

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court Files No.'s:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**OBJECTION TO MOTION FILED BY APRIVEN PARTNERS, LP, C&C CAPITAL,
LLC, AND TRUE NORTH FUNDING, LLC FOR LEAVE TO CONDUCT
CONSTRUCTIVE-TRUST DISCOVERY PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

Petters Group Worldwide, LLC (“PGW”) and Petters Company, Inc. (“PCI”) (collectively, the “Debtors”), through their undersigned attorneys, submit the following objection to the motion of Apriven Partners, LP (“Apriven”), C&C Capital, LLC (“C&C Capital”) and True North Funding, LLC (“True North”) (collectively, the “Plaintiffs”) for Leave to Conduct Constructive-Trust Discovery Pursuant to Federal Rule of Bankruptcy Procedure 2004 (the “Motion”).

BACKGROUND FACTS

On October 6, 2008, Plaintiffs filed a complaint in the United States District Court,

District of Minnesota, in the matter *Apriven Partners, LP, C&C Capital, LLC and True North Funding, LLC v. Petters Group Worldwide, LLC, Petters Company, Inc., Nationwide International Resources, Inc., Thomas J. Petters, Deanna Coleman, a/k/a Deanna Munson, Robert White, Larry Reynolds, and John and Jane Does 1 through 10*, Case No. 08-5373 (ADM/JSM) (the “District Court Litigation”).

This complaint was filed several weeks after the federal fraud investigation and subsequent arrests were made public. In their complaint, Plaintiffs asserted numerous claims, including breach of contract, fraud, and conspiracy. The District Court Litigation has been stayed as the result of the Debtors’ Chapter 11 filings.

ARGUMENT

As a result of filing its bankruptcy petitions, Plaintiffs are stayed from “the commencement or continuation...of...an action or proceeding against the debtor that was...commenced before the commencement of the case under this title...” 11 U.S.C. § 362(a)(1). As a result of the automatic stay, Plaintiffs are prohibited from continuing the District Court Litigation without proper leave of this Court. Here, Plaintiffs have made no such request, therefore, their Motion should be denied.

As Plaintiffs correctly state, any party in interest can conduct a 2004 examination about anything remotely related to the debtor or administration of the bankruptcy case. It has been likened to a fishing expedition, where procedural safeguards are at a minimum. *In re North Plaza, LLC*, 395 B.R. 113, 122 (D.C. S.D. Cal. 2008); *In re Russell*, 392 B.R. 315, 359 (Bankr. E.D. Tenn. 2008). Rule 2004 examinations are allowed for the “purpose of discovering assets and unearthing frauds.” *In re GHR Energy Corp.*, 33 B.R. 451, 453 (Bankr. D. Mass. 1983).

Rule 2004 exams, however, are not without limit. Bankruptcy Courts are fairly clear that the use of a 2004 examination is improper when there is a contested matter or an adversary

proceeding pending, where as the narrower discovery rules and procedures would apply. *In re Snyder*, 52 F.3d 1067, *2 (5th Cir. April 12, 1995) (“Examination under Rule 2004 should not be used to obtain information for use in an unrelated case or proceeding pending before another tribunal.”) citing *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 516 (D.C. E.D.N.Y. 1991). In *In re Comdisco, Inc.*, 2006 WL 2375458, *6 -7 (D.C. N.D. Ill. August 14, 2006), the court provided a good summary of the issue:

Rule 2004 is a pre-litigation discovery device for bankruptcy proceedings, and when an adversary proceeding or contested matter has commenced, discovery must be made pursuant to the Federal Rules. *In re The Bennett Funding Group, Inc.*, 203 B.R. at 28; *In re Valley Forge Plaza Assocs.*, 109 B.R. at 674; *In re Enron Corp.*, 281 B.R. at 840; *In re Szadkowski*, 198 B.R. 140, 142 (Bankr.D.Md. 1996). Due to the discrepancy in the discovery standards, courts are “wary of attempts to utilize [Rule 2004] to avoid the restrictions of [the FRCP] in the context of adversary proceedings.” *In re The Bennett Funding Group, Inc.*, 203 B.R. at 28; see also *In re Valley Forge Plaza Assocs.*, 109 B.R. at 675; *In re Enron Corp.*, 281 B.R. at 841 (“Based on Rule 2004’s substantive differences, courts have expressed concern that Rule 2004 examinations not be used as a tactic to circumvent the safeguards of the Federal Rules of Civil Procedure.”).

Conducting discovery through a 2004 examination to further Plaintiffs’ stayed District Court Litigation would violate the automatic stay provided Debtors under § 362(a) by continuing an action or proceeding that was commenced prior to the bankruptcy filings. Any discovery will go to the amount Plaintiffs are owed by the Petters entities, which will ultimately be determined at a later date through the claim objection process in bankruptcy or another proceeding. Since the District Court Litigation is stayed, and Plaintiffs have not filed proofs of claim or any adversary proceeding in the bankruptcy case, there is no information the Plaintiffs could be seeking through a Rule 2004 examination that does not relate to the pending District Court Litigation.

The purpose of the automatic stay is to relieve the Debtors of having to litigate multiple

matters simultaneously with limited resources to fund such litigation. Here, any Rule 2004 examination would represent an undue burden on the Debtors. There is a process in place that will sort out the fraud and other issues – both through the bankruptcy court and the parallel criminal proceedings. The Plaintiffs will have a place in that process, but should not be dictating the pace or terms of that process, especially this early in such a complex case as with these Debtors and their affiliated entities.

Plaintiffs also argue that a constructive trust may be applicable to their investments, and as beneficiaries of that trust, they are entitled to such information. Debtors do object to Plaintiffs' assertion that a constructive trust exists and that assets of the estate are subject to such a constructive trust on their behalf, and they reserve their rights to contest any such statement, allegation or argument contained in the memorandum supporting Plaintiffs' Motion at such time they are asserted in any other proceeding.

The Plaintiffs are in a position similar to every other creditor in this case—they were induced to lend money to the Debtors and related entities, even up to the time the federal investigation became public, and the invested money of many creditors was utilized by the Debtors and the other named Defendants in the criminal complaint, in furtherance of that scheme. Here, it is important to remember that the fraud has already been unearthed, the perpetrators of the fraud have been removed from control over the assets of the Debtors and the Debtors and Receiver for the non-debtor defendants in the District Court Litigation are actively attempting to preserve and recover assets, with the whole process overseen by the bankruptcy court and a Committee of Unsecured Creditors to ensure distributions to unsecured creditors are maximized. The United States has also seized the liquid assets of the Debtors, in an approximate amount of \$1.5 million, as well as many of the Debtors' records, as part of the United States'

criminal case. Therefore, the risk of further depletion of assets by the Debtors has been eliminated, and the records that will be utilized to determine where any specific funds came from and went to have been preserved.

The Receiver has retained the services of PriceWaterhouseCoopers (“PWC”), a well-regarded accounting firm, to conduct a forensic accounting examination of the activities and transactions of the Debtors. PWC had several persons actively working with the finance and accounting personnel of the Debtors to review all relevant transactions, documentation and records that remain in the Debtors’ possession and control. PWC is also coordinating with the independent entities, such as the United States Attorney’s office, banks and other entities that may have relevant records relating to the Debtors, to review such records in furtherance of its examination. This review of the Debtors’ records will likely take several months, and at the end of that review PWC will issue a report. Allowing creditors to conduct duplicative 2004 examinations may interfere with the ability of PWC to efficiently complete its review of the Debtors’ records and transactions.

Plaintiffs’ request to conduct a Rule 2004 examination is merely an end run around the automatic stay imposed by the Debtors’ bankruptcy filings, and the Motion should be denied. Granting this Motion will merely open the flood gates for piecemeal dissipation of estate assets in having to prepare for creditors’ fishing expeditions. The perpetrators of the fraud cannot reap any benefit from continued possession of fraudulently obtained assets, and assets are no longer being utilized to further the alleged fraudulent scheme. The Debtors and the Receiver are searching for assets and investigating how funds were utilized, with the whole process overseen by the Committee of Creditors. There is no need, at this point in time, to cause the estates further cost and expense of unnecessary Rule 2004 examinations.

CONCLUSION

WHEREFORE, Debtors respectfully requests the Court enter an order denying Plaintiffs' request to conduct a Rule 2004 examinations of the Debtors.

DATED: December 4, 2008

LINDQUIST & VENNUM P.L.L.P.

By /e/ James A. Lodoen
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**ATTORNEYS FOR DOUGLAS A.
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IN POSSESSION**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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Chapter 11 Cases
Judge Gregory F. Kishel

**ORDER DENYING MOTION FOR LEAVE TO CONDUCT DISCOVERY PURSUANT
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

This case came on for hearing before the Court on December 9, 2008 on the motion of Apriven Partners, LP, C&C Capital, LLC and True North Funding, LLC (collectively, the "Plaintiffs") for Leave to Conduct Discovery Pursuant to Federal Rule of Bankruptcy Procedure 2004. Appearances were noted on the record. Based on the arguments of counsel, moving documents and the record made at the hearing,

IT IS HEREBY ORDERED:

1. The Motion for Leave to Conduct Discovery Pursuant to Federal Rule of Bankruptcy Procedure 2004 is denied.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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CERTIFICATE OF SERVICE

Gretchen Luessenheide of the City of New Hope, County of Hennepin, State of Minnesota, being first duly sworn on oath, states that on December 4, 2008 she served the following documents:

1. Objection to Motion Filed by Apriven Partners, LP, C&C Capital, LLC, and True North Funding, LLC for Leave to Conduct Constructive-Trust Discovery Pursuant to Federal Rule of Bankruptcy Procedure 2004; and
2. Proposed Order Denying Motion for Leave to Conduct Discovery Pursuant to Federal Rule of Bankruptcy Procedure 2004.

electronically by Notice of Electronic Filing, and upon all parties who have requested service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota.

/e/ Gretchen Luessenheide
Gretchen Luessenheide