



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Michael Bonert and Vivien Bonert,
Debtors.

Case No.: 2:19-bk-20836-ER
Chapter: 11

**MEMORANDUM OF DECISION (1)
DEEMING MOTION FOR
RECONSIDERATION OF RULE 2004
ORDER TO CONSTITUTE A MOTION
FOR A PROTECTIVE ORDER, (2)
SCHEDULING A HEARING ON THE
MOTION FOR PROTECTIVE ORDER
FOR DECEMBER 18, 2019, AT 10:00 A.M.,
(3) VACATING RULE 2004 ORDER
PENDING ADJUDICATION OF THE
MOTION FOR PROTECTIVE ORDER,
AND (4) EXTENDING DEADLINE TO
FILE DISCHARGEABILITY
COMPLAINT ONLY AS TO CERTAIN
CREDITORS**

**HEARING ON MOTION FOR
PROTECTIVE ORDER:**

Date: December 18, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Debtors move for reconsideration (the “Motion for Reconsideration”)¹ of an order requiring Debtors to produce documents and submit to a Rule 2004 examination (the “Rule 2004 Order”).² Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),³ the Court finds this matter to be suitable for disposition without oral argument. For the reasons set forth below, the Court will (1) deem the Motion for Reconsideration to constitute a motion for a protective order (the “Motion for Protective Order”), (2) schedule a hearing on the Motion for Protective Order for **December 18, 2019, at 10:00 a.m.**, and (3) vacate the Rule 2004 Order pending adjudication of the issues raised by the Motion for Protective Order.

I. Background

Michael Bonert and Vivien Bonert (the “Debtors”) filed a voluntary Chapter 11 petition on September 12, 2019 (the “Petition Date”). Prior to the Petition Date, the Debtors operated a pie manufacturing company known as Bonert’s Incorporated (the “Bakery”). In 2016, the Bakery ceased conducting business after its lender caused the Bakery’s assets to be sold through a federal receivership. Proceeds of the receivership sale were used to pay secured creditors, but were not sufficient to pay unsecured trade creditors, some of whom obtained unopposed judgments against the Bakery.

On August 13 and 14, 2019, trade creditors Capitol Distribution Company, LLC, Coastal Carriers, LLC, Packaging Corporation of America, Seneca Foods Corporation, and Stratas Foods LLC (collectively, the “Creditors”) filed collection actions (the “Collection Actions”) against the Bakery, the Debtors, and LLCs owned by the Debtors that had leased properties to the Bakery. The Collection Actions allege, *inter alia*, that the Debtors operated the LLCs and the Bakery as a single enterprise for the purpose of defeating the rights of creditors; that the Debtors are the alter ego of the Bakery; and that consequently the Debtors are liable for trade debt incurred by the LLCs and the Bakery. Two of the Collection Actions were filed in the United States District Court for the Central District of California (the “District Court”) and two of the Collection Actions were filed in the Los Angeles Superior Court (the “State Court”).

Debtors sought bankruptcy protection for the purpose of having all alter-ego claims arising in connection with the Debtors’ operation of the LLCs and the Bakery adjudicated before the Bankruptcy Court. Pursuant to this objective, on September 13 and 16, 2019, the Debtors removed all four of the Collection Actions to the Bankruptcy Court.

On October 17, 2019, the Court approved stipulations remanding two of the Collection Actions to the District Court. Both stipulations were without prejudice to any party’s right (1) to move for referral of the action back to the Bankruptcy Court or (2) to move for an injunction against the prosecution of the action. The Collection Actions that originated in the State Court remain pending before this Court. Motions for orders remanding those Collection Actions to the State Court are scheduled to be heard on December 11, 2019.

¹ Doc. No. 70.

² Doc. No. 68.

³ Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

On September 16, 2019, the Debtors moved to employ Fredman Lieberman Pearl LLP (“FLP”) as their general bankruptcy counsel (the “Employment Application”).⁴ A hearing on Creditors’ opposition to the Employment Application is set for November 19, 2019.

On November 1, 2019, Creditors moved to conduct a Rule 2004 examination of the Debtors (the “Rule 2004 Motion”).⁵ On November 5, 2019, at 12:25 p.m., the Court entered an order granting the Rule 2004 Motion (the “Rule 2004 Order”).⁶ Consistent with the procedures set forth in LBR 2004-1(d) and LBR 9013-1(p), the Debtors were not provided a specified period to oppose the Rule 2004 Motion, and the Rule 2004 Order was entered without the Court having conducted a hearing.⁷

On November 5, 2019, at 3:53 p.m.—approximately three hours subsequent to entry of the Rule 2004 Order—Debtors filed an opposition to the Rule 2004 Motion (the “Opposition”).⁸ Among other things, Debtors asserted that Creditors had failed to sufficiently explain why the discovery requested through the Rule 2004 Motion could not be obtained in the Collection Actions filed by the Creditors, and that Creditors lacked standing to conduct a Rule 2004 examination because they had not filed Proofs of Claim.

On November 7, 2019, Debtors filed a motion for reconsideration of the Rule 2004 Order (the “Motion for Reconsideration”),⁹ accompanied by an application seeking a hearing on the Motion for Reconsideration on shortened notice (the “Application”).¹⁰ Debtors argue that reconsideration is necessary to enable the Court to consider the arguments raised in the Opposition. Debtors further assert that compliance with the Rule 2004 Order will require them to produce thousands of documents that Creditors already have in their possession, at great expense to the estate.

II. Findings and Conclusions

Pursuant to LBR 2004-1(f), discovery disputes arising in connection with an order requiring a Rule 2004 examination are normally resolved by way of a motion for a protective order. LBR 2004-1(f) requires that a motion for a protective order be “filed and served not less than 14 days before the date of the examination, and set for hearing not less than 2 days before the scheduled examination” LBR 2004-1(f) further provides that the Court may order a postponement of a Rule 2004 examination so that the motion for a protective order may be heard on regular notice.

The Court finds it appropriate to treat the Motion for Reconsideration as a motion for a protective order (the “Motion for Protective Order”). The primary arguments advanced by the Debtors are that (1) the discovery obligations imposed by the Rule 2004 Order are unreasonably burdensome, and (2) that Creditors are attempting to use Rule 2004 to benefit prosecution of their Collection Actions, thereby circumventing the stricter safeguards applicable to discovery conducted in adversary proceedings. These are the types of arguments that are typically advanced in support of a motion for a protective order.

⁴ Doc. No. 13.

⁵ Doc. Nos. 64–67.

⁶ Doc. No. 68.

⁷ Under the Local Bankruptcy Rules, examinees who object to the discovery ordered in connection with a Rule 2004 examination may move for a protective order.

⁸ Doc. No. 69.

⁹ Doc. No. 70.

¹⁰ Doc. No. 71.

Pursuant to LBR 2004-1(f), the Court will order a postponement of the Rule 2004 examination so that the Motion for Protective Order may be heard on regular notice. The Rule 2004 Order requires the Debtors to produce documents on November 29, 2019 and to submit to examinations on December 12, 2019. No urgent circumstances require that the complex issues raised by the Motion for Protective Order be adjudicated on shortened notice. To the extent that Creditors assert that the Rule 2004 examinations are necessary to enable them to determine whether to file a dischargeability action, the Debtors have stated that they are willing to stipulate to a 60-day extension of the deadline to file a dischargeability complaint.¹¹ The Court will enter an order extending Creditors' deadline to file a dischargeability complaint by 60 days.

The hearing on FLP's Employment Application is set for November 19, 2019. Further adjudication of the issues raised by the Motion for Protective Order prior to the determination of whether FLP will be allowed to serve as the Debtors' general bankruptcy counsel would prejudice the Debtors. The following deadlines shall apply with respect to the Motion for Protective Order:

- 1) By no later than **November 26, 2019**, the parties shall meet and confer regarding the issues raised by the Motion for Protective Order in accordance with LBR 7026-1(c)(2).
- 2) If the parties are unable to resolve their disputes through the meet and confer process, then by no later than **December 4, 2019**, the parties shall file a stipulation setting forth their respective positions regarding the scope of the requested document production and examination in accordance with LBR 7026-1(c)(3) (the "Discovery Stipulation"). Other than the Discovery Stipulation, no further briefing on the Motion for Protective Order will be accepted.
- 3) A hearing on the Motion for Protective Order shall take place on **December 18, 2019, at 10:00 a.m.**

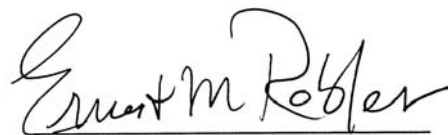
Pending adjudication of the Motion for Protective Order, the Court will vacate the Rule 2004 Order. Once the Motion for Protective Order has been adjudicated, the Court will enter an order setting new dates regarding the Rule 2004 examinations, if appropriate.

The Court will enter an order consistent with this Memorandum of Decision.

¹¹ The deadline for filing a dischargeability complaint under § 523 is December 20, 2019. Doc. No. 16. The deadline for filing a complaint objecting to the Debtors' discharge under § 727 is the first date set for hearing on the confirmation of Debtors' Chapter 11 Plan. Bankruptcy Rule 4004(a). As the Debtors have not yet filed a Chapter 11 Plan, the deadline for filing a § 727 complaint has not yet been set.

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Date: November 8, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge