Docket #0109 Date Filed: 8/8/2023

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

RESPONSE IN OPPOSITION TO PLAINTIFF'S APPLICATIONS TO THE CLERK FOR ENTRY OF DEFAULT (DOC. 74, 75, 78) FILED ON BEHALF OF KELLY JOAN MORRISSEY, JULIA ERWIN, AND DARYL JOHNSON

Defendants Struck Love Bojanowski and Acedo, PLC,[1] Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz[2] (collectively, "State of Arizona Defendants"), through counsel, file this Response in Opposition to Plaintiff's Applications to the Clerk for Entry of Default against Kelley Morrissey,[3] Julia Erwin, and Daryl Johnson (*see* Docs. 74, 75, and 78). Defendants Morrissey, Erwin, and Johnson have not been served in Tripati's adversary action, and file this response for the limited purpose of preventing default judgment against them.

I. RELEVANT BACKGROUND.

Plaintiff Anant Kumar Tripati is a pro se inmate currently serving a 52.5-year sentence in Arizona state prison for convictions on multiple counts of fraudulent schemes against the State of

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

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

[3] The Amended Adversary Complaint misspells this Defendant's name as Kelly Joan Morrissey.

Arizona. *See State v. Tripati*, Maricopa County Superior Court Nos. CR 1992-008576-A, CR1992-00960, http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseSearch.asp (search Last Name: "Tripati"; First Name: "Anant"). Tripati is a notorious vexatious litigant and has been deemed as such by courts across the country. (*See* Dkt. 25 at 2–5.)

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 (referred to as the "Amended Adversary Complaint."). (Doc. 4, 4-1.) On May 19, Tripati filed summonses and certificates of service indicating that only 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.) Morrissey, Erwin, and Johnson were never served with either the original Adversary Complaint or the Amended Adversary Complaint. Indeed, the adversary action simply rehashes the same claims he made against them in *Tripati v. Wexford Health Sources, Inc.*, No. 2:20-CV-00427, 2022 WL 1516780 (W.D. Pa. Feb. 14, 2022), which were dismissed by United States District Court for the Western District of Pennsylvania and affirmed by the Third Circuit. *Id.*, 2022 WL 1013446, at *3 (W.D. Pa. Apr. 5, 2022); *Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022).

On July 17, 2023, Tripati filed a flurry of applications for default, including his Applications to the Clerk for Entry of Default Against Morrissey, Erwin, and Johnson, for failure to plead or otherwise respond to his complaint. (*See* Doc. 74, 75, 78.) On July 19, the State of

Arizona Defendants—including Morrissey, Erwin, and Johnson—filed a Motion to Screen the Amended Adversary Complaint.[4] (Doc. 86.) That motion is currently pending.

II. LEGAL ARGUMENT.

Rule 55 of the Federal Rules of Civil Procedure applies to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. Rule 55(a) provides that, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). The Clerk can enter a default judgment at a plaintiff's request, but only if the plaintiff's claim is for a sum certain or a sum that can be made by certain computation. Fed. R. Civ. P. 55(b)(1).

Tripati's Applications to the Clerk for Entry of Default against Morrissey, Erwin, and Johnson do not comply with Rule 55 because they do not contain a sum certain or a proposed judgment amount. (Doc. 74, 75, 78); *see* Fed. R. Civ. P. 55(b)(1). The Applications should be denied on this basis alone.

Furthermore, and contrary to Tripati's contentions, proofs of service were never filed showing that Morrissey, Erwin, or Johnson were served. (*See* Doc. 74, 75, 78.) There is no indication that these individuals were served with the original or Amended Adversary Action. Even if they were, they moved to screen Tripati's Amended Adversary Complaint on July 19, 2023. (Doc. 86.) It would therefore be improper for the Clerk to enter default judgment prior to the Court's resolution of that motion.

III. CONCLUSION.

For the reasons above, State of Arizona Defendants respectfully request that the Court deny

[4] In that motion, Defendants Erwin, Morrissey, and Johnson specifically noted that they had not appeared in this case due to lack of service, and that they moved for screening given Tripati's applications for default judgment against them. (*See* Doc. 86 at 1, n.3.)

Tripati's Application to the Clerk for Entry of Default Judgment against Morrissey, Erwin, and Johnson. (Doc. 74, 75, 78.)

Dated this 7th day of August 2023.

Respectfully submitted,

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

s/ Daniel P. Struck

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of August 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

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