Docket #0086 Date Filed: 7/19/2023

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

ANANT KUMAR TRIPATI, Plaintiff, v. SARA TIRSCHWELL, et al, Defendants.	Adversary Proceeding # 23-03072 Assigned to: Bankruptcy Judge Christopher M. Lopez

STATE OF ARIZONA DEFENDANTS' MOTION TO SCREEN AMENDED ADVERSARY COMPLAINT

Defendants Struck Love Bojanowski and Acedo, PLC,[1] Daniel P. Struck, Michael Gottfried, Betty Ulibarri, Diane Bohuszewicz,[2] Paul Carter, Julia Erwin, Kelly Joan Morrissey, and Daryl Johnson[3] (collectively, "State of Arizona Defendants"), through counsel, move the Court to screen Plaintiff Anant Kumar Tripati's pro se inmate Amended Adversary Complaint pursuant to 28 U.S.C. § 1915A.[4] (*See* Doc. 4-1.) State of Arizona Defendants also request an

[1] The Adversary Complaint incorrectly refers to this Defendant as "Struck Wieneke & Love PLC."

[2] The Adversary Complaint misspells these Defendants' names as "Ullibari" and "Boschuweicz."

[3] Defendants Carter, Erwin, Morrissey, and Johnson have not appeared in this case, and have not been served with either the original Adversary Complaint or the Amended Adversary Complaint. Given that Tripati has recently moved for default judgment against them (*see* Doc. 73, 74, 75, 78), these Defendants file this motion for the limited purpose of asking the Court to screen the Amended Adversary Complaint. By doing so, none of these Defendants waive their insufficient service defense.

[4] By making this special appearance to request screening of the pro se inmate complaint pursuant to § 1915A, counsel for State of Arizona Defendants reserves their right to raise in a responsive pleading all defenses that may apply to claims, if any, that survive a screening order, including but not limited to the defenses available under Federal Rules of Bankruptcy Proceedings 7004 and 70012, and Federal Rules of Civil Procedure 4 and 12(b).

extension of time until 30 days after the Court issues a screening order to file a responsive pleading if the Amended Adversary Complaint is not dismissed.

I. THE COURT SHOULD SCREEN TRIPATI'S AMENDED ADVERSARY COMPLAINT.

By way of relevant procedural background, Tripati filed his original Adversary Complaint on May 1, 2023. (Doc. 1.) On May 15, Tripati filed an "Omnibus Motion to Amend Adversary and Consolidate ECF 244; 261; 280 and Proof of Claims," and attached a "Corrected Verified Adversary Complaint" as an attachment to that motion. (Doc. 4, 4-1.) On May 19, Tripati filed summonses and certificates of service indicating that his original Adversary Complaint was mailed to Defendants Struck Love Bojanowski and Acedo, PLC, Struck, Gottfried, Ulibarri, and Bohuszewicz. (*See* Doc. 7, 11, 12, 19.) Indeed, Defendants Struck Love Bojanowski and Acedo, PLC, Struck, Gottfried, Ulibarri, and Bohuszewicz only received the original Adversary Complaint and were never served with the Amended Adversary Complaint. Defendants Carter, Morrissey, Erwin, and Johnson were never served with either.

Rule 15 of the Federal Rules of Civil Procedure applies in adversary proceedings. Fed. R. Bankr. P. 7015. Rule 15(a)(1) provides that a party may amend a complaint once as a matter of course but no later than: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). In other cases, a party may amend only with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2).

Here, Tripati filed his Omnibus Motion to Amend and Amended Adversary Complaint before any defendant's appearance, and *before* he served any party with the original Adversary Complaint. Moreover, Tripati lodged his Amended Adversary Complaint as an attachment to his

Omnibus Motion to Amend, which is still pending and has not been granted. Although Tripati may have been permitted to amend his complaint once as a matter of course pursuant to Rule 15(a)(1)(A), by lodging his Amended Adversary Complaint as an attachment to his Omnibus Motion to Amend, he is required to wait for the Court to rule on that motion before the lodged Amended Adversary Complaint becomes the operative complaint. Furthermore, there is no indication that Tripati attempted to or did serve State of Arizona Defendants with either the Omnibus Motion to Amend or the Amended Adversary Complaint. Thus, Tripati failed to comply with Rule 15(a)(1) and did not effectuate service of the Amended Adversary Complaint on State of Arizona Defendants.

Accordingly, on June 5, 2023, Defendants Struck Love Bojanowski and Acedo, PLC, Struck, Gottfried, Ulibarri, and Bohuszewicz filed a Motion to Screen Plaintiff's Pro Se Inmate Adversary Complaint and Request for An Extension of Time to File a Responsive Pleading, requesting that the Court screen the original Adversary Complaint. (*See* Doc. 25.) That Motion is currently awaiting disposition.

In an abundance of caution, State of Arizona Defendants also move for screening of Tripati's Amended Adversary Complaint but maintain that the Amended Adversary Complaint was not properly served on these defendants and that they did not have proper notice of it at the time they filed their Motion to Screen. State of Arizona Defendants incorporate by reference all background facts and arguments asserted in their Motion to Screen to the extent applicable, including that Tripati is a fraudulent and vexatious litigant who frequently engages in forum shopping to assert frivolous lawsuits and that his Amended Adversary Complaint should be screened pursuant to the mandates of 28 U.S.C. § 1915A. (Doc. 25 at 2–9.)

II. CONCLUSION.

For the reasons above, and for the reasons stated in their Motion to Screen the original Adversary Complaint, State of Arizona Defendants respectfully request that this Court screen Tripati's pro se inmate Amended Adversary Complaint pursuant to § 1915A. They further request that the Court extend the time period for them to file a response until 30 days after the Court issues a screening order if the Amended Adversary Complaint is not dismissed.

Dated this 19th day of July 2023.

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck

Daniel P. Struck
TX Federal Court ID No. 012377
dstruck@strucklove.com
3100 W. Ray Road, Suite 300
Chandler, AZ 85226

Attorneys for Defendants Struck Love Bojanowski & Acedo, PLC., Daniel P. Struck, Betty Ulibarri, Diane Bohuszewicz, Michael Gottfried, Paul Carter, Julia Erwin, Kelly Joan Morrissey, and Daryl Johnson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of July 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

On the same date, I served a true copy of the foregoing on Pro Se Plaintiff my first class mail, postage prepaid:

Anant Kumar Tripati, #102081
ASPC Yuma
P.O. Box 8909
San Luis, AZ 85349

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck
Daniel P. Struck
TX Federal Court ID No. 012377
dstruck@strucklove.com
3100 W. Ray Road, Suite 300
Chandler, AZ 85226

Attorneys for Defendants Struck Love Bojanowski & Acedo, PLC., Daniel P. Struck, Betty Ulibarri, Diane Bohuszewicz, and Michael Gottfried