

IN THE CIRCUIT COURT OF FAULKNER COUNTY ARKANSAS
CIVIL DIVISION -1st

LAURA HAMMETT, an individual

PLAINTIFF

V. CASE No. 23-cv-20-631

**FIRST AMERICAN HOME WARRANTY
CORPORATION, a California Corporation;
NICHOLSON'S HEATING AND AIR
CONDITIONING, INC., an Arkansas
Corporation; SMARTCOOL OF
ARKANSAS, INC., an Arkansas Corporation,
DOES 1-99**

DEFENDANTS

Reply Re: Motion for Recusal of Judge Susan Kaye Weaver; Brief in Support

Comes now Plaintiff Laura Hammett, (“Hammett”), and in reply to opposition to her motion for the recusal of Judge Susan Kaye Weaver states:

1. Nicholson’s Heating and Air Conditioning, Inc. stated falsely that “[Hammett] has cited only adverse rulings on discretionary matters in support of her motion, coupled with statements allegedly uttered by other litigants who were adverse to [Hammett].” (Response of Defendant Nicholson’s [], at 2, ¶ 3.)
2. As to this case alone, with its short docket relative to the other cases involving Hammett wherein Judge Weaver presides, the Court had little opportunity to make adverse rulings.
3. The order mandating arbitration is adverse to Hammett. It is a clearly erroneous application of law. Hammett did not sue on a theory of contract. She sued on: (1) Fraud in the inducement; (2) Rescission; (3) Promissory Estoppel; (4) Negligence; (5) Reckless Endangerment; (6) Bodily injury; (7) outrage; (8) violations of the Arkansas Service Contracts Act and (9) fraud. (First Amended Complaint, “FAC”, ¶ 12.)
4. Hammett clearly did not agree with the contract. FAHW honored Hammett’s request to rescind the contract on a separate property that did not suffer any malfunction and returned the purchase price in full. That solution

was not appropriate for the Gold Lake Club Property. Hammett refrained from purchasing a policy from another company, based on FAHW's fraudulent advertising, and therefore had no honest home warranty company to cause the repair of the faulty HVAC or dishwasher. (See FAC in general, specifically, ¶¶ 177, 187-197)

5. Hammett certainly did not agree with the arbitration agreement. (FAC ¶ 193.) In particular, the arbitration agreement excluded damages for each and every claim raised by Hammett. Had FAHW rescinded the contract on the first day Hammett asked, Hammett would only have asked for the cost of repair or replacement of the HVAC. (FAC ¶ 21.) But FAHW fraudulently induced Hammett to wait indefinitely for the HVAC to be repaired, with devastating consequences.
6. A clearly erroneous interpretation or application of a law or rule will constitute a manifest abuse of discretion. *Little Rock Wastewater Util. v. Larry Moyer Trucking, Inc.*, 321 Ark. 303, 902 S.W.2d 760 (1995).”
Ferguson v. State, 2016 Ark. 319, at 6–8, 498 S.W.3d 733, 737–38.
7. The Court's mandate that Hammett abide by the arbitration agreement in a contract to which she did not agree was prejudicial. Had Hammett signed the documents required in the Commercial Disputes Arbitration Rules and Mediation Procedures specified, she would be signing away her rights and

damages incurred through the violations enumerated in FAC ¶ 12.

(Commercial-Rules_Web.pdf (adr.org), at 12, §R-4(a)(ii).)¹

8. Instead, Hammett waited patiently for the Court of Appeals to make a decision on Hammett's unopposed appellate brief in *Pietrczak*, including Judge Weaver's erroneous refusal to recuse herself from *Pietrczak* and all other cases involving Hammett as a litigant. (Arkansas Court of Appeals Case No. CV-22-435, at 26 to 33)
9. The plain wording of *Arkansas Code of Judicial Conduct Rule 2.11* required Judge Weaver to recuse because her "impartiality might reasonably be questioned." *Ark. Code Jud. Conduct* R. 2.11(A).
10. Far more than erroneous orders, Judge Weaver appears to have an extrajudicial bias that is exemplified in lying about what was said in hearings and seizing Hammett's property rights after forbidding Hammett to defend those rights under a credible threat of imprisonment. No John Grisham novel is more exaggerated in the characterization of a Southern, small town judiciary than was the performance by Judge Weaver in the *Pietrczak* hearings.
11. Adding insult to injury, Hammett was demonstrably ill, providing a blood test that showed her neutrophils were high and lymphocytes were low.

¹ Note that FAHW was allowed to file for arbitration and failed to pursue its right.

Judge Weaver refused to stay the hearing, even though she intended to refuse Hammett the opportunity to be heard.

12. In *Pietrczak*, Judge Weaver applied stale law, *Irvin*, to support her decision to base refusal to recuse on her “conscience” rather than the appearance of impropriety and the damage it would cause in the public’s perception and confidence in the judiciary.
13. The Court “repeated the outdated rule that ‘a judge’s recusal is discretionary’ and that a ‘substantial burden’ is on the movant to prove the judge was not impartial. [citing *Ferguson* at 4, 479 S.W.3d at 27.]” *Elizabeth James, Judicial Disqualification—Confusion, Clarification and Continued Considerations: A Closer Look at Arkansas's Judicial Disqualification Rules in Light of Ferguson v. State*, 40 U. ARK. LITTLE ROCK L. REV. 283 (2017).
14. Rule 2.11(A)(1) of the Code of Judicial Conduct provides that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including when the judge has a personal bias or prejudice concerning a party or a party's lawyer.” *Matter of Est. of Edens*, 2018 Ark. App. 226, 19, 548 S.W.3d 179, 190–91 (2018); “The proper administration of the law requires not only that judges refrain from actual bias but also that they avoid all appearance of unfairness. *Id.*

When a judge exhibits bias or the appearance of bias, the appellate court will reverse.” Id 191.; “A clearly erroneous interpretation or application of a law or rule will constitute a manifest abuse of discretion. Id.” Id.)

15. Hammett had numerous attorneys refuse to get involved in her cases for fear of harming their careers.
16. Nicholson’s characterizes the example Hammett gave in her motion as an “adverse ruling”. The continuance issue described in detail showed that, not only did Judge Weaver abuse her discretion by refusing a continuance to Hammett where a summons to a common-defense-doctrine defendant was not even issued and neither summons served; Judge Weaver granted a continuance sua sponte to U. S. Bank because service of summons by the pro se plaintiff in that case was technically deficient.
17. To reiterate from the pending appeal, in contradiction to Nicholson’s hollow contention:
18. Judge Weaver filed an admonishment letter on Friday, August 20, 2021, at 4:25 PM. Hammett’s adversary filed a motion disguised as a responsive letter with an exhibit, file stamped August 20, 2021 at 5:08 PM. Opposing counsel’s usual tardiness gave this an appearance of planning otherwise known as collusion, between Judge Weaver and the represented party.

19. Judge Weaver enforced an overbroad request for production of documents and other tangibles and intangibles disguised as a “subpoena” against Hammett.
20. The “uttered” statements Nicholson referred to in Response ¶ 3 included an adversarial attorney shouting “Shut your mouth Bitch!” loudly in the Searcy County Courthouse Annex. This was followed up with the attorney leaning toward Hammett during the hearing and saying “bitch” right in front of the judge. The Court failed to mention this and the court reporter left it out of the transcript, even though the court reporter later stated that her recording equipment was very sensitive.
21. Pietrczak presented another pertinent contradiction between Judge Weaver’s treatment of Hammett and represented litigants. In Pietrczak, Hammett agreed to rescind a valid contract, because the contract was written very generously in Pietrczak’s favor. Judge Weaver then deemed that contract “void ab initio”. In contrast, Hammett rescinded the FAHW adhesion contract, and Judge Weaver did not deem the contract void ab initio. Instead, the court enforced the arbitration clause in the contract.
22. Hammett intends to appeal erroneous rulings by Judge Weaver in this case. But the appearance of extra-judicial bias demands a recusal, to mitigate damages to Hammett and the public’s perception of the Arkansas judiciary.

With hope for justice,

/s/ Laura Hammett January 3, 2024

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CERTIFICATE OF SERVICE

I hereby certify that, on January 3, 2024 I electronically filed the Plaintiff
Laura Hammett's **Reply Re: Motion for Recusal of Judge Susan Kaye
Weaver** with the Clerk of the Court using the eFlex Electronic Filing
System, which shall send notification of such filing to all counsel of record.

January 3, 2024

/S/ Laura Hammett

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