

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

In re: : Case No. 23-90086

TEHUM CARE SERVICES, INC., : Chapter 11

Debtor,

ANANT KUMAR TRIPATI, : Adv. Proc. No. 23 AP 3072

Plaintiff,

v.

SARA TIRSCHWELL, et al,

Defendants.

RESPONSE IN OPPOSITION OF WEXFORD HEALTH SOURCES, INC., GREGORY C. MICHAELS, ESQUIRE, DICKIE MCCAMEY & CHILCOTE, P.C., MICHAEL P. RIDULFO, ESQ., AND KANE RUSSELL COLEMAN P.C. TO PLAINTIFF'S MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS

Gregory C. Michaels, Esquire, Dickie McCamey & Chilcote, P.C., Michael P. Ridulfo, Esquire, Kane Russell Coleman, P.C., and Defendant Wexford Health Sources, Inc. (“Wexford”) (collectively “Responding Parties”) hereby file this Response in Opposition to Plaintiff’s Motion for Inherent Power and Rule 11 Sanctions (“Motion for Sanctions”) and respectfully states as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff’s Motion for Sanctions should be denied. Wexford filed an Response in Opposition to Plaintiff’s Second Motion for Leave to file an Amended Complaint (“Second



Motion”) asserting sound bases for opposing Plaintiff’s Second Motion. There was no deception, misstatements or concealment of the facts as alleged by Plaintiff. This Motion for Sanctions is yet another example of Plaintiff’s vexatious litigation history. Wexford in no way misrepresented any facts related to Plaintiff’s purported claims or Plaintiff’s lengthy history of frivolous lawsuits across numerous courts across the county. Rather, Wexford correctly stated to this Court that Plaintiff’s proposed amendments are futile and no leave to amend should be granted until the Motions to Dismiss and Motion to Screen Plaintiff’s Complaint are addressed by this Court. Plaintiff’s Motion for Sanctions is baseless and it should be denied by the Court.

II. PROCEDURAL BACKGROUND

2. Plaintiff, Anant Kumar Tripathi (“Plaintiff”), filed his Verified Adversary Complaint in the U.S. Bankruptcy Court for the Southern District of Texas on May 1, 2023 commencing this action. On May 15, 2023, Plaintiff filed a Motion to Amend seeking to file an Amended Complaint. On June 5, 2023, Defendants Struck Love Bojanowski and Acedo, PL, Daniel P. Struck, Michael Gottfried, Betty Ulibarri, and Diane Bohuszewicz (“Arizona Defendants”) filed their Motion to Screen Plaintiff’s Pro Se Inmate Adversary Complaint and request for an Extension of Time to File a Responsive Pleading [Doc. 25] (“Motion to Screen”). On June 19, 2023, Wexford filed its Notice of Special Appearance and Joinder in Support of Arizona Defendants’ Motion to Screen [Doc. 45] (“Joinder”). In addition to Wexford, five other defendants have joined the Arizona Defendants’ Motion to Screen and five other defendants have filed motions to dismiss the adversary complaint or filed their own motion to screen the adversary complaint. The Motion to Screen as well as the motions to dismiss remain pending before the Court as does the Plaintiff’s Motion to Amend filed on May 15, 2023. On July 31, 2023, Plaintiff filed his Motion for Leave to File a Second Amended Complaint [Doc. 96] (“Second Motion for

Leave”). On August 21, 2023, Wexford filed its Response in Opposition to Plaintiff’s Second Motion for Leave. [Doc. 121]. Plaintiff filed his Motion for Sanctions on October 16, 2023. [Doc. 162].

III. LEGAL STANDARD

3. “A court may impose Rule 11 sanctions . . . when an attorney files a written motion for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation or when the legal contentions are not warranted by existing law.” *Luna v. Am. Nat’l Ins. Co.*, 2021 U.S. Dist. LEXIS 90464, *14 (W.D. Tex. 2021). “The purpose of [Rule 11] is to deter baseless filings in district court and to spare innocent parties and overburdened courts from the filings of frivolous lawsuits.” *Butowsky v. Folkenflik*, 2020 U.S. Dist. LEXIS 256374, *48 (E.D. Tex. 2020) (internal quotation marks and citations omitted). “[T]o impose sanctions against an attorney under its inherent power, a court must make a specific finding that the attorney acted in ‘bad faith’.” *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995). “[M]ere violation of a rule, statute, or ethical standard does not *ipso facto* constitute bad faith.” *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 716 (Tex. Sup. Ct. 2020). Rather, “conscious wrongdoing” is required (*id.*), as “when a party or its counsel maintains patently unreasonable litigation positions or engages in contumacious behavior that deliberately subverts a court’s administration of a case.” *Sarco Creek Ranch v. Greeson*, 167 F. Supp. 3d 835, 845 (S.D. Tex. 2016).

IV. ARGUMENT

A. THE RESPONDING PARTIES DID NOT ALLEGE PLAINTIFF WAS PROCEEDING *IN FORMA PAUPERIS*

4. Plaintiff incorrectly claims that Wexford should be sanctioned for allegedly arguing that Plaintiff did not pay the filing fee for instituting this action. At no time has Wexford claimed

that Plaintiff did not pay the requisite filing fee for this action or that Plaintiff was proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1925. Wexford referenced 28 U.S.C. § 1925 to address Plaintiff's identification as a vexatious litigant across multiple federal district courts and as such, this Court can issue a screening order and Plaintiff's filings must be screened to determine whether they are filed in good faith. *See* Doc. 121. The Responding Parties made no misrepresentations. Plaintiff is a vexatious litigant according to multiple federal courts and is subject to a screening order to determine the legitimacy of his filings. Stating facts regarding Plaintiff's past litigation history is not bad faith and there is no justification for the filing of a motion for sanctions, let alone a basis to grant such a motion and sanction the Responding Parties.

B. RESPONDING PARTIES DID NOT CONCEAL ANY MATERIAL FACT FROM THE COURT.

5. Plaintiff vaguely claims that all "Defendants concealed the material fact that before the Third Circuit there was a pending motion to recall the mandate [f]iled February 16, 2023 and that neither the Third Circuit nor the District Court decided the spoliation issue before the court." *See* Doc. 162, p. 4. To the extent this vague allegation is addressed to the Responding Defendants, Plaintiff provides no evidence of exactly how the Responding Parties concealed a fact from the Court. Wexford correctly stated that none of Plaintiff's proposed amendments change the fact that Plaintiff's Adversary Complaint rehashes allegations made against Wexford that were dismissed previously by the courts. *See Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022). Plaintiff's purported spoliation claim is nothing more than a regurgitation of the same claims dismissed by the Courts. Plaintiff's disagreement with Wexford's position as to his claims does not justify sanctioning a party and is not evidence of bad faith or misleading the Court in any way. Plaintiff's Motion for Sanctions should be denied.

V. CONCLUSION

For the foregoing reasons, Gregory C. Michaels, Esquire, Dickie McCamey & Chilcote, P.C., Michael P. Ridulfo, Esquire, Kane Russell Coleman, P.C., and Defendant Wexford Health Sources, Inc., respectfully request that this Honorable Court deny Plaintiff's Motion for Sanctions.

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

/s/ Michael P. Ridulfo

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on November 6, 2023, a true and correct copy of the foregoing RESPONSE IN OPPOSITION OF WEXFORD HEALTH SOURCES, INC., GREGORY C. MICHAELS, ESQUIRE, DICKIE MCCAMEY & CHILCOTE, P.C., MICHAEL P. RIDULFO, ESQ., AND KANE RUSSELL COLEMAN P.C. TO PLAINTIFF'S MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS was served upon all counsel of record via the Court's ECF and by mailing the same via U.S. Mail, first-class, postage pre-paid to:

CMRRR 7021 0950 0000 9465
and regular mail
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/s/ Michael P. Ridulfo
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