Docket #0114 Date Filed: 8/14/2023

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

In Re: Tehum Care Services, Inc Debtor.	Case No: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati Plaintiff, vs. Sarah Tirschwell, et al., Defendant.	Adv. Pro. No. 23-03072 (CML)

United States Courts
Southern District of Texas
FILED
AUG 14 2023
Nathan Ochsner, Clerk of Court

MOTION TO EXCEED PAGE LIMITS

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through counsel.

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RELIEF REQUESTED

¶ I ask that I be allowed to file an omnibus response that exceeds the page limits.

MEET AND CONFER

¶ Before filing this response I contacted these Defendants, provided them with a draft copy of my response, and informed them their motions are not well grounded and contrary law. I asked them to meet and discuss this, so that I do not have to file this exhaustive response. I informed them that their conduct is deceptive. They failed to contact me.

THE FRUSTRATION OF PURPOSE DOCTRINE MANDATES THE MOTIONS BE DENIED

¶The "frustration of purpose" doctrine Geier v American Honda, 529 US 861 (2000) see also Gulf States Utility Co., v Alabama Power Co, 824 F2d 1465(5th Cir) amended reh., 831 F2d 557 (5th Cir. 1987) applies to all contracts. Wexford Corizon Centurion Naphcare entered into contracts to provide me and other prisoners' healthcare. Without the liability insurers, they would not have been allowed to enter into these contracts. These liability insurers guaranteed their performance and liability.

¶ By their misconduct set forth in ECF 4 they frustrated the intention of these contracts.

¶ By engaging in spoliation of evidence, they aided the Debtor in perpetrating this bankruptcy fraud.

¶ By and through their misconduct under the Meet and Confer section below, these Defendants have frustrated the purpose of bankruptcy

A. AS THE PROTECTOR OF THE JUDICIAL PROCESS, THE EQUITABLE DOCTRINE OF JUDICIAL ESTOPPEL MANDATES DEFENDANTS BE BARRED FROM ACCESS TO THIS FORUM FOR PLAYING FAST AND LOOSE WITH THIS COURT AND ITS PROCESSES

¶The equitable doctrine of judicial estoppel[1] has long been applied by U.S. Courts seeking to prevent litigants from playing "fast and loose" in litigation. *New Hampshire v. Maine, 532*

1 Charles Alan Wright Et Al., Federal Practice And Procedure § 4402 (2d Ed. 2011). Procedurally, judicial estoppel appears to be treated similarly to questions of res judicata since it may be raised by defendants in a motion to dismiss or for summary judgment. See Dunellen, LLC v. Getty Props. Corp., 567 F.3d 35, 37–38 (1st Cir. 2009) (upholding trial court's application of res judicata and judicial estoppel in granting summary judgment). Also

U.S. 742, 749–50 (2001) (collecting circuit decisions). Somewhat unique among the equitable estoppel doctrines, the central purpose of judicial estoppel is to protect the integrity of the legal system itself. *In re Coastal Plains, Inc., 179 F.3d 197, 205 (5th Cir. 1999)* (characterizing judicial estoppel as protecting "the judicial system, rather than the litigants"). The basic formulation of the doctrine varies from one court to another, though common tenets pervade. Compare id. at 206 ("Most courts have identified at least two limitations on the application of the doctrine: (1) it may be applied only where the position of the party to be estopped is clearly inconsistent with its previous one; and (2) that [the] party must have convinced the court to accept that previous position."), with *Salomon Smith Barney, Inc. v. Harvey, 260 F.3d 1302, 1308 (11th Cir. 2001)* ("First, it must be shown that the allegedly inconsistent positions were made under oath in a prior proceeding. Second, such inconsistencies must be shown to have been calculated to make a mockery of the judicial system.").

¶Stated simply, the doctrine of judicial estoppel bars a litigant from proceeding with a defense which is at odds with a position asserted by the litigant in a prior legal proceeding. While jurists and scholars have identified numerous objectives of the doctrine, at its core, the doctrine is about guarding against litigant chicanery.

¶ It was not until 2001 that the Supreme Court examined the doctrine in detail in *New Hampshire v. Maine. 532 U.S. 742, 749–50 (2001)* (noting that the Court has "not had occasion to discuss the doctrine elaborately."). In New Hampshire, the court applied judicial estoppel to prevent the state of New Hampshire from asserting that its Piscataqua River

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similar to res judicata, the doctrine can be raised sua sponte by the court itself. In re M Cassidy, 892 F.2d 637, 641 (7th Cir. 1990) (citing Allen v. Zurich Ins. Co., 667 F.2d 1162, 1168 n.5 (4th Cir. 1982)) (doctrine may be raised by court on appeal sua sponte). Hence, this argument included the failure of Defendants to provide evidence, that these claims are barred by res judicata and collateral estoppel, because they have failed to show where, in what court, when these issues were addressed. They were not presented or addressed.

boundary with Maine ran along the Maine shore of the river, contrary to a 1970s consent judgment under which New Hampshire had agreed the boundary ran along the geographic center of the river.

¶The court cited the *Davis v. Wakelee 156 U.S. 680, 689 (1895)* definition but elaborated on the doctrine's unique position as a protector of the judicial process. As the Court noted, the doctrine is used to "prevent the perversion of the judicial process" Id. at 750 (quoting *In re Cassidy, 892 F.2d 637, 641 (7th Cir. 1990))* by "prohibiting parties from deliberately changing positions according to the exigencies of the moment." Id. (quoting *United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993).* Other courts have been more colorful in describing the doctrine's ultimate aims of promoting fair and honest dealing in the courts. *Reynolds v. Comm'r, 861 F.2d 469, 472 (6th Cir. 1988)* (citing the various metaphors courts have used to describe the evils judicial estoppel guards against, including: "playing fast and loose with the courts," *Scarano v. Central R.R., 203 F.2d 510, 513 (3d Cir. 1953);* "blowing hot and cold as the occasion demands," *Allen v. Zurich Ins. Co., 667 F.2d 1162, 1167 n.3 (4th Cir. 1982);* and "hav[ing] [one's] cake and eat[ing] it too," *Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146, 1177 (D.S.C. 1974)).*

B. CENTRAL THRUST IS THE "INTEGRITY OF THE JUDICIAL PROCESS

¶Yet, the central thrust of all these formulations remains the same: the protection of the "integrity of the judicial process." New Hampshire, 532 U.S. at 749–51 (citing various cases to illustrate the uniform agreement among the courts as to the purpose of judicial estoppel).

¶ Underpinning the courts' common application of the doctrine of judicial estoppel are the broadly recognized interests served by the United States' uniform Bankruptcy Code and the desire of the courts to ensure the integrity of their processes. Compare *Ryan Operations G.P.*

v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362 (3d Cir. 1996) ("[J]udicial estoppel would be inappropriate in any event as there is no evidence that Ryan acted in bad faith.") See generally *Sea Trade Co. v. FleetBoston Fin. Corp., No. 03 Civ. 10254, 2008 WL 4129620 (S.D.N.Y. Sept. 4, 2008)* (applying the doctrine of judicial estoppel after extensive and contested review of bankruptcy disclosure requirements under Argentine Bankruptcy Law).

C. JUDICIAL ESTOPPEL PREVENTS A PARTY FROM PREVAILING IN ONE PHASE OF A CASE ON AN ARGUMENT AND THEN RELYING ON A CONTRADICTORY ARGUMENT TO PREVAIL IN ANOTHER PHASE

¶ In addition to litigants' statutory and pseudo statutory obligations, the courts have additional "inherent powers" through which judges ensure efficient, orderly, and fair disposition of cases. See *Chambers v. NASCO, Inc., 501 U.S. 32, 58 (1991) (Scalia, J., dissenting)* ("It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" (quoting *United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812))).* Among these powers is a court's ability to guard against litigant duplicity by employing the equitable doctrine of judicial estoppel. *New Hampshire v. Maine, 532 U.S. 742, 749 (2001)* ("This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." (Internal quotation marks omitted)).

¶Briefly put, judicial estoppel permits a court to overrule arguments inconsistent with a petitioning party's representations in a prior legal proceeding. Invoked to protect the integrity of the judicial system, judicial estoppel has become an increasingly popular means of dismissing claims brought by individuals who have previously filed for bankruptcy and

failed to disclose those claims as assets in the bankruptcy proceeding. *In re Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999). Lowery v. Stovall, 92 F.3d 219, 224 (4th Cir. 1996)* ("[T]he position sought to be estopped must be one of fact rather than law or legal theory.") Such distinctions between inconsistency in law or fact, however, may be irrelevant when viewed in light of the doctrine's secondary elements which better define judicial estoppel's application. Cassidy, 892 F.2d at 642 ("[I]n this case we think that the change of position on the legal question is every bit as harmful to the administration of justice as a change on an issue of fact.").

¶It should be noted however, that neither an unfair advantage, nor a material benefit to the inconsistent party is necessary to find the "judicial acceptance" required to judicially estop a litigant. All that need be shown is that the prior tribunal or agency relied upon the representation in reaching some decision.

¶Consequently, judicial estoppel may be applied in cases where a litigant did not ultimately prevail on his case in chief, but convinced a tribunal to rely on his representation to reach some conclusion in a prior case.

D. JUDICIAL ESTOPPEL PERMITS THIS COURT TO OVERRULE ARGUMENTS INCONSISTENT WITH DEFENDANTS REPRESENTATIONS IN PRIOR LEGAL PROCEEDINGS WHERE THEY INFORMED THE JUDGES THAT THE EVIDENCE I OUTLINE DID NOT EXIST

¶ During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶In CIV 18-0066RM Corizon Quintairos Prieto Wood & Boyer; Nichole Rowey; aggressively during the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist. CR 186, 187, 188, 191, 195, 200, 205, 208, 209, 210, 212, 217, 220, 234, 236, 237, 238, 240, 241,

242, 245, 246, 248, 249, 250, 251, 255, 256, 257, 314, 318, 337, 352, 363, 383, 392, 414, 421, 425, 427, 434

¶ In CIV 13-0615 TUC DCB Corizon through Joseph Scott Conlon ;Renaud Cook Drury Mesaros PA During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶ In CIV 13-0140 TUC DCB Wexford Health Sources, Inc; Weber Gallagher Simpson Stapleton Fires & Newby LLP; Jones Skelton Hochuli During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶ In bad faith Defendants made material false representations and were dishonest in their representations to the court, about the evidence, because it did not suit their position at the time. *In re Coastal Plains, 179 F.3d 197, 208, 210 (5th Cir. 1999)* (noting another circuit's requirement of inconsistency in factual representations but expressing no opinion on the requirement and applying judicial estoppel due to prior judicial acceptance of bankruptcy filings valuing estate assets at less than $20,000. These observers in turn classify courts as embracing either a "judicial acceptance" or "sanctity of the oath" version of judicial estoppel.

¶ As the Supreme Court noted in New Hampshire, the doctrine "'prohibit[s] parties from deliberately changing positions according to the exigencies of the moment.'" *New Hampshire v. Maine, 532 U.S. 742, 749–50 (2001)* (emphasis added) (quoting *United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993)).* Such bad faith may be discerned from the record where the inconsistency constitutes a particularly egregious affront to judicial dignity. See generally *Taylor v. Freeland & Kronz, 503 U.S. 638, (1992); Stoll v. Gottlieb, 305 U.S. 165 (1938).*

THESE LAWYERS HAVE NOT ACTED EQUITABLY DURING THESE ADVERSARY PROCEEDINGS BECAUSE THEY LIED OUTRIGHT, ABOUT THE CORE OF THEIR DEFENSE, THAT THE THIRD CIRCUIT ADDDRESSED SPOLIATION. THE THIRD CIRCUIT DID NOT ADDRESS THE CLAIMS BECAUSE OF THIS BANKRUPTCY

COUNSEL LIED ABOUT THE CENTRAL ISSUE AS TO THEIR DEFENSES TO THIS LITIGATION

¶Reported cases provide a broad range of examples of how not to behave as a litigant. As the First Circuit stated in *Aoude v. Mobil Oil Corp. 892 F.2d 1115, 1118 (1st Cir. 1989)* "because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms."

¶ These lawyers in their filings state that the Third Circuit decided against me on the spoliation claims **This is patently false.**

¶I asked them to provide me the page and paragraph where the court resolved this spoliation claims against me, and they refused to refer me to that portion of the decision.

¶They came outright and lied to this judge about a central issue in this litigation. If this court is to take this lie outright, the claims get dismissed. On the other hand if this court were to review the court order, the complaint proceeds. So this assertion is core to this litigation.

¶ When misconduct bears a substantial relationship to the matter(s) in issue the clean hand doctrine applies. *Precision Instrument Mfg. Co. v. Auto. Main. Mach. Co., 324 U.S. 806, 815 (1945)* (suggesting that the conduct of the opposing party is not relevant)

¶Traditionally, an equitable defense, the clean hands doctrine has been applied to cases at law since the merger of law and equity.

¶The standard exposition of the clean hands doctrine speaks of the requirement of coming into court with clean hands, but many courts also require that hands remain clean during

the litigation. Thus, a plaintiff who arrives in court with clean hands may still find herself out of court if her hands become soiled during the litigation. *C.C.S. Communication Control, Inc. v. Sklar, No. 86-7191, 1987 U.S. Dist. LEXIS 4280 (S.D.N.Y. June 1, 1987), affd without op., 983 F.2d 1048 (2d Cir. 1992).*As one trial court explained: "It would be strange if a court of equity had power-because of public policy for its own protection-to throw out a case because it entered with unclean hands and yet would have no power to act if the unconscionable conduct occurred while the case was in court."

¶ As such for this fact and this fact alone the motions to dismiss should be denied with prejudice, with directions the matters in the motions to dismiss cannot be reargued in any other manner, during these proceedings.

i. THE RIGHT TO RELIEF FOR SPOLIATION IS CLEARLY ESTABLISHED

¶ *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* clearly establishes the right to seek relief by way of an independent action, because prior action ended poorly, due to the missing or fabricated evidence, set forth in the complaint. *1B J Moore, J. Lucas, T. Currier, Moore's Federal Practice, para 0.407, at 286 (2nd ed. 1984)* provides in relevant part

- **"If it attempts to avoid, defeat, or evade a previously entered judicial decree.....or otherwise attempts to deny the prior decree's force and effect...in the context of an incidental proceeding NOT ESTABLISHED BY LAW for the purpose of attacking the decree's validity" (emphasis added)**

¶ The key is "established by law" and pursuant to *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* the right to independent action is established law, which does not set aside the judgment in the prior action.

A. THIS COURT HAS JURISDICTION AS THE CONDUCT OF DEFENDANTS ARE INEXTRICABLY ENTWINED

¶ The conduct of Defendants are inextricably entwined with the conduct of the Debtor *Fire Eagle LLC v Bischoff, 710 F.3d 299 (5th Cir. 2003).* They use the same modus operandi. *Howell Hydrocarbons v Adams, 897 F2d 183 (5th Cir. 1990)* Because of their identity of interests, combined with the cooperation agreements that they have entered into, they are named as parties. These Defendants were parties, to the spoliation claims in the District and Circuit Courts. Without their joinder, I cannot get complete relief, because, as the Debtor has filed for this bankruptcy, the Circuit Court and District courts have, as required by law, declined to hear my spoliation claims. *In re Lile 1998 Bankr. Lexis 399 (SD Tex 1989)* when the complaint is based on the same operative facts, they are intertwined.

B. COOPERATION AGREEMENT BY WEXFORD CONFERS JURISDICTION

¶ January 30, 2013 Mark Hale, the CEO of Wexford signed a contract in Pittsburgh, agreeing to cooperate with Corizon Health. This contract was scanned and signed on the same date by Denel Pickering for the ADCRR in Phoenix. Weber Gallagher, Jones Skelton, Struck and Gottfried were involved.

C. COOPERATION AGREEMENT BY CORIZON CONFERS JURISDICTION

¶ Steve Rector CEO of Corizon on July 20, 2018 signed an agreement to cooperate with Centurion in Brentwood, Tennessee and it was scanned and signed on the same date by Ken Sanchez in Phoenix for ADCRR. Struck, Renaud Drury, Quintairios Prieto and Gottfried were involved.

D. COOPERATION AGREEMENT BY CENTURION CONFERS JURISDICTION

¶ Steven H Wheeler, CEO of Centurion from Vienna, Virginia on May 25, 2019 signed a cooperation agreement agreeing to cooperate with Corizon. The document was cosigned in Arizona by Kenneth P. Sanchez, for ADCRR. Broening Oberg, Struck and Gottfried were involved.

E. COOPERATION AGREEMENT BY NAPHCARE CONFERS JURISDICTION

¶ Bradford McLane CEO Naphcare on May 24, 2022 signed in Alabama a document agreeing to cooperate with Centurion and on the same date it was scanned and signed by Kenneth P. Sanchez, ADCRR in Phoenix.

F. DEEMED TO HAVE ESTABLISHED PERSONAL JURISDICTION IS ESTABLISHED BY SPOLIATION

¶ The Supreme Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. *Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982)* (affirming order that imposed sanction of deeming personal jurisdiction established) As Defendants destroyed evidence, jurisdiction is deemed to have been established.

CONCLUSION

¶ The motions to exceed page limits should be granted.

Respectfully submitted,

Anant Kumar Tripati 8/8/23

CERTIFICATE OF SERVICE

The Plaintiff hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

8/14/23