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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ZUDI KARAGJOZI, Petitioner, vs. HON. MICHAEL B. KAPLAN, U.S.B.J., Respondent.	:	Civil Action No.

PETITION FOR WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. §1651, 28 U.S.C. §455AND 28 U.S.C. §1447 TO ENFORCE RECUSAL, VACATE ORDERS ENTERED AFTER RECUSAL AND TO REMAND MATTER TO STATE COURT

Petitioner Zudi Karagjozi ("Karagjozi"), by and through undersigned counsel, by way of Petition for Writ of Mandamus against Respondent Hon. Michael B Kaplan, U.S.B.J. ("Kaplan"), hereby avers as follows:

INTRODUCTION

Justice delayed is justice denied, and injustice here bespeaks injustice everywhere. Karagjozi has fought for the last thirteen years for the right to a jury trial of his peers to pursue malpractice claims on behalf of himself and his family. After seeing his company, his reputation,

his livelihood and his family destroyed, Karagjozi was ready to finally obtain justice in the state court. Now because of Kaplan and his rulings, and without ever having his day in court, Karagjozi is on the verge of seeing his state case dismissed by a federal court bankruptcy judge that never had jurisdiction over his claims.

In 2012, Kaplan recused himself as the judge in Karagjozi's malpractice case[1]. After doing so, in 2016 (after the case spent 4 years in state court) he actively sought to preside thereover, and entered a series of dispositive and devastating orders against Karagjozi. Karagjozi is here as a last resort, because Kaplan has defied settled Third Circuit law, as set forth in Moody v. Simmons, 858 F.2d 137 (3d Cir. 1988) and In re School Asbestos Litigation, 977 F.2d 674 (3d Cir. 1992), both of which mandate his recusal and vacating of all court orders entered after his recusal[2].

Rather than fulfill his judicial obligations and continue the recusal and transfer this case to another judge, as required, Kaplan proceeded to overturn all of Judge Lyons' orders, and issue his own rulings (most notably allowing the removal of the state court proceeding to bankruptcy court), in all instances ruling against Karagjozi. He cannot un-ring that bell, and he had no business inserting the bankruptcy court into non-core state court malpractice issues. In short, Kaplan had no jurisdiction over the adversary proceeding after his April 2012 recusal. By seeking to assert jurisdiction where none exists, Kaplan is not only harming Karagjozi, but is usurping the authority of the state court to adjudicate matters of state law.

[1] As set forth in more detail below, Karagjozi filed the malpractice case in state court in 2012, it was removed to bankruptcy court and then remanded to state court by Judge Lyons, to whom Kaplan transferred the case. It was removed a second time in 2016 after Judge Lyons retired. It is this second removal, and the orders entered in it, that is the subject of this petition.

[2] The conduct of Kaplan in this case is much more egregious than the judges in either the Moody or School Asbestos matters. For example, in the latter case, the judge had merely attended a seminar and sat in the audience; yet the Third Circuit found a sufficient conflict of interest on a petition for writ of mandamus to enforce his recusal and to vacate his orders. Here, Kaplan did not merely attend the seminar, but was an active participant and key speaker in the Seminar.

Because Kaplan acted in such a fashion, has demonstrated personal bias against Karagjozi, has clear personal and professional conflicts of interest, and has already recused himself from this case, this Court must enforce such recusal.

Kaplan's actions, in failing to honor his previous recusal, entering orders after his recusal and exhibiting actual bias and prejudice toward Petitioner, strike at the very heart of an impartial judiciary.

Because of the prior recusal – and actual bias – of Kaplan toward Karagjozi, issuance of a Writ of Mandamus is required by controlling Third Circuit precedent. Accordingly, Karagjozi requests the following relief: (i) the enforcement of the recusal of Kaplan; (ii) the vacating of all orders entered by Kaplan since the date of recusal; and (iii) remand to the Superior Court of New Jersey.

PARTIES

1. Karagjozi is an adult individual and a resident of the State of New.

2. Kaplan is a United States Bankruptcy Court Judge for the District of New Jersey in the Trenton vicinage with a business address of Clarkson S. Fisher U.S. Courthouse, 402 E. State Street, Courtroom #8, Trenton, NJ 08608.

JURISDICTION

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. §455, 28 U.S.C. §1651 and 28 U.S.C. §1447.

FACTUAL BACKGROUND

I. The Kara Bankruptcy

4. Karagjozi was the principal of Kara Homes, Inc. ("Kara"), sole member of its board of directors and 100% shareholder. Karagjozi retained David Bruck, Esq. ("Bruck") and his law firm Greenbaum, Rowe, Smith & Davis, LLP ("Greenbaum"), to conduct workout negotiations with numerous lenders to increase loan amounts so Kara could close on 300 contracted homes.

5. Despite his retention solely to conduct workout negotiations with several lenders of Kara, Bruck convinced Karagjozi to file a bankruptcy on behalf of Kara[3]. On October 5, 2006, Kara filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey, Trenton Division, Case No. 06-19626 ("Bankruptcy").

6. At the time of its filing the Kara Bankruptcy was one of the largest financial bankruptcies filed in New Jersey history. Even though he had been just confirmed, Kaplan was assigned this very complex Chapter 11 case.[4]

7. Karagjozi alleges that Bruck never advised Karagjozi, prior to the filing of the Kara bankruptcy, that Karagjozi should retain his own counsel separate from that of the Kara corporate entity. Karagjozi further alleges that Bruck failed to advise that he was representing Kara at the expense of and potentially contrary to the interests of Karagjozi.

8. Bruck never advised Karagjozi that there was the potential that Karagjozi would have lost his entire fortune, which was tied up in Kara. If Karagjozi knew that Bruck would not

[3] Approximately 100 entities related to Kara filed for protection pursuant to Chapter 11; for brevity, these entities are not listed.

[4] Judge Kaplan acknowledges as much:

> Well, initially for the first financing application, I was away in Baby Judge School . . . and you went before Judge Ferguson. *See*, Exhibit A, *infra*. at 73; 9-13.

have protected his interests, he would have fired Bruck on the spot, and indeed would never have hired him in the first place.

9. In fact, Karagjozi eventually did retain his own attorney to represent his independent interests, but by then it was too late, as he was led to believe by Bruck that Bruck would protect Karagjozi's interests.

II. The Kaplan/Bruck Seminar and Road Show

10. In or about March 2008[5], while he had been presiding over the Bankruptcy for approximately eighteen months, Kaplan participated as a featured speaker, along with Bruck, in an ICLE seminar titled "Coping with the Distressed Real Estate Market: What It Means to Each Stakeholder" ("Seminar"). A true and correct copy of a transcript of the Seminar ("Seminar Transcript") is attached hereto as Exhibit "A" and incorporated herein by reference.

11. It is simply common sense that Kaplan and Bruck conferred extensively in preparation for this Seminar.[6]

12. Acting as the "master of ceremonies" of the Seminar ("Seminar Transcript, page 6; lines 16-19) was Perry Mandarino, CPA, of Traxi, LLC ("Mandarino") who was appointed by Kaplan as Chief Restructuring Officer ("CRO") in the Bankruptcy. *See*, Docket Entry 402 of the Kara Bankruptcy.

13. The Bankruptcy, as well as Karagjozi, played a central role in this Seminar. Everyone present had been apprised that Bruck was counsel to Kara, Mandarino was the CRO and Kaplan the judge presiding over the Kara Bankruptcy. *See*, Exhibit A, page 12; lines 10-12.

14. Mandarino further advised that

[5] It is also believed that this same seminar with the same participants was part of a "road show" and took place in at least one other state, which we believe to be New York.

[6] Because of these *ex parte* communications, it is also quite possible that Petitioner would need to depose Respondent, under oath, regarding all communications with Bruck, both before and after the Seminar.

> the three of us here [referring to Kaplan and Bruck] have lived through a significant homebuilder's bankruptcy and all the issues that-that evolve with it real time, and we were probably, you know, some of the first people to do it.

See, Exhibit A, page 12; lines 15-21.

15. Kaplan advised that one reason Mandarino was retained as CRO was that they could not "necessarily rely upon debtor's current management (*e.g.*, Karagjozi) because there was a lack of faith by the lenders and debtors-debtor management". *Id*. at page 16; 1-5. Bruck further opined that "no one had any faith in management, and no one would give management a dime." *Id*. at page 20; lines 9-11.

16. In a colloquy discussing the expansion of the Kara Board of Directors at the expense of Karagjozi, the sole shareholder and founder of the company, the following exchange occurred between Bruck and Kaplan:

> MR. BRUCK: And as it turned out, the two fellows who were appointed as directors were terrific. They were independent. They were knowledgeable. They both had a vast amount of experience in the real estate construction industry and -- and in the residential industry, and they sat on that board with the founder, and we had many, many, many meetings. Some of them were acrimonious. Some of them were uncomfortable. We wound up towards the end where most of the meetings were -- actually were by phone, but they acted
>
> **JUDGE KAPLAN: Was that because you were afraid of physical violence?** (Emphasis supplied).
>
> MR. BRUCK: No Comment.
>
> *Id*. at page 47; lines 13-24, page 48; lines 1-8.

17. When Kaplan alluded to threats of physical violence, he was referring specifically to Karagjozi, as he had been responding to a comment from Bruck about acrimonious meetings with the founder (Karagjozi) and other board members appointed by Kaplan. *See*, colloquy, ¶ 17, *supra*.

18. Notably, Bruck declined to repudiate this false inference that Karagjozi threatened physical violence against Bruck. Instead, Bruck's "no comment" could only reinforce a negative attitude in Kaplan toward Karagjozi.

19. Of course, Karagjozi was not there to refute these baseless assertions, which were made in a room full of attorneys, and which only could have damaged Karagjozi's reputation.

20. Bruck's efforts to poison Kaplan against Karagjozi during the Seminar can be further shown by comments made by Bruck, as follows:

> You know, typically when you're retained in a bankruptcy, you're retained by, in most cases, the CEO, the substantial major shareholder, the founder of – as I was in the Kara case, and that as the case progresses, and in this case especially with the forming of the CRO, you don't always go home with the party who brought you to the dance. And what happens is that your -- your role as debtor's attorney, you have fiduciary obligation to the debtor, that is my role is that I respond to the board of directors. In -- in this case, it became an independent board of directors because the --**the interests of the shareholder or CEO and the interest of management of the -- of the debtor may not always be the same. And you -- you've got to remember that you're -- where your obligation lies. You're not there to make sure that the principal gets off of all his guaranties or that the -- he retains an ownership interest in -- in the reorganized debtor. Although, certainly that's beneficial to him, but your obligation is to do everything within your power to maintain and to develop a best return for the benefit of the company and for its creditors. So you have that disparity, and it's essential, I think, in these type of cases that the -- the principals of the debtor have their own counsel because their views and the debtor's views really frequently just go in different directions.** You know, you can understand that the principal, especially a guy who founded the company, who basically brought the company up from inception is emotionally tied to the company. His -- his entire net worth is -- is – basically consists of the company. His identity consists of the company. So step one is Perry Mandarino comes in and sits in his chair. The second step is he's faced with losing his company. That's not a role that -- that his counsel can be involved in. It's typically -- and it becomes in some cases antagonistic.
>
> *See*, Exhibit A, 176-179; lines (1-14 on p. 179). (Emphasis supplied).

21. During the Seminar, and right in front of Kaplan, Bruck stated **"you don't always go home with the party who brought you to the dance."** Ex. A, 177:8-10 (Emphasis supplied).

22. In all these comments, it is evident that Bruck's motivation was to clearly telegraph to Kaplan Bruck's defenses in the malpractice case which both Bruck and Kaplan knew were coming, as Karagjozi had obtained a release allowing him to sue Bruck and Greenbaum for malpractice.

23. It would be virtually impossible, since Kaplan and Bruck had known each other for approximately twenty years at the time of the Kara Bankruptcy and had participated in this and other seminars involving Karagjozi's company, for Kaplan to impartially and without bias assess the merits of Karagjozi's malpractice claims against Bruck.

III. The State Court Malpractice Case/Removal of Same

24. On January 11, 2012, Karagjozi filed a five-count legal malpractice action against Greenbaum and Bruck in the Superior Court of New Jersey, Essex County, Docket No. L-366-12 ("Malpractice Case").

25. Defendants removed the Malpractice Case from the state court in February 2012 to the bankruptcy court. Because of the prior Kara Bankruptcy, the Malpractice Case was treated as an adversary proceeding, and was assigned an adversary case number, 12-01185 ("Adversary"). The Adversary was assigned to Kaplan.

26. On March 28, 2012 Karagjozi filed a motion to remand the Adversary back to state court.

27. On April 3, 2012 an order ("Recusal Order") was entered transferring the adversary proceeding from Kaplan to Hon. Judge Raymond T Lyons, Jr. (Docket Entry 11). No explanation was provided why Kaplan, *sua sponte*, transferred this case to Judge Lyons, other

than the generic language contained in the Recusal Order that the "court having noted that transfer to another judge within the District of New Jersey is appropriate". A true and correct copy of the Recusal Order is attached hereto as Exhibit "B" and incorporated herein by reference.

28. On April 23, 2012 Judge Lyons denied Karagjozi's motion to remand. After Karagjozi filed a motion to amend the complaint and for reconsideration of the court's order denying Karagjozi's motion to remand, Judge Lyons, on August 1, 2012 granted Karagjozi's motion to amend the complaint and ordered remand back to the state court. A true and correct copy of Judge Lyons' August 1, 2012 order ("Lyons Order") is attached hereto as Exhibit "C" and incorporated herein by reference.

29. The Malpractice Case proceeded for approximately four years in Essex County, through discovery, motions *in limine*, the filing of motions for dismissal and for summary judgment (all of which were denied at the state court level). Finally, in September 2016 the case was set for trial, a jury was selected, and trial was scheduled to begin on October 17, 2016.

30. On October 11, 2016 barely a week after the state court denied defendants' *in limine* motions and agreed to allow introduction of the Seminar into evidence, and the jury was already selected, defendants filed a second Notice of Removal (Docket Entry 28), but rather than title the notice of removal for what it was, it was instead referred to as a Motion to Reopen Case.

31. On October 13, 2016, Kaplan was again added to the case (Docket Entry dated 10/13/2016). On that same date, defendants noticed a hearing on the "Motion to Reopen Case". The docket also indicates that DOCUMENTS REVIEWED BY JUDGE (capitals in original). A hearing was scheduled for October 18, 2016 (Docket Entry 34).

32. Defendants did not file an amended Notice of Removal until October 17, 2016, almost a full week after the purported removal (Docket Entry 37).

IV. The October 18, 2016 Status Conference

33. Although the docket entry indicated that a hearing was to be held on October 18, 2016, this "hearing" was in fact a status conference. Attached as Exhibit "D" and incorporated herein by reference is a true and correct copy of the full transcript of the October 18, 2016 status conference ("Transcript"). *See*, Transcript, page 3; lines 1-6 (THE COURT: . . . "Why don't we--this is a status conference. I want to get a sense of what's going on.").

34. It was not until approximately two thirds through this conference that Kaplan first raised the issue of his *sua sponte* recusal, and engaged in an off the record discussion with counsel of record present at that time, as follows:

> MR. BERGENFIELD: And then I'd be happy to defer to Your Honor. When we came before you initially, you passed this case to Judge Lyons.
>
> THE COURT: That's what I was going to address.
>
> MR. BERGENFIELD: Okay, off record?
>
> THE COURT: Off record.
>
> MR. BERGENFIELD: Okay, got it. I have the --
>
> (Off the record discussion)
>
> THE COURT: Off record I discussed with counsels issues relative to my initial decision to recuse myself going back to 2009 I think it was before Judge Lyons and my determination that it might be better to continue with this matter given my experience and knowledge of the case. I'm offering both parties, counsel the ability to discuss with their counsel if they are comfortable with having me go forward. I'm assuming I am going forward with this matter, but if there's any change of heart, I welcome the opportunity to offer payback to my colleagues and send them something for some time.

See, Transcript, page 21; lines 19-25, page 22; lines 1-12.

35. Even after four years Kaplan would not disclose on the record the reason or reasons for his recusal. What was so damaging that Kaplan initially recused himself, transferred the case to Judge Lyons, then after improperly assuming jurisdiction again still refused to disclose his reasoning for the initial recusal?

36. Kaplan never had the authority to preside over the Adversary. Once he recused himself in April 2012, the ONLY actions that could be taken by Kaplan were to enter only "housekeeping" orders solely to effectuate transfer of the Adversary to another judge. *See*, *infra*, Moody v. Simmons, 858 F.2d 137 (3d Cir. 1988).

V. After Recusal, Contrary to Settled Third Circuit Precedent, Kaplan Continued to Enter Dispositive Orders in the Adversary

37. On October 24, 2016, counsel for Karagjozi filed a motion for remand, with a hearing scheduled for December 6, 2016 (Docket Entry 40).

38. On October 28, 2016, Kaplan entered an order setting schedule for jurisdictional issues (Docket Entry 43).

39. On November 4, 2016, defendants in the Adversary filed a cross-motion related to a motion for reconsideration that had been filed by Karagjozi almost four years prior when the case was being heard by Judge Lyons. The cross-motion filed by defendants consisted of 15 documents totaling 1023 pages (Docket Entry 46).

40. On November 14, 2016 counsel for Karagjozi filed a motion for sanctions pursuant to FRBP 9011, FRCP 11 and 28 U.S.C. §1927, with a hearing also scheduled for December 6, 2016, the same day as Karagjozi's motion to remand (Docket Entry 47).

41. After a number of opposition papers were filed to the various pending motions (Docket Entry Nos. 48-52) and an adjournment of the hearing on the various motions to

December 14, 2016 (Docket Entry 12/06/2016), the court issued an opinion and decision on the pending motion for remand and the cross-motion filed by defendants (Docket Entry 54).

42. In his December 14, 2016 opinion, Kaplan made several rulings on substantive and crucial issues, including whether the bankruptcy court should remand the matter back to state court, whether the court could consider relief from the Lyons Order and whether the court had the inherent power to review the Lyons Order.

43. One such ruling by Kaplan was that the court had jurisdiction to reconsider pursuant to FRCP 60 (b) (6) the Lyons Order. *See*, Docket Entry 54.

44. Kaplan further ruled that the second Notice of Removal filed on October 17, 2016 was timely even though it was filed four years after the first removal and in violation of the very strict requirements of the removal statute. *Id*.; *see also* 28 U.S.C. §1441.

45. As a result of Kaplan's rulings, Karagjozi filed a motion for leave to file an appeal (Docket Entry 63) and a motion to withdraw the reference (Docket Entry 60), both of which were denied by the District Court. *See*, Docket Entry 70 and 76.

46. On August 23, 2017, Kaplan entered an order reopening the case effective to October 17, 2016 (Docket Entry 74).

47. All orders entered by Kaplan after his April 2012 recusal were void *ab initio*, as he never had jurisdiction over the Adversary and had no authority to enter such orders.

48. As a result, the last final, binding order entered in the Adversary was the Lyons Order remanding the Adversary to state court.

IV. Karagjozi Made Prior Efforts to Enforce Kaplan's Recusal

49. Karagjozi has not sat on his rights or otherwise delayed in bringing this action.

50. In October 2016 when, despite his recusal and obvious conflicts of interest, Kaplan determined he should preside over the Adversary, Karagjozi made it very clear to his then attorney Glenn Bergenfield that under no circumstances did Karagjozi want Kaplan involved.

51. Bergenfield advised Karagjozi that Kaplan was determined to preside over the Adversary and that there was nothing that could be done about that; unfortunately, Karagjozi later learned that was not necessarily true. Attached as Exhibit "E" and incorporated herein by reference is an email from Bergenfield to Karagjozi dated December 18, 2016, in which Bergenfield falsely advised that Kaplan would not recuse himself.

52. Trusting his attorney and unsure or not aware of the complex law of judicial recusal, Karagjozi did not further object.

53. It was only after undersigned counsel was retained and Karagjozi was able to review the transcript of the conference did he learn that Kaplan had offered to transfer the Adversary to another judge.

54. On November 20, 2017 undersigned counsel sent a letter to Kaplan asking that he abide by his April 2012 recusal. A true and correct copy of this letter is attached hereto as Exhibit "F" and incorporated herein by reference.

55. Kaplan essentially ignored our recusal request and did nothing.

56. Karagjozi only seeks his day in court before a jury of his peers and a just adjudication of his claims against Bruck and Greenbaum.

57. To allow Kaplan-with his recusal, conflicts of interest and personal bias-to rule on the motion to dismiss and deny Karagjozi justice would be complete travesty and contrary to the notions of fairness, due process and fair play.

FIRST COUNT
(All Writs Act, 28 U.S.C. §1651)

58. Petitioner incorporates by reference the allegations of ¶¶ 1-57 as though fully set forth at length herein.

59. The All Writs Act, 28 U.S.C. §1651 (a) ("Act") states that

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

60. Relief via a writ of mandamus is "extraordinary" and is typically appropriate "only upon a showing of (1) a clear abuse of discretion or clear error of law; (2) a lack of an alternate avenue for adequate relief; and (3) a likelihood of irreparable injury." United States v. Wright, 776 F.3d 134, 146 (3d Cir. 2015). The writ will issue only if the party seeking the writ "meets its burden to demonstrate that its right to the writ is clear and indisputable." Sunbelt Corp., 5 F.3d at 30 (*quoting* Carteret Sav. Bank, F.A. v. Shushan, 919 F.2d 225, 232 (3d Cir. 1990)).

61. Here, Petitioner has met his burden as set forth above. Clearly, the first prong of Wright is met as Kaplan, by recusing himself, then taking control of the malpractice action against Bruck, by his demonstrated conflicts of interest with his relationship with Bruck, the subject of the case before Kaplan, and personal bias against Petitioner at the ICLE Seminar, clearly establish abuse of discretion.

62. The second prong of the Wright test is also met, as there is no alternative avenue for adequate relief. Even if Kaplan once again recused himself, his orders entered after his previous recusal still stand and must be vacated in their totality. The only feasible way to

accomplish this goal and to put the case in the posture that existed before Kaplan entered these orders post recusal is by way of writ of mandamus.

63. The third prong of the Wright test is also met. Karagjozi will clearly suffer irreparable harm if Kaplan's orders are not vacated. Karagjozi's malpractice case is based entirely on state law, and the state court is where this case should be decided. Quite simply, a bankruptcy court judge has no role in interpreting state law and Karagjozi will be irreparably harmed if the judgment of a state court judge that has vast experience in state malpractice law is replaced by a judge limited by statute to bankruptcy matters.

WHEREFORE, Petitioner Zudi Karagjozi requests the issuance of a Writ of Mandamus to:

(a) Enforce the recusal of Respondent Hon. Michael B Kaplan from April 3, 2012;

(b) Vacate each and every Order, opinion, or ruling entered by Respondent after April 3, 2012:

(c) Immediately remand the adversary proceeding back to the Superior Court of New Jersey; and

(d) Providing for such other and further relief as this Court deems just and equitable.

SECOND COUNT
(For Recusal Pursuant to 28 U.S.C. §455 (a) & (b))

64. Karagjozi incorporates by reference the allegations of ¶¶ 1-63 as though fully set forth at length herein.

65. 28 U.S.C. §455 is addressed directly to judicial officers, requiring them to act *sua sponte* when confronted with situations requiring their disqualification, as follows:

> (a) Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

66. Kaplan violated 28 U.S.C. §455 (a) as any independent observer, and certainly Karagjozi, would reasonably question his impartiality.

67. Kaplan's long-standing personal and professional relationship with Bruck and his participation in and comments about Karagjozi during the Seminar evidenced a clear bias against Karagjozi and in favor of Bruck.

68. Bruck also had an opportunity during the Seminar to present a defense to potential malpractice claims of Karagjozi in a setting where Kaplan would view those defenses most favorably to Bruck and where Karagjozi had no opportunity to rebut same. In other words, Kaplan had an unfiltered and one-sided presentation of Bruck's defenses in a case over which he would eventually preside.

69. Kaplan violated 28 U.S.C. §455 (b) because he exhibited a personal bias and prejudice toward Karagjozi.

70. This bias and prejudice towards Karagjozi was evidenced by Kaplan's statements at the Seminar about Karagjozi's purported mismanagement of Kara, and asking Bruck whether he felt physically threatened by Karagjozi.

71. Kaplan's bias and prejudice toward Karagjozi was clear and unequivocal.

WHEREFORE, Petitioner Zudi Karagjozi requests the issuance of a Writ of Mandamus to:

(a) Enforce the recusal of Respondent Hon. Michael B Kaplan from April 3, 2012;

(b) Vacate each and every Order, opinion, or ruling entered by Kaplan after April 3, 2012:

(c) Immediately remand the adversary proceeding back to the Superior Court of New Jersey; and

(d) Providing for such other and further relief as this Court deems just and equitable.

THIRD COUNT
(For Vacating of All Orders, Opinions and Rulings of Judge Kaplan After April 3, 2012 pursuant to Moody v. Simmons, 858 F.2d 137 (3d Cir. 1988) and In re School Asbestos Litigation, 977 F.2d 674 (3d Cir. 1992))

72. Petitioner incorporates by reference the allegations of ¶¶ 1-71 as though fully set forth at length herein.

73. The Third Circuit, in the case of Moody v. Simmons, 858 F.2d 137 (3d Cir. 1988) specifically provided that the vacating of all orders entered after a judge should have recused himself after his impartiality could reasonably be questioned is an appropriate remedy.

74. Here, the Court does not even have to reach the issue of whether Kaplan should have recused himself because here Kaplan did in fact *sua sponte* recuse himself on April 3, 2012.

75. Kaplan would not have recused himself if he did not in fact believe such a recusal was warranted.

76. Moody compels the conclusion that once Kaplan recused himself, he was forbidden from coming back onto the Adversary and to enter dispositive orders, or to do anything other than enter housekeeping orders necessary to transfer the Adversary to another judge.

77. Accordingly, every order entered by Kaplan after his April 3, 2012 recusal must be vacated in accordance with Moody.

WHEREFORE, Petitioner Zudi Karagjozi requests the issuance of a Writ of Mandamus to:

(a) Enforce the recusal of Respondent Hon. Michael B Kaplan from April 3, 2012;

(b) Vacate each and every Order, opinion, or ruling entered by Respondent after April 3, 2012:

(c) Immediately remand the adversary proceeding back to the Superior Court of New Jersey; and

(d) Providing for such other and further relief as this Court deems just and equitable.

FOURTH COUNT
(For Remand Pursuant to 28 U.S.C. §1447)

78. Karagjozi incorporates by reference the allegations of ¶¶ 1-77 as though fully set forth at length herein.

79. The October 28, 2016 Order entered by Kaplan granting the "motion to reopen" of defendants was entered after Kaplan's recusal.

80. The December 20, 2016 Order entered by Kaplan denying the motion for remand filed by Karagjozi and granting the motion for reconsideration of the 2012 order of Judge Lyons to remand was entered after Kaplan's recusal.

81. Pursuant to both Moody and School Asbestos, both the October 28, 2016 Order and the December 20, 2016 Order entered by Kaplan after his recusal, must be vacated. As such, the July 18, 2012 remand order entered by Judge Lyons remains in full force and effect.

82. Accordingly, this matter must be remanded back to the Superior Court of New Jersey pursuant to and in accordance with Judge Lyons' July 18, 2012 Order.

WHEREFORE, Petitioner Zudi Karagjozi requests the issuance of a Writ of Mandamus to:

(a) Enforce the recusal of Respondent Hon. Michael B Kaplan from April 3, 2012;

(b) Vacate each and every Order, opinion, or ruling entered by Respondent after April 3, 2012:

(c) Immediately remand the adversary proceeding back to the Superior Court of New Jersey; and

(d) Providing for such other and further relief as this Court deems just and equitable.

Respectfully submitted,
BRUCE J. DUKE, LLC

Dated: April 22, 2019

By: /s/ Bruce J. Duke

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