


ORDERED.

Dated: March 31, 2022



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,

Debtor.

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**ORDER DENYING MOTION TO COMPEL PRODUCTION
OF FOREIGN BANK RECORDS WITHOUT PREJUDICE**

THIS CASE came on for hearing on July 22, 2021, at 9:30 a.m., on the Chapter 7 Trustee's motion to compel the production of foreign bank records.¹ According to the Trustee, the Debtor's principal (Peter Gaal) and other owners, officers, directors, or control persons (Debra Watkins and Nikki Montgomery) are authorized signors on, or have the right of withdrawal for, accounts titled in the name of the Debtor and its affiliates (Procom Investments KFT, Procom Consulting

¹ Doc. No. 268.

KFT, Procom Consulting Utazasi IRODA FT, and Procom Tours, LLC)². The Trustee alleges that, in the one year before this case was filed, the Debtor transferred more than \$4.5 million to Procom Consulting and more than \$4.8 million to Procom Investments KFT.

In his motion, the Trustee asks the Court to compel the Debtor to produce any accounts for which Gaal, Watkins, or Montgomery were authorized signatories or had withdrawal authority during the four years before this case was filed.³ In the alternative, the Trustee asks the Court to compel the Debtor to execute a consent directive authorizing international banks and financial entities to produce complete records for any accounts Gaal, Watkins, or Montgomery were signatories on or had withdrawal authority for.⁴

Naturally, Gaal objects.⁵ Gaal, of course, does not oppose the Debtor's bank records being turned over to the Trustee. But Gaal says the Debtor has already provided copies of all bank records in its possession, custody, or control.⁶ And, in any case, the Trustee doesn't need a consent directive from Gaal to obtain those records.⁷ More important, Gaal says the Debtor does not have authority to consent

² *Id.* at ¶ 13.

³ *Id.* at ¶ 14.

⁴ *Id.* at ¶ 15.

⁵ Doc. No. 285.

⁶ *Id.* at ¶ 2.

⁷ *Id.* at ¶ 6.

to the production of bank records,⁸ and providing such consent would violate the European Union's General Data Protection Regulation.⁹ Gaal raises other objections.

At this point, the Court is not certain it has the authority to grant the relief sought. The Trustee argues the Court should look to *In re Mastro* for its authority.¹⁰ In that case, the court ruled that a bankruptcy court may lean on Bankruptcy Code § 105 and Federal Rule of Bankruptcy Procedure 2004 in ordering a debtor to sign a consent directive.¹¹ But, as Gaal points out, *Mastro* involved an order compelling a debtor to sign a consent directive for the release of its own bank records—not those of a non-debtor.¹²

In any event, the Court need not decide whether it has the authority to grant the relief sought because the Court is not persuaded the relief is warranted at this point. Around the time it filed its motion, the Trustee sought to compel the Rule 2004 examination of Gaal.¹³ Recently, this Court refused to reconsider an order (and

⁸ *Id.* at ¶¶ 4 – 5.

⁹ *Id.*

¹⁰ Doc. No. 268 at pp. 6 – 7 (citing *Rigby v. Mastro (In re Mastro)*, 585 B.R. 587, 598 (B.A.P. 9th Cir. 2018)).

¹¹ *In re Mastro*, 585 B.R. at 595 – 97.

¹² Doc. No. 285 at ¶ 9 (discussing *Mastro*).

¹³ Doc. No. 263.

subpoena) compelling Gaal's Rule 2004 exam.¹⁴ Because the Trustee may be able to obtain the discovery he seeks from the Rule 2004 examination, it would be inappropriate, on the record before the Court, to grant the relief the Trustee seeks.

Accordingly, it is

ORDERED:

1. The Trustee's to motion to compel the production of foreign bank records is DENIED.

2. Denial of the Trustee's motion is without prejudice to the Trustee raising these issues (and seeking the production of foreign bank records) after it has had the opportunity to examine Gaal under Rule 2004.

Attorney Lynn Sherman is directed to serve a copy of this Order on all interested parties who do not receive service by CM/ECF and to file a proof of service within three days of entry of the Order.
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¹⁴ Doc. No. 354.