Docket #0140 Date Filed: 8/30/2023

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., Defendants.	Adv. Pro. No. 23-03072 (CML)

United States Courts
Southern District of Texas
FILED
AUG 30 2023
Nathan Ochsner, Clerk of Court

OBJECTION TO ECF 112

Plaintiff submits the following objections to ECF 112

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Thomas v. Gen. Motors Acceptance Corp., 288 F.3d 305, 307 (7th Cir. 2002) ---- 3

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OTHER AUTHORITIES

Jay E. Rosenblum, The Appropriate Standard of Review for a Finding of Bad Faith, 60 Geo. Wash. L. Rev. 1546, 1569-70 (1992) ---- 3

MEET AND CONFER

¶Plaintiff previously contacted counsel and informed them their arguments as to screening were invalid as the matter was screened. Counsel declined to withdraw the application.

RELEVANT FACTS

¶ Before the Third Circuit the court had the motion to recall the mandate involving the spoliation claim which forms this adversary pending.

¶The Debtor advised the Third Circuit of this bankruptcy. Defendants did not ask the court, to consider the claims against them (see attached docket). As a consequence of this failure the Third Circuit upheld the following order declining to consider the spoliation claims:

- **"In light of the suggestion of bankruptcy filed by Appellee Corizon Inc....no action will be taken on Appellant's motion" (Order by Third Circuit in Tripati v Wexford No. 22-1861, Marc 13, 2003. Referring to pleading titled FRAP 41(d) (1) application.)**

COUNSEL ARE PLAYING FAST AND LOOSE WITH THE COURT ON THEIR ARGUMEMNT AS TO SCREENING.

¶The Supreme Court in Cleveland 526 U.S. 795 (1999) defined a position of "fact" in the context of judicial estoppel when it stated that a "purely factual matter[ ]" is of the type: "'The light was red/green,' or 'I can/cannot raise my arm above my head.' In general, facts are the "who, when, what, and where. ' They involve only questions of what actually occurred and require no knowledge of any legal standard. Jay E. Rosenblum, The Appropriate Standard of

Review for a Finding of Bad Faith, 60 Geo. Wash. L. Rev. 1546, 1569-70 (1992). Thomas v. Gen. Motors Acceptance Corp., 288 F.3d 305, 307 (7th Cir. 2002)

THE PURELY FACTUAL MATTER FOR JUDICIAL ESTOPPEL

¶ The Defendants did not join the Plaintiff and did not ask the Third Circuit to consider the spoliation claims against them, except the debtor, as they were not in bankruptcy.

JUDICIAL DECEPTION BY COUNSEL MANDATES APPLICATION OF JUDICIAL ESTOPPEL

¶As the Fifth Circuit has explained, the doctrine of judicial estoppel protects the courts "by 'prevent[ing] parties from playing fast and loose with the courts to suit the exigencies of self-interest.' ", Browning Mfg. v. Mims (In re Coastal Plains, Inc.), 179 F.3d 197, 205 (5th Cir. 1999) (quoting Brandon v. Interfirst Corp., 858 F.2d 266, 268 (5th Cir. 1988)).

¶Jurists have described the threat to courts' integrity as occurring when litigants "'play[ ] fast and loose with the courts to suit the exigencies of self interest'- In re Coastal Plains, Inc., 179 F.3d 197, 205 (5th Cir. 1999) (quoting Brandon v.Interfirst Corp., 858 F.2d 266, 268 (5th Cir. 1988)) or "'abus [e] the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposite to suit an exigency of the moment.' " Warda v. Comm'r, 15 F.3d 533, 538 (6th Cir. 1994) (quoting Teledyne Indus., Inc. v. NLRB., 911 F.2d 1214, 1218 (6th Cir. 1990)). Courts maintain this rationale despite the windfall benefits accruing to some parties who successfully assert judicial estoppel.

¶ Similar statements abound, and are often made in judicial estoppel cases. As honesty is a recurrent theme, the judicial estoppel cases address the following important question: What should be done when a litigant is dishonest New Hampshire v. Maine, 532 U.S. 742, 750-51 (2001) ("[C]ourts regularly inquire whether the party has succeeded in persuading a court to

accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.") (internal quotations omitted); United States v. Newell, 239 F.3d 917, 921 (7th Cir. 2001); cf Hossaini v. W. Mo. Med. Ctr., 140 F.3d 1140, 1143 (8th Cir. 1998) (observing the minority view that judicial estoppel does not require acceptance of a position).

THE DECEPTION BY COUNSEL IN THIS MATTER

¶ Counsel is deceitful in that they have failed to disclose that the spoliation claims were previously screened.

DEFENDANTS HAVE UNCLEAN HANDS BECAUSE THEY DID NOT ALLOW THE THIRD CIRCUIT TO DECIDE SPOLIATION CLAIMS AGAINST THEM

¶Like many equitable remedies, one may not invoke judicial estoppel with unclean hands, Schneider v. Unum Life Ins. Co. of Am., No. CV 05-1402-PK, 2008 WL 109065, at *7 n.3 (D. Or. Jan. 8, 2008); Mason v. Lowe (In re Mason), Bankr. No. 11–10251, Adversary No. 11–1042, 2012 WL 733834, at *7-9 (Bankr. E.D. Tenn. Mar. 6, 2012) such as where the party seeking estoppel has suborned perjury in a prior, related proceeding Mason, 2012 WL 733834, at *8.

THE UNCLEAN HANDS ON SCREENING

¶ Counsel in this case, have concealed the fact that these claims were pending in the Third Circuit and they did not ask the Third Circuit to consider the claims as to them, for they were not in bankruptcy. This is unclean hands as to this matter.

ARTICLE 1, SEC. 8 CLAUSE 4 DOES NOT ALLOW BANKRUPTCY COURTS TO SCREEN CLAIMS

¶Bankruptcy courts are created by Article 1, Sec. 8 Clause 4 and the statute that governs it is 28 USC 1930. As stated in *Satterfield v Malloy, (In re Satterfield) 2009 US App. Lexis. 13601(10th Cir. 2009)* bankruptcy Courts are not courts of the United States. 28 USC 1930 does not have any screening provisions.

¶ Hence the argument that these claims must be screened are frivolous and designed to harass, intimidate Plaintiff and delay these proceedings.

CONCLUSION

¶ The doctrine of judicial estoppel prevents consideration of the request to screen.

Respectfully submitted,

Anant Kumar Tripati

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.

		recall the mandate was entered. Therefore, no action will be taken on the foregoing motion requesting leave to file a document in support of the motion to recall. (CJG) [Entered: 03/21/2023 08:33 AM]
03/27/2023	☐ 83 20 pg, 1.82 MB	MOTION filed by Appellant Anant Kumar Tripati to "Request to the Panel to Review March 13, 2023 Order by the Clerk." Response due on 04/10/2023. Certificate of Service dated 03/29/2023. Service made by ECF. (SLC) [Entered: 03/29/2023 10:27 AM]
04/13/2023	☐ 84 1 pg, 95.52 KB	ORDER (AMBRO*, KRAUSE and SCIRICA, Circuit Judges) denying motion by Appellant titled "Request to the Panel to Review March 13, 2023 Order by the Clerk. Ambro, Authoring Judge. *Judge Ambro assumed senior status on February 6, 2023. (SLC) [Entered: 04/13/2023 08:13 AM]