Docket #0203 Date Filed: 8/14/2024

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)

LEXINGTON INSURANCE COMPANY'S OPPOSITION TO TRIPATI'S MOTION FOR A VIRTUAL HEARING AND FOR LEAVE TO FILE THE SUPPLEMENTAL COMPLAINT AND SECOND AMENDED COMPLAINT

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ARGUMENT

The Court should deny Plaintiff Anant Kumar Tripati's ("Tripati") request for leave to file a Supplemental Complaint and a Second Amended Complaint (the "Motion"). *See* ECF Docket No. 202. The Motion should be denied for two reasons. First, Lexington's motion to dismiss the original Complaint as against Lexington is still pending before the Court. *See* ECF Docket No. 47 [Lexington's Motion to Dismiss]. As summarized below, the Complaint should be dismissed as against Lexington. Second, Tripati has already moved to file a Second Amended Complaint, which Lexington opposed, and a Supplemental Complaint. Those motions remain pending. *See* ECF Docket Nos. 96, 120, 125, 198.

On June 20, 2023, Lexington moved to dismiss the Complaint with prejudice as to it. *See* ECF Docket No. 47 [Lexington's Motion to Dismiss]. In so doing, Lexington explained that the Complaint should be dismissed with prejudice for four reasons: (i) Tripati's claims were untimely and violated the applicable statutes of limitation; (ii) the Complaint was incomprehensible and confusing, in violation of Federal Rule of Civil Procedure ("FRCP") 8(a); (iii) the Complaint did not plead any actionable facts as to Lexington, in violation of FRCP 9(b); and (iv) Tripati failed to state plausible RICO claims, in violation of FRCP 12(b)(6). *See id.* at 1-18.

On July 31, 2023, Tripati moved for leave to file a Second Amended Complaint. *See* ECF Docket No. 96. On August 21, 2023, Lexington opposed it because it was as fatally defective as his first. *See* ECF Docket No. 120 [Lexington's Opposition]).[1] Lexington explained

[1] On August 21, 2023, Defendants Struck Love Bojanowski and Acedo, PLC, Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz joined in and opposed Tripati's motion for leave to file a Second Amended Complaint. *See* ECF Docket No. 125.

that Tripati's allegations against Lexington set forth naked assertions and continuously failed to provide facts showing what Lexington did or how it caused Tripati's injury. *See id.*

Nothing has changed as to the allegations against Lexington.

CONCLUSION

For each of the foregoing reasons, the Court should deny the Motion.

Dated: August 14, 2024

Respectfully submitted,

/s/ Michael S. Davis

Michael S. Davis (*pro hac vice* approved in *Tehum* case on 03/01/2023; *pro hac vice* approved in Adversary case on 06/27/2023)

Yoav M. Griver (*pro hac vice* approved in Adversary case on 06/27/2023)

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CERTICATE OF SERVICE

The undersigned attorney hereby certifies that, on August 14, 2024, a true and correct copy of the foregoing document was served upon all counsel of record through the Bankruptcy Court's Electronic Case Filing (ECF) system, and on the Plaintiff by first class U.S. mail, postage prepaid, at the following address:

Anant Kumar Tripati
Inmate # 102081
P.O. Box 8909
Yuma, AZ 85349

/s/ Michael S. Davis
_____
Michael S. Davis