. Therefore, the Defendant's contention is mistaken as a matter of Connecticut law.

3. The Court's Observations on Notice

The Court has maintained that in the absence of successful motion challenging the service of process in this adversary proceeding, it is entitled to presumptive validity. The Court communicated that principle of law, and merely noted that such notice had yet to be appropriately challenged. This claim is likewise without substance.

IV. CONCLUSION

The parties' allegations upon which the Recusal Motions are based are without merit. Bald and unsubstantiated assertions of demonstrable bias and prejudice are hardly satisfactory grounds for recusal under the Second Circuit standards referenced herein. Such claims stand utterly without delineation, substantiation or legal merit. This Court welcomes all litigants and counsel in good standing. It also welcomes litigants and counsel of any creed, religion or national origin, consistent with the oath of office. The facts advanced to support recusal neither demonstrate a "deep-seated favoritism or antagonism", nor do they represent the "rare circumstance" where any decision of this Court can be a basis for recusal. For the reasons stated herein and upon the record, the Motions for Recusal are denied.

Dated at Hartford, Connecticut this 5th day of April 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

The seal of the United States Bankruptcy Court, District of Connecticut, is partially visible behind the text. It features a circular design with a central emblem and the words "U.S. BANKRUPTCY COURT" and "DISTRICT OF CONNECTICUT" around the perimeter.