

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

PROCOM AMERICA, LLC,

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

Debtor.

Chapter 7

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MOTION TO ALLOW IN-PERSON RULE 2004 EXAMINATION(S)

Douglas N. Menchise, as Chapter 7 Trustee (“Trustee”), moves the Court to allow for the in-person examination of Peter Gaal and the Rule 30(b)(6) representative(s) of Procom America, LLC, Procom Tours, LLC, Procom Consulting KFT a/k/a Procom Consulting Utuzasi Iroda KFT and Procom Investments KFT (collectively, the “Examinees”), and in support states:

1. On September 14, 2022, this Court entered its Order Granting in Part Trustee’s Expedited Motion to Compel Rule 2004 Examinations (Doc. 426) (“Order on Motion to Compel”). Among other things, the Order on Motion to Compel required Peter Gaal, Procom America, LLC and Procom Tours, LLC to appear for the Trustee’s duly noticed Rule 2004 examinations.

2. Such appearance was ordered to be conducted by Zoom or other remote video communication platform on certain identified conditions, including that any examinee be alone in the room in which they are giving their testimony and not have access to any telecommunication device. *Id.* at ¶ 4.

3. Gaal, Procom America, Procom Tours, along with Procom Consulting KFT a/k/a Procom Consulting Utuzasi Iroda KFT and Procom Investments KFT, however, failed and refused to appear for the Trustee’s duly noticed Rule 2004 examinations, even under the conditions imposed by the Court.

4. On November 14, 2022, this Court entered its Order Granting Trustee’s Motion for Civil Contempt and Sanctions (Doc. 453) (the “Contempt Order”), finding Gaal and the Hungarian Companies¹ in civil contempt for failure to comply with the Court’s discovery orders, and further ordering, *inter alia*, Gaal “to sit for and give testimony at a Bankruptcy Rule 2004 examination as noticed by the Trustee....” (Doc. 453 at ¶ 3).

5. Following entry of the Contempt Order, the Trustee’s counsel has attempted to reschedule Mr. Gaal and the Hungarian Companies for the Rule 2004 examinations ordered by the Court, but counsel for Mr. Gaal and the Hungarian Companies has refused to cooperate, in violation of their obligations under Local Rule 1001-1 to “secure the just, speedy, and inexpensive determination of every case, contested matter, and adversary proceeding,” and instead insist that even scheduling the Rule 2004 examinations must wait until this Court and the District Court determine whether they are entitled to a stay pending appeal.

6. Mr. Gaal and the Hungarian Companies seem to be taking advantage of a “stay” occasioned by their counsel’s refusal to meet and confer even though no court has granted a stay of any of this Court’s multiple orders.

7. The Trustee intends to proceed with rescheduling the Rule 2004 examinations, and proceed in accordance with this Court’s Contempt Order, and will require Mr. Gaal and any Rule 30(b)(6) corporate representative to appear in person for such examination at the Trustee’s counsel’s office in Hungary.

8. While Zoom or other remote video communication will be made available to any person who wishes to participate in that manner, the Trustee’s intends to be in the same room as the examinee to ensure a full, honest and productive examination.

¹ The “Hungarian Companies” are Procom Consulting KFT a/k/a Procom Consulting Utuzasi Iroda KFT and Procom Investments KFT.

9. While the undersigned believes the prior conditions² placed on Mr. Gaal's examination by the Order Granting Motion to Compel are no longer operative since Mr. Gaal chose not to appear for that examination, in the abundance of caution, the Trustee files this motion to confirm and/or allow the examinations to take place under normal procedures.

10. Indeed, under the circumstances of this case, there is no substitute for an in-person examination, at which counsel can assess the examinee's credibility, and reduce the chances of witness coaching.

11. Moreover, an in-person examination will reduce the possibility that the examinee, translator and counsel will not understand each other, and reduce the possibility of any technical difficulties or a confused record with the possibility of mis-attribution of speaker to transcribed material.

WHEREFORE, the Trustee respectfully requests this Court, for cause shown, allow the Trustee to move forward with an in-person Rule 2004 examination of the Examinees, and grant such other and further relief as this Court deems necessary and proper

SHUMAKER, LOOP & KENDRICK, LLP

By: /s/ Steven M. Berman

STEVEN M. BERMAN

Florida Bar No. 856290

sberman@shumaker.com

SETH P. TRAUB

Florida Bar No. 022088

straub@shumaker.com

101 East Kennedy Blvd, Suite 2800

Tampa, Florida 33602

Phone: (813) 229-7600

² Those now expired conditions being Mr. Gaal was to be alone in a room with all other persons and parties appearing by video.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 29, 2022, the foregoing was furnished via CM/ECF service upon Lynn Sherman, Esq. as counsel for Mr. Gaal and Kathleen DiSanto as counsel for the Hungarian Companies, and by U.S. Mail:

ProCom Tours, LLC
c/o John M. Hemenway
1060 Bloomingdale Ave.
Valrico, FL 33596

Procom America, LLC
400 N. Ashley Drive
Suite 1010
Tampa, FL 33602

/s/ Steven Berman

Steven M. Berman, Esq.