

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:

PROCOM AMERICA, LLC,

Debtor.

Chapter 7

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

**FLORIDA ATTORNEY GENERAL'S MOTION FOR AN ORDER DECLARING THE
AUTOMATIC STAY UNDER 11 U.S.C. § 362 INAPPLICABLE TO THE ATTORNEY
GENERAL'S ACTIONS AGAINST THE DEBTOR, OR IN THE ALTERNATIVE, FOR
RELIEF FROM THE AUTOMATIC STAY**

**NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail. You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to your claim in this bankruptcy case, your claim may be reduced, modified, or eliminated.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 801 N. Florida Ave., Suite 555, Tampa, Florida 33602 and serve a copy on the movant's attorney, Michael Roland, at PL-01, The Capital, Tallahassee, Florida 32399 and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

The Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”), hereby moves this Court to enter an order declaring that the automatic stay under 11 U.S.C. § 362 is inapplicable to the Attorney General’s investigative actions pursuant to section 501.206, Florida Statutes, against Procom America, LLC dba Beyond Band of Brothers aka BBOB (the “Debtor”), or in the alternative, to grant the Attorney General relief from the automatic stay, and in support thereof states as follows:

Jurisdiction

1. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(G).

Background

2. The Debtor operates a travel company specializing in European Tours to World War II battle sites. Beginning in April 2020, consumers began receiving messages from the Debtor that their trips were cancelled. When consumers began contacting the Debtor to seek refunds of the thousands of dollars they had paid, they were unable to reach the Debtor and instead received messages that the Debtor was no longer in business. The Attorney General received dozens of complaints from consumers who experienced an inability to receive a refund or even communicate with the Debtor. Multiple consumers also complained that the premiums they paid to the Debtor for travel insurance was never forwarded to the insurer thereby leaving the consumers without travel insurance protection.

3. The Debtor filed an Assignment for the Benefit of Creditors on or about April 15, 2020 and was then forced into this involuntary bankruptcy by its creditors on May 1, 2020.

To-date, hundreds of consumers have not received refunds for cancelled trips or any indication of when they may receive their money.

4. The Attorney General has reason to believe the Debtor has engaged in unfair and deceptive trade practices in the conduct of its business in Florida and throughout the United States.

5. On May 26, 2020, the Attorney General filed a proof of claim (Claim 15-1) and intends to investigate the Debtor and related entities or persons for deceptive and unfair trade practices under Florida's Deceptive and Unfair Trade Practices Act, section 501.206, Florida Statutes ("FDUTPA"),

Relief Requested & Basis for Relief

6. Pursuant to 11 U.S.C. § 362(b)(4), the Attorney General respectfully requests that this Court enter an order finding that the automatic stay is inapplicable to the actions of the Attorney General under FDUTPA, or in the alternative, to enter an order pursuant to 11 U.S.C. § 362(d), granting the Attorney General relief from the automatic stay in order to investigate the Debtor and related entities or persons for deceptive and unfair trade practices under FDUTPA.

7. The Attorney General is an enforcing authority under FDUTPA, and any actions or proceedings against the Debtor by the Attorney General are pursuant to its enforcement authority under FDUTPA. The purpose of the Attorney General's FDUTPA action is to further the public policy of protecting consumers from unfair and deceptive trade practices.

8. Pursuant to 11 U.S.C. § 362(b)(4), filing for relief under Chapter 7, Title 11 of the Bankruptcy Code does not operate as a stay of commencement or continuation of actions or proceedings by a governmental unit "to enforce such governmental unit's or organization's

police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the government unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. § 362(b)(4).

9. Courts have set a strong precedent that actions of states alleging violations of consumer protection statutes fall within the "police and regulatory power exception" found in 11 U.S.C. § 362(b)(4). *In re Berry*, Case No. 19-14527-BKC-RBR, 2019 WL 3992719, slip op. at 2-3 (Bankr. S.D. Fla. June 26, 2019); *In re Guardia*, 522 B.R. 734,735 (Bankr. S.D. Fla. 2014) (holding that the filing of the Complaint against the Debtor and its prosecution up to judgment and the filing of a claim in this bankruptcy court all falls squarely within the Attorney General's police powers pursuant to § 362(b)(4) and therefore not in violation of the automatic stay); *In re Steffy*, 494 B.R. 574, 585 (Bankr. N.D. Ga. 2012) (finding that the state of Arkansas' action to enforce consumer protection laws and to protect its citizens fell within the exception of § 362(b)(4)); *In re Nelson*, 240 B.R. 802, 805-07 (Bankr. D. Me. 1999) (holding that the State of Maine's lawsuit against the debtor for violations of Maine's Unfair Trade Practices Act and the Consumer Solicitations Sales Act was within the § 362(b)(4) exception).

10. In *In re Berry*, the Attorney General brought a FDUTPA action against defendant businesses and individuals, including Bryan Berry ("Berry"), in Broward County, alleging defendants were players in a fraudulent foreclosure rescue scheme. *In re Berry*, 2019 WL 3992719, slip op. at 1. The Attorney General sought injunctive and equitable relief, including, but not limited to, disgorgement, restitution, and civil penalties. *Id.* While the trial court case was pending, Berry filed a voluntary Chapter 13 petition. *Id.* at 2. The Attorney General filed a motion in the U.S. Bankruptcy Court, Southern District of Florida, Fort Lauderdale Division for an order declaring that the Automatic Stay under 11 U.S.C. § 362 was

inapplicable to FDUTPA except as it relates to an enforcement of a money judgment against the debtor. *Id.* Berry argued that the automatic stay should act to prevent the Attorney General from obtaining a money judgment. *Id.*

11. The Court concluded that the Automatic Stay under 11 U.S.C. § 362 did not apply to the Florida Attorney General's FDUTPA action, including the obtaining of monetary relief such as restitution and civil penalties, except as it relates to the "right to *enforce* a monetary judgment" (emphasis original). *Id.* at 3.

12. The Attorney General's FDUTPA investigation and action is a matter of public safety and health, and not primarily for the protection of its interest in the Debtor's property. Additionally, Courts have provided a greater exception from the Automatic Stay to governments, including the Attorney General, under § 362(b)(4), including the seeking of judgments, awarding of damages, and enforcement of injunctive relief, than the investigative exception the Attorney General seeks herein, pursuant to section 501.206, Florida Statutes.

13. Therefore, the filing of this Chapter 7 case should not stay the Attorney General's FDUTPA investigative action due to the police and regulatory power exception set forth in 11 U.S.C. § 362(b)(4). In the alternative, should this Court find that the automatic stay does apply to the Attorney General's FDUTPA investigation, the Attorney General respectfully requests that this Court lift the automatic stay so the Attorney General can proceed with its FDUTPA investigation.

WHEREFORE, the Attorney General respectfully requests that this Court enter an order (i) finding that the automatic stay does not apply to the Attorney General's FDUTPA investigative actions against the Debtor, and that the Attorney General can proceed with its investigative action; (ii) or in the alternative, granting the Attorney General relief from the

automatic stay to proceed with its FDUTPA investigative action; and (iii) any further relief as this Court deems necessary and just.

DATED this 15th day of July, 2020.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Michael Roland
Michael Roland
Assistant Attorney General
Florida Bar No. 44856

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2020, a copy of the forgoing was filed through CM/ECF which will furnish a copy on all counsel of record.

/s/ Michael Roland
Michael Roland
Assistant Attorney General
Florida Bar No. 44856