IT IS ORDERED as set forth below:

Date: August 21, 2007

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A07-71556-PWB
	:	
THOMAS G. DEAN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER DENYING MOTION TO DISQUALIFY JUDGE

The Debtor seeks the disqualification of the undersigned pursuant to 28 U.S.C. § 455(a) based upon the commencement of a lawsuit by the Debtor against the undersigned and others in the United States District Court, Northern District of Georgia. For the reasons stated herein, the Debtor's motion is denied.

This is the Debtor's second bankruptcy case before the undersigned. Previously, in case number 06-71654-PWB, the Court entered an Order (1) dismissing the Debtor's "Motion to Redeem Bank Account and to Avoid Lien" and abstaining from resolving any matters arising out or related to the facts set forth therein; (2) denying the Debtor's "Motion for an Order of Default"; (3) dismissing the Debtor's "Motion for Compensatory, Incidental Punitive & Special Damages

Under 11 USCA Subsection 362(h), Against the Claimants SunTrust Bank and 5th 3rd Bank" and abstaining from resolving any matters arising out of or related to the facts set forth therein; (4) granting the motion for relief from stay filed by Fifth Third Bank and SunTrust Bank by terminating the stay with respect to the Debtor's bank account; (5) denying confirmation of the Debtor's chapter 13 plan; and (6) dismissing the case without prejudice. The Debtor appealed this Order which the District Court affirmed on June 29, 2007. Civil Action File No. 1:07-CV-00248-JEC. The Debtor's appeal from the District Court's order to the Eleventh Circuit Court of Appeals, No. 07-13270-I, was dismissed on August 16, 2007, for want of prosecution for failure to pay the filing fee.

On June 28, 2007, the Debtor commenced an action, that being *Thomas G. Dean v. Homecomings Financial Services, Ford Motor Credit Company, Mary Ida Townson, Paul Bonapfel, the U.S. Bankruptcy Court (NDGA), SunTrust Bank, Fifth Third Bank, the Superior Court for Douglas County, Georgia, and the State of Georgia*, Case Number 1:07-CV-1521-JEC, in the United States District Court, Northern District of Georgia.

On July 24, 2007, the Debtor filed this case that was assigned to the undersigned under this Court's regular practice of assigning "re-filed" cases (*see* BLR 1015-1(b)) to the same judge. The Debtor alleges that the undersigned is disqualified from presiding over this new case because (1) there is an action against the undersigned brought by the Debtor currently pending; and (2) the Debtor questions the Court's "competence," which this Court construes to mean its impartiality.

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). The Court will consider the Debtor's bases for disqualification in turn.

The Pending Lawsuit

The Debtor contends that the pending lawsuit against the undersigned warrants recusal. Presumably, the Debtor believes that a lawsuit against the undersigned creates a situation in which the judge's "impartiality might reasonably be questioned."

In *Bush v. Cheatwood*, 2005 WL 3542484 (N.D. Ga. 2005), the pro se plaintiff sought recusal of the presiding judge because, in a separate case, the plaintiff had filed a third party complaint naming the judge as a third party defendant. The plaintiff contended that the judge had acted corruptly in another legal proceeding in which he had dismissed one of his claims against another judge. The judge denied the plaintiff's motion to recuse, finding that the plaintiff had presented no evidence of bias, other than the existence of the separate lawsuit, and had failed to identify any extrajudicial acts that would demonstrate bias or prejudice. The court emphasized that "granting a motion to recuse in these circumstances would mean that a litigious pro se party such as the plaintiff would have an effective means to manipulate and needlessly delay the judicial

process." *Bush v. Cheatwood*, at *1.

In a separate recusal request involving the same litigant and the same judge, the Eleventh Circuit found that the district court judge did not abuse his discretion in denying the plaintiff's motion for recusal, adding that "a judge is not disqualified merely because a litigant sues or threatens to sue him." *In re Bush*, 2007 WL 283080, *2 (11th Cir. Jan. 31, 2007) (unpublished opinion) (*quoting United States v. Grismore*, 564 F.2d 929, 933) (10th Cir. 1977)).

For these reasons, therefore, courts have recognized that a lawsuit or threat of lawsuit against a judge as a means of judge shopping is not permissible. *E.g.*, *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993) (Section 455 "is not intended to give litigants a veto power over sitting judges, or a vehicle for obtaining a judge of their choice"); *United States v. Owens*, 902 F.2d 1154, 1156 (4th Cir. 1990) ("Parties cannot be allowed to create the basis for recusal by their own deliberate actions. To hold otherwise would encourage inappropriate 'judge shopping.'").

In this case the Debtor has commenced an action against the undersigned, but has cited no evidence of bias or prejudice other than the pending lawsuit he initiated. The lawsuit clearly arises out of the undersigned's performance of his judicial duties in the Debtor's previous case. No other relationship between the undersigned and the Debtor exists. Under the doctrine of judicial immunity, therefore, there is no colorable basis for the lawsuit. *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) ("Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction").

Such a lawsuit alone is no basis for recusal inasmuch as it allows the Debtor to manipulate the legal system and "cherry pick" the judge or forum most amenable to him. If the commencement of a lawsuit against a judge warranted recusal in each situation, then a debtor could

at any time in the course of a bankruptcy case, unhappy with the outcome of litigation, file a lawsuit against the sitting judge, and obtain reassignment to another judge. Such an outcome is a waste of judicial resources and constitutes impermissible judge shopping. Accordingly, the existence of the lawsuit brought by the Debtor against the undersigned does not constitute a basis for recusal.

Other questions of impartiality or bias

The Debtor also seeks disqualification of the undersigned on the basis that "competent [sic] is questionable with respect to the event arising in this case." The Court construes this to be a challenge to the Court's partiality and an accusation of bias or prejudice based upon rulings in the prior bankruptcy case.

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 Debtor has not set forth with particularity any facts or circumstances 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."). Except for the existence of the pending lawsuit, the Debtor's motion rests solely on the generalized grievance that, because his requests for relief in his prior bankruptcy case were denied, the Court has displayed bias towards him. But 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 Debtor has offered no evidence of "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555. Indeed, none exists. This Court provided the Debtor with opportunities to assert his claims and contentions in his prior bankruptcy case. The findings of fact and conclusions of law as announced at the December 13, 2006 hearing and as incorporated in the Court's December 18, 2006 Order evidence this Court's consideration of the Debtor's arguments in light of the facts and the law and demonstrate a complete lack of bias in the Court's determinations in the Debtor's case. Further, the Debtor's previous case was dismissed "without prejudice," thereby permitting the Debtor to file another bankruptcy case if warranted. As such, the Court finds no basis for recusal in this case. Accordingly, it is

ORDERED that the Debtor's motion to disqualify Judge Paul Bonapfel is DENIED.

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