

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	Case No. 23-90086
TEHUM CARE SERVICES, INC.	§	(Jointly Administered)
	§	
DEBTORS.	§	Chapter 11

ANANT KUMAR TRIPATI	§	Adversary No. 23-03072
	§	
<i>Plaintiff</i>	§	
v.	§	
	§	
SARA TIRSCHWELL, et al.,	§	
<i>Defendants.</i>	§	

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

Sara Tirschwell, defendant in the above-referenced bankruptcy case (“Tirschwell”), by and through her counsel, files this response to Plaintiff’s Motion to File 801(d)(2)(A)(B)(C)(D) Statements in Support of Pending Motions [Docket No. 192] (the “Motion”), and in support thereof, states as follows:

1. On May 1, 2023, Plaintiff Anant Kumar Tripathi (“Plaintiff”) filed his Verified Adversary Complaint [Docket No. 1] (the “Complaint”) in the Bankruptcy Court for the Southern District of Texas, initiating the above-referenced adversary proceeding.

2. The Court’s docket reflects that a summons was issued for Tirschwell and many other defendants on May 4, 2023 [Docket No. 2], and that service was executed on Tirschwell on May 19, 2023 [Docket No. 9]. However, the address listed on the certificate of service is 205 Powell Place #104, Brentwood, Tennessee 37027, which is the address of YesCare and Corizon Health, the debtor’s predecessor in interest. Tirschwell has not been associated with those



companies since March of 2023, and does not have an office or residence at the address at which Plaintiff claims to have effectuated service.

3. On October 3, 2023, Plaintiff filed his Application to the Clerk for Entry of Default [Docket No. 156] (the “Application”), seeking entry of default against Tirschwell. This, too, was served by mail to 205 Powell Place #104, Brentwood, Tennessee 37027.

4. On November 17, 2023, Tirschwell filed her Response to Plaintiff’s Application for Entry of Default [Docket No. 181] (the “Response”), opposing the entry of default and informing the Court that she had not been properly served.

5. On December 7, 2023, Plaintiff filed his Motion. It is unclear what relief Plaintiff seeks in his Motion or which statements Plaintiff wants the Court to consider. Plaintiff does not direct his Motion at any particular defendant, nor does he identify the “Motions” that he alleges the statements support. However, Tirschwell is compelled to respond because Plaintiff specifically refers to her in the Motion.

6. It appears that Plaintiff seeks to use certain statements from the Debtors’ bankruptcy filings to support some of the allegations in his Complaint. The conclusion of the Motion states “these 801(d)(2) statements should be considered as establishing a conspiracy, and warranting the case proceed to discovery.” Motion at p. 12. Federal Rule of Evidence 801(d)(2) relates to statements that are not hearsay.

7. However, when considering motions to dismiss, the court “may generally only consider factual allegations contained within the ‘four corners’ of the complaint.” *In re Northstar Offshore Grp., LLC*, 616 B.R. 695, 710 (Bankr. S.D. Tex. 2020) (citing *In re Extreme Power Inc.*, 563 B.R. 614, 629 (Bankr. W.D. Tex. 2016) and citing *Morgan v. Swanson*, 659 F.3d 359, 401 (5th Cir. 2011)). Thus, evidence is inappropriate at this stage, whether hearsay or not.

8. Plaintiff also appears to argue that service on Tirschwell was proper because the Debtor's service address has not changed. Motion at p. 3. However, Tirschwell is not the Debtor, no longer works for the Debtor, and does not reside or regularly conduct business at the Debtor's address. Service by first class mail to the Debtor's address is therefore improper. FED. R. BANKR. P. 7004(b)(1).

WHEREFORE, Defendant Sara Tirschwell respectfully requests the Court deny Plaintiff's Motion, and grant any further relief that the Court deems appropriate.

Dated: December 19, 2023

Respectfully submitted,

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Counsel for Defendant Sara Tirschwell

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on (i) all parties receiving ECF notice in the case, and (ii) to the following addresses via First Class Mail.

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/s/ Thomas A. Woolley, III
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