

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90027

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: APRIL 6, 2011

The complainants, two debtors in a Chapter 7 bankruptcy proceeding, have filed a complaint, under 28 U.S.C. § 351(a), against the presiding bankruptcy judge which I find to be baseless for reasons given below.

The complaint is the third in a series of baseless complaints arising from the original proceeding and two related adversary cases. The first complaint, No. 01-10-90010, was filed against the judge who originally presided over the case. The second complaint, No. 01-10-90011, like the present matter, was filed against the bankruptcy judge to whom the proceeding was reassigned. By order, dated June 29, 2010, I dismissed the previous complaints, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B). See Order, C.C.J., In Re: Complaints Nos. 10-10-90010 and 01-10-90011, June 29, 2010

The present complaint, like the previous two, arises from the complainants' attempt to turn into a misconduct proceeding their dissatisfaction with rulings issued in the Chapter 7 proceeding and related adversary cases. The complainants have been represented by counsel at several intervals during the proceedings, but have otherwise appeared pro se.

The complainants essentially reiterate two of the allegations presented in an earlier complaint and present two different but related claims. The complainants first allege that the judge wrongfully ordered the conversion of the case from a Chapter 13 to a Chapter 7 proceeding. The complainants argue that the judge was "statutorily barred" from ordering the case converted because it had been established that the complainants could "pay all claims in full." The complainants contend that there was no evidence on the record in support of the order of conversion.

The complainants next reiterate the allegation that the judge wrongfully approved the stipulation agreement that the trustee submitted to the court.

The complainants further allege that the judge issued an order to show cause why the case should not be converted to Chapter 7, in order to intentionally and unreasonably delay the complainants' right to "defend and protect [their] property." The complainants conclude that the judge's "recklessness and incompetence" has caused them to wrongfully lose their home, and damaged the complainants' other creditors.

Finally, the complainants claim that the judge issued "bogus and erroneous order[s]" in the adversary proceeding that the Chapter 7 Trustee filed against the party to

whom the complainants had allegedly fraudulently conveyed their property. The complainants contend that, since the trustee's verified complaint contained criminal charges, the court lacked jurisdiction to hear it. The complainants include allegations that the trustee lacked standing to raise allegations of criminal conduct and engaged in other wrongdoing. The complainants contend that the dismissal of a case that they filed in U.S. District Court, on the ground that it sought to bring criminal charges, demonstrates the bankruptcy judge's improper handling of the adversary proceeding. (The complainants have since filed three additional original proceedings in District Court, against the bank and the trustee, in addition to the appeal of the bankruptcy case.)

The complaint is without merit. As an initial matter, the judicial conduct statute does not provide an avenue for presenting claims against the trustee in a bankruptcy proceeding. See 28 U.S.C. § 351, et.seq.

With regard to the judge, the complainants allege nothing more than court orders with which they disagree as purported evidence of misconduct. As explained in the order dismissing the complainants' previous misconduct complaints, there was no evidence of any improper judicial motive in connection with either the court's conversion of the case to Chapter 7 or its acceptance of the settlement stipulation. See Order, C.C.J., In Re: Complaints Nos. 10-10-90010 and 01-10-90011, June 29, 2010, at 4-6. Despite having been told this, complainants repeat an allegation already found baseless. The complainants offer no information in this complaint that in any way undermines the previous determination. Accordingly, these claims are again dismissed as lacking factual

foundation, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(D) and 11(c)(1)(B), respectively. The related claim -- that the judge issued the show cause order in order to intentionally delay the complainants' exercise of their rights -- is presented with no basis in fact. The show cause order allowed the complainants the opportunity to be heard on the issue of the conversion before the court ruled. In fact, the court held a hearing on the matter at which one of the complainants failed to appear. The allegation that this order somehow demonstrated the judge's bias, or his "recklessness and incompetence," is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial Misconduct, Rules 11(c)(1)(C). See also Rules of Judicial-Conduct, Rule 3(h)(3)(B) (Cognizable misconduct does not include "an allegation about delay in rendering a decision or ruling . . .").

The complainants likewise present no evidence of bias or other judicial animus in connection with the judge's handling of the referenced adversary proceeding. The reviewed record -- including the misconduct complaint, the docket, pleadings and orders issued in the case -- establishes that the trustee filed that matter against the party to whom the complainants' personal property had allegedly been wrongfully conveyed in order to avert the transfer of the disputed property. The judge addressed the issues raised in the case in conjunction with the complainants' lead case, and issued judgment in accordance

with the accepted stipulation. As there is no evidence of bias or other wrongdoing, the allegation that the judge issued erroneous rulings in the matter is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-10-90027 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), 11(c)(1)(C), and 11(c)(1)(D).

4/6/11
Date

Andrea L. Lynch
Chief Judge Lynch