

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 7  
)  
FIVE STAR DESIGN & BUILDERS, LLC ) CASE NO. 04-67820-MHM  
)  
Debtor )

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)  
JOHN W. RAGSDALE, JR., Trustee )  
for the Chapter 7 Bankruptcy Estate of Five Star )  
Design & Builders, LLC )

Movant )

v. )

**CONTESTED MATTER**

)  
LISA M. MICHAS and AARON E. CAILLOUET, )  
Trustee for the Chapter 7 Bankruptcy Estate of )  
Lisa M. Michas )

Respondents )

**ORDER DENYING EMERGENCY EX PARTE MOTION  
OF LISA MICHAS**

Scheduled for Tuesday, July 25, 2006, is a hearing in Chapter 7 case number 04-67820, Five Star Design & Builders, LLC, on the Chapter 7 Trustee's motion for the bankruptcy case of Lisa Marie Michas, filed in the Eastern District of Louisiana, to be transferred to the Northern District of Georgia (the "Motion to Transfer"). On Friday, July 21, 2006, Ms. Michas filed an Emergency Ex Parte Motion for the undersigned and Trustee to disqualify themselves from further participation in the Motion to Transfer because Mr. John Michas has filed a lawsuit against the undersigned and Trustee in the U.S. District Court for the Eastern District of Louisiana (the "Lawsuit").

The allegations in the Lawsuit both as to the undersigned and as to Trustee relate to conduct or facts learned in their respective official capacities. Alleged bias must be personal and it must stem from an **extra-judicial** source. *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt*, 794 F.2d 950 (5<sup>th</sup> Cir. 1986); *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981).<sup>1</sup> A motion for disqualification may not rely upon conduct or facts learned by a judge in the judge's judicial capacity, including rulings in the case from which disqualification is sought. *Loranger v. Stierheim*, 10 F.3d 776; *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322 (8th Cir. 1985); *U.S. v. Bond*, 847 F.2d 1233 (7th Cir. 1988); *King v. U.S.*, 576 F.2d 432 (2d Cir.), *cert. denied*, 439 U.S. 850 (1978). Additionally, frivolous allegations are insufficient grounds for recusal on the basis of an appearance of bias, because the well-informed observer would perceive no factual basis for Movant's allegations except previously rulings adverse to Movant based on the matters presented. *See In re Taylor*, 417 F. 3d 649 (7th Cir. 2005); *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt*, 794 F.2d 950 (5<sup>th</sup> Cir. 1986); *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981); *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322 (8th Cir. 1985); *U.S. v. Bond*, 847 F.2d 1233 (7th Cir. 1988); *King v. U.S.*, 576 F.2d 432 (2d Cir.), *cert. denied*, 439 U.S. 850 (1978).

Finally, the copy of the unfiled complaint against Trustee and the undersigned is filed by John Michas. Lisa Michas does not appear to be a party to that proceeding. The citation upon which Ms. Michas relies relates to an adversary proceeding filed in this court in which the undersigned was a named defendant. The undersigned noted the inherent impossibility of a judge

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<sup>1</sup>*Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981), renders decisions of the Fifth Circuit issued prior to September 30, 1981, binding precedent for the Eleventh Circuit.

presiding over a proceeding in which that judge is also a defendant. The action filed by John Michas, however, was not even filed in this district. If a judge or Trustee could be forced to recuse simply because a lawsuit had been filed against them, then litigants could undertake to file such lawsuits whenever they received or were threatened with an adverse ruling. Such attempted manipulation of the court system cannot be tolerated. Accordingly, it is hereby

**ORDERED** that the Emergency Ex Parte Motion filed by Lisa Michas is *denied* and her request for continuance is *denied*.

**The Clerk is directed to serve** this Order upon Debtor, Respondents, the U.S. Trustee and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 21<sup>st</sup> day of July, 2006.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE