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

IN RE:	§	
	§	
TEHUM CARE SERVICES, INC.	§	CASE NO. 4:23-BK-90086 (CML)
	§	
Debtor.	§	CHAPTER 11
	§	
ANANT KUMAR TRIPATI	§	
	§	Adversary No. 23-03072
Plaintiff,	§	
	§	
Vs.	§	
	§	
SARAH TIRSCHWELL, et al.	§	
	§	
	§	

DEFENDANT WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP'S OPPOSITION TO PLAINTIFF'S SECOND APPLICATION FOR DEFAULT

Comes Now, Weber Gallagher Simpson Stapleton Fires & Newby LLP ("Weber Gallagher" or "Defendant"), by and through its counsel, hereby files this opposition to Plaintiff's Second Application for Entry of Default (the "Application"). [Dkt # 132].

BACKGROUND

1. Plaintiff is a pro se inmate currently serving in an Arizona state prison. *See State v. Tripati, Maricopa,* County Superior Court Nos CR 1992-008576-A, CR 1992-00960.

2. On May 1, 2023, Plaintiff Anant Kumar Tripati ("Plaintiff") filed his Verified Adversary Complaint by Anant Kumar Tripati [Doc. 1] ("Complaint") in the Bankruptcy Court for the Southern District of Texas, thereby commencing the above referenced adversary proceeding.

3. In the Complaint, Plaintiff alleges that Defendant "obstruct[ed] justice" and "interfer[ed] in the administration" of justice through concealing evidence and submitting false statements. Complaint, ¶ 13. Further, Plaintiff alleges Defendant has participated in a scheme to commit fraud in violation of Arizona's civil racketeering statute ("Plaintiff's Allegations"). Complaint, ¶¶ 431-458.

4. Plaintiff's Allegations were previously dismissed in The United States District Court for the District of Pennsylvania due to lack of personal jurisdiction and Plaintiff's inability to properly state a claim for relief. *Tripati v. Wexford Health Sources, Inc.*, No. 2:20-CV-00427, 2022 WL 1516780 (W.D. Pa. Feb 14, 2022).

5. Plaintiff's vexatious nature has been recognized by various courts including the United States District Court for the District of Arizona, The United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. *Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 n.2 (3d Cir. Dec. 15, 2022).

6. Plaintiff previously filed its first Application for Default against Defendant [Dkt # 82] on July 17, 2023. Defendant timely responded on August 4, 2023 [Dkt # 105].

ARGUMENT

7. Plaintiff's proposed default judgment is barred by FED. R. CIV. P. 55.[1] Specifically, under the rule, the Clerk may only enter a default judgment where a plaintiff's claim is for a sum certain proven by an affidavit showing the amount due. Originally, Plaintiff moved for default judgment against Defendant on July 17, 2023, but did not seek a sum certain nor prove up his damages with an affidavit. [Dkt # 82]. Although Plaintiff has moved again for default judgment

[1] Per FED. R. BANKR. 7055, FED. R. CIV. P. applies in adversary proceedings.

and has identified a specific sum sought ($480,000,000), his Application still fails to comply with the applicable Federal rules.

8. First, Plaintiff's "affidavit"[2] is not competent evidence under Federal Rule of Evidence 602. The "affidavit" contains numerous factual allegations (and legal conclusions) for which he has neither asserted nor established any basis for such knowledge. Although Plaintiff asserts the "facts are true and correct and [he is] competent to so testify," he does not assert that the information is within his personal knowledge (nor could he, as the facts are largely conclusory allegations of what Plaintiff believes the various parties were doing at random times) nor does he identify or attach any documents or records establishing those facts. *See* FED. R. EVID. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness had personal knowledge of the matter"); *Dominguez v. AD Towing*, No. EP-09-CV-060-DB, 2010 U.S. Dist. LEXIS 85218, at *9 (W.D. Tex. 2010) ("[A]s Defendants did not attach the work records Gutierrez relied on, the Court has no way of fathoming whether Gutierrez's Affidavit accurately reflects those records. As such, Gutierrez's Affidavit constitutes nothing more than unsubstantiated assertions without a basis in personal knowledge of the facts undergirding said assertions"); *United States v. 92,203.00 in United States Currency*, 537 F.3d 504, 508 (5th Cir. 2008) ("We agree that Agent Pena's affidavit was clearly not based on personal knowledge but instead was comprised primarily of hearsay statements"). As such, Plaintiff's "affidavit" is insufficient to support Plaintiff's Application for Default Judgment.

9. Second, Plaintiff's "affidavit" still does not meet the requirements of Federal Rule of Civil Procedure 55, which requires that Plaintiff attach an affidavit that establishes "a sum

[2] Plaintiff's "affidavit" is both titled an affidavit and a declaration, is 35 pages long, and contains both factual allegations for which Plaintiff has not established any personal knowledge and legal conclusions and arguments that lack authority.

certain or a sum that can be made certain by computer." FED. R. CIV. P. 55(b)(1). Although Plaintiff seeks $480,000,000 in damages in his Application for Default Judgment, Plaintiff's own affidavit notes that his damages are "an as yet undetermined amount, believed to be not less than approximately $30,000,000." *See* Plaintiff's Application for Default Judgment [Dkt # 132], Affidavit of Anant Kumar Tripati, at ¶¶ 179, 187, 199, 200.[3] By Plaintiff's own admission, the amount is not a sum certain and cannot yet be calculated. Moreover, even if the $30,000,000 was a sum certain (it is not), it is certainly not the $480,000,000 demanded by Plaintiff in his Application for Default Judgment [Dkt # 132]. Plaintiff's affidavit provides no support or justification for his $480,000,000 "damages" and, as such, there is no basis for default judgment.

10. In addition to the above, there are many other reasons why granting Plaintiff's Application under these circumstances would be improper and inapplicable. Defendant reserves the right to assert additional bases in opposition to Plaintiff's Application at a later time and does not waive any bases not yet asserted.

WHEREFORE, Defendant respectfully requests the Court deny Plaintiff's Application for Default Judgment and any further relief that the Court deems appropriate.

Dated: September 5, 2023

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Stephen E. Hart

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[3] Plaintiff's "affidavit" is included in Plaintiff's main document filed as docket number 132 and is not an attachment. As such, Defendant has identified the specific paragraph numbers of Plaintiff's alleged "affidavit," which begins on page 11 of docket number 132.

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2023 I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. I also served a copy on Plaintiff via mail at the following address:

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Yuma, AZ 85349
Pro Se Plaintiff

/s/ Stephen E. Hart
Stephen E. Hart