Docket #0175 Date Filed: 11/6/2023

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

In re:	:	Case No. 23-90086
TEHUM CARE SERVICES, INC.,	:	Chapter 11
Debtor,	:	
ANANT KUMAR TRIPATI,	:	Adv. Proc. No. 23 AP 3072
Plaintiff,	:	
v.	:	
SARA TIRSCHWELL, et al,	:	
Defendants.	:	

RESPONSE TO PLAINTIFF'S MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS (ECF DOC. 162) OF JONES, SKELTON & HOCHULI, P.L.C. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 7012 AND FRCP 12(B)(2), 12(B)(5) AND 12(B)(6)

Defendant Jones, Skelton & Hochuli, P.L.C. ("JSH") and its attorneys, Holly M. Whalen, Esquire, admitted *Pro Hac Vice*, and DiBella Weinheimer (collectively, "Respondents") file the following response to Plaintiff Anant Kumar Tripati's Motion for Inherent Power and Rule 11 Sanctions (ECF Doc. 162)("Motion for Sanctions") and state as follows:

I. OVERVIEW AND PROCEDURAL BACKGROUND

Plaintiff Anant Kumar Tripati, a known habitual litigant, has now filed a Motion asking this Honorable Court to impose sanctions against JSH and its counsel relating to arguments made in support of JSH's dismissal from this action. Plaintiff's request lacks any support in fact or law and must be denied.

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In this action filed by Plaintiff by Complaint (ECF Doc. 1) on May 1, 2023, Plaintiff asserts that the various Defendants, including various healthcare providers that provide healthcare services to correctional facilities and prison systems, employees of the Arizona Department of Corrections, as well as the lawyers and law firms that have represented those individuals and entities in litigation by Plaintiff and others across the country have engineered a scheme to deploy prefabricated defenses in prisoner litigation by using permissible procedural devices in bad faith and rigging the game from inception. Although Plaintiff has sought to amend his pleading a number of times during the pendency of this action, the bald, sweeping accusations made by Plaintiff remain virtually the same. *See*, (ECF Docs. 1, 4-1 and 96).

Plaintiff's most recent attack on certain Defendants in this case, seeking sanctions relating to arguments by those Defendants that Plaintiff's claim have previously been decided by other courts, must fail. Contrary to Plaintiff's assertion, neither JSH nor its counsel made any false statements, misled this Honorable Court or concealed any facts with respect to the arguments made on behalf of JSH in this action.

Rather than repeat *ad nauseum* the history and background of this case as well as Plaintiff's multitude of previous lawsuits filed against the various Defendants in the courts of Arizona and Pennsylvania, Respondents herein incorporate the Factual Background, Procedural History and Argument set forth in JSH's Motion to Dismiss Pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rules of Civil Procedure 12(b)(2), (5) and (6) (ECF Doc. 28), Exhibits thereto and Brief in Support thereof (ECF Doc. 30) as well as its Reply Brief in support thereof (ECF Doc. 131).

II. LEGAL ARGUMENT

a. Legal Standard

Federal Rule of Civil Procedure 11 is incorporated into bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9011. Under Bankruptcy Rule 9011, an attorney presenting a pleading or motion to the court certifies, to the best of his knowledge that: "(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law…; (3) the allegations and other factual contentions have evidentiary support…; and (4) the denials of factual contentions are warranted on the evidence…." F.R.B.P. 9011(b). Under Rule 11, and thus Bankruptcy Rule 9011, the court employs an objective standard when determining whether the conduct of the parties or their counsel is in violation of the rule. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 498 U.S. 533 (1991).

With respect to imposition of sanctions under a court's inherent power, the threshold for use of the inherent power sanctions is high. Reed v. Iowa Marine and Repair Corp., 16 F.3d 82 (5th Cir. 1994). To impose sanctions against an attorney under its inherent power, a court must make a specific finding that the attorney acted in 'bad faith.'" Chaves v. M/V Medina Star, 47 F.3d 153, 156 (5th Cir. 1995)(internal citations omitted). No facts exist upon which sanctions under Rule 11, Rule 9011 or this Court's inherent power are appropriate.

b. No Factual or Legal Basis Exists for Sanctions under Rule 11, Bankruptcy Rule 9011 or this Honorable Court's Inherent Power Against JSH or its Counsel.

As against JSH and its counsel, Tripati's sole basis for requesting sanctions is that JSH, through its counsel, informed this Honorable Court in its Reply Brief in Support of Motion to

Dismiss Pursuant to Federal Rule of Bankruptcy Procedure 7012 and FRCP 12(B)(2), 12(B)(5) and 12(B)(6)(ECF Doc. 131) that Tripati's spoliation claims raised by him here in this Court had been fully litigated before the United States Court of Appeals for the Third Circuit and that JSH and its counsel had somehow engaged in "concealing the material fact that before the Third Circuit there was pending a motion to recall the mandate F[sic]iled February 16, 203[sic]". *See*, Motion for Sanctions at 3-4. Tripati's assertion is wholly without merit and lacks any support in fact or law.[1]

Simply, JSH, by and through its counsel did not "conceal" any material fact, mislead this Court nor misrepresent the Pennsylvania Courts' determinations regarding the litigation of Plaintiff's prior claims, either before the United States Court of Appeals for the Third Circuit in the appeal captioned, Anant Kumar Tripati, Appellant v. Wexford Health Sources, Inc. et al., Appellees, No. 22-1861, or before the United States District Court for the Western District of Pennsylvania in the civil action captioned Anant Kumar Tripati, Plaintiff v. Wexford Health Sources, Inc. et al., Defendants, Civil Action No. 2:20-cv-0427. To the contrary, JSH, through its counsel, repeatedly referenced and quoted the claims made by Plaintiff, filings made of record by the parties and the courts' determinations both at the trial level and on appeal. Despite Plaintiff's argument to the contrary now, it is clear on the face of the Pennsylvania Courts' Orders and Opinions that the spoliation claims as raised in the Pennsylvania litigation, and regurgitated here, were decided up through and including denial by the Third Circuit of Plaintiff's request for rehearing and issuance of the mandate (3d Cir. ECF 73 and 74). It is clear from the filings thereafter by Plaintiff seeking additional time in which to file his Petition for Writ of Certiorari (3d

[1] Notably, JSH's Motion to Dismiss is also based on additional arguments including lack of jurisdiction, improper service and failure to state a claim upon which relief may be granted. (ECF Docs. 28, 30 and 131).

Cir. ECF Docs. 75 and 76), that even Plaintiff conceded that his only potential route to keeping his claim alive was through a Petition to the United States Supreme Court.

While vague and a bit obscure, the crux of Plaintiff's argument now appears to be the fact that JSH failed to advise the Court that Plaintiff had filed in the Third Circuit what he designated a "FRAP 41(d)(1) Application and Request for Other Relief" (3d Cir. ECF 79) after Corizon, Inc. filed its Suggestion of Bankruptcy (3d Cir. ECF 78) on February 17, 2023. Plaintiff's filing on February 17, 2023, simply has no relevance to this action. The Rule 41(d)(1) filing does not change the fact that the Third Circuit finally and definitively dismissed, with prejudice, the entirety of Plaintiff's claims against all Defendants. Contrary to any argument made by Plaintiff, his February 17, 2023 filing did not render the Third Circuit's Order affirming dismissal of his claims, including his claims relating to spoliation of evidence, a nullity. At most, a motion pursuant to Federal Rule of Appellate Procedure 41(d)(1) could only provide a stay of the mandate pending the filing of a petition for a writ of certiorari to the Supreme Court. *See* Federal Rule of Appellate Procedure 41(d). Given the nature and procedural status of Plaintiff's claim, i.e., dismissal of the entirety of Plaintiff's claims against all Defendants, a stay of the mandate would have served no purpose and was nonsensical.

As accurately noted in JSH's Reply Brief (ECF Doc. 131), Tripati's sole course of relief with respect to those claims is to pursue a Petition for Writ of Certiorari to the United States Supreme Court, and, thus, his attempt to relitigate those issues in this Court is improper. Because neither JSH, nor its counsel, engaged in any conduct violative of Rule 11 or Bankruptcy Rule 9011 or which could be considered bad faith, Plaintiff's Motion must be denied.

III. CONCLUSION

For the foregoing reasons, Plaintiff Anant Kumar Tripati's Motion for Inherent Power and Rule 11 Sanctions (ECF Doc. 162) filed against, *inter alia*, Jones Skelton & Hochuli, P.L.C. and its counsel, Holly M. Whalen and the law firm of DiBella Weinheimer should be denied.

Respectfully submitted,

DIBELLA WEINHEIMER

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Reply Brief in Support of Motion to Dismiss was served upon all counsel of record this 6th day of November, 2023, via the Court's ECF and by mailing the same via U.S. Mail, first-class, postage pre-paid to:

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