

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re: Case No. 8:20-bk-03522-MGW  
PROCOM AMERICA, LLC d/b/a Chapter 7  
Beyond Band of Brothers d/b/a  
BBOB,  
Debtor.

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**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**

DOUGLAS N. MENCHISE (the “Trustee”), as Chapter 7 Trustee of the bankruptcy estate of PROCOM AMERICA, LLC, by counsel, hereby files his *Motion To Compel Debtor’s Production Of Foreign Bank Records Or, In The Alternative, Consent To Disclosure Of Foreign Bank Records* pursuant to Sections 105(a), 521(a)(3), 521(a)(4), 704(a)(1), and 704(a)(4) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2004(c) of the Federal Rules of Bankruptcy Procedure, and states in support thereof as follows:

**A. FACTUAL AND PROCEDURAL BACKGROUND**

1. The Debtor was in the business of providing bucket list tours of historic war sites in Normandy; the United Kingdom; Western, Central and Eastern Europe; Hawaii/the Pacific region; Asia; and the United States.

2. On or about April 13, 2020, Peter Gaal<sup>1</sup> (“Gaal”) executed an agreement and related documents granting, assigning, conveying, transferring, and setting over all of Procom America, LLC’s (the “Debtor”) assets including, but not limited to, “all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, *accounts receivables, bank deposits,*

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<sup>1</sup> Gaal was the Debtor’s founder, managing member, and Chief Executive Officer.

*cash, promissory notes, cash value and proceeds of insurance policies, claims and demands* belonging to the [Debtor], *and all books, records, and electronic data pertaining to all such assets, wherever such assets may be located* (hereinafter the “Estate”)” to Larry S. Hyman (the “Assignee”) for the benefit of the Debtor’s creditors.

3. On or about April 15, 2020, the Assignee filed a *Petition Commencing Assignment For The Benefit Of Creditors* with the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the “**ABC Petition**”) and the proceedings were assigned Case Number 20-CA-003298. A copy of the ABC Petition is attached hereto as *Exhibit 1*.

4. According to the ABC Petition, unpaid consumer deposits totaled \$11,895,980.00 as of April 10, 2020.

5. On May 1, 2020 (the “**Petition Date**”), three creditors filed an involuntary Chapter 7 petition against the Debtor.

6. Shortly thereafter, Gaal consented to entry of an Order for Relief against the Debtor (Doc. 7) and the Order for Relief was entered (Doc. 9).

7. On or about June 3, 2020, Gaal executed schedules, statements, and lists (Doc. 70) on behalf of the Debtor.<sup>2</sup> Therein, Gaal disclosed that the Debtor owed \$13,407,628.25 to 1,973 nonpriority unsecured claimants.<sup>3</sup> *Id.* at CM/ECF pp. 2, 3, and 13 through 295.

8. Notably, Gaal also disclosed his receipt of a \$350,000.00 loan from the Debtor approximately 45 days before the ABC Petition was filed and the Debtor’s transfer of \$4,564,144.80 to Procom Consulting and \$4,832,000.00 to Procom Investments KFT in the one

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<sup>2</sup> Gaal also testified on the Debtor’s behalf at the Meeting of Creditors on June 22, 2020 and personally appeared through counsel at hearings conducted on May 19, 2020, May 27, 2020, June 11, 2020, and December 15, 2020.

<sup>3</sup> Over 500 customers have filed proofs of claim in this case seeking the recovery of over \$16 million in prepayments for cancelled tours. *See* Claims Register.

year period preceding the Petition Date.<sup>4</sup> A copy of the *Procom America, LLC Insider Payments And Transfers May 8, 2019 – May 8, 2020* document included with the Schedules at CM/ECF pp. 322 through 324 is attached hereto as **Exhibit 2**.

9. According to the ABC Petition, “Procom Consulting KFT is the Hungarian tour operating company responsible for scheduling, logistics and tour delivery operations for overseas tours” and “Procom Investments KFT is the Hungarian advertising and marketing firm for Debtor [and] is responsible for search engine optimization and social media marketing”. See Exhibit 1 hereto, ABC Petition, Schedule A-Creditor List-List of Unsecured Claims Attachment 2A as of April 10, 2020, Notes 5 and 6.

10. On April 29, 2021, the Trustee filed an *Omnibus Notice Of Taking Rule 2004 Examinations Duces Tecum* of the Debtor, Gaal, and Procom entities via Zoom on May 28, 2021 (Doc. 260 – the “**2004 Notice**”). The Trustee also served a Subpoena on Gaal and the Procom entities through Gaal’s counsel on April 29, 2021.

11. The examinees failed to seek relief from the 2004 Notice or Subpoena and failed to appear at the 2004 examinations.

12. As a result, the Trustee filed a Motion to Compel the Rule 2004 Examinations (Doc. 263) and the Court entered an Order granting the Motion to Compel (Doc. 265). The Order requires counsel for the Debtor and Gaal to “coordinate scheduling of the [] 2004 examinations with counsel for the Trustee ... [w]ithin five business days” of June 10, 2021. As of the date of this Motion, the examinations have not been scheduled.

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<sup>4</sup> The Debtor’s transfers include \$200,000.00 to Procom Consulting as “subcontractor expense[s]” in March 2020 and \$412,000.00 to Procom Investments KFT as “marketing fee[s]” in March 2020. Some of these transfers also appear unrelated to the Debtor’s legitimate business operations such as transfers to Victoria’s Secret, Best Buy, Nordstrom, Suit Supply, Apple Store, Dillard’s, Kylie Cosmetics, Abercrombie & Fitch, and Crate & Barrel.

13. Upon information and belief, the Debtor's pre-petition owners, officers, directors, and/or control persons (including Gaal, Debra Watkins, and Nikoletta "Nikki" Montgomery) are authorized signors on and/or have a right of withdrawal from foreign bank accounts containing Debtor funds and which may be titled in the names of the Debtor, Procom Investments KFT, Procom Consulting KFT, Procom Consulting Utazasi IRODA KFT, and/or Procom Tours, LLC (the "**Procom Entity(ies)**").

14. The Debtor should be compelled to produce complete copies of all foreign bank records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date.

15. Alternatively, the Debtor should be compelled to execute a Consent Directive authorizing international banks and financial entities to produce complete records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date. A proposed Consent Directive is attached hereto as *Exhibit 3*.

## **B. LEGAL AUTHORITY**

By consenting to entry of the Order for Relief, Gaal undertook obligations mandated by the Bankruptcy Code on behalf of the Debtor. Among other things, the Debtor became obligated to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title" and to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title". 11 U.S.C. §§ 521(a)(3) and

(a)(4). Upon entry of the Order for Relief and his appointment, the Trustee assumed the statutory duties to “collect and reduce to money the property of the estate” and to “investigate the financial affairs of the debtor”. 11 U.S.C. §§ 704(a)(1) and (a)(4).

An examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure is the Trustee’s primary investigatory tool to aid in the fulfillment of his statutory duties. Bankruptcy Rule 2004(b) authorizes an examination concerning “the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge....” Fed. R. Bankr. P. 2004(b). The primary purpose of a Rule 2004 examination is to give the parties a tool “to quickly ascertain the extent and location of the estate’s assets.” *In re Fearn*, 96 B.R. 135 (Bankr. S.D. Ohio 1989); *see also In re Martin*, 403 B.R. 359, 362 (Bankr. D.S.C. 2009). In addition to discovering assets, these examinations are often used to “unearth[] frauds.” *In re Table Talk, Inc.*, 51 B.R. 143, 145 (Bankr. D. Mass. 1985); *see also Martin*, 403 B.R. at 362 (“The broad general examination of debtors and others to recover assets and uncover fraudulent conduct is a traditional feature of bankruptcy jurisprudence traceable to the first bankruptcy statute enacted . . . in 1542.”); *In re Symington*, 209 B.R. 678, 683 (Bankr. D. Md. 1997). The scope is “unfettered and broad” and courts sometimes describe Rule 2004 examinations as being legitimate “fishing expedition[s].” *Id.*; *Table Talk*, 51 B.R. at 145; *Fearn*, 96 B.R. at 135. Typically, Rule 2004 is used to examine the debtor. However, this examination is not limited to the debtor or his agents “but may properly extend to creditors and third parties who have had dealings with the debtor.” *Fearn*, 96 B.R. at 138; *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803, 810-11 (Bankr. S.D.N.Y.) (“[I]n the proper context the Court may authorize the examination of third parties that possess knowledge of the debtor’s acts, conduct, liabilities, or financial condition

which relate to the administration of the bankruptcy estate.”) (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002)). Summed up, “an inquiry pursuant to Rule 2004 may ‘cut a broad swath’ through the debtor’s affairs, those associated with him, and *those who might have had business dealings with him.*” *Id.* (quoting *In re Mantolesky*, 14 B.R. 973, 976 (Bankr. D. Mass. 1981) (emphasis in original)).

As set forth above, the Trustee provide 29-days advance notice to the Debtor, Gaal, and the Procom Entities of their 2004 examinations but, they failed to seek relief from the Notice or Subpoena and failed to appear for the examinations. The Court also entered an Order requiring their counsel to coordinate scheduling of the 2004 examinations within five business days of June 10, 2021 but, the examinations have not been scheduled as of the date of this Motion. Nevertheless, the Trustee will continue his efforts to conduct 2004 examinations of the Debtor, Gaal, and the Procom Entities.

In the meantime, the Debtor should be compelled to produce complete copies of all foreign bank records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date. Alternatively, the Debtor should be compelled to execute a Consent Directive authorizing international banks and financial entities to produce complete records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date.

In *Rigby v. Mastro (In re Mastro)*, 585 B.R. 587, 598 (B.A.P. 9<sup>th</sup> Cir. 2018), the court held that “a bankruptcy court may use § 105(a) and Rule 2004 to compel a debtor to sign a consent

directive in furtherance of the debtor's § 521(a)(4) obligation to provide recorded information to the trustee and in furtherance of a trustee's § 704 duties to investigate a debtor's affairs." In so holding, the court stated that "issuance of a consent directive in connection with a Rule 2004 examination request is entirely consistent with the broad inquiry into a debtor's financial affairs authorized by the Code." *Id.* at 597. In other words, "[a] consent directive order under § 105 would enable the trustee's § 704 investigation of the debtor's financial affairs; and it is consistent with a debtor's § 521 obligation to cooperate with this investigation." *Id.* at 596.

The international nature of this case, the Debtor's significant unpaid obligations to customers (totaling \$11,895,980.00 according to the ABC Petition, \$13,407,628.25 according to the Schedules, or \$16 million according to the Claims Register), and the Debtor's transfers to insiders totaling \$10,264,672.88 in the one-year period preceding the Petition Date (see Exhibit 2 hereto) amply establish that the relief sought herein is necessary and appropriate.

### **C. CONCLUSION**

WHEREFORE, the Trustee respectfully requests the Court to enter an Order (i) granting this Motion; (ii)(a) compelling the Debtor to produce complete copies of all foreign bank records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date; or, in the alternative, (ii)(b) compelling the Debtor to execute a Consent Directive authorizing international banks and financial entities to produce complete records for any accounts on which Gaal, Watkins, or Montgomery are/were authorized signors or have/had the right of withdrawal therefrom including, but not limited to, those titled in the name(s) of any Procom Entity(ies) during the four year period preceding the Petition Date; and (iii) providing for such further relief as the Court may deem just.

Dated: June 16, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 16, 2021, I electronically filed the foregoing *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* 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 Alberto F. Gomez, Jr., Esq., Johnson Pope Bokor Ruppel & Burns, LLP, 401 East Jackson Street, Suite 3100, Tampa, Florida 33602 and 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.