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[1]	§	
ANANT KUMAR TRIPATI **Plaintiff,**	§	**Ad. Proc. No. 23-03072 (CML)**
V.	§	
SARAH TIRSCHWELL, et al., **Defendants**	§	

OBJECTION TO APPLICATION TO THE CLERK FOR ENTRY OF DEFAULT AGAINST COVERYS SPECIALTY INSURANCE COMPANY FOR FAILURE TO PLEAD OR RESPOND OTHERWISE
(*Re*: AP Docket No. 83)

NOW COMES Coverys Specialty Insurance Company ("**Coverys**"), by and through its undersigned counsel, and, without submitting to the jurisdiction of this Court, makes this special appearance for the limited purpose of filing this *Objection* (the "**Objection**") to the *Application to the Clerk for Entry of Default Against Coverys Specialty Insurance Company for Failure to Plead or Respond Otherwise* [Dkt. No. 83] (the "**Application for Entry of Default**") filed by Anant Kumar Tripati ("**Plaintiff'**) based on Plaintiff's failure to properly serve Coverys with the summons and complaint in the above-captioned adversary proceeding.

In support thereof, Coverys states the following:

[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.

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I. Background

1. On May 1, 2023, Plaintiff filed a *Complaint* (the "**Complaint**") initiating the above-captioned adversary proceeding.

2. On May 4, 2023, a docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

3. On May 19, 2023, a docket notation reflects that "Summons Issued on," among others, Coverys Specialty Insurance Company.

4. Still later, on June 28, 2023, a docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

5. On July 17, 2023, although it appears from the most recent docket entry that no summons was issued as to Coverys, and, under any circumstance, Plaintiff failed to serve Coverys with a Summons and Complaint in this adversary proceeding as required by Bankruptcy Rule 7004, the Plaintiff filed his Application for Entry of Default.

II. Objection

6. Service of process for adversary proceedings filed in the United States Bankruptcy Court are governed by Rule 7004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and, to the extent incorporated therein, Rule 4 of the Federal Rules of Civil Procedure. Pursuant to Bankruptcy Rule 7004, a plaintiff filing an adversary proceeding must serve a copy of the complaint, along with the summons, upon the defendant. Fed. R. Civ. P. 4(c)(1) ("A summons must be served with a copy of the complaint.").

7. It is self-evident that the Clerk must issue a summons before service can be made. *See* Fed. R. Bankr. P. 7004(e) ("If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued."); *see also* Fed.

R. Bankr. P. 7004(f) ("If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, *serving a summons* . . . in accordance with this rule . . . is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code."), In this case, based on the most recent docket notation, the Clerk did not issue a summons with respect to Coverys. However, even assuming the Clerk issued a summons as reflected in the May 19, 2023 docket entry, the Plaintiff still failed to serve Coverys with the summons and Complaint in accordance with the Bankruptcy Rules.

8. Coverys is a corporation. Thus, Plaintiff – if intending to effectuate service *via* USPS, first class, prepaid – was required to perfect service pursuant to Bankruptcy Rule 7004(b)(3). Under this rule, service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." *Id*.

9. Plaintiff's "Declaration" avers, "[a]s is evidenced by the proof of service on file this Defendant has been served the summons and complaint." Dkt. No. 83. Yet, Plaintiff fails to cite to any proof of service on the docket, and the Plaintiff has not, in fact, served Coverys. *See generally* Adversary Proceeding 23-03072 (CML) reflecting no service upon Coverys; *see also* Fed. R. Civ. P. 4(l)(1) as made applicable to this Adversary Proceeding by Fed. R. Bankr. P. 7004 ("Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit").

10. "Proper service of process is a jurisdictional prerequisite to the entry of a default judgment." *Avdeef v. Royal Bank of Scotland, P.L.C.*, 616 F. App'x 665, 672 (5th Cir. 2015). Because Coverys has never been properly served with a summons and Complaint, the Plaintiff is unable to meet this jurisdictional prerequisite and the Application for Entry of Default should be denied.

III. Reservation of Rights

11. This Objection is submitted without prejudice to, and with full reservation of, Coverys' rights, claims, defenses, and remedies, including the right to supplement the Objection or modify, amend, or withdraw this Objection, to seek discovery, to raise additional objections and to introduce evidence at any hearing related to the Application for Entry of Default, and without in any way limiting any other rights of Coverys to object to and defend against the Complaint, on any grounds, as may be appropriate.

IV. Conclusion

As Plaintiff failed to serve the Summons and Complaint upon the Coverys, this Court lacks jurisdiction over the Coverys, and the Court should deny Plaintiff's Application for Entry of Default.

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Dated: August 4, 2023
Boston, Massachusetts

Respectfully submitted,

VERRILL DANA LLP

By: */s/Thomas O. Bean*

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Counsel to Coverys Specialty Insurance Company

Certificate of Service

I, Thomas O. Bean of Verrill Dana, LLP, certify that I am over the age of eighteen and, on August 4, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas in the above-captioned case along with the Plaintiff, *via* USPS, first-class, prepaid to the address below.

/s/ *Thomas O. Bean*
Thomas O. Bean (admitted *pro hac vice*)

***Via* USPS, First Class, Prepaid:**
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P.O. Box 8909
Yuma, AZ 85349