

Buhannic v Tradingscreen, Inc.
2018 NY Slip Op 33128(U)
December 6, 2018
Supreme Court, New York County
Docket Number: 653624/2016
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X
PHILIPPE BUHANNIC and PATRICK BUHANNIC,
individually and derivatively on behalf of
TRADINGSCREEN, INC.,

INDEX NO. 653624/2016

MOTION
DATE

Plaintiffs,

MOTION SEQ.
NO.

020

- v -

TRADINGSCREEN, INC.; PIERRE SCHROEDER;
PIERO GRANDI; FRANK PLACENTI; ROBERT
TRUDEAU; TCV VI, L.P., and TCV MEMBER
FUND, L.P.,

DECISION AND ORDER

Defendants.
-----X

HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion Seq. No. 020)
445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 460, 461, 462, 463, 464,
465, 466, 467, 468, 469, 474, 477

were read on this motion to/for

Recusal

Plaintiff Philippe Buhannic, proceeding pro se, moves for this court's recusal in this action. As a threshold matter, the court declines to grant Mr. Buhannic's request to refer this motion to the Administrative Judge for determination. It is well settled that where, as here, grounds for recusal under Judiciary Law § 14 are not at issue, "a Trial Judge is the sole arbiter of recusal." (See People v Moreno, 70 NY2d 403, 405 [1987].)

Mr. Buhannic seeks recusal on the ground that the court has demonstrated bias against him based on national origin (i.e., because he is a French national) and based on his pro se

status.¹ He also seeks recusal based on the court's alleged alteration ("forging") of transcripts and alleged ex parte communications regarding the credentials of a paralegal whom he had employed.

It is axiomatic that "[t]he right to an impartial jurist is a basic requirement of due process." (People v Novak, 30 NY3d 222, 225 [2017] [internal quotation marks and citation omitted].) The Code of Judicial Conduct, section 100.3 (E) (1), provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) (1) the judge has a personal bias or prejudice concerning a party."

Mr. Buhannic does not point to any ruling or any evidence in the record that provides any support whatsoever for his claim of bias or his other assertions of wrongdoing. (See generally R & R Capital LLC v Merritt, 56 AD3d 370, 370 [1st Dept 2008]; Solow v Wellner, 157 AD2d 459, 459 [1st Dept 1990].) On the contrary, the frivolous nature of the assertions of bias and other wrongdoing is apparent on the face of those assertions, and is confirmed by review of the record. (See e.g. Mar. 5, 2018 Tr., at 6 [cited by Mr. Buhannic as support for alleged bias]; Buhannic v Friedman, US Dist Ct, SD NY, 18 CV 5729, Abrams, J., Doc No. 15 [Memo. In Supp. of Motion to Dismiss discussing, among other allegations, alleged alteration of transcripts]; Letter of John M. Vassos [Defs.' Counsel], dated Nov. 20, 2017, to the court, copied to Mr. Buhannic's outgoing counsel at Shibolet LLP and Patrick and Philippe Buhannic [NYSCEF Doc No 277] [summarizing Philippe Buhannic's email to defendants' counsel regarding services to be performed by Mr. Buhannic's paralegal].)

¹ Prior to representing himself, Mr. Buhannic was represented in this action by four separate counsel, including well known law firms.

Although Mr. Buhannic denies that the recusal motion is based on his objections to the court's rulings, he has repeatedly objected to the court's decision, dated December 12, 2017, denying him indemnification for his attorney's fees in this action and certain other matters, with a possible limited exception. He has also objected to certain of the court's rulings regarding discovery and to procedural rulings affecting the management of the proceedings, including stays or adjournments necessitated by his repeated discharge of attorneys. A litigant's dissatisfaction with a court's rulings obviously cannot support a request for recusal.

It is also well settled that a judge has no legal or ethical obligation to recuse merely because a litigant sues or threatens to sue the judge. (Matter of New York State Assn. of Criminal Defense Lawyers [v Kave], 95 NY2d 556, 561 [2000]; Judicial Ethics Opinions 16-106 [Oct. 7, 2016], 13-41 [Apr. 25, 2013], 98-69 [June 19, 1998].) Rather, "[a] judge has an obligation not to recuse himself or herself, even if sued in connection with his or her duties, unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance. A litigant cannot be allowed to create a sham controversy by suing a judge without justification, and to then use that sham as a means for achieving the judge's recusal." (Spremo v Babchik, 155 Misc 2d 796, 799 [Sup Ct, Queens County 1992], mod on other grounds 216 AD2d 382 [2d Dept 1995], lv denied 86 NY2d 709 [1995], cert denied 516 US 1161 [1996]; Judicial Ethics Opinions, supra.)

As indicated above, Mr. Buhannic has brought an action against this court in federal court, asserting bias and wrongdoing substantially similar to that at issue here. (Buhannic v

Friedman, supra [motion to dismiss pending].)² This court is satisfied that it can continue to serve, as it has done in the past, with complete impartiality, in both fact and appearance.

It is accordingly hereby ORDERED that plaintiff Philippe Buhannic's motion for recusal is denied in its entirety.

12-6-18
DATE


MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

² Mr. Buhannic has filed numerous actions in federal court related to his termination and his ownership interest in TradingScreen, Inc., including an action against arbitrators following an adverse decision. These actions are referenced in the lawsuit against this court. (Buhannic v Friedman, supra, Doc. No. 4.)