

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

JCK LEGACY COMPANY, ET AL.,	Main Case No.
Debtors.	20-10418-mew

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 17, 2024
11:32 AM

B E F O R E:
HON. MICHAEL E. WILES
U.S. BANKRUPTCY JUDGE

ECRO: CO



Motion by Colt-Sarmiento seeking appointment of counsel

Response filed

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A P P E A R A N C E S (All present by video or telephone):

PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for Yale Bogen as Successor GUC Recovery

Trustee

31 West 52nd Street

New York, NY 10019

BY: PATRICK E. FITZMAURICE, ESQ.

KWAME O. AKUFFO, ESQ.

ALSO PRESENT:

YALE BOGEN, Successor GUC Recovery Trustee

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1 P R O C E E D I N G S

2 THE COURT: JCK Legacy.

3 MR. AKUFFO: Good morning, Your Honor. Kwame Akuffo
4 on behalf of Yale Scott Bogen, the successor GUC recovery
5 trustee. On the line with me also is my colleague Patrick
6 Fitzmaurice and the trustee, Mr. Bogen.

7 I don't think Mr. Colt-Sarmiento is on the line
8 either.

9 THE COURT: Okay. Go ahead. I have your papers in
10 opposition to his motion. Do you have anything you wish to
11 add?

12 MR. AKUFFO: No, Your Honor. But briefly, I'd just
13 like to make a brief introduction of the trustee, Mr. Bogen.
14 This is Mr. Bogen's first telephonic appearance before the
15 Court. He was appointed in June of last year to replace the
16 previous trustee, who passed away. And currently, Mr. Bogen,
17 well, who is on the line, he's serving as the senior managing
18 director of Development Specialists, Inc. And he is a -- he's
19 been involved in the post-conservation matters in these Chapter
20 11 cases for more than two and a half years now, Your Honor.

21 THE COURT: All right. Welcome, Mr. Bogen.

22 MR. BOGEN: Good morning, Your Honor.

23 THE COURT: All right.

24 MR. AKUFFO: So yeah, with respect to the motion to
25 appoint counsel, Your Honor, again, we have nothing to add

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1 other than that, other than the reasons stated in the
2 objection. After we filed the objection, we served the
3 objection and the notice of hearing on Mr. Colt-Sarmiento. We
4 did not receive a formal or informal response to the objection.
5 And so again, for the reasons stated in the objection, Your
6 Honor, we request that the motion to appoint counsel be denied.

7 THE COURT: Okay. I'm going to dictate a decision on
8 this into the record. I'd ask you to have my decision
9 transcribed, and submit it to us in Word format. We will then
10 reserve the right to correct typos or other mistakes or make
11 other changes that might be appropriate, and we'll issue that
12 as the final decision on this application. And at that time,
13 we'll also issue an order and send all of it to Mr. Colt-
14 Sarmiento. Okay.

15 MR. AKUFFO: Understood, Your Honor.

16 THE COURT: All right. So I have before me the motion
17 by Mr. Colt-Sarmiento for the appointment of counsel to assist
18 him in pursuing his claim against one of the debtors in this
19 case. Mr. Colt-Sarmiento is currently a prisoner and seeks the
20 appointment of counsel under Section 1915(e)(1) of Title 28 of
21 the United States Code. In support of his application, Mr.
22 Colt-Sarmiento has cited to a decision in In re: Alan (ph.),
23 2007 Bankr. LEXIS 303, in which case, the court noted that
24 there was authority to appoint counsel for indigent litigants
25 but that the court was not required to do so and in which case

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1 the court actually declined to do so.

2 It is useful to review some of the past history of
3 this in order to explain my ruling on this request. Mr. Colt-
4 Sarmiento's claim is based on allegations that one of the
5 debtors, the Tacoma News Tribune, defamed him in an article
6 that was published in March 2018 by virtue of some statements
7 in the article that described the testimony in his underlying
8 criminal trial and the underlying facts that led to that
9 criminal trial.

10 As I noted, the Court has the power under Section
11 1915(e)(1) to request that counsel represent an indigent. But
12 the court is not obligated to make such a request and actually
13 has no power to force a particular attorney to take on such a
14 representation. Some courts have suggested that the power to
15 request a counsel to represent an indigent should be only
16 exercised under exceptional circumstances, but the Second
17 Circuit has rejected that standard. See Hodge v. Police
18 Officers, 802 F.2d 58 (2d Cir. 1986). In Hodge, Second Circuit
19 endorsed the factors that were first established by the Seventh
20 Circuit in Maclin v. Freake, 650 F.2d 885 (7th Cir. 1981).

21 Under the Hodge decision, a court that considers a
22 request for the appointment of counsel under Section 1915(e)(1)
23 should first consider the merits of the litigant's claim, since
24 counsel is normally unwarranted if a claim is frivolous or if
25 the chance of success is extremely slim. If the claim is a

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1 colorable one, then the court should consider whether the facts
2 are complicated and whether they require investigation of a
3 kind that an indigent is not in a position to do, whether the
4 only evidence consists of conflicting testimonies, such that
5 the assistance of trained counsel is warranted, the capability
6 of the indigent litigants to present the case, the complexity
7 of the legal issues, and any other special reason why
8 appointment of counsel would be more likely to lead to a just
9 determination.

10 There have already been significant proceedings in
11 this court regarding Mr. Colt-Sarmiento's claim. Mr. Colt-
12 Sarmiento filed a handwritten proof of claim dated July 19,
13 2020 and filed August 7, 2020, ECF number 754. He made
14 additional filings asking that his claim be treated as a
15 secured claim. Those are at ECF 930. He also filed objections
16 to other motions. I have listed those in a prior decision, ECF
17 number 1415, but those are not really relevant and not
18 necessary to repeat here.

19 The debtors, through their plan administrator,
20 objected to Mr. Colt-Sarmiento's original claim and to his
21 request to be treated as a secured creditor. That objection
22 was that ECF number 1216. I granted Mr. Colt-Sarmiento's
23 request for additional time to respond to those objections.
24 That order is at ECF number 1284. Mr. Colt-Sarmiento then
25 filed an amended claim in October 2021, which is at ECF number

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1 1323.

2 One of the objections that had been raised was that
3 Mr. Colt-Sarmiento's claim should be barred because it was
4 filed after the deadline I had set for the submission of
5 claims. I directed the debtors to make an additional filing as
6 to whether Mr. Colt-Sarmiento had been a known creditor who was
7 entitled to direct notice by mail of the deadline for the
8 filing of claims. That order was at ECF number 1407.

9 Subsequently, I issued a decision on March 3, 2022,
10 ECF number 1415, and an order on that same date, which is at
11 ECF number 1416. I first held that Mr. Colt-Sarmiento's claim
12 would be treated as having been timely filed. I noticed that
13 he had not formally asked that he be granted relief from my
14 order setting a deadline for the filing of claims. But I also
15 noted that he had clearly asked that his claim be regarded as a
16 valid one. And as I said then, "There are only so many
17 niceties of legal practice that can reasonably be expected,
18 given Mr. Colt-Sarmiento's position."

19 I then reviewed the factors that are relevant in
20 deciding whether to grant relief from a bar date order under
21 Rule 9006, and I found that those factors have been satisfied.
22 But there was also an objection at that time that Mr. Colt-
23 Sarmiento's claim had not been filed using the official form,
24 and I denied that objection. I did, however, sustain the
25 objection to Mr. Colt-Sarmiento's request that his claim be

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1 treated as a secured claim, and I found that there was no basis
2 on which to do so.

3 In my decision, I also denied Mr. Colt-Sarmiento's
4 objections to some other motions. That objection did not
5 resolve the merits of Mr. Colt-Sarmiento's claim, but there
6 were further objections filed by the GUC recovery trustee,
7 which had the authority to do that under the confirmed plan.
8 Those objections were filed March 22, 2022, at ECF number 1436.

9 Mr. Colt-Sarmiento did file responses on May 12, 2022,
10 and July 15, 2022, which are at ECF numbers 1460 and 1491.
11 Among other things, Mr. Colt-Sarmiento asked the Court to grant
12 him a further extension of time in light of his limited access
13 to a computer and to a law library. The GUC recovery trustee
14 filed a further response on July 15, 2022, which is at ECF
15 number 1494.

16 On September 7, 2022, I issued a decision and an order
17 denying Mr. Colt-Sarmiento's claim. Those are at ECF numbers
18 1521 and 1522. I said then that I was sympathetic with Mr.
19 Colt-Sarmiento's contention that he had limited ability to do
20 legal research. But I noted that for that reason, we had
21 carefully reviewed the applicable law regarding his asserted
22 claims to be sure that we were aware of and could evaluate any
23 arguments that might support his claims or that might warrant
24 any further proceedings. However, after doing that research,
25 we concluded that there was merit to the trustee's legal

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1 objections and that the claim should be disallowed.

2 In my decision, I then reviewed the requirements of
3 Washington law regarding claims of defamation, false light,
4 invasion of privacy, intentional infliction of emotional
5 distress, negligent infliction of emotional distress, and
6 negligence, each of which Mr. Colt-Sarmiento had identified as
7 a theoretical basis for his claim. I noted a variety of
8 reasons why his claim was legally deficient, and accordingly, I
9 disallowed the claim. The order disallowing the claim was
10 entered on September 7, 2022, and no appeal was filed.

11 Since that time, Mr. Colt-Sarmiento has filed other
12 objections to other matters and has made other requests for
13 information, all of which I have addressed.

14 Under these circumstances, the November 27, 2023,
15 request for the appointment of counsel is unfounded. Mr. Colt-
16 Sarmiento asked about it -- acted on his own behalf, as he was
17 entitled to do, and the Court fully considered all of his prior
18 submissions before ruling on his claim in September 2022. The
19 motion seeking the appointment of counsel was filed more than a
20 year after the issuance of the order that disallowed Mr. Colt-
21 Sarmiento's claim. No appeal was filed, and there is nothing
22 that a lawyer could do to alter that fact, nor am I aware of
23 any ground on which relief from the Court's order could be
24 sought under Bankruptcy Rule 924, which incorporates the
25 provisions of Rule 60(b) of the Federal Rules of Civil

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1 Procedure.

2 I understand Mr. Colt-Sarmiento's frustration, like
3 any other claimant, and his unhappiness with the outcome. But
4 I will note that we made every effort to afford him additional
5 time to submit papers and spent significant time doing our own
6 legal research to make certain that the legal merits of his
7 claim were being evaluated fairly. In any event, at this stage
8 of the proceedings, there just is no basis for the appointment
9 of counsel. For that reason, I will deny Mr. Colt-Sarmiento's
10 request. All right. Counsel, if you would have that
11 transcribed and submitted, I would appreciate it.

12 MR. AKUFFO: We'll do that, Your Honor. One more
13 matter, Your Honor, that is not on for today, but we noted that
14 there was also another letter that was filed at docket number
15 1576 by Nathaniel Miles (ph.). We plan to file a response to
16 that, and we'd like to set a hearing date for that letter
17 request, if that's okay.

18 THE COURT: All right. I'm not sure what that is, but
19 if you need a hearing, just call chambers and work out a
20 hearing date.

21 MR. AKUFFO: Understood, Your Honor. All right.
22 Thank you very much. We'll go ahead and transcribe the ruling
23 into Word and then send it to the Court for review.

24 THE COURT: Okay.

25 (Whereupon these proceedings were concluded at 11:47 AM)

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I N D E X

RULINGS:	PAGE	LINE
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counsel motion is denied		

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true
and accurate record of the proceedings.



River Wolfe (CDLT-265)

TTA-Certified Digital Legal Transcriber

eScribers

7227 North 16th Street, Suite #207

Phoenix, AZ 85020

Date: January 18, 2024

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