Docket #0121 Date Filed: 8/21/2023

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**
	§	
Debtor.	§	
	§	
	§	
ANANT KUMAR TRIPATI,	§	**Adv. No. 23-03072**
	§	
v.	§	
	§	
SARA TIRSCHWELL, et al,	§	
	§	
Defendants.	§	

RESPONSE IN OPPOSITION OF WEXFORD HEALTH SOURCES, INC. TO PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Defendant Wexford Health Sources, Inc. ("Wexford") by and through its counsel, hereby files this Response in Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint and respectfully states as follows:

I. PRELIMINARY STATEMENT

Plaintiff's Motion for Leave File a Second Amended Complaint should be denied. Plaintiff provides no basis for the request for leave, why it should be granted while pending motions to dismiss and motion to screen the first Complaint remain pending. The purported amendments cannot and do not address the arguments presented by the Motion to Screen Plaintiff's Pro Se Inmate Adversary Complaint related to the serial vexatious filings of the Plaintiff. Instead, Plaintiff claims this Court is incapable of issuing a screening order, which is simply incorrect. Until the Motion to Screen is addressed by the Court, any attempted amendments would be futile. Therefore,

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Plaintiff's Second Motion for Leave should be denied until the Motion to Screen is addressed by the Court.

II. PROCEDURAL BACKGROUND

Plaintiff Anant Kumar Tripati ("Plaintiff") filed his Verified Adversary Complaint in the U.S. Bankruptcy Court for the Southern District of Texas on May 1, 2023 commencing this action. On May 15, 2023, Plaintiff filed a Motion to Amend seeking to file an Amended Complaint. On June 5, 2023, Defendants Struck Love Bojanowski and Acedo, PL, Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz ("Arizona Defendants") filed their Motion to Screen Plaintiff's Pro Se Inmate Adversary Complaint and request for an Extension of Time to File a Responsive Pleading [Doc. 25] ("Motion to Screen"). On June 19, 2023, Wexford filed its Notice of Special Appearance and Joinder in Support of Arizona Defendants' Motion to Screen [Doc. 45] ("Joinder"). In addition to Wexford, five other defendants have joined the Arizona Defendants' Motion to Screen and five other defendants have filed motions to dismiss the adversary complaint or filed their own motion to screen the adversary complaint. The Motion to Screen as well as the motions to dismiss remain pending before the Court as does the Plaintiff's Motion to Amend filed on May 15, 2023. On July 31, 2023, Plaintiff filed his Motion for Leave to File a Second Amended Complaint [Doc. 96] ("Second Motion for Leave").

III. LEGAL STANDARD

Fed. R. Civ. P. 15 instructs courts to "freely give leave [to amend] when justice so requires." However, leave to amend can be denied where there is justification. *Robertson v. Intratek Computer, Inc.*, 976 F.3d 575, 584 (5th Cir. 2020). Justification exists in instances of undue delay, bad faith, dilatory motive, repeated failure to cure previous amendments, undue

prejudice, and futility. *New Orleans Ass'n of Cemetery Tour Guides & Cos. v. New Orleans Archdiocesan Cemeteries*, 56 F. 4th 1026, 1034 (5th Cir. 2023).

IV. ARGUMENT

The Court should deny Plaintiff's Second Motion for Leave, because the First Adversary Complaint is subject to a Motion to Screen. The Motion to Screen sought the screening and dismissal of Plaintiff's claims in the First Adversary Complaint because Plaintiff is a recognized vexatious litigant, who has lied to the Court to obtain relief. Plaintiff's Adversary Complaint rehashes allegations made against the Arizona Defendants and Wexford that were dismissed previously by the courts. *See Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022). Plaintiff's only statements addressing the Motion to Screen is that bankruptcy courts cannot issue a screening order under 28 U.S.C. 1915. This is simply incorrect.

Under 28 U.S.C. 1915, a bankruptcy court like other courts of the United States has the power to determine whether a litigant can process *in forma pauperis* under 28 U.S.C. 1915(a). As required by statute, the court must perform an analysis not only of the financial situation of the litigant but also related to good faith nature of the proposed filing. Beyond a demonstration of poverty, §1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. §1915(a)(3). "The bankruptcy court should review any. . . *in forma pauperis* filing to determine if it is in good faith." See In re Hall, 2008 Bankr. LEXIS 4903, *7-8 (Bankr. W.D. Tex. July 10, 2008) quoting *Valente v. Donahue*, 2004 U.S. Dist. LEXIS 11786, at *2 (N.D. Ill. June 25, 2004). Therefore, no leave to amend should be granted until the Court determines whether a screening order should be issued and determines whether Plaintiff's filing is in good faith.

Further, of the four reasons cited by Plaintiff to justify his amendment, none provide a basis for this Court to deviate from the findings of U.S. District Court for the Western District of Pennsylvania and the Third Circuit affirming the dismissal of Plaintiff's claims previously brought against Wexford in the Third Circuit. *See* Tripati v. Wexford Health Sources, Inc., No. 2:20-CV-00427, 2022 WL 1516780, at *2 (W.D. Pa. Feb. 14, 2022) *Tripati v. Wexford Health Sources, Inc.*, No. 22-1861, 2022 WL 17690156 (3d Cir. 2022).

V. CONCLUSION

For the foregoing reasons, Defendant Wexford Health Sources, Inc., respectfully requests that this Honorable Court deny Plaintiff's Motion for Leave to File a Second Amended Adversary Complaint.

Dated: August 21, 2023

Respectfully submitted,

/s/Michael P. Ridulfo
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on August 21, 2023, a true and correct copy of the foregoing Response in Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint was served upon all counsel of record via the Court's ECF and by mailing the same via U.S. Mail, first-class, postage pre-paid and by certified mail, return receipt requested to:

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/s/Michael P. Ridulfo
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