

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE:

CASE NO. 08-17980-BKC-RBR
CHAPTER 7

TRAFFORD DISTRIBUTING CENTER, INC.
a/k/a Trafford Distribution Center, Inc.,

Debtor.

SONEET R. KAPILA, Trustee in Bankruptcy
for TRAFFORD DISTRIBUTING CENTER, INC.,

Plaintiff,

vs.

RICHARD I. CLARK AS TRUSTEE FOR
MATTHEW WORTLEY TRUST d/b/a X CO. FINANCE,
RICHARD I. CLARK AS TRUSTEE FOR
MATTHEW WORTLEY TRUST d/b/a
X CO. FACTORING CORP., RICHARD I. CLARK
d/b/a X CO. FACTORING CORP., RICHARD I. CLARK
d/b/a X CO. FINANCE., RICHARD I. CLARK AS
TRUSTEE FOR JOSEPH M. WORTLEY TRUST d/b/a
X CO. FINANCE, RICHARD I. CLARK AS TRUSTEE
FOR JOSEPH M. WORTLEY TRUST d/b/a
X CO. FACTORING CORP., RICHARD I. CLARK d/b/a
MATTHEW WORTLEY TRUST, RICHARD I. CLARK
d/b/a JOSEPH M. WORTLEY TRUST

Adv. Case No. 08-01759-RBR

Defendants.

SONEET R. KAPILA, Trustee in Bankruptcy
for TRAFFORD DISTRIBUTING CENTER, INC.,

Plaintiff,

vs.

LIBERTY PROPERTIES AT TRAFFORD, LLC,
LIBERTY ASSOCIATES, LC, AND
ADVANCED VEHICLE SYSTEMS, LLC,

Adv. Case No.:08-01792-RBR

Defendants.

_____/
SONEET R. KAPILA, Trustee in Bankruptcy
for TRAFFORD DISTRIBUTING CENTER, INC.,

Plaintiff,

vs.

BARBARA WORTLEY,

Adv. Case No.: 08-01793-RBR

Defendant
_____/

Must read in full to
understand the title of
the Motion! Wow!

DEFENDANTS' MOTION FOR RELIEF FROM ORDER DENYING MOTION TO
RECUSE AND DEFENDANTS' MOTION TO RECUSE

Defendants, RICHARD I. CLARK AS TRUSTEE FOR THE JOSEPH M. WORTLEY
TRUST d/b/a X CO. FACTORING CORP. ("Mr. Clark") and in all other capacities named herein,
LIBERTY PROPERTIES AT TRAFFORD, LLC ("Liberty Properties"), LIBERTY ASSOCIATES,
LC ("Liberty Associates"), ADVANCED VEHICLE SYSTEMS, LLC ("AVS"), and BARBARA
WORTLEY ("Mrs. Wortley") (collectively referred to herein as "Defendants" or "Movants"), by
and through undersigned counsel and pursuant to Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60(b),
and Fed. R. Bankr. P. 5004 and 28 U.S.C. § 455, move this Court for entry of an Order of Relief
from Order Denying Motion to Recuse, and entry of an Order Recusing itself from these
proceedings, and as good grounds therefor, would show that:

1. Undersigned counsel for the movants has previously written a letter to this Court,
raising an issue and suggesting that recusal might be appropriate. A copy of the letter is attached
hereto as Exhibit "A".

2. In response to the letter, the Court entered a six-page, "Order Denying Motion For

Recusal”¹ which concluded with the statement “**ORDERED** that the Motion to Recuse is **DENIED with prejudice.**”

3. No motion was filed. The movants had no opportunity to gather and present facts, or develop their arguments in a motion. Moreover, this Court appears to have misapprehended the applicable law, as set forth in its Order.

4. Movants hereby move that this Court enter an Order of Relief, vacate the “Order Denying Motion For Recusal” and Recuse itself.

THE RELEVANT FACTS

5. This case has a tainted history. The predecessor Judge, John Kenneth Olson, presided over these Adversary cases from their filing in November, 2008 until he recused himself by Order dated October 28, 2010. Movants sought recusal of Judge Olson by motion filed August 24, 2010.² The motion was heard August 26, 2010, and denied by written Order dated August 30, 2010.³

¹ DE 316 in Case 08-01793-RBR.

² DE in Case 08-01793-JKO.

³ DE-215 in Case 08-01759-JKO; DE-255 in Case 08-01792-JKO, and DE-238 in Case 08-01793-JKO. The relevant facts relating to Judge Olson’s recusal are as follows: In early to mid-2009, midway through the litigation herein, the law firm that represented the Trustee, Plaintiff in these Adversary cases, hired Judge Olson’s fiancé, which enabled him to move from Orlando to Fort Lauderdale to live together as domestic partners. The fiancé previously worked in Orlando, had never appeared in a bankruptcy proceeding previously according to the ECF filing records of the Middle District, Northern District, Southern Districts of Florida. Yet he was hired as a bankruptcy attorney by Plaintiff’s law firm, worked directly for Plaintiff’s lead counsel in this case and was appointed as Trustee’s counsel for numerous cases for the Bankruptcy Court in the Southern District of Florida, after being hired and moved to South Florida. During this same time frame, Plaintiff’s law firm was laying off numerous lawyers and staff, and closing offices. The firm did not appear to be seeking to hire any bankruptcy lawyers. It also appears they had the capacity to easily fill any hiring need from within its own attorneys. It seems highly irregular, that under such circumstances, the law firm looked to an out of town practitioner with no bankruptcy experience to hire, at a time of mass attorney departures. Rather, it appears that there was an opportunity to “do a favor” for Judge Olson, and it appears that that was the motivation for the hiring of Judge Olson’s fiancé.

6. Although he ultimately recused himself, by Order dated October 28, 2010,⁴ Judge Olson refused to recognize that the facts required recusal pursuant to 28 U.S.C. § 455 (a). In his October 28 Order, Judge Olson stated that a second motion to recuse, filed September 3, 2010⁵ was “actually reconsideration motions which do not satisfy reconsideration standards”⁶ Sadly, Judge Olson was completely misreading or ignoring the applicable law relating to the appearance of impropriety, the perception of impartiality, and recusal as set forth in 28 U.S.C. § 455(a),⁷ to such an extent that, on Appellate proceedings in this case, Chief Judge Federico Moreno of the Southern District of Florida, held a status conference and made comments to the effect that he was concerned by the facts, that the issues related to the integrity of the Judicial system, that the judgments gave an appearance of being tainted, and that the case could easily be reassigned to another judge.⁸

Movants learned of all these facts after Judge Olson had entered a 71-page Findings of Fact and Conclusions of Law, which adopted over ninety-percent of Trustee’s counsel’s proposed findings, and entered judgment for an amount in excess of \$2.3 million dollars when the initial demand in the cases, was only a total \$419,000. The additional amount in the judgment was based upon a theory of “deepening insolvency” which was not pled, raised for the first time during the trial of the case, and appears completely inapplicable to the facts in this case, as a matter of law.

⁴ DE-139 in Case No. 08-01780-JKO.

⁵ DE-246 in Case 08-01793-JKO.

⁶ DE-139 in Case 08-17980-JKO. The full statement, on recusal was:

These “Second Motions” are actually reconsideration motions which do not satisfy reconsideration standards. Nevertheless, for the reasons stated on the record at the hearing conducted October 28, 2010, the Plaintiff believes that recusal and reassignment will be beneficial as a practical matter. I will accordingly recuse myself to speed these adversary proceedings to a more prompt conclusion. The clerk is directed to reassign the main bankruptcy case and all related adversary proceedings to another judge.

⁷ DE-9 in Case No. 10-61803-mc-FAM; DE-9 in Case No. 10-61810-mc-FAM; DE-8 in Case No. 10-61808-mc-FAM.

⁸ Excerpts of Judge Moreno’s comments to counsel, during the status conference, are:

I would have to be candid that I’m concerned with the allegations. It’s a matter of

Similarly, in a newspaper article in the Daily Business Review which gave coverage to the topic, see Exhibit “B”, the fact scenario herein was posed to an ethics professor in Nova Southeastern University, and described as a “no-brainer” wherein recusal was required.

7. Within days of the Status Conference, the parties appeared before Judge Olson and jointly suggested that he should recuse.⁹ It was apparent from the October 28 Order¹⁰ that Judge Olson still denies that error was committed. Also, Judge Olson has a reputation for sanctioning

public concern because it gets in the media, but whenever something goes to the integrity of the judicial system, it's just not good, you know... it's uncomfortable and it's something that I agree is a matter of great interest in order for people to be more satisfied that the decision was made totally unrelated to the relationship between the judge and the lawyer (pp. 5- 6, lines 22-25 and 1, 5-8).

[T]he relationship between a judge and the lawyer involved, it's uncomfortable whether you're married, whether you're living with the person, whether he's your best friend and you golf every day, you know, depends on how close you are; but the closeness, even from Judge Olson's order, is not in dispute (p. 8, lines 19-24).

[W]hy am I uncomfortable with this whole thing, and you're not at all? I mean, wouldn't it be easier just to - - we've got enough bankruptcy judges. We've got enough district judges, and I mean, judges recuse all the time ... (p. 9, lines 13-16).

And when we say only in Miami, now I have to expand and say only in the Southern District do we come up with facts that would make a TV show, but you know, I will tell you, that's why I brought you in for status, it's uncomfortable, because no matter what it is, there's going to be a feeling that it's a tainted judgment ... (p. 12, lines 18-23).

You see, the appearance of it is troublesome to me. I'll be up-front. It really is. How can it not be? I mean, I'm married to a lawyer ... and I'm not the only judge who has a spouse who's a lawyer. But I would never think of ruling in a case involving my wife (p. 20, lines 4-7 and 9-11).

See October 22, 2010 Status Conference Hearing Transcript [DE 299-1 in Adversary Case No. 08-01793].

⁹ “ While we certainly agree with this Court's ruling when it did not recuse itself, and we don't' think that the arguments raised in the second motion to recuse would be the grounds to do so, it does appear to us that if this Court would sua sponte decide to recuse itself, the Trustee would not object to that, because right now our concern is, we just want to move this matter forward as quickly as we can.” See transcript, p.4, of the October 28, 2010 hearing, DE-299 in Case No.08-01793-RBR.

¹⁰ DE- 139 in Case No. 08-17980-JKO. See note 6, *supra*.

lawyers in a strident and public fashion,¹¹ so Movants herein justifiably have a heightened awareness of how this tainted case is handled, going forward. In fact, both law firms that had been hired to assist with the Motion To Alter or Amend immediately withdrew when the Motion to Recuse was filed.¹²

8. Lack of disclosure has plagued this case. Despite the close connection between Judge Olson and Plaintiff's law firm, neither the Court, nor Plaintiff's counsel, nor Plaintiff/Trustee, ever advised the movants herein of the circumstances relating to Plaintiff's counsel's law firm hiring the Judge's fiancé. The movants learned of these facts, by happen stance, when it was brought to their attention in August, 2010. Movants promptly investigated, raised the issue, and sought a recusal. Judge Olson responded stridently with his Order denying recusal,¹³ but ultimately recused, at Plaintiff's counsel's request following the statements by Judge Moreno during Appellate proceedings.¹⁴ Even then, Judge Olson refused to recognize the necessity for recusal under these facts,¹⁵ and Plaintiff's counsel failed to recognize the significance of what occurred, and the necessity that the Judgments be vacated.¹⁶ These motions to vacate, and other motions relating to

¹¹ See, e.g.; *In re Moon Thai & Japanese, Inc.*, 10-23328-JKO [DE-394]; *In re Creative Desperation, Inc.* 415 B.R. 882 (Bkr. SD Fla 2009); *In re New River Dry Dock, Inc.*, 06-13274-JKO, [DE-588, 593].

¹² See DE-234 and DE- 235 in 08-01793-JKO.

¹³ DE-238 in 08-01793-JKO

¹⁴ See notes 6 and 8, *supra*.

¹⁵ See note 6, *supra*.

¹⁶ See, e.g. DE-278 in 08-01759-RBR.

vacating, altering, or amending the Final Judgment, are currently pending before this Court.¹⁷

9. The outcome of this case will have substantial economic impact on the Plaintiff, Soneet Kapila, and his attorney's firm (where Judge Olson's spouse works). Unless a recovery is made in this case, only \$113,632.56 available for distribution to creditors and for administrative expenses and attorney fees.¹⁸ This case is in a posture where Plaintiff's counsel originally demanded \$419,000 in actual damages and yet has run up in excess of \$450,000 in attorneys fees, through Final Judgment, primarily from pursuing the claims in this bankruptcy.¹⁹ Much time has been expended by the Trustee. These fees, and this time, will only be paid if there is a recovery for an amount far in excess of the original demand. If this Court vacates the Judgment, (as it clearly should)²⁰ that

¹⁷ See Defendants' Motion to Alter or Amend Final Judgment and Findings of Fact and Conclusions of Law Pursuant to Federal Rule of bankruptcy Procedure 9023 [DE-200 in 08-01759; DE-243 in 08-01792; DE-224 in 08-01793]; Defendant's Motion To Stay [DE-225 in 08-01793]; Defendant's Motion for Rehearing on Defendant's Motion to Stay Final Judgment [DE-257 in 08-01793]; Defendant Barbara Wortley's Reply to Trustee's Response to Motion to Alter or Amend the Final Judgment [DE-232 in 08-01793]; Defendants' Motion to Disqualify Michael Bakst and The Ruden McClosky law Firm, Attorneys for Soneet R. Kapila, Trustee in Bankruptcy for Trafford Distributing Center, Inc. [DE- 221 in 08-01759.; DE-261 for 08-01792; DE-248 in 08-01793]; Defendants' Supplemental and Renewed Motion to Vacate Orders and Final Judgment Pursuant to Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60(b) [DE-269 in 08-01759; DE-298 in 08-01792]; Defendants' Renewed Motion for Leave to Take Discovery [DE-279 in 08-01759]

¹⁸ DE-176 in 08-017980-RBR

¹⁹ Aside from these Adversaries, this is a relatively simple bankruptcy case. There were virtually no creditors other than Richard Clark as Trustee, asserting that a family trust owned the receivables pursuant to a factoring agreement, the claims against Heinz on the largest receivable and the claims of creditor, the National Labor Relations Board, for accrued wages and benefits payable to workers of a separate company called Liberty Source W, Inc., which operated a printing and fulfilment business at the same location prior to the formation of Trafford. The NLRB found that upon formation, Trafford was an Alter ego of Source W and therefore, they are liable for Source W's obligations. It was the pendency of this claim, that could not be resolved by negotiation, and the NLRB's threats of contempt proceedings, coupled with the grave illnesses of key advisors to Trafford, that caused Trafford to give up and file a voluntary Chapter 7 proceeding. However, at that time, virtually every creditor of Trafford, with a liquidated amount due, was paid in full and current at the time of filing. The Joseph M. Wortley Trust was never paid anything in the months leading up to bankruptcy.

²⁰ If it would appear to a reasonable person that the court has knowledge of facts that would give it an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the court actually has no interest in the case or because the court is pure in heart and incorruptible. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). In the *Liljeberg* opinion, the Court established the clear and

ruling will have severe impact on the Plaintiff and his attorney's law firm.

10. Movants have asserted that the action of Plaintiff's counsel, in hiring the Judge's fiancé and failing to disclose the relationship, is wrongful. Subsequently, in an action filed in the Circuit Court in and for Broward County, Florida on April 27, 2011, movants have filed suit against Plaintiff's lead counsel and the Judge's spouse, arising out of this wrongful conduct.²¹

FACTS SUPPORTING RECUSAL OF THIS COURT HEREIN

11. The grounds for recusal of this Court are based upon the fact that this Court's son is a young lawyer who is developing his career as a bankruptcy practitioner, practicing extensively before Judge Olson.²² He has also received appointments, as Trustee's Counsel, from the Plaintiff herein, Soneet Kapila.²³ He also receives appointments from other Trustees who practice before Judge Olson.²⁴

fundamental mandate that the integrity of the federal judiciary must be unquestionable in the eyes of the parties, the litigants, and most important, the public. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created. *Liljeberg*, 486 U.S. at 860. The Court required the judge to recuse himself retroactively and ordered that his prior orders be vacated because of the *appearance of impropriety* that his conduct created. The Court found retrial necessary, even though there was no allegation that the judge acted with actual bias in the proceedings before him.

²¹ See Broward County Circuit Court, Case No. CACE-11009808.

²² See Cases No. 07-20681-JKO; 07-16319-JKO; 07-16537-JKO; 07-17213-JKO; 07-17881-JKO; 07-19805-JKO; 07-20507-JKO; 07-20681-JKO; 07-21382-JKO; 07-21485-JKO; 08-01365-JKO; 08-01366-JKO; 08-01367-JKO; 08-10849-JKO; 08-11047-JKO; 08-11633-JKO; 08-14272-JKO; 08-19141-JKO; 07-19805-JKO; 07-20507-JKO; 07-20681-JKO; 08-10849-JKO; 08-11633-JKO; 08-14272-JKO; 08-10928-JKO; 08-14272-JKO; 09-02281-JKO; 09-24750-JKO; 10-01224-JKO; 10-01281-JKO; 10-01805-JKO; 10-01851-JKO; 10-02007-JKO; 10-02015-JKO; 10-02027-JKO; 10-02178-JKO; 10-02229-JKO; 10-03344-JKO; 10-12432-JKO; 10-29919-JKO; 11-20446-JKO; 11-21475-JKO.

²³ See Cases No. 07-19805-JKO; 07-20681-JKO; 07-16319-JKO; 07-19805-JKO; 07-21485-JKO; 08-11047-JKO.

²⁴ See Cases No 07-20507-JKO; 07-20681-JKO; 08-10849-JKO; 08-11633-JKO; 08-14272-JKO; 07-16537-JKO; 07-17213-JKO; 07-17881-JKO; 07-20507; 07-20681-JKO; 07-21382-JKO; 08-10849-JKO; 08-19141-JKO.

Judge Ray

12. At the same time, Judge Olson's spouse practices before this Court.²⁵ Judge Olson's spouse is also a resident of Broward County. The Fort Lauderdale division of the Bankruptcy Court is a two-judge division covering Broward County. This Court's son is based in Broward County, so his bankruptcy practice naturally focuses here. Since he is unable to practice before his father, this Court, that means that the focus of this Court's son's career centers on a practice in front of Judge Olson.

13. Movants perceive that Judge Olson is quick to enter public and strident rebukes of attorneys who he concludes have acted inappropriately.²⁶ Movants perceive that Judge Olson retaliates against those who he views as adversarial. Clearly movants have made themselves adversaries of Judge Olson, by seeking and obtaining his recusal and suing his spouse/domestic partner.

14. Movants are concerned that this Court will be reluctant to enter Orders which Judge Olson might interpret as a rebuke of Judge Olson's judicial conduct in this tainted case, because Judge Olson might retaliate against this Court's son. Movants feel that this is a natural family concern and therefore Movants reasonably believe that it will undermine this Court's efforts to approach this case impartially. Movants therefore conclude that it creates an appearance of impropriety for this Court to continue presiding over this case when this Court's son is making his career out of a practice before Judge Olson, and with Soneet Kapila and with other Trustees.

15. Judge Olson's prior rulings in this case are deserving of rebuke by this Court. Judge

²⁵ See Cases No 09-24894-RBR; 08-19123-RBR; 09-28283-RBR.

²⁶ See, e.g. *In re Touse, Inc, et al.*, Case No.: 10-60017-CIV/GOLD, at page 93, footnotes 53 and 65 and pages 103 and 111-113; and cases cited in footnote 11, *supra*.

Olson has been strongly rebuked by another Court for what movants assert is the same type of conduct which occurred in this case, to wit, wholesale adoption of the facts and conclusions of law which are not supported by the evidence, but instead reflect a bias in favor of an attorney who has a relationship with the Judge, misapplication of the law, and conducting a trial in a manner which is prejudicial to the opposing party.²⁷ Movants assert that Judge Olson deserves the same type of criticism for his handling of this case including: entering a permanent injunction with no additional evidence following a temporary injunction being dissolved;²⁸ finding a violation of the automatic stay based upon an innocuous lawyer letter that was never requested to be retracted and instead was seized upon as a basis for an injunction,²⁹ improperly striking an expert witness report and striking





²⁷ See *In re Touse, Inc, et al.*, the District Court, on Appeal, chastised Judge Olson by finding “the totality of these circumstances, as patently ignored by the Bankruptcy Court in its virtually and *verbatim* adoption of the committee’s proposed findings of fact, established a direct link...” The Court also noted that “the Bankruptcy Court further committed clear and prejudicial error by repeatedly sustaining the committee’s hearsay objections to testimony elicited by the Transeastern Lenders and other Appellants to the testimony elicited by them from Paul Berkowitz...if allowed, Mr. Berkowitz’s testimony would have directly corroborated and strongly supported that the conveying subsidiaries did, in fact, receive substantial indirect benefits from Touse’s payment of the new loan proceeds to the Transeastern Lenders.” *Id.* at footnote 53. The Court described Judge Olson’s application of law as “patently unreasonable and unworkable”, *id.* at page 103, and that Judge Olson gave an “overly broad interpretation of section 550(a) and erroneously neglected to analyze the specific text of that provision. *Id.* at 93. The Court also noted as “persuasive” arguments made by the Appellants that the case be reassigned to another judge if remand was warranted because Appellants had “serious doubts about [Judge Olson’s] ability to approach the Defendants’ evidence and arguments fairly” and cited specific examples including granting Summary Judgment on an issue after the Movant acknowledged that it withdrew its motion on that same issue, questioning witnesses for the Defendant’s in a “belligerent and dismissive” manner, allowing rebuttal testimony from a single fact witness identified by the Defendants as rebuttal to the new testimony.” *Id.* at footnote 65. In the Touse case, the District Court determined that it would not remand the case back to the Bankruptcy Court and instead quashed Judge Olson’s Order, found the imposition of remedies null and void and directed that judgment be entered for the Defendants. *Id.* at 111-113.

²⁸ DE-141 in Case No. 08-01759-JKO (Defendants’ Motion for Reconsideration of Order Granting Plaintiff’s Motion for Partial Summary Judgment); DE-153 in Case No. 08-01759-JKO (Defendants’ Supplemental Memorandum Concerning Reconsideration of Order Granting Plaintiff’s Motion for Partial Summary Judgment); DE-158 in Case No. 08-01759-JKO (Defendants’ Second Supplemental Memorandum, Post Argument, In Further Support of Reconsideration of Order Granting Plaintiff’s Motion for Partial Summary Judgment).

²⁹ See, note 28, *supra*. This was an ambiguous letter stating a position which could have been corrected by a responding letter from the Trustee, and was clarified promptly. In this case, Mr. Clark was given no opportunity to clarify or otherwise correct the interpretation of his letter as being a violation. The case did not result from the letter, as illustrated by the fact that the Complaint was already filed, and the letter merely caused the Trustee to amend and

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an expert witness who completely rebutted the statements of Trustee Kapila following Mr. Kapila's deposition and while summary judgment proceedings were pending,³⁰ aggressive conduct toward movants' witnesses at trial, and issuance of findings of fact and conclusions of law which movants considered to be contrary to fact, unsupported by the record, defamatory, and which have negatively impact their ability to do business. 

16. Movants believe that Judge Olson's rulings are properly vacated, dating back to August, 2009, and that those rulings should be given no weight as they are the product of corruption and bias. 

17. Movants believe that this Court will be forced, by circumstances and a family relationship, to be reticent, and will be unwilling to enter the type of rulings that are required. Movants therefore seek this Court's recusal in this case.

APPLICABLE LAW/ARGUMENT

18. Under 28 USC § 455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Recusal under section 455(a) is appropriate where "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain significant doubt about the judge's impartiality. . . ." *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003) (internal quotations omitted). A judge's actual state of mind or prejudice is not at issue, and any doubts must be resolved in favor of recusal. *Id.* Because a substantial amount of this Court's son's practice of law is before Judge Olson, and Judge Olson has a penchant for

seek Injunctive Relief.

³⁰ DE-160 and 176 in 08-01792 and DE-160 and 167 in 08-01793.
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aggressively attacking lawyers,³¹ these movants believe that this Court may be unable to impartially proceed to vacate Judge Olson's rulings and then rule in favor of the movants on those same issues. Based upon Judge Olson's previous actions, movants perceive that, were this to Court to rule in favor of Judge Olson's adversaries, Judge Olson may retaliate against this Court's son. Stated another way, in the perception of these Defendants, how Judge Olson receives this Court's son in the future may be impacted by how this Court handles this case involving these Defendants. Likewise, this Court's decisions, in this case, could impact whether or not Soneet Kapila hires this Court's son, in the future. As stated by Judge Fay in *Potashnick v. Port. City Construction Company*, 609 F.2d 1101, 1111 (5th Cir. 1980), "if any reasonable factual basis for doubting the judge's impartiality exists, the judge 'shall' disqualify himself and let another judge preside."

19. The fact that these issues were raised by letter, before the filing of this motion, does not preclude the movants from developing these arguments herein. The letter was not intended to be a motion, as it was informal in nature and does not comply with the form of filing a pleading or motion as stated under Rules 7 and 10 of the Federal Rules of Civil Procedure. Relevant facts were not fully compiled and legal and factual arguments were not developed. This Court should not have treated the letter as a motion, then find that the "motion" contained insufficient facts, and then deny the purported motion "with prejudice" on criticism of lack of "support for their position" and "simply allude[ing] to the position that since [his] son appears before Judge Olson, [he] may be influenced in some way to rule in favor of Judge Olson's prior position on the Trafford Adversaries."

20. At the time that the letter was written, Movants had just commenced to investigate

³¹ See, note 11, *supra*.

the issue. The facts set forth herein show a more extensive practice before Judge Olson, as well as practice with the Plaintiff in this case. The Plaintiff here has hired this Court's son, in the past, and is in a position to do so in the future, or not. This was not disclosed by the Plaintiff, or the Court.

21. The strident denial of legitimate grounds supporting movant's perception of bias creates its own, independent, demonstration that this Court may not be impartial in this case, and causes movants to entertain significant doubt about this Court's impartiality in this case. See *Patti, supra*, 337 F.3d at 1321; *Potashnick, supra*, 609 F.2d at 1111. This issue turns on the facts of this case, involving these parties. This case involves allegations of corruption that have gone up on appeal, out in the newspapers, and into a separate court action. This Court's son is a bankruptcy practitioner in Broward County who personally appears as counsel of record in numerous cases before Judge Olson. It appears that practicing before Judge Olson is this Court's son's primary professional endeavor.³² Also, the Plaintiff herein is a client of this Court's son. It is far from "preposterous"³³ for the movants to conclude that, under the circumstances of this case, this Court might not approach the movants' case with the requisite impartiality. When the matter was raised

informally, by letter, and this Court stridently rejected the suggestion in a six-page order concluding that "the motion to recuse is denied with prejudice," this Court has clearly demonstrated that the movants are justified in their perception that this Court may not approach this case in an impartial manner. Under the circumstances, this Court must recuse itself from this case.

22. Section 455(b)(5)(iii) provides that recusal is appropriate if the Court's son is "known.....to have an interest that could be substantially affected by the outcome of the proceeding."

³²According to SuperLawyers.com, this Court's son practice 80% Bankruptcy and Creditor/Debtor rights, and 20% business litigation. In the past two weeks he has filed two cases as Debtors counsel that was assigned to Judge Olson.

³³ See Order at page 6.

As set forth above, the Court's son is a young bankruptcy lawyer in Broward County, Florida, and the only bankruptcy judge in Broward County, Florida that he can practice is in front of is Judge Olson. Under the circumstances of this case, were this Court to enter a ruling in line with the findings and conclusions in *Tousa*, it is reasonable to expect that Judge Olson may retaliate against this Court's son. Likewise, this Court's ruling might impact whether or not Mr. Kapila hires the Court's son, as Trustee's counsel, in the future. Accordingly, this Court's son has "an interest that could be substantially affected by the outcome of the proceeding."

23. The interrelationships among Judge Olson, his spouse, this Court's son, Mr. Kapila and this Court creates an appearance of cronyism, with family members trading off their positions. When one aspect of the issues was raised, this Court entered an Order which ignored them. Also, the additional facts of Plaintiff hiring the Court's son as attorney for the Trustee is a significant failure to disclose. This Court's conduct, in overlooking these matters, coupled with its strong rebuke and denial of the "Motion", gives the appearance of this Court being complicit. By chastising the suggestion that an issue might exist, rather than divulging the facts and analyzing the issues, this Court has demonstrated a lack of impartiality. Recusal is mandated under these circumstances.

CONCLUSION

As Judge Moreno stated, there is a perception that this case is tainted. Judge Olson's fiancé was hired by Plaintiff's attorneys and this fact was never disclosed to the movants. When recusal was sought, Judge Olson had a strident, legally erroneous reaction to the motion. Even when he recused, he did so in denial of what occurred. Now, before this Court, questions relating to impartiality have been raised, and strongly rejected by this Court without full disclosure or consideration of the facts and law. The circumstances with this Court's son must be analyzed under

the peculiar facts of this case. The movant's position is reasonable and correct under the applicable law and the facts of this case. This Court should recuse itself. The "Order denying motion for recusal" should be vacated, and an Order of Recusal entered in its place.

Respectfully submitted,

s/ Douglas C. Broeker

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Attorneys for Defendants

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

By: **s/ Douglas C. Broeker**
Douglas C. Broeker, Esquire
Florida Bar No. 306738

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via electronic filing using the CM/ECF system with the Clerk of the Court which sent e-mail notification of such to: **Marla B. Neufeld, Esq., Michael R. Bakst, Esq., and Morris G. Miller, Esq.** 222 Lakeview Ave #800, West Palm Beach, FL 33401, efile1542@ruden.com, efile2565@ruden.com, skip.miller@ruden.com, on this 2nd day of May, 2011.

By: **s/ Douglas C. Broeker**
Douglas C. Broeker, Esquire
Florida Bar No. 306738

DCB/clr

M:\wp51\Active.Client.Files\Trafford BKC\Motions\Defendants Motion to Recuse.wpd

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April 7, 2011

Via Federal Express and Facsimile

The Honorable Raymond B. Ray
U.S. Bankruptcy Court
299 East Broward Blvd, RM 306
Ft. Lauderdale, FL 33301

RE: *In re Trafford Distributing Center, Inc. a/k/a Trafford Distribution Center, Inc. Case No. 08-17980-BKC-RBR (Main BKC); Adversary Case No. 08-01759; 08-01792; 08-01793*

Dear Judge Ray:

We represent Barbara Wortley, Liberty Properties at Trafford, LLC, Liberty Associates, LC, Advanced Vehicle Systems, LLC, and Richard Clark as Trustee, in the above Adversary cases. Before the cases were reassigned to you, we had issues arising from the fact that our opposing counsel/law firm hired Judge Olson's fiancé, now spouse, in the middle of the litigation without disclosure to us, and that our lead opposing counsel was his direct supervisor. Promptly after learning these facts, we moved to recuse, and vacate all Orders entered after the date of hire. Ultimately, Judge Olson recused himself, but we still have motions to vacate Judge Olson's Orders and for other relief, pending before your Honor.

The pending motions involve what we consider to be corrupt activity, and we are mindful of the difficulties involved in determining them, in the context of a tight-knit Bankruptcy community. It has just come to our attention that your son, who we understand is a Bankruptcy attorney, practices extensively before Judge Olson. We realize that this places you in an untenable position with regard to our pending motions and the prosecution of our defenses. It also perpetuates the terrible appearance of impropriety that has tainted this case, and is further complicated by the facts that, while your son practices extensively before Judge Olson, at the same time Judge Olson's spouse practices before your Honor. It appears that your son has become involved in six (6) new matters before Judge Olson.

EXHIBIT "A"

Letter to The Honorable Raymond B. Ray

April 7, 2011

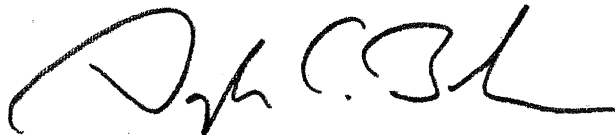
Page 2

We are mindful of both the context of Judge Olson's Order denying our first Motion to Recuse, [See, e.g., DE-235 in Case No. 08-01759] which was the subject of review to Chief Judge Federico Moreno [See e.g., DE-286 in Case No. 08-01759]. We are also mindful of the fact that both of our co-counsel in Case No. 08-01793 immediately withdrew when we decided that we needed to move to recuse.

As a result, we request that you recuse yourself from all of the above matters. If it is necessary or appropriate for us to file a Motion to Recuse or to Withdraw the Reference, we will do so, however we felt that it was more appropriate to raise this to you, by letter, first.

Thank you for your continued efforts in the administration of justice.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. A. Sweetapple" and "D. C. Broeker" joined together.

ROBERT A. SWEETAPPLE, ESQ. and
DOUGLAS C. BROEKER, ESQ.

DCB/clr

cc: Michael Bakst, Esq. (via email & US Mail)

Chad Pugatch, Esq. (via email & US Mail)

Clients

DAILY BUSINESS REVIEW

Peretz
 Chesel
 Herrmann
 Actual Property Lawyers

BANKRUPTCY COURT Judge's fiance works with firm involved in litigation

JUDGE OLSON REFUSES TO RECUSE HIMSELF FROM CASE

by **Julie Kay, DBR**, U.S. Bankruptcy Judge John Olson in Fort Lauderdale is at the center of a controversy involving his refusal to recuse himself from a case with representation by a law firm where his fiance works.

represents trustee Sonnet Kapila in the Trafford Distributing Center bankruptcy case.

Both sides agree Fender is not directly involved in the case, but Sweetapple, Brooker & Varkas attorneys insist Olson should have disclosed the personal relationship because Fender has worked closely with Ruden, bankruptcy attorney Michael Baker in other cases.

SEE STORY, PAGE A3



In his ruling, U.S. Bankruptcy Judge John Olson said he did not have to disclose the relationship or recuse himself.

ELECTIONS Ethics complaint pending

Opponent questions source

CAPITAL SOURCES

Wayne Tompkins

SIDE

AL REVIEW

BOARD OF CONTRIBUTORS

Shannon has worked for the U.S. Postal Service in Miami. He recently describes how development of a new business from a commercial condo to a specialty bookstore. **A5**

STARS' CHARITIES RETURN ROTHSTEIN DONATIONS

Charities run by Miami Heat basketball star Dwyane Wade and former Miami Dolphins star Jason Taylor agreed to return donations made by Scott Rothstein. The charities will return half of their donations. **A4**

LESTATE REVIEW

OWNER HOMES SELL AT A LOSS

Home that owner sold briskly to design aficionados as market prices are now selling at a loss if at all. **A7**

FINANCIAL REVIEW

LEGATE ANNOUNCES MERGER

Georgia-based Stonegate Bank has signed a merger



LEGAL REVIEW

EVENTS

Today

Dade County Defense Bar Association: Luncheon with Third District Court of Appeal Judge Richard J. Suarez speaking on the topic, "Everything you Ever Wanted to Know About the Third DCA," noon, Hyatt Regency, 400 SE Second Ave., Miami. Cost: \$45 members, \$50 nonmembers, \$5 more at the door, Free for judges. Call (305) 789-7598.

Florida Association for Women Lawyers Palm Beach County chapter: Welcome Back and new member reception, 5:30 p.m., BB Kings, 550 S. Rosemary Ave., Suite 236, West Palm Beach. Free for members, \$20 nonmembers. E-mail: pbcfaw@att.net.

Broward County chapter of the Paralegal Association of Florida: Dinner and discussion on "Unique Aspects of Florida Personal Injury Law," 6 p.m., Coral Ridge Yacht Club, 2800 Yacht Club Blvd., Fort Lauderdale. Cost: \$25 members, \$29 nonmembers. E-mail: ssabra@kahaneandassociates.com.

Puerto Rican Bar Association of Florida: Guardianship and Special Needs Planning series, 6 p.m., Broward County Bar Association building, 1051 SE 3rd Ave., Fort Lauderdale. Cost: \$25. Call (954) 963-7220.

PEOPLE



JUDGE WON'T RECUSE HIMSELF FROM FIANCÉ'S LAW FIRM'S CASES

by Julie Kay
jkay@aim.com

A Fort Lauderdale bankruptcy judge is refusing to recuse himself from a case where the trustee is represented by the law firm where the judge's fiancé works.

U.S. Bankruptcy Judge John Olson issued a ruling Monday following an emergency hearing



Fender

last week in the case of Trafford Distributing Center v. Richard Clark as trustee for Matthew Wortley Trust. In his ruling, Olson acknowledged he is engaged to Ruden

Fender, chair of The Florida Bar's state-federal judicial liaison committee, but said he did not have to disclose the relationship or recuse himself.

"Because my fiancé's employment at Ruden McClosky is an insufficient basis for recusal, and because nothing other than that employment and our upcoming marriage is offered to support the movant's allegations, I will accordingly deny their recusal motions," Olson stated.

Attorneys who filed the recusal



U.S. Bankruptcy Judge John Olson calls his fiancé Steven Fender's employment "insufficient basis for recusal."

motion promised a quick appeal and a fresh motion for recusal, claiming adverse rulings after Fender joined Ruden. They insist Olson should have at least disclosed his relationship with Fender.

"Based on statements the judge made in open court, there are additional grounds for recusal, and we believe the court has misconstrued the nature of the disclosure that should have been made," Robert Sweetapple of Sweetapple Broeker & Varkas of Miami said in an inter-

ABOUT U.S. BANKRUPTCY JUDGE JOHN K. OLSON

Sworn in as judge in 2006.

Based in Fort Lauderdale.

Former partner at Swans, Weaver Miller, Weissel, Alkadeff & Sitterson in Tampa.

Earned his law degree from Boston College in 1975.

Quote when appointed to the bench: "The satisfaction from trying to do some good for the public is more important than the economics at some point."

view Sweetapple and his colleague, Douglas Broeker, represent related companies and a trust sued by the bankruptcy trustee for \$330,000 in clawbacks.

The issue arose in a routine bankruptcy matter involving a Pennsylvania fulfillment company that filed for bankruptcy in the Southern District of Florida, where it operated in 2008. The case was assigned to Olson, and Fort

SEE OLSON, PAGE A6

