Docket #2369 Date Filed: 07/22/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(Houston Division)

In re:

TEHUM CARE SERVICES, INC.,

Debtor.

Chapter 11

Case No. 23-90086 (CML)

GORDON SCOTT DITTMER'S RESPONSE TO YESCARE'S REPLY TO THE OBJECTION OF GORDON SCOTT DITTMER TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES

Gordon Scott Dittmer (herein, Plaintiff), the plaintiff in GORDON SCOTT DITTMER v. CORIZON HEALTH, INC., Case No. 1:22-cv-00077 (W.D. Mich.)(Plaintiff's Civil Action) argues that he should not be enjoined from prosecuting his § 1983 action against Dr. Papendick (herein, Papendick) because his claims therein are against Papendick in his "individual" or "personal" capacity rather than his "official" or "professional" capacity.

While YesCare would present to this Court that Plaintiff alleges that his claims against Papendick are against Papendick in his "individual" capacity rather than in his capacity as an "employee" of the Debtor, such a presentation amounts to nothing more than a ruse. Plaintiff is not suing Papendick in his "official" capacity, as that would amount to suing Papendick's "office," i.e., the Debtor. Instead, Plaintiff is suing Papendick in his "individual" or "personal" capacity, which is separate from Papendick's office, even as an employee of the Debtor.

The distinction between individual- and official-liability suits is

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paramount here. In an official-capacity claim, the relief sought is only nominally against the official and, in fact, is against the official's office, and thus, the [Debtor] itself. See Will v. Michigan Department of State Police, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); Dugan v. Rank, 372 U.S. 609, 611; 620-622, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963). This is why, when officials sued in their official capacities leave office, their successors automatically assume their role in the litigation. Hafer v. Melo, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). The real party in interest is the [Debtor], not the named official. See Edelman v. Jordan, 415 U.S. 651, 663-665, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).

Personal-capacity suits, on the other hand, seek to impose individual liability upon [an] officer for actions taken under color of state law." Hafer, 502 U.S., at 25. See also, Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971)("[O]fficers sued in their personal capacity come to court as individuals,") Hafer, 502 U.S., at 27, and the real party in interest is the individual, not the [Debtor]. See Philadelphia Co. v. Stimson, 223 U.S. 605, 619-620, 32 S.Ct. 340, 56 L.Ed. 570 (1912)("The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded").

The identity of the real party in interest dictates what immunities may be available. Defendants in an official-capacity action may assert sovereign immunity. Kentucky v. Graham, 473 U.S. 159, 167, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). An officer in an individual-capacity action, on the other hand, may be able to assert personal immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances. Van de Kamp v. Goldstein, 555

U.S. 335, 342-344, 129 S.Ct. 855, 172 L.Ed.2d 706 (2009). But sovereign immunity "does not erect a barrier against suits to impose individual and personal liability." Hafer, 502 U.S., at 30-31.

There is no reason to depart from these general rules. It is apparent that these general principles foreclose the Debtor from covering Papendick's liability in this case. Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 687, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949).This is a deliberate indifference action rising from a tort committed by Papendick for his personal malfeasance within the State of Michigan. Id. The suit is brought against a Debtor employee performing his duties outside the scope of his employment, and the judgment will not operate against the Debtor. Id. This is not a suit against Papendick in his official capacity. It is simply a suit against Papendick to recover for his personal actions, which "will not require action by the [Debtor] or disturb the [Debtor's] property." Id. Papendick, not the Debtor, is the real party in interest.

As the Court held in Lewis v. Clark, 581 U.S. 155, 137 S.Ct. 1285, 197 L.Ed.2d 631 (2017), [w]e have never before had the occasion to decide whether an indemnification clause is sufficient to extend a sovereign immunity defense to a suit against an employee in his individual capacity. Id., at 165. We hold that an indemnification provision cannot, as a matter of law, extend sovereign immunity to individual employees who would otherwise not fall under its protective cloak. Id.

The Supreme Court's holding follows naturally from the principles discussed above, and have applied these same principles to a different question before -- whether a state instrumentality may invoke the State's immunity from suit even when the federal Government has agreed to indemnify that instrumentality against

adverse judgments. Id. Their analysis turned on where the potential legal liability lay, not from whence the money to pay the damages award would ultimately be paid. The critical inquiry is who may be legally bound by the court's diverse judgment, not who will ultimately pick up the tab. Id.

Here, any indemnification provision of the Debtor does not somehow convert the suit against Papendick into a suit against the Debtor; when Papendick is sued in his individual capacity, he is being held responsible only for his individual malfeasance. Id., at 165-166. The United States Supreme Court has not before treated a lawsuit against an individual employee as one against a state instrumentality, and Papendick offers no persuasive reason to do so now. Id, at 166.

The conclusion of the United States Supreme Court that indemnification provisions do not alter the real-party-in-interest analysis for purposes of sovereign immunity is consistent with the practice that applies in the context of diversity of [] joinder. Navarro Savings Assn. v. Lee, 446 U.S. 458, 460, 100 S.Ct. 1779, 64 L.Ed.2d 425 (1980). In assessing diversity jurisdiction, courts look to the real parties in the controversy. Id. Applying this principle, courts below have agreed that the fact that a third party indemnifies one of the named parties to the case does not, as a general rule, influence the diversity analysis. Corfield v. Dallas Glen Hills LP, 355 F.3d 853, 865 (5th Cir., 2003); E. R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co., 160 F.3d 925, 936-937 (2nd Cir., 1998). They have similarly held that a party does not become a required party for joinder purposed under Federal Rule of Civil Procedure 19 simply by virtue of indemnifying one of the named parties. See, e.g., Gardiner v. Virgin Islands Water & Power Auth., 145 F.3d 635, 641 (3d Cir,, 1998); Rochester Methodist Hospital v. Travelers Ins. Co., 728 F.2d 1006,

1016-1017 (8th Cir., 1984).

In sum, although some indemnity or joinder provision may be implicated when a suit is brought against an individual officer in his official capacity, they are simply not present when the claim is made against an employee in his individual capacity. Neither an indemnification or joinder provision, such as those at stake here, alter that analysis. Papendick may not avail himself of any indemnification or joinder provision.

As noted, above, when a defendant is sued in his individual capacity, he is being sued for his personal malfeasance, and thus, for his personal liability, even as an employee of the Debtor. When a defendant is being sued in his "official" capacity, it is his office that is being sued, and it is the corporate entity that is the party in interest. There is a clear distinction between the two, and that distinction should not be confused.

As a constitutionally inferior court, a federal bankruptcy court is compelled to follow controlling Supreme Court precedent unless and until the Supreme Court itself determines to overrule it. **Hutto v. Davis, 454 U.S. 370, 375, 102 S.Ct. 703, 705-706, 70 L.Ed.2d 556 (1982); Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 533, 535, 103 S.Ct. 1343, 1344, 75 L.Ed.2d 260 (1983).** Justice Rehnquist emphasized the importance of precedent in **Hutto**, supra, when he observed that "unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by lower courts no matter how misguided the judges of those courts may think it to be." **Hutto, 454 U.S., at 375.** Thus, a federal district or circuit court "may not reject, dismiss, disregard or deny Supreme Court precedent until the Supreme Court itself determines to overrule it." **Hopwood v. State of Texas, 84 F.3d 720, 722 (5th Cir. 1996)**(Politz, J. dissenting).

As has been pleaded in Plaintiff's Objection, Plaintiff has not been provided with copies of several pertinent documents in this case, including the confirmed Plan, Disclosure Statement, YesCare Omnibus Motion, etc., and as such, he can neither properly or factually confirm nor dispute any allegation as to the contents therein, however, when any provision within the confirmed Plan, or any other referenced document, is contrary to clearly established United States Supreme Court precedent, those Articles or other provisions can neither extend to Papendick nor preclude Plaintiff from prosecuting his § 1983 action against Papendick for Papendick's personal malfeasance.

WHEREFORE, Plaintiff prays that this Honorable Court make that distinction between "individual" and "official" capacities, recognize United States Supreme Court precedent, and issue an order whereby Plaintiff is not enjoined from prosecuting his § 1983 action against Papendick.

Respectfully submitted,

Dated: July 14, 2025

Gordon S. Dittmer,
In Pro Per,
MDOC No. 175464,
Lakeland Correctional Facility,
141 First Street,
Coldwater, MI., 49036-9687.

PROOF OF SERVICE

23-90086 (CML) (In Re: TEHUM CARE SERVICES, INC.)

Clerk of the Court,
United States Bankruptcy Court,
Courtroom 401,
515 Rusk,
Houston, TX., 77002.

Bowman and Brooke, LLP,
Attorneys at Law,
Attn: Trevor W. Carolan,
Adam M. Masin,
5850 Granite Parkway,
Suite 900
Plano, TX., 75024.

NOTICE OF UNITED STATES POSTAL MAILING

The following documents were mailed by Gordon Scott Dittmer on July 16, 2025, to the Clerk of the Court and to Trevor W. Carolan and Adam M. Masin (attorneys for CHS TX, Inc. d/b/a YesCare, Inc.) at the above addresses, and are considered filed on July 17, 2025.

DOCUMENTS ENCLOSED

1) APPLICATION FOR LEAVE TO FILE RESPONSE AS SURREPLY TO YESCARE'S REPLY TO THE OBJECTION OF GORDON SCOTT DITTMER TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES:
2) GORDON SCOTT DITTMER'S RESPONSE TO YESCARE'S REPLY TO THE OBJECTION OF GORDON SCOTT DITTMER TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES
3) PROOF OF SERVICE; and,
4) CERTIFICATE OF SERVICE.

Case Name: In Re: TEHUM CARE SERVICES, INC.

Case Number: 23-90086 (CML)

MEANS OF SERVICE
Service upon them has been done by sealing said documents inside properly addressed envelopes and handing said sealed envelopes, along with properly completed Expedited Legal Mail Disbursement Authorization forms, to prison authorities for processing and positing into the out-going United States mail.

Dated: July 17, 2025

Gordon S. Dittmer,
Unsecured Creditor,
MDOC No. 175464,
Lakeland Correctional Facility,
141 First Street,
Coldwater, MI., 49036.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(Houston Division)

In Re:	Chapter 11
Tehum Care Services, Inc.	Case No. 23-90086 (CML)
Debtor	

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of July, 2025, a true and correct copy of (1) APPLICATION FOR LEAVE TO FILE RESPONSE AS SURREPLY TO YESCARE'S REPLY TO YESCARE'S REPLY TO THE OBJECTION OF GORDON SCOTT DITTMER TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES, and, (2) GORDON SCOTT DITTMER'S RESPONSE TO YESCARE'S REPLY TO THE OBJECTION OF GORDON SCOTT DITTMER TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES, was filed with the Clerk of the Court, and with Trevor W. Carolan and Adam M. Masin (attorneys for CHS TX, Inc. d/b/a YesCare, Inc.), and served using the United States Postal Service, addressed as follows:

Clerk of the Court,
United States Bankruptcy Court,
Courtroom 401,
515 Rusk,
Houston, TX., 77002.

Bowman and Brooke, LLP,
Attn: Trevor W. Carolan,
Adam M. Masin,
5850 Granite Parkway,
Suite 900,
Plano, TX., 75024.

Dated: July 17, 2025

Gordon Scott Dittmer,
In Propria Persona,
MDOC No. 175464,
Lakeland Correctional Facility,
141 First Street,
Coldwater, MI., 49036-9687.

Gordon S. Dittmer,
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