

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Iconic Mars Corp. v. Kaotica Corp.

Iconic Mars · No. 3:22-cv-0092-CAB-DEB · Decided July 28, 2025

OPINION

Iconic Mars Corporation v. Kaotica Corporation

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 ICONIC MARS CORP., Case No.: 3:22-cv-0092-CAB-DEB 12 Plaintiff,

ORDER DENYING MOTION FOR

13 v. RECUSAL

14 KAOTICA CORP.,

[Doc. No. 203] 15 Defendant. 16 17 Before the Court is Plaintiff Iconic Mars Corporation's motion requesting the 18 undersigned recuse from any further proceedings in this action, pursuant to 28 U.S.C. §§ 19 144 and 445. [Doc. No. 203.] Plaintiff asserts that the Court has evidenced an 20 "appearance" of bias against Plaintiff and Plaintiff's counsel. Defendant Kaotica filed an 21 opposition [Doc. No. 225.] Plaintiff filed a reply. [Doc. No. 226.] 22 The standard for recusal under 28 U.S.C. §§ 144 and 445 is "whether a reasonable 23 person with knowledge of all the facts would conclude that the judge's impartiality might 24 reasonably be questioned." U.S. v. Studley, 783 F.2d 934, 939 (9th Cir. 1986). "[T]he 25 challenged judge [herself] should rule on the legal sufficiency of a recusal motion in the 26 first instance." Id. at 940. "The reasonable person is not someone who is hypersensitive 27 or unduly suspicious, but rather is a well-informed, thoughtful observer." United States v. 28 Mikhel, 889 F.3d 1003, 1027 (9th Cir. 2018) (quoting United States v. Holland, 519 F.3d 1 909, 913 (9th Cir. 2008)). A motion for recusal is committed to the sound discretion of the 2 district court and the moving party bears a substantial burden to show that the judge is not 3 impartial. See, e.g., U.S. v. Bell, 79 F.Supp. 2d, 1169, 1171 (E.D. Cal 1999). 4 A motion under Section 144 must be made timely, i.e., the motion should be made 5 at the earliest possible moment after obtaining facts demonstrating a basis for recusal. "The 6 Ninth Circuit has warned that a recusal motion made after the entry of judgment is 7 presumptively untimely." Id. at 1172. This case was tried to a jury and a verdict entered 8 on June 13, 2024. [Doc. No 113.] Remaining equitable claims and other post-trial 9 proceedings were resolved in an order issued by the Court on February 5, 2025. [Doc. No. 10 145.] Plaintiff's motion for recusal was filed on June 2, 2025. 11 To the extent Plaintiff contends evidence of bias from the Court's

performance while 12 presiding over the trial or from the Court’s post-trial hearing on January 16, 2025, when 13 addressing the equitable claims and fee requests, it is presumptively untimely. Studley, 14 783 F.2d at 939 (a motion for recusal filed weeks after the conclusion of trial is 15 presumptively untimely absent a showing of good cause for its tardiness.) Moreover, 16 Plaintiff brought this motion only after considerable delay and significant adverse rulings 17 against him, including the adverse final judgment entered in this case. See Wood v. 18 McEwen, 644 F.2d 797, 802 (9th Cir. 1981) (holding that recusal motion brought with a 19 lengthy delay after facts underlying motion are known and especially after an adverse 20 ruling is untimely). It is too late to complain about the restrictions placed on Plaintiff 21 during rebuttal in closing arguments, restrictions that were based on the Court’s ruling that 22 there was no credible, good-faith basis for arguing that the stipulated judgment agreed to 23 by Plaintiff’s counsel was somehow manipulated by Kaotica.1 24 25 26 27 1 To that point, the Court was free to express its reasonable disbelief of Plaintiff’s arguments and representations from the record. See Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1388 (9th Cir. 28 1 Even assuming the motion was timely, under either Section 144 or 445(b)(1) it is 2 without merit. See Bell, 79 F. Supp. 2d at 1173 (both sections are considered together). A 3 district judge shall “disqualify [herself] in any proceeding in which [her] impartiality might 4 reasonably questioned” or where she has a personal bias or prejudice concerning a party. 5 28 U.S.C. §§ 455(a), 455(b)(1). “The alleged bias and prejudice to be disqualifying must 6 stem from an extrajudicial source and result in an opinion on the merits on some basis other 7 than what the judge learned from [her] participation in the case.” United States v. Grinnell 8 Corp., 384 U.S. 563, 583 (1966). 9 “Opinions formed by the judge on the basis of facts introduced or events occurring 10 in the course of the current proceedings do not constitute a basis for a bias or partiality 11 motion unless they display a deep-seated favoritism or antagonism that would make fair 12 judgment impossible.” Liteky v. United States, 510 U.S. 540, 555–56 (1994). A judge’s 13 prior adverse ruling is not sufficient cause for recusal. Studley, 783 F.2d at 939. 14 This Court found it appropriate to sanction Plaintiff and Plaintiff’s counsel 15 personally for bad faith conduct of this litigation. [Doc. No. 145.] That decision was based 16 on the manner in which this case was litigated, and positions asserted by counsel before 17 and during trial that were meritless, intentionally misleading and contrary to Court orders. 18 [See e.g., Hrg. Transcript Doc. No. 144 at 22–24.] Despite Plaintiff’s repeated attempts to 19 recharacterize and repackage the history of this litigation, the sanctions issued by this Court 20 were justified and based on the conduct of the party and counsel and not based on any 21 personal bias against them. 22 Plaintiff contends the Court demonstrated bias by seeking extrajudicial 23 communications with judicial colleagues about Plaintiff’s counsel’s reputation and for 24 remarking at a post-trial hearing on the deficiency of his performance, suggesting it could 25 be grounds for a malpractice claim. 26 Plaintiff simply distorts the facts. After the trial, Defendant moved for sanctions 27 against counsel as well as Plaintiff. In response to that motion, Plaintiff’s counsel explicitly 28 lobbied the Court—more than once—to inquire among the members of this district’s bench 1 about his

reputation in his personal attempts to avoid sanctions. [Doc. No. 128 at 2, fn. 2; 2 Doc. No. 144 at 32–33.] Plaintiff’s counsel made the following representation to the Court, 3 supported by his own declaration: 4 Finally, this Court is invited to confer with District Judge Robert S. Huie about the advocacy and professionalism of the law firm and Mr. Lobbin, as 5 Judge Huie presided over the firm’s next most recent jury trial in this District, 6 in October 2023. 7 [Doc. No. 128 at 2 fn. 2] (emphasis added). At the hearing relating to sanctions, Plaintiff’s 8 counsel made a similar request: 9 ATTORNEY LOBBIN: If I may, Your Honor, one more comment. As Your 10 Honor’s considering its final order, because this sanctions issue deals with subjective bad faith, it really goes to, you know, me as a person. And I would 11 invite, and I request, that the Court consult with some of your colleagues– 12 [Doc. No. 144 at 32–33] (emphasis added). 13 The issue however, as the Court tried to explain, was solely counsel’s conduct in the 14 case before this Court—which was found sanctionable—not whether other judges within 15 the district would have vouched for him. Having urged the Court to make “extrajudicial” 16 inquiries regarding his reputation among the judges of the district, he cannot now complain 17 about the Court’s remark. 18 At a hearing regarding a separate, related case, 3:21-cv-433-CAB, Plaintiff’s counsel 19 repeatedly stated that he failed in his duty to competently represent his client regarding the 20 filing made two and a half years earlier of a critical document to a stipulated judgment. He 21 sought relief from his failure asserting a clerical error was made by the court in the filing 22 pursuant to Rule 60(a). [Doc. No. 66.] Alternatively, he alleged manipulation of the 23 document by opposing counsel, while acknowledging he did not review the critical exhibit 24 before executing and filing the stipulated judgment. 25 Plaintiff’s counsel sought untimely relief from a stipulated judgment that he himself 26 agreed to, years later, and without any actual basis in law to justify such extraordinary and 27 unusual relief. [See Doc. No. 69.] If in fact there was an error in the exhibit attached to 28 1 the consent judgment, the fault lay with counsel and his blatantly deficient performance, 2 which was the context of the Court’s reference to malpractice at the post-trial hearing. [See 3 3:21-cv-433-CAB, Doc. No. 69; 3:22-cv-92-CAB, Hrg. Transcript. Doc. No. 225-4 at 16– 4 17.]; See Charron v. United States, 200 F.3d 785, 789 (Fed. Cir. 1999) (accusing counsel 5 of malpractice merely reflected the judge’s evaluation and criticism of counsel’s handling 6 of the case derived from the conduct of the litigation and did not establish personal bias or 7 prejudice or the appearance of partiality). The remark does not establish bias or require 8 recusal. 9 Plaintiff also requests that this Court refer the recusal motion to another judge 10 pursuant to 28 U.S.C. § 144. “Whenever a party to any proceeding in a district court makes 11 and files a timely and sufficient affidavit that the judge before whom the matter is pending 12 has a personal bias or prejudice either against him or in favor of any adverse party, such 13 judge proceed no further therein, but another judge shall be assigned to hear such 14 proceeding.” Id. 15 The request is based on the same assertions seeking recusal under Section 445. It is 16 both untimely and made on similarly insufficient grounds. It is well-settled that an adverse 17 ruling is not an adequate basis to show recusal. See Liteky, 510 U.S. at 549.2 There is no 18 indication (or

legitimate argument) that any of the Court’s rulings were made based upon 19 anything other than the merits of the applicable facts and law and what the Court observed 20 in the course of the proceedings. The Court imposed sanctions on Plaintiff and counsel 21 based on an analysis of the conduct of this litigation and findings that the proceedings were 22 initiated and pursued in bad faith. The remaining proceeding in this matter is the 23 24 25 2 Plaintiff argues that the true grounds for recusal only became known to him in the post-verdict/judgment hearings. This does not render his motion timely, especially considering Plaintiff’s focus in his motion 26 on alleged “pervasive” bias infecting the June 2024 trial. [See Doc. No. 203 at 8.] “[P]arties that suspect possible bias or prejudice toward them must not withhold filing recusal motions until their dispute has 27 been resolved on the merits.” *United States v. Bigley*, No. CV-14-00729-PHX-HRH, 2017 WL 3432370, at *3 (D. Ariz. Aug. 10, 2017) (citing *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1295 (9th 28 1 || determination of reasonable and necessary attorney fees to be awarded to Kaotica and any 2 || apportionment of that award between Plaintiff and counsel. 3 The Court will not recuse or refer this matter because, in response to the Court 4 || having found Plaintiff’s (and counsel’s) conduct sanctionable, Plaintiff now contends that 5 || finding is based on a personal bias or prejudice against him. The motion is denied. 6 It is SO ORDERED. 7 8 Dated: July 28, 2025 _ Ge 10 Hon. Cathy Ann Bencivengo 11 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28