

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

| | | |
|----------------------------|---|-----------------------|
| IN RE: | § | |
| | § | Case No. 23-40569-EJC |
| MASTER LENDING GROUP, LLC, | § | |
| | § | Chapter 7 |
| Debtor. | § | |

MOTION FOR PERMISSION TO SUBMIT BRIEF

Mary Ida Townson, United States Trustee for Region 21 (the “U.S. Trustee”), through the undersigned counsel, hereby moves this Court for entry of an order allowing the U.S. Trustee to submit the attached brief for the Court’s consideration. At the September 12, 2023, hearing on the U.S. Trustee’s pending subpoena and motion under Rule 2004, there was no discussion as to whether the parties may submit post-hearing briefs.

WHEREFORE, the U.S. Trustee requests that the Court enter an order allowing the U.S. Trustee to submit the attached brief for the Court’s consideration.

Date: September 25, 2023

Respectfully submitted,
MARY IDA TOWNSON
UNITED STATES TRUSTEE, REGION 21

By: /s/ Joel Paschke
IL Bar No. 6275662

Office of the United States Trustee
33 Bull Street, Suite 400
Savannah, GA 31401
(912) 652-4112

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing MOTION FOR PERMISSION TO SUBMIT BRIEF, and the proposed order, have this day been served upon the following by emailing copies to the parties listed below at the email addresses listed below their names. In addition, electronic service will be received by those parties that are entitled to receive such service in this case through the electronic filing system of this Court.

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Susan Elizabeth Hall
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Date: September 25, 2023

/s/ Joel Paschke
Joel Paschke

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BRIEF OF THE UNITED STATES TRUSTEE

Mary Ida Townson, United States Trustee for Region 21 (the “U.S. Trustee”), respectfully submits this post-hearing brief in support of her pending motion under Rule 2004.

Facts

Master Lending Group, LLC (“MLG”), was a business that solicited investments of cash largely from local members of the Savannah community. In exchange for the investment, MLG would typically issue a promissory note to the investor promising to make monthly interest payments and to return the principal investment on demand according to the terms of each note. Gergory Hirsch was the sole owner and managing member of MLG.

On July 6, 2023, MLG filed a petition for relief under Chapter 7 of the Bankruptcy Code, and Tiffany Caron was appointed as the Chapter 7 trustee. On the petition date, Gregory Hirsch was in the final stages of a fatal disease that rendered him unable to communicate. He has since passed away. MLG’s bankruptcy schedules as amended show that MLG owed just under \$43 million to investors but had less than \$1 million in assets. There has been no accounting as to what became of the investors’ money.

In an effort to assist the Chapter 7 trustee to identify potentially recoverable assets of the bankruptcy estate and to identify any potential wrongdoing that may have occurred, the U.S. Trustee issued two subpoenas to Truist (formerly SunTrust Bank) on July 13, 2023. The first

subpoena (the “MLG subpoena”) sought bank records relating to MLG for the period from January 1, 2015, through June 30, 2023. The second subpoena (the “Hirsch subpoena”) sought bank records relating to Gregory Hirsch covering the same time period. Counsel for the probate estate of Gregory Hirsch filed a motion to quash the Hirsch subpoena citing, among other things, a procedural defect in that there was no “proceeding” pending for the issuance of a subpoena. To cure that defect, the U.S. Trustee subsequently filed a Rule 2004 motion directed at Truist seeking production of the same documents requested in the Hirsch subpoena. In particular, the U.S. Trustee seeks production of the following documents covering the period from January 1, 2015, through June 30, 2023: (1) all bank statements, deposit slips, canceled checks, and signature cards for any account over which Gregory Hirsch has or had signatory authority; (2) all credit card statements for accounts on which Gregory Hirsch was an authorized user; and (3) any personal financial statements or loan applications submitted by Gregory Hirsch.

Counsel for the probate estate subsequently objected to the U.S. Trustee’s Rule 2004 motion, and a hearing date was set for September 12, 2023, on both the motion to quash the Hirsch subpoena and the objection to the U.S. Trustee’s Rule 2004 motion. At the hearing, in support of her Rule 2004 motion, the U.S. Trustee submitted evidence of potentially recoverable fraudulent transfers in the form of testimony by U.S. Trustee auditor Hayley Glisson and numerous checks written on MLG’s bank account payable to Gregory Hirsch and to several LLCs owned and controlled by him, including Hirsch & Company, Low Country Development Group LLC, and Wallin Street LLC.

Other than cross examining the U.S. Trustee’s witness, counsel for the probate estate offered no evidence in opposition. Significantly, the probate estate offered no evidence at the hearing identifying any accounts at Truist that would be subject to the U.S. Trustee’s production

request; nor did probate counsel make any attempt to offer evidence distinguishing accounts that should be discoverable from those that should not be. At the hearing, probate counsel asserted a general lack of information due to the death of Gregory Hirsch. At present, it appears that neither probate counsel nor the U.S. Trustee knows how many accounts at Truist were controlled by Gregory Hirsch (in his own name, jointly with family members, and through his business entities) and how many of those accounts contain funds ultimately traceable to MLG that are subject to recovery actions by the bankruptcy estate. Nor is it known whether checks received from MLG's investors were deposited directly into accounts owned and controlled by Gregory Hirsch and his business entities other than MLG, thereby bypassing MLG entirely.

Bankruptcy Rule 2004

“On motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a). “The examination of an entity under this rule . . . may relate only 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[.]” Fed. R. Bankr. P. 2004(b). Rule 2004 also contemplates the production of documents and that such document production may be compelled by subpoena. Fed. R. Bankr. P. 2004(c).

“The general rule is that the scope of a Rule 2004 examination is very broad and great latitude of inquiry is ordinarily permitted.” *In re Kelton*, 389 B.R. 812, 819-20 (Bankr. S.D.Ga. 2008) (citing *Matter of Wilcher*, 56 B.R. 428, 433 (Bankr. N.D.Ill. 1985)). “The primary purpose of a Rule 2004 examination is for revealing the nature and extent of the bankruptcy estate, and for discovering assets, examining transactions, and determining whether wrongdoing has occurred. In this regard, courts have recognized that Rule 2004 examinations are . . . in the nature of fishing expeditions.” *Id.* at 820 (internal quotations and citations omitted).

Once an objection has been filed, the U.S. Trustee “must show good cause exists to conduct a Rule 2004 examination.” *Kelton*, 389 B.R. at 820 (citation omitted). Generally, good cause is shown if the [Rule 2004] examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice.” *Kelton*, 389 B.R. at 820 (internal quotations and citations omitted).

However, a Rule 2004 motion may be denied where (1) the purpose is to harass the debtor; (2) the motion seeks information unrelated to the debtor’s financial affairs or the administration of the debtor’s estate; (3) the movant seeks to examine an individual with no knowledge of the debtor’s affairs; or (4) when the motion would circumvent the more stringent discovery rules in adversary proceedings. *Kelton*, 389 B.R. at 820. However, where there is no adversary proceeding pending with respect to the subject matter of a Rule 2004 motion, ground #4 above does not apply. *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 455-456 (Bankr. D.N.J. 1998)) (citations omitted).

Good Cause to Grant the Rule 2004 Motion

The U.S. Trustee’s Rule 2004 motion was brought for reasons consistent with the primary purpose underlying Rule 2004 – namely, to discover assets, examine transactions, and determine whether wrongdoing has occurred. As the Court seemed to acknowledge at the hearing, the Chapter 7 trustee has a duty to “follow the money” and find where it went. The U.S. Trustee’s Rule 2004 motion is an attempt to do just that as well as determine whether other wrongdoing has occurred.

The evidence presented by the U.S. Trustee at the hearing shows that Gregory Hirsch caused MLG to issue numerous checks payable to himself and a number of his business entities, and the majority of these transfers may constitute fraudulent transfers recoverable by the

bankruptcy estate under 11 U.S.C. § 548 or under Georgia state fraudulent transfer law. However, because our evidence is limited to our initial review of bank records received in response to the MLG subpoena, we can identify only the initial transferee of each potentially recoverable transfer. To identify subsequent transferees who may also be liable to the bankruptcy estate, the U.S. Trustee and the Chapter 7 trustee need the ability to obtain the bank records of Gregory Hirsch, his business entities, and any account into which Gregory Hirsch could have transferred funds traceable to MLG. *See* 11 U.S.C. § 550(a)(1) and (2) (liability attaches to the initial transferee or the entity for whose benefit such transfer was made and to any immediate or mediate transferee of the initial transferee).

At one point in the hearing, the Court suggested that the U.S. Trustee's inquiry might be limited only to those accounts where "Gregory Hirsch" appears as the owner of the account on the account agreement. However, such a limitation would bar the U.S. Trustee from obtaining any bank records with respect to corporate accounts controlled by Gregory Hirsch notwithstanding that those entities received transfers traceable to MLG. Presumably, those accounts would be held in the name of the subject corporation rather than in Mr. Hirsch's personal name. Moreover, once a transfer was made from MLG to an account owned by one of Mr. Hirsch's other business entities, nothing would have prevented Mr. Hirsch from subsequently transferring those funds to himself or another business entity that we cannot identify solely by reviewing the accounts held in the name of MLG, Gregory Hirsch, or the business entities identified at the hearing as initial transferees of checks issued by MLG. Further, as noted above, we cannot assume that all of the investors' money flowed through MLG. Therefore, the U.S. Trustee's Rule 2004 motion needs to be broad enough to access records associated with any account at Truist where Gregory Hirsch could have deposited money

traceable to MLG or its investors.

No Grounds for Denial or Limitation of the Rule 2004 Motion

Judge Barrett identified four grounds recognized by the courts for denying a Rule 2004 motion: (i) where the purpose is to harass; (ii) where the motion seeks information unrelated to the debtor's financial affairs or the administration of the debtor's estate; (iii) where the movant seeks to examine an individual with no knowledge of the debtor's affairs; or (iv) when the motion would circumvent the more stringent discovery rules in adversary proceedings.

In this case, none of these judicially recognized grounds for denying or limiting a Rule 2004 motion have been established by probate counsel. Probate counsel has neither pled nor argued that the U.S. Trustee's Rule 2004 motion falls within any of the first three grounds set forth above. To the extent that probate counsel argued at hearing that the U.S. Trustee's motion would circumvent the discovery rules associated with adversary proceedings, the U.S. Trustee asserts that there is no adversary proceeding pending with respect to the funds we are tracing through the accounts that Gregory Hirsch controlled. As noted above, the majority of courts hold that there are no grounds to deny or limit a Rule 2004 motion under these circumstances. Indeed, at least one court granted a Rule 2004 motion notwithstanding the pendency of an adversary proceeding. *Matter of Sun Med. Management, Inc.*, 104 B.R. 522, 524-525 (Bankr. M.D.Ga. 1989).

At this juncture, the U.S. Trustee and the Chapter 7 trustee are gathering the facts necessary to substantiate the bankruptcy estate's claims, and given that Rule 2004 appears to be the primary (and perhaps the only) discovery tool for gathering evidence from third parties, denial or limitation of the U.S. Trustee's Rule 2004 motion would cause undue hardship to those seeking to uncover the facts necessary to administer this case to conclusion and would render an

injustice to those investors who need an explanation for what happened to their money.

Date: September 25, 2023

Respectfully submitted,
MARY IDA TOWNSON
UNITED STATES TRUSTEE, REGION 21

/s/ Joel Paschke

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA**

In re:

MASTER LENDING GROUP, LLC,

Debtor.

Case No. 23-40569-EJC

Chapter 7

ORDER

UPON consideration of the U.S. Trustee's motion for permission to submit the brief attached to her motion,

IT IS HEREBY ORDERED that the motion is granted.

[END OF DOCUMENT]

Prepared by:

/s/ Joel Paschke

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