

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

GEORGE T. MAHSHIE,

CASE NO. 91-03476

Debtor

Chapter 11

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APPEARANCES:

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Pittcon Preinsulated Pipes  
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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Court has considered the motion filed herein Abdallah G. Bseirani, AGB International Management Corporation and Pittcon Preinsulated Pipes Corporation (the "Bseirani Parties") seeking an order pursuant to Federal Rule of Bankruptcy Procedure ("Fed.R.Bankr.P.") 2004 to examine Laraine T. Mahshie ("L.Mahshie"), the spouse of George T. Mahshie ("Debtor") and requiring L.Mahshie to produce documents in connection with that examination.

A hearing on the motion of the Bseirani Parties was held at Syracuse, New York on March 31, 1992 at which both L.Mahshie and the Debtor appeared in opposition to the motion.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this contested matter pursuant to 28

U.S.C. §§1334(b), 157(a) and b)(1) and (2)(A) and (O).

#### FACTS AND ARGUMENTS

The Bseirani Parties obtained a judgment pre-petition against the Debtor and others in an action commenced in the United States District Court for the Northern District of New York ("District Court action").

In order to enforce the judgment in the District Court action, the Bseirani Parties sought to depose L.Mahshie, and on or about November 8, 1991, the parties consented to an order ("Consent Order") compelling the deposition of L.Mahshie to be taken on December 13, 1991 at the offices of the attorneys for the Bseirani Parties.

On December 9, 1991, however, the Debtor commenced this Chapter 11 case and the Bseirani Parties have taken the position that the deposition of L.Mahshie scheduled for December 13, 1991 has been stayed.

The Bseirani Parties now seek to conduct essentially the same deposition of L.Mahshie pursuant to Fed.R.Bankr.P. 2004 and to require L.Mahshie to produce essentially the same documents that were to be produced pursuant to the Consent Order.

Both L.Mahshie and the Debtor oppose the motion, contending that L.Mahshie is not subject to an examination pursuant to Fed.R.Bankr.P. 2004 except as to those limited matters which relate directly to the administration of the Debtor's estate in Chapter 11; that the document production sought is overly broad and burdensome to L.Mahshie and that the Debtor's appeal of the judgment awarded to the Bseirani Parties has already been argued before the United States Court of Appeals for the Second Circuit and a decision is imminent which, if Debtor is successful, will in all probability result in the dismissal of the Chapter 11 case.

#### DISCUSSION

Clearly, Fed.R.Bankr.P. 2004 authorizes the examination of L.Mahshie as an "entity" who may be examined. The scope of that examination is controlled

by the plain language of the Rule and may relate "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."

Rule 2004 examinations are, however, so broad in scope and have been referred to as "fishing expeditions" and should not be confused with more limited discovery found in the Federal Rules of Civil Procedure ("Fed.R.Civ.P."). See Matter of Wilcher, 56 B.R. 428, 434 (Bankr. N.D.Ill. 1985).

That is not to say, however, that a Fed.R.Bankr.P. 2004 examination is not without limits. It has been held that the "examination of a witness as to matters having no relationship to the debtors affairs or no effect on the administration of his estate is improper." Id at pg. 433. See also In re Valley Forge Plaza Associates, 109 B.R. 669, 674 (Bankr. E.D.Pa. 1990); In re Financial Corp. of America, 119 B.R. 728, 733 (Bankr. C.D.Cal. 1990); In re Fearn, 96 B.R. 135, 137 (Bankr. S.D.Ohio 1989).

The Bseirani Parties have asserted that they believe the Debtor has made certain fraudulent conveyances of real property without consideration to L.Mahshie and that an examination of L.Mahshie is necessary to determine whether or not the Debtor has any real prospects for reorganization. The document production sought by the Bseirani Parties is very broad, seeking generally production of all of L.Mahshie's personal asset documents, records and papers generated since 1984, with the exception of tax returns.

L.Mahshie argues that, at worst, she should only be required to produce documents which relate directly to transactions between the Debtor and herself. Such a limitation, however, would be purely subjective in that it would allow L.Mahshie to determine what documents, in her opinion, relate directly to her transactions with the Debtor.

The Court, having reviewed the document request as modified pursuant to correspondence dated April 2, 1992, from the attorneys representing the Bseirani Parties, finds that while broad in scope, the request does not exceed the parameters of Fed.R.Bankr.P. 2004, keeping in mind that the Rule permits inquiry that may, "cut a broad swath through the debtor's affairs, those associated with him, and those who might have had business dealings with him."

In re Mantolesky, 14 B.R. 973, 976 (Bankr. D.Mass. 1981).

The Court, however, will permit L.Mahshie to avail herself of the same protections to which she agreed in the Consent Order, namely that after producing the documents requested at the examination, she reserves the right to assert any legitimate objections which she may have to the document discovery requests with corresponding rights of both parties to submit specific document discovery disputes to this Court.

Finally, in light of the significant number of documents to be produced, the Court directs the Bseirani Parties to schedule the examination to be held pursuant to Fed.R.Bankr.P. 2004 at the offices of their attorneys, not earlier than May 1, 1992.

IT IS SO ORDERED.

Dated at Utica, New York

this            day of April, 1992

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STEPHEN D. GERLING  
U.S. Bankruptcy Judge