**IT IS ORDERED as set forth below:**

**Date: October 26, 2015**

**Paul W. Bonapfel**
**U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

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| IN RE:<br><br>FRANCES EDITH JACKSON,<br><br>Debtor. | CASE NO. 14-72501-PWB<br><br>CHAPTER 7 |
| MATTHEW E. JACKSON, JR. and VELMA L. JACKSON,<br><br>Plaintiffs,<br><br>v.<br><br>FRANCES EDITH JACKSON,<br><br>Defendant. | ADVERSARY PROCEEDING NO. 15-5100-PWB |

ORDER DENYING MOTION FOR DISQUALIFICATION

The Plaintiffs seeks the disqualification of the undersigned in this proceeding pursuant to 28 U.S.C. § 455(a) based upon their contention that the undersigned has displayed a lack of impartiality and has a personal bias. For the reasons stated herein, the Plaintiffs' motion is denied.

Section 455 of Title 28 governs the disqualification of federal judges, including bankruptcy judges, from acting in particular cases. Rule 5004 of the Federal Rules of Bankruptcy Procedure provides that a "bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case." Of relevance to this particular case are the requirements that a judge shall disqualify himself in "any proceeding in which his impartiality might reasonably be questioned" or "where he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a) and (b)(1).

The standard for recusal is whether "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Berger*, 375 F.3d 1223, 1227 (11th Cir. 2004). The challenged judge may rule on a recusal motion. *In re United States*, 158 F.3d 26, 34 (1st Cir. 1998); *Schurz Communications, Inc. v. FCC*, 982 F.2d 1057, 1059 (7th Cir. 1992) (in chambers).

In *Liteky v. United States*, 510 U.S. 540, 555 (1994), the Supreme Court explained:

> [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-

> seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

The Plaintiffs have not set forth a factual basis evidencing this Court's bias or impartiality. *Blizard v. Frechette*, 601 F.2d 1217, 1221 (1st Cir. 1979) ("trial judge must hear cases unless some reasonable factual basis to doubt the impartiality or fairness of the tribunal is shown by some kind of probative evidence"); *United States v. Corr*, 434 F.Supp. 408, 412-413 (S.D.N.Y. 1977) (the test for disqualification under 28 U.S.C. § 455 "is not the subjective belief of the defendant or that of the judge, but whether facts have been presented that, assuming their truth, would lead a reasonable person reasonably to infer that bias or prejudice existed, thereby foreclosing impartiality of judgment.").

Likewise, the Plaintiffs have offered no evidence of "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555. Indeed, none exists.

The Plaintiffs' motion rests on the generalized grievance that, because the Court expressed concerns, doubts, and questions about the merits of the claims at issue during colloquy at the hearing on July 21, 2015, the Court has displayed bias against the Plaintiffs and partiality to the Debtor.

At that hearing (the only hearing and ruling to date in the case) after lengthy argument from both parties, the Court denied the Plaintiffs' motion for a protective order, denied the Debtor's motion for sanctions, and deferred ruling on the Debtor's motion to dismiss. The Court converted the Debtor's motion to dismiss to a motion for summary judgment and set forth deadlines for the filing of a response and reply by the parties.

The Court's denial of the motion for a protective order is not grounds for disqualification; adverse rulings by a court alone do not establish impartiality for purposes of disqualification. *See Byrne v. Nezhat*, 261 F.3d 1075, 1103 (11th Cir. 2001); *In re Clark*, 289 B.R. 193, 197 (Bankr. M.D. Fla. 2002); *In re Lickman*, 284 B.R. 299, 303 (Bankr. M.D. Fla. 2002). "Judicial rulings are grounds for appeal, not recusal." *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 641 (7th Cir. 2002).

The conversion of the motion to dismiss to a motion for summary judgment was not a display of bias or impartiality; instead, it was a procedural necessity. When a court considers matters outside the pleadings in a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the matter is converted to a motion for summary judgment. FED. R. CIV. P. 12(d). When conversion occurs, the court must give an adverse party "express, ten-day notice of the summary judgment rules, of his right to file affidavits or other material in opposition to the motion, and of the consequences of default." *Griffith v. Wainwright*, 772 F.2d 822, 825 (11th Cir.1985). This is a "bright line" rule in the Eleventh Circuit. *Milburn v. U.S.*, 734 F.2d 762, 766 (11th Cir.1984). Furthermore, it is a procedural necessity that actually *benefits* the Plaintiffs because it gives them further opportunity to respond to the Debtor's contention that the complaint fails to state a claim upon which relief may be granted.

Finally, any hostility or rancor perceived by the Plaintiffs at the July 21, 2015 hearing does not serve as a basis for disqualification or recusal. As a general rule, bias sufficient to disqualify a judge must arise from "extrajudicial sources." *Hamm v. Members of the Bd. of Regents of State of Fla.*, 708 F.2d 647, 651 (11th Cir. 1983). An exception to this general rule is when a judge's statements in a judicial context "demonstrate such pervasive bias and

prejudice that it constitutes bias against a party." *Id*. "Friction between the court and counsel," however, does not rise to the level of "pervasive bias." *Id*.

This Judge's candid assessment of a case for purposes of trial preparation, including the strengths and weaknesses of each side, is not a display of partiality, personal bias, or prejudice. Based on the foregoing, it is

ORDERED that the Plaintiffs' motion for disqualification pursuant to 28 U.S.C. § 455 is denied.

**END OF ORDER**

**Distribution List**

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