

ORDERED.

Dated: September 14, 2022



Catherine Peek McEwen
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 Band of Brothers,
d/b/a BBOB,

Debtor.

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**ORDER GRANTING, IN PART, TRUSTEE'S EXPEDITED
MOTION TO COMPEL RULE 2004 EXAMINATIONS**

THIS CASE came on for hearing on July 28, 2022, at 10:00 a.m., and again for continued hearing on July 29, 2022, at 10:00 a.m., on the Trustee's expedited motion to compel the Rule 2004 examination of Peter Gaal, Procom America, LLC, and Procom Tours, LLC.¹

¹ Doc. No. 405.

Last year, the Trustee subpoenaed Gaal and the corporate representatives of Procom America and Procom Tours for Rule 2004 examinations.² The subpoena was served by e-mail on Gaal's counsel. When Gaal and the corporate representatives of Procom America and Procom Tours failed to appear, the Trustee moved for—and the Court entered—an order compelling them to appear for a Rule 2004 examination.³ Gaal, who lives in Hungary, then sought reconsideration on the grounds that service of a Rule 45 subpoena on his U.S. counsel was improper and that the Trustee was instead required to comply with the Hague Convention to obtain discovery from a foreign national abroad.⁴

The Court denied Gaal's request for reconsideration because the Hague Convention is not the exclusive means for obtaining discovery from a foreign national abroad; Rule 45 permits substitute service; and substitute service on Gaal's counsel was proper because it was reasonably calculated to—and, in fact, did—ensure the subpoena reached Gaal.⁵ Gaal then sought leave to appeal, which was ultimately denied by the District Court.⁶

² Doc. No. 260. The Trustee also subpoenaed for Rule 2004 examination the corporate representatives of Procom Investments KFT; Procom Consulting KFT; and Procom Consulting Utazasi IRODA KFT. Doc. No. 260.

³ Doc. Nos. 263 & 265.

⁴ Doc. No. 272. None of the other examinees—the corporate representatives of Procom America, Procom Tours, Procom Investments KFT, Procom Consulting KFT, and Procom Consulting Utazasi IRODA KFT—sought reconsideration.

⁵ Doc. Nos. 354 & 357.

⁶ Doc. Nos. 362, 363, 368 & 389.

In the meantime, the Trustee filed an adversary complaint against Gaal.⁷ So Gaal sought an emergency protective order from his Rule 2004 examination based on the “pending proceeding” rule,⁸ which generally precludes the use of Rule 2004 to obtain discovery if a related adversary proceeding is pending.⁹ Because Gaal had not yet been served in the adversary proceeding, the Court declined to invoke the “pending proceeding” rule to prohibit Gaal’s Rule 2004 examination.¹⁰

After the Court denied Gaal’s motion for protective order, the Trustee noticed Gaal’s Rule 2004 examination for July 11 – 12, 2022.¹¹ The Trustee also noticed the corporate representatives of Procom America and Procom Tours for Rule 2004 examinations on the same dates.¹² But none of them appeared for their Rule 2004 examination.¹³ Thus, the Trustee again moved to compel the Rule 2004 examinations of Gaal and the corporate representatives of Procom America and Procom Tours.¹⁴

⁷ *Douglas N. Menchise, as Chapter 7 Trustee v. Peter Gaal, et al.*, Adv. No. 8:22-ap-00041-MGW.

⁸ Doc. No. 365.

⁹ *In re Gaime*, 2018 WL 7199806, at *3 (Bankr. M.D. Fla. Dec. 18, 2018).

¹⁰ Doc. No. 385.

¹¹ Doc. Nos. 399 & 402.

¹² Doc. Nos. 399 & 402.

¹³ Doc. No. 405.

¹⁴ Doc. No. 405.

For the reasons stated orally and recorded in open court, the Court concludes it is appropriate to order Gaal and the corporate representatives of Procom America and Procom Tours to appear for their Rule 2004 examinations. Accordingly, it is

ORDERED:

1. The Trustee's motion to compel is GRANTED in part; DENIED in part; and DEFERRED in part.
2. The Trustee's motion to compel is GRANTED to the extent that Peter Gaal and the corporate representatives of Procom America and Procom Tours (the "Rule 2004 Examinees") are again ordered to produce documents and give testimony under Federal Rule of Bankruptcy Procedure 2004.
3. Consistent with their obligations under Local Rule 1001-1 to "secure the just, speedy, and inexpensive determination" of contested matters, counsel for the Trustee and Rule 2004 Examinees shall meet and confer regarding the rescheduling of the Rule 2004 examinations.
4. Unless the parties agree otherwise, the Rule 2004 examinations shall be conducted by Zoom or another remote video communication platform within 60 days of the July 29, 2022 hearing on the following conditions:
 - a. The Rule 2004 Examinees shall produce photo identification sufficient to confirm his or her identity;
 - b. The Rule 2004 Examinees shall be alone in the room in which they are giving their Rule 2004 testimony;
 - c. The Rule 2004 Examinees shall, in the presence of the Trustee or his counsel, physically move any telecommunication devices not necessary for the

transmission of the video link (including computers and tablets) to a place that is beyond the Examinees' reach but still visible to the Trustee or his counsel;

- d. The Rule 2004 Examinees shall, upon request of the Trustee or his counsel, use their device to pan the entirety of the room in which they are located; and
- e. The Trustee or his counsel, in their sole discretion, shall be free to request that the Examinee, while under oath:
 - i. affirm that the conditions of this Order have been satisfied;
 - ii. disclose the location of any other communications devices (including phones, computers, and tablets) present in the room in which the Examinee is testifying;
 - iii. disclose whether the Examinee had any communications (orally or electronically) with a third party at any point from the beginning of the Rule 2004 examination until its conclusion by the Trustee.¹⁵

5. The Rule 2004 Examinees shall produce all non-privileged documents responsive to the Trustee's *duces tecum* requests at least five business days before their Rule 2004 examinations.

6. If any Rule 2004 Examinee does not intend on appearing for his or her Rule 2004 examination, the Rule 2004 Examinee (through counsel) shall inform the Trustee and his counsel in writing of the Rule 2004 Examinee's refusal to attend the

¹⁵ The attorney-client privilege may still apply to the content of any communications between the Rule 2004 examinee and his or her counsel.

noticed examination (including as amended or re-noticed) at least seven days before the scheduled Rule 2004 examination.

7. If any Rule 2004 Examinee fails to appear at their duly re-noticed Rule 2004 examination, this Court will consider whether to hold the Examinee in civil contempt and, if so, whether to impose sanctions against the Examinee, including:

- a. monetary sanctions, including compensatory or coercive sanctions;
- b. the issuance of an international bench warrant for the Rule 2004 Examinee; or
- c. confinement of the Rule 2004 Examinee until the Rule 2004 Examinee complies with the applicable Orders of this Court.¹⁶

8. The Motion is DENIED, without prejudice, as to the request for sanctions against counsel for any of the Rule 2004 Examinees.

9. The Motion is DEFERRED, as to any further request for contempt findings or sanctions, including monetary compensatory and coercive sanctions as against any of the Rule 2004 Examinees.

10. The Court retains jurisdiction to enforce this Order.

Attorney Steven M. Berman is directed to serve a copy of this Order in a manner consistent with this Court's Limited Notice Order (Doc. 138) 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 this Order.

¹⁶ See, e.g., *In re Lawrence*, 238 B.R. 498 (Bankr. S.D. Fla. 1999).