

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 12 2018

David J. Smith
Clerk

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-18-90002

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Bankruptcy Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in June 2017 Complainant filed a voluntary petition for Chapter 7 bankruptcy on behalf of a trust (the debtor) whose business was listed as “Single Asset Real Estate.” About a week later, the debtor filed a Motion to Reimpose Stay, seeking to extend the automatic stay. After that, the Subject Judge entered an order directing Complainant to appear at a hearing to show cause why the case should not be dismissed because the debtor was: (1) not eligible to be a debtor under Chapter 7 and (2) not represented by an attorney. In late June 2017 the debtor filed a Motion to Set Aside Foreclosure Sale, arguing that the law firm _____, foreclosed on the property in violation of the automatic stay. She also alleged that _____, _____ bank (who held the mortgage on the property), and the purchaser of the property “colluded and committed financial crimes to commandeer the subject property illegally and committed fraud.”

At a July 2017 show cause hearing where the debtor was represented by counsel, Complainant testified that she was the trustee of the debtor and generally described the circumstances of the foreclosure. The Subject Judge found that, based on the evidence presented, the trust was not a business trust and thus was not eligible to be a debtor under Chapter 7. The Subject Judge entered an order dismissing the case but retaining jurisdiction to adjudicate any issues pertaining to the automatic stay.

In August 2017 the debtor filed a motion for reconsideration and a notice of appeal. The debtor also filed a request that the court issue an order stating that the automatic stay remained in place or that the court re-impose the automatic stay, which the court denied. The order stated that there was no stay in effect because the case had been dismissed and that the court would not impose a stay after the case had been dismissed because the debtor was never eligible to be a debtor in a Chapter 7 case. The Subject Judge also entered an order denying the motion for reconsideration, finding it did not set forth a valid basis for the court to reconsider its dismissal order.

In September 2017 _____ and _____ filed a Motion for an Order Confirming No Automatic Stay is in Effect, or in the Alternative, Motion for Relief from the Automatic Stay Nunc Pro Tunc. At a hearing later that month, Complainant testified, among other things, that she did not receive proper notice of the foreclosure sale and that she had contacted _____ before the sale to inform it that she had filed for bankruptcy. Counsel for _____ and _____ called an attorney with _____, who generally testified that he had not seen any evidence that the firm was aware the bankruptcy had been filed at the time of the foreclosure sale.

In October 2017 the Subject Judge entered an order: (1) denying the debtor's Motion to Set Aside Foreclosure Sale; and (2) granting _____ and _____ motion for an order annulling the automatic stay nunc pro tunc to the filing date. In the order, the Subject Judge noted that, at the hearing, both Complainant and the witness from _____, "a professional foreclosure firm," were credible, and that the evidence presented did not establish whether _____ and _____ had notice of the filing of the bankruptcy case at the time of the foreclosure sale. The Subject Judge concluded, however, that various factors favored annulling the automatic stay nunc pro tunc to the filing date. Among other things, the Subject Judge found that, based on the evidence presented, there was no equity in the property above the amount of the loan. The debtor filed an amended notice of appeal as to the Subject Judge's order.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge allowed _____, _____, and the purchaser of the property to violate the automatic stay and "to commit an illegal act, and has endorsed that act as conscionable." She then appears to allege that the Subject Judge violated her constitutional right of access to the courts, and she takes issue with the determination that the trust could not file for Chapter 7 bankruptcy. She states that the Subject Judge: (1) "appears to have allowed his Appointee's political and personal affiliations to interfere" with the case; (2) "commandeered everything in his power to circumvent the law"; and (3) should be removed from the bench due to his "inability to interpret the law."

Complainant takes issue with the actions of _____, and she asserts that the Subject Judge stated that the firm was “reputable” and that it “is above the law and does not need to adhere to legal procedures.” Complainant asserts that the Subject Judge ignored _____ acknowledgement that the foreclosure would be rescinded, and she takes issue with a statement that the debtor should have filed a Chapter 11 or 13 case.

In another document submitted as part of her Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge’s statements and rulings in the case, and she alleges that the Subject Judge violated the debtor’s and her constitutional rights. Complainant asserts that there was no proof of the sale of the property, stating that “collusion, bid-rigging and conspiracy fraud are charges that come to mind here.” She contends that _____ violated the automatic stay, and she asserts that the Subject Judge “did everything that he could to side with and rule in the favor of _____.”

Complainant states that: (1) the Subject Judge’s “ruling suggests and confirms that big business can break the law and not be held accountable,” while “tax-paying citizens have no rights in his courtroom;” (2) “[h]is mind was completely made up before he rendered a decision;” (3) “[e]verything that he did was not fair or impartial and completely favored _____, an outright abuse of our legal process, an unforgivable breach of professionalism and a miscarriage of justice;” and (4) his behavior “is reprehensible and is overt willful misconduct, willful intemperance, prejudicial conduct, and represents a serious inability for him to perform his duties”

Complainant alleges that the Subject Judge violated the Code of Conduct for United States Judges because he: (1) “repeatedly showed absolutely no decorum” in hearings; (2) “was not impartial in his dealings with this Debtor;” (3) “did not respect the law;” (4) “was unreasonably rude and disrespectful” to Complainant; (5) “repeatedly used inappropriate orders and verbiage language disregarding propriety rules;” (6) “allowed outside influence and political affiliations;” (7) “was unprepared and was not competent;” and (8) “disregarded his administrative responsibilities with bias as well, giving the Defense contemptible leeway in this process, while holding the Debtor up to more than the required legal standard.” Complainant also states that the Subject Judge “did not fully or fairly disclose his reasons for abrupt assumptions” during hearings, and “provided false, incomplete, misleading information” in his orders, including by stating that “the Trust is not a business.” She attached additional documents to her Complaint.

Discussion


Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into

question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Id. The "Commentary on Rule 3" states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural ruling." This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders entered in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, was not impartial, violated the Code of Conduct for United States Judges, treated her in a demonstrably egregious and hostile manner, or otherwise engaged in misconduct.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B), and the Complaint "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge