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

| | |
|---|---|
| In Re:<br><br>Tehum Care Services, Inc.<br>*Debtor* | Case No.: 23-90086 (CML)<br>CHAPTER 11 |
| Anant Kumar Tripati<br>*Plaintiff*,<br><br>v.<br><br>Sarah Tirschwell, et al.,<br>*Defendants*. | Adv. Pro. No. 23-03072 (CML) |

**DEFENDANT SCOTTSDALE INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT JUDGMENT**

Defendant Scottsdale Insurance Company ("Scottsdale") files this Response to Plaintiff's "Application to the Clerk for Entry of Default Against Scottsdale Insurance Company for Failure to Plead or Respond Otherwis[e]" (the "Application for Default"), stating in support as follows:

1. Plaintiff Anant Kumar Tripati ("Plaintiff") initiated this adversary proceeding against multiple defendants, including Scottsdale, on May 1, 2023 ("Plaintiff's Complaint"). (*See* Doc. No. 01.) According to the case docket, the Court issued a Summons on Scottsdale and several other named defendants on May 19, 2023. (*See* Doc. 05.) Scottsdale, however, was never served with the Summons or a copy of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 4(c). (*See* Exhibit A, Declaration of Laura Allen; Case Docket (showing that Summons was not executed on Scottsdale)).

2. On July 17, 2023, Plaintiff filed his Application for Default against Scottsdale (Doc. 72) for Scottsdale's purported failure to issue a response to Plaintiff's Complaint. Scottsdale first

became aware of the above-captioned adversary proceeding on July 24, 2023, when it received a copy of the Plaintiff's Application for Default. (*See* Exhibit A, Declaration of Laura Allen.)

3. Based on the foregoing, Plaintiff cannot demonstrate proper service, and default should not be entered against Scottsdale. *See Roor Int'l BV v. A1 Smoke Shop, Inc.*, No. 2019 U.S. Dist. LEXIS 206230, at *3 (S.D. Tex. Oct. 18, 2019) ("It is axiomatic that a defendant has no duty to answer a lawsuit until properly served; and consequently, a plaintiff is not entitled to obtain a default judgment until proper service is effectuated."); *see also Pate v. Zientz*, No. 09-CV-643, 2010 U.S. Dist. LEXIS 99427, at *1, n.2 (E.D. Tex. Aug. 27, 2010) ("A plaintiff bears the burden of demonstrating proper service of a complaint and summons.").

4. As set forth in Scottsdale's Motion for Extension of Time to Answer Plaintiff's Complaint, filed simultaneously with this Response, Scottsdale seeks to waive service of process and respectfully requests that the Court grant Scottsdale a 60-day extension from the filing date of its motion to file an Answer to Plaintiff's Complaint pursuant to Fed. R. Civ. P. 4(d)(3).

WHEREFORE, Defendant Scottsdale Insurance Company respectfully requests that the Court DENY Plaintiff's Application for Default.

Respectfully submitted,

*/s/ Patrick M. Kemp*

Patrick M. Kemp
Texas Bar No. 24043751
Southern District No. 38513
pkemp@smsm.com
Segal McCambridge Singer & Mahoney
100 Congress Ave., Ste. 800
Austin, Texas 78701
(512) 476-7834
(512) 476-7832 – Facsimile

**ATTORNEY-IN-CHARGE FOR DEFENDANT SCOTTSDALE INSURANCE COMPANY**

OF COUNSEL:

Robert G. Wall
Texas Bar No. 24072411
Southern District No. 1117137
rwall@smsm.com
Segal McCambridge Singer & Mahoney
100 Congress Ave., Ste. 800
Austin, Texas 78701
(512) 476-7834
(512) 476-7832 – Facsimile

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and mailed this the 4th day of August, 2023 to:

Anant K. Tripati 102081
ASPC Yuma, Cibola Unit
P.O. Box 8909
Yuma, AZ 85349
United States

*/s/ Patrick M. Kemp*
Patrick M. Kemp

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

| | |
|---|---|
| In Re:<br><br>Tehum Care Services, Inc.<br>*Debtor* | Case No.: 23-90086 (CML)<br>CHAPTER 11 |
| Anant Kumar Tripati<br>*Plaintiff*,<br><br>v.<br><br>Sarah Tirschwell, et al.,<br>*Defendants*. | Adv. Pro. No. 23-03072 (CML) |

**DECLARATION OF LAURA ALLEN IN SUPPORT OF SCOTTSDALE INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT**

STATE OF ARIZONA§

COUNTY OF MARICOPA§

1. My name is Laura Allen. I am over eighteen (18) years of age and am competent to make this Declaration. The facts stated in this Declaration are based on my personal knowledge and my review of the document entitled The Application to the Clerk For Entry of Default Against Scottsdale Insurance Company ("Application for Default") with regard to the above-referenced lawsuit.

2. I am a representative in the claims department for Nationwide E&S/Specialty which oversees the claims of Scottsdale Insurance Company ("Scottsdale"), and I am familiar with the procedure pertaining to service of process of documents served on Scottsdale, which is within the normal course and scope of my duties and responsibilities.

**DEFENDANT'S EXHIBIT A**

3. On July 24, 2023, Scottsdale received by first-class mail the Application for Default, with respect to the above referenced lawsuit.

4. To the best of my knowledge, this was Scottsdale's first notice of a claim by Anant Kumar Tripati ("Plaintiff") which is the subject of the above-mentioned lawsuit.

5. At no time prior to receiving the Application for Default did Scottsdale have in its possession proof of service of any Summons and Complaint for the above referenced lawsuit.

6. If Scottsdale had received the Summons and Complaint, or any other documents pertaining to service of process concerning the above-mentioned lawsuit, Scottsdale would have documented receipt and made a contemporaneous record of said documents. There is no such record and Scottsdale's first notice of Plaintiff's claim is the first-class regular mail receipt of the Application for Default.

7. I submit this Declaration in support of defendant Scottsdale Insurance Company's Response to Plaintiff's Application for Entry of Default.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of August 2023.

Laura Allen
Scottsdale Insurance Company

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

| | |
|---|---|
| In Re:<br><br>Tehum Care Services, Inc.<br>*Debtor* | Case No.: 23-90086 (CML)<br>CHAPTER 11 |
| Anant Kumar Tripati<br>*Plaintiff*,<br><br>v.<br><br>Sarah Tirschwell, et al.,<br>*Defendants*. | Adv. Pro. No. 23-03072 (CML) |

**ORDER DENYING PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT AGAINST DEFENDANT SCOTTSDALE INSURANCE COMPANY**

ON THIS DAY came to be heard Plaintiff Anant Kumar Tripati's Application for Entry of Default against Defendant Scottsdale Insurance Company. After considering Plaintiff's Application, the response of Scottsdale Insurance Company, and any replies, the Court is of the opinion that Plaintiff's Application for Entry of Default against Defendant Scottsdale Insurance Company should be and is hereby DENIED. It is therefore ORDERED that Plaintiff's Application for Entry of Default against Defendant Scottsdale Insurance Company is DENIED in its entirety.

SO ORDERED on this ____ day of _____, 2023.

_____
UNITED STATES DISTRICT JUDGE