

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

In re: WELLPATH HOLDINGS, INC., <i>et al.</i> ,	§	
Debtors,	§	
	§	Case No. 24-90533 (ARP)
	§	Chapter 11
	§	(Jointly Administered)
THOMAS J. FREEMAN,	§	
Plaintiff	§	Adv. No. _____
	§	
VS.	§	
	§	
WELLPATH LLC,	§	
Defendant.	§	

**COMPLAINT TO DETERMINE NON-DISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. § 523(a)(2)(A)**

Plaintiff THOMAS J. FREEMAN ("Plaintiff"), by and through his undersigned counsel, brings this adversary proceeding against Defendant WELLPATH LLC ("Defendant" or "Wellpath") pursuant to § 523(a)(2)(A) of Title 11 of the United States Code (the "Bankruptcy Code") and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).
3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicate for the relief sought herein is section 523(a)(2)(A) of the Bankruptcy Code.

PARTIES

6. Plaintiff is an individual and creditor of Defendant.
7. Defendant is a debtor in the above-captioned Chapter 11 case.

BACKGROUND

8. Plaintiff and Defendant were opposing litigants in a case styled and numbered *Thomas J. Freeman, v. Wellpath LLC & Young Sun Kim, Do*, Case No. 1:22-cv-01613, in the United States District Court, Northern District of Illinois, Western Division.

9. Plaintiff agreed to mediate the case and went to the mediation in good faith to try to effectuate a settlement of his claims.

10. On October 10, 2024, Plaintiff and Defendant participated in a mediation to resolve Plaintiff's pending medical malpractice and civil rights claims against both Defendant and its employee physician, Dr. Young Sun Kim ("Kim"). At the conclusion of the mediation, the parties reached an oral agreement to settle all claims (the "Mediated Settlement").

11. Eleven days later, on October 21, 2024, Defendant's counsel transmitted the written settlement agreement and release (collectively, the "Settlement Agreement") to memorialize the terms of the October 10 Mediated Settlement. Plaintiff executed the Settlement Agreement on October 24, 2024, and simultaneously provided a stipulation of dismissal. The Court entered its order dismissing the case with prejudice on October 25, 2024.

12. The Settlement Agreement required Defendant Wellpath to pay Plaintiff a total sum of \$75,000.00 in two equal installments: \$37,500.00 within thirty (30) days of both the dismissal and execution of the Settlement Agreement and \$37,500.00 within ninety (90) days of both the dismissal and execution of the Settlement Agreement.

13. In executing the Settlement Agreement and stipulation of dismissal, Plaintiff relied on Defendant's express representations and promises to make the agreed-upon payments. Based on these representations, Plaintiff dismissed all claims with prejudice and provided complete releases to both Defendant and Kim.

14. Just eighteen (18) days after Plaintiff executed the Settlement Agreement and releases, on November 11, 2024, Defendant filed its Chapter 11 bankruptcy petition, without having made any payments under the Settlement Agreement.

FACTS DEMONSTRATING FRAUDULENT INDUCEMENT

15. At the time Defendant negotiated and executed the Settlement Agreement, Defendant had already undertaken extensive bankruptcy preparations and knew that it would not fulfill its payment obligations and never intended to fulfill its payment obligations, as evidenced by the following timeline:

16. Beginning in January 2024, Defendant engaged Lazard Frères & Co. LLC ("Lazard") as restructuring investment banker and McDermott Will & Emery LLP ("McDermott") as restructuring counsel to address what Defendant described as a "significant maturity wall." (*See*, Dkt. 20, ¶ 9.)

17. McDermott is also bankruptcy counsel for Defendant in the related proceeding and at all material times mentioned herein.

18. Between April and June 2024, Defendant conducted a failed sale process of its Recovery Solutions Division, contacting over 140 potential buyers but receiving only 6 preliminary bids. (*See*, Dkt. 20, ¶ 10.)

19. By August 30, 2024, Defendant had defaulted on its credit facilities and executed a Forbearance Agreement with its lenders due to its inability to make required interest and amortization payments. (*See*, Dkt. 59, ¶ 11.)

20. On September 21, 2024—nearly three (3) weeks before the Settlement Agreement—Defendant retained Epiq Corporate Restructuring LLC ("Epiq") as its bankruptcy claims and noticing agent, as evidenced by the engagement letter attached to Defendant's November 12, 2024 retention application. (*See*, Dkt. 4, ¶¶ 1 and 4-1, Epiq Retention Application.)

21. Throughout September and October 2024, Defendant was actively negotiating the terms of a pre-arranged Chapter 11 bankruptcy with an *ad hoc* group of lenders. (*See*, Dkt. 59 ¶11.)

22. Despite all of these bankruptcy preparations, Defendant: (a) negotiated and attended the mediation on October 10, 2024; (b) failed to disclose its imminent bankruptcy filing; (c) failed to disclose its defaults under credit facilities; (d) failed to disclose its retention of bankruptcy professionals; (e) failed to disclose the failed sale process; and (f) failed to disclose its ongoing restructuring negotiations.

23. Defendant knew at the time it settled the *Freeman* case in mediation and prior to executing the Settlement Agreement that it would not and could not fulfill its payment obligations, as evidenced by its bankruptcy filing just 32 days later. Further, Defendant deliberately structured the settlement payments to be due after its bankruptcy filing, ensuring that its obligation to Plaintiff would become a pre-petition unsecured claim subject to discharge, rather than an enforceable obligation.

24. Defendant's motive in deceiving Plaintiff into settlement despite knowing it would not make the payments was twofold: first, to secure a release for the co-defendant Kim; and

second, to push the settlement payments into the post-bankruptcy period, knowing that they would be uncollectible due to the automatic stay and discharge provisions of Chapter 11.

25. Defendant attended the mediation in bad faith, deliberately misrepresenting its intent to fulfill the settlement payments, despite knowing at the time that it would not do so. Defendant structured this deception to induce Plaintiff into dismissing claims against Kim while ensuring that Wellpath's obligations would fall into the bankruptcy process, rendering them uncollectible. This calculated fraud left Plaintiff without recourse against Kim and exposed solely to Wellpath's pre-planned insolvency.

26. At the time Defendant represented to Plaintiff it would make the two (2) settlement payments, it knew that representation was false. Moreover, Defendant omitted telling Plaintiff of its imminent bankruptcy filing and thus committed misrepresentation by omission.

27. Plaintiff relied upon Defendant's representations in entering into the settlement and Settlement Agreement to his detriment and suffered harm as a result.

FRAUDULENT INDUCEMENT UNDER SECTION 523(a)(2)(A)

28. The relationship between Plaintiff and Defendant and the settlement discussions and entering into the settlement agreement gave rise to a duty to speak by Defendant; the event that triggered the duty to speak was entering a settlement agreement and making promises of payment; the general content of the information that was withheld was the imminent filing of bankruptcy, its materiality being that Plaintiff would not have entered the settlement agreement had Defendant not omitted the information; the identities of those under a duty who failed to make such disclosures were the attorneys and representative at the mediation; what Defendant gained from withholding the information was a discharge of Kim; why Plaintiff's reliance on the omission was reasonable and detrimental was that the settlement payments promised was the only

inducement for Plaintiff to enter the agreement, and Plaintiff gave up his claims as a result; and the damages the fraud caused Plaintiff was giving up his claims against Defendants Wellpath and Kim.

29. Section 523(a)(2)(A) of the Bankruptcy Code excepts from discharge any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A).

30. To establish non-dischargeability under § 523(a)(2)(A), a creditor must prove by a preponderance of evidence that: (1) the debtor made representations; (2) at the time they were made the debtor knew they were false; (3) the debtor made them with the intention and purpose to deceive the creditor; (4) the creditor relied on such representations; and (5) the creditor sustained losses as a proximate result of the representations. *See, In re Robinson*, 640 B.R. 741 (2021).

31. A debtor's intent not to perform a contract at the time of formation constitutes fraud under § 523(a)(2)(A). *See, In re Orsine*, 254 B.R. 184 (2000); *In re Zimmerman*, 567 B.R. 521 (2017).

32. When Defendant executed the Settlement Agreement, it made express oral and written representations that it would make the intended settlement payment amounts on the specified dates provided with no intention at the time it made the representation of paying the settlement amounts.

33. Further, Defendant represented that, if Plaintiff released all claims against both Wellpath and Kim and dismissed the case with prejudice against both defendants, Wellpath would make the payments as agreed in the Settlement Agreement.

34. These representations were false when made. In fact, the settlement was nothing more than a ruse, as Defendant never intended to make the promised payments.

35. At the time these representations were made, Wellpath (a) had already retained bankruptcy counsel and professionals; (b) had defaulted on its credit facilities; (c) was negotiating bankruptcy terms with creditors; and (d) knew it would file bankruptcy before the first payment came due.

36. Upon information and belief, at the time of mediation, Defendant had already retained bankruptcy counsel, had established a potential filing date, and had substantially prepared the necessary bankruptcy filing documents.

37. Defendant had special knowledge or information regarding the transaction that was not ascertainable by Plaintiff.

38. Defendant participated in mediation specifically to secure Kim's release, knowing such release would have been unobtainable through a mere bankruptcy filing.

39. Defendant committed fraud not only through these affirmative misrepresentations but also through material omissions regarding its true financial condition and intentions. Defendant made material omissions of fact that were known to be true but deliberately concealed to create a false impression. Defendant deliberately concealed that it had already planned to file for bankruptcy and had no intention or ability to make the agreed-upon settlement payments.

40. Defendant made these false representations and material omissions as part of a calculated scheme to deceive Plaintiff into executing the Settlement Agreement, dismissing his claims with prejudice, and releasing both Defendants Wellpath *and* Kim.

41. Plaintiff justifiably relied on Defendant's representations by executing the Settlement Agreement, dismissing his claims with prejudice, and providing releases to Defendants Wellpath *and* Kim.

42. As a direct and proximate result of Defendant's fraud, Plaintiff has been damaged by the loss of his ability to pursue his original claims, the loss of his right to recovery against Kim, and the conversion of his claims into an unsecured bankruptcy claim.

43. Based on the foregoing, Plaintiff's claim against Defendant is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Determine that Defendant's \$75,000.00 debt to Plaintiff is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A);
- B. Enter judgment in favor of Plaintiff and against Defendant in the amount of \$75,000.00 plus interest;
- C. Award Plaintiff his costs and attorney's fees incurred in bringing this action; and
- D. Grant Plaintiff such other relief as is just and proper.

Dated: February 11, 2025

Respectfully submitted,

/s/ Damon Mathias

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