FOR PUBLICATION

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH DEVELOPMENT AUTHORITY, Plaintiff, v. **MARIA ANA T. SABLAN, SY'S CORPORATION d.b.a. PACIFIC GARDENIA HOTEL, RONALD D. SABLAN, JEANNETTE D. SABLAN a.k.a. JEANNETTE SABLAN YAMASHITA, LPP MORTGAGE, LTD., CNMI DEPARTMENT OF FINANCE, and JOHN DOE,** Defendants.	**CIVIL ACTION NO. 01-0442A** **ORDER GRANTING MOTION FOR DISQUALIFICATION**

I. Introduction

THIS MATTER came before the Court for a hearing on March 21, 2005, at 9:00 a.m. in courtroom 220A to consider Defendants Ronald D. Sablan, Maria Ana T. Sablan and Sy's Corporation's (hereinafter "Defendants") MOTION FOR RECUSAL (hereinafter "MOTION FOR DISQUALIFICATION") of Associate Judge Juan T. Lizama. Defendants were represented by G. Anthony Long, Esq. Plaintiff Commonwealth Development Authority ("CDA") was represented by F. Matthew Smith, Esq. of the Law Office of F. Matthew Smith, LLC.[1] Also present at the

[1] The Law Offices of Vicente T. Salas is also currently the attorney of record for Plaintiff CDA. The Court notes that, based on a review of the pleadings in this file, Mr. Matthew Smith has been an associate of the Law Offices of Vicente T. Salas since the inception of this case until only recently.

hearing were Assistant Attorney General Deborah Covington for the Department of Finance, and Bruce L. Mailman, Esq., for LPP Mortgage, Ltd. Having considered the arguments presented by counsel, as well as the briefs submitted by the parties and the pleadings and orders on the record, the Court now issues its decision, **GRANTING the MOTION** for the reasons that follow.

II. Facts and Procedural Background

This action commenced on August 7, 2001, with the filing of Plaintiff CDA's COMPLAINT TO FORECLOSE AND FOR MONEY DUE. In the Complaint, CDA seeks a monetary judgment under various loan agreements with the Defendants, and also seeks to foreclose upon mortgages of properties held by the Defendants. On December 28, 2004, an Order of Self Recusal was entered by Presiding Judge Robert C. Naraja, and the case was subsequently assigned to Associate Judge Juan T. Lizama. By their Motion, Defendants now seek the disqualification of Judge Lizama in this case. Defendants contend that because Mr. Smith is or was a member of the Law Offices of Vicente T. Salas, Esq., and because both Mr. Smith and Mr. Salas represented Judge Lizama previously in an unrelated matter, there is an appearance of bias in the Plaintiff's favor that warrants disqualification. Defendants allege that the representation of Judge Lizama in the case of *Lizama v. Kintz*, Civ. Case No. 90-0609, existed for at least twelve years and resulted in a judgment in Judge Lizama's favor in the amount of 1.9 million dollars, which then resulted in an unknown final settlement. The settlement in *Lizama v. Kintz* is evidenced by a "Satisfaction and Release of Judgment" that was filed by Mr. Smith (then counsel for Judge Lizama) on August 27, 2003. Defendants claim that, because of the amount of money at stake and because of the length of the representation, Judge Lizama's impartiality in this case "might reasonably be questioned," and Judge Lizama should therefore be disqualified pursuant to 1 CMC § 3308(a).

During oral argument, counsel for Plaintiff acknowledged that the Law Offices of Vicente T. Salas ("Salas Law Firm") previously represented Judge Lizama in the case of *Lizama v. Kintz*, but confirmed that the representation had ceased, and that the Salas Law Firm no longer represents Judge Lizama in any matter.

This Court has jurisdiction pursuant to N.M.I. Const. art. IV, § 2.

III. Analysis

"It is well settled that a judge is presumed to be qualified and that the movant bears a substantial burden of proving otherwise." *Idaho v. Freeman*. 478 F. Supp 33, 35 (D. Idaho 1979); *see also Reiffin v. Microsoft Corp.*, 158 F. Supp. 2d 1016, 1022 (N.D.Cal. 2001), *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003). In this case, Defendants' request for disqualification is based solely upon Title 1, Section 3308(a) of the Commonwealth Code, which provides: "**A justice or judge of the Commonwealth shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned**." 1 CMC § 3308(a) (emphasis added).[2] The standard for judicial disqualification under 1 CMC § 3308 is thus an objective one: "[a] judge is required to recuse himself. . . if an objectively reasonable person informed of the facts would conclude that the judge's impartiality might reasonably be questioned were the judge to continue to hear the case." *Denardo v. Municipality of Anchorage,* 974 F.2d 1200, 1201 (9th Cir. 1992). Whether a judge's ***prior*** representation by the law offices of counsel to a party would cause the judge's impartiality to be "reasonably questioned," however, is an issue that has not been addressed previously in the Commonwealth's case law.

[2] The language of this section is founded upon the Federal disqualification statute, 28 U.S.C. § 455, and for this reason, references to applicable Federal cases concerning judicial disqualification are appropriate. *See Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas),* 2000 MP 12 ¶3.

Defendants cite *City of Fort Lauderdale v. Palazzo Las Olas Group, LLC*, for the statement that "[t]he general rule is that disqualification of the judge is required if counsel for one of the parties **is representing or has recently represented the judge**."[3] 882 So. 2d 1102, 1103 (Fla. Dist. Ct. App. 2004) (emphasis added). This standard necessarily raises the question of what constitutes a "recent" representation for disqualification purposes. In *City of Fort Lauderdale*, the Florida Appellate Court granted a petition for a writ of prohibition, disqualifying a judge on the basis that the judge had recently been represented by an attorney to one of the parties. The attorney representing the trial judge and the petitioner/developer withdrew from the case after the case was assigned to the trial judge. Despite the attorney's withdrawal, the Appellate Court held that the judge's disqualification was still required, because the judge's representation by the attorney was concurrent with that of the case before him. The court emphasized that the "central concern" was "the appearance of impropriety in a circuit judge reviewing a petition . . . that was drafted and filed by the judge's personal counsel to seek review of that same counsel's presentation of a case in an administrative tribunal." *Id*. at 1103.

Similarly, in the case of *Marcotte v. Gloeckner*, 679 So. 2d 1225, 1225-26 (Fla. Dist. Ct. App. 1996), the Florida Court of Appeals required a judge's disqualification where an attorney for a party had *simultaneously* represented both a trial judge in a recent unrelated matter and a defendant in a case before that same judge. The Court required the judge's disqualification despite the fact that

[3] This statement is corroborated to some extent by the text of the 1970 version of 28 USC § 455, which stated that "[a]ny justice or judge of the United States shall disqualify himself in any case in which he . . . is so related to or connected with any party *or his attorney* as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." (Emphasis added). That language was subsequently omitted in favor of the broader, objective standard of requiring a judge's disqualification in "any proceeding in which his impartiality might reasonably be questioned," which can be interpreted as encompassing the criteria of the earlier version. *See* 28 USC § 455(a) (2005 ed.); *see also Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859 n.7, 108 S. Ct. 2194, 2202 n.7, 100 L. Ed. 2d 855, 872 n.7 (1988).

the law firm no longer represented the judge, emphasizing the overlap between the judge's representation and that of the defendant. *See also Potashnick v. Port City Constr. Co.*, 609 F.2d 1101 (5th Cir. 1980) (in which the Fifth Circuit Court of Appeals held in part that, where an attorney for a party had represented a trial judge in several unrelated matters while the action before the judge was pending, that judge's impartiality might reasonably be questioned even though the judge's representation was not ongoing).

In this case, the Salas Law Firm filed the Complaint on behalf of Plaintiff CDA on August 7, 2001. On that date, Judge Lizama's case was still pending in the Superior Court, and the Salas Law Firm represented him during this period until the case settled and ended on August 27, 2003. Therefore, the Salas Law Firm represented both the judge and the Plaintiff in this very case simultaneously for two years. Based on these facts alone, this Court finds that even though the Salas Law Firm no longer represents him,[4] a reasonable person would conclude that the judge's impartiality might reasonably be questioned were he allowed to continue to hear this case, and for this reason, Judge Lizama must be disqualified.

Like its Federal counterpart at 28 U.S.C. § 455(a), 1 CMC § 3308(a) was created with the goal of fostering the appearance of impartiality and preventing the appearance of bias. *See Potashnick*, 609 F.2d at 1111 (noting that "[a]ny question of a judge's impartiality threatens the purity of the judicial process and its institutions"). By rendering this opinion, this Court does not intend to suggest that Judge Lizama holds any *actual* bias against Defendants, and indeed, this Court

[4] This case was assigned to Judge Lizama on December 28, 2004, four-hundred and eighty-eight (488) days after the close of the Salas Law Firm's representation in *Lizama v. Kintz*. The Defendants have not offered any evidence to suggest that the representation continued beyond the filing of the notice of satisfaction. Counsel Matthew Smith of the Law Offices of Vicente T. Salas submitted a declaration in support of Plaintiff's Opposition to this Motion to Recuse and stated at the hearing that the Salas Law Office no longer represents Judge Lizama in any case.

believes that Judge Lizama would preside impartially, irrespective of any alleged influence, were he permitted to continue to hear the case. However, because the analysis under 1 CMC § 3308(a) calls for a purely *objective* inquiry, this Court's thoughts on the subject are of no consequence: it is the statute's overriding concern for averting the *appearance* of bias that requires disqualification. As the Florida Appellate Court stated,

> "justice must satisfy the appearance of justice," even though this "stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties."

City of Ft. Lauderdale at 1103 (*citing Atkinson Dredging Co. v. Henning*, 631 So. 2d 1129, 1130 (Fla. Dist. Ct. App. 1994) (*quoting Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11, 16 (1954) and *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942, 946 (1955))).

IV. Conclusion

For the foregoing reasons, Defendants' MOTION FOR DISQUALIFICATION is **GRANTED**.

SO ORDERED this 31st day of March 2004.

/s/
RAMONA V. MANGLONA, Associate Judge