

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	No. 07-0849-CV-W-FJG
)	
GENERAL ELECTRIC COMPANY, et al.,)	
)	
Defendants.)	

ORDER

Currently pending before the Court are the following motions: 1) plaintiff's Motion to Alter or Amend the Judgment (Doc. # 61); 2) plaintiff's Motion for Order Disqualifying Attorney General Michael Mukasey and the Department of Justice (Doc. # 68); 3) plaintiff's Motion to Withdraw Any and All Ex Parte Orders (Doc. # 69) and 4) plaintiff's Motion for a Hearing on the Motion to Disqualify (Doc. # 74).

I. Motion to Alter or Amend the Judgment

Plaintiff moves pursuant to Fed.R.Civ.P. 59(e) for the Court to reconsider the Order entered on July 30, 2008, granting defendants' Motions to Dismiss.

A motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e) serves the limited purpose of correcting manifest errors of law or fact or presenting newly discovered evidence. . . . It is not appropriate to use a Rule 59(e) motion to repeat arguments or to raise new arguments that could have been made before judgment. . . . District courts have broad discretion when deciding whether or not to grant a motion to amend judgment.

In re General Motors Corp. Anti-Lock Brake Products Liability Litigation, 174 F.R.D. 444, 446 (E.D.Mo. 1997), aff'd sub nom. Briehl v. General Motors Corp., 172 F.3d 623 (8th Cir. 1999)(citations and internal quotations omitted). See also, Peters v. General

Service Bureau, Inc., 277 F.3d 1051,1057 (8th Cir. 2002)(“Arguments and evidence which could have been presented earlier in the proceedings cannot be presented in a Rule 59(e) motion.”). Plaintiff believes that this Court erred by: 1) ignoring the recent Supreme Court decision in Bridge v. Phoenix Bond & Indem. Co., 128 S.Ct. 2131, 170 L.Ed.2d 1012 (2008) and applying a heightened pleading standard; 2) finding the plaintiff’s injuries indefinite or speculative; and by 3) failing to recuse from this case. Plaintiff states that he has not raised any new evidence to support his Rule 59(e) motion and that his motion is “based solely on the basis of clear error or manifest error and injustice.” (Plaintiff’s Reply Suggestions to General Electric’s Suggestions in Opposition, p.1). The Court will examine each of the points raised by plaintiff below.

A. Bridge v. Phoenix Bond & Indemnity Co.

Plaintiff argues that this Court ignored a recent Supreme Court decision in Bridge v. Phoenix Bond & Indemnity Co., 128 S.Ct. 2131, 170 L.Ed.2d 1012 (2008), and held plaintiff to a heightened standard of pleading. However, the Supreme Court’s decision in Bridge dealt not with standing, but rather with a reliance element in a mail fraud case.

The Supreme Court found that:

a plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant’s alleged misrepresentations.

Id. at 2145. Plaintiff’s complaint was dismissed because he could not show that he suffered a definite and provable injury. Thus, the Court does not find that the Bridge decision affects the Court’s previous determination.

B. Indefinite and/or Speculative Injuries

Plaintiff argues that the Court's ruling erroneously discredits the accrual rule where multiple injuries occur over an extended period of time. Plaintiff also argues that the Court has adopted an excessively narrow view of causation and injury contradicting the law of this Circuit. Plaintiff then proceeds into a seven page discussion of various cases and an explanation as to why they are relevant to his case. However, plaintiff is simply repeating arguments that he could and did raise in his earlier pleadings. The purpose of Rule 59(e) is not to give parties an opportunity to rehash or reargue their cases.

C. Recusal

Plaintiff also asserts that the Court is biased because of an alleged connection to the Board of Directors of St. Luke's Health System, Inc. during the period of time described in plaintiff's Complaint. Plaintiff alleges that St. Luke's was the racketeering conspiracy's planned recipient of the laundered funds from the Novation LLC member hospitals and the replacement entity for Neoforma, Inc. It should be noted however, the plaintiff has not actually filed a Motion for Recusal nor did plaintiff raise this issue until *after* the Court ruled against plaintiff. Plaintiff argues that "[t]he Circuit's analysis would find that because the state law claims are consistent and unchanged (and as yet never ruled on), the present action is the same 'matter in controversy' as Lipari v. General Electric et al., 06-0573-CV-W-FJG where the Hon. Judge Fernando J. Gaitan did not rule on the plaintiff's timely motion for recusal and the same 'matter in controversy' as MSCI v. General Electric et al., KS Dist. Court # 03-2324-CM brought by the plaintiff's

attorney that appears to have been reciprocally disbarred without a hearing by Hon. Judge Fernando J. Gaitan despite grounds and a request for a hearing.”

The Court is unsure why plaintiff believes that this case is the same ‘matter in controversy.’ The case filed in 2006 by plaintiff was a separate action which was remanded to the state court almost two years ago. The Court in that case denied as moot plaintiff’s motion for recusal. The instant action was initially filed in federal court by the plaintiff on November 9, 2007, against some of the same defendants, but also against other defendants who were not named in the ‘06 action. Despite having previously filed the Motion to Recuse in the ‘06 action, plaintiff has not to date filed a Motion to Recuse in the present action. Even if plaintiff had actually filed a Motion to Recuse, the Court finds no basis for granting the motion. In Tri-State Financial, LLC v. Lovald, 525 F.3d 649, 653 (8th Cir. 2008), the Court stated:

Motions for recusal under 28 U.S.C. § 455 “will not be considered unless timely made.” Fletcher v. Conoco Pipe Line Co., 323 F.3d 661, 664 (8th Cir.2003) (citation omitted). The timeliness doctrine under § 455 “requires a party to raise a claim at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim.” Id. (internal quotation marks and citation omitted). A party is required to bring its recusal motion promptly to avoid the risk that the party might hold its application as an option in the event the trial court rules against it. See In re Apex Oil Co., 981 F.2d 302, 304-05 (8th Cir.1992).

Additionally, even if the motion had been timely made, there is no basis for the motion.

In Scenic Holding LLC v. New Board of Trustees of Tabernacle Missionary Baptist Church, Inc., 506 F.3d 656 (8th Cir. 2007), the Court stated:

Under 28 U.S.C. § 455(a), a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Because § 455(a) sets forth an objective standard, whether a judge

actually is biased or actually knows of a ground requiring recusal is irrelevant. Moran v. [Clarke], 296 F.3d at 648 [(8th Cir. 2002)]. Rather, the issue is “whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.” Id. (quotation omitted). “Because a judge is presumed to be impartial, a party seeking recusal bears the substantial burden of proving otherwise.” United States v. Martinez, 446 F.3d 878, 883 (8th Cir. 2006).

Id. at 662. In the instant case, an average person would not reasonably question the Court’s impartiality, especially since the Court has not served on the Board of Directors for St. Luke’s in several years. Therefore, the Court finds that there is no basis on which to recuse.

Accordingly, for the reasons stated above, the Court hereby **DENIES** plaintiff’s Motion to Alter or Amend the Judgment (Doc. # 61).

II. Motion to Disqualify

Plaintiff requests that the Court disqualify Attorney General Michael Mukasey and the United States Department of Justice including the Western District of Missouri Office of U.S. Attorney John Wood from representing Bradley Schlozman. Plaintiff argues that the U.S. Department of Justice has targeted Bradley Schlozman in an investigation by a federal grand jury. Plaintiff also asserts that Schlozman and John Wood were installed in the U.S. Attorney’s office to obstruct justice in the criminal case against Cox-Health of Springfield, Missouri and its executives. Plaintiff also states that John Wood was a former law partner of Brad Schlozman. Plaintiff argues that Attorney General Michael Mukasey and John Wood have an unwaivable conflict of interest in the representation of Brad Schlozman because they were engaged in criminal activity related to the charges for which their client is on trial.

As the Court has now dismissed plaintiff's Complaint and has denied plaintiff's Motion to Alter or Amend the Judgment, the Court hereby **DENIES AS MOOT** plaintiff's Motion to Disqualify (Doc. # 68).

III. Motion to Withdraw Any and All Ex Parte Orders

Plaintiff argues that the Order dismissing his Complaint did not reflect the record of the litigation or the issues raised between the parties. He also asserts that the Order did not address the Motion for Recusal that was filed on 11/8/06 in his other case or address his motion to remand. Plaintiff states that the Order was overreaching because it referred to the Kansas litigation, erroneously ignored his standing and ignored recent Supreme Court precedent. Plaintiff theorizes that because the Order did not address the issues raised between the parties, then the Order must of been ghost written by the United States Department of Justice. The Court can assure plaintiff that the Order dismissing his Complaint was not ghost-written nor were portions of the Order submitted to the Court through improper ex parte contact. The Order was written after reviewing all the parties' pleadings and reading the relevant caselaw and was a product of this Court's own analysis of the issues. Accordingly, as there were no ex parte orders submitted, the Court hereby **DENIES** plaintiff's Motion to Withdraw Any and All Ex Parte Orders (Doc. # 69).

IV. Motion for Hearing

Plaintiff requests that the Court grant a hearing on his outstanding motions including his Rule 59(e) motion. In support of this motion, plaintiff refers to another pro se party, who is not a party to this action and asserts that John Wood was

eavesdropping on conversations between a prisoner and a witness in a federal criminal proceeding and federal bankruptcy proceedings. The Court is unsure how plaintiff believes that this information is relevant to his case before this Court. Nevertheless, the Court does not find that a hearing is necessary and finds no merit in plaintiff's Motion to Alter or Amend the Judgment.

V. Conclusion

Accordingly, for the reasons stated herein the Court hereby **DENIES** plaintiff's Motion to Alter or Amend the Judgment (Doc. # 61); **DENIES AS MOOT** plaintiff's Motion for Order Disqualifying Attorney General Michael Mukasey and the Department of Justice (Doc. # 68); **DENIES** plaintiff's Motion to Withdraw Any and All Ex Parte Orders (Doc. # 69) and **DENIES** plaintiff's Motion for a Hearing on the Motion to Disqualify (Doc. # 74).

Date: 10/31/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge