


ORDERED.

Dated: December 14, 2021


Michael G. Williamson
United States Bankruptcy Judge

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

In re:

Case No. 8:20-bk-03522-MGW
Chapter 7

Procom America, LLC,
d/b/a Beyond Bank of Brothers,

Debtor.

_____ /

ORDER ON DISCOVERY MOTIONS

THIS CASE came on for hearing on October 4, 2021, at 3:00 p.m., on Peter Gaal's motion to quash subpoenas directed to Kevin Riggs and Renaissance Consulting & Development, LLC,¹ as well as the Chapter 7 Trustee's motion to compel Riggs, Renaissance Consulting, and Gaal to produce documents and to compel Gaal to turn over the Debtor's tax refund for 2019.²

¹ Doc. No. 295.

² Doc. No. 312. Gaal opposed the Trustee's motion. Doc. No. 314.

As background, Gaal was the founder and 100% owner of the Debtor, Procom America. In April 2020, Gaal assigned all the Debtor's assets to Larry Hyman, who, as assignee, filed a petition in state court commencing an assignment for the benefit of the Debtor's creditors. Even so, two weeks later, three of the Debtor's creditors filed this involuntary chapter 7 case.³

At first, Gaal was cooperative. He consented to the order for relief.⁴ And he voluntarily executed schedules, statements, and lists on the Debtor's behalf.⁵ But, when it comes to discovery, Gaal has not been as cooperative.⁶

Take, for instance, the Trustee's efforts to obtain Rule 2004 discovery from Riggs and Renaissance Consulting. Prepetition, Riggs (who is a certified public accountant) and Renaissance Consulting prepared the Debtor's tax returns and Gaal's personal tax returns. The Trustee subpoenaed Riggs and Renaissance Consulting for Rule 2004 examination and requested they produce documents relating to "Procom," which was defined in the subpoena to include the Debtor and

³ Doc. No. 1.

⁴ Doc. No. 7.

⁵ Doc. No. 70.

⁶ The Trustee has been forced to file a motion to compel turnover of estate property (Doc. No. 19); a motion to compel Rule 2004 examinations of the Debtor and various insiders, including Gaal (Doc. No. 263); and a motion to compel production of the Debtor's foreign bank records (Doc. No. 268). The Court granted the motion to compel turnover of estate property and the motion to compel Rule 2004 examinations. Doc. No. 265. The Court currently has under advisement the motion to compel production of the Debtor's foreign bank records.

“all of its . . . agents, representatives, assigns, and all other persons acting or purporting to act on behalf of the company.”⁷

Gaal moved to quash the Trustee’s Rule 2004 subpoenas because, based on the way they were drafted, the subpoenas could be read to require Riggs and Renaissance Consulting to turn over documents relating to Gaal. According to Gaal, “Rule 2004 is not a basis for inquiry into the financial records of non-debtors.”⁸ To the extent the subpoenas sought his personal financial records, Gaal argued that subpoenas went far beyond Rule 2004 and were tantamount to post-judgment discovery against Gaal even though the Trustee had not formally asserted any claims against him.

At the Rule 2004 examination of Riggs, two things became apparent.

First, Gaal’s personal financial records were (at least to some extent) inextricably intertwined with the Debtor’s financial records: as a single-member LLC, the Debtor was a disregarded entity for tax purposes in 2019; all the Debtor’s income and expenses were listed on Gaal’s personal 1040-NR tax return for 2019; some of the Debtor’s 2019 distributions to Gaal were made so Gaal could have funds to pay his quarterly estimated taxes on the Debtor’s projected 2019 income; Gaal received a tax refund for 2019 based on his overpayment of estimated 2019 quarterly

⁷ Doc. No. 294.

⁸ Doc. No. 295, ¶ 10.

taxes; and most, if not all, the income and expenses reflected on Gaal's personal 1040-NR for 2019 was the Debtor's income and expenses.

Second, because Riggs' counsel, Matt Tornincasa, had unanticipated technical issues, he was unable to produce certain e-mails to the Trustee before Riggs' Rule 2004 examination. He was likewise unable to produce the requested the e-mails at Riggs' Rule 2004 examination or afterward.

So the Trustee filed his motion to compel. In his motion, the Trustee asked the Court to compel Riggs and Renaissance Consulting to produce all documents responsive to the Trustee's Rule 2004 subpoenas, including all e-mail communications between Riggs (or Renaissance) and the Debtor, its subsidiary, or anyone associated with the Debtor or its subsidiary, regarding the Debtor's operations.⁹ The Trustee's motion also asks the Court to compel Gaal to turn over his 2019 tax refund (and all documents relating to it), which the Trustee contends is property of the estate.¹⁰

Rule 2004 permits a trustee to go on a fishing expedition so long as the information the trustee seeks relates to the acts, conduct, or property or to the liabilities and financial condition of the debtor; or to any matter that may affect the

⁹ Doc. No. 312, ¶¶ 7 – 9.

¹⁰ *Id.* at ¶¶ 10 – 11.

administration of the debtor's estate.¹¹ The information requested in the Trustee's Rule 2004 subpoenas, at a minimum, relates to the Debtor's financial condition and matters affecting the administration of the Debtor's estate.

In particular, because the Debtor was a disregarded entity for tax purposes, Gaal's 2019 tax return (and other information relating to transactions between the Debtor and its equity owner) is discoverable under Rule 2004. What's more, there is no immunity or privilege preventing the turnover of federal, state, or local tax returns related to the Debtor's operations—whether those returns are reported with the Debtor or Gaal as the reporting taxpayer.

Thus, Riggs and Renaissance should be required to produce all documents responsive to the Trustee's Rule 2004 subpoenas, including: (i) documents relating to Riggs and Renaissance's representation of Gaal individually (and, in particular, Gaal's 2019 tax return and any documents relating to his 2019 tax refund); and (ii) all e-mail communications between Riggs (or Renaissance) and the Debtor, its subsidiary, or anyone associated with the Debtor or its subsidiary, regarding the Debtor's operations. Accordingly, it is

¹¹ Fed. R. Bankr. P. 2004(b); *In re MMH Auto. Grp., LLC*, 346 B.R. 229, 233 (Bankr. M.D. Fla. 2006); *In re Defoor Centre, LLC*, 2021 WL 5829526, at *7 (Bankr. M.D. Fla. Dec. 7, 2021) (describing Rule 2004 discovery as a "fishing expedition").

ORDERED:

1. The Trustee's motion to compel production of documents and turnover of a tax refund is GRANTED to the extent set forth in this Order. Gaal's motion to quash is DENIED, except to the extent set forth in this Order.

2. Riggs and Renaissance shall immediately comply with the Trustee's Rule 2004 subpoenas by producing to the Trustee all responsive documents not previously produced, including (i) documents relating to Riggs and Renaissance's representation of Gaal individually (and, in particular, Gaal's 2019 tax return and any documents relating to his 2019 tax refund); and (ii) all e-mail communications between Riggs (or Renaissance) and the Debtor, its subsidiary, or anyone associated with the Debtor or its subsidiary regarding the Debtor's operations.

3. Any documents relating to Riggs and Renaissance's representation of Gaal individually shall be marked "confidential," and absent further order of this Court, the Trustee shall not disclose the information contained in those "confidential" documents to any person or entity (including Electronic Merchant Systems, LLC) other than his currently retained professionals.

4. Although Riggs and Renaissance are required to turn over any documents relating to Gaal's 2019 tax return and tax refund, the issue whether the 2019 tax refund is property of the estate is not before the Court. The Court therefore declines to order Gaal to turn over the 2019 tax refund at this time.

5. This Order, however, is without prejudice to the Trustee seeking other relief relating to the 2019 tax refund by motion or by adversary proceeding.

Attorney Steve Berman is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and to file a proof of service within three days of entry of the order.