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

In re:	§	**Chapter 11**
TEHUM CARE SERVICES, INC	§	**Case No. 23-90086 (CML)**
Debtor[1]	§	
ANANT KUMAR TRIPATI **Plaintiff,**	§	**Ad. Proc. No. 23-03072 (CML)**
V.	§	
SARAH TIRSCHWELL, et al., **Defendants**	§	

OBJECTION TO MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS AGAINST THOMAS O. BEAN, ESQ. [AND] NATHANIEL R. HULL, ESQ., ADMITTED PRO HAC VICE OF VERRILL DANA LLP FILED BY ANANT KUMAR TRIPATI
(*Re*: AP Docket No. 173)

NOW COMES undersigned counsel to Coverys Specialty Insurance Company ("**Coverys**") and files this *Objection* (the "**Objection**") to the *Motion for Inherent Power and Rule 11 Sanctions Against Thomas O. Bean, Esq. [and] Nathaniel R. Hull, Esq. Admitted Pro Hac Vice of Verrill Dana LLP* [Dkt. No. 173] (the "**Motion for Sanctions**") filed by Plaintiff Anant Kumar Tripati ("**Mr. Tripati**").

In support of the Objection, undersigned counsel states as follows:

[1] The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

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Mr. Tripati's motion for sanctions – his third to date in this adversary proceeding[2] - is meritless. The central premise is the preposterous notion that undersigned counsel's verbatim recitation of the docket entries in prior pleadings:

> • Were filed to manipulate the bankruptcy process and assist in the perpetration of the biggest fraud in United States Bankruptcy history. *Armstrong v Davis, 2012 USD 135389 (ED Tex 2012)*
>
> • [Were] not well grounded in fact and law. *In re French Gardens Ltd, 1986 Bankr. Lexis 6894 (SD Tex 1986)*
>
> • [W]ere filed without counsel performing their duty to investigate. *In re Phillips, 2008 Bankr. Lexis 412 (SD Tx 2008)*
>
> • [W]ere filed to harass and delay these proceedings. *In re Rogers 2002 Bankr. Lexis 1963 (ND Tx 2002)*
>
> • [And] [t]he pleadings, arguments, all contain falsehoods and are not privileged. *In re Legrand*, 2022 Bankr. Lexis 894 (Bank. EDCA 2022) *In re French*, 162 BR 541(Bankr. D.SD. 1994).

Motion for Sanctions, p. 6.

Although Mr. Tripait claims that "[r]eliance on the docket entries does not constitute reasonable inquiry under these circumstances," Motion for Sanctions, p. 5, undersigned counsel's accurate recitation of docket entries was both objectively reasonable and in good faith. Accordingly, the Motion for Sanctions should be denied.

I. Background

1. On May 1, 2023, Plaintiff filed a *Complaint* (the "**Complaint**") initiating the above-captioned adversary proceeding.

[2] *See* Dkt. Nos. 93 (*Motion for Inherent Power and Rule 11 Sanctions Against Counsel and Defendants*), 162 (*Motion for Inherent Power and Rule 11 Sanctions Against Holly M. Whalen, Esq.; Dibella Weinheimer; Jones Skelton Hochuli PC; Michael P. Ridulfo, Esq.; Kane Russell Coleman PC; Gregory C. Michaels; Dickey McCamey & Chilcote; Wexford Health Sources*, and 173 (*Motion for Inherent Power and Rule 11 Sanctions Against Thomas O. Bean Esq, Nathaniel R. Hull Esq Admitted Pro Hac Vice of Verrill Dana LLP*).

2. On May 4, 2023, a docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

3. On May 19, 2023, a docket notation reflects that "Summons Issued on," among others, Coverys Specialty Insurance Company.

4. Still later, on June 28, 2023, a docket notation reflects that "Summons Not Issued" as to, among others, Coverys Specialty Insurance Company.

5. On July 17, 2023, although (a) the June 28, 2023 docket entry expressly states that no summons was issued as to Coverys and (b) Mr. Tripati both failed to (i) serve Coverys with a Summons and Complaint in this adversary proceeding as required by Bankruptcy Rule 7004, and (ii) file a Return of Service with respect to service of the Summons and Complaint on Coverys, Mr. Tripati filed an *Application to the Clerk for Entry of Default Against Coverys Specialty Insurance Company for Failure to Plead or Respond Otherwise* [Dkt. No. 83] (the "**First Application for Entry of Default**").

6. On August 4, 2023, Coverys timely filed and served upon Mr. Tripati its *Objection to Application to the Clerk for Entry of Default Against Coverys Specialty Insurance Company for Failure to Plead or Respond Otherwise* [Dkt. No. 102] (the "**First Objection**").

7. The Court has not acted on the First Application for Entry of Default nor has Mr. Tripati cured the jurisdictional prerequisite that Coverys be properly served with a summons and the Complaint.

8. Nonetheless, on August 29, 2023, Mr. Tripati filed his *BR Application For Default Judgment Against Weber Gallagher Simpson Stapleton Fires & Newby LLP; Evanston Insurance Company; Zurich American Insurance; American Zurich Insurance Company; Columbia Casualty Company; Scottsdale Insurance Company; Coverys Specialty Insurance Company; Hartford*

Casualty Insurance Company; Beecken Petty O'Keefe, A Delaware Corporation [Dkt. No. 132] (the "**Second Application for Entry of Default**").

9. On September 12, 2023, Coverys timely filed and served upon Mr. Tripati its *Objection* to the Second Application for Entry of Default [Dkt. No. 144] (the "**Second Objection**").

10. The Court has not acted on the Second Application for Entry of Default nor has Mr. Tripati cured the jurisdictional prerequisite that Coverys be properly served with a summons and the Complaint.

II. Objection

11. In assessing whether an attorney has met the obligations required under Rule 11, the Court applies the "snapshot" rule, measuring the attorney's conduct as of the time of the filing. *Marlin v. Moody Nat. Bank, N.A.,* 533 F.3d 374, 380 (5th Cir. 2008); *In re Harris*, No. 13-36395, 2015 WL 2210339, at *5 (Bankr. S.D. Tex. May 8, 2015) ("A rule 11 sanction is appropriate only as measured by the 'snapshot' rule, measuring the attorney's conduct as of the time of the signing."). The question is whether the lawyer's certification complies with an objective standard of reasonableness under the circumstances. *Whitehead v. Food Max of Miss., Inc.,* 332 F.3d 796, 802 (5th Cir.2003). The burden of proof is on the moving party to establish that sanctions are appropriate. If a prima facie case is made, only then does the burden shift to the attorney or party against whom sanctions are sought to demonstrate a legitimate basis for the offending filing. *In re KPMA Partnership Ltd*., 2006 WL 2868978, at *1 (Bankr. S.D. Tex. Oct. 5, 2006). "[S]anctions are normally reserved for rare and exceptional case[s] where the action is clearly frivolous, legally unreasonable, or without legal foundation or brought for an improper

purpose. It is an extraordinary remedy, one to be exercised with extreme caution." *Sievert v. Howmedica Osteonics Corp*., 2020 WL 2507678, at *3 (N.D. Tex. May 15, 2020).

12. With respect to imposition of sanctions under a court's inherent power, the standard for imposing such sanctions is "extremely high" and a court must make a specific finding that the attorney acted in "bad faith." *Goldin v. Bartholow*, 166 F.3d 710, 722 (5th Cir. 1999); *see also Boland Marine & Mfg. Co. v. Rihner*, 41 F.3d 997, 1005 (5th Cir. 1995) ("A court should invoke its inherent power to award attorney's fees only when it finds that fraud has been practiced upon it, or that the very temple of justice has been defiled.") (internal quotations and citations omitted).

13. Here, undersigned counsel did nothing more that recite – *verbatim* – docket entries from this adversary proceeding. A litigant is entitled to rely upon the authenticity and accuracy of the Court's docket, *In re Estate of Burger*, 852 A.2d 385, 392 (Pa. 2004), and courts routinely take judicial notice of prior court proceedings as matters of public record as they are sources of fact "whose accuracy cannot reasonably be questioned." *See* Federal Rule of Evidence 201; *see also In re Deepwater Horizon*, 934 F.3d 434, 440 (5th Cir. 2019) (citing *ITT Rayonier Inc. v. United States*, 651 F.2d 343, 345 n.2 (5th Cir. 1981) ("A court may . . . take judicial notice of its own records or those of inferior courts.")).

14. Here, Coverys' counsel did nothing more than accurately recite the entries that appear on the Court's docket and, notwithstanding the cascading series of evils Mr. Tripati attributes to undersigned counsel's recitation of these docket entries, Mr. Tripati has not disputed (a) the fact of the entries on the docket, (b) the authenticity of the docket entries, (c) or the accuracy of undersigned counsel's recitation of the docket entries. As courts routinely take judicial notice of docket entries as "sources [of fact] whose accuracy cannot reasonably be questioned," Fed. R. Evid. 201, counsel's reliance on the Court's docket – a source whose accuracy cannot reasonably

be questioned – necessarily meets an "objective standard of reasonableness" and was not "in bad faith." Therefore, no facts exist upon which sanctions under Rule 11, Rule 9011 or this Court's inherent power, are appropriate.

IV. Conclusion

For the reasons set forth above, Mr. Tripati's Motion for Sanctions should be denied.

Dated: November 18, 2023
Boston, Massachusetts

Respectfully submitted,

VERRILL DANA LLP

By: */s/ Thomas O. Bean*

Thomas O. Bean (admitted *pro hac vice*)
VERRILL DANA, LLP
One Federal Street, 20th Floor
Boston, Massachusetts 02110
Tel: 617-309-2606
E-mail: tbean@verrill-law.com

- and -

Nathaniel R. Hull (admitted *pro hac vice*)
VERRILL DANA, LLP
One Portland Square
Portland, Maine 04101
Tel: 207-253-4726
E-mail: nhull@verrill-law.com

Counsel to Coverys Specialty Insurance Company

Certificate of Service

I, Thomas O. Bean of Verrill Dana, LLP, certify that I am over the age of eighteen and, on November 18, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas in the above-captioned adversary proceeding and on the Plaintiff by first-class mail, postage prepaid to the address below.

/s/ *Thomas O. Bean*
Thomas O. Bean (admitted *pro hac vice*)

***Via* First Class Mail, Postage Prepaid:**
Anant Kumar Tripati
#102081
P.O. Box 8909
Yuma, AZ 85349