Docket #0148 Date Filed: 9/18/2023

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
SEP 18 2023
Nathan Ochsner, Clerk of Court

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

REPLY TO ECF 137
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Uranga v Davis, 893 F.3d 282, 286 (5th Cir. 2018) ---- 8

Vick v Wong, 263 FRD 325 (ED Va. 2009) ---- 7

SUMMARY OF THE REPLY

¶ Defendant is mistaken. In ECF 132 I have asked the court to hold a hearing and issue an order that enters default and judgment by Default.

SUMMARY OF AND MISSTATEMENTS IN ECF 137

¶ Counsel states at ECF 137 para 4 that the United States District Court Western District of Pennsylvania dismissed these claims and this statement is patently false,[1] because the court screened these claims, and did not address it. The Court stated:

" Distilled to its essence, the complaint alleges that the various healthcare providers, and their attorneys and ADOC policymakers, have engaged in a vast conspiracy "in advance of litigation . . . [and] have deployed their prefabricated defense against me and other pro per (sic) prisoner plaintiffs. They used the Permissible Procedural Devices in bad faith . . . They [] rigged the game from the very beginning. Seeking truthful, accurate, non-tainted evidence has never been their objective. Not mischaracterizing but creating alternative facts." Complaint at ¶¶ 9 and 9A. For example, Plaintiff alleges that "Wexford, Zwick, Forman, Weber Gallagher assembled template and stock pleadings discovery and motions documents for use by local counsel in proper prisoner litigation, that contained false or misleading information about the practices of Wexford. Specifically, concealed all emails, reports and complaints about the practices of Wexford . . .They concealed these to frustrate prisoner litigation. Then they submitted false sworn and unsworn representations including false affidavits, false and incorrect expert reports and discovery response verifications by Wexford employees, offices, consultants, and experts.

¶ The claims were screened by the court and not decided.[2] These claims were pending before the Third Circuit.(see attached Order Dated March 13, 2023)

¶ At 5 counsel argues that I am a vexatious litigant. However, counsel omits the fact that neither the Magistrate Judge, the District Court or the Third Circuit found that these claims were precluded though counsel argued before those courts, I was a vexatious litigant. [3]

¶ At 6 counsel argues that by ECF 105 they responded. However I have not received ECF 105, though I made requests.

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1 Counsel does not refer this court to that portion of the court where the court resolved the claim, because the court did not. Tripati v. Wexford Health Servs. Civil Action No. 2: 20-cv-0427 (W.D. Pa. Apr. 8, 2020)

2 Counsel does not refer to where the court decided these claims in the Third Circuit.

3 Counsel does not refer to where the Third Circuit and the District Court found that these claims were vexatious. To the contrary they allowed me to pursue these and declined to address the argument that these claims arte vexatious.

¶ At 7-10 counsel argues I have not asked for a sum certain in ECF 132.

RELEVANT PARTS OF ECF 132

¶ A court has the authority to both order entry of default and grant default judgment. Breuer Electric Man. V Tornado Systems of America, 687 F.2d 182 (7th Cir. 1982) When a litigant has not responded in three months, judgment by default is proper. PNCEF LLC v Hendricks Building Supply LLC, 2010 USD Lexis 94712 (S.D.Al. 2010)

¶ Though default judgments are generally disfavored Hassell v United States (In re Hassell) 20003 Bankr. Lexis 1856 (Bankr. N.D.Tex. 2003) they are nevertheless available for willful failure to respond. United States v Torrence, 2002 US Dist.Lexis 16343 (E.D.Tex. 2002)

¶ Punitive damages may be awarded on default Cutcliff v Reuter, 2015 US App. Lexis 11177 (8th Cir. 2015) to punish defendants for its conduct and to deter future similar conduct. Smith v Wade, 461 US 30, 49-50(1983)

¶The treble damages in RICO are remedial not punitive PacificCare Health Sys, Inc v Book, 538 US 401, 406-07(2003). When common law claims are alleged in addition to RICO claims, punitive damages are available. Humana Inc v Forsythe, 525 US 299, 313 (1999)

¶ When awarding punitive mages, the reprehensibility of the conduct is a key factor. BMW of North America Inc v Gore, 517 U.S. 559, 585-85(1996)

¶ Under the Rules, there is no need to prove the summons and complaint were received only that they were mailed. Rebein v Adkins (III Inc) 2006 Bankr. Lexis 707 (Bankr. Kansas 2006) see also Flores v Safadi (In re Safadi) 2010 Bankr. Lexis 1979 (Bankr. D Ariz. 2010)

THE CONDUCT THAT I ALLEGE AS TO WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP

¶ The complaint states :

- **July 16, 2013 Weber Gallagher sent a email to Skelton Hochuli that training given to staff are to be released to inmates in discovery. February 3 2013 Mullenaux of Wexford sent emails to all staff that staff should just change reports required by Parsons to make it look good. (ECF 96 @ 155) January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery. (ECF 96 @ 156) January 4, 2013 Mullenaux of Wexford sent emails to all staff that inmates Wexford staff should not send inmates to hospital and in the event they die, Wexford will take care of it. (ECF 96 @ 157) October 6, 2012 Mullenaux of Wexford sent emails to all staff that inmates are not to be referred to specialists of provided essential treatment as the costs are exorbitant and Wexford is not getting paid much. (ECF 96 @ 158)**
- **September 9, 2012 Weber Gallagher sent a email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery. (ECF 96 @ 159) August 18, 2012, May 21, 2013; and March 6, 2013 ADCRR informed Wexford by emails that Wexford should reexamine the reports as they appear falsified. (ECF 96 @ 160)**

¶ This is the same spoliation claim that was screened by the District Court and I was allowed to proceed on and which was pending in the Third Circuit when the Bankruptcy was filed.

- **" Distilled to its essence, the complaint alleges that the various healthcare providers, and their attorneys and ADOC policymakers, have engaged in a vast conspiracy "in advance of litigation . . . [and] have deployed their prefabricated defense against me and other pro per (sic) prisoner plaintiffs. They used the Permissible Procedural Devices in bad faith . . . They [] rigged the game from the very beginning. Seeking truthful, accurate, non-tainted evidence has never been their objective. Not mischaracterizing but creating alternative facts." Complaint at ¶¶ 9 and 9A. For example, Plaintiff alleges that "Wexford, Zwick, Forman, Weber Gallagher assembled template and stock pleadings discovery and motions documents for use by local counsel in proper prisoner litigation, that contained false or misleading information about the practices of Wexford. Specifically, concealed all emails, reports and complaints about the practices of Wexford . . .They concealed these to frustrate prisoner litigation. Then they submitted false sworn and unsworn representations including false affidavits, false and incorrect expert reports and discovery response verifications by Wexford employees, offices, consultants, and experts.**

LIMITED DISCOVERY AS TO DAMAGES SHOULD BE ORDERED

¶Limited discovery as to the amount of damages should be ordered Direct TV Inc v Guzzi, 308 F.Supp. 2d 788 (ED MI 2004)

1. Any instructions, directives, emails, memos sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning discovery from inmates proceeding pro per in litigation against Wexford and or its employees, proceeding pro per, 2012-2014.
2. Any instructions, directives, emails, memos sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning motions for summary judgment by inmates proceeding pro per in litigation against Wexford and or its employees, proceeding pro per, 2012-2014.
3. Any instructions, directives, emails, memos sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning motion for summary judgment in litigation against Wexford and its employees, by Anant Kumar Tripati.
4. Any instructions, directives, emails, memos sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning discovery requested by Anant Kumar Tripati in litigation against Wexford and its employees, proceeding pro per, 2012-2014.
5. Any instructions, directives, emails, memos, documents sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning Jensen fka parsons v Ryan as to the role of Wexford and or its employees CIV 12-00601 ROS 2012-2014.
6. Any documents emails, memos sent by Weber Gallagher Simpson Stapleton Fires & Newby LLP; concerning the termination of healthcare contract by Wexford.

AS DEFENDANTS HAVE NOT SET FORTH A MERITORIOUS DEFENSE DEFAULT AND DEFAULT JUDGMENT IS PROPER

¶ Relief from default requires a showing that there is a meritorious defense and Defendants have not made that showing. In re J. B. Lovell Corp, 1988 Bankr. Lexis. 1048 (ND Ga. 1988)

¶ Their responses shows that they are evading service, going to extremes, even trying the take advantage of clerical error. Addison v Reitman Blacktop Inc., 272 FRD 72 (ED NY 2010)

¶ Their BR7004 defense is frivolous as it clear they have been properly served in compliance with BR 7004. Stephenson v El-Batrawi, 524 F3d 907(8th Cir. 2008)

¶ Defendants have proffered no meritorious defense to the allegations Vick v Wong, 263 FRD 325 (ED Va. 2009)

¶ As there is no good reason not to respond, default is proper. In re Knight, 833 F2d 1515 (11th Cir. 1987)

¶ Because service in compliance with BR 7004 has been accomplished, Defendants intentional refusal to respond, warrants default and judgment by default. Price v America's Servicing Co., (In re Price) 2007 Bankr. Lexis 36662 (Bankr. ED Ark. 2007) Adversary 2008 Bankr. Lexis 1590 (Bankr. ED Ark. 2008)

CONCLUSION

¶ When as in this case, Defendants are stalling process, default and judgment by default should be ordered. PNCEF LLC v Hendrixs Bldg. Supply LLC 740 F Supp2d 1287 (SD Ala. 2010)

Respectfully submitted,

Anant Kumar Tripati

PROOF 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.

Case 23-03072 Document 148 Filed in TXSB on 09/18/23 Page 28 of 49

...zona Department of Corrections
...habilitation and Reentry
Legal Mail Log

Legal correspondence shall be opened and inspr for contraband only in the presence of the inmate (As outlined in A Department of Corrections, Rehabilitation and Reentry (ADCRR,, partment Order 914, Inmate Mail). If the inmate is not in the unit return the unopened Legal Mail to Complex Mail Room.

	DATE *(mm/dd/yyyy)*
)LA	02/16/2023

metal and other contraband have been removed prior to issuing to inmate.*

nate Name *Print name)*	ADCRR Number	Housing	Date *(mm/dd/yy)*	Signature	Received From / Mail To	Tracking Number	Contents	Outgoing Postage	Officer/Badge Number
'ATI A	102081	4D15L	02/16/23		U.S Court of Appeals 601 Marcet St #21400 Philadelphia, CA 19106				

E: *Shift Commander shall sign and date upon completion of all Legal/Certified Mail distribution.*

T COMMANDER NAME *(Last, First M.I.) (Please print)*	SIGNATURE	DATE *(mm/dd/yyyy)*
pl. V. Servantis	Cpl. V. S 1289	2-16-23

2-16-23

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1861

Tripati v. Wexford Health Sources Inc.

To: Clerk

1) Suggestion of Bankruptcy received from Appellee Corizon Inc.

2) Motion by Appellant titled FRAP 41(d)(1) Application and Request for Other Relief

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In light of the suggestion of bankruptcy filed by Appellee Corizon Inc., indicating the defendant in the lower court filed a petition for relief under the Bankruptcy Code, no action will be taken on Appellant's motion. See 11 U.S.C. § 362 (actions against the debtor may not proceed during the pendency of the bankruptcy).

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: March 13, 2023
CJG/cc: Anant Kumar Tripati
Christopher J. Watson, Esq.
Joseph J. Bosick, Esq.
Holly M. Whalen, Esq.
Jason M. Yarbrough, Esq.
Rita Bustos, Esq.
Alyssa R. Illsley, Esq.
Kevin L. Nguyen, Esq.
Cassidy L. Neal, Esq.

Inmate [redacted]
ADC # [redacted]
Arizona State Prison Complex Yuma
Unit [redacted]
[redacted] AZ [redacted]

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515 Rusk
Houston, TX 77002