

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

York Beach Surf Club, LLC,

Debtor

Chapter 11

Case No. 25-20021

ORDER PERMITTING WITNESS'S REMOTE TESTIMONY

In February 2025, creditor Thrive Lending Fund II, LLC, filed a Motion for Relief from the Automatic Stay [Dkt. No. 7], as to which an evidentiary hearing is scheduled for April 10, 2025. Less than a week before the hearing, Thrive filed a Motion to Permit Witness to Participate Remotely at April 10, 2025 Hearing [Dkt. No. 61]. Specifically, Thrive seeks permission for Justin Broгна, the Chief Operating Officer of Thrive, to testify remotely. Thrive estimates that this testimony “will be less than an hour” and will cover “the background of Thrive’s loan to the Debtor, the loan documentation, and events following the maturity of the loan[.]” Thrive reports that the debtor has consented to Mr. Broгна’s being permitted to testify remotely. Thrive asks that its request be determined on an expedited basis and with notice limited to itself and the debtor.

The grounds for an expedited determination are questionable, as Thrive appears to have intended to call this witness in any event. Further, one could easily conclude that Thrive has not articulated compelling circumstances for allowing a witness to testify from a remote location. The convenience of parties or witnesses, standing alone, is not a sufficient reason to deviate from longstanding norms and preferences for live (non-remote) witness testimony in federal court proceedings. *See, e.g.*, Fed. R. Civ. P. 43 & advisory committee’s note to 1996 amendment. Moreover, alternatives to live witness testimony exist such as using deposition testimony, in

accordance with procedural rules, and—something that might be particularly suitable here—stipulations of undisputed facts.

Nevertheless, given the limited nature of the anticipated testimony and given the debtor's consent—but with considerable reluctance—the Court grants Thrive's requests, including for expedited determination and limitation of notice, and will permit Mr. Brogna to testify remotely subject to the following conditions.

1. To obtain details about how Mr. Brogna will participate through videoconference technology, counsel to Thrive must contact the Clerk's Office by noon on April 8, 2025. The Clerk's Office will then provide such details through electronic mail. Counsel must also arrange for Mr. Brogna to participate in a test of the videoconference technology with the Clerk's Office no later than noon on April 9, 2025.
2. Counsel for Thrive and for the debtor must ensure that printed copies of exhibits marked for identification are sent via overnight delivery to Mr. Brogna so that he receives the exhibits on or before April 9, 2025. Mr. Brogna should not expect to be able to access electronic copies of exhibits during his remote testimony.¹
3. Thrive is responsible for ensuring that Mr. Brogna, as its witness, has access to necessary and properly functioning equipment for participating through videoconference technology, including a computer, internet access, a camera, a microphone, and speakers or headphones. The Court will not provide technical

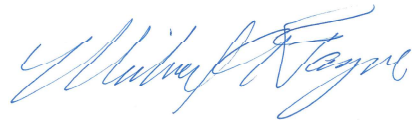
¹ Further, during his remote testimony, Mr. Brogna should not expect to be able to access any applications, devices, or physical resources (including documents) other than those strictly necessary for his use of the videoconference technology.

support. Thrive bears the risk of any technical failure that prevents or interferes with Mr. Brogna's participation.

4. Although Mr. Brogna will be participating by video remotely, the evidentiary hearing is a court proceeding at which formalities must be observed. Mr. Brogna must act and dress in the same manner as he would in a courtroom located in a courthouse. His participation must be from a space that is free from disruption and the presence of others (such as an office with a door that can be closed).
5. Any audio recording or capturing of images of any portion of the hearing by any means is prohibited and violations of this prohibition may result in a contempt finding and sanctions. The audio recording maintained by the Court will be the sole basis for creation of a transcript that constitutes the official record of the hearing.

Finally, counsel in this matter are cautioned that the relief granted in this Order will not become the norm in cases assigned to the undersigned judicial officer.

Dated: April 7, 2025



Michael A. Fagone
United States Bankruptcy Judge
District of Maine