

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

WILLIAM B. MCHENRY, JR.,

Debtor.

CASE NO. 20-00268

Chapter 7

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
DEBTOR TO COMPLY WITH RULE 2004 REQUESTS**

Alysson Mills, in her capacity as the court-appointed receiver for the estates of Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel and pursuant to Federal Rules of Bankruptcy Procedure 9014, 7037, and 2004(c), respectfully submits this brief in support of her motion for an order compelling William B. McHenry, Jr. (“McHenry” or “Debtor”) to produce certain documents requested in Exhibit A to the Notice of Intent to Take Rule 2004 Examination.¹

INTRODUCTION

Rule 2004 entitles a creditor to a “broad and unfettered” examination of the debtor, which necessarily includes an examination of documents related to the debtor’s financial affairs. *In re Young*, No. 17-14065-NPO, 2018 WL 6060338, at *5 (Bankr. N.D. Miss. Nov. 19, 2018) (Olack, J.). The Receiver requested documents related to McHenry’s financial affairs, but of those requested documents McHenry refuses to produce what appear to be the most relevant.

¹ Doc. 48, In re: William Byrd McHenry, Jr., No. 20-bk-00268 (Bankr. S.D. Miss.).

Among other things, McHenry refuses to produce documents related to First South Investments, the single-member LLC by which he purports to conduct business. He also contends any documents created prior to August 2019 are “irrelevant.”² He tries to divorce his involvement in Madison Timber from the fact that the Receiver obtained a \$3,472,320 final judgment against McHenry and First South Investments reflecting the amount of Madison Timber “commissions” they received.³ He accuses the Receiver of “[c]ontinually telling the tale of the Madison Timber Ponzi Scheme.”⁴

McHenry’s objections to the Receiver’s requests are baseless, find no support in the rules governing bankruptcy proceedings, and if permitted, would eviscerate the requirement that a debtor make full and exhaustive disclosure of his assets and liabilities. It is elementary that a debtor who asks this Court to discharge his debts must make a full disclosure of his assets. McHenry, however, refuses to produce, among other things, documents relating to First South Investments, the single-member LLC by which McHenry purports to conduct business.

The Bankruptcy Code imposes a singular benefit on the honest and transparent debtor—discharge of most, if not all, of his debts. *See In re Adams*, No. 12-02569-NPO, 2015 WL 1876669, at *8 (Bankr. S.D. Miss. Apr. 22, 2015) (Olack, J.) (“The privilege of discharge is granted only to those debtors who make a good faith effort in producing a full picture of their financial affairs.”). The price of that relief is disclosure of all information relating to the debtor’s assets and liabilities. McHenry has refused to comply with that obligation and should be compelled to do so.

² Exhibit 4 at p. 2.

³ *See* Exhibit 4 at p. 2.

⁴ Exhibit 4 at p. 2.

Indeed, Rule 2004 authorizes an inquiry into a debtor's financial affairs that is tantamount to a "fishing expedition." *In re Young*, 2018 WL 6060338, at *5 (the scope of a Rule 2004 examination, including the production of documents, is "broad and unfettered and in the nature of a fishing expedition"). Rule 2004 entitles a creditor to "a broad investigation into the financial affairs of the debtor for the purpose of the discovery of assets of the estate and the exposure of fraudulent conduct." *In re Corraera*, 589 B.R. 76, 108 (Bankr. N.D. Tex. 2018). The Receiver has a right to investigate McHenry's financial affairs to discover what assets are available to satisfy the Receiver's judgment against him and, as importantly, to determine what bases exist to object to the dischargeability of McHenry's debts pursuant to Sections 727 and 523.

BACKGROUND

The Receiver holds a \$3,473,320 final judgment against McHenry and First South Investments.⁵ The amount reflects "commissions" that McHenry, through First South Investments, received in exchange for McHenry's recruitment of new investors to the Madison Timber Ponzi scheme.

On January 25, 2019, a federal grand jury indicted McHenry for securities and wire fraud.⁶ The Receiver did not examine McHenry regarding his assets while criminal proceedings were pending because he would have invoked his right to silence. Immediately upon the conclusion of those criminal proceedings, however, the Receiver obtained an order permitting her to examine McHenry under oath in open court regarding his ability to pay the \$3,473,320 judgment against

⁵ Doc. 62, *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).

⁶ Doc. 3, *United States v. McHenry*, No. 3:19-cr-00020 (S.D. Miss).

him. The order instructed McHenry to appear for examination on February 10, 2020, and to produce documents relevant to his finances to the Receiver on or before January 27, 2020.⁷

Rather than comply with that order, on January 24, 2020, McHenry filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code, thereby triggering an automatic stay of litigation against him. McHenry identified the Receiver as a creditor of his bankruptcy estate.

McHenry agreed with the Receiver's request that he sit for an examination and produce documents pursuant to Rule 2004.⁸ As a result, and pursuant to Rule 2004 and this Court's Local Bankruptcy Rule 2004-1, the Receiver filed on February 18, 2020 a Notice of Intent to Take Rule 2004 Examination ("Notice"), which noticed McHenry's examination for March 18, 2020 at the offices of McHenry's counsel.⁹

The Receiver attached as Exhibit A to the Notice her requests for documents pursuant to Rule 2004.¹⁰ By agreement of the parties, McHenry was to produce responsive documents to the Receiver on March 6, 2020.

The meeting of McHenry's creditors pursuant to Section 341(a) was held on March 4, 2020. At the instruction of his attorney, McHenry refused to respond to multiple questions of the Receiver's counsel, claiming that those questions must be deferred to his Rule 2004 examination. McHenry is now apparently of the view that he never has to answer the Receiver's questions.

On March 5, 2020, the Receiver received 28 pages of documents from McHenry, which included bank statements from only four bank accounts for only the past three months. In those

⁷ Doc. 67, *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss.).

⁸ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.). Faced with the COVID-19 pandemic, the parties agreed to continue McHenry's examination. Doc. 64.

⁹ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

¹⁰ Doc. 48, *In re: William Byrd McHenry, Jr.*, No. 20-bk-00268 (Bankr. S.D. Miss.).

bank statements were references to other checking and PayPal accounts to which McHenry transferred money, but about which McHenry made no disclosure.¹¹ McHenry's "production" was accompanied by a letter from McHenry's counsel objecting to every one of the Receiver's requests for documents.¹²

Counsel for the Receiver wrote to McHenry's counsel on March 10, 2020, challenging McHenry's objections and again requesting that McHenry fulfill his obligation pursuant to Rule 2004 to produce all documents responsive to the Receiver's requests.¹³

McHenry's counsel responded on March 13, 2020.¹⁴ In that letter, McHenry agreed to produce bank statements from January 2019 until January 2020. McHenry maintained all other objections and has yet to produce any additional documents.

ARGUMENT

The scope of examination allowed under Rule 2004 is broader than that allowed for discovery under the Federal Rules of Civil Procedure and is allowed to be in the nature of a "fishing expedition." *In re Young*, 2018 WL 6060338, at *5. Investigation into a debtor is improper only when the information sought has "no relationship to the debtor's affairs or no effect on the administration of his estate." *In re Johns–Manville Corp.*, 42 B.R. 362, 364 (S.D.N.Y. 1984).

Each of the Receiver's document requests bears directly on McHenry's financial affairs, his ability to satisfy the Receiver's judgment against him, and the bases for the Receiver to object

¹¹ McHenry's document production and objections to the Receiver's request are attached hereto as Exhibit 2. The Receiver has redacted from McHenry's production certain financial information. She will provide an un-redacted copy to the Court if it wishes.

¹² See Exhibit 2.

¹³ The Receiver's counsel's letter is attached hereto as Exhibit 3.

¹⁴ McHenry's counsel's March 13, 2020 letter is attached hereto as Exhibit 4.

to the dischargeability of McHenry's debts. The documents plainly fall within the scope of examination. McHenry is simply wrong to refuse to produce the documents.

1. McHenry refuses to produce documents relating to checking and PayPal accounts to which McHenry evidently transferred money. The Receiver discovered these accounts in the course of her review of bank statements that McHenry provided as part of his scant "production."¹⁵ When the Receiver inquired of the nature of the checking and PayPal accounts that she discovered, McHenry responded only that he "provided all statements for personal accounts which [he] utilizes."¹⁶ That assertion cannot be true, because the statements McHenry provided do not evidence payments of routine, essential bills, such as a mortgage or car note. Plainly McHenry has more accounts than he has disclosed. The Receiver is entitled to investigate any and all accounts that he uses.

2. McHenry refuses to produce any documents before January 2019, because one year before the petition date "is the time period which the Bankruptcy Court would consider in relation to discharge per 11 U.S.C. § 727(a)(2)(A)."¹⁷ The Receiver, however, intends to object to the dischargeability of McHenry's debts on numerous bases pursuant to Sections 727 and 523, most if not all of which have no one-year limitation. Further, McHenry's position conflicts with the "broad and unfettered" examination of the debtor mandated by Rule 2004. *In re Young*, 2018 WL 6060338, at *5.

¹⁵ For example, on the First Commercial Bank statement for October – November of 2019, McHenry made deposits of \$500.00, \$800.00, \$650.00, and \$75.00 into "checking 5013214." *See* Exhibit 2 at pp. 21–22. On the same statement are numerous debits entitled "PAYPAL INST XFER." McHenry also received transfers from "checking 5022736," "checking 5018767," and "checking 5013214." Exhibit 2 at p. 23. McHenry has not identified any of these accounts.

¹⁶ Exhibit 4 at p. 1.

¹⁷ *See* Exhibit 4.

3. McHenry refuses to produce “state and federal tax returns” because they “are subject to certain privacy rights,” are “privileged,” and “improper disclosure of them can even potentially rise to tortious invasion of privacy claims in overturning a demurrer as to that claim.”¹⁸ Nonsense. “Income tax returns are quintessential documents ‘from which the debtor’s financial condition or business transactions might be ascertained.’” *In re Wolfson*, 152 B.R. 830, 833 (S.D.N.Y. 1993) (quoting 11 U.S.C. § 727(a)(3)). McHenry must produce state and federal tax returns.

4. McHenry refuses to produce “any documentation for any person or business entity as the [sic] no other person nor business entity is a debtor or a party to this bankruptcy case.”¹⁹ McHenry’s objection is based on the Receiver’s request for documents relating to First South Investments, LLC. McHenry is the single member and owner of First South Investments, LLC and he used (and may continue to use) First South Investments, LLC to house funds he received from the Madison Timber Ponzi scheme. All disbursements of First South Investments, LLC went directly to McHenry. Nonetheless, McHenry contends he cannot be compelled to produce documents related to First South Investments, LLC “regardless of Mr. McHenry’s relationship to the business entity.”²⁰ It certainly cannot be the case that a debtor can use a business entity as a conduit for fraudulent conduct and then claim it immune from investigation in his bankruptcy. McHenry must produce the documents requested by the Receiver.

5. Finally, McHenry refuses to produce certain documents that he claims he previously provided to the Receiver in the context of her lawsuit against him arising from his involvement in the Madison Timber Ponzi scheme. Those financial disclosures were made on

¹⁸ See Exhibit 2.

¹⁹ See Exhibit 2.

²⁰ See Exhibit 4 at p. 1.

October 18, 2018—over 17 months ago. At the very least, Mr. McHenry must supplement his production with all financial information to present. McHenry posits that he need not supplement because “the documentation given to [the Receiver] in October 2018 has not changed.”²¹ If so, why object?

McHenry invited the Receiver’s inquiry by filing for bankruptcy. If he wants this Court to discharge his debts, he must be willing to disclose all things relating to his financial affairs. The Receiver’s requests are not onerous or otherwise difficult to satisfy, and the documents she seeks are necessary to determine not only McHenry’s assets but also whether there exist grounds to object to the dischargeability of McHenry’s debts. Without the documents she seeks, neither the Receiver, the Chapter 7 Trustee, nor this Court can make an informed decision regarding whether McHenry is entitled to relief.

CONCLUSION

McHenry has no valid reason for failing to produce the documents requested by the Receiver. The Receiver respectfully requests that the Court compel McHenry to produce the documents in accordance with Exhibit A to the Notice.

²¹ Exhibit 4 at p. 2.

April 3, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: April 3, 2020

/s/ Lilli Evans Bass