

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:	§	
	§	CASE NO. 23-02871
PREMIER KINGS, INC., et al.	§	
	§	CHAPTER 11
DEBTORS.	§	

**First Horizon Bank’s Objection to Motion for Examination of
First Horizon Bank under Rule 2004**

First Horizon Bank (“First Horizon”) hereby objects to the Plan Administrator’s Motion for Examination of First Horizon (Doc. 697) because it: 1) fails to demonstrate good cause for the proposed document requests, which unfairly intrude into the private business affairs of First Horizon; 2) contains requests that seek documents protected from disclosure under attorney-client privilege and work-product protections; and 3) fails to allow a reasonable amount of time for compliance.

Factual Background

Plan Administrator Mark Smith filed his Motion for Examination of First Horizon Bank on June 11, 2024 (the “Motion”), asking this Court to enter an Order for the Examination of First Horizon Bank under Fed. R. Bankr. P. 2004. Doc. 697.

The Motion alleges the following background facts purported to establish the factual predicate for Plan Administrator’s proposed 2004 Examination:

- 5. Sidhu owned both the Debtors and the Affiliates.
- 6. The Debtors and the Affiliates had common management including but not limited to common officers and directors.
- 7. One or more of the Affiliates entered into loan transactions with First Horizon (the “Affiliate Loans”). *See* Claim Nos. 176, 171, 170, 114, 112.
- 8. Pursuant to the loan documents governing the Affiliate Loans (the “Affiliate Loan Documents”) the Affiliates granted First Horizon liens on and security interests in certain collateral, including but not limited to assets belonging to the Debtors (the “First Horizon Liens”).



9. The First Horizon Liens became a cloud on the Debtors' title to their assets.

10. Sidhu and the Debtors' other officers and directors' actions of granting the First Horizon Liens on the Debtors' assets contributed to the Debtors' insolvency and eventual bankruptcy.

Motion, ¶¶ 5-10 (emphasis added).

First Horizon disagrees with the factual statements contained in the Motion suggesting that Debtors granted First Horizon a lien or security interest in assets owned by the Debtors. First Horizon's liens in the subject collateral were granted by non-debtors Premier Holdings, LLC and Premier Holdings of Georgia, LLC.

The Motion appears to assume that the issue of whether non-debtors Premier Holdings, LLC and Premier Holdings of Georgia, LLC or the Debtor-entities owned the assets upon which First Horizon was granted liens (as security for money loaned) is either an uncontested fact or has been adjudicated. *Id.* Neither is true. The Debtors brought an Adversary Proceeding against the Holdings entities – including Premier Holdings, LLC and Premier Holdings of Georgia, LLC (collectively, “Holdings”) – asking for the Court to determine who owned the disputed personal property. *See* Complaint, Doc. 1, *Premier Kings, Inc. v. Premier Holdings, LLC*, Case No. 2023-AP-00047-TOM (the “Adversary Proceeding”).

The Adversary Proceeding raised one issue: “whether certain assets were property of the Debtors' bankruptcy estates.” *See* Motion for Approval of Settlement, Adversary Proceeding, Doc. 15, ¶¶ 7-8 (defining the “Property Dispute” as the dispute over the property interests of certain assets “pledged as collateral under certain loan made by the Holdings Lenders,” including “whether certain assets were property of the Debtors' bankruptcy estates.”).

Separately, this Court determined that Debtors and Holdings' dispute over the ownership of certain assets was a bona fide dispute over the property interests of objecting entities, including First Horizon Bank, in the *Order Approving the Asset Purchase Agreements*, and allowed the sales of substantially all of Debtor's assets, including those of which ownership was

disputed, to proceed under 28 U.S.C. § 363(f). Doc. 355. The Adversary Proceeding remained pending for the Court to adjudicate the ownership dispute. *Id.*

On February 23, 2024, Debtors and Holdings filed a Motion for Approval of Settlement of Claims against the Disputed Claims Reserve Fund under Rule 9019. Adversary Proceeding, Doc. 15. The settlement of the Adversary Proceeding was approved, the Adversary Proceeding was dismissed with prejudice, and the Property Dispute was never adjudicated. *See* Adversary Proceeding, Doc. 22.

Lack of Good Cause & Unfair Intrusion into Private Business Affairs of First Horizon

First Horizon objects to the proposed Rule 2004 requests because the Plan Administrator has failed to demonstrate good cause and because the requests amount to an unfair intrusion into the private business affairs of First Horizon.

Before granting the Motion, the Court must determine whether the Plan Administrator has shown sufficient good cause to pursue the Rule 2004 examination. *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008). The “good cause” standard requires a totality of circumstances approach. *Id.* Further, “the level of good cause required to be established by the [Movant] before [he] can obtain certain documents or pursue a certain line of inquiry in a Rule 2004 examination involving a creditor will vary depending on the potential intrusiveness involved.” *Id.* “In evaluating a request to conduct a Rule 2004 examination, the Court must ‘balance the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination. That documents meet the requirement of relevance does not alone demonstrate that there is good cause for requiring their production.’” *In re AOG Ent., Inc.*, 558 B.R. 98, 109 (Bankr. S.D.N.Y. 2016).

Here, the Plan Administrator’s Motion fails to establish good cause for the requested Rule 2004 examination because of the speculative nature of the Director & Officer claims referenced in the Motion, which are predicated on a disputed fact that was never adjudicated pre-confirmation, i.e. that Debtors did own the assets subject to the Property Dispute. *See In re AOG Ent., Inc.*, 558 B.R. 98, 108-110 (Bankr. S.D. N.Y. 2016) (finding 2004 Motion both moot and

otherwise due to be denied for movant's failure to show good cause because of speculative nature of claims sought to be investigated).

Further, the scope of the proposed Rule 2004 document requests is unfairly intrusive into First Horizon's private business affairs. The "scope of Rule 2004 examination should not be so broad as to be more disruptive and costly to the party to be examined than beneficial to the party seeking discovery." *In re Countrywide Home Loans*, 384 B.R. at 393.

Three of the six requests for production proposed in the Motion are unfairly intrusive into First Horizon's business affairs, namely the request for "[a]ll communications between [Debtors and/or Holdings] are [First Horizon] related to any of [Debtors or Holdings'] obligations to [First Horizon]"; "[a]ll *internal* communications concerning any of the [Debtors or Holdings'] obligations to [First Horizon]"; and "[a]ll due diligence [First Horizon] performed prior to extending credit to [Debtors or Holdings]." Motion, Ex. B, Attachment 1, p. 2.

The Debtors (specifically Premier Kings, Inc. and Premier Kings of Georgia, Inc.) were guarantors of loans extended from First Horizon's predecessor – Iberiabank – to Holdings. *See* First Horizon's Proofs of Claims and Supporting Documentation, Claims 53 & 54. The requests seek all communications, all internal communications, and all due diligence related to loans extended to non-debtors Holdings. This Court should deny the Motion because the requests are overbroad such that they will be "more disruptive and costly to First Horizon" than "beneficial to the [Plan Administrator]" and should be limited or disallowed on this basis. *In re Countrywide Home Loans* at 393.

Potentially Responsive Documents Protected from Disclosure

First Horizon further objects to the Motion because it seeks documents subject to work-product protection and documents containing communications protected from disclosure pursuant to attorney-client privilege.

The proposed subpoena specifically seeks communications between First Horizon and its counsel. Doc. 697, Ex. B, Attachment 1, Instructions ¶ 6 & Requests ¶¶ 1-5. Further, it seeks

documents from January 1, 2019, through present. Doc. 697, Ex. B, Attachment 1, Instructions ¶ 7.

First Horizon has not only participated in these bankruptcy proceedings but has also engaged in litigation with Holdings and its co-obligor Jaipal Gill in three separate civil actions within the requested period. See *First Horizon Bank v. Premier Holdings, LLC et al* in the Chancery Court of Shelby County, TN, Case No. CH-23-1418; *First Horizon Bank v. Jaipal Gill* in the Chancery Court of Williamson County, TN, Case No. 24-CV-53383; and *First Horizon Bank v. Premier Holdings, LLC* in the U.S. District Court for the Middle District of Tennessee, Case No. 3:24-CV-00702.

Thus, First Horizon objects to the Motion to the extent it seeks the production of documents protected from disclosure under attorney-client privilege and work-product protection, and specifically reserves the right to seek a protective order regarding specific documents or information sought by the Plan Administrator in the event the Motion is granted.

Rule 2004 Motion Fails to Allow a Reasonable Time for Compliance

Finally, First Horizon objects to the Motion because the proposed Rule 2004 Subpoena fails to allow a reasonable time for compliance. This Court set the Motion for hearing on June 20, 2024. Doc. 708. The Motion requests a deadline of June 28, 2024, for First Horizon to produce the requested documents, and for a witness be available to testify on behalf of First Horizon at an oral 2004 examination the week of July 8, 2024. Doc. 697, ¶ 19. The Motion was not filed until June 11, 2024. Doc. 697.

First, the undersigned counsel has previously scheduled travel out of state and will be unavailable from June 22, 2024 through June 29, 2024, leaving essentially one business day (June 21st) for First Horizon to identify responsive documents, counsel to review those

documents, and prepare the same for production. The requested timeline would also leave only one week – the week of July 4th – for preparation of the witness for oral examination.

This timeline is not reasonable and in the event the Court does grant the Plan Administrator’s Motion, First Horizon respectfully requests the Court set its own deadlines which allow a reasonable amount of time for compliance allowing at least fourteen days for First Horizon to produce the requested documents and at least fourteen additional days to prepare a witness to testify.

Joinder

First Horizon joins the responses of all other parties to the Motion or other motions filed at the same time as the Motion seeking similar relief from other parties to the extent such responses are not inconsistent with this Objection.

Reservation of Rights

First Horizon reserves the right to assert objections to specific items and documents requested, and reserves the right to seek reimbursement of costs and expenses incurred in complying with any Rule 2004 examination directed to First Horizon authorized by this Court.

Dated: June 18, 2024

Respectfully Submitted,

/s/ Danielle E. Douglas

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CERTIFICATE OF SERVICE

I certify that I have, this 18th day of June 2024, filed the foregoing using the Court's CM/ECF system, which will automatically serve a copy of the foregoing on all counsel of record.

/s/ Danielle E. Douglas

OF COUNSEL