Docket #0181 Date Filed: 11/17/2023

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	**Case No. 23-90086**
TEHUM CARE SERVICES, INC.	§	**(Jointly Administered)**
	§	
DEBTORS.	§	**Chapter 11**

ANANT KUMAR TRIPATI	§	**Adversary No. 23-03072**
	§	
Plaintiff	§	
v.	§	
	§	
SARA TIRSCHWELL, et al.,	§	
Defendants.	§	

RESPONSE TO PLAINTIFF'S APPLICATION FOR ENTRY OF DEFAULT

Sara Tirschwell, defendant in the above-referenced bankruptcy case ("Tirschwell"), by and through her counsel, files this opposition to Plaintiff's Application to the Clerk for Entry of Default [Docket No. 156] (the "Application"), and in support thereof, shows as follows:

1. On May 1, 2023, Plaintiff Anant Kumar Tripati ("Plaintiff") filed his Verified Adversary Complaint [Docket No. 1] (the "Complaint") in the Bankruptcy Court for the Southern District of Texas, initiating the above-referenced adversary proceeding.

2. The Court's docket reflects that a summons was issued for Tirschwell and many other defendants on May 4, 2023 [Docket No. 2], and that service was executed on Tirschwell on May 19, 2023 [Docket No. 9]. However, the address listed on the certificate of service is 205 Powell Place #104, Brentwood, Tennessee 37027, which is the address of YesCare and Corizon Health, the debtor's predecessor in interest. Tirschwell has not been associated with those companies since March of 2023, and does not have an office or residence at the address at which Plaintiff claims to have effectuated service.

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3. On October 3, 2023, Plaintiff filed his Application, seeking entry of default against Tirschwell. This, too, was served by mail to 205 Powell Place #104, Brentwood, Tennessee 37027.

4. A plaintiff bears the burden of demonstrating proper service of a complaint and summons. *RooR Int'l BV v. A1 Smoke Shop Inc.,* 2019 WL 6330543 (S.D.Tex. Oct. 18, 2019) (citations omitted). The Plaintiff has not, and cannot prove proper service on Tirschwell, because she has not been properly served. A plaintiff is not entitled to obtain a default judgment until proper service is effectuated. *Id.* (citations omitted). Until Plaintiff properly serves Tirschwell, and the time to answer has actually run, entry of default would be inappropriate.

5. In addition to the above, Plaintiff is not entitled to a default under the Federal Rules of Bankruptcy Procedure because his claims are not for a sum certain, nor does Plaintiff set forth the proposed judgment amount. Fed. R. Bankr. P. 7055.

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

Dated: November 17, 2023

Respectfully submitted,

McCLOSKEY ROBERSON WOOLLEY, PLLC

By: /s/ *Thomas A. Woolley, III*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on (i) all parties receiving ECF notice in the case, and (ii) to the following addresses via First Class Mail.

Anant Kumar Tripati 102081
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/s/ Thomas A. Woolley, III
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