

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	
	)	Chapter 11
	)	
TEHUM CARE SERVICES, INC., ¹	)	Case No. 23-90086 (CML)
	)	
Debtor.	)	

**RESPONSE OF ANDREW LYLES TO “CHS TX, INC.’S MEMORANDUM OF LAW IN
SUPPORT OF ITS OMNIBUS MOTION TO ENJOIN PLAINTIFFS [sic] FROM
PROSECUTING CASES AGAINST RELEASED PARTIES RELATING TO “EXHIBIT C”
PARTIES” (Docket No. 2545) and its “MOTION TO ENJOIN PLAINTIFF ANDREW LYLES
FROM PROSECUTING HIS CLAIMS AGAINST DR. KEITH PAPENDICK”
(Docket No. 2461)**

Factual Background and Preliminary Statement

1. Andrew Lyles is not a creditor in this bankruptcy. His connection to this case arose on February 27, 2023, when the Debtor filed a “Notice of Revised Proposed Order” (Docket No. 30) relating to the Debtor’s “Emergency Motion to Extend and Enforce the Automatic Stay” (Docket No. 7). The Debtor’s emergency stay-extension motion sought to extend the automatic stay to cover certain categories of non-debtors that the Debtor had agreed to indemnify, specifically “(a) non-debtor former clients and/or their employees (collectively, the ‘Indemnified Clients’); (b) former officers and directors (collectively, the ‘Indemnified D&Os’); and (c) non-debtor affiliates, CHS and YesCare Corp.” (Docket No. 7, pg. 3, ¶ 6).
2. The Revised Proposed Order (Docket No. 30) asked this Court to stay Mr. Lyles’ case because Lyles was purportedly suing non-debtor affiliates CHS TX, Inc. and YesCare Corp. on a successor-liability or alter-ego theory. (See Docket No. 30-1, pg. 2, ¶ 3 and pg. 5). The Order was granted, (see

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.



Docket No. 118, pg. 2), but there was a problem: Mr. Lyles never sued CHS TX, Inc. or YesCare Corp. There was, and is, only one Defendant in Mr. Lyles' lawsuit: Dr. Keith Papendick.²

3. There is no dispute that Dr. Papendick is not a former employee of a client of the Debtor, a former officer or director of the Debtor, or one of the two "non-debtor affiliates" referenced in the Stay-Extension Motion. The Debtor did not contend that it owed Dr. Papendick any contractual right to defense or indemnification, or that an *A.H. Robins*-style identity of interest existed between the Debtor and Dr. Papendick. Once Mr. Lyles' counsel brought the error to the Debtor's attention, the Debtor agreed to a stipulation providing that Mr. Lyles' claim against Dr. Papendick would not be subject to any stay extension in the *Tehum* Chapter 11 case, and that litigation against Dr. Papendick could continue unimpeded by this bankruptcy proceeding. (See **Ex. 1**- Email correspondence between Lyles' counsel and Debtor's counsel; Docket No. 237).

4. Once the stipulation with the Debtor was entered, Mr. Lyles reasonably believed his claim against Dr. Papendick would not be further affected by Tehum's bankruptcy proceeding. Mr. Lyles did not file a proof of claim in the Tehum bankruptcy. Filing a proof of claim would have been improper, because Mr. Lyles was not a creditor of Tehum; he was suing only Dr. Papendick for Dr. Papendick's own conduct.³ "Claims against non-debtor third parties **cannot** be filed in the bankruptcy court." *In re St. Vincents Cath. Med. Ctrs.*, 398 B.R. 517, 523 (Bankr. S.D.N.Y. 2008) (emphasis in original). This is true even if the claims are "against third parties like physicians or nurses" who are employees or former employees of a debtor that provided medical services.⁴ *Id.* at 524. In other words, "[a] medical

² The Debtor may have incorrectly assumed that Mr. Lyles had sued CHS TX, Inc. and/or Yescare Corp. because he is represented by the same counsel as William Kelly and Kohchise Jackson, who did bring successor-liability claims against those entities.

³ For the avoidance of doubt, Mr. Lyles does not consent to bankruptcy court jurisdiction for *Stern* purposes and does not waive his rights to a jury trial or to adjudication of his claim by an Article III tribunal.

⁴ Dr. Papendick is not even a former employee of the Debtor. He is a former employee of the Debtor's former subcontractor, Quality Correctional Care of Michigan, P.C. (See Docket 2222).

malpractice claim against a Covered Person is **not** ‘the equivalent of a claim against the Debtors’ it is a claim against the Covered Person and nothing more.” *Id.* at 523 (emphasis in original).

5. On November 20, 2024, the Debtor served Mr. Lyles with the Confirmation Hearing Notice via first-class mail, addressed to his attorneys. (See Docket 1852, pg. 116). The Debtor also mailed a “Notice of Non-Voting Status” and an “Opt-Out Release Form” to Mr. Lyles, but the Debtor did not mail these materials to Mr. Lyles’ attorneys’ office. Instead, these materials were mailed only to Mr. Lyles himself at a Michigan prison. (See Docket 1852, pg. 43). The Notice of Non-Voting Status informed Mr. Lyles:

You are receiving this notice because, according to the Debtor’s books and records, You may be the holder of a Claim in Class 1 (Other Priority Claims), Class 2 (Secured Claims), or Class 11 (Interests in the Debtor) (collectively, the “Non-Voting Classes”), or You are a holder of an Administrative Expense Claim, Professional Fee Claim, or Priority Tax Claim, which are unclassified under the Plan (collectively, the “Unclassified Claims”). Pursuant to the terms of the Plan, holders of Claims in Classes 1 and 2, respectively, are Unimpaired and therefore, pursuant to section 1126(f) of the Bankruptcy Code, are presumed to have accepted the Plan. Pursuant to the terms of the Plan, holders of Interests in the Debtor shall not receive or retain any property under the Plan on account of such Interests and therefore, pursuant to section 1126(g) of the Bankruptcy Code, are presumed to not accept the Plan.

Docket 1813, pp. 101-102.

6. Although Opt-Out Release Forms were mailed to creditors in Classes 1, 2, and 11, the Solicitation Procedures Order did not require the Plan Proponents to serve Opt-Out Release Forms on creditors in these non-voting classes. (Docket 1813, pg. 7, ¶ 11). Per the Solicitation Procedures Order, creditors in these classes were supposed to receive only the Notice of Non-Voting Status and the Confirmation Hearing Notice. *Id.*

7. The Plan Proponents also apparently took the position that only creditors holding claims in Classes 3-10 were entitled to submit Opt-Out Release Forms. Two Opt-Out Release Forms, submitted by Mary Greiner and Stephen Floyd Ullrich, were rejected in the Opt-Out tabulation on the basis that,

“Creditor is not in an opt-out class.” (Docket 1993, pg. 35). This treatment is consistent with Section V. of the Solicitation Procedures, which provides:

V. RETURN OF BALLOTS AND OPT-OUT RELEASE FORMS

1. Claimants Entitled to Vote.

Holders of Claims in Classes 3, 4, 5, 6, 7, 8, 9 and 10 are entitled to vote and complete Opt-Out Release Forms.

Docket 1813, pg. 20 (emphasis in original). Stephen Floyd Ullrich filed an administrative priority claim (Document 2104, Claim # 1011), while Mary Greiner did not file a proof of claim.

8. Andrew Lyles is not a “PI/WD Claimant” as defined in the Plan, because he does not hold a claim “against the Debtor.” See Docket 2222, pp. 4-6. Because Mr. Lyles is not a creditor of the Debtor and did not file a proof of claim, he should not have been served with any solicitation materials. But even assuming, *arguendo*, that Mr. Lyles were a “PI/WD Claimant,” he would not have been served in compliance with the Solicitation Procedures.

9. There is no dispute that Mr. Lyles has been incarcerated in a Michigan prison at all relevant times,⁵ so if he were a “PI/WD Claimant,” he would also have been an “Incarcerated Claimant” as defined in the Solicitation Procedures. (Docket 1813, pg. 15, ¶ 26). Every “Incarcerated Claimant” was entitled to receive **“a paper copy of the Solicitation Procedures and the Disclosure Statement with all exhibits, including the Plan with its exhibits.”** (Docket 1813, pg. 17, ¶ c.) (emphasis added). Instead, Mr. Lyles merely received a Notice of Non-Voting Status incorrectly identifying him as the holder of a claim in Class 1, 2, or 11, or possibly “a holder of an Administrative Expense Claim, Professional Fee Claim, or Priority Tax Claim,” along with an Opt-Out Form, without the context that would have been provided by a copy of the Plan or a copy of the Disclosure Statement. (Docket 1852, pg. 4, ¶ 15, pg. 43).

⁵ See <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=667516>.

10. CHS TX, Inc. now argues that Mr. Lyles, a non-creditor, “consented” to gratuitously release his claim against Dr. Papendick, a non-debtor, because did not return the Opt-Out Release Form that the Debtor mailed to him at his prison. CHS TX, Inc. is mistaken. First, Mr. Lyles cannot be bound by an “opt-out” release or the Plan’s Channeling Injunction because he is not a creditor of the Debtor. Second, even if Mr. Lyles were a creditor, he was not served in compliance with the Solicitation Procedures Order. Finally, even if Mr. Lyles were a creditor of the Debtor (he is not), and he were served with the correct solicitation materials (he was not), Dr. Papendick does not fall within the definition of a “released party” under the Plan.

I. Andrew Lyles is not a creditor of the Debtor

11. “[T]here are no provisions in the Code which make a plan binding upon a non-creditor third party.” *Harris v. Fid. Nat’l Info. Serv. (In re Harris)*, 2008 Bankr. LEXIS 1072 (Bankr. S.D.T.X., April 4, 2008). It follows that an opt-out procedure contained in a bankruptcy plan cannot extinguish claims against non-debtors held by non-creditor third parties who simply fail to respond to an unsolicited mailing. If non-creditors’ claims against non-debtors could be extinguished by an opt-out procedure contained in a bankruptcy plan, then:

non-debtors could tuck releases unrelated to a bankruptcy proceeding into bankruptcy plans, then secrete an opt-out opportunity into a convoluted legal document, send the document to non-parties previously unaware of the bankruptcy proceeding and use their non-response to extinguish all of their claims. This type of gamesmanship, aimed at extinguishing claims of unwitting individuals and providing a golden parachute to the parties drafting the plan, cannot be tolerated.

Patterson v. Mahwah Bergen Retail Grp., Inc., 636 B.R. 641, 675 (E.D. Va. 2022).

12. Mr. Lyles incorporates by reference all of his previously-briefed arguments (*see* Docket 2222) as to why he is not a creditor of the Debtor, or the holder of a “PI/WD Claim” as defined in the Plan, and thus is not bound by the Plan or the Channeling Injunction. Mr. Lyles also joins and concurs in the

arguments advanced by “Exhibit C” party Rilwan Akinola at Docket 2285, pp. 26-31, and adopts and incorporates those arguments as his own. For the sake of brevity, Mr. Lyles will largely avoid reiterating previously-briefed arguments and limit his discussion of this issue to the points subsequently raised by CHS TX.

13. The fact that Mr. Lyles has a claim against Dr. Papendick, and Dr. Papendick might himself assert a successor-liability claim⁶ for indemnification against CHS TX, does not make Mr. Lyles a creditor of the Debtor. To be a “creditor” under the Code, one must have “a claim against the debtor[.]” § 101(10)(A). A “claim” is defined, in relevant part, as a “right to payment[.]” § 101(5)(A). The Fifth Circuit has interpreted the term “right to payment” to mean an obligation against the debtor that is enforceable by the creditor under substantive non-bankruptcy law. *See Pate v. Tow (In re Clark)*, 921 F.3d 566, 570 (5th Cir. 2019). A plaintiff does not hold a claim against the debtor when he merely has a right to payment from someone who, in turn, has a right to payment from the debtor. In *Pate*, the Fifth Circuit held that two women owed child support by a debtor were not “creditors,” where a state agency collected the child support on their behalf and paid it to them. The women were not creditors because the state agency, rather than the women, held the legal right to enforce the payment obligation against the debtor. *See Pate*, 921 F.3d at 570-572; *See also, In re Fin. Oversight & Mgmt. Bd.*, 998 F.3d 35, 41 (1st Cir. 2021).

14. *Pate* also demonstrates that whether a debtor chooses to classify someone as a “creditor” has no bearing on the analysis. The debtor in *Pate* listed one of the women as a creditor in his schedules and did not list the other. *Pate*, 921 F.3d at 569. Neither woman was held to be a creditor; the fact that the debtor identified one woman as his creditor simply did not matter. *See Id.* at 572.

⁶ Dr. Papendick cannot recover from the Debtor, because Dr. Papendick opted-out of the Consensual Claimant Release. Docket 1993, pg. 33.

15. CHS TX argues that Mr. Lyles was a creditor of the Debtor because he purportedly “always had standing to assert § 1983 and negligence claims against the Debtor based on Dr. Papendick’s alleged conduct and could enforce a payment obligation against the Debtor if such claims were proven at trial.” (Docket 2257, pg. 9). It is black-letter law that prison healthcare contractors are not exposed to *respondeat superior* or vicarious liability in § 1983 suits. *See, e.g., Jones v. Cnty. of Kent*, 601 F. Supp. 3d 221, 255 (W.D. Mich. 2022); *Coleman v. Hamilton Cnty. Bd. of Cnty. Commissioners*, 130 F.4th 593, 603 (6th Cir. 2025) (“Section 1983 plaintiffs cannot hold private companies like NaphCare vicariously liable for the acts of their employees.”). Mr. Lyles’ attempt to pursue a direct claim against the Debtor stemming from Dr. Papendick’s conduct had already been dismissed, with prejudice, several years before the petition date.⁷ Nor could Mr. Lyles have sued the Debtor for Dr. Papendick’s medical negligence on the petition date. Dr. Papendick’s allegedly-wrongful conduct occurred between November of 2016 and January of 2017, *see Lyles v. Papendick*, 2022 U.S. Dist. LEXIS 62092 at *28-*32 (E.D. Mich. March 4, 2022), and the two-year statute of limitations to bring a state-law medical malpractice claim in Michigan had already lapsed. *See* MCL § 600.5805(8).

16. Regardless, the test for whether someone is a “creditor” of the Debtor cannot depend on whether a non-debtor seeking to benefit from a third-party release can think of a way that the person could, theoretically, have sued the Debtor. If “creditor” status could be unwittingly conferred on individuals who were not asserting claims against the Debtor, then non-parties to a bankruptcy case could potentially lose their rights against other non-debtor third parties by failing to pay attention to

⁷ Mr. Lyles named Corizon as a defendant when he initially filed his lawsuit, *pro se*, in March of 2019. The court sua sponte dismissed his claim against Corizon pursuant to 28 U.S.C. § 1915A on July 18, 2019, nearly four years before the petition date. *See Lyles v. Papendick*, 2019 U.S. Dist. LEXIS 119354 at *5 (E.D. Mich. July 19, 2019). Because the order of dismissal did not specifically indicate that it was without prejudice, the dismissal was with prejudice. *See, e.g. Memon v. Allied Domecq QSR*, 385 F.3d 871, 874 n.6 (5th Cir. 2004).

bankruptcy proceedings that they were not even aware that they had a duty to monitor. As one court put it,

“[i]t is reasonable to require creditors to pay attention to what the debtor is doing in bankruptcy as it relates to the creditor's rights against the debtor. But as to the creditor's rights against third parties — which belong to the creditor and not the bankruptcy estate — a creditor should not expect that those rights are even subject to being given away through the debtor's bankruptcy.”

In re Smallhold, Inc., 665 B.R. 704, 721 (Bankr. D. Del. 2024). The concerns identified in *Smallhold* have even greater salience here, where the purported “creditors” in Exhibit C were not even aware that they had any rights against the Debtor to begin with.

17. To illustrate, the “Maryland Department of Assessments and Taxation—Business Services Unit” is one of the many parties in this case that were served with, but did not return, an Opt-Out Release Form. (See Docket 1852, pg. 9; Docket 1993, pp. 33-35). CHS TX, Inc. inherited Corizon’s statewide Maryland contract via the divisional merger. (Docket 811, pg. 28). CHS TX then continued providing medical care, and accruing tort liability, in Maryland’s prison system after the merger date and during the pendency of the *Tehum* bankruptcy case. (See Docket 2285, pg. 7). By failing to complete and return an unsolicited Opt-Out Release Form, did the Maryland Department of Assessments and Taxation really “consent” to gratuitously release CHS TX from all state tax liability, for all of CHS TX’s Maryland operations, up until the Plan’s Effective Date?

18. Like Mr. Lyles, the Maryland Department of Assessments and Taxation—Business Services Unit did not file a proof of claim in the *Tehum* bankruptcy. Like Mr. Lyles, the Department did not know that it needed to pay attention to the proceedings in *Tehum* in order to avoid forfeiting its rights against a non-debtor. Charging purported ‘creditors’ who are so inactive in a bankruptcy proceeding that they do not file proofs of claim “with full knowledge of the scope and implications of the proposed third party releases, and implying a “consent” to the third party releases based on the creditors’ inaction,

is simply not realistic or fair, and would stretch the meaning of "consent" beyond the breaking point.”
In re Chassix Holdings, 533 B.R. 64, 81 (Bankr. S.D.N.Y. 2015).

II. If Andrew Lyles were a PI/WD Claimant, he was not served in compliance with the Solicitation Procedures Order

19. The Solicitation Procedures Order required the Plan Proponents to serve “*all Holders of Claims*” with an eight-item Solicitation Package. (Docket 1813, pg. 5, ¶ 7) (emphasis added). Mr. Lyles, like all of the Exhibit C parties, was not served with the Solicitation Package. (Docket 1852, pg. 4). Instead, he received only a “Opt-Out Release Form, Notice of Non-Voting Status, Confirmation Hearing Notice, and Return Envelope[.]” (Docket 1852, ¶ 15).

20. “Incarcerated Claimants,” which are defined in the Solicitation Procedures Order as “the Holder of a PI/WD Claim who is known to be currently incarcerated in a federal, state, or local penal institution, prison, jail, reformatory, or other similar correctional institution[.]” (Docket 1813, pg. 15, ¶ 26), were required to be served with paper copies of all of the items in the Solicitation Package. (Docket 1813, pg. 6). The Plan Proponents knew that Andrew Lyles was incarcerated, because they mailed the Notice of Non-Voting Status to him at a correctional facility. (Docket 1852, pg. 43). Yet they did not mail him a paper copy of all the items in the Solicitation Package, including the Plan and the Disclosure Statement, probably because, like Mr. Lyles himself, they did not consider Mr. Lyles to be a “Holder of a PI/WD Claim.”

21. If the Debtor considered the Exhibit C parties to be “Holders” of “PI/WD Claims,” it should have served them with all of the materials that each Holder of a PI/WD Claim was supposed to receive per the Solicitation Procedures Order, including copies of the Plan and the Disclosure Statement. Without the Plan or the Disclosure Statement, the Exhibit C parties lacked context that could help them understand the limited materials they were served with. Such context was especially important in this

case, where the creditor population consisted, in large part, of prison inmates. Prison inmates generally have no access to the internet and only intermittent access to telephones.

22. In addition to not receiving the documents that a PI/WD Claimant should have received per the Solicitation Procedures Order, Mr. Lyles was served with a “Notice of Non-Voting Status” that provided misleading and incorrect information about his purported “claim.” The Notice informed Mr. Lyles that he may be a holder of one or more of the following: a) a Class 1 Priority Claim, b) a Class 2 Secured Claim, c) a Class 11 Interest in the Debtor, or an unclassified Administrative Expense Claim, Professional Fee Claim, or Priority Tax Claim. (Docket No. 1853, pg. 101-102). The Notice also informed him that holders of “PI/WD Claims” had been placed in Classes 6, 7, and 8, and that holders of “Indirect Claims” had been placed in Classes 9 and 10. (Docket 1853, pg. 105-108). The information provided in the Notice of Non-Voting Status thus leads the reader to a reasonable inference that he is **not** the holder of either a PI/WD Claim or an Indirect Claim.

23. The definitions attached to the Opt-Out Release Form indicate that the term, “*Consenting Claimant*” “means a Consenting Indirect Claimant, a Consenting GUC Claimant, and/or Consenting PI/WD Claimant[.]” (Docket 1813, pg. 38). In turn, the definitions provided for “*Consenting Indirect Claimant*” and “*Consenting GUC Claimant*” are verbatim identical to each other. (Docket 1813, pg. 38). This was likely a mistake. Per the materials that were served on the Exhibit C parties, one must be the “Holder of an Indirect Claim” to qualify as either a “Consenting GUC Claimant” or as a “Consenting Indirect Claimant.” (Docket 1813, pg. 38). And one must be a “Holder of a PI/WD Claim” to qualify as a “Consenting PI/WD Claimant.” *Id.* A person who reads the Notice of Non-Voting Status in conjunction with the Opt-Out Release Form could thus reasonably conclude that his Class 1, Class 2, or Class 11 claim is not among the two types of claims (PI/WD Claims and Indirect Claims) that could qualify a person to be a “Consenting Claimant.”

24. If the Court finds that Mr. Lyles is a creditor of the Debtor, it should also find that he was an “Incarcerated Claimant” who was not properly served with the Solicitation Package in violation of the Solicitation Procedures Order. Mr. Lyles should not be bound by a consensual third-party release where he did not receive the materials that should have been served along with the Opt-Out Release Form, including the Plan and the Disclosure Statement, and instead received a Notice of Non-Voting Status that incorrectly informed him that he may be a holder of one of several clearly-inapplicable types of claims.

III. Dr. Keith Papendick is not a “Released Party” under the Plan

25. CHS TX acknowledges that Dr. Papendick was not an employee of the Debtor, but rather was an employee of Quality Correctional Care of Michigan, P.C., the Debtor’s former subcontractor. (Docket 2461-1, ¶ 3). CHS TX argues that Dr. Papendick is nevertheless a “Released Party” under the Plan, because he is allegedly a former “agent” or “professional advisor” to the Debtor. (Docket 2461, pg. 7).

26. “Under Texas law, “[a]gency is never to be presumed; it must be shown affirmatively. The party who asserts the existence of agency relationship has the burden of proving it.” *Newby v. Enron Corp.*, (*In re Enron Corp. Sec.*), 491 F.Supp. 2d 690, 706 (S.D.T.X. 2007) (quoting *Karl Rove & Thornburgh*, 39 F.3d 1273, 1296 (5th Cir. 1994)). To prove the existence of an agency relationship:

evidence must establish that the principal has both the right: (1) to assign the agent's task; and (2) to control the means and details of the process by which the agent will accomplish that task. It is the principal's extent of control over the details of accomplishing the assigned task that primarily distinguishes the status of independent contractor from that of agent.

Indian Harbor Ins. Co. v. Valley Forge Ins. Group, 535 F.3d 359, 364 (5th Cir. 2008). In other words, “[w]here one has the right to control the end sought to be accomplished but not the means and details of the accomplishment; that is, only what shall be done, not how it shall be done, the person employed acts as an independent contractor and not as an agent.” *Schott Glas v. Adame*, 178 S.W.3d 307, 315

(Tex. App.—Houston [14th Dist.] 2005, pet. denied) (quoting *First Nat'l Bank v. Bullock*, 584 S.W.2d 548, 551-52 (Tex. Civ. App.—Austin 1979)).

27. The test focuses on whether the principal had the *right* to control the manner in which the agent performed the assigned task, not on whether the principal actually exercised control. See *Newspapers, Inc. v. Love*, 380 S.W.2d 582, 585 (Tex. 1964). When there is a written contract defining the rights of the parties in their dealings with each other, “the contract is determinative” of the existence or non-existence of an agency relationship, “unless there is “extrinsic evidence indicating that the contract was subterfuge or that the [principal] exercised control in a manner inconsistent with the contractual provisions.”” *e2 Creditors Trust v. Stephens, Inc., (In re e2 Communs., Inc.)*, 354 B.R. 368, 391 (Bankr. N.D. Tex. 2006) (quoting *Ross v. Tex. One P'ship*, 796 S.W.2d 206, 210 (Tex. App. -- Dallas 1990)).

28. In this instance, a written “Services Agreement” between QCCM and the Debtor governed the parties’ relationship, and it apparently classified QCCM as an independent contractor. (See Docket 59-18, pg. 1). CHS TX has not produced the Services Agreement. It has not produced any evidence that the Services Agreement gave Corizon the right to control the means and details of the work performed by QCCM’s employees. Nor has it put forth evidence that the “written contract was intended as a subterfuge by the contracting parties[.]” *Newspapers, Inc.*, 380 S.W.2d at 584. CHS TX thus has not met its burden of proving the existence of an agency relationship between the Debtor and the employees of QCCM, including Dr. Papendick.

29. Even if CHS TX had shown that the Debtor had a right to control the manner in which Dr. Papendick performed his job duties, Dr. Papendick still would not be a “Released Party.” If Dr. Papendick is a former “agent” of the Debtor because the Debtor had a right to control him in spite of QCCM’s separate ownership, then by the same logic, he would also be a former “agent” of Flacks Group LLC, because prior to December of 2021, the Debtor was a wholly-owned subsidiary of Flacks

Group LLC. (Document 1073-1, pg. 21).⁸ And if Dr. Papendick is a “former . . . agent” of Flacks Group LLC, then he is a “Non-Released Party” as defined in the Plan. (Docket 2014, pg. 73, ¶ 127).

30. If Dr. Papendick is a “Non-Released Party,” he cannot benefit from any releases. Article IX, ¶ N of the Plan provides:

“Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the Confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order, shall constitute any adjudication, judgment, trial, hearing on the merits, finding, conclusion, or other determination establishing that any non-Released Party shall not be deemed to be . . . liable (or continue to be liable) for their respective liabilities to any holder of a by reason of any theory of law or equity. Neither the Plan nor the Plan Documents shall in anyway reduce, limit, discharge or release any non-Released Party . . . on account of any Claim (including a PI/WD Claim)[.]”

(Docket 2014, pp. 115-116). Additionally, the Plan’s definition of “Released Parties” includes a carveout: “*provided, however*, that a Non-Released Party shall not be a “Released Party.”” (Docket 2014, pg. 76, ¶ 175). The carveout makes clear that entities which fit both within the definition of “Released Party,” and within the definition of “Non-Released Party,” as Dr. Papendick would if the Court accepted CHS TX’ agency arguments, are treated as “Non-Released Parties.”

Dated: September 19, 2025

Respectfully submitted,

/s/ Ian T. Cross
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⁸ James Hyman also would have had the right to control Dr. Papendick if the Debtor had such a right, because Mr. Hyman was the CEO of the Debtor prior to December of 2021.

Exhibit 1

Email correspondence between Lyles'
counsel and Debtor's counsel



Ian Cross <ian@lawinannarbor.com>

Lyles v. Papendick (stay case)

Amber M. Carson <acarson@grayreed.com>
To: Ian Cross <ian@lawinannarbor.com>

Mon, Mar 20, 2023 at 8:48 PM

Thanks, Ian. I will ask my assistant to file in the morning.

Sent from my iPhone

Amber M. Carson

Partner

Tel 469.320.6199 | Fax 469.320.6916 | acarson@grayreed.com

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On Mar 20, 2023, at 10:46 PM, Ian Cross <ian@lawinannarbor.com> wrote:

Thanks Amber. I am fine with your language. Do you want to file it or should I? You have my permission to sign my name to the stip.

On Mon, Mar 20, 2023 at 7:48 PM Amber M. Carson <acarson@grayreed.com> wrote:

Ian, a revised draft of stipulation and agreed order is attached for your review, along with a redline back to your version.

Please let me know if this works for you, or if you would like to discuss.

From: Amber M. Carson <acarson@grayreed.com>
Sent: Monday, March 20, 2023 4:17 PM
To: Ian Cross <ian@lawinannarbor.com>
Cc: Jason S. Brookner <jbrookner@grayreed.com>
Subject: RE: [EXTERNAL] Lyles v. Papendick (stay case)

Ian, apologies for the delay on this. I am sending my proposed revisions to my client, and will get you a revised draft ASAP.

From: Ian Cross <ian@lawinannarbor.com>
Sent: Monday, March 13, 2023 3:59 PM

To: Amber M. Carson <acarson@grayreed.com>
Subject: Re: [EXTERNAL] Lyles v. Papendick (stay case)

Thanks Amber. Here is a draft stipulation, let me know if you have changes, etc.

Ian

On Fri, Mar 10, 2023 at 5:46 PM Amber M. Carson <acarson@grayreed.com> wrote:

Hi Ian,

Thank you for bringing this to our attention. As you know, we're drinking through the fire hose right now, and in the process of carefully examining each of these cases. At the current time, it looks like removing the Lyles case from the order makes sense.

If you want to send over a draft stipulation removing the Lyles case from Judge Lopez's order, we will review and revert back.

Amber

Amber M. Carson

Partner

Tel 469.320.6199 | Fax 469.320.6916 | acarson@grayreed.com
1601 Elm St., Suite 4600 | Dallas, TX 75201
grayreed.com | Connect with me on LinkedIn

<image001.jpg>

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From: Ian Cross <ian@lawinannarbor.com>

Sent: Friday, March 10, 2023 12:37 PM

To: Jason S. Brookner <jbrookner@grayreed.com>; Amber M. Carson <acarson@grayreed.com>

Subject: [EXTERNAL] Lyles v. Papendick (stay case)

Hi Jason and Amber,

I was wondering if we can stip out Lyles v. Papendick from the stay in the Tehum bankruptcy. The case is identified in the chart as stayed as to Yescare and CHS TX, but neither of those entities are (or ever were) defendants. There is only one defendant in that case, Dr. Keith Papendick. He is a former employee of Quality Correctional Care of Michigan, P.C.

Are you planning to move for a broader stay covering former employees of Quality Correctional Care of Michigan, P.C.? If so, can you provide any applicable indemnity agreements?

Thanks,

Ian

