Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
RALPH RICHARD ROBINSON	)	CASE NO. 10-41201
ANN PAULINE ROBINSON	)	
	)	
Debtors	)	

DECISION REGARDING MOTION FOR RULE 2004 EXAMINATION

At Fort Wayne, Indiana, on May 9, 2011

In this chapter 13 case, American Gardenworks, Inc. and Millennium Real Estate Investment, LLC have filed a motion seeking the court's permission to conduct a Rule 2004 examination and production of documents from the debtor, all corporations or other similar entities of which the debtors have an interest, and accountants and banks with whom the debtor has recently done business. They assert that the examination is necessary to protect their claim and to prepare for any hearings on a motion for relief from stay and abandonment they filed, together with any hearings on confirmation of the debtors' proposed plan (to which they have objected).

Rule 2004 of the Federal Rules of Bankruptcy Procedure allows the court to authorize the examination of any entity as 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. Rule 2004(b). The opportunity for such an examination is available to "any party in interest," Fed. R. Bankr. P. Rule 2004(a), but whether or not the court allows the examination is a matter committed to its discretion, In re Rosenberg, 303 B.R. 172, 175 (8th Cir BAP 2004); In re Dinubilo, 177 B.R. 932, 939 (D. E. D. Cal. 1993), and requires a sufficient cause. Dinubilo, 177 B.R. at 943; In re Symington, 209 B.R. 678, 687 (Bankr.

D. Md. 1997); Matter of Wilcher, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985). See also, Norton Bankruptcy Rules, 2010-11 ed., Rule 2004 ed. comment (c), pp. 140-41 (Creditors do not have an absolute right to conduct examinations under rule 2004 "which provides that the court 'may order' an examination. One can readily visualize a situation where creditors may want to use this section to deal with their special problems and use the section as a substitute for discovery.").

A 2004 examination is not a substitute for discovery; if the traditional discovery tools are available the potential examiner is required to use them and may not take advantage of Rule 2004. In this instance, the traditional discovery tools are available. By filing a motion for relief from stay and abandonment, as well as objecting to confirmation, the movants initiated a contested matter. Once they did so, "discovery sought in furtherance of litigation is subject to the F.R.Civ.P. rather than the broader bounds of R2004." In re Valley Forge Plaza Associates, 109 B.R. 669, 674-75 (Bankr. E.D. Pa. 1990). See also, In re Enron Corp., 281 B.R. 836 (Bankr. S.D. N.Y. 2002).

The motion for a rule 2004 exam filed by American Gardenworks, Inc. and Millennium Real Estate Investment, LLC will be denied. An order doing so will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court