Docket #0170 Date Filed: 10/31/2023

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

DEFENDANT SCOTTSDALE INSURANCE COMPANY'S
RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT

Defendant Scottsdale Insurance Company ("Scottsdale") files the following Response to Plaintiff's "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (Doc. 165), stating in support as follows:

I. BRIEF FACTUAL & PROCEDURAL OVERVIEW

1. Plaintiff initiated this instant action in May 2023 when he filed a 139-page and 458-paragraph complaint against numerous defendants, including Scottsdale. *See* Doc. 1, Plaintiff's Adversary Complaint (the "Complaint").

2. Scottsdale was first made aware of this action on June 24, 2023, when it was discovered that Plaintiff filed an application for default against Scottsdale (Doc. 72) for failing to respond to the Complaint. Scottsdale, however, was never served with a copy of the Complaint or Summons.

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3. On August 4, 2023, Scottsdale filed a Motion for Time Extension to Respond to the Complaint (Doc. 104) where Scottsdale agreed to waive formal service of process and requested additional time to file a response to the Complaint. The Court granted that motion on August 7, 2023 (Doc. 108).

4. Scottsdale timely filed a Motion to Dismiss in lieu of a formal answer to the Complaint on September 27, 2023, arguing that the Complaint fails to state a plausible claim for relief and should be dismissed accordingly under Fed. R. Civ. P. 12(b)(6).

5. Plaintiff has since filed the "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (the "Motion for Contempt") directed at Scottsdale. *See* Doc. 165. In his Motion for Contempt, Plaintiff argues Scottsdale should be found in default and sanctioned because it violated the Court's Order by allegedly failing to file a "responsive pleading" to the Complaint. Plaintiff, however, misinterprets the Federal Rules which provide Scottsdale the option to file a Rule 12 motion in lieu of a formal answer.

II. ARGUMENTS & AUTHORITIES

6. Per to the plain and unambiguous language of Fed. R. Civ. P. 12, Scottsdale may (and did) file a Rule 12(b) motion in lieu of a formal "responsive pleading." Fed. R. Bankr. P. 7012(a) specifically states, in part:

> If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.
> …
> *The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action*; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.

(emphasis added). Fed. R. Civ. P. 12(b)—which includes a Rule 12(b)(6) motion to dismiss for failure to state a claim—is made applicable to bankruptcy adversary proceedings under Fed. R. Bankr. P. 7012(b).

7. While Scottsdale was never properly served with Plaintiff's Complaint, Scottsdale waived its right to formal service of process and requested an extension of time to file a response to the Plaintiff—a request which was granted by the Court (Doc 108). Therefore, contrary to Plaintiff's assertions, Scottsdale was never "in default."

8. Scottsdale, moreover, properly submitted a "responsive pleading" pursuant to Fed. R. Bankr. P. 7012 when it filed its Motion to Dismiss (Doc. 153), a motion "permitted under the Rules" which altered Scottsdale's timeframe to file a formal answer to the Complaint. *See Arias v. Franklin Credit Mgmt. Corp. (In re Arias)*, case no. 22-00004, 2023 Bankr. LEXIS 258, at *17 (Bankr. D.P.R. Feb. 1, 2023) ("In the instant case, the Complaint was a pleading to which a responsive pleading was required. [The defendant] filed [its] Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) *in lieu of an answer*.") (emphasis added)).

9. To the extent the Court denies Scottsdale's Motion to Dismiss, Scottsdale submits it will timely file an answer to Plaintiff's Complaint pursuant to Fed. R. Bankr. P. 7012.

III. CONCLUSION & PRAYER

10. For these reasons, Scottsdale respectively prays that the Court deny Plaintiff's Motion for Contempt, and for all such other relief to which it may show itself justly to be entitled.

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and mailed this the 31st day of October, 2023 to:

Anant K. Tripati 102081
ASPC Yuma, Cibola Unit
P.O. Box 8909
Yuma, AZ 85349
United States

#9414 7266 9904 2178 2266 38

/s/ Patrick M. Kemp
Patrick M. Kemp

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ORDER DENYING PLAINTIFF'S MOTION FOR CONTEMPT

ON THIS DAY came to be heard Plaintiff Anant Kumar Tripati's "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (Doc. 165) against Defendant Scottsdale Insurance Company. After considering the Motion and the Response of Scottsdale Insurance Company, the Court is of the opinion that Plaintiff's Motion for Contempt against Defendant Scottsdale Insurance Company should be and is hereby DENIED. It is therefore ORDERED that Plaintiff's Motion for Contempt against Defendant Scottsdale Insurance Company is DENIED in its entirety.

SO ORDERED on this ____ day of _____, 2023.

Hon. Christopher Lopez
United States Bankruptcy Judge