



**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS**

MARY C. SIRACUSA, J.S.C.

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**MEMORANDUM OF DECISION
PURSUANT TO RULE 1:6-2(f)**

**MICHAEL DIMEO, SR., MICHAEL,
DIMEO, JR.,**

Plaintiffs,

v.

**JOSEPH H. KAYATI, JR., ANTHONY DIMEO,
III, JOHN DOE(S) 1-10,**

Defendants,

v.

WILLIAM DIMEO, FRANK DIMEO,

Third Party Defendants.

JOSEPH H. KAYATI, JR., ANTHONY DIMEO, III,

Plaintiffs,

v.

**MICHAEL DIMEO, SR., MICHAEL DIMEO, JR., MIKE DIMEO AND SONS, LLC, D3K
ASSOCIATES, LLC, DIMEO BLUEBERRY FARMS, LLC, WILLIAM DIMEO, FRANK
DIMEO, INDIAN BRAND FARMS, and all JOHN DOES, 1-10 all jointly and severally, and
in the alternative,**

Defendants

DOCKET #: ATL-L-2883-15
(consolidated) ATL-L-2884-15

DATE: February 14, 2020

MOTION: Cross Motion to Disqualify Judges Mendez and Siracusa and Remove Case from CBLP
Opposition to Cross Motion to Fix Date for Competency Hearing

MOVANT: Joseph H. Kayati, *Pro se*- Plaintiff/Defendant

Nature of Motion and Procedural Background

The Complaints in this consolidated matter were filed on April 1, 2014. The discovery end date was June 29, 2018, although discovery is currently continuing. There were one thousand four-hundred forty-four days of discovery prior to the discovery end date. There were nine (9) extensions of discovery. There has been substantial motion practice subsequent to the discovery end date. Trial is scheduled for May 4, 2020.

Plaintiff Joseph Kayati seeks to have this case removed from the Complex Business Litigation Program (CBLP) and to disqualify me from presiding over this case. Mr. Kayati also seeks to have the Assignment Judge, Honorable Julio Mendez disqualified. Mr. Kayati opposes the setting of a date certain for the competency hearing for Michael DiMeo, Sr.

Plaintiffs Michael DiMeo Sr. and Michael DiMeo, Jr. oppose Mr. Kayati's Cross Motion for removal from the CBLP and disqualification of Judge Mendez and Judge Siracusa. Initially, DiMeo Sr. and DiMeo Jr. argue that Mr. Kayati's Cross Motion is procedurally deficient. (See New Jersey Court Rule 1:6-3). DiMeo Sr. and DiMeo Jr. also contend that the inclusion of this case into the CBLP was proper under the Court Rules. (See New Jersey Court Rules 4:102-1 to 4:105-9). DiMeo Sr. and DiMeo Jr. further assert that Mr. Kayati's accusations of conspiracy and violations of ethical obligations by the Court and Judges are baseless and outrageous. Finally, DiMeo Sr. and DiMeo Jr. point out that Mr. Kayati's opposition to fix a date certain for Michael DiMeo Sr.'s competency

hearing is moot because the hearing is scheduled for April 20, 2020. DiMeo Sr. and DiMeo Jr. seek attorney fees and sanctions.

Third Party Defendants, William and Frank DiMeo oppose Mr. Kayati's Cross Motion for removal from the CBLP and disqualification. Third Party Defendants assert that Mr. Kayati's baseless, offensive outrageous and unsupported attacks upon the Court is an attempt to "muddy the litigation" and "cloud the docket" because he received adverse rulings. Third Party Defendants further assert that Mr. Kayati fails to address the actual rules applicable to the CBLP which support the assignment of this case to the CBLP. (See New Jersey Court Rules 4:102-1 to 4:105-9). Third Party Defendants seek sanctions against Mr. Kayati for his unsupported and offensive allegations against the judiciary.

Non-parties Frank Donio, Inc. and David Arena oppose Mr. Kayati's Cross Motion for removal from the CBLP and disqualification. The non-parties assert that Mr. Kayati's various motions should be denied, as they are legally and factually deficient and devoid of merit. The non-parties similarly seek sanctions against Mr. Kayati for his continued harassment and unnecessary involvement of the non-parties in this litigation, as well as the meritless assertions of wrongdoing against the Court and the parties of this litigation.

Motion for Disqualification

The analysis of the issue of recusal or disqualification must begin with the recognition that a judge has a duty to preside over a case assigned to him or her and to disqualify himself or herself, if presiding over a matter would be inappropriate. Laird v. Tatum, 409 U.S. 824, 837 (1972) (stating that a judge "has a duty *to sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*"); State v. Marshall, 148 N.J. 89 (1997) (stating judges are not free to "err on the side of caution" by granting recusal motions); Hundred East Credit Corp. v. Eric Schuster Corp.,

212 N.J. Super. 350, 358 (App. Div.) certif. denied, 107 N.J. 60 (1986) ("It is not only unnecessary for a judge to withdraw from a case upon a mere suggestion that he is disqualified: it is improper for him to do so unless the alleged cause of recusal is known by him to exist or is shown to be true in fact."). The Code of Judicial Conduct, Canon 3.17 (A) instructs that "Judges shall hear and decide all assigned matters unless disqualification is required by this rule or other law". A judge must recuse him/herself only if the impartiality of the Court might reasonably be questioned. Code of Judicial Conduct, Canon 3.17 (B)(1).

On the other hand, a judge must recuse himself or herself when "there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." R. 1:12-1 (g). A movant must demonstrate "prejudice or potential bias." Marshall, supra, 148 N.J. at 276 (internal quotation marks and citation omitted). The United States Supreme Court in Ex parte American Steel Barrel Co. stated, "the recusal statute 'was never intended to enable a discontented litigant to oust a judge because of adverse rulings made.'" 230 U.S. 35, 44 (1913). Further, the appellate division has held that it is "inappropriate for a Judge to withdraw from a case "unless the alleged cause of recusal is known by [the judge] to exist or is shown to be true in fact." State v. Dala, 483 N.J. Super. 156, 161 (App. Div. 2014)(citing Hundred East Credit Corp. v. Eric Shuster Corp., 212 N.J. Super. 350, 358 (App. Div. 1986).

Mr. Kayati's assertions that this Court is biased or prejudiced against him are without merit and are clearly made because he is discontented with rulings made by me on November 8, 2019. The record clearly establishes that Mr. Kayati has served subpoenas on parties and non-parties that have been quashed or partially quashed by Judge Joseph Marczyk and Judge Christopher Gibson prior to me being assigned to this case. Despite the prior Court orders, Mr. Kayati refuses to abide by those rulings and maintains that he is entitled to financial documents and other discovery to

which the Court has deemed he is not entitled. Further, this Court's November 8, 2019 order again concluded that Mr. Kayati is not entitled to the financial documents and other discovery he seeks from the non-parties and Third Party Defendants.

This litigation was initiated on April 1, 2014 in the Law Division in Camden County. The case was transferred to the Chancery Division in Atlantic County, and after rulings by Judge Raymond Batten it was transferred to the Atlantic County Law Division and assigned to Judge Joseph Marczyk. Thereafter, in 2018 the matter was transferred to the Complex Business Litigation Program and assigned to Judge Gibson. This case, which is almost six (6) years old, has had a tortured procedural history and a plethora of discovery motions and motions for reconsideration. Mr. Kayati alleges that the judges assigned to this case are biased and prejudiced against him simply because they have made rulings adverse to him. The record demonstrates exactly the opposite. Each judge has afforded Mr. Kayati extensive oral arguments on his motions and has carefully and thoughtfully examined the moving papers and oppositions thereto. The court has afforded Mr. Kayati every opportunity to present his arguments. To assert that this Court or any other judges assigned to this case, or the attorneys or court staff have engaged in unethical or improper behavior, is not only outrageous, it is patently false and meritless.

There is nothing in this record that would suggest that Mr. Kayati has not and will not receive a fair and unbiased hearing and judgment. Accordingly, for all of the above reasons, the motion to disqualify Judge Mendez and Judge Siracusa is DENIED.

Motion to Remove Case from CBLP

The Complex Business Litigation Program ("CBLP") is focused on business, commercial and construction cases with significant amounts in dispute or business or commercial cases involving complex factual or legal issues. See New Jersey Court Rules

4:102-1 through 4-105-9. The overall goals of the rules are to provide better case management, more predictability and greater efficiencies in the conduct of business litigation in the Superior Court. See Comment to R. 4:102-1.

R. 4:102-4. Admittance to or removal from the CBLP provides as follows:

(a) Opt-in/Opt-Out. Parties may file a motion for inclusion in the CBLP where a case is not presumptively assigned to the CBLP but involves complex business related issues and/or the amount in controversy is less than \$ 200,000. Parties may also move for removal from the CBLP on the grounds that the action does not meet the eligibility criteria.

(b) Review of Cases in CBLP. The Assignment Judge or the CBLP judge may conduct an initial review of a case to determine if it is appropriate for the CBLP. The judge may, *sua sponte*, assign it to the CBLP or remove it from the CBLP. If the case is removed from the CBLP it will be reassigned to the appropriate track for case management.

According to the CBLP Case Management Guidelines, promulgated by Directive #01-19 (01/31/2019), CN 12369, the CBLP does not include matters involving

- Actions to protect the interests of a business, such as non-compete agreements, trade secrets or restrictive covenant agreements.
- Conscientious Employee Protection Act actions.

Mr. Kayati seeks to remove this matter from the CBLP because he asserts he was never advised that the case was assigned to the CBLP and he never agreed to be bound by the rules governing the CBLP. Mr. Kayati alleges a variety of misconduct and other wrongdoing by the Court as reasons why the case should be removed from the CBLP, which the Court will not specifically address, because the Court deems those allegations without merit. Finally, Mr. Kayati at paragraph #71 of his certification cites five (5) examples of cases that should be excluded from the CBLP, including CEPA claims, environmental litigation claims and commercial landlord tenant

actions. Mr. Kayati maintains that his complaint contains a CEPA claims, environmental litigation claims and a commercial landlord tenant action.

The parties and non-parties all assert that the case is properly assigned to the CBLP, but do not address Mr. Kayati's contention that his complaint contains CEPA, environmental litigation and commercial landlord tenant claims.

Pursuant to R. 4-104 (b), the Court clearly has discretion to remove a case from the CBLP. Because Mr. Kayati's complaint includes a CEPA claim and claims regarding a non-compete agreement, the Court will remove the case from the CBLP and assign it to the Law Division. The cases will retain the current docket numbers, will remain consolidated and assigned to me.

Accordingly, Mr. Kayati's Cross Motion to remove this matter from the CBLP is GRANTED.

Competency Hearing

The competency hearing for Michael DiMeo Sr. is to commence on April 20, 2020 and if necessary, continue on April 21, 2012. Therefore, Mr. Kayati's opposition to setting a date for the competency hearing is DENIED as moot.

Sanctions and Counsel Fees

Counsel for Michael DiMeo, Sr. and Michael DiMeo Jr. seek sanctions and counsel fees against Mr. Kayati claiming that his Motion, Cross Motion and Opposition presented unsupported arguments to underlie requests that were improper and without merit.

Counsel for Third Party Defendants seek counsel fees and sanctions against Mr. Kayati asserting that the Court should no longer tolerate Mr. Kayati's baseless, unsupported, offensive and conclusory allegations of impropriety and attacks on the judiciary.

Counsel for the non-parties also seek counsel fees and sanctions against Mr. Kayati for his continued harassment and unnecessary involvement of the non-parties in this litigation, as well as the meritless assertions of wrongdoing against the Court and the parties of this litigation.

The applications for counsel fees and sanctions are denied without prejudice at this time. Mr. Kayati has been given two (2) opportunities to present his arguments as to why he is entitled to certain discovery. The Court has not been persuaded by his arguments on either occasion. If Mr. Kayati files another motion to relitigate these issues, the Court will grant an application for fees and sanctions.

CONCLUSION

Mr. Kayati's Cross Motion for Disqualification of Judge Julio Mendez and Judge Mary Siracusa DENIED.

Mr. Kayati's Cross Motion to Remove this matter from the CBLP is GRANTED.

Mr. Kayati's Opposition to the Cross Motion to fix a date for the competency hearing of Michael DiMeo Sr. is DENIED as moot.

The application for counsel fees and sanctions is DENIED without prejudice.

An appropriate Order has been entered. Conformed copies accompany this Memorandum of Decision. A copy of the Order and a copy of this Memorandum of Decision shall be served on all of counsel of record *via* eCourt and upon *Pro Se* Plaintiff Joseph Kayati *via* email within the next seven (7) days.



Mary C. Siracusa, J.S.C.