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MAY 13 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION

In re:

DONYEL BETRICE JOHNSON

Debtor.

Chapter 7

Case No.: 6:20-bk-14283-MH

Adv. No: 6:20-ap-01163-MH

**ORDER DISMISSING CASE FOLLOWING
HEARING TO SHOW CAUSE WHY THE
CASE SHOULD NOT BE DISMISSED
BECAUSE PLAINTIFF (1) IS NOT
REPRESENTED BY COUNSEL; AND (2) IS
NOT PROCEEDING AS A LEGAL ENTITY**

Hearing Information:

Date: March 17, 2021

Time: 2:00 p.m.

Place: 3420 Twelfth Street
Riverside, CA 92501

Courtroom: 303

JM PHILLIPS

Plaintiff,

v.

DONYEL BETRICE JOHNSON

Defendant.

I. BACKGROUND

On September 21, 2020, Phillips Chiropractic, Inc. filed a *pro se* non-dischargeability complaint against Donyel Betrice Johnson (“Defendant”). After Defendant filed an answer and motion to dismiss (ECF Dkt. 4), on November 2, 2020, “JM Phillips”, purporting to be the “pro-se assignee of Phillips Chiropractic, Inc.”, filed a first amended complaint (ECF Dkt. 8) (as amended, “Complaint”).¹ JM Phillips and Phillips Chiropractic, Inc., are hereinafter each referred to as “Plaintiff”. At the status conference hearing on February 10, 2021, the Court indicated it would be setting an order to show cause why the case should not be dismissed for Plaintiff’s failure to be represented by counsel and for Plaintiff’s failure to disclose his legal name. On February 16, 2021, the Court’s issued its Order to Show Cause Why the Case Should Not Be Dismissed Because Plaintiff (1) Is Not Represented By Counsel; And (2) Has Not Disclosed His Legal Name (“OSC”) (ECF Dkt. 20). Plaintiff’s response was due by March 2, 2021 and Defendant’s response, if any, was due on March 10, 2021. On March 3, 2021, Plaintiff filed multiple exhibits (ECF Dkt. 43-52, 55), apparently in response to the OSC, and submitted a response on March 11, 2021 (ECF Dkt. 56). Defendant filed an opposition on March 15, 2021 (ECF Dkt. 57).

At the OSC hearing on March 17, 2021, Plaintiff appeared without counsel as “Mr. Phillips,” who declined to give his legal name, and Defendant was represented by John Sarai. As shown by the record of the OSC hearing and conceded by the Plaintiff at the OSC hearing, as well as at the status conference hearing on February 10, 2021, (1) Phillips Chiropractic Inc. is not the assignee of the underlying claim, and as such did not have standing to bring the Complaint, and (2) “JM Phillips” is a fictitious entity that at no point has been represented by counsel in the adversary.

¹ Separately, by motion filed on December 10, 2020, Plaintiff JM Phillips sought leave to file a second amended complaint, to amend the Complaint for reasons not relevant here.

II. DISCUSSION

The first issue the Court considered at the OSC hearing was whether the Court had jurisdiction over the Complaint. The Court finds it does not. Additionally, the Court notes on an alternative basis that to the extent the jurisdictional issue could have been cured, Plaintiff's response to the OSC did not cure the lack of jurisdiction, nor did Plaintiff show cause sufficient to satisfy the requirements set by the OSC.

1. The Court Lacked Jurisdiction to Hear Plaintiff's Amended Complaint Because the Plaintiff Was a Fictitious Entity.

The court in *W.N.J. v. Yocom*, 257 F.3d 1171 (10th Cir. 2001) held that a Plaintiff proceeding under a fictitious name in federal court deprives the court of jurisdiction. The court explained:

"Proceeding under a pseudonym in federal courts is, by all accounts, 'an unusual procedure.' " *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir.2000) (quoting *MM v. Zavaras*, 139 F.3d 798, 800 (10th Cir.1998)). Rule 10(a) of the Federal Rules of Civil Procedure requires that every pleading contain a caption setting forth, *inter alia*, "the title of the action," and this title must include "the names of all the parties." Similarly, Rule 17(a) mandates that "every action shall be prosecuted in the name of the real party in interest." *See also Femedeer*, 227 F.3d at 1246. The Rules provide no exception that allows parties to proceed anonymously or under fictitious names such as initials. *Nat'l Commodity & Barter Ass'n v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir.1989) (per curiam). Nevertheless, in "certain limited circumstances," courts do allow a party to proceed under a pseudonym. *Id.* "Significant privacy interests," such as plaintiffs' interest in keeping their sexual habits from public scrutiny, sometimes suffice. *Id.*; *see also Femedeer*, 227 F.3d at 1246 (case must "involv[e] matters of a highly sensitive and personal nature"); *Coe v. U.S. Dist. Ct. for Dist. of Colo.*, 676 F.2d 411, 416 (10th Cir.1982) (listing cases allowing pseudonyms for challenges to laws involving birth control, abortion, and homosexuality, among others).

When a party wishes to file a case anonymously or under a pseudonym, it must first petition the district court for permission to do so. *Nat'l Commodity & Barter Ass'n*, 886 F.2d at 1245. If a court grants permission, it is often with the requirement that the real names of the plaintiffs be disclosed to the defense and the court but kept under seal thereafter. *Id.* Where no permission is granted, "the federal courts lack jurisdiction over the unnamed parties, as a case has not been commenced with respect to them." *Id.*

1 *W.N.J. v. Yocom*, 257 F.3d at 1172 (citations and quotation marks in original).

2
3 Accordingly, as Plaintiff did not petition the court to proceed under “JM Phillips” before amending the
4 complaint, by the date of the OSC hearing, the Court had no choice but to dismiss the Complaint for
5 lack of jurisdiction. *See Nat’l Commodity & Barter Ass’n*, 886 F.2d at 1245 (a plaintiff must obtain a
6 court order before attempting to proceed under a fictitious name). Stated otherwise, at the moment the
7 Plaintiff filed his amended Complaint to proceed under the entity/pseudonym, “JM Phillips,” the Court
8 lost jurisdiction over the matter, as the case could not commence with respect to a fictitious plaintiff.
9
10 *See W.N.J. v. Yocom*, 257 F.3d at 1172.
11
12

13 On this basis alone, because the Court lacks jurisdiction, the Court is required to dismiss the case.
14

15 2. Absent Circumstances Not Present Here, A Fictitious Entity May Not Be a Plaintiff.

16
17 Assuming arguendo, the Court had jurisdiction, to the extent it can be argued that the OSC provided the
18 Plaintiff an opportunity to “petition” the Court to proceed under a pseudonym prior to the dismissal,
19 Plaintiff failed to meet his burden. Pursuant to the OSC, the Plaintiff was charged with showing cause
20 as to why he failed to disclose his legal name by March 17, 2021. The OSC included language
21 articulating the showing required by Plaintiff, as follows:
22
23

24 Parties are only allowed to use pseudonyms in certain circumstances. *See, e.g., Does I thru XXIII*
25 *v. Advanced Textile Corp.*, 214 F.3d 1058, 1067-68 (9th Cir. 2000) (“In this circuit, we allow
26 parties to use pseudonyms in the ‘unusual case’ when nondisclosure of the party’s identity is
27 necessary to protect a person from harassment, injury, ridicule or personal embarrassment.”)
28 (quotation omitted). Here, Plaintiff has not requested such authorization, and his nondisclosure
of his legal name “runs afoul of the public’s common law right of access to judicial proceedings,
and Rule 10(a)’s command that the title of every complaint ‘include the names of all the
parties.’” *Id.* At 1067 (citation omitted).

ECF Dkt. 20.

As such, Plaintiff was required to make a showing of harassment, injury, ridicule, or personal embarrassment by the March 17, 2021, hearing. Plaintiff, in his response, filed after the deadline, four court days prior to the hearing, only provided conclusory recitations of these factors. Plaintiff stated:

The Plaintiff Assignee, JM Philips is willing to stipulate to a name change to comply with what the Court OSC stated as to “reveal identity” and provide a “legal name,” should the Court still require that the listed name be changed. However, based upon prior harassment reports filed and the objection to a name change as stated in the last hearing on 2-11-21, the assignee prefers not to be exposed to future harm. Therefore, should the Court still insist on a name change, JM Philips request the Court an opportunity to discuss the detailed reasons privately and confidentially, in order to more fully explain any additional requested information by the Court to avoid making any name changes.

ECF Dkt. 56, Pg. 14 (errors in original). This statement was not accompanied by any evidence whatsoever. No declarations or documents were attached in support, nor were the “prior harassment reports” that Plaintiff referred to submitted to the Court or contained in the record. As Defendant’s counsel brought up at the OSC hearing, the Court, at the minimum, could not determine the type or nature of the alleged harassment or the identity of the party allegedly harassing the Plaintiff, let alone whether the alleged harassment implicated a “significant privacy interest,” as is required for the Court to permit a fictitious plaintiff. *See W.N.J. v. Yocom*, 257 F.3d at 1172.

Moreover, assuming arguendo that Plaintiff was somehow able to legally proceed under a fictitious name *after* filing his amended complaint, Plaintiff did not timely obtain such relief when faced with the OSC. Plaintiff’s opportunity to obtain approval for any such request would have been prior to the time of the hearing on the OSC, rather than containing an “offer” in his late filed response for a hearing “should the Court *still* insist on a name change.” *See* Dkt. 56, Pg. 14 (emphasis added). This is because the Court’s “insistence” on the name change was already implicit in the OSC, as the OSC’s clear direction was that

1 if Plaintiff failed to show cause for why he has not disclosed his legal name, the case would be
2 dismissed. Thus, at that point, Plaintiff was on notice that by the time of the response deadline to the
3 OSC, Plaintiff must make a sufficient showing that he should be allowed to proceed as a fictitious entity.
4 As such, Plaintiff is not permitted a second chance *after* the OSC hearing to show why despite *already*
5 failing to show cause as ordered, the Plaintiff still should not have to reveal his legal name. Therefore,
6 Plaintiff has not satisfied the Court's OSC by providing evidence that he satisfies the circumstances of a
7 plaintiff that should be allowed to proceed as a fictitious entity.
8

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11 3. Plaintiff Is Required to but Failed to Appear by Counsel Either as a Corporate Entity or
12 as a Fictitious Entity.

13 Local Rule 9011-2(a) provides:

14 A corporation, a partnership including a limited liability partnership, a limited liability company,
15 or any other unincorporated association, or a trust may not file a petition or otherwise appear
16 without counsel in any case or proceeding, except that it may file a proof of claim, file or appear
17 in support of an application for professional compensation, or file a reaffirmation agreement, if
signed by an authorized representative of the entity.

18 *See also Reading Int'l, Inc. v. Malulani Group, Ltd.*, 814 F.3d 1046, 1053 (9th Cir. 2016) ("A
19 corporation must be represented by counsel."); *In re Highley*, 459 F.2d 554, 555 (9th Cir. 1972) ("A
20 corporation can appear in a court proceeding only through an attorney at law."). The rationale is
21 because a corporation or other association is an artificial entity "existing legally separate from its
22 owner," and thus they are not their own natural persons with the legal capacity to represent themselves.
23 *See Zapata v. McHugh*, 893 N.W. 2d 720, 725 (Neb. 2017) (providing detailed analysis and collecting
24 cases); *See also Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194,
25 201 (1993) ("As the courts have recognized, the rationale for that rule applies equally to all artificial
26 entities."). This rule, on its face, does not contain any exceptions permitting an entity to appear in court
27 without counsel.
28

Here, once the Complaint was amended, the Plaintiff changed from an artificial corporate entity to a fictitious entity. Given the logic and reasoning behind *Rowland* and *Zapata*, that an artificial business entity requires counsel, the Court finds it even more necessary or appropriate that a *fictitious* entity be represented by counsel. On this basis, the Court finds that Plaintiff is a fictitious entity not represented by counsel, or, alternately, that the Plaintiff is engaged in the unauthorized practice of law, both of which warrant dismissal.

III. CONCLUSION

THEREFORE, to the extent Plaintiff “JM Phillips” is the intended Plaintiff, the Court does not have jurisdiction over the Complaint filed, without authorization, under a pseudonym, nor has Plaintiff presented any legal or evidentiary basis to be allowed to continue as Plaintiff under a pseudonym after the Complaint was filed. Alternatively, to the extent either “JM Phillips” or “Phillips Chiropractic, Inc.”, are the intended Plaintiffs, the Court finds it appropriate to dismiss the Complaint for failure to comply with Ninth Circuit authority and the Court’s local bankruptcy rules mandating that artificial entities be represented by counsel. Based on the foregoing, and Plaintiff having failed to show cause why the Complaint should not be dismissed in response to the OSC, the Court hereby DISMISSES the case.

IT IS SO ORDERED.

Date: May 13, 2021



Mark Houle
United States Bankruptcy Judge