UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Jinzheng Group (USA) LLC, Debtor.	Case No.: 2:21-bk-16674-ER Chapter: 11 **MEMORANDUM OF DECISION DENYING WITHOUT PREJUDICE MOTION FOR BANKRUPTCY RULE 2004 EXAMINATION FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS** **[RELATES TO DOC. NOS. 142–144]** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rules 9013-1(j)(3) and 9013-1(p)(3)]

Before the Court is the *Expedited Motion for Examination of Max Yang as Person Most Knowledgeable for the Debtor and Compelling the Production of Documents Pursuant to Fed. R. Bankr. P. 2004 and LBR 2004-1* [Doc. No. 142] (the "Motion") filed by the Official Committee of Unsecured Creditors (the "Committee"). The Committee has also filed an application seeking an order setting a hearing on the Motion on shortened notice [Doc. No. 144] (the "Application").

Pursuant to Civil Rule 78(b), LBR 9013-1(j)(3), and LBR 9013-1(p)(3),[1] the Court finds this matter to be suitable for disposition without oral argument. As explained below, the Court finds that the Committee is entitled to discovery from Max Yang, but that such discovery must

[1] 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.

proceed under the Federal Rules of Civil Procedure, not under Bankruptcy Rule 2004, because the information the Committee seeks to obtain from Max Yang pertains in part to contested matters that are set for hearing on March 22, 2022. Therefore, the Court will deny the Motion without prejudice. It is important to emphasize that the Motion is denied only because Bankruptcy Rule 2004 is not the proper procedural vehicle for the discovery the Committee seeks. The Court expects Max Yang to cooperate with requests for discovery by the Committee that are properly asserted under the Federal Rules of Civil Procedure.

I. Background

On August 24, 2021 (the "Petition Date"), Jinzheng Group (USA) LLC (the "Debtor") filed a voluntary Chapter 11 petition. The petition was filed on an emergency basis to stop a foreclosure sale of the Debtor's primary asset, 32 acres of undeveloped land located in Los Angeles County (the "Property").

On January 25, 2022, the United States Trustee (the "UST") appointed the following three creditors to serve on the Committee: (1) Betula Lenta, Inc. ("Betula"), (2) Pennington Construction Advisors, Inc. ("Pennington"), and (3) The Phalanx Group, Inc. ("Phalanx"). A hearing on the Committee's application to employ Pachulski Stang Ziehl & Jones LLP ("PSZJ") as its counsel is set for March 22, 2022 (the "Employment Application").

The Debtor has filed a motion to disband the Committee, or in the alternative to change the Committee's membership [Doc. No. 135] (the "Disbandment Motion"). The Committee has filed a motion to appoint a Chapter 11 Trustee, or in the alternative to terminate the Debtor's exclusive period for filing a Chapter 11 Plan and soliciting acceptances thereof [Doc. No. 136] (the "Motion to Appoint Chapter 11 Trustee"). Hearings on the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee are set for March 22, 2022.

The Committee seeks an order compelling Max Yang, in his capacity as the person most knowledgeable for the Debtor, to appear for a Bankruptcy Rule 2004 Examination. The Committee states that it requires Max Yang's "testimony prior to the hearing" on the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee. Doc. No. 144 at ¶ 2(c).

II. Findings of Fact and Conclusions of Law

Pursuant to LBR 2004-1(b), a motion for examination under Bankruptcy Rule 2004 "must … explain why the examination cannot proceed under FRBP 7030 or 9014." The purpose of this requirement is as follows:

> Another important feature of Rule 2004 is that (at least in the Central District of California) the applicant seeking court approval to conduct a Rule 2004 examination must certify that no adversary proceeding or contested matter is presently pending whereby the applicant can utilize the more restricted and controlling discovery procedures. It is a "well recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004." *In re Enron Corp*., 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002); *see also In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996) ("Courts are wary of attempts to utilize Fed. R. Bankr. P. 2004 to avoid the restrictions of the Fed. R. Civ. P. in the context of adversary proceedings."); *In re Valley Forge Assocs*., 109 B.R. 669, 675 (Bankr. E.D. Pa. 1990) ("Many courts have expressed distaste for efforts of parties to utilize [Rule] 2004 examinations to circumvent

> the restrictions of the [Federal Rules of Civil Procedure] in the context of adversary proceedings or contested matters.")….
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> This feature and process provides various protections to both the applicant and the target of the discovery, as well as avoids confusion.

In re Downs, No. 8:16-BK-12589-SC, 2021 WL 4823508, at *3 (Bankr. C.D. Cal. Oct. 13, 2021).

The Committee has acknowledged that at least some of the information it seeks to obtain from Max Yang pertains to the upcoming hearings on the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee. *See* Doc. No. 144 at ¶ 2(c) ("There are pending motions to dissolve the Committee, appoint a trustee, etc., and movant requires testimony prior to the hearing on these matters."). The Court finds that the Federal Rules of Civil Procedure, as opposed to Bankruptcy Rule 2004, provide the proper procedural vehicle for the Committee to obtain discovery from Max Yang. The Court expects Max Yang to cooperate with requests for discovery by the Committee that are properly asserted under the Federal Rules of Civil Procedure. As set forth in Bankruptcy Rule 9014(c), the Federal Rules of Civil Procedure allowing discovery apply in contested matters such as the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee.

The Court acknowledges that not all of the information that the Committee seeks to obtain from Max Yang pertains solely to the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee, and that the Committee also seeks to examine Max Yang in furtherance of its investigative and diligence duties regarding the Debtor. However, issues relating to the Committee's general and investigative duties cannot be easily separated from issues relating to the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee. To avoid confusion, it is appropriate for discovery directed toward Max Yang to proceed under the Federal Rules of Civil Procedure while the Disbandment Motion and the Motion to Appoint Chapter 11 Trustee remain pending. After those motions have been adjudicated, the Committee may apply for authorization to conduct a Bankruptcy Rule 2004 Examination of Max Yang (provided that the Court does not grant the Debtor's request to disband the Committee).

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

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Date: March 7, 2022

Ernest M. Robles
United States Bankruptcy Judge