

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

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

PROCOM AMERICA, LLC,

Chapter 7

Debtor.

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**CHAPTER 7 TRUSTEE, DOUGLAS N. MENCHISE’S, RESPONSE IN OPPOSITION  
TO PETER GAAL’S *EMERGENCY* MOTION FOR PROTECTIVE ORDER (Doc. 365)**

DOUGLAS N. MENCHISE (the “**Trustee**”), as Chapter 7 Trustee of the bankruptcy estate of PROCOM AMERICA, LLC (the “**Debtor**”), by counsel, hereby files his response in opposition to Peter Gaal’s *Emergency Motion For Protective Order* (Doc. 365 – the “**Emergency Motion**”), and states in support thereof as follows:

1. Nearly one year ago, the Trustee served a Subpoena for Rule 2004 examination on Peter Gaal (the Debtor’s principal) and entities he controlled by delivering the subpoena to Gaal’s domestic counsel who has actively participated in this case on his behalf.<sup>1</sup> Among other things, the Trustee sought to inquire about \$10.2 million in transfers by the Debtor to Gaal and his entities in the one year period preceding the Petition Date. As reflected in the Claims Register, 572 creditors have filed proofs of claim in the Debtor’s estate totaling \$16,027,766.65.

2. After Gaal failed to appear for his scheduled 2004 examination on May 28, 2021 and the Court entered an *Order Granting Chapter 7 Trustee, Douglas N. Menchise’s, Motion To Compel Rule 2004 Examinations Duces Tecum* (Doc. 265 – the “**2004 Examination Order**”), Gaal challenged the validity of the subpoena through extensive briefing and argument.<sup>2</sup>

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<sup>1</sup> See Exhibit A hereto and Doc. 263-4.

<sup>2</sup> See Doc. Nos. 269, 272, 275, 279-280, and 282-284. Separately, Gaal sought to quash the Trustee’s Subpoenas for Rule 2004 examination of the Debtor’s former accountant. See Doc. Nos. 295 and 338. Gaal has also opposed an extension of the limitations period for the Trustee’s commencement of avoidance actions. See Doc. Nos. 349 and 356.

3. In late March, the Court issued a *Memorandum Opinion On Service Of A Subpoena On A Foreign National* and entered an *Order Denying Peter Gaal's Expedited Motion For Reconsideration Of The Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion To Compel Rule 2004 Examinations Duces Tecum* (Doc. Nos. 354 and 357 – together, the “**Reconsideration Order**”).

4. On April 4, the Trustee again attempted to coordinate the scheduling of Gaal's 2004 examination with his domestic counsel.<sup>3</sup>

5. In response, Gaal filed a *Motion For Leave To Appeal* and *Notice Of Appeal* of the interlocutory 2004 Examination Order and Reconsideration Order on the same day (Doc. Nos. 362 and 363 – together, the “**Interlocutory Appeal**”).

6. As the Trustee's efforts to administer the Debtor's estate pursuant to 11 U.S.C. § 704(a) has not been stayed by virtue of the Interlocutory Appeal, the Trustee re-noticed the 2004 examination of Gaal and his entities for May 3-4, 2022. *See* Doc. 364.

7. In response, Gaal filed the Emergency Motion on the same day. In the motion, Gaal references the Trustee's adversary proceeding filed on March 15, 2022<sup>4</sup> and contends the Trustee is precluded from conducting his 2004 examination by virtue of the “pending proceeding” rule. *Citing In re Bennett Funding Group, Inc.*, 203 B.R. 24 (Bankr. N.D.N.Y. 1996).<sup>5</sup>

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<sup>3</sup> *See* Exhibit B hereto.

<sup>4</sup> *See* Adv. Proc. No. 8:22-ap-00041-MGW.

<sup>5</sup> The Bennett Funding Group bankruptcy cases involved one of the largest Ponzi schemes in U.S. history, a civil enforcement action filed by the U.S. Securities and Exchange Commission, and numerous chapter 11 proceedings. *See* [http://en.wikipedia.org/wiki/Bennett\\_Funding\\_Group](http://en.wikipedia.org/wiki/Bennett_Funding_Group) (last visited Apr. 6, 2022). Notably, the *Bennett Funding* court rejected a blind invocation of the pending proceeding rule without a comparison of the claims in the adversary proceeding with the proposed scope of the Rule 2004 examination. Coincidentally, undersigned represented Edmund Bennett, Kathleen Bennett, and Michael Bennett in connection with the Bennett Funding Group bankruptcy cases and related ERISA disputes. *See, e.g., In re Bennett Funding Group, Inc.*, Case No. 96-61376 (Bankr. N.D.N.Y. Sept. 5, 1997), [Bennett41.pdf \(uscourts.gov\)](#); *Bennett v. Manufacturers & Traders Trust Co.*, 2005 WL 2896962 (N.D.N.Y. Nov. 2, 2005); and *Metzler v. Bennett*, 1998 WL 187454 (N.D.N.Y. Apr. 15, 1998).

8. Significantly, however, Gaal has not accepted service of the summons and complaint in the Trustee's adversary proceeding and has not indicated that he will do so through his domestic counsel or otherwise. Just like Gaal challenged (and continues to challenge) the Trustee's service of the 2004 examination subpoena, he apparently intends to challenge the Trustee's service of the summons and complaint in the adversary proceeding in order to further delay the Trustee's administration of this bankruptcy case. Such gamesmanship by the Debtor's principal should not be condoned. In other words, Gaal should not be permitted to assert the "pending proceeding rule" in order to avoid his 2004 examination while refusing to accept service of the pending proceeding itself.

9. Finally, the Emergency Motion is the incorrect procedural vehicle for the relief Gaal seeks. In order to halt the Trustee's 2004 examination, Gaal must obtain an order granting a Motion for Stay pending his Interlocutory Appeal pursuant to Bankruptcy Rule 8007. In order to obtain a stay, Gaal would be required to establish that (1) he is likely to prevail on the merits of the appeal; (2) he will suffer irreparable injury if the stay or other injunctive relief is not granted; (3) the Trustee and the creditor body would suffer no substantial harm if the stay is granted and administration of this estate is further delayed; and (4) the issuance of a stay will serve, rather than disserve, the public interest implicated in the case. *In re Synectic Asset Management Inc.*, 2014 WL 6065770, at \*5 (M.D. Fla. Nov. 12, 2014) (quoting *In re F.G. Metals, Inc.*, 390 B.R. 467, 471-72 (Bankr. M.D. Fla. 2008)).

10. Gaal's failure to file a Motion to Stay and inability to make the required showing in light of the detailed analysis set forth in the *Memorandum Opinion On Service Of A Subpoena On A Foreign National* (Doc. 354) justifies summary denial of the Emergency Motion.

Respectfully submitted,

FOX ROTHSCHILD LLP  
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By: /s/ Robert F. Elgidely  
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Florida Bar No. 111856  
E-Mail: [relgidely@foxrothschild.com](mailto:relgidely@foxrothschild.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 6, 2022, I electronically filed the foregoing *Chapter 7 Trustee, Douglas N. Menchise's, Response In Opposition To Peter Gaal's Emergency Motion For Protective Order (Doc. 365)* with the Clerk of the Court using the CM/ECF System. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this notice as service of this document by electronic means including Lynn W. Sherman, Esq., Trenam Kemker Scharf Barkin Frye O'Neill & Mullis, P.A., 200 Central Avenue, Suite 1600, St. Petersburg, FL 33701. A copy was also posted on the website <https://www.shumaker.com/beyond-band-of-brothers-bankruptcy> pursuant to the *Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures* entered on July 31, 2020 (Doc. 138).

By: /s/ Robert F. Elgidely  
Robert F. Elgidely, Esq.

**Elgidely, Robert F.**

**From:** Elgidely, Robert F.  
**Sent:** April 29, 2021 4:00 PM  
**To:** LSherman@trenam.com  
**Cc:** dmenchise@verizon.net; Berman, Steven M.; David C. Cimo  
**Subject:** SERVICE OF COURT DOCUMENTS - In re Procom America, LLC - United States Bankruptcy Court, Middle District of Florida, Case No. 8:20-bk-03522-MGW  
**Attachments:** Gaal Procom Omnibus 2004 Notice - 04.29.2021 - Combined As Filed.pdf; Gaal Subpoena - 04.29.2021.pdf  
**Importance:** High

**Notice of Service of Court Documents**

**Filer:** Robert F. Elgidely  
**Court:** United States Bankruptcy Court for the Middle District of Florida  
**Case #:** 8:20-bk-03522-MGW  
**Case Style:** In re Procom America, LLC, Debtor

**Documents**

Title
(1) Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Notice Of Taking Rule 2004 Examinations Duces Tecum
(2) Subpoena To Testify At A Deposition In A Bankruptcy Case (Or Adversary Proceeding)

Sincerely,

**Robert F. Elgidely, Esq.**

Partner

**Fox Rothschild LLP**

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**Elgidely, Robert F.**

**From:** Elgidely, Robert F.  
**Sent:** April 4, 2022 11:27 AM  
**To:** Lynn W. Sherman  
**Cc:** Berman, Steven M.; David C. Cimo  
**Subject:** Procom - Scheduling Gaal's 2004 Examination  
**Attachments:** Memorandum Opinion re Service of Subpoena on Foreign National - 03.21.2022-C.pdf; Order denying Gaal Motion for Reconsideration re 2004 examination - 03.22.2022-C.pdf

Hello Lynn. As you know, the Court has ordered Peter Gaal to appear for a 2004 examination by May 5. Please let us know Mr. Gaal's availability for his Zoom examination in early May.

Thank you.

**Robert F. Elgidely, Esq.**

Partner

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