



FILED
ALAMEDA COUNTY
MAR 22 2016
CLERK OF THE SUPERIOR COURT
By *Dennis Hayashi*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

DONGXIAO YUE,

Plaintiff,

v.

WENBIN WILLIAM YANG and
DOES 1 - 5,

Defendant.

No. HG15-773556

ORDER STRIKING THE
CHALLENGE FOR CAUSE
AGAINST JUDGE DENNIS
HAYASHI FILED ON MARCH 16,
2016

On March 16, 2016 Plaintiff Dongxiao Yue filed a document titled "Verified Statement of Dongxiao Yue of Disqualification of Judge Dennis Hayashi and Notice of Disqualification" ("the Challenge"). This document was served on Judge Hayashi on March 16, 2016 by personal delivery to the clerk in Department 522, at a time when Judge Hayashi was present in court. The Challenge is based on Plaintiff's contentions the undersigned has, in the course of

making rulings in the case, shown prejudice against Plaintiff and in favor of Defendant Yang, and that a person aware of the facts might reasonably entertain a doubt that the judge would be unable to be impartial (Code of Civil Procedure ("CCP") sections 170.3(a)(6)(B) and 170.3(a)(6)(A)(iii)¹. The Challenge is hereby ordered STRICKEN, for the reasons that follow.

The body of the Challenge consists of seventeen pages, with forty five pages of largely unauthenticated attachments. The Challenge consists mainly of Plaintiff's review of his longstanding contentious relationship with Defendant, fought out through Internet websites, a review of the procedural history and rulings in this case, and reference to the undersigned's relationship with Edward Chen, now a judge of the federal district court. Very few evidentiary facts are asserted. The Challenge concludes with six numbered paragraphs specifying the particular facts that allegedly establish disqualification. These paragraphs will be addressed in order.

Paragraph seventy four is related to communications between the parties concerning Judge Chen. Plaintiff states that he opposed Chen's appointment to the federal bench and that, as a result, Defendant made defamatory attacks on Plaintiff in return. None of these remarks have been introduced into evidence. From this point Plaintiff moves to the undersigned's support of Chen's appointment, and a speech Chen allegedly made at the funeral of Fred Korematsu. Plaintiff states that

¹ Unless otherwise stated, all further statutory references are to the Code of Civil Procedure.

in the course of this speech Chen stated that hearing the national anthem left him with "feelings of ambivalence and cynicism when confronted with appeals to patriotism." No evidence is cited in support. Plaintiff then argues that this establishes disqualification under sub-sections 170.3(a)(1)(A) and (B). The first subsection requires disqualification when the judge has personal knowledge of disputed evidentiary facts concerning the proceeding. Plaintiff has not identified any such disputed evidentiary facts within the undersigned's knowledge, therefore the sub-section does not apply. Subsection (B) broadens the reach of subsection (A) by requiring disqualification if a close relative of the judge is likely to be a material witness in the case. Plaintiff has not advanced evidentiary facts showing how this subsection applies in this case.

Paragraph seventy five advances the same two subsections as requiring disqualification. The facts alleged are that Plaintiff and Defendant have engaged in vigorous, possibly vituperative exchanges, based on differing interpretations of the events of World War II as they involved the United States, China, and Japan. From this Plaintiff maintains that, because the undersigned also has some knowledge of these events, disqualification is required. This is not the kind of personal knowledge of disputed evidentiary facts concerning the proceeding that these subsections refer to and therefore disqualification is not required under paragraph seventy five.

Paragraph seventy six argues that disqualification is required under

subsection 170.1(a)(6)(A)(iii) because Judge Chen is a friend of the undersigned, and because Defendant has falsely accused Plaintiff of "condemning" Chen as a "low life judge." This, according to Plaintiff, means that a person aware of the facts might reasonably entertain a doubt that the undersigned would be able to be impartial when considering Plaintiff's defamation claims against Defendant.

Among other requirements, a challenge for cause cannot be based on information and belief, hearsay, or other inadmissible evidence. (See *Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926 [the determination of a judge's disqualification for bias "is necessarily based on the evidence"].) Mere conclusions of the pleader are insufficient. (*In re Morelli* (1970) 11 Cal.App.3d 819, 843; *Urias v. Harris Farms, Inc.* (1999) 234 Cal.App.3d 415, 426.) The standard for disqualification under section 170.1(a)(6) is an objective one, and a party's subjective belief as to a judge's bias and/or prejudice is irrelevant and not controlling in a motion to disqualify for cause. (See *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; see also *Leland Stanford Junior University v. Superior Court* (1985) 173 Cal.App.3d 403, 408.)

Paragraph seventy six is not based on evidence and does not present facts that an objective observer would construe as evidence of lack of impartiality.

Paragraphs seventy seven and seventy eight are likewise based on allegations about statements Defendant directed against Plaintiff. Plaintiff claims that Defendant falsely accused Plaintiff of preaching hatred and violence against

Japanese, and that Defendant has made an issue of Plaintiff's writings about World War II. Defendant also argues, with no evidence in support, that the undersigned's emotional attachment to Japanese issues such as the case of Fred Korematsu establish a ground for disqualification. As with paragraph seventy six, no admissible evidence is presented. The principles previously cited, when applied to the allegations in paragraph seventy seven and seventy eight, lead to the conclusion that these paragraphs do not establish any ground for disqualification.

Paragraph seventy nine is based on the rulings the undersigned has made in this case. Plaintiff argues that these show prejudice against him. Adverse rulings are not a basis for disqualification. A "trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112; *see also McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312.) Furthermore, with certain exceptions that are not relevant here, it is not a ground for disqualification that a judge "[h]as in any capacity expressed a view on a legal or factual issue presented in the proceeding." (Section 170.2, subd. (b).)

Opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial

remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (*Liteky v. United States* (1994) 510 U.S. 540, 555; *United States v. Grinnell Corp.* (1966) 384 U.S. 563, 583; *Andrade v. Chojnacki* (5th Cir.2003) 338 F.3d 448, 455.)

Application of these principles establishes that paragraph seventy nine does not set forth any evidence of bias that would require disqualification.

For the reasons stated above, the Challenge filed by Plaintiff Dongxiao Yue on March 16, 2016 is hereby ORDERED STRICKEN.

Dated 3/21/16

Hon. Dennis Hayashi
Judge of the Superior Court of the
State of California, County of
Alameda