

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WILLIAM H. MALOOF, ex rel.)	Case No. 1:07-cv-01902
Level Propane Gases, Inc., et al.)	
Plaintiff)	
)	Judge Christopher A. Boyko
vs.)	
)	
BT COMMERCIAL)	
CORPORATION, et al.)	
Defendants)	

**MOTION TO RECONSIDER ORDER DENYING MOTION TO TRANSFER
CASE**

Now comes William H. Maloof, by and through counsel undersigned, and for his Motion for Reconsider the Order Denying his Motion to Transfer the above-captioned case to Judge Ann Aldrich, pursuant to Rule 3.1 (5), United States District Court, Northern District of Ohio, Local Rules, states as follows:

On June 28, 2007, Plaintiff filed his Motion to Transfer case in this Court (Docket Item 5.) On July 5, 2007, the Court, by marginal entry, denied the Motion (Docket Item 7.) Rule 3.1(5), supra, provides that “Any case received from the random draw may be transferred with the concurrence of the receiving judge and the approval of the Chief Judge.”¹

Plaintiff respectfully submits that given Richard Jacobs’ prominent role in the present suit and this Court’s role in the recent ceremonial humiliation of David Jacobs and trumpeting vindication of Richard E. Jacobs’ probity in *Jacobs v. Jacobs*, Case No. 04-2235, USDC, NDO (see Exhibit 1) and the familiarity of Judge Aldrich’s Court with

1. This same Local Rule provides that: “When an additional assignment is thus made to a District Judge under any of the following sub-paragraphs, an electronic card for said District Judge shall be removed from the deck from the same category from which the case would have been drawn.”

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the facts, circumstances and arguments advanced, both in the prosecution and defense of the bankruptcy appeals, see *infra*, and the prior lawsuit, *Maloof v. BT Commercial Corp.*, Case No. 06-01378, USDC, NDO (see Exhibit 2,) this Court should be eager to purge this case from its docket without ever approaching the merits of its claims. Were this case to remain on this Court's docket, any disposition of any substantive issue would be subjected to the taint of suspected partiality. Even the perceived allegiance of a Court to a party in an active suit, which perception arose from the Court's conduct of a previous suit, hobbles the fundamental role of the Court as that place where justice is not only done but seen to be done, see *Code of Judicial Conduct for United States Judges*, Canon 3(C)(1).²

Judge Aldrich's Court is familiar with the facts of this case, having rendered a number of decisions related to appeals arising in the Level Propane Bankruptcy proceedings (Case No. 02-16172, United States Bankruptcy Court, N. D.O.). The appeals filed by the Plaintiff herein were 03-CV-2038, 03-CV-2044, 03-CV-2106, 04-CV-0092, and 04-CV-0307, upon which Judge Aldrich has ruled only in the last few months. Most recently Judge Aldrich has turned aside Plaintiff's due process argument as 'tenuous' in declining to hear the appeal of Debtor's Counsel, *Maloof v. Level Propane* (Bankruptcy Appeal) Case No. 07-1008, USDC, NDO. Moreover, Judge Aldrich has before her the appeals filed by the Plaintiff now pending, including Case No. 07-0150 (Appeal regarding his Motion to Reopen Examiner's Investigation) and Case No. 07-0153 (Appeal regarding his Motion to Vacate) that concern many of the same issues and the

2. Sec. 3(C)(1) states in relevant part: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including . . ."

same evidence as in the case at bar. Additionally, the ten (10) appeals of the equipment lessors were prosecuted in Judge Aldrich's court, see related case docket of *In Re: Level Propane Gases, Inc.*, 02-16172. Just recently, her Court affirmed the rejection of a prior class action settlement by Level Propane as Debtor, *Certified Class of Ohio Residential Customers v. Level Propane Gases, Inc.*, Case No. 03-02241, USDC, NDO.

Consequently, Judge Aldrich will be in the best position to sort through the long history of this case, particularly with respect to the issues bearing on the domination of Level Propane by the Defendants herein, among which is Richard Jacobs.

Judge Aldrich has to date affirmed each and every Order of the Bankruptcy Court from which an appeal has been taken by the Plaintiff and upon which her Court has ruled, and has dismissed his suit filed in 2006, *Maloof v. BT Commercial Corp. et al.*, 06-01378, which case was transferred out of this Court on Plaintiff's motion. In that ruling, Judge Aldrich observed that the claims set out in that suit, in her view, belonged to the corporations of which the Plaintiff, as the shareholder, participated derivatively. The dismissal of this case is now on appeal before the Sixth Circuit Court of Appeals, as Case No. 07-3333. Plaintiff, in light of Judge Aldrich's rulings cannot be said to be shopping for a forum friendly to his cause. Judge Aldrich's Court, having before it, however, so many matters, both resolved and pending, that turn on so many of the same facts and relate to so many of the same parties as in this present suit, is doubtless conversant with the facts essential to the suit at hand. This familiarity with the case alone will advance the economical administration of justice.

In light of the record with respect to the Level Propane Bankruptcy and *Maloof v. BT Commercial Corp.*, *supra*, there is no appearance whatsoever that in Judge Aldrich's

Court there is any allegiance to the Plaintiff or even sympathy to his position. By contrast, the same firm neutrality is not apparent in this Court in light of this Court's role in Richard Jacobs' ceremonial and crushing humiliation of his nephew in *Jacobs v. Jacobs*, Case No. 04-2235. This issue of allegiance is further complicated by Ralph Cascarella's role as Managing Partner of Walter & Haverfield, LLP, counsel for the Jacobs nephews and his relationship as brother-in-law to the Plaintiff and his role as a witness in this suit, in as much as he actively participated in the attempt to crush the Plaintiff privately with respect to the management control of Level Propane (see Exhibit 3) as his firm participated in the unheard-of public judicial lashing of their own client in *Jacobs v. Jacobs, supra*.

Transferring the case will *advance a good, judicial economy* in Judge Aldrich's Court, and *obviate an evil, the perception of partiality* arising from the conduct of the settlement in *Jacobs v. Jacobs, supra*, in this Court. These objects can be accomplished with neither prejudice to any party nor the delay of justice, as the case is presently postured.

Wherefore, for the reasons above-stated, that the administration of justice will be served by the economies occasioned by and pursuant to Local Rule, Plaintiff prays that this case be transferred to Judge Aldrich.

Respectfully submitted,

/s/ David C. Eisler
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SERVICE

I hereby certify that on this 10th day of July, 2007, the foregoing was filed electronically. Notice of this filing will be sent to all parties named in the complaint at the addresses set forth in the complaint by regular mail. Parties may also access this filing through the Court's system.

/s/ David C. Eisler
David C. Eisler, Counsel for William H. Maloof