



ENTERED
05/08/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:	§	CASE NO. 19-20497
HIDALGO COUNTY EMERGENCY	§	
SERVICE FOUNDATION,	§	
Debtor.	§	CHAPTER 11
	§	
HIDALGO COUNTY EMERGENCY	§	
SERVICE FOUNDATION,	§	
Plaintiff	§	ADVERSARY NO. 20-2006
v.	§	
JOVITA CARRANZA, IN HER	§	
CAPACITY AS ADMINISTRATOR FOR	§	
THE U.S. SMALL BUSINESS	§	
ADMINISTRATION,	§	
Defendant.	§	

PRELIMINARY INJUNCTION

On Friday May 8, 2020, the Court considered the Plaintiff’s Application For Preliminary Injunction with due notice to the parties.

1. The Court finds that the Plaintiff has proven it would suffer immediate and irreparable harm without issuance of a preliminary injunction.

2. Plaintiff has shown a substantial likelihood of success on the merits on its claim that Jovita Carranza in her capacity as Administrator for the United States Small Business Administration (“SBA”) has acted in a manner that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. §706(2)(A); and “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” 5 U.S.C. §706(2)(C), and therefore the Court “shall compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

3. Plaintiff has also shown a substantial likelihood of success on the merits on its claim that the SBA’s conduct is a violation of 11 USC §525(a), enforceable under 11 USC

§105(a) and the government's waiver of sovereign immunity in 11 USC §106.

4. Both of Plaintiff's causes of action arise from the SBA's categorical exclusion of the Plaintiff from participation in the PPP support program solely because it is a debtor in bankruptcy, and because it is an applicant who is "presently involved in any bankruptcy".

5. Plaintiff has proven that the risk of harm to Plaintiff if a preliminary injunction is not granted outweighs the harm to SBA and other Restrained Parties (as defined below).

6. Plaintiff has proven that issuance of this preliminary injunction is in the public interest.

7. The Court incorporates by reference into this preliminary injunction all its oral findings and rulings made on the record at the temporary restraining order hearing on April 24, 2020, the contents of its temporary restraining order entered on April 25, 2020, and also all oral findings and rulings made on the record at this hearing. The Court further adopts the legal reasoning set forth by Judge Thuma in *Roman Catholic Church of the Archdiocese of Santa Fe v. United States of America Small Business Administration*, Adv. P. No. 20-1026, (Bankr. D.N.M. May 1, 2020).

8. The Plaintiff is a debtor-in-possession and so no bond is required.

Based on the findings and conclusions as set forth and referenced above, it is hereby ORDERED, AJDUDGED AND DECREED as follows:

1. The Plaintiff's request for a preliminary injunction is GRANTED as set forth herein.

2. A preliminary injunction is hereby issued, with notice, and directed to SBA, all her officers, agents, servants, employees and attorneys, and all other persons who are in active concert with any of the foregoing persons; the Court considers any lender that is eligible to make

PPP loans and that has actual knowledge of this order to be “in active concert” with SBA in any of their dealings with the Plaintiff in connection with the PPP process and so bound by this preliminary injunction (collectively “**Restrained Parties**”).

3. Until the expiration of this preliminary injunction, all the Restrained Parties are hereby ENJOINED, RESTRAINED, and/or COMMANDED as follows—

- a. From directly or indirectly interfering with Plaintiff’s submission of any PPP application form to any lender, with the words “or presently involved in any bankruptcy” stricken from the form (or ignored with respect to an on-line application), and, if Plaintiff satisfies all the other conditions in question #1 to the application form, Plaintiff may mark the box answering question #1 “no.”
- b. From refusing to accept and promptly process in accordance with all other applicable PPP program rules and regulations the Plaintiff’s PPP application forms dated April 3, 2020, and April 28, 2020.
- c. The Restrained Parties shall consider all of Plaintiff’s PPP application forms, and shall fully implement all aspects of the PPP with respect to Plaintiff, without any consideration of the involvement of Plaintiff or any owner of Plaintiff in any bankruptcy.
- d. All lenders considering a PPP application form submitted by the Plaintiff are entitled to rely at all times on this order and the SBA sworn statement as set for below with respect to any lawful action they may take in reliance thereon.
- e. To the extent any lender requires Hidalgo County EMS to execute any other forms, applications, or other documents for PPP funding that include any language about whether Hidalgo County EMS or any owner of Hidalgo County EMS is involved in any bankruptcy, Hidalgo County EMS is authorized to strike the portion of such language about involvement in any bankruptcy and the Restrained Parties shall process the forms, applications, or other documents without any consideration of the involvement of Hidalgo County EMS or any owner of Hidalgo County EMS in any bankruptcy.
- f. The Restrained Parties shall not make or condition the approval of any PPP loan or loan guaranty involving the Plaintiff contingent on the Debtor or any owner of the Debtor not being “presently involved in any bankruptcy.”

4. No later than 5:00 p.m. (prevailing Central time) on Monday, May 11, 2020, Jovita Carranza in her capacity as Administrator for the United States Small Business Administration, shall file a sworn declaration that confirms that the SBA will honor any right,

guaranty, inducement or other privilege extended to any participating lender in the Paycheck Protection Program that complies with this preliminary injunction. The failure to timely comply with this paragraph will result in the issuance of a show cause order, a requirement for personal appearance and the potential imposition of compensatory and coercive sanctions.

Signed: May 08, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE