

ORDERED.

Dated: November 18, 2022



Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Case No. 8:11-bk-22258-CED
Chapter 7

Fundamental Long Term Care, Inc. and
Trans Health Management, Inc.,

Debtors.

Estate of Juanita Jackson, et al.,

Plaintiffs,

vs.

Adv. Pro. No. 8:13-ap-00893-CED

General Electric Capital Corporation, et al.,

Defendants.

**ORDER DENYING DEFENDANT RUBIN SCHRON'S
MOTION FOR ORDER TO SHOW CAUSE WHY THE ESTATE OF
JUANITA JACKSON SHOULD NOT BE HELD IN CONTEMPT**

THIS PROCEEDING came before the Court to consider the *Motion of Defendant Rubin Schron for Order to Show Cause Why the Estate of Juanita Jackson Should Not Be Held in Contempt* (the “Contempt Motion”),¹ the response filed by the Probate Estate of Juanita Jackson (the “Jackson Estate”),² and the reply filed by Rubin Schron (“Schron”).³

On December 16, 2015, the Court⁴ entered an order (the “Permanent Injunction”) permanently enjoining the Jackson Estate from “pursuing” (1) any claims against Schron arising out of the nucleus of facts set forth in this adversary proceeding, and (2) any pending proceedings supplementary against Schron. In the Contempt Motion, Schron asserts that the Jackson Estate has violated the Permanent Injunction by failing or refusing to dismiss the claims that remain pending against him in the District Court case styled *Estate of Juanita Amelia Jackson v. Trans Health Management, Inc., et al.*, Case No. 8:10-cv-02937-VMC-TGW (the “District Court Case”).

After carefully considering the record, the Court concludes that (1) the Permanent Injunction does not impose an affirmative duty on the Jackson Estate to

¹ Doc. No. 1222.

² Doc. No. 1228.

³ Doc. No. 1229.

⁴ Judge Michael G. Williamson originally presided in this adversary proceeding. On November 8, 2022, the main bankruptcy case and all pending adversary proceedings were reassigned to Judge Caryl E. Delano (Main Case, Doc. No. 2441).

dismiss the District Court Case; (2) the Jackson Estate has not asked the District Court to take any action in the District Court Case; and (3) the Jackson Estate has not “pursued” the District Court Case in violation of the Permanent Injunction. Therefore, the Court will deny the Contempt Motion.

I. BACKGROUND

On July 30, 2004, the Jackson Estate sued Trans Healthcare, Inc. (“THI”), Trans Health Management, Inc. (“THMI”), and others for negligence in the Circuit Court for Polk County, Florida (the “State Court Case”).⁵

On July 22, 2010, the Jackson Estate obtained a judgment against THI and THMI in the State Court Case for \$110 million (the “State Court Judgment”).⁶

On December 10, 2010, the Jackson Estate filed a motion in the State Court Case to implead Schron in proceedings supplementary under Fla. Stat. § 56.29 and sought an order to show cause why Schron should not be liable for its judgment against THI and THMI.⁷ Essentially, the Jackson Estate alleged that, in March 2006, Schron, through his fiduciaries, agents, and co-conspirators, hindered the Jackson Estate’s collection of the State Court Judgment by gaining control of THI and THMI and causing their assets, worth millions of dollars, to be fraudulently transferred to

⁵ See District Court Case, Doc. No. 22-1, ¶ 1.

⁶ District Court Case, Doc. No. 22-1, ¶ 2; Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, n. 8.

⁷ District Court Case, Doc. No. 22-1.

Schron and his co-conspirators.⁸ The Jackson Estate alleged that these actions left THI “with only a small group of unprofitable subsidiaries and property.”⁹

On December 30, 2010, one of the other defendants in the State Court Case removed the State Court Case, including the proceeding supplementary against Schron, to the United States District Court for the Middle District of Florida. The State Court Case remains pending in the District Court and is referred to hereafter as the “District Court Case.”¹⁰

On September 9, 2011, the Jackson Estate filed a supplement to its motion to implead Schron in the District Court Case.¹¹ In the supplement, the Jackson Estate alleged that Schron should be added as a judgment debtor to the State Court Judgment (a) under the theories of successor-in-interest and breach of fiduciary duty to creditors, and (b) because Schron took actions to hinder and delay the Jackson Estate’s collection the State Court Judgment by transferring assets of THMI to himself.

On December 5, 2011, the Jackson Estate filed an involuntary Chapter 7 petition against THMI’s parent company, Fundamental Long Term Care, Inc.

⁸ District Court Case, Doc. No. 22-1, ¶ 3.

⁹ District Court Case, Doc. No. 22-1, ¶¶ 33-35.

¹⁰ District Court Case, Doc. No. 1.

¹¹ District Court Case, Doc. No. 104.

(“Debtor”). On January 12, 2012, the Bankruptcy Court entered an Order for Relief in the Bankruptcy Case.¹² Beth Ann Scharrer was appointed as the Chapter 7 Trustee.

On October 1, 2013, the Jackson Estate and the probate estates of five other deceased individuals (collectively, the “Probate Estates”) commenced this adversary proceeding by filing a two-count complaint against Schron and fifteen other defendants. In their complaint, the Probate Estates asserted that the defendants were liable for the debts of THI and THMI as their successors-in-interest or alter egos.¹³

In 2013, this Court ruled – in at least two separate orders – that all fraudulent transfer or alter ego claims to collect judgments against THI or THMI, including claims brought by the Jackson Estate, should be litigated in the Bankruptcy Court.¹⁴

First, on September 12, 2013, after the Court was advised that the Jackson Estate and the Probate Estates had filed proceedings supplementary against individual “targets,” including Schron, the Court entered an order requiring all parties to litigate any fraudulent transfer or alter ego claims in one proceeding in the Bankruptcy Court. The Court’s ruling was based on the following grounds: (a) the plaintiffs in the proceedings supplementary sought to recover assets that were property of the bankruptcy estate; (b) the proceedings supplementary would

¹² Main Case, Doc. Nos. 1, 6.

¹³ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1.

¹⁴ Adv. Pro. No. 8:12-ap-01198-MGW, Doc. No. 65; Adv. Pro. No. 8:13-ap-00928-MGW, Doc. No. 32.

interfere with the Chapter 7 Trustee's administration of the bankruptcy estate; and (c) the Bankruptcy Court was charged with determining whether Debtor and THMI should be treated as the same entity.¹⁵

Second, on November 19, 2013, the Court entered an order determining that the Bankruptcy Court was the centralized forum for handling the fraudulent transfer and alter ego litigation. The Court stated: "If parties want to litigate claims that conceivably affect property of the estate (such as claims over THMI's assets), then those claims must be litigated in this Court."¹⁶

At about the same time, and consistent with the Court's ruling that all fraudulent transfer and alter ego claims must be brought in the Bankruptcy Court, the Court entered orders preliminarily enjoining the Jackson Estate and the other Probate Estates from pursuing any proceedings supplementary or other collection actions outside the Bankruptcy Case.¹⁷ In its *Order on Estate of Webb's Motion to Clarify Non-Existence of Injunction*, the Court specifically identified the District Court Case as subject to the injunction.¹⁸

On November 22, 2013, the Jackson Estate and Schron, citing this Court's rulings and preliminary injunction, filed a joint motion in District Court to hold the

¹⁵ Adv. Pro. No. 8:12-ap-01198-MGW, Doc. No. 65.

¹⁶ Adv. Pro. No. 8:13-ap-00928-MGW, Doc. No. 32, p. 20.

¹⁷ See Adv. Pro. No. 8:13-ap-00928-MGW, Doc. No. 35.

¹⁸ Main Case, Doc. No. 1272.

District Court Case in abeyance.¹⁹ On November 25, 2013, the District Court granted the joint motion and entered an order (the “District Court Stay Order”). The District Court Stay Order (a) stayed and administratively closed the District Court Case pending the resolution of the Bankruptcy Court proceedings, (b) directed the parties to file periodic status reports, and (c) allowed either party to move to lift the stay and re-open the case if any remaining issues were not resolved by the Bankruptcy Court.²⁰

Thereafter, based on this Court’s orders requiring that all fraudulent transfer and other collection actions be determined in a single proceeding in the Bankruptcy Case, the Jackson Estate, the other Probate Estates, and the Chapter 7 Trustee (together, “Plaintiffs”) filed an amended joint complaint,²¹ a redacted amended complaint,²² and a second amended complaint against Schron and fifteen other defendants in this adversary proceeding (the “Second Amended Complaint”).²³

Throughout each of their complaints, Plaintiffs alleged that Schron’s associates devised a scheme in March 2006 to acquire the assets of THMI – worth hundreds of millions of dollars – without acquiring THMI’s liabilities.²⁴ The Second Amended

¹⁹ District Court Case, Doc. No. 129.

²⁰ District Court Case, Doc. No. 130.

²¹ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 72.

²² Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 109.

²³ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 289.

²⁴ See Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, p. 4.

Complaint alleged seven claims for relief against Schron: alter ego, aiding and abetting a breach of fiduciary duty, constructive fraud, abuse of process, conspiracy to commit abuse of process, negligence, and avoidance of postpetition transfers.²⁵ Generally, Plaintiffs alleged that (a) Schron received THMI's assets for far less than their value, and (b) Schron and other individuals had controlled THI's and THMI's defense in the Probate Estates' state court actions.²⁶

In June 2014, the Court entered an order dismissing all of Plaintiffs' claims against Schron with prejudice (the "Dismissal Order").²⁷ In the Dismissal Order, the Court held that although the Jackson Estate had ample opportunity to present its claims against Schron, the Second Amended Complaint did not include a single plausible allegation that Schron received, participated in, or benefitted from the transfer of THMI's assets and did not plead sufficient claims against Schron for alter ego liability, constructive fraud, abuse of process, or negligence.

Notwithstanding the Court's dismissal of the claims against Schron, the Jackson Estate indicated that it intended to pursue the proceeding supplementary against Schron in the District Court Case.²⁸

²⁵ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 289.

²⁶ See Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, pp. 8-9.

²⁷ Adv. Pro. No. 8:13-ap-00893-CED, Doc. Nos. 568, 596.

²⁸ See Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, p. 12.

Therefore, on December 16, 2015, the Court entered a permanent injunction in favor of Schron (the “Permanent Injunction”).²⁹ The Permanent Injunction permanently enjoined the Probate Estates—including the Jackson Estate—from pursuing (a) any claims against Schron arising out of the nucleus of facts set forth in this adversary proceeding, (b) any pending proceedings supplementary against Schron, and (c) any claims against Schron as the “real party in interest” in proceedings brought by the Probate Estates.³⁰

The Court later entered an opinion explaining that the Permanent Injunction was necessary to protect the Court’s prior orders and judgments. As the Court explained, it (a) previously ordered the Jackson Estate to bring its claims against Schron in this Court, (b) the Jackson Estate had litigated its fraudulent transfer, alter ego, and abuse of process claims in this adversary proceeding, (c) the Court had dismissed those claims with prejudice, and (d) the “state court proceedings supplementary, wherever they are pending, involve the same claims that this Court already decided.”³¹ In addition, the Court explained that because the Permanent Injunction was necessary to aid the Court’s jurisdiction and resolve the Bankruptcy

²⁹ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1167.

³⁰ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1167, p. 2.

³¹ Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, pp. 14-16.

Case, it necessarily applied to all claims against Schron that were *or could have been* litigated in the Bankruptcy Court.³²

On September 8, 2016, the District Court affirmed both the Dismissal Order and the Permanent Injunction.³³ The Jackson Estate appealed the District Court's ruling to the Eleventh Circuit Court of Appeals.

On October 19, 2017, the Eleventh Circuit affirmed, stating:

We conclude that the bankruptcy court had jurisdiction to enjoin future claims arising from the 2006 Transaction and that it acted within the scope of its authority under the All Writs Act and the Anti-Injunction Act in issuing the Permanent Injunction. The Permanent Injunction was broad, but its breadth was justified in this case. We also find the various claims against Schron implausible as alleged in the Second Amended Complaint, even taking all the Estates' allegations as true. And given the Estates' inability or unwillingness to remedy the deficiencies in their pleadings, the bankruptcy court exercised proper discretion in dismissing the Second Amended Complaint with prejudice. We therefore AFFIRM the bankruptcy court's dismissal of claims against Schron with prejudice and its issuance of a permanent injunction with respect to claims against Schron.³⁴

The United States Supreme Court denied the Jackson Estate's petition for writ of certiorari.³⁵

After 2013, in compliance with the District Court Stay Order, the Jackson Estate has periodically filed status reports in the District Court Case. On May 24, 2022, the

³² Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1205, pp. 16-22.

³³ Case No. 8:16-cv-00022-EAK, Doc. No. 68.

³⁴ 873 F.3d 1325, 1348 (11th Cir. 2017).

³⁵ 139 S. Ct. 210, 202 L. Ed. 2d 125 (2018).

Jackson Estate filed a status report (the “Status Report”) that is similar in content to its prior status reports.³⁶

In the Status Report, the Jackson Estate summarized the “remaining viable claims” against Schron that it believes are outside the scope of the Permanent Injunction. Generally, the claims relate to Schron’s alleged stripping and looting of entities other than THMI.³⁷ In the concluding paragraph, the Jackson Estate asks the District Court to “continue to treat this action as stayed.”

Since the District Court Stay Order was entered in November 2013, neither Schron nor the Jackson Estate has asked the District Court to lift the stay or to reopen the District Court Case. Rather, the District Court Case remains stayed and administratively closed as of the date of this Order.

On September 13, 2022, Schron filed the Contempt Motion in this Court, asserting that he asked the Jackson Estate to dismiss the District Court Case on September 6, 2022, and that the Jackson Estate declined.³⁸ In the Contempt Motion, Schron contends that this Court previously dismissed all claims against him with prejudice, and that the ruling forecloses the Jackson Estate’s claims against him in

³⁶ District Court Case, Doc. No. 247.

³⁷ In identifying the claims, the Jackson Estate appears to mischaracterize the Bankruptcy Court’s review of the record at Adv. Pro. No. 8:13-ap-00893-CED, Doc. No. 1213, n. 38.

³⁸ Doc. No. 1222, ¶¶ 4, 16.

the District Court Case. Schron therefore contends that the Jackson Estate's refusal to dismiss the District Court Case violates the Permanent Injunction.³⁹

II. ANALYSIS

For the following reasons, the Court finds that the Permanent Injunction is not a mandatory injunction, that the Jackson Estate has not pursued claims against Schron in violation of the Permanent Injunction, and the Jackson Estate is not in contempt of the Permanent Injunction.

A. The Permanent Injunction is not a mandatory injunction.

Generally, a mandatory injunction orders a responsible party to take a specific action or actions. For example, where the purpose of an injunction is to address compliance with a statute or to correct an existing condition, a mandatory injunction will require the responsible party to take affirmative remedial steps.⁴⁰ A mandatory injunction directs the party to take action that alters, rather than maintains, the status quo.⁴¹

A prohibitory injunction, on the other hand, restrains a responsible party from taking further action. The purpose and effect of a prohibitory injunction is to preserve the status quo among the parties.⁴²

³⁹ Doc. No. 1222, ¶¶ 3, 15.

⁴⁰ *In re SK Foods, L.P.*, 2018 WL 784451, at *11 (Bankr. E.D. Cal. Feb. 6, 2018); *In re Brown*, 2007 WL 3407624, at *1 (Bankr. M.D. Ga. Nov. 7, 2007).

⁴¹ *In re Adelpia Communications Corp.*, 323 B.R. 345, 373 (Bankr. S.D.N.Y. 2005).

⁴² *In re SK Foods*, 2018 WL 784451, at *11; *In re Brown*, 2007 WL 3407624, at *1.

Here, the Permanent Injunction enjoins the Jackson Estate from pursuing claims against Schron and from pursuing any pending proceedings supplementary against Schron.⁴³ It is a prohibitory injunction that restrains the Jackson Estate from seeking to alter the status quo of the District Court Case, among other proceedings.

The Permanent Injunction does not direct the Jackson Estate to take any affirmative, remedial step with respect to its claims against Schron or its proceedings supplementary against Schron. Thus, the Permanent Injunction is not a mandatory injunction and does not order the Jackson Estate to dismiss the District Court Case.

B. The Jackson Estate did not “pursue” claims against Schron by its request that the District Court to continue stay the District Court Case.

The Permanent Injunction enjoins the Jackson Estate from “pursuing” claims and proceedings against Schron. A party “pursues” a claim or proceeding if it takes an act that changes the status quo of an existing case.⁴⁴ For example, a party who files a notice of trial in a case has “pursued” the case because the notice altered the status of the case by moving it forward to a judicial determination.⁴⁵

But a party does not “pursue” a case by requesting that the action be stayed because the request for a stay does not disturb the status quo of the case.⁴⁶ In other words, a party does not “pursue” a claim by taking an action that simply puts the

⁴³ Doc. No. 1167.

⁴⁴ *In re Perryman*, 631 B.R. 899, 903 (B.A.P. 9th Cir. 2021).

⁴⁵ *In re Koeberer*, 632 B.R. 680, 687-88 (B.A.P. 9th Cir. 2021).

⁴⁶ *In re Stuart*, 632 B.R. 531, 541-42 (B.A.P. 9th Cir. 2021).

matter “on hold” – provided the action does not advance the case in the party’s favor.⁴⁷

Here, the District Court Case was stayed at the time that the Permanent Injunction was entered in 2015. The Jackson Estate has not asked the District Court to lift the stay or to reopen the District Court Case. In its periodic Status Reports, the Jackson Estate has only asked the District Court to continue to treat the District Court Case as stayed. The Court concludes that the Jackson Estate has not “pursued” its claims against Schron in the District Court Case because it has not sought to alter the status of the proceeding.

C. The Jackson Estate is not in contempt of the Permanent Injunction.

A court should only find that a party is in contempt of an order if the order is clear and unambiguous, proof of noncompliance is clear and convincing, and the respondent has not been reasonably diligent in attempting to comply. Stated differently, the moving party must show that the respondent violated a court order, that the order was valid and lawful, and that the order was clear, definite, and unambiguous.⁴⁸

⁴⁷ *In re Perryman*, 631 B.R. at 903.

⁴⁸ *Medi-Weightloss Franchising USA, LLC v. Medi-Weightloss Clinic of Boca Raton, LLC*, 2012 WL 2505930, at *2 (M.D. Fla. May 24, 2012).

In *Taggart v. Lorenzen*,⁴⁹ the United States Supreme Court held that:

[A] court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.⁵⁰

Under this standard, a court should only enter a finding of contempt if the responding party violated an order based on an objectively unreasonable understanding of the order.⁵¹

Although decided prior to *Taggart*, the court in *In re Mega-C Power Corporation*⁵² upheld a bankruptcy court's denial of a request for contempt by applying a similar objective standard. There, a Chapter 11 plan enjoined the continuation of proceedings against the debtor, and the issue was whether the barred parties had violated the injunction by refusing to dismiss the debtor from litigation pending in Canada. The barred parties contended that the litigation had been stayed by the Canadian court, and that the plan injunction allowed them to continue the stay rather than dismiss the debtor from the case. The bankruptcy court found that the barred parties' interpretation of the injunction was not unreasonable or illogical, and that the moving parties had not shown that the barred parties were in contempt of the

⁴⁹ 139 S. Ct. 1795, 204 L. Ed. 2d 129 (2019).

⁵⁰ *Taggart v. Lorenzen*, 139 S. Ct. at 1799 (emphasis in original).

⁵¹ *Id.* at 1802.

⁵² 2010 WL 6467668 (B.A.P. 9th Cir. June 29, 2010).

injunction by failing to dismiss the debtor from the Canadian litigation. On appeal, the Ninth Circuit Bankruptcy Appellate Panel concluded that the bankruptcy court applied the correct rule of law and did not abuse its discretion by denying the moving parties' request for contempt.⁵³

Here, the District Court stayed the District Court Case in 2013. The Permanent Injunction entered in 2015 prohibited the Jackson Estate from "pursuing" the District Court Case but did not direct the Jackson Estate to take affirmative action to dismiss the proceeding. Since the Permanent Injunction was entered, the Jackson Estate has filed periodic reports asking the District Court to continue to treat the District Court Case as stayed, and has not asked the District Court to lift the stay or reopen the proceeding. In other words, the status of the District Court Case is the same as it was when the Permanent Injunction was entered, and the Jackson Estate has not sought to alter the status quo or advance its claims against Schron toward a final determination.

In its response to the Contempt Motion, the Jackson Estate asserts that the text of the Permanent Injunction prevents it from taking certain actions — pursuing particular claims against Schron — but that the Permanent Injunction does not require it to dismiss the District Court Case.⁵⁴ As in the *Mega-C Power* case, the

⁵³ *In re Mega-C Power Corporation*, 2010 WL 6467668, at *14.

⁵⁴ Doc. No. 1228, ¶¶ 8, 9.

Jackson Estate's position is objectively reasonable and provides fair ground of doubt as to whether it violated the Permanent Injunction by refusing to dismiss the District Court Case.

Therefore, the Court concludes Schron has not shown that the Jackson Estate is in contempt of the Permanent Injunction, and will deny the Contempt Motion.

Accordingly, it is

ORDERED that the *Motion of Defendant Rubin Schron for Order to Show Cause Why the Estate of Juanita Jackson Should Not Be Held in Contempt* (Doc. No. 1222) is **DENIED**.

The Clerk's office is directed to serve a copy of this order on interested parties via CM/ECF.