

1 Michael J. Gearin, WSBA # 20982
2 David C. Neu, WSBA # 33143
3 Brian T. Peterson, WSBA # 42088
4 K&L GATES LLP
5 925 Fourth Avenue, Suite 2900
6 Seattle, WA 98104-1158
7 (206) 623-7580

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: June 23, 2017
Hearing Time: 9:30 a.m.
Response Date: June 21, 2017

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 In re:

12 NORTHWEST TERRITORIAL MINT, LLC,

Case No. 16-11767-CMA

13 TRUSTEE'S REPLY TO OBJECTION OF
14 DIANE ERDMANN TO MOTION FOR
EXAMINATIONS OF ROSS B. HANSEN
AND DIANE ERDMANN PURSUANT
TO RULE 2004 AND SUBPOENAS
PURSUANT TO RULE 9016

15 Mark Calvert, Trustee (the "Trustee") for the Northwest Territorial Mint, LLC ("NWTM"),
16 in the above-captioned proceeding, by and through his attorneys, K&L Gates, LLP, replies to the
17 objection ("Objection") of Diane Erdmann to his motion for entry of an order for examination of
18 Ross B. Hansen and Diane Erdmann pursuant to Federal Rules of Bankruptcy Procedure 2004(b)
19 and (c) and authority to serve subpoenas pursuant to Federal Rule of Bankruptcy Procedure 9016 to
20 certain third parties (the "Motion"), and states as follows:

21 **I. REPLY**

22 In the Objection, Diane Erdmann characterized the Trustee's request to examine her pursuant
23 to Bankruptcy Rule 2004 as an end-run around discovery in the adversary proceeding pending under
24 Adv. Pro. 16-01217 (the "Fraudulent Transfer Action") or, alternatively, an impermissible effort to
25 examine a "non-debtor's finances." Neither argument is persuasive.
26

REPLY RE: MOTION FOR SUBPOENA
PURSUANT TO RULES 2004 AND 9016 - 1
500453000 v2

K&L Gates LLP
925 Fourth Ave., Suite 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 The Trustee seeks to examine Diane Erdmann and Ross Hansen regarding the source of over
2 a half-million dollars worth of precious metals which Ms. Erdmann liquidated over a period of five
3 months, and the uses to which she put the proceeds, as well as evidence regarding any other precious
4 metals which she or Mr. Hansen own. The documents which the Trustee has requested are narrowly
5 tailored to this end - documents regarding ownership, acquisition, and sale of precious metals, and
6 account statements for accounts through which proceeds might have flowed.

7 Contrary to Ms. Erdmann's unsupported argument that an examination of a non-debtor is
8 improper, Bankruptcy Rule 2004 authorizes examination "of any entity" regarding "property or to
9 the liabilities and financial condition of the debtor, or to any matter which may affect the
10 administration of the debtor's estate." Fed. R. Bankr. P. 2004. As detailed in the Motion, and
11 declarations filed in support of the Trustee's motions to examine various coin dealers, Dkt. Nos.
12 1013-1016, facts have recently come to light that show that Diane Erdmann has been liquidating
13 substantial assets that may very well constitute property of the estate and using the proceeds to pay
14 attorneys as well as for other purposes.

15 Ms. Erdmann submitted a declaration in support of her Objection in which she makes the
16 assertion that she never testified under oath that she lacked assets. This assertion is at best
17 misleading, and at worst patently false. Attached to her declaration is a transcript of a supplemental
18 proceedings examination conducted, pursuant to RCW Ch. 6.32, by counsel for Brad Cohen. It
19 contains the following exchanges:

20 Q: Okay. What is in that? Of the safe deposit boxes that are still open, what
21 is still there?

22 A: Under a thousand dollars and six ounces of gold.

23 Q: How much is that six ounces of gold worth?

24 A: About 12 hundred an ounce.

25 Q: How do you plan on paying the rent once the thousand dollars and six ounces of gold
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

is spent?

A: I haven't figured that out yet.

Q: Do you have any other assets -- or do you have any other cash or precious metals besides the thousand dollars and the six ounces of gold in your safe deposit box?

[Objection by Diane Erdmann's counsel]

A: Yes.

Q: What precious metals -- or what is that?

A: Silver.

Q: And is that the silver being held by Mr. Schwink?

A: Yes.

Q: Okay. Anything else?

A: **No.**

Q: Does Mr. Hansen have any cash or precious metals?

A: **No.**

Declaration of Diane Erdmann, Ex. B. at 69:21-70:17 (emphasis added).

Q: Have you guys discuss [sic] how you're going to get by financially moving forward?

MR. BUGBEE: Objection; asked and answered. Are you just harassing the witness about her state of financial affairs and how destitute it is?

Q: Do you have an answer, Ms. Erdmann?

A: We have. Nothing has really been resolved.

Q: Okay. What's the -- what's the plan right now?

A: As I said, nothing has been resolved.

Q: So there is no plan?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A: There is no plan.

Q: And when do you think you'll run out of money out of the safe deposit box?

A: It won't take long since there's less than a thousand.

Q: And then when do you think you'll run out of the money that -- in silver that Mr. Schwink is holding for you?

A: I don't know.

Q: Are there any other assets that you have or have access to --

[Objection by Diane Erdmann's counsel]

Q: -- that you haven't told me about yet?

A: There's stuff from the sheriff's department, and there's some from Todd Tracy, so that's always a possibility.

Declaration of Diane Erdmann, Ex. B. at 113:8-114:9.

While Ms. Erdmann, in a technical sense, might not have testified that was completely devoid of assets, she testified quite clearly that as of June, 2016, other than the retainer funds paid to Tracey Law Group and metals seized by the King County Sheriff¹, her assets consisted of 6 ounces of gold, worth \$7,200, \$1,000 in cash, and some silver held by Don Schwink. When asked directly if she had any other assets, she emphatically said "No." She certainly did not testify that she possessed the platinum, palladium, gold, and other precious metals that she began selling months later to coin dealers as far away as Illinois.

Given Ms. Erdmann's testimony, under oath, regarding her dearth of assets, and in light of the fact that millions of dollars worth of precious metals that should be in the Debtor's vault are unaccounted for, the Trustee has a legitimate interest in examining Ms. Erdmann on the topic of how she came to possess the hundreds of thousands of dollars in precious metals that she began liquidating in October, 2016. She does not offer an explanation in the Opposition as to the source.

¹ The assets seized by the King County Sheriff are in the possession of the Trustee by order of this Court.

1 One plausible explanation is that Diane Erdmann and Ross Hansen secreted property of the estate
2 and that Ms. Erdmann has been liquidating such property to pay personal expenses. If true, the
3 estate may hold causes of action under 11 U.S.C. §549 to recover unauthorized transfers of property
4 of the estate.² Accordingly, the documents requested by the Trustee, all of which are related to
5 precious metal acquired, owned, or sold by Diane Erdmann or Ross Hansen, and account statements
6 necessary to trace proceeds of metals sold by Diane Erdmann, are well-within the scope of Rule
7 2004 as they relate to the existence of property of the estate and the administration of the estate.

8 Ms. Erdmann is simply incorrect that an examination under Rule 2004 is improper given the
9 pendency of the Fraudulent Transfer Action.³ Issues regarding Ms. Erdmann's precious metal assets
10 are not implicated in the Fraudulent Transfer Action. Accordingly, the Trustee seeks to examine Ms.
11 Erdmann, on the limited scope of her assets, pursuant to Bankruptcy Rule 2004 rather than through
12 requests for production, interrogatories, and depositions in the Fraudulent Transfer Action.
13 Presumably any efforts to obtain such discovery in the Fraudulent Transfer Action would be met
14 with objection on relevancy grounds. Finally, there are exigent circumstances that call for
15 shortening time, and for examination of Ms. Erdmann in short order. If Ms. Erdmann has any
16 remaining precious metals that are property of the estate, her actions have shown that it would be
17 simple for her to liquidate such metals in a very short time frame. The passage of time only provides
18 Ms. Erdmann with further opportunity to potentially convert assets.

19 II. CONCLUSION

20 For the reasons set forth herein, the Trustee is entitled to an order granting the Motion and he
21

22 ² Property of the estate includes proceeds, so the estate may hold claims against any third party paid
23 by Ms. Erdmann. 11 U.S.C. §541(1)(6).

24 ³ In support of this contention, Ms. Erdmann cites two cases, without explanation, and without
25 pinpoint page citations. The first case *U.S. v. Jackson* doesn't appear to address the issue at all. The
26 second, *In re Dinubilo* merely stands for the proposition that once a matter is contested, Rule 2004
cannot be used as a substitute for discovery. It does not, however, stand for the proposition that once
an entity is a party to an adversary proceeding, Rule 2004 cannot be used to examine that entity as to
matters unrelated to the contested matter.

1 respectfully requests that the Court enter such an order. The Trustee has no objection to counsel for
2 Ms. Erdmann appearing telephonically at the hearing on June 23, 2017, if he requests to do so, and
3 the Court deems it appropriate.
4

5 DATED this 20th day of June, 2017.
6

7 K&L GATES LLP
8

9 By /s/ David C. Neu
10 Michael J. Gearin, WSBA #20982
11 David C. Neu, WSBA #33143
12 Brian T. Peterson, WSBA #42088
13 Attorneys for Mark Calvert, Chapter 11 Trustee
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on June 20, 2017, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 20th day of June, 2017 at Seattle, Washington.

Denise A. Lentz
Denise A. Lentz