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*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

DEFENDANT COLUMBIA CASUALTY COMPANY'S RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT JUDGMENT

Defendant Columbia Casualty Company ("Columbia") files this Response to Plaintiff's "Application to the Clerk for Entry of Default Against Columbia Casualty Company for Failure to Plead or Respond Otherwis[e]" (the "Application for Default," Doc. 84), and in support would respectfully show as follows:

1. Plaintiff Anant Kumar Tripati initiated this adversary proceeding against multiple defendants, including Columbia, on May 1, 2023 by filing his Complaint. (Doc. No. 01).

2. The court's docket reflects that a summons was issued for Columbia and several other named defendants on May 19, 2023. (*See* Doc. 05). But Columbia was not served with the summons or a copy of Plaintiff's Complaint as required by Fed. R. Civ. P. 4(c). (*See* Exhibit A, Declaration of Barbara Hyman). The case docket shows no certificate of service reflecting execution of the May 19, 2023 summons on Columbia.

3. On July 17, 2023, Plaintiff filed the Application for Default against Columbia alleging that Columbia failed to respond to Plaintiff's Complaint. (Doc. 84). While Plaintiff's Application for Default asserts that service on Columbia "is evidenced by the proof of service on file," the case docket reflects no such evidence.

4. Columbia first became aware of this adversary proceeding on August 22, 2023, when it first received a copy of Plaintiff's Application for Default. (*See* Exhibit A, Declaration of Barbara Hyman).

5. Plaintiff cannot demonstrate proper service of his Complaint, and default therefore should not be entered against Columbia. *See RooR Int'l BV v. A1 Smoke Shop, Inc.*, Case No. 4:18-CV-3828, 2019 WL 6330543, at *2 (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."); *Douglas v. Pilgrim Senior Citizens Hous. Dev. Corp.*, No. 11-CV-3637, 2012 WL 327783, at *1 (S.D. Tex. Aug. 9, 2012) (absent proper services of process, any default judgment is void); *see also Pate v. Zientz*, No. 4:09cv643, 2010 WL 3767573, at *1 n.2 (E.D. Tex. Aug. 27, 2010) (noting that Federal Rule of Civil Procedure 4(c) places the burden on plaintiffs to ensure that defendants are properly served with summons and a copy of the complaint).

6. As set forth in Columbia's Motion for Extension of Time to Answer Plaintiff's Complaint, filed simultaneously with this Response, Columbia seeks to waive service of process and respectfully requests that the Court grant Columbia 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 Columbia Casualty Company respectfully requests that the Court deny Plaintiff's Application for Default.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT COLUMBIA CASUALTY COMPANY

CERTIFICATE OF SERVICE

I certify that on the 30th day of August, 2023, a true and correct copy of the foregoing document was served upon all counsel of record electronically via the Court's CM/ECF system, and has been served on the Plaintiff by first class U.S. mail at the following address:

Anant K. Tripati
Inmate #102081
P.O. Box 8909
Yuma, AZ 85349

/s/ Ben Stephens
Ben Stephens

Ex. A

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DECLARATION OF BARBARA HYMAN IN SUPPORT OF COLUMBIA CASUALTY COMPANY'S RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT

STATE OF ILLINOIS §
§
COUNTY OF COOK §

1. My name is Barbara Hyman. I am over eighteen years of age and am competent to make this Declaration. The facts stated in this Declaration are based on my personal knowledge, including my review of the document entitled "The Application to the Clerk for Entry of Default Against Columbia Casualty Company" (the "Application for Default") in the above-referenced lawsuit.

2. I am a Senior Paralegal in the CNA Law Department, which oversees claims asserted against Columbia Casualty Company ("Columbia") and other affiliated companies that use the "CNA" service mark. In that capacity, I am familiar with Columbia's procedures for the receipt and handling of summons, complaints and other documents that are served upon Columbia, and those procedures are within the normal course and scope of my duties and

responsibilities.

3. On August 22, 2023, Columbia first received the Application for Default in the above-referenced lawsuit. Upon receipt of the Application for Default, I searched for any evidence that Columbia may have received the summons and complaint in the above-referenced lawsuit, and I was unable to find any such evidence. To the best of my knowledge, August 22, 2023 was Columbia's first notice that Plaintiff Anant Kumar Tripati had asserted claims against Columbia in the lawsuit. At no time prior to receiving the Application for Default did Columbia receive any Summons and/or Complaint for the above-referenced lawsuit.

4. If Columbia had received the Summons and/or Complaint, or any other documents pertaining to service of process in this lawsuit, Columbia would have made a contemporaneous record of its receipt of the documents. Columbia has no such record of having received such documents. Accordingly, Columbia's first notice of Plaintiff's claim is the receipt of the Application for Default on August 22, 2023.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 29 day of August, 2023.

Barbara Hyman