


ORDERED.

Dated: February 07, 2019



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
RONALD E. SCHERER,	)	Case No. 6:17-bk-2004-KSJ
	)	Chapter 11
Debtor.	)	
_____	)	

**ORDER DENYING MOTION TO ALLOW USE OF 2004 EXAMINATIONS**

This case came before the Court on January 29, 2019, to consider the United States of America’s Motion for Order Regarding Use of Rule 2004 Examinations in Adversary and Contested Matters and the related responses.<sup>1</sup> The United States of America seeks an order allowing it to expand its use of Rule 2004 examinations it took in the main case to all adversary proceedings and contested matters involving the United States of America in this bankruptcy case.

As Bankruptcy Judge Colton explained at an earlier hearing,<sup>2</sup> Rule 2004 examinations are not without limits.<sup>3</sup> Rule 2004 examinations are meant to obtain preliminary information. Parties

<sup>1</sup> Doc. Nos. 387, 394, 395, 401, 402.

<sup>2</sup> This case was reassigned from Judge Colton on December 19, 2017.

<sup>3</sup> The transcript of the hearing before Judge Colton on December 12, 2017, is at Doc. No. 211. Judge Colton started to explain the limits of Rule 2004 at Page 20, Lines 9-10.

then use that information to file adversary proceedings and get more details in the discovery process.<sup>4</sup> Judge Colton found that the examinations must be limited to what Rule 2004 dictates. Specifically, Judge Colton stated: “[Rule 2004 Examinations] are not to be used to ask questions related to pending adversary proceedings. Discovery related to a pending adversary proceeding must be made in the context of the adversary proceeding.”<sup>5</sup> Judge Colton then granted an earlier Motion for Protective Order and limited the Rule 2004 examination for the Debtor—she provided the 2004 examination must be focused on the property, liabilities, and financial condition of the Debtor.<sup>6</sup> This Court agreed (and still agrees) with Judge Colton’s earlier rulings.

This Court imposed the same limitation on the 2004 examination of Douglas Holmes after Mr. Holmes sought a protective order.<sup>7</sup> Many other related parties sought similar protective orders, and the Court also limited the 2004 examinations of those parties.<sup>8</sup>

These 2004 examinations were taken to discover possible fraudulent transfers and before the parties had articulated issues subject to discovery and trial. The parties could not have been prepared to ask questions needed for trial and would be prejudiced if the United States now used the 2004 examinations for non-available witnesses. The examinations may constitute admissions by the Debtor and may be used in rebuttal, but the 2004 examinations may not be used as a direct presentation of evidence.

Accordingly, it is

**ORDERED** that the United States of America’s Motion for Use of 2004 Examinations (Doc. No. 387) is **DENIED**.

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<sup>4</sup> Doc. No. 211, p. 20:21-24.

<sup>5</sup> Doc. No. 211, p. 21:5-9.

<sup>6</sup> Doc. Nos. 167, 168.

<sup>7</sup> Doc. Nos. 193, 196.

<sup>8</sup> Doc. Nos. 220, 221, 258, 266, 286. The Court then imposed the limitation that the United States must seek leave to take Rule 2004 examinations of other parties. The United States then sought leave to take examinations of additional parties. Doc. No. 291. The Court granted the United States’ request. Doc. No. 312.

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The Clerk is directed to serve a copy of this order on all interested parties.