



**IT IS ORDERED as set forth below:**

**Date: April 15, 2008**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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IN RE:

CASE NO. 07-77463

Brian Bennett and Dawn Bennett,

CHAPTER 7

Debtor.  
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JUDGE MASSEY

**ORDER ON TRUSTEE'S MOTION FOR RULE 2004 EXAMINATION OF MCCALLA  
RAYMER, LLC AND FOR PRODUCTION OF DOCUMENTS**

Paul H. Anderson, Jr., the Chapter 7 Trustee in this case, seeks an order pursuant to Bankruptcy Rule 2004 directing the law firm of McCalla, Raymer, LLC to produce documents relating to a real estate closing to which Debtors were parties. McCalla, Raymer has responded to the motion, arguing that unless the provisions of Ga. Code Ann. § 7-1-360 are complied with, the document production might expose the law firm or its client, a financial institution under the terms of that statute, to a claim by the client's customer. The point of this statute is to give the customer an opportunity to object to production of confidential information. That statute requires the service of a subpoena or other process to compel disclosure of information or production of

documents and provides that a customer may seek a protective order. McCalla, Raymer seeks the protections afforded by that statute as a condition of granting the motion, not to obstruct the Trustee in gathering information but to protect itself. Nothing in this Order should be construed as holding that Ga. Code Ann. § 7-1-360 is applicable to examinations under Bankruptcy Rule 2004 or constrains bankruptcy courts in issuing orders under that Rule.

Bankruptcy Rule 2004 provides for examination of any entity but “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, or to the debtor's right to a discharge.” Fed. R. Bankr. P. 2004(b). With respect to compelling attendance of an entity other than the debtor, Bankruptcy Rule 2004(c) provides:

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

Compliance with this part of Bankruptcy Rule 2004 would satisfy the requirement of Ga. Code Ann. 7-1-360 that discovery of records of a financial institution be compelled by a court of competent jurisdiction. Merely granting a motion to conduct a Rule 2004 examination is not an order to attend an examination or to produce documents, unless the order so provides, and therefore in most cases, the movant must subpoena the witness to compel the examination and the production of documents.

The other issue raised by the response of McCalla, Raymer concerns notice to the Debtors and an opportunity for them to be heard. Ga. Code Ann. § 7-1-360(d) provides:

(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an order or subpoena for the records or in the Georgia or federal court where the civil matter is being heard or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure and the financial institution as may be otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section.

This protection would be available here but for the fact that the Trustee did not serve the Debtors and their counsel with the motion. Bankruptcy Rule 9013 provides in part:

Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

The advisory committee note to Bankruptcy Rule 2004 points out that motions under that rule may be granted ex parte. Thus, the Trustee was not required to serve his motion on Debtors. The filing of such a motion is not a secret, and a debtor or his attorney may learn of the motion from the public record. The better practice may be, however, to serve debtors with such motions unless there is a sound reason for not doing so. An affected entity may seek protection from examination either by objecting promptly to the motion, assuming they are served, by moving to vacate an order granting such a motion, or by moving to quash a subpoena, again assuming that entity is aware of the subpoena if he is not the deponent.

The Court held a hearing on the Trustee's motion on notice to the Trustee and McCalla, Raymer on April 15, 2008. The Trustee did not appear.

Based on the foregoing, the Trustee's motion is GRANTED to permit that examination in accordance with Fed. R. Bankr. R. 2004(b) at a mutually agreed place and time that is more than 14 days from entry of this Order. The Trustee must serve a subpoena on McCalla, Raymer.

Debtors may object to the disclosure or production of documents by McCalla, Raymer by filing a motion for a protective order with this Court within 10 days of entry of this Order.

The Clerk is directed to serve a copy of this Order on the Trustee, McCalla, Raymer, LLC, Debtors and Debtors' counsel.

\*\*\*END OF ORDER\*\*\*