

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Procom America, LLC,

Debtor.

Case No.: 8:20-bk-03522-CPM
Chapter 7

**HUNGARIAN COMPANIES' STATEMENT OF THE ISSUES
PRESENTED ON APPEAL AND DESIGNATION OF RECORD**

Procom Consulting KFT a/k/a Procom Consulting Utuzasi Iroda KFT, a Hungarian limited liability company, and Procom Investments KFT, a Hungarian limited liability company (collectively, the “**Hungarian Companies**” or “**Appellants**”), by and through their undersigned counsel and pursuant to Bankruptcy Rule¹ 8009(a)(1), hereby file their statement of the issues to be presented and designation of items to be included in the record in connection with their appeal to the United States District Court, Middle District of Florida, Case No. 8:22-cv-2716-KKM, of the Bankruptcy Court’s (a) Order Granting Trustee’s Motion for Civil Contempt and Sanctions (Doc. No. 453) entered November 14, 2022; (b) Order Granting, In Part, Trustee’s Expedited Motion to Compel Rule 2004 Examinations (Doc. No. 426) entered September 14, 2022; (c) 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. No. 357) entered March 22, 2022; (d) Memorandum Opinion on Service of a Subpoena on a Foreign National (Doc. No. 354) entered March 21, 2022; and (e) Order Granting Chapter 7 Trustee, Douglas N. Menchise’s Motion to Compel Rule 2004 Examinations Duces Tecum (Doc. No. 265) entered June 10, 2021:

¹ All references to the “Bankruptcy Code” are to the applicable section of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. All references to a “Bankruptcy Rule” or “Bankruptcy Rules” are to the applicable Federal Rule of Bankruptcy Procedure. All references to a “Rule” are to the applicable Federal Rule of Civil Procedure.

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in holding that Rule 45(b)(1) does not require service of the Rule 2004 Subpoena on the Hungarian Companies by personal delivery.
2. Whether the Bankruptcy Court erred in holding that transmission of the Rule 2004 Subpoena by email to domestic counsel for Gaal (a non-party foreign national living abroad) or by email to domestic counsel for the Hungarian Companies is a permissible form of substitute service on the Hungarian Companies under Rule 45(b)(1).
3. Whether the Bankruptcy Court erred in holding that the Hungarian Companies are subject to the Bankruptcy Court's subpoena power, absent personal service of the subpoena within the United States or service outside the United States in compliance with the Hague Convention.
4. Whether the Bankruptcy Court erred in holding that the Trustee is not required to comply with the Hague Evidence Convention in order to obtain discovery from the Hungarian Companies.
5. Whether the Bankruptcy Court erred in granting the Trustee's Motion for Civil Contempt and Sanctions when the motion was not served on the Hungarian Companies in accordance with Bankruptcy Rules 9020 and 9014.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Appellants hereby designate the following items to be included in the record on appeal, including all exhibits and attachments thereto:

Documents Filed in Bankruptcy Case No: 8:20-bk-03522-CPM

Docket No.	Filing Date	Description
1	05/01/2020	Chapter 7 Involuntary Petition
7	05/07/2020	Consent of Procom America, LLC to Order for Relief
8	05/08/2020	Consent of Larry Hyman, Assignee to Order for Relief
9	05/08/2020	Order for Relief
10	05/08/2020	Notice of Bankruptcy Case

19	05/14/2020	Chapter 7 Trustee's Emergency Motion to Compel Turnover of Estate Property
28	05/19/2020	Debtor's Notice of Filing Detailed Listing of Communications and Associated Files from Renaissance Consulting & Development, LLC to Outside Parties
33	05/22/2020	Order Granting Chapter 7 Trustee's Emergency Motion to Compel Turnover of Estate Property
70	06/03/2020	Declaration Under Penalty of Perjury for Non-Individual Debtors (Schedules A-H, Summary of Assets, Statement of Financial Affairs)
87	06/11/2020	Hearing Proceeding Memo
260	04/29/2021	Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
263	06/01/2021	Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
265	06/10/2021	Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
268	06/16/2021	Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Debtor's Production of Foreign Bank Records or, in the Alternative, Consent to Disclosure of Foreign Bank Records
269	06/21/2021	Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Re-Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
272	06/24/2021	Expedited Motion for Reconsideration of the Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
275	06/29/2021	Response to Peter Gaal's Expedited Motion for Reconsideration of the Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
279	07/05/2021	Notice of Supplemental Authority In Support of Response to Peter Gaal's Expedited Motion for Reconsideration of the Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
280	07/06/2021	Hearing Proceeding Memo
282	07/09/2021	Gaal's Response to Trustee's Notice of Filing Supplement Authority Regarding Expedited Motion for Reconsideration of the Order Granting Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Rule 2004 Examinations <i>Duces Tecum</i>
283	07/12/2021	Notice of Filing Proposed Memorandum Decision and Order
284	07/14/2021	Notice of Filing Proposed Order
285	07/14/2021	Peter Gaal's Objection to Chapter 7 Trustee, Douglas N. Menchise's, Motion to Compel Debtor's Production of Foreign Bank Records or, in the Alternative, Consent to Disclosure of Foreign Bank Records
286	07/15/2021	Order Granting Amended Motion for Leave to Withdraw as Counsel for Debtor

293	08/13/2021	Notice of Issuance of Rule 2004 Subpoena <i>Duces Tecum</i> to Kevin E. Riggs
294	08/13/2021	Notice of Issuance of Rule 2004 Subpoenas <i>Duces Tecum</i>
295	08/20/2021	Motion of Peter Gaal for Entry of an Order Pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure Quashing Third Party Subpoenas Issued to Kevin Riggs and Renaissance Consulting & Development, LLC or, in the Alternative, for Entry of a Protective Order
296	08/20/2021	Notice of Filing Proposed Order
338	12/14/2021	Order on Discovery Motions
348	02/02/2022	Trustee's Motion to Extend Deadline to Commence Avoidance Actions
349	02/03/2022	Peter Gaal's Response in Opposition to Trustee's Motion to Extend Deadline to Commence Avoidance Action
354	03/21/2022	Memorandum Opinion on Service of a Subpoena on a Foreign National
356	03/22/2022	Order Granting Trustee's Motion to Extend Deadline to Commence Avoidance Action
357	03/22/2022	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 <i>Duces Tecum</i>
359	03/31/2022	Order Denying Motion to Compel Production of Foreign Bank Records Without Prejudice
362	04/04/2022	Notice of Appeal
363	04/04/2022	Motion for Leave to Appeal
364	04/05/2022	Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Third Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
365	04/05/2022	Peter Gaal's Emergency Motion for Protective Order
366	04/05/2022	Certificate of Necessity of Request for Emergency Hearing
367	04/06/2022	Chapter 7 Trustee, Douglas N. Menchise's, Response in Opposition to Peter Gaal's Emergency Motion for Protective Order
368	04/06/2022	Peter Gaal's Emergency Motion for Stay Pending Appeal
369	04/06/2022	Certificate of Necessity of Request for Emergency Hearing
371	04/06/2022	Chapter 7 Trustee, Douglas N. Menchise's, Corrected Response in Opposition to Peter Gaal's Emergency Motion for Stay Pending Appeal
375	04/07/2022	Notice of Filing Demand for Repayment of Debtor's Loan to Peter Gaal in Further Support of Chapter 7 Trustee, Douglas N. Menchise's Opposition to Peter Gaal's Emergency Motions for Protective Order and for Stay Pending Appeal
376	04/08/2022	Cross Notice of Taking Depositions <i>Duces Tecum</i>
379	04/14/2022	Transcript Regarding Hearing Held July 6, 2021
385	04/20/2022	Order Denying Peter Gaal's Emergency Motions for Protective Order and for Stay Pending Appeal

386	04/25/2022	Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Fourth Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
389	04/29/2022	Endorsed Order from District Court denying Motion for Leave to Appeal and Dismissing Appeal
398	07/07/2022	Application of Chapter 7 Trustee, Douglas N. Menchise, to Employ Baker McKenzie Law Firm as Hungarian Local Counsel
399	07/07/2022	Amended Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Fourth Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
401	07/08/2022	Order Approving Application of Chapter 7 Trustee, Douglas N. Menchise, to Employ Baker McKenzie Law Firm as Hungarian Local Counsel
402	07/08/2022	Second Amended Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Fourth Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
403	07/08/2022	Second Amended Chapter 7 Trustee, Douglas N. Menchise's, Omnibus Fourth Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
405	07/14/2022	Trustee's Expedited Motion to Compel Examination Testimony from and for Sanctions Against Procom America, LLC, Peter Gaal, and Procom Tours, LLC
410	07/26/2022	Peter Gaal's Response in Opposition to Trustee's Expedited Motion to Compel Examination Testimony from and for Sanctions Against Procom America, LLC, Peter Gaal, and Procom Tours, LLC
413	07/28/2022	Hearing Proceeding Memo
415	07/29/2022	Hearing Proceeding Memo
420	08/16/2022	Chapter 7 Trustee, Douglas N. Menchise's, Fifth Omnibus Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
422	08/23/2022	Amended Chapter 7 Trustee, Douglas N. Menchise's, Fifth Omnibus Notice of Taking Rule 2004 Examinations <i>Duces Tecum</i>
426	09/14/2022	Order Granting, in Part, Trustee's Expedited Motion to Compel Rule 2004 Examinations
427	09/16/2022	Trustee's Motion for Civil Contempt and Sanctions
432	09/22/2022	Notice of Filing Power of Attorney
435	10/02/2022	Peter Gaal's Response in Opposition to Trustee's Motion for Civil Contempt and Sanctions
436	10/02/2022	Hungarian Companies' Response in Opposition to Trustee's Motion for Civil Contempt and Sanctions
438	10/05/2022	Notice of Filing Timeline of Discovery Attempts, Court Enforcement and Contempt
443	10/05/2022	Hearing Proceeding Memo
447	11/06/2022	Transcript Regarding Hearing Held October 5, 2022
453	11/14/2022	Order Granting Trustee's Motion for Civil Contempt and Sanctions

454	11/16/2022	Notice of Appeal
		Transcript Regarding Hearing Held April 14, 2022 (on order with reporter pursuant to Fed. R. Bankr. P. 8009(b)(1))
		Transcript Regarding Hearing Held July 28, 2022 (on order with reporter pursuant to Fed. R. Bankr. P. 8009(b)(1))
		Transcript Regarding Hearing Held July 29, 2022 (on order with reporter pursuant to Fed. R. Bankr. P. 8009(b)(1))

Claim from Claim Registry for Bankruptcy Case No: 8:20-bk-03522-CPM

Claim 528-1	08/13/2020	Proof of Claim of Electronic Merchant Systems, LLC
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Documents Filed in Adversary Proceeding No: 8:22-ap-00041-CPM

Docket No.	Filing Date	Description
1	03/15/2022	Complaint for Declaratory Relief, Substantive Consolidation and to Avoid and Recover Preferential or Other Actual or Constructive Fraudulent Transfers and Other Damages
2	03/17/2022	Summons in an Adversary Proceeding
3	04/14/2022	Trustee's Cross Notice of Deposition Duces Tecum
4	04/18/2022	Peter Gaal's Emergency Motion for Protective Order and to Quash Trustee's Cross Notice of Taking Depositions Duces Tecum
5	04/18/2022	Certificate of Necessity of Request for Emergency Hearing
8	04/20/2022	Hearing Proceeding Memo
10	04/27/2022	Order Granting Motion for Protective Order and to Quash Trustee's Cross Notice of Taking Depositions Duces Tecum
11	05/06/2022	Trustee's Motion to Permit Alternative Service on Defendants
15	05/23/2022	Peter Gaal's Response in Opposition to Trustee's Motion to Permit Alternative Service on Defendants
16	05/23/2022	Hungarian Companies' Response in Opposition to Trustee's Motion to Permit Alternative Service on Defendants
21	07/14/2022	Notice of Hearing
23	07/28/2022	Hearing Proceeding Memo
28	10/05/2022	Alias Summons in an Adversary Proceeding
29	10/05/2022	Hearing Proceeding Memo
34	11/04/2022	Order Granting Trustee's Motion to Permit Alternative Service on Defendants
36	11/04/2022	Defendant Peter Gaal's Motion to Dismiss Complaint for Declaratory Relief, Substantive Consolidation and to Avoid and Recover Preferential or Other Actual or Constructive Fraudulent Transfers and Other Damages
37	11/04/2022	Hungarian Companies' Motion to Dismiss Complaint for Declaratory Relief, Substantive Consolidation and to Avoid and Recover Preferential or Other Actual or Constructive Fraudulent Transfers and Other Damages

45	11/14/2022	Motion for Reconsideration of the Order Granting Trustee's Motion to Permit Alternative Service on Defendants
47	11/17/2022	Hungarian Companies' Motion for Reconsideration of the Order Granting Trustee's Motion to Permit Alternative Service on Defendants

Dated: Tampa, Florida
December 7, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 2022, I electronically filed a true and correct copy of the foregoing *Hungarian Companies' Statement of the Issues Presented on Appeal and Designation of Record* with the Clerk of the United States Bankruptcy Court for the Middle District of Florida by using the CM/ECF system, and I furnished a copy of the foregoing document(s) to the following parties in the manner of service indicated below:

/s/ Kathleen L. DiSanto
ATTORNEY

Via the CM/ECF system which will send a Notice of Electronic Filing to:

United States Trustee (USTPRegion21.TP.ECF@USDOJ.GOV)
Douglas N. Menchise, Chapter 7 Trustee (dmenchise@verizon.net)
J. Steven Wilkes, Esq. (steven.wilkes@usdoj.gov)
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All parties who receive electronic service via the CM/ECF system