UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Judge Thomas J. Tucker Chapter 9

CREDITOR MARK CRAIGHEAD'S RESPONSE IN OPPOSITION TO CITY OF DETROIT'S MOTION FOR ENTRY OF AN ORDER ENFORCING THE BAR DATE ORDER AND CONFIRMATION ORDER

Mark Craighead, by his undersigned counsel, responds in opposition to the City of Detroit's motion for entry of an order enforcing the bar date order and confirmation order against Mr. Craighead. Mr. Craighead relies on the argument set forth in his Brief below and requests this Court enter an order denying the City's Motion in full.

Respectfully submitted,
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INTRODUCTION

In his federal civil rights lawsuit, Mark Craighead alleges he spent seven years behind bars for a murder he did not commit. Mr. Craighead alleges that various Detroit Police Officers, including the now notorious Defendant Barbara Simon, coerced him into providing a false confession—a confession that is demonstrably false. And although Mr. Craighead had no way to know at the time, Defendant Simon's gross misconduct was no aberration. Mr. Craighead alleges that the City's failure to supervise and discipline Defendant Simon allowed her to violate his rights with impunity, and thus became the moving force behind his constitutional violations. Mr. Craighead has sued the City of Detroit under *Monell v. Department of Social Services*. 436 U.S. 658 (1978).

The City has moved to bar Mr. Craighead from litigating his meritorious claims against it, asserting that Mr. Craighead should have filed a proof of claim during its bankruptcy proceedings. But because Mr. Craighead could not have contemplated that he had a claim against the City until after the bankruptcy proceedings were concluded, Mr. Craighead's claims arose post-petition and cannot be barred by this Court's prior orders. The City's motion should be denied.

STATEMENT OF FACTS

Mark Craighead was at work at a Sam's Club warehouse during the midnight shift on June 27, 1997. *See* Mr. Craighead's Complaint, attached as

Exhibit 6a to the City's Motion, at ¶ 18. The warehouse doors literally locked him inside during his shift. *Id.* While Mr. Craighead was locked inside the warehouse, his friend Chole Pruitt was shot to death, and the shooter left Pruitt's truck on fire 30 miles away from Sam's Club, where it was recovered at 2:35 a.m. *Id.* ¶¶ 14-15, 116. Law enforcement cast a wide net, interviewing dozens of people including Mr. Craighead, but the case went unsolved. *Id.* ¶¶ 16, 21.

Mr. Craighead was cleared two separate times by police in the years that followed, but three years after the murder, the Defendant police officers took over and zeroed in on Mr. Craighead even though there was no evidence connecting him to the crime. *Id.* ¶¶ 3, 19, 21, 22, 105. To the contrary, Mr. Craighead was a model citizen. He was married, had four children, was employed fulltime, coached youth sports, and had no criminal history. *Id.* ¶ 11.

On June 20, 2000, Defendants Jackson and Fisher showed up on Mr. Craighead's porch. These Defendants coerced Mr. Craighead to accompany them to the police station without allowing him to contact an attorney and without probable cause. *Id.* ¶¶ 24-47.

After Mr. Craighead had been at the station for some time, Defendant Simon appeared and started questioning him. She never provided his *Miranda* warnings and ignored his requests to call an attorney and to go home. *Id.* ¶¶ 62-66. When Mr. Craighead invoked his right to silence, Defendant Simon locked him in an

interrogation room alone for several hours. *Id.* ¶ 67. By the time she let him out, he was in bad shape: He was starving, his back was hurting, and he had developed a migraine. *Id.* ¶ 69. Defendant Simon issued a variety of threats, including telling Mr. Craighead that he would not be allowed to make a phone call, go home, or go to work until he started cooperating. *Id.* ¶ 68. She told him that that he would lose his job, but that he could go home if he simply took a polygraph test. *Id.* ¶¶ 70, 72. Mr. Craighead believed her. *Id.* ¶ 71. With little willpower left given his physical state and lack of sleep, Mr. Craighead relented and agreed to take the polygraph. *Id.* ¶¶ 73-75.

After the polygraph, Defendant Simon returned and began to twist the screws. She told Mr. Craighead that unless he confessed to the crime, his wife would find herself a new husband and his children would call someone else "daddy." *Id.* ¶ 86. She threatened Mr. Craighead with life in jail without parole if he did not confess. *Id.* ¶ 87. Mr. Craighead asked if she would release him, since he had taken the polygraph test like she asked, and she laughed at him. *Id.* ¶¶ 88-89.

By the time of his confession the following day, Mr. Craighead hadn't eaten in over 17 hours and had barely slept in 2 days. *Id.* ¶ 96. Defendant Simon again told Mr. Craighead that she could prove he had killed Mr. Pruett and would spend the rest of his life in prison, and suggested that he instead confess to accidentally killing Mr. Pruett. *Id.* ¶¶ 100-102. Mr. Craighead succumbed and signed Simon's

false statement implicating himself in the murder. *Id.* ¶ 103. The confession was demonstrably false and contradicted the forensic evidence, and there was no evidence implicating Mr. Craighead in the shooting. *Id.* ¶ 107. But Mr. Craighead was nevertheless convicted of murder based on that false statement. *Id.* ¶ 108.

Years after his conviction, Mr. Craighead was finally able to provide phone records that established his alibi—as he had maintained all along, he was working in a locked warehouse at the time of the murder and could not have had anything to do with the crime. *Id.* ¶¶ 115-116. After decades of maintaining his innocence, Mr. Craighead was finally able to clear his name. *Id.* ¶¶ 131-132. His conviction was overturned and he received a certificate of innocence. *Id.* ¶¶ 131-132.

Mr. Craighead's mistreatment, however, was not an isolated experience. *Id.* ¶¶ 117-124. As alleged in the Complaint, the City created an environment in which Defendant Simon could violate people's rights with impunity, thereby allowing and encouraging the violations of Mr. Craighead's Constitutional rights and others'. *Id*. ¶¶ 117-125. The problem within the City's police department was so widespread as to be the City's *de facto* policy, and functioned as the moving force behind the deprivation of Mr. Craighead's rights. *Id*. ¶¶ 117-125, 189-196.

LEGAL STANDARD

The City of Detroit has filed a motion to enforce the bar date order and confirmation order against Mr. Craighead, claiming that he failed to make a claim

against the City within the allocated timeframe. Whether Mr. Craighead's claims were discharged in the City's bankruptcy depends on when those claims arose. Under the United States Bankruptcy Code, a claim is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. §101(5)(A).

Mr. Craighead did not file a proof of claim under 11 U.S.C. § 501 in the City's bankruptcy. Unless a Chapter 11 reorganization plan provides otherwise, the judicial confirmation of the plan "discharges the debtor from any debt that arose before the date of such confirmation" regardless of whether the creditor filed a proof of claim. *See* 11 U.S.C. § 1141(d)(1)(A). However, "[t]he debtor remains fully liable for all 'claims' arising after the bankruptcy confirmation." *Signature Combs, Inc. v. United States*, 253 F. Supp. 2d 1028, 1032 (W.D. Tenn. 2003).

To determine when a claim "arises," courts in the Sixth Circuit use the "fair contemplation test." *In re City of Detroit, Michigan*, 548 B.R. 748, 763 (Bankr. E.D. Mich. 2016). Under this test, a creditor's claims are "fairly contemplated" if the creditor could have ascertained through the exercise of reasonable due diligence that they had a claim. *In re City of Detroit*, 642 B.R. 807, 810 (Bankr. E.D. Mich. 2022). "'[A] future claim that cannot be contemplated by the parties is *not* discharged under the Bankruptcy Code, even if that claim stems from the

pre-petition conduct of the debtor.'" *Hobart Corp*., 2014 WL 12842525, at *3 (quoting *In re Hexcel Corp*., 239 B.R. 564, 572 (N.D. Cal. 1999)) (emphasis added).

ARGUMENT

I. Mr. Craighead's Claims Against the City Were Not Discharged by the Bankruptcy

Briefly stated, the City contends that because Mr. Craighead did not submit a claim during the pendency of its bankruptcy proceeding, he is forever barred from litigating his meritorious claims against it. The City is wrong.

To begin, Mr. Craighead was under no obligation to submit a proof of claim during the bankruptcy proceeding. Under the Bankruptcy Code, a "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured…." 11 U.S.C. § 101(5).

Mr. Craighead had no claim against the City, be it contingent or otherwise, unless and until his conviction was overturned. Under *Heck v. Humphrey*, "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." 512 U.S. 477, 489-90 (1994); *see also, e.g.*, *D'Ambrosio v. Marino*, 747 F.3d 378, 385-86 (6th Cir. 2014) ("Until the vacatur of [the plaintiff]'s state conviction became final, *Heck* barred his § 1983 claims, which clearly implied the invalidity

of his conviction…. Because [the plaintiff]'s civil rights claims did not accrue until his state conviction was vacated and the *Heck* bar was lifted, the two-year statute of limitations does not bar his current claims.") (citing *Wallace v. Kato*, 549 U.S. 384, 393 (2007); *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005)); *see also King v. Harwood*, 852 F.3d 568, 578-79 (6th Cir. 2017) (malicious prosecution claim did not accrue until after conviction had been vacated).

Here, Mr. Craighead's federal claims clearly and unequivocally invoke the invalidity of his conviction and, therefore, cannot have accrued until his criminal proceedings terminated in his favor—long after the City's bankruptcy proceedings concluded in 2014. *Heck*, 512 U.S. at 489-90. Had Mr. Craighead attempted to assert his claim previously, his efforts would have been barred. *See, e.g.*, *Morris v. City of Detroit*, 211 Fed App'x 409, 410-11 (6th Cir. 2006) (Section 1983 coercion claim was barred under the *Heck* doctrine); *Cristini v. City of Warren*, No. 07 Civ. 11141, 2012 WL 5508369, at *18 (E.D. Mich. Nov. 14, 2012) (*Brady* claim barred by *Heck* until conviction no longer subject to reinstatement); *Word v. City of Detroit*, No. 05 Civ. 74501, 2006 WL 1704205, at *3 (E.D. Mich. June 16, 2006) ("The [*Heck*] doctrine is easily applied to [the plaintiff]'s claims that [the defendant officer]…fabricated evidence…in order to secure his conviction."). Accordingly, Mr. Craighead's Section 1983 claims did not accrue until long after the City's bankruptcy concluded.

Courts have recognized that because malicious prosecution claims do not accrue until after exoneration, plaintiff-creditors have no obligation to submit a proof of claim. *Austin v. BFW Liquidation, LLC (In re BFW Liquidation, LLC)*, 471 B.R. 654, 667 (N.D. Ala. 2012) (chapter 11 bankruptcy proceeding). In *Austin*, the Court explained that where a criminal action against the plaintiff did not conclude in the plaintiff's favor until after the debtor's plan was confirmed, that the plaintiff's "malicious prosecution action accrued…post-confirmation" and was not, therefore, "discharged by confirmation of the debtor's plan." *Id.*

Similarly, Courts considering analogous situations where a debtor-plaintiff fails to list a malicious prosecution claim as an asset in a bankruptcy routinely hold that there is no basis to disclose such a claim unless and until it becomes actionable. *See Johnson v. Mitchell*, 2011 WL 1586069, at *7-8 (E.D. Cal. 2011) (explaining that "the element of termination in plaintiff's favor is of paramount importance to a malicious prosecution claim, and the claim would not exist without this primary predicate," and that because the "predicate" requirement occurred after the bankruptcy filing, "plaintiff's malicious prosecution claims [we]re not part of the bankruptcy estate"); *McAtee v. Morrison & Frampton, PLLP*, 2021 MT 227, ¶ 19512 P.3d 235, 239, *reh'g denied* (Oct. 12, 2021) ("McAtee's malicious prosecution claim, as premised on the civil fraud action, had not yet accrued at the time she filed her bankruptcy petition and cannot be deemed rooted in her

pre-bankruptcy conduct. McAtee was therefore not required to schedule the claim as an asset in the bankruptcy proceeding."); *In re Jenkins*, 410 B.R. 182 (W.D. Va. 2008) (holding that even though some of the conduct that constituted the basis for the plaintiff's malicious prosecution claim arose prepetition, the fact that the "right to bring the claim" was not in existence at the time of filing—the criminal case had not resolved in the plaintiff's favor—meant that the malicious prosecution was not property of the bankruptcy estate); *Carroll v. Henry Cty., Georgia*, 336 B.R. 578 (N.D. Ga. 2006) (discussing *Heck* and concluding that the plaintiff "had no section 1983 claim until the conclusion of his trial, when the jury found him not guilty of the charges against him," and that "[b]ecause the jury verdict occurred after the filing of the bankruptcy petition, the plaintiff had no section 1983 claims at the time of commencement of [the bankruptcy] case"); *Brunswick Bank & Trust Co. v. Atanasov* (*In re Atanasov*), 221 B.R. 113 (D.N.J.1998) (debtor's malicious prosecution claim was not property of estate as it arose post-petition when indictment was dismissed); *cf. Atkins v. Cory & Cory (In re Cory*), 2008 WL 5157515, at *1 (W.D. Mo. 2008) ("The Debtors concede that the criminal action against Ms. Atkins at issue in the state court malicious prosecution action was dismissed after the Debtors filed their Chapter 7 bankruptcy petition. Therefore, the Plaintiff's malicious prosecution action accrued post-petition. As a post-petition claim, it is not subject to the Debtors' discharge.").

The City cites several cases that come out the other way. Dkt. 13803 at 19-20 (citing *Sanford v. City of Detroit*, No. 17-13062, 2018 WL 6331342 (E.D. Mich. Dec. 4, 2018); *Monson v. City of Detroit*, No. 18-10638, 2019 WL 1057306 (E.D. Mich. Mar. 6, 2019); *Burton v. Sanders*, No. 20-11948, 2021 WL 168543 (E.D. Mich. Jan. 1, 2021). All of these cases, however, have at their root *In re Motors Liquidation Co.*, 576 B.R. 761 (Bankr. S.D.N.Y. 2017). *See Sanford*, 2018 WL 6331342, at *5-6; *Monson*, 2019 WL 1057306, at *9; *Burton*, 2021 WL 168543, *4-5 (relying on *Sanford* and *Monson*). The problem for the City is that *In re Motors Liquidation Co.* is factually distinguishable from this case because there, the debtor did not actively work to incarcerate the plaintiff and thus try to prevent him from ever being able to assert his rights at all. The debtor in *In re Motors Liquidation Co.*, (as well as the debtor in *Stone v. Kmart Corp.*, No. 06-302, 2007 WL 1034959, at *3 (M.D. Ala. Mar. 30, 2007), cited by *Sanford*, 2018 WL 6331342, at *6), was simply the employer of the tortfeasors and played no role in the underlying misconduct. In contrast, here the City is alleged to have been the moving force behind the misconduct, not only allowing it to happen, but creating the environment that permitted Mr. Craighead's constitutional rights to be violated. The City cannot be allowed to, itself, directly violate a person's constitutional rights—as opposed to simply employing the tortfeasor—and then avoid liability

through bankruptcy when the claim against it was both unknown and unavailable during the claim reporting period. The City has cited no cases that hold otherwise. Accordingly, Mr. Craighead was not obligated to file a proof of claim during the City's bankruptcy proceeding.

Separately and independently, Mr. Craighead also had no obligation to file a proof of claim because he had no reason to foresee a claim against the City, as opposed to the individual Defendant Officers who coerced his confession. At the time the City filed its bankruptcy proceeding, Mr. Craighead had no way to know that Defendant Simon had perpetrated her abusive tactics on a number of other people, or that the City had a widespread practice of failing to discipline its detectives, allowing and encouraging the abuse he suffered.

At the very least, the question turns on a question of fact—what did Mr. Craighead know about the City's role in Simon's misconduct, and when did he know it? Such questions cannot be resolved on the City's motion, and require discovery to flesh out.

The City suggests that Mr. Craighead knew the City's policies were to blame for his wrongful arrest. *See* Dkt. 13803 at 11-12. But Mr. Craighead's allegations that he was unlawfully arrested, or that the City's practices regarding obtaining warrants was deficient, all pertained to Mr. Craighead's long-extinguished Fourth Amendment claims for false arrest. Under *Wallace v. Kato*, Fourth Amendment

claims that do not necessarily invalidate a conviction accrue at the time of the seizure, and are subject to Michigan's three-year statute of limitations. 549 U.S. at 389-90; *Curran v. City of Dearborn*, 957 F. Supp. 2d 877, 882 (E.D. Mich. 2013) (three-year statute of limitations applies to civil rights claims). Accordingly, even if this Court looks to the briefing in the criminal courts, all it demonstrates is that Mr. Craighead knew that he had a claim against the City that extinguished in 2003, three years after his arrest. The evidence would not alert Mr. Craighead that the City was also the moving force behind his coercive interrogation, false confession, and the evidence that led him to being wrongfully convicted of murder.

This Court, therefore, cannot subject Mr. Craighead's claims to the Confirmation Order and Bar Date Order.

II. This Court Should Allow the District Court to Adjudicate the Merits

In two sentences, citing no case law or other legal support, the City contends that the Bankruptcy Court retains exclusive subject matter jurisdiction over this entire case, not only including this motion to enforce the bar date and confirmation orders, but over the substantive *Monell* claims as well. Dkt. 13803 at 22. This wholly undeveloped argument should be deemed waived. *McPherson v. Kelsey*, 125 F.3d 989, 9995-96 (6th Cir. 1997) ("[I]ssues adverted to in a perfunctory manner…are deemed waived"); *see also White Oak Prop. Dev., LLC v. Washington Twp.*, 606 F.3d 842, 850 (6th Cir. 2019) ("perfunctory" and

"nebulous" argument renders an issue forfeited). Regardless, as discussed below, this Court should allow the District Court to adjudicate Mr. Craighead's *Monell* claim merits.

Indeed, although the Bankruptcy Court retains exclusive jurisdiction to adjudicate claims arising under the Plan, it is not *precluded* from allowing another court to adjudicate such a claim. *See, e.g., In re White Motor Credit*, 761 F.2d 270, 273-275 (6th Cir. 1985) (affirming bankruptcy court's authority to lift a stay, abstain from liquidating a claim, and letting case go forward in other courts in the interests of justice, even when a plan has been approved); *see also Blachy v. Butcher*, 221 F.3d 896, 909 (6th Cir. 2000) (affirming that a bankruptcy court can share its jurisdiction with other courts even when it has exclusive jurisdiction under Section 1334(e)). It can and should share jurisdiction with the District Court here.

Litigation of Mr. Craighead's *Monell* claim should proceed in the District Court for three reasons. First, the District Court has the expertise to litigate civil rights cases, including the kinds of factual issues that are in play here, and does so regularly. Second, bankruptcy courts do not hold jury trials, and Mr. Craighead is entitled to have his case heard by a jury. *See e.g. City of Monterey v. Del Monte Dunes at Monterey Ltd*, 526 U.S. 687, 691 (1999) ("The Seventh Amendment provides [plaintiffs] with a right to a jury trial on their §1983 claim.").

Third, Mr. Craighead has filed a single Complaint, alleging that certain Detroit police officers and the City violated his constitutional rights. The District Court is presiding over the claims against the individual defendants. The discovery of those claims and the claim against the City will directly overlap, as will the legal issues. *See e.g. Humenuik v. T-Mobile USA Inc*., No. 1:14-CV-02002, 2015 WL 3397861, at *1 (N.D. Ohio, May 26, 2015) (denying bifurcation of a plaintiff's underlying constitutional claim and *Monell* claim because "Plaintiff's two claims form part of the same ongoing narrative and will require a great deal of overlapping evidence, thus suggesting that they can neatly and economically be handled together.") As a result, litigating the two cases in two different courts—the underlying claims against the individual officers in District Court and the *Monell* claim against the City in this Court—will be duplicative and inefficient. It would result in "two rounds of dispositive briefing, two parallel tracks of discovery, and potentially two trials." *Id*.

To avoid such inefficiency, bankruptcy courts have repeatedly deferred to a different court to adjudicate the merits of the claim. *See In re Lewis*, 423 B.R. 742 (W.D. Mich. 2010) (deferring to the state court where it was "better suited to decide the issue"); *see also In re LaCasse*, 238 B.R. 351, 355 (W.D. Mich. 1999) (quoting *In re White*, 851 F.2d 179, 173 (6th Cir. 1988) (deferring to the state court

"out of consideration of court economy…and deference to…their established expertise"). The Court should adopt this procedure here as well.

CONCLUSION

Mr. Craighead respectfully requests this Court deny the City of Detroit's motion for the entry of an order enforcing the bar date order and confirmation order against Mark Craighead, and allow the District Court to adjudicate the merits of Mr. Craighead's §1983 suit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rachel Brady, an attorney, certify that I served the foregoing document on all parties of record via the Court's CM/ECF filing system on November 20, 2023.

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