

**Troni v JPMorgan Chase Bank, N.A.**

2010 NY Slip Op 32801(U)

October 6, 2010

Supreme Court, New York County

Docket Number: 115785/09

Judge: Richard F. Braun

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD F. BRAUN  
J.S.C. *Justice*

PART 83

Index Number : 115785/2009  
TRONI, LORENZO  
vs.  
J.P. MORGAN CHASE BANK, N.A.  
SEQUENCE NUMBER : 002  
OTHER RELIEFS

INDEX NO. \_\_\_\_\_  
MOTION DATE 7/1/10  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for recusal

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

| PAPERS NUMBERED |  |
|-----------------|--|
| 1               |  |
| 2               |  |
| 3               |  |

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is denied,  
*This constitutes the decision and order of this Court. See separate opinion.*

**FILED**  
OCT 08 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: New York, New York, October 5, 2010 ENTER: [Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 23

----- X  
LORENZO TRONI,

Index No. 115785/09

Plaintiff)

OPINION

- against -

JPMORGAN CHASE BANK, N.A.,

Defendant.

**FILED**  
OCT 08 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

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**RICHARD F. BRAUN, J.:**

Plaintiff moves for recusal. Plaintiff requests that the court recuse itself because he believes that the court is biased and prejudiced against plaintiff. Defendant opposes recusal, asserting that there was no bias or prejudice, and no mandatory requirement of recusal under Judiciary Law § 14 (“Disqualification of judge by reason of interest or consanguinity”). Defendant contends that, as the court is not related or connected to any of the parties, the determination of recusal is in the court’s discretion (*see People v Moreno* (70 NY2d 403, 405-406 [1987])). Defendant seeks to avoid judge shopping by plaintiff.

There is no basis for recusal. In an attempt to demonstrate bias, plaintiff relies on the March 9, 2010 transcript. Beginning at page 2 of the transcript, plaintiff refers to the court’s request for a copy of the complaint and plaintiff’s attempt to give it to the court. Plaintiff expresses resentment at being instructed to give the complaint to the part clerk or court officer. Pursuant to Judiciary Law § 4, with limited exceptions proceedings are to be conducted in open court for everyone to hear, not at the bench or in chambers (*see Matter of Westchester Rockland Newspapers v Leggett*, 48 NY2d 430, 437 [1979]). “Generally, attorneys and unrepresented litigants are at counsel table, and this Judge presides from the bench. Plaintiff also complains that the proceedings were transcribed by a

court reporter, rather than an outside service, suggesting the possibility of interference with the transcription. The court reporter used is an employed official court reporter, and the judges of this court only use such reporters. They are responsible for transcribing fully and accurately, and, if not, the transcript can be corrected.

As reflected commencing on page 2 of the March 9, 2010 transcript, the court tried to explain the reason for the inquiry into the value of plaintiff's case. In accordance with 22 NYCRR 202.12 (c) (6), at an early stage in the litigation, i.e., the preliminary conference, the court is required to make the necessary inquiries of counsel or a pro se litigant and decide which cases should remain in Supreme Court and which matters should be referred to a lower court, pursuant to CPLR 325 (d). CPLR 325 (d) provides in relevant part:

a court in which an action is pending may, in its discretion, remove such action without consent to such lower court where it appears that the amount of damages sustained may be less than demanded, and the lower court would have had jurisdiction but for the amount of damages demanded. If the action is so removed, then the verdict or judgment shall be subject to the limitation of monetary jurisdiction of the court in which the action was originally commenced and shall be lawful to the extent of the amount demanded within such limitation....

It is the court's responsibility to make the determination, and not rely solely on the positions of the plaintiff or defendant, and thus the court had to obtain complete information from plaintiff and defendant's attorney.

Plaintiff asserts that this court cannot be impartial and that the court should recuse itself to avoid the appearance of impropriety. None of the items noted by plaintiff demonstrate bias or the court's inability to be impartial. Recusal is in the sound discretion of the court, and only the court can assess whether it can be impartial, and how best to avoid the appearance of impropriety. In *Hass*

& *Gottlieb v. Sook Hi Lee* (55 AD3d 433, 434 [1<sup>st</sup> Dept 2008]), the Court stated: “The court was within its discretion in refusing to recuse itself.” This State’s highest court, the Court of Appeals, in *People v Moreno* (70 NY2d at 405-406) explained:

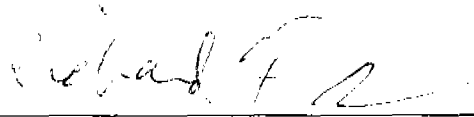
Absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter of recusal. This discretionary decision is within the personal conscience of the court when the alleged appearance of impropriety arises from inappropriate awareness of ‘nonjuridical data’ (citations omitted). When the alleged impropriety arises from information derived during the performance of the court’s adjudicatory function, then recusal could surely not be directed as a matter of law. A court’s decision in this respect may not be overturned unless it was an abuse of discretion (citations omitted). Unlike a lay jury, a Judge ‘by reasons of ... learning, experience and judicial discipline, is uniquely capable of distinguishing the issues and of making an objective determination’ based upon appropriate legal criteria, despite awareness of facts which cannot properly be relied upon in making the decision (citation omitted).

In *Matter of Johnson v Hornbliss* (93 AD2d 732, 733 [1<sup>st</sup> Dept 1983]) the Court noted: “In the absence of a violation of express statutory provisions, bias or prejudice or unworthy motive on the part of a Judge, unconnected with an interest in the controversy, will not be a cause for disqualification, unless shown to affect the result.” In *Matter of Alizia McK.* (25 AD3d 429, 430 [1<sup>st</sup> Dept 2006]) the Court determined: “The court properly exercised its discretion in declining to recuse itself after it initiated a complaint against appellant and appellant’s mother and sister for creating a violent courtroom disturbance. The court was not ‘interested’ in the proceedings, within the meaning of Judiciary Law § 14. The charges which arose from the disturbance were unrelated to the proceedings against appellant over which the court presided. Absent a legal disqualification under Judiciary Law § 14, recusal is a discretionary decision within the personal conscience of the court (see *People v Moreno*, 70 NY2d 403 [1987]). In this case there are no circumstances that would

bring the court's impartiality into question.”

This court absolutely knows that it is in no way biased or prejudiced against plaintiff, and can be impartial. This is evidenced by the court’s not removing this case to Civil Court, pursuant to CPLR 325 (d). Accordingly, plaintiff’s request for recusal has been denied by this court’s separate October 5, 2010 decision and order. Because plaintiff is a pro se party, this court will not award, pursuant to CPLR 8106 and 8202, motion costs in favor of defendant who won this motion, which the court might have done if plaintiff had been represented by counsel on this motion, and also because defendant’s attorney violated 22 NYCRR 202.8 (c) (*see Armendariz v Tiramisu Restaurant, Inc.*, 170 AD2d 334, 334-335 [1<sup>st</sup> Dept 1991]).

Dated: New York, New York  
October 6, 2010

  
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RICHARD F. BRAUN, J.S.C.

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