

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

Oral Argument Requested

**PLAINTIFFS DESMOND RICKS, AKILAH COBB AND
DESIRE'A RICKS'S RESPONSE IN OPPOSITION TO
THE CITY OF DETROIT'S MOTION FOR THE ENTRY OF AN
ORDER ENFORCING THE BAR DATE ORDER AND
CONFIRMATION ORDER AGAINST DESMOND RICKS, AKILAH
COBB AND DESIRE'A RICKS**

Desmond Ricks, Akilah Cobb, and Desire'a Ricks, by and through their attorneys Fieger, Fieger, Kenney & Harrington, P.C., file this response opposing the City of Detroit's *Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Desmond Ricks, Akilah Cobb and Desire'a Ricks* ("Motion"). In support of this response, Desmond Ricks, Akilah Cobb, and Desire'a Ricks state as follows:

I. Introduction

1. Admitted that on August 23, 2017, Desmond Ricks ("Ricks"), Akilah Cobb and Desire'a Ricks (collectively, the "Plaintiffs") filed a



federal lawsuit pursuant to 42 U.S.C. §1983 and related state law claims stemming from the wrongful imprisonment of Desmond Ricks. Mr. Ricks was wrongfully convicted based on falsified evidence, and was imprisoned for over 24 years for a crime he did not commit. Mr. Ricks was exonerated in 2017 based on newly discovered evidence.

Denied that Plaintiffs' claims are barred by the bankruptcy orders. It is black letter law that a wrongful imprisonment claim under §1983 does not accrue until the sentence or conviction has been invalidated. "Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor, so also 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." *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994)(cleaned up). Mr. Ricks's §1983 claim, thus, accrued in 2017, well after the City of Detroit bankruptcy had concluded. The Plaintiffs' claims accrued after the City was discharged from Bankruptcy, and their claims are not subject to the Bankruptcy order.

Denied that Plaintiffs' federal lawsuit violates this Court's Bar Date Order. Plaintiffs have valid claims against the City that are not subject to the bankruptcy orders, since they accrued after the bankruptcy was over.

Admitted that Plaintiffs declined to concur with the City's requested relief, given that Plaintiffs have valid claims against the City that are not subject to any bankruptcy order. Notably, the City of Detroit did not make any attempts to contact Plaintiffs' counsel to discuss its motion, or the basis for the relief sought, other than e-mailing a draft of the motion and asking for concurrence.

II. Factual Background

A. The City's Bankruptcy Case

2. Admitted that on July 18, 2013 ("Petition Date"), the City filed this chapter 9 case.

3. Admitted that on October 10, 2013, the City filed its *Motion Pursuant to Section 105, 501 and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), for Entry of an Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* ("Bar Date").

Motion") [Doc. No. 1146], which was approved by order of this Court on November 21, 2013 ("Bar Date Order"). [Doc. No. 1782].

4. Admitted that the Bar Date Order established February 21, 2014, as the deadline for filing claims against the City. Further admitted that Paragraph 6 of the Bar Date Order states that the

following entities must file a proof of claim on or before the Bar Date...any entity: (i) whose prepetition claim against the City is not listed in the List of Claims or is listed as disputed, contingent or unliquidated; and (ii) that desires to share in any distribution in this bankruptcy case and/or otherwise participate in the proceedings in this bankruptcy case associated with the confirmation of any chapter 9 plan of adjustment proposed by the City...

Bar Date Order ¶ 6.

5. Admitted that Paragraph 22 of the Bar Date Order also provides that:

Pursuant to sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim in this case pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Order with respect to a particular claim against the City, but that fails properly to do so by the applicable Bar Date, shall be forever barred, estopped and enjoined from: (a) asserting any claim against the City or property of the City

that (i) is in an amount that exceeds the amount, if any, that is identified in the List of Claims on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature or a different classification or priority than any Scheduled Claim identified in the List of Claims on behalf of such entity (any such claim under subparagraph (a) of this paragraph being referred to herein as an “Unscheduled Claim”); (b) voting upon, or receiving distributions under any Chapter 9 Plan in this case in respect of an Unscheduled Claim; or (c) with respect to any 503(b)(9) Claim or administrative priority claim component of any Rejection Damages Claim, asserting any such priority claim against the City or property of the City.

Denied that the above provisions of the Bar Date Order apply to Plaintiffs’ lawsuit filed in federal court. The Bar Date Order defines the term “claim” as it is defined in the section 101(5) of the Bankruptcy Code. Bar Date Order ¶ 6. Section 101(5) of the Bankruptcy Code, in turn, defines a “claim” 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; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

In order to be subject to the Bar Date Order, Plaintiffs must have had a “right to payment” before the applicable deadline.

Plaintiffs did not have any “right to payment” on or before February 21, 2014, the deadline for filing claims against the City. In February 2014, Mr. Ricks was still wrongfully imprisoned, and conviction had not been invalidated. Any dream of exoneration was not yet realized. At that time, Mr. Ricks had no “right to payment” (in any form) from the City, and thus had no “claim” for which he was required to file proof of. Mr. Ricks’s claims against the City did not accrue until 2017, when he was exonerated.

6. Admitted that none of the Plaintiffs filed a proof of claim, but Plaintiffs further state that they were not required to. As a practical matter, it is impossible to file a “proof of claim” for a cause of action that has not yet accrued. Simply put, there is no “claim,” as defined by the Bankruptcy Code.

7. Admitted that on October 22, 2014, the City filed its *Eighth Amended Plan of the Adjustment of Debts of the City of Detroit* (“Plan”), which this Court confirmed on November 12, 2014. [Doc. Nos. 8045 & 8272].

8. The discharge provision in the Plan provides:

Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims under the Plan will be in exchange for and in complete satisfaction, discharge and **release of all Claims arising on or before the Effective Date.** Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date, discharge the City from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (ii) the Holder of a Claim based on such debt has accepted the Plan.

Plan, Art. III.D.4, at p.50.

9. Admitted that the Plan injunction set forth in Article III.D.5 provides in pertinent part:

Injunction

On the Effective Date, except as otherwise provided herein or in the Confirmation Order,

a. all Entities that have been, are or may be holders of Claims against the City...shall be permanently enjoined from taking any of the following actions against or affecting the City or its property...

1. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other

proceeding of any kind against or affect the City of its property...

5. proceeding in any manner in any place whatsoever that does not conform or comply with the provisions of the Plan or the settlements set forth herein to the extent such settlements have been approved by the Bankruptcy Court in connection with Confirmation of the Plan; and

6. taking any actions to interfere with the implementation or consummation of the Plan.

Plan, Article III.D.5, at pp.50-51.

Denied that the Plan or its injunction provision apply to Plaintiffs' litigation. Plaintiffs did not have any "claims" against the City that accrued "on or before the effective date." They could not, therefore, file any "proof of claim" under the Plan Order deadlines. The injunction provisions do not apply to Plaintiffs' litigation.

10. Admitted that this Court retained jurisdiction to enforce the Plan injunction and to resolve any suits that may arise in connection with the consummation, interpretation or enforcement of the Plan. Plan, Art. VII. F, G, I, at p.72.

Denied that Plaintiffs' federal court litigation is implicated by the Plan.

B. Plaintiffs' United States District Court Lawsuit

11. Admitted that on December August 23, 2017, the Plaintiffs filed a complaint against the City and certain individuals in the United States District Court for the Eastern District of Michigan, commencing case number 17-12784 ("Lawsuit"). On May 18, 2018, the Plaintiffs filed their *First Amended Complaint* ("Amended Complaint") against the City and three individuals in their individual capacity.

12. Admitted that in the Amended Complaint, the Plaintiffs assert claims which arise from or relate to the alleged wrongful conviction of Ricks on September 23, 1992. **Denied** that the date that Mr. Ricks was wrongfully convicted controls when his "claim" against the City arose. Mr. Ricks did not have a viable cause of action against the City or its employees for wrongful conviction until a Court of Law *deemed that conviction wrongful and set it aside*. As stated above, it is black letter law that a claim for wrongful conviction under §1983 does not accrue until the conviction or sentence has been invalidated. *Heck, supra*, at 489-90.

Mr. Rick was not exonerated, and his conviction was not invalidated and declared wrongful, until 2017. Thus, his "claim" stemming from the wrongful conviction did not arise until 2017.

III. Argument

13. Denied that Plaintiffs violated the Plan's injunction and discharge provisions when they filed the Lawsuit to assert claims and otherwise seek relief against the City. As explained above, Plaintiffs did not have a claim arising from the wrongful conviction until the conviction was itself invalidated: 2017.

14. Admitted that the Plan's discharge provision states that the "rights afforded under the Plan and the treatment of Claims under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims arising on or before the Effective Date." Plan Art. III.D.4, at p.50 (emphasis added).

Denied that Plaintiffs do not have a right to bring a cause of action against the City, or pursue their litigation in federal court. Plaintiffs' claims did not accrue until 2017, well after the bankruptcy discharge provisions were put into place. The Plan did not discharge future claims, and specifically states that it only applies to "Claims arising on or before the Effective Date." Mr. Ricks did not have a claim—i.e. a right to payment—

for constitutional violations under §1983 until 2017. His claims against the City arose in 2017 and are not subject to the Plan.

15. Denied that Bankruptcy Court is a proper forum for litigating Plaintiff's claims against the City. As stated above, the plan only applied to Claims arising on or before the Effective Date; Plaintiffs' claims do not fall under this category of claims. The Bankruptcy Court has no jurisdiction over Plaintiffs' claims, which arose after the Effective date of the Plan.

IV. Conclusion

16. Plaintiffs respectfully requests that this Court enter an order denying the City's motion.

***FIEGER, FIEGER, KENNEY
& HARRINGTON, P.C.***

Dated: February 13, 2019

/s/Stephanie L. Arndt
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2019, I electronically filed the below-listed document with the Clerk of the Court using the ECF system, which sent notification of such filings to all participating attorneys:

Desmond Ricks, Akilah Cobb, and Desire'a Ricks response opposing the City of Detroit's *Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Desmond Ricks, Akilah Cobb and Desire'a Ricks*

***FIEGER, FIEGER, KENNEY
& HARRINGTON, P.C.***

Dated: February 13, 2019

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