

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.

**CHAPTER 7 TRUSTEE, DOUGLAS N. MENCHISE’S, CORRECTED
RESPONSE IN OPPOSITION TO PETER GAAL’S *EMERGENCY*
MOTION FOR STAY PENDING APPEAL (Doc. 368)**

DOUGLAS N. MENCHISE (the “**Trustee**”), as Chapter 7 Trustee of the bankruptcy estate of PROCOM AMERICA, LLC (the “**Debtor**”), by counsel, hereby files his corrected response in opposition to Peter Gaal’s *Emergency* Motion For Staying Pending Appeal (Doc. 368 – the “**Second Emergency Motion**”), as follows:

1. The Second Emergency Motion should be denied for the reasons set forth in *Chapter 7 Trustee, Douglas N. Menchise’s, Response In Opposition To Peter Gaal’s Emergency Motion For Protective Order* (Doc. Nos. 354 and 367), which is incorporated herein by this reference.

2. Gaal’s *Emergency* Motion For Protective Order filed on April 5, 2022 (Doc. 365) and *Emergency* Motion For Staying Pending Appeal filed on April 6, 2022 (Doc. 368) seek to preclude the Trustee from conducting his 2004 examination on the basis of (i) the “pending proceeding” rule and (ii) his interlocutory appeal of (a) the *Order Granting Chapter 7 Trustee, Douglas N. Menchise’s, Motion To Compel Rule 2004 Examinations Duces Tecum* (Doc. 265); (b) the *Memorandum Opinion On Service Of A Subpoena On A Foreign National* issued on March 21, 2022 (Doc. 354); and (c) the *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. 357) (together, the “**Interlocutory Orders**”).

3. Gaal's filings reflect his continued efforts to impede the Trustee's administration of this case pursuant to 11 U.S.C. § 704(a) and smack of gamesmanship.

4. For instance, Gaal invokes the “pending proceeding” rule to prevent the Trustee from conducting his 2004 examination while seeking to evade service of the summons and complaint in that pending proceeding.

5. Furthermore, the District Court has not granted Gaal leave to appeal the Interlocutory Orders. Therefore, the Trustee may continue his efforts to administer the Debtor's estate notwithstanding Gaal's costly litigation tactics.

6. For these reasons and those reflected in the record of this case, Gaal's Second Emergency Motion should be summarily denied.

Respectfully submitted,

FOX ROTHSCCHILD LLP
Special Counsel to the Chapter 7 Trustee
2 South Biscayne Boulevard, Suite 2750
Miami, FL 33131
Telephone: (305) 442-6543
Telecopier: (305) 442-6541

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.
Florida Bar No. 111856
E-Mail: 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, Corrected Response In Opposition To Peter Gaal's Emergency Motion For Staying Pending Appeal* (Doc. 368) 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.