

United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division

Transmittal Sheet for Opinions for Posting

**Will this opinion be Published? Yes**

**Bankruptcy Caption: Joseph C. Sheehan**

**Bankruptcy No.: 20 B 07130**

**Date of Issuance: February 4, 2021**

**Judge: Jacqueline P. Cox**

**Appearance of Counsel:**

**Attorney for Debtor: Brian P. Welch, Burke, Warner, MacKay & Serritella, P.C.**

**Attorney Stephen C. Hackney representing Breccia Unlimited Company, et al.**

**Attorney Jason J. Ben representing Damien Murray, et. al.**

**Attorney Jennifer Madden representing Irish Bank Res. Corp. Representatives**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
Joseph C. Sheehan,	)	Case No. 20 B 07130
	)	
Debtor.	)	Judge Jacqueline Cox

**Amended Order on Motion Pursuant to Rule 2004 (Dkt. 100)**

**I. Jurisdiction**

Federal district courts have original and exclusive jurisdiction of all cases under title 11, the Bankruptcy Code. 28 U.S.C. § 1334(a). The district courts may refer cases under title 11, and any or all proceedings arising under title 11 or arising in or related to a case under title 11, to the bankruptcy judges for their district. 28 U.S.C. § 157(a). The District Court for the Northern District of Illinois has referred its bankruptcy cases to the Bankruptcy Court for the Northern District of Illinois. N.D. Ill. Operating Procedure 15(a).

Bankruptcy courts have statutory authority to “hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.” 28 U.S.C. § 157(b)(1). Core proceedings include this motion, a matter concerning the administration of the estate - an effort to identify what property the estate owns. 28 U.S.C. § 157(b)(2)(A).

**II. Background**

The Debtor, Joseph C. Sheehan, seeks authority to conduct discovery pursuant to Federal Rule of Bankruptcy Procedure 2004 of certain parties, many of whom were involved in litigation against him in Ireland, such as creditor Damien Murrin (“Murrin”) and RSM Ireland Business

Advisory Limited (“RSM Ireland”), the receiver and manager of Blackrock Shares; the Debtor claims ownership of the shares. Adversary Complaint 19-00146, Docket 1, ¶¶ 25 - 26. <sup>1</sup> The Debtor is managing his financial affairs as a debtor in possession pursuant to 11 U.S.C. § 1107(a).

According to Murran, the Debtor was born in Ireland, worked in Ireland, owned property in Ireland and is currently an active litigant there who filed this bankruptcy case in the United States against Irish entities and an Irish individual. Is the Debtor seeking to use this court to frustrate the legal process in Ireland by interfering with a receiver appointed to liquidate his assets as authorized by Irish law? The court can not be sure because it has yet to be given an explanation of the claims pursued in Ireland and how and if they have been resolved.

The court notes the expansive scope of information the Debtor seeks from the prospective examination respondents. For example, as to Breccia Unlimited Company (“Breccia”), “[a]ny and all information relating to the claims of Breccia, the Blackrock Receivership and the Ballyheigue Receivership.” As to Murran, “[a]ny and all information relating to the Blackrock Receivership, the Ballyheigue Receivership, any and all claims of Murran against the Debtor and the affidavits of Murran and RSM Ireland attached to the motion to dismiss the Turnover Litigation filed by Murran and RSM Ireland.” Motion Pursuant to Rule 2004 (“Motion”), Docket 100, pp.10-11 (internal pages 7-8).

On August 24, 2020, this court denied a previous motion to conduct Rule 2004 examinations because the parties to whom it was directed had not been properly served. Order at Docket 74.

---

<sup>1</sup> In his Schedule A/B - Property, the Debtor states that he has a \$40,000,000 claim against Murran. Docket 25, p. 7, line 33 - the adversary claim. However, in his Schedule E/F of Creditors Who Have Unsecured Claims, the Debtor scheduled an unsecured debt of unknown amount that he owes Murran. Docket 25, p. 15, line 44.

On October 28, 2020, this court denied another motion to conduct Rule 2004 examinations of nine persons and entities. Order at Docket 93. The motion had been served via email and possibly postal mail. One problem is that Local Bankruptcy Rule 2004-1 requires service of motions for orders allowing examinations on the person or entity to be examined. While Fed. R. Bankr. P. 7004(b) allows service by first class mail within the United States, most of the nine persons and entities to be examined are located in Ireland or the United Kingdom. Were they served according to the rules applicable to service of individuals and corporate entities in foreign nations? Another problem is that service by electronic mail is prohibited unless a written request is made under Federal Rule of Bankruptcy Procedure 9036 or the court orders otherwise. Local Bankruptcy Rule 9013-1(D)(5).

This latest motion for an order allowing Rule 2004 examinations was filed on December 14, 2020 at Docket 100. In it the Debtor states:

11. The Debtor has found no requirement for service on entities and persons in Ireland with respect to the Motion that would be different than provided in the procedural rules applicable in this Court. Moreover, the Debtor has found no authority requiring the issuance of “letters rogatory” as a predicate to granting the right to conduct Rule 2004 Discovery of entities and persons in Ireland.

Motion at Docket 100, p. 3, ¶ 11.

Federal Rule of Bankruptcy Procedure 7004 applies Federal Rule of Civil Procedure 4(f), regarding service of individuals in foreign countries, to adversary proceedings. Strictly speaking, however, the Motion before the court was filed in the bankruptcy case, not in the adversary proceeding. This does not mean that prospective examination respondents do not have to be served according to Rule 4(f). For example, Fed. R. Bankr. P. 9014(b) requires service of motions and contested matters.

### III. Lack of Personal Jurisdiction Objection

Respondents Breccia, Irish Agricultural Development Company Unlimited (“IADC”), Blackrock Hospital Limited and Marpole Limited object to the Debtor’s latest request on two grounds. First, that the Debtor improperly seeks authority to pursue discovery because this court has ruled that it does not have personal jurisdiction of some of the respondents. The second ground is that the proposed order includes relief broader than that described in the motion. The original objectors have been joined by Murran. Joinder, Docket 103. Foreign Representatives Kieran Wallace and Eamonn Richardson of the Irish Bank Resolution Corporation Limited also object on similar grounds.

In the adversary proceeding filed by the Debtor on April 13, 2020 against Murran, RSM Ireland, Breccia and IADC, 20-00146, this court ruled on August 25, 2020 that it did not have personal jurisdiction of Defendants Breccia and IADC because they had been served by email. Order Granting Motion to Dismiss, Docket 31, in Adversary Proceeding 20-00146. The court’s finding that email service of summons was invalid does not control the issue now before the court - what has to be done to effectively serve a prospective examination respondent with notice of a motion seeking an order pursuant to Rule 2004 when the person to be examined is a defendant in an adversary proceeding.

Serving summons on a person or entity to gain personal jurisdiction at the initiation of a case and sending notice of a motion at a later date are different. *Atwater v. Light Korean Presbyterian Church (In re Mak Petroleum, Inc.)*, 424 B.R. 912, 918 (Bankr. M.D. Fla. 2010) (“The ‘sending’ of judicial documents differs fundamentally from the ‘service’ of complaints, as acknowledged by the United States Supreme Court when it explained that the use of the term ‘service of process’ in

the Hague Convention has a ‘well-established technical meaning.’”) (quoting *Darko v. MegaBlocs, Inc.*, 2006 WL 2945954, at \* 2 (N.D. Ohio Oct. 13, 2006)) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988)).

Fed. R. Bankr. P. 9014(a) states that in contested matters relief has to be sought by motion. Subsection (b) states that the motion has to be served in the manner provided for service of a summons and complaint by Rule 7004. Again, while Fed. R. Bankr. P. 7004(b) allows nationwide service, this does not allow service by mail of persons in a foreign nation. *In re Teknek*, 512 F.3d 342, 345-46 (7th Cir. 2007) (“When service must occur in a foreign nation, Fed.R.Civ.P. 4(f), incorporated by Rule 7004(a), governs. International treaties and conventions, such as the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, must be followed; service by mail is not allowed.”) (internal citation omitted). Note, however, in 2017 the Supreme Court said service by mail is permissible under the Hague Convention:

Multiple foreign courts have held that the Hague Service Convention allows for service by mail. In addition, several of the Convention’s signatories have either objected, or declined to object, to service by mail under Article 10, thereby acknowledging that Article 10 encompasses service by mail.

*Water Splash, Inc. v. Menon*, 135 S.Ct. 1504, 1512 (2017).

While the *Water Splash* ruling condones service abroad by mail, a Southern District of New York Bankruptcy Judge informs that plaintiffs have to first obtain leave of court to serve defendants in foreign nations by mail: “. . . a plaintiff is not required to attempt service through the other provisions of Rule 4(f) before the Court may order service pursuant to Rule 4(f)(3).” *Fairfield Sentry Limited v. Theodoor GGC Amsterdam (In re Fairfield Sentry Limited)*, 2020 WL 7345988, at \* 11 (Bankr. S.D.N.Y. Dec. 14, 2020) (internal citation omitted).

#### **IV. Pending Adversary Rule**

Many courts recognize and enforce the pending adversary proceeding rule which disallows discovery pursuant to Rule 2004 if a related adversary proceeding is pending because the scope of a Rule 2004 examination is exceptionally broad, a principle which is peculiar to bankruptcy law to allow discovery of any matter which may affect the administration of a debtor's estate. *In re Sheetz*, 452 B.R. 746, 748 (Bankr. N.D. Ind. 2011) ("The scope of such an examination is quite broad, relating to just about anything that deals with the debtor's actions, assets, liabilities or financial affairs, its right to a discharge, or any matter affecting the administration of the bankruptcy estate.") (citing *Matter of Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985)). Once litigation has been initiated, however, resort to Rule 2004 may not be appropriate; the parties must use the discovery tools provided by the civil rules. *In re Roman Catholic Church of Diocese of Gallup*, 513 B.R. 761, 765 (Bankr. D.N.M. 2014) ("If an adversary proceeding or contested matter is pending, the discovery rules in the rules of civil procedure should be used, rather than Rule 2004 examinations.").

The challenge for this court is whether to allow the Debtor to seek discovery pursuant to Rule 2004 from several parties, some of whom are unserved defendants in the adversary proceeding. Discovery should proceed after proper service of the complaint and summons.

Discovery under the civil rules, generally applicable to adversary proceedings, may be somewhat less expansive than the scope of inquiry allowed under Rule 2004. Discovery under the civil rules has to be relevant and proportional:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely

benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. of Civ. P. 26(b)(1) (made applicable to adversary proceedings by Fed. R. Bankr. P. 7026).

#### **V. Objection Regarding the Scope of the Proposed Order**

Is the scope of the proposed order broader than the scope of the motion? The court can not discern exactly what this objection is. Has the Debtor improperly sought authority to pursue discovery as opposed to asking the court to order examinations? The objectors ask the court to clarify that the authority being granted is not authority to conduct discovery but rather authority to request aid of foreign courts to permit such discovery, subject to applicable rules and laws of the relevant jurisdiction. This undeveloped argument is waived; the court should not have to search the record to discern what a brief means. *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”).

Perhaps, this issue can be revisited if the Debtor serves yet another motion for Rule 2004 examinations in the future with a similar proposed order. In any event, the court is not limited to the contents or form of proposed orders submitted with motions. Sometimes a movant’s proposed order reflects the court’s ruling in which case the proposed order will be entered; when a proposed order does not reflect a court’s ruling it will not be entered.

#### **VI. Applicability of the Hague Convention**

The Debtor, in his role as a Plaintiff, has to address whether the Hague Convention applies to his claims. Both the United States and Ireland are parties to it. *See* Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), [1969] 20 U.S.T. 361, T.I.A.S. No. 6638. That treaty includes

a requirement that the countries party to it operate a central authority to receive requests for service of judicial documents from other signatory countries. *Volkswagenwerk*, 486 U.S., at 698-99.

However, the central authority approach is not the exclusive means to obtain service of individuals or corporate entities abroad, as noted by the rulings in the *Splash Water* and *Fairfield Sentry* cases.

Fed. R. Bankr. P. 7004(a) states that many provisions of Rule 4 of the Fed. R. of Civ. P., including Rule 4(f) - Serving an Individual in a Foreign Country, apply in adversary proceedings.

Rule 4(f) states:

(f) Unless federal law provides otherwise, an individual - other than a minor, an incompetent person, or a person whose waiver has been filed - may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

Fed. R. of Civ. P. 4(f) (as applied to adversary proceedings by Fed. R. Bankr. P. 7004(a)).

Subsection 4(h) covers serving domestic and foreign corporations; it references serving foreign entities not located in a judicial district of the United States in the manner prescribed by Rule 4(f).

The Debtor notes in the Motion before the court that he has provided 22 days mail notice of

this Motion on the prospective examination respondents. Again, the court repeats that Fed. R. Bankr. P. 7004(b) states that service by mail is allowed within the United States, not in foreign countries.

### **VII. Conclusion**

The Debtor has to seek service on individuals and corporate entities pursuant to Fed. R. Bankr. P. 7004(f).

The Motion Pursuant to Rule 2004 is denied without prejudice for two reasons - the prospective examination respondents have not been properly served and it is improper to pursue Rule 2004 examinations when a related adversary proceeding is pending.

**Date: February 4, 2021**

**ENTERED:**

---

**Jacqueline P. Cox**  
**United States Bankruptcy Judge**