

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90004

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MARCH 13, 2014

Complainants are three unsecured creditors in a Chapter 11 bankruptcy proceeding. They filed a complaint, under 28 U.S.C. § 351(a), alleging that the presiding bankruptcy judge engaged in misconduct by authorizing the sale of the debtors' assets, including both a business and a home.

Complainants allege that, in authorizing the sale of the debtors' assets, the judge has violated Canon 3A(4) of the Code of Conduct for United States Judges by coercing a "party into surrendering the right to have the controversy resolved by the courts." Complainants cite to an objection, that they and the debtors filed, to the trustee's motions to approve the sales. Complainants conclude that, should the sales proceed, there can be no meaningful appeal because the "controversy" will have become a "fait accompli."

The misconduct complaint is not cognizable. First, a violation of the Code of Conduct for United States Judges may inform consideration of judicial misconduct complaints but a violation of the Code does not necessarily constitute judicial misconduct under the statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3. In the present matter, a review of the record - including the misconduct complaint, the docket, and relevant pleadings and orders issued in the case - suggests no violation of the Code of Conduct, let alone cognizable misconduct.

The reviewed record indicates that the judge held an expedited hearing on the trustee's motion to strike the complainants' objection to the proposed sales, as well as on the trustee's motion to hold the debtors in contempt (for objecting to the proposed sale of the home in violation of a prior stipulation). At the hearing, the judge extended the deadline for filing objections and counteroffers to the proposed sales, pending notice to creditors who had been omitted initially, and rescheduled the hearing on the trustee's motion to proceed with the sales. However, the court reserved the right to cancel the hearing absent the receipt of further objections. The judge also ordered the debtors to comply with a previous stipulation to sell the home.

Complainants seek to use the judicial misconduct complaint procedure as a means of obtaining interlocutory review of the court's orders (and potential orders) regarding the disposition of these assets. This is neither the purpose nor function of the judicial

misconduct statute, 28 U.S.C. § 351, *et. seq.*, which does not provide a mechanism for modifying a court order in a pending or closed case. See Rules for Judicial-Conduct, Rules 11, 19, and 20.

Beyond this, complainants have not alleged that the judge has engaged in conduct that would be cognizable under the governing statute and rules. They do not dispute that they have been accorded the same notice and opportunities as other comparable creditors in the proceeding. Their objection to the proposed disposition of the debtors' assets, without any evidence of bias or illicit motive on the part of the judge, is not cognizable as a judicial misconduct complaint. "Cognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling, . . . without more . . ." Rules of Judicial-Conduct, Rule 3(h)(3)(A).

Further, the Code of Conduct provision to which complainants cite is inapposite. Canon 3A(4) requires a judge to accord litigants "the full right to be heard according to law" and prohibits *ex parte* communication, except in certain enumerated circumstances. See Code of Conduct for United States Judges, Canon 3A(4). The Commentary to this provision provides, in part: "A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts." Id., at Commentary to Canon 3A(4). This proscription against pressuring parties to accept a settlement has no bearing whatsoever on the judge's handling of the present matter.

Accordingly, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). Since the complainants fail to provide any evidence of misconduct or other impropriety by the bankruptcy judge, the misconduct complaint is also dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

For the reasons stated, Complaint No. 01-14-90004 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D).

3/13/14
Date

Sandra Lynch
Chief Judge Lynch