

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

In Re:

CASE NO. 23-40569-EJC

MASTER LENDING GROUP, LLC,

CHAPTER 7

Debtors.

**LIMITED OBJECTION TO 2004 EXAMINATION AND DOCUMENT PRODUCTION
OF HIRSCH & TUCKER, LLC, OR, IN THE ALTERNATIVE, MOTION TO MODIFY
SCOPE OF 2004 EXAMINATION AND DOCUMENT PRODUCTION OF HIRSCH &
TUCKER, LLC**

COMES NOW, the undersigned counsel of Gregory M. Hirsch (“Mr. Hirsch”), a non-debtor to the above captioned matter, and files this *Limited Objection to 2004 Examination and Document Production of Hirsch & Tucker, LLC, or, In the Alternative, Motion to Modify Scope of 2004 Examination and Document Production of Hirsch & Tucker, LLC* (the “Objection”). In support of the Objection, the undersigned presents the following:

FACTS:

1.

On July 6, 2023, Master Lending Group, LLC (“Debtor”) filed a voluntary petition for relief under Chapter 7 (the “Petition”) of 11 U.S.C. sec. 101 *et seq.* (the “Bankruptcy Code”), case number 23-40569. (Doc. 1).

2.

Upon the filing of the Petition, Tiffany E. Caron was appointed as the trustee in the case (the “Chapter 7 Trustee”). (Doc. 6). The Chapter 7 Trustee is represented by Neil C. Gordon with Taylor Duma LLP as special counsel, and Hays Financial Consulting, LLC as accountant and financial consultant (the “Chapter 7 Professionals”). (Doc. 32, 93).

3.

Mr. Hirsch was the owner of Debtor. (Doc. 1, p.3).

4.

Upon information and belief, Mr. Hirsch died on Friday, August 4, 2023, after battling advanced stages of amyotrophic lateral sclerosis (“ALS”).

5.

Mr. Hirsch was a partner at Hirsch & Tucker, LLC (“H&T”).

6.

As of the date of the Objection, the Chapter 7 Trustee sought and obtained before and after Mr. Hirsch’s death five (5) orders granting the Chapter 7 Trustee’s respective Rule 2004 motions and requiring (i) Hirsch & Tucker, LLC to appear for examination on August 14, 2023, and produce certain documents on August 4, 2023 (the “H&T Rule 2004 Exam”), (ii) Workmen’s Circle Credit to appear for examination and produce certain documents on September 7, 2023, (iii) Union, William Wilson Riddle, Jr., Robin DeAnne Riddle Robertson, and Truist Bank to appear for

examination and produce certain documents on September 8, 2023 (collectively, the “2004 Orders”). (Doc. 62, 74, 75, 76, 78).

7.

The H&T Rule 2004 Exam called for an August 4, 2023 document production and an August 14, 2023 examination.

8.

There have been a number of communications between counsel for Mr. Hirsch and the Chapter 7 Trustee and the Chapter 7 Professionals regarding Mr. Hirsch’s death, and concerns regarding the scope of the H&T Rule 2004 Exam as some of the requests implicate Mr. Hirsch’s personal, confidential, and privilege rights involved with such examination.

9.

The undersigned counsel understands that H&T has turned over to the Chapter 7 Trustee and the Chapter 7 Trustee Professionals Mr. Hirsch’s work laptop (the “Laptop”). Due to the uncertainty as to the type of information the Laptop may contain and the possibility of it containing privileged information as well as information outside of the scope of the H&T Rule 2004 Exam. The undersigned counsel also understands that the Chapter 7 Trustee’s professionals intend to image the hard drive of the Laptop and perform searches thereon based on pre-agreed search terms determined by the Chapter 7 Trustee, the Chapter 7 Trustee Professionals, and the counsel for the estate of Mr. Hirsch and counsel for H&T. Additionally, it is also possible that the scope of the H&T Rule 2004 Exam requests may implicate personal information of Greg Hirsch which is outside the scope of discoverable information under Federal Rules of Bankruptcy Procedure 2004.

10.

The Chapter 7 Trustee, the Chapter 7 Trustee Professionals, counsel for H&T, and the undersigned are currently working in good faith to develop a document production protocol which will also contain the pre-agreed search terms for the H&T 2004 Exam to address the above concerns.

11.

Given these ongoing discussions, the Chapter 7 Trustee has agreed to continue the Rule 2004 examination and document production until a later time which time the undersigned counsel understands has not been set yet.

12.

However, given that the Court's order granting the H&T 2004 Exam was issued on August 2, 2023 (Doc. 62), the undersigned files this Objection out of an abundance of caution to object to the scope or in the alternative seek to limit the scope of the H&T 2004 Exam in the event the interested parties cannot amicably resolve this dispute.¹

13.

Furthermore, upon information and belief, the executor of Mr. Hirsch's estate is currently in the process of preparing to initiate a probate proceeding and approve the appointment of a tentative executor. Such opening of the probate estate, and appointment is expected to occur over

¹ After an order is issued for a Rule 2004 examination, an objection may be treated as a motion to quash pursuant to Civil Rule 45(d), applied in cases under the Code by Rule 9016. (§ 2004:4 Objections; motion to quash; protective order, Bankr. Proc. Manual § 2004:4 (2023 ed.)

the next thirty (30) days. Given pendency of the probate estate and in order to preserve the rights of the estate of Mr. Hirsch until the appointment of an estate representative that can evaluate and speak on behalf of such estate, the undersigned respectfully submits this Objection.

DISCUSSION:

Mr. Hirsch, respectfully, objects to the H&R Rule 2004 Exam or in the alternative moves the Court to limit the scope of the H&T Rule 2004 Examination as the requested discovery is outside of the scope of Rule 2004. The scope of a Rule 2004 examination is “to 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); *In re No Rust Rebar, Inc.*, 21-12188-PDR, 2022 WL 17365810, at *2 (Bankr. S.D. Fla. Dec. 1, 2022). “The purpose of a Rule 2004 examination is to discover the nature and extent of the bankruptcy estate in order to distribute debtor's assets for the benefit of its creditors,” so “[l]egitimate goals of Rule 2004 examinations include discovering assets, examining transactions, and determining whether wrongdoing has occurred.” *In re No Rust Rebar, Inc.*, 2022 WL 17365810, at *2 (quoting *In re Millennium Lab Holdings II, LLC*, 562 B.R. 614, 626 (Bankr. D. Del. 2016) (citations omitted).

Although the scope of Rule 2004 examinations is broad, it is not unlimited. These examinations cannot be used for harassment nor stray into matters which are not relevant to the basic inquiry. *In re No Rust Rebar, Inc.*, 2022 WL 17365810, at *2. The party seeking the 2004 discovery bears the burden of proving good cause for it. *In re Defoor Centre, LLC*, 634 B.R. 630, 638 (Bankr. M.D. Fla. 2021); *see also In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985).

Good cause can be established by showing that the “discovery is needed to establish a claim or that denial of the Rule 2004 discovery would cause undue hardship or injustice.” *In re Defoor Centre*, 634 B.R. at 638. Ultimately, the granting of a 2004 examination is in the discretion of the Court which requires a balancing of the competing interests of the parties, weighing the relevance and necessity of the information sought. *In re Millennium*, 562 B.R. at 626 (citations omitted).

Mr. Hirsch does not seek to quash or object to the entire Rule 2004 examination of H&T. Some of the requests included in the Rule 2004 examination are clearly within the scope of Rule 2004. (Doc. 55). However, some of the requests sought by the examination are outside of the scope of Rule 2004, and the Chapter 7 Trustee has not established good cause to seek the information or testimony.

Here, Mr. Hirsch is not the debtor that is the subject of the Petition – only MLG is the debtor listed in the Petition. (*See* Doc. 1). An individual is not the same as a company, and Mr. Hirsch in his role as a member of MLG, is not liable or responsible for any debts, obligations, or liability of MLG. *See* O.C.G.A. § 14-11-303(a) (“A person who is a member, manager, agent, or employee of a limited liability company is not liable, solely by reason of being a member, manager, agent, or employee of the limited liability company ... for a debt, obligation, or liability of the limited liability company.”).

To the extent that the H&T Rule 2004 Exam seeks any of Mr. Hirsch’s personal, confidential, or privileged information, such information is separate and apart from MLG and is

not relevant to the Petition.² The scope of the H&T Rule 2004 Exam should be limited to exclude such information and testimony, and should only be permitted to seek the information and testimony from H&T that may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

The Chapter 7 Trustee Professionals, H&T, and the undersigned are working to develop a protocol concerning the concerns as to the potential scope of the H&T Rule 2004 Exam. The intent of this protocol is to address the concerns of Mr. Hirsh's personal, confidential, and privilege protections. Additionally, Mr. Hirsch, as a fifty percent owner of H&T, has concerns concerning H&T's client's personal and confidential information, as well as the protection of associated privilege.

However, if the counsel for the respective interested parties are unable to resolve these concerns, protection from the Court will be needed to modify and limit the scope of the H&T Rule 2004 Exam. Out of an abundance of caution, the Objection is being filed to preserve any and all rights of Mr. Hirsch pending the establishment of Mr. Hirsch's estate and the appointment of an executor.

² A party has standing to move to quash a subpoena served on a non-party if that subpoena requests documents of the party's "personal right or privilege with respect to the materials subpoenaed." *Collins-Williams v. Contour Eastwyck LLC*, 2021 WL 2476470, at *3 (N.D. Ga. May 14, 2021); *Cellairis Franchise, Inc. v. Duarte*, 193 F. Supp. 3d 1379, 1381 (N.D. Ga. 2016) (citations omitted). Additionally, parties "clearly have standing to move for a protective order if the subpoenas seek irrelevant information or if they create an undue burden." *Collins-Williams*, 2021 WL 2476470, at *3; *Ballard v. Wilshire Ins. Co.*, No. 1:17-CV-02316-CAP, 2018 WL 6164333, at *1 (N.D. Ga. Mar. 29, 2018).

WHEREFORE, the undersigned as counsel for Mr. Hirsch respectfully requests that the Court enter an order providing the relief requested herein and order such other and further relief as is just and proper.

Respectfully submitted this 16th day of August, 2023.

/s/ S. Elizabeth Hall

S. ELIZABETH HALL

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing ***LIMITED OBJECTION TO 2004 EXAMINATION AND DOCUMENT PRODUCTION OF HIRSCH & TUCKER, LLC, OR, IN THE ALTERNATIVE, MOTION TO MODIFY SCOPE OF 2004 EXAMINATION AND DOCUMENT PRODUCTION OF HIRSCH & TUCKER, LLC*** by filing the foregoing pleading with the Clerk of Court using the CM/ECF System:

(a) by first class mail by depositing same in the United States mail, with adequate first-class postage affixed thereon, property addressed to the following parties:

Master Lending Group, LLC
440 Mall Blvd. Suite A
Savannah, GA 31406

Tiffany E. Caron
P.O. Box 711
West Palm Beach, FL 33402

Hirsh & Tucker, LLC
Attn: Jeffrey Tucker
440 Mall Blvd., Suite A
Savannah, GA 31406

and,

(b) through the Case Management/Electronic Case Filing System automatically generated by the United States Bankruptcy Court for the Northern District of Georgia on the parties registered with the Court's CM/ECF system.

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This 16th day of August, 2023.

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