



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

**Date: August 25, 2010**

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

**IN RE:** : Chapter 11  
:   
**ROBERT CLARK GILBERT,** : Case No. 10-41047-pwb  
:   
Debtor. :   
\_\_\_\_\_ :

**ORDER ON MOTION TO QUASH NOTICE  
OF RULE 2004 EXAMINATION**

Dennis W. Davis and Penny D. Davis (the "Plaintiffs") have a lawsuit pending in the Superior Court of Paulding County, No. 07-CV-1459-JO (the Superior Court Litigation) in which Robert Clark Gilbert (the "Debtor") is a defendant. Other defendants in the Superior Court Litigation are the Board of Commissioners of Paulding County, Jerry Shearing, Larry Ragsdale, Don Powell, Hal Echols, and Wayne Kirby (collectively, the "Paulding County Defendants").

On May 14, 2010, the Plaintiffs filed a motion for the examination of the Debtor under

Rule 2004 of the Federal Rules of Bankruptcy Procedure. [25]. The motion was unopposed, and the Court entered an Order on July 8, 2010, authorizing the examination. [37]. The examination has been scheduled for August 26, 2010. [Docket 45, Exhibit “A”].

On August 23, 2010, the Paulding County Defendants filed a motion “Motion to Quash Notice of Rule 2004 Examination” in which they seek an order prohibiting the examination. [45]. Their argument rests solely on the proposition that the time for discovery has expired in the Superior Court Litigation and that the Plaintiffs should not be permitted to circumvent that court’s restrictions on discovery through utilization of legal process in this Court.

The Court held a telephonic conference on the record on August 24, 2010, in which counsel for the Plaintiffs, the Debtor, and the Paulding County Defendants participated and presented arguments in support of their respective positions. For the reasons the Court announced at the hearing in favor of denying the motion, as summarized and supplemented below, the Court will deny the motion.

On balance, the Court concludes that restrictions on discovery in litigation pending in a nonbankruptcy court do not preclude a litigant’s invocation of Rule 2004 to obtain information from the debtor with regard to matters relating to the bankruptcy case in which the litigant is a creditor at the instance of another litigant who is not a creditor in the bankruptcy case. The Court notes that an objection to the Rule 2004 examination *by the Debtor* would present the rather different issue of whether a party may use a Rule 2004 examination as a substitute for discovery when the examining party is in litigation with, or is contemplating the litigation of some dispute with, the proposed examinee and the *examinee* objects to the examination. Here, however, the Debtor did not timely object to the Rule 2004 examination.

In the circumstances of this case, the general principles that the bankruptcy process requires full disclosure from the debtor and that a creditor is entitled to a thorough examination of the debtor trump the competing consideration about the use of Rule 2004 as a circumvention of discovery limitations in a nonbankruptcy proceeding. The Plaintiffs, who are creditors in this case, are entitled to examine the Debtor and it is not appropriate to limit that right based on the objection of the Paulding County Defendants, who are not creditors. Whether the Plaintiffs are circumventing discovery restrictions in the Superior Court Litigation or are otherwise obtaining an unfair advantage in that action, and, if so, what remedies (such as exclusion of any use of the examination by the Plaintiffs at trial or otherwise) are appropriate, are questions for the Superior Court to determine.

Based on the foregoing, it is hereby **ORDERED** that the Motion to Quash Notice of Rule 2004 Examination [45] be, and the same hereby is, **DENIED**.

**[End of Order]**

**This Order has not been prepared, and is not intended, for publication.**

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