Docket #0192 Date Filed: 12/7/2023

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

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

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

MOTION TO FILE 801(d)(2)(A)(B)(C)(D STATEMENTS IN SUPPORT OF PENDING MOTIONS

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through counsel.

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¶ON November 2, 2023 I received the attached and ask this court to consider these in support of all pending motions.

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OTHER AUTHORITIES

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FIRST BASIS FOR RELIEF

¶The attached ECF 986-1pp 2 shows that the Debtor has not changed the address of Sara Tirschwell and Valitas.

¶ However Sara Tirschwell and Valitas have argued that the address that the Debtor has given this Court is not the address for service. Cossio v Cate, (In re Cossio) 56 F.3d 70 (9th Cir. 1995) holds that the Debtor has the duty to change the address and the adder on the petition is the proper address to serve.

¶ This material false statement mandates default be entered.

SECOND BASIS FOR RELIEF

¶ In ECF 986-1 pp 82 attached the Debtor wants releases to Corizon, M2, Valitas, Tirschwell and others.

¶These are 801(d)(2)(A)(B)(C)(D) admissions that a conspiracy exists, knowledge of each other's activities. United States v Mendoza, 473 F 2d 697(5th Cir. 1973) Morrisson v Western Building of Amarillo Ins (In re Morrisson) 555 F.3d 473 (5th Cir. 2009) United States v Gurroia, 898 F2d 524(5th Cir. 2018)

WHAT DO THESE 801(D)(2) STATEMENTS ESTABLISH

¶After taking billions of dollars during COVID, the Debtor hid its assets with its parent Valitas and sister companies M2 Loan, M2Equity and M2Hold. (ECF 96 @ 119) It did not make these disclosures as mandated by the law, in the schedules it filed.

¶In order to ensure the success of the Debtor's scheme, the liability insurers, made policy exceptions because of the premiums, thereby enabling the Debtor. (ECF 96@ 125-264-287) by and through emails and faxes (ECF 96@ 128-147)

¶Billions of dollars have been allocated by the United States during the COVID. Corizon, an entity owned by Valitas ,Becken O'Keefe, obtained these funds. They however did not use these funds for the purposes intended.

¶They gave their management bonuses, but the staff in the prisons got nothing.

¶Corizon did this in every prison or jail, they have had contracts in.

¶In furtherance of the scheme to conceal assets and file this fraudulent bankruptcy, Sara Tirschwell; Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation, (hereinafter Valitas Family Of Companies), all through mail and emails from and to ch.com determined that Corizon reorganize in Texas.

¶They agreed to form Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a TexasCorporation and CHS Tex, a Texas Corpration. Never has Corizon maintained its place of business in Texas. It has always maintained its principal place of business in Tennessee. This was all accomplished by emails sent from corizonhealth.com (hereinafter "ch.com")

¶They agreed to transfer bulk of the assets to CHS TEX, liabilities to Yescare and bonds and policies to Tehum. This reorganization was a sham designed to defraud. They then as planned filed for bankruptcy.

¶The Ankura consulting was hired to conduct due diligence. Russell Perry of Ankura did not examine the financials as he should have, especially the use of COVID funds, and any claims against Corizon for spoliation of evidence.

¶M2 HoldCo LLC, ;M2 LoanCo LLC; M2 EquityCo LLC, agreed to give Corizon loans from monies laundered from the assets of Corizon. These were sham loans.

¶Valitás Health Services is majority owned by Beecken Petty O'Keefe & Company, a Chicago-based private equity management firm. Beecken's other holdings are primarily in the healthcare industry.

THE CORPORATE STRUCTURE IS A MERE INSTRUMENTALITY TO PERPETRATE FRAUD

¶The corporate structure is a mere instrumentality to perpetrate fraud. The medical director of Wexford, Corizon, Centurion and Naphcare have testified that the Debtor is in the business of denying inmates care that meets constitutional standards. (ECF 96@ 100-118)

¶In Husky International Electronics, Inc. v. Ritz, explores the meaning of the word "fraud" under a federal bankruptcy statutory section. That section uses the term "actual fraud," and bears upon the question of whether a particular debt should be denied a discharge. The Court's approach in defining fraud affords guidance to the question of defining fraud under other statutes. The Husky case also raised a veil piercing issue to be dealt with on remand. That issue involved the application of Texas statutory law precluding veil piercing in cases brought by contract creditors unless they were victims of "actual fraud."

¶In Husky Int'l Elecs., Inc. v. Ritz, 136 S. Ct. 1581 (2016) the Supreme Court interpreted the meaning of the word fraud, a very important word in the legal lexicon. "Fraud" appears in various guises in different parts of speech, including as a noun by itself; an adjective,

fraudulent; a verb, defraud; or an adverb, fraudulently. It is also found, in one form or another, in various contexts including statutes and cases. In Husky, the phrase "actual fraud" is used as a part of a federal bankruptcy statute that deals with denying a debtor a discharge from a particular debt. See id. at 1585 (citing 11 U.S.C. § 523(a)(2)(A) (2012)).

¶That section prohibits the discharge of an individual debtor under Chapter 7 from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . . ." 11 U.S.C. § 523(a)(2)(A).

¶In the United States, fraud in its various formats occurs in everyday expressions discussing claims or news of its perpetration. Many use the word to describe what they consider to be shameful behavior. In Husky, the Supreme Court rejected the very narrow interpretation of fraud that had been rendered by the Fifth Circuit, concluded that it had a broader meaning under the statutory section involved in the case, and, along the way to its decision, pointed to the historic breadth of fraud. In addition, the Court discussed the application of the "obtained by" fraud requirement.

¶Husky also involved issues to be resolved on remand—from the Supreme Court to the Fifth Circuit—regarding not only the federal bankruptcy discharge section already referred to, but also regarding the meaning of actual fraud and direct personal benefit under a Texas veil piercing statute TEX. BUS. ORGS. CODE ANN. § 21.223(b) (2017) crucial in determining if Ritz was personally indebted to Husky.

¶As will be discussed more fully, Husky sought to hold Ritz personally liable on a debt it was owed by Chrysalis Manufacturing Corporation, and also claimed that the debt was not discharged under the applicable federal bankruptcy statute. The remand resulted in

significant analyses and holdings from the Fifth Circuit In re Ritz, 832 F.3d 560 (5th Cir. 2016) and eventually the bankruptcy court. Husky Int'l Elecs., Inc. v. Ritz (In re Ritz), 567 B.R. 715 (Bankr. S.D. Tex. 2017).

¶ Both fraud and veil piercing are fundamental topics in American law, and Husky presents an excellent opportunity for giving them special attention.

THE BANKRUPTCY COURT

¶Responding to the Fifth Circuit on remand, the bankruptcy court considered whether Ritz's conduct reflected the requisite intent to hinder,

delay, or defraud in order to satisfy the actual fraud prong of TUFTA. Husky Int'l Elecs., Inc. v. Ritz (In re Ritz), 567 B.R. 715, 739 (Bankr. S.D. Tex. 2017). Explaining its reliance on circumstantial evidence, the bankruptcy court indicated that the Fifth Circuit, along with many courts, allowed the use of a "badge of fraud" analysis. TUFTA itself listed a number of specific badges such as "the transfer was to an insider," "the transfer was concealed," "the debtor was insolvent or became insolvent shortly after the transfer was made." The bankruptcy court "unequivocally [made] a finding that the Debtor's transfers of the $1,161,279.90 were made with the actual intent to hinder, delay, or defraud Husky under TUFTA."

¶The bankruptcy court also decided that the actual fraud was perpetrated primarily for Ritz's direct personal benefit. In doing so, the court referred, inter alia, to (a) the Debtor's admission that a transfer of Chrysalis's funds to a company for which he had a personal guarantee would be a personal benefit to him, (b) the Debtor's transfers of over $677,000 to one company which owed a debt for a one-million-dollar loan Debtor had guaranteed, and (c) transfers

from Chrysalis to continue the businesses of the Debtor's other companies instead of paying Chrysalis's creditors.

¶The bankruptcy court then turned to the issue of whether Ritz's debt to

Husky was non-dischargeable under § 523(a)(2)(A) as a "debt for money to the extent obtained by . . . actual fraud." The court, referring specifically to transfers to Debtor-Creditor Entities, held that money was obtained by Ritz.64 Pointing to its "badges of fraud" analysis, the court concluded that the debtor committed actual fraud when he transferred the $1,161,279.90 from Chrysalis to the Debtor-Controlled Entities.65 The bankruptcy court reasoned that Ritz's personal debt arose due to the Debtor-Controlled Entities obtaining the funds from his fraudulent conduct because the Texas veil piercing statute imposed personal liability on the debtor for the debt to Husky. The court explained, "[t]here is no question that the creation of this personal obligation is directly traceable to—i.e., resulted from—the Debtor's fraudulent actions in orchestrating the transfers of $1,161,279.90 out of Chrysalis's account and into the accounts of the Debtor-Controlled Entities." Alluding to the Supreme Court's language in Husky that "debts 'traceable to' the fraudulent conveyance,' [are] non-dischargeable under § 523(a)(2)(A)," the bankruptcy court found Ritz's debt owed to Husky to be non-dischargeable.

SECOND ARGUMENT

JUDICIAL ESTOPPEL BARS THE DEBTOR FROM SEEKING DISCHARGE BECAUSE OF NON DISCLOSURE OF THE ASSETS IN THE SCHEDULES AND INCONSISTENT POSITIONS

¶"[T]he doctrine of judicial estoppel has broader preclusive effects than . . . issue preclusion," insofar as judicial estoppel "bar[s] not only an inconsistent position with respect to [a legal issue] but also all successive claims inconsistent with that representation." Adelphia

Recovery Trust v. HSBC Bank USA (In re Adelphia Recovery Trust), 634 F.3d 678, 697 (2d Cir. 2011). "[N]o single or uniform set of judicial estoppel elements exists" at present. Alec P. Ostrow, Nondisclosure as a Basis for Judicial Estoppel in Bankruptcy, or Estop Me If You Haven't Heard This Before, in Norton Annual Survey Of Bankruptcy Law 123, 142 (William L. Norton, Jr. ed., 2011 ed.) (claiming "there are no universally accepted elements of the [judicial estoppel] doctrine")

¶ In New Hampshire v. Maine, 532 U.S. 742 (2001) a nonbankruptcy case, the Supreme Court established "several factors [that] typically inform the decision whether to apply the doctrine in a particular case," be that case a bankruptcy case or otherwise: 1. a party has taken a position in a legal proceeding that is "clearly inconsistent" For a helpful analysis of what it means for two positions to be clearly inconsistent, see Cotter v. Skylands Cmty. Bank (In re Cotter), Bankr. No. 08-12504, Adversary No. 11-01619, 2011 WL 5900811, at *6-7 (Bankr. D.N.J. Oct. 24, 2011). with a position that party has taken previously in either the same or a separate legal proceeding; 2. that party "has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled;'" and 3. that party "would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."

¶Despite articulating this list of factors, the Supreme Court conceded that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." (quoting Allen v. Zurich Ins. Co., 667 F.2d 1162, 1166 (4th Cir. 1982) The Court therefore emphasized: "In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's

application in specific factual contexts." accord Burnes v. Pemco Aeroplex, Inc., 291 F.3d 1282, 1286 (11th Cir. 2002). As a result, THE Fifth Circuit considers additional elements in the bankruptcy context. Love v. Tyson Foods, Inc., 677 F.3d 258, 261 (5th Cir. 2012) (citing Reed v. City of Arlington, 650 F.3d 571, 574 (5th Cir. 2011) (en banc)) (adding the element of advertence. The most common additional elements are whether the party's assertion of an inconsistent position was inadvertent, Love, 677 F.3d at 261 (citing Reed, 650 F.3d at 574) and whether "the facts at issue are the same in both cases."

¶Unlike equitable estoppel, judicial estoppel is intended to protect the

integrity of the judicial system, not the litigants E.g., Wells Fargo Bank, N.A. v. Oparaji (In re Oparaji), 698 F.3d 231, 235 (5th Cir. 2012) (citing Browning Mfg. v. Mims (In re Coastal Plains, Inc.), 179 F.3d 197, 205 (5th Cir. 1999)). Accordingly, whether any party "relie[s] on [the position advanced by the party sought to be estopped] is irrelevant because detrimental reliance is not a required element of judicial estoppel." Hancock Bank v. Bates (In re Bates), Bankr. No. 09–51279–NPO, Adversary No. 09–05092–NPO, 2010 WL 2203634, at *14 (Bankr. S.D. Miss. May 27, 2010).

¶Interestingly, several circuits and districts, at least in the bankruptcy

context, have occasionally eliminated, or at least diminished the importance of, some of the elements set forth by the Supreme Court in New Hampshire, particularly the "unfair advantage"/"unfair detriment" prong. Wakefield v. SWC Sec., Inc. (In re Wakefield), 293 B.R. 372, 378 (N.D. Tex. 2003) Eliminating proceeding is unrelated to the current proceeding.").

¶Within the consumer bankruptcy context, the most common application

of judicial estoppel occurs when a debtor fails to satisfy the disclosure requirements established by the Bankruptcy Code (the Code) Hereinafter, we shall use "CODE" to refer to

the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (2012). and Federal Rules of Bankruptcy Procedure (the Rules).

¶In return for the bankruptcy relief debtors receive through gaining a discharge, the [Code] requires disclosure of all interests in property, the location of all assets, prior and ongoing business and personal transactions, and, foremost, honesty. The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the [Code], and the public's respect for the bankruptcy system as well as the judicial system as a whole. . . . The Code requires

nothing less than a full and complete disclosure of any and all apparent interests of any kind. Fokkena v. Tripp (In re Tripp), 224 B.R. 95, 98 (Bankr. N.D. Iowa 1998) (citations omitted).

¶Accordingly, the Code requires all debtors to file a "schedule of assets and liabilities . . . [and] a statement of the debtor's financial affairs." CODE § 521(a)(1)(B) (2012). Property of the bankruptcy estate is "construed as broadly as possible In re Stewart, 452 B.R. 726, 741 (Bankr. C.D. Ill. 2011) to include not only "claims or causes of action existing at the time the bankruptcy case is filed," but also certain post-bankruptcy causes of action. CODE §§ 1207(a)(1); 1306(a)(1) (2012). A debtor's duty to disclose assets is therefore "ongoing." Jethroe v. Omnova Solutions, Inc., 412 F.3d 598, 600 (5th Cir. 2005) (citing Kamont v. West, 83 F. App'x 1, 3 (5th Cir. 2003)).

¶Consequently, "Schedule B" of a debtor's bankruptcy schedules requires

the debtor "to list all 'contingent and unliquidated claims of every nature, . . . counterclaims of the debtor, and rights to setoff claims.'" At least one court has interpreted the word "and" in "contingent and unliquidated . . . as being disjunctive so that the petitioner is directed to list all contingent claims and all unliquidated claims," rather than conjunctive

such that the petitioner need only disclose claims that are both contingent and unliquidated. Rose v. Beverly Health & Rehab. Servs., Inc., 356 B.R. 18, 26 (E.D. Cal. 2006). "The obvious thrust of the question is to elicit a complete disclosure of all potential assets that could be marshaled to satisfy the bankruptcy estate's obligations . . . . Any more restrictive interpretation would be clearly contrary to controlling case law."

¶Failure to make these disclosures can result in dismissal of the debtor's bankruptcy case pursuant to § 521(i) of the Code. Code § 521(i) provides a mechanism for dismissal of the bankruptcy case itself. It is therefore distinct from dismissal of a subsequent lawsuit on judicial estoppel grounds. "Additionally, courts have ample power to punish debtors who wrongfully conceal assets" Valdez v. JDR LLC, No. CV 04-1620-PHX-JAT, 2006 WL 2038456, at *3 (D. Ariz. July 20, 2006).

CONCLUSION

¶ For these reasons these 801(d)(2) statements should be considered as establishing a conspiracy, and warranting the case proceed to discovery.

Respectfully submitted,
Anant Kumar Tripati

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.

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

In re:	)	Chapter 11
TEHUM CARE SERVICES, INC.,[1]	)	Case No. 23-90086 (CML)
Debtor.	)	

NOTICE OF COMBINED HEARING TO CONSIDER (I) FINAL APPROVAL OF DISCLOSURE STATEMENT AND (II) CONFIRMATION OF THE DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS' JOINT CHAPTER 11 PLAN

PLEASE TAKE NOTICE THAT on October [●], 2023, the United States Bankruptcy Court for the Southern District of Texas (the "Court") entered an order [Docket No. [●]] (the "Disclosure Statement Order"): (a) authorizing the above-captioned debtor and debtor in possession and its Official Committee of Unsecured Creditors, as joint Proponents, to solicit votes on the *Debtor and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan* (as may be amended, supplemented, or modified from time to time, the "Plan"); (b) conditionally approving the *Disclosure Statement Regarding Debtor and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan* (the "Disclosure Statement") as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the "Solicitation Packages"); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to confirmation of the Plan and final approval of the Disclosure Statement.[2]

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider confirmation of the Plan and final approval of the Disclosure Statement (the "Combined Hearing") will commence on **January [●], 2024, at [●] [●].m.** prevailing Central Time, before the Honorable Christopher M. López in the United States Bankruptcy Court for the Southern District of Texas, located at Courtroom 401, 515 Rusk, Houston, TX 77002.

Please be advised: the Combined Hearing may be continued from time to time by the Court or the Proponents without further notice other than by such adjournment being announced in open court or by a Notice of Adjournment filed with the Court and served on all parties entitled to notice.

[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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement or the Plan, as applicable.

www.kccllc.net/tehum; and/or (c) writing to Kurtzman Carson Consultants LLC, Re: Tehum Care Services, Inc., Attn: Voting Department, 222 N Pacific Coast Highway, Suite 300, El Segundo, CA 90245. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at: http://www.txs.uscourts.gov. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

The Plan Supplement. The Proponents will file the Plan Supplement on or before seven (7) days prior to the Objection Deadline, and will serve notice on all Holders of Claims entitled to vote on the Plan, which will: (a) inform parties that the Proponents filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

RELEASE, EXCULPATION AND INJUNCTION PROVISIONS

Article IX of the Plan contains Release, Exculpation, and Injunction provisions, and Article IX.D contains a Third-Party Release. Thus, you are advised to review and consider the Plan carefully because your rights might be affected thereunder.

Under the Plan, "*Released Parties*" means collectively the following, in each case in its capacity as such with each being a "Released Party": (a) the Debtor; (b) Russell Perry, the Debtor's Chief Restructuring Officer; (c) the Committee and its members; (d) the Liquidation Trustee; (e) the Personal Injury Trustee; (f) the Settlement Parties; (g) M2 EquityCo LLC; (h) Valitás Intermediate Holdings Inc.; (i) Valitás Health Services, Inc.; (j) M2 Pharmacorr Equity Holdings LLC; (k) Pharmacorr/M2 LLC; (l) Pharmacorr Holdings LLC; (m) Endeavor Distribution LLC; (n) CHS Texas LLC; (o) Yes Care Holdings LLC; (p) Sigma RM, LLC; (q) DG Realty Management LLC; (r) Scaracor LLC; (s) Yitzchak Lefkowitz a/k/a Isaac Lefkowitz; (t) Sara Ann Tirschwell; (u) Ayodeji Olawale Ladele; (v) Beverly Michelle Rice; (w) Jeffrey Scott King; (x) Jennifer Lynee Finger; (y) Frank Jeffrey Sholey; (z) for each Entity listed in (a) through (y), each of their respective current and former officers, directors, and managers; (aa) for each Entity listed in (b) through (y), each of their respective current and former employees and agents; and (bb) for each Entity listed in (d) through (y), each of their respective attorneys and other professional advisors; provided, however, that James Gassenheimer, Charles Gassenheimer, James Hyman, and Michael Flacks shall not be a "Released Party."

Under the Plan, "*Releasing Parties*" means collectively the following, in each case in its capacity as such with each being a "Releasing Party": (a) the Debtor; (b) the Committee; (c) the Liquidation Trustee; (d) the Personal Injury Trustee; (e) the Settlement Parties; and (f) Consenting Creditors.

Article IX.C. of the Plan provides for a Debtor Release:

Pursuant to section 1123(b) of the Bankruptcy Code, upon payment in full of the Settlement Payment as provided in Article IV.B.1, and in exchange for other good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, its Estate,

INMATE MAIL: ARIZONA DEPARTMENT OF CORRECTIONS

Inmate

ADC #

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