

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JW BOA LLC, successor to Bank of America, N.A.,
successor by merger to LaSalle Bank N.A., successor
by merger to LaSalle Bank FSB,

Plaintiff,

v.

Eugene Hendrix, City of Chicago, Unknown Owners and
Non-record Claimants,

Defendants.

No. 12 CH 20721

MEMORANDUM OPINION AND ORDER

A substitution of judge for cause should be granted if a judge has been influenced to a party's detriment by extra-judicial circumstances or possesses deep-seated antagonism or hostility toward the party. Eugene Hendrix seeks a substitution of judge for cause from Judge Laura C. Liu because she entered various orders during the pendency of his appeals. Since Hendrix failed to allege that extra-judicial circumstances influenced Judge Liu to his detriment or that she harbors deep-seated antagonism or hostility toward him, his request for a substitution of judge for cause must be denied.

FACTS

On December 3, 2012, Judge Liu entered an order granting JW's motion for possession of the mortgaged property. Resp. at 2. Eight days later, on December 11, 2012, the court entered an order granting JW, among other things, all legal rights of possession of the property during the remaining foreclosure proceeding. *Id.* at 3. Hendrix appealed these orders.

On April 9, 2013, the appellate court dismissed Hendrix's appeal for want of prosecution. Ptn. at ¶ 1. Several days later, on April 15, Hendrix filed a motion asking the appellate court to vacate the April 9 order. *Id.* at ¶ 2. On May 2, the appellate court entered an order stating: "on [Hendrix's] motion to vacate order of April 9, 2013; it is hereby ordered: Motion Allowed." *Id.* at Ex. A.

During a May 17, 2013 hearing in the circuit court, Judge Liu indicated that she read the April 9 appellate court order to mean that the court had taken Hendrix's motion under advisement, not that the court had granted the motion. Resp. at 4. Based on that reading, Judge Liu entered orders permitting Hendrix to substitute counsel, allowing JW to withdraw its renewed motion for contempt, and setting a briefing schedule on Hendrix's motion to vacate and motion to reconsider. *Id.*; Ptn. at ¶ 8.

Based on Judge Liu's alleged conduct, Hendrix filed a petition¹ for substitution of judge for cause. In that motion, Hendrix alleges that the appellate court's May 2 order vacated the April 9 order, Ptn. at ¶ 4, and, thereby, divested the circuit court's jurisdiction. *Id.* at ¶¶ 5 & 9. He further alleges that Judge Liu is prejudiced and biased against Hendrix. *Id.* at ¶¶ 8, 11, 15, 24, 26-27. Hendrix further alleges that Judge Liu's action violated Illinois law and his constitutional rights. *Id.* at ¶ 12. Judge Liu's alleged prejudice means that Hendrix cannot receive a fair trial before her. *Id.* at ¶¶ 15, 21, 26, 28 & 42.

ANALYSIS

The Code of Civil Procedure authorizes the substitution of a judge in a variety of circumstances, including "[w]hen cause exists." 735 ILCS 5/2-1001(a)(3). Illinois courts have consistently held that, in those instances in which a petition for substitution is filed after a judge has made a substantive ruling, the word "cause" is equated with "actual prejudice." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30. Any lesser standard would permit judge shopping. *Id.*

The burden of establishing actual prejudice is on the party seeking the substitution. *Id.* at ¶ 31. That party must present allegations which, if true, would justify granting substitution for cause. *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010), citing *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248 (1st Dist. 2006), quoting, in turn, *Alcantar v. Peoples Gas Light & Coke Co.*, 288 Ill. App. 3d 644, 649 (1st Dist. 1997). Allegations of bias or prejudice must normally be based on something other than what the judge learned from participating in the case. *In re Estate of Wilson*, 238 Ill. 2d at 554. A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality. *Id.*, citing *Alcantar*, 288 Ill. App. 3d at 649; *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 777 (1st Dist. 2009). As explained in *Eychaner v. Gross*:

"[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. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible."

202 Ill. 2d 228, 281 (2002), quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994) (emphasis in original).

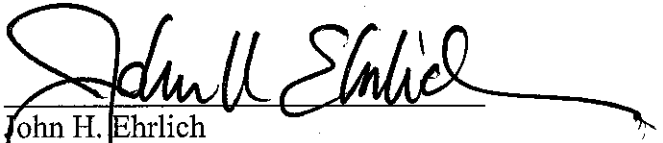
Hendrix's petition for substitution of judge for cause arises from a single instance of Judge Liu entering various orders on May 17 after the appellate court had allegedly indicated that it had vacated its prior dismissal of Hendrix's appeal for want of prosecution. If Hendrix's reading of the appellate court order is correct, which it is not, but this court will assume that it is, Judge Liu's entry of orders on May 17 still does not provide the basis for a substitution of judge

¹ Although Hendrix titled his filing as a motion, this court will refer to it as a petition. 735 ILCS 5/2-1001(a)(3).

for cause. Judge Liu's alleged misreading of the appellate court order is simply that, a misreading, nothing else. Hendrix provides no factual allegations that Judge Liu entered the May 17 orders based on any extra-judicial circumstances. He also fails to allege that Judge Liu entered the orders because of any antagonism or hostility toward him. Rather, he alleges that the orders themselves show Judge Liu's prejudice. In other words, Hendrix has failed to allege any animosity or hostility that motivated Judge Liu to enter those orders. Absent preexisting extra-judicial influence, animosity, or hostility, the orders cannot serve as the basis for a substitution of judge for cause.

Hendrix's petition is denied with prejudice. This matter is returned to the Presiding Judge of the Chancery Division for reassignment.

Dated: 22 November 2013



John H. Ehrlich
Circuit Court Judge

Judge John H. Ehrlich

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