

Judge Christopher M. Alston
Chapter 11
Hearing location: Seattle, Room 7206
Hearing Date: June 23, 2017
Hearing time: 9:30 a.m.
Response date: June 21, 2017

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:) CHAPTER 11
NORTHWEST TERRITORIAL MINT, LLC,) CASE NO. 16-11767-CMA
Debtor.) MEMORANDUM OF CREDITOR IN
SUPPORT OF TRUSTEE’S MOTION FOR
EXAMINATION OF ROSS B. HANSEN
AND DIANE ERDMANN PURSUANT TO
RULE 2004 AND SUBPOENAS PURSU-
ANT TO RULE 9016

COMES NOW creditor, Adrienne Atwell, through her undersigned attorney, and submits this memorandum in support of the Trustee’s Motion for Examination of Ross B. Hansen and Diane Erdmann Pursuant to Rule 2004 and Subpoenas Pursuant to Rule 9016 (the, “Motion”).

RELEVANT BACKGROUND

As documented in Ms. Atwell’s proof of claim for the principal amount of \$281,566 which she filed with the Court (Claim No. 1104-2), she is the owner of gold bullion purchased in 2008 from the Perth Mint in Australia which consisted of seven 1-kilo bars and two 10 ounce bars imprinted with Perth Mint’s logo and bearing individual serial numbers (hereafter, the “Bullion”).¹ In May 2013, Ms. Atwell entered into a written agreement with the Debtor for storage of the Bullion which the Perth Mint delivered via courier directly to the Debtor. Claim No. 1104-2. The Debtor acknowledged in writing

¹ The factual background regarding Ms. Atwell’s claim contained herein is based upon her proof of claim and the documents attached thereto.

1 that it received the Bullion. *Id.* At a later date, upon Ms. Atwell's authorization, the Debtor sold (at
2 least purportedly) the two ten ounce bars and remitted the sale proceeds to her. *Id.* Ms. Atwell
3 continued to store the rest of the Bullion with the Debtor which issued to her written confirmations
4 thereof. *Id.* After the Debtor filed the present bankruptcy case, Ms. Atwell learned that the Bullion was
5 not in storage at the Debtor's facilities, its whereabouts unknown and still unknown.
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7 Ross B. Hansen was the principal and chief executive of the Debtor who supervised its
8 operations. Diane Erdmann was the Debtor's employee in charge of the vault where the Debtor stored
9 precious metals and the management of cash and bullion as well as shipping at the Debtor's Federal
10 Way, Washington and Dayton, Nevada facilities.² It is well known and beyond serious dispute that Ms.
11 Erdmann and Mr. Hansen have a long standing continuing meretricious relationship with them living
12 together and each, from time to time, providing the other with financial support.
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14 The declarations the Trustee filed in support of the Motion show that by happenstance his
15 counsel recently discovered documentary evidence that establishes that from October 2106 through
16 March 2017, Ms. Erdmann liquidated precious metals previously undisclosed including gold bullion
17 with the Gold Center Inc. and Bryan D. Geraghty which yielded her and Mr. Hansen a sum in excess of
18 \$500,000. Those funds were used to pay the Debtor's attorneys and for the personal benefit of Ms.
19 Erdmann and Mr. Hansen. Ms. Erdmann and Mr. Hansen, as shown in the Trustee's declarations, had
20 ample opportunity to disclose the foregoing transactions but instead chose to keep them secret.
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22 Ms. Erdmann filed a response and objection to the Motion (the, "Erdmann Objection") in which
23 she opposes examination, because, among other things, the Trustee previously deposed her and she is a
24 defendant in the Trustee's pending adversary proceeding for avoidance of fraudulent transfers.
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² Diane Erdmann's Trial Brief (ECF Docket No. 410) at 3, lines 23-26.

1 ANALYSIS AND ARGUMENT

2 It is well established law that the reach of FRBP 2004 is extremely broad. By its express terms
3 it applies to “any entity” which is a defined term pursuant to §101(15) of the Bankruptcy Code that
4 includes a “person”. Furthermore, it is well established that the scope of examination under Rule 2004
5 is also extremely broad (often referred in court decision as the “ultimate fishing expedition”).

6 The decision to grant a BR 2004 examination is vested in the Bankruptcy Court’s discretion. *In*
7 *re Dinubilo*, 177 B.R. 932, 939 (E.D.Cal. 1993). The purpose of a 2004 examination is to identify the
8 assets and transactions involving a debtor’s estate and determine whether the estate has additional
9 adversary claims. *Id.* at 940; *also see, In re Ecam Publications, Inc.*, 131 B.R. 556 560 (Bankr.
10 S.D.N.Y. 1991). Although courts are mindful of the potential for Rule 2004 to overtake the narrower
11 rules for discovery generally applicable in adversary proceedings, the Bankruptcy Court has the
12 discretion to order a 2004 examination notwithstanding the existence of other litigation. *In re*
13 *International Fibercom, Inc.*, 283 B.R. 290, 292-93 (Bankr.AZ. 2002); *see also*, FRBP 9014(c)
14 (providing in pertinent part, “unless the court directs otherwise, the following rules shall apply....”)
15 (emphasis added). In particular, Rule 2004 examinations are regularly permitted when the examination
16 relates to a matter other than pending litigation. *Id.* at 292; *In re Buick*, 174 B.R. 299, 305 (Bankr. D.
17 Colo. 1994).

18 In *In re International Fibercom, Inc.*, *supra* at 290, 292-93, the court granted a creditor’s motion
19 for a 2004 examination. The court emphasized therein that the discovery sought via Rule 2004 was
20 broader than that of the pending litigation and it was likely that additional claims would be uncovered.
21 For these and other reasons, the court permitted the examination to proceed. Courts, moreover, have
22 been especially reluctant to deny a requested to 2004 exam when the adversary proceeding at issue
23 involves the trustee. *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 711-12 (Bankr.
24 S.D.N.Y. 1991) (The cases are ... in general agreement that pending litigation by or against the trustee is
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1 not sufficient cause to deny the examination."); *see also In re Dinubilo*, supra at 942-43 (although
2 finding the Rule 2004 order inappropriate but not an abuse of discretion under the particular facts of the
3 case, noting that the creditor/trustee distinction may be a valid one under certain circumstances").

4 The Trustee explains correctly and accurately in the reply that he filed to the Erdmann Objection
5 that the 2004 examinations will be broader in scope than the Trustee's pending adversary proceeding
6 and may lead to additional evidence and claims. The evidence regarding Ms. Erdmann's liquidation of
7 bullion and other precious metal yielding over \$500,000 that the Trustee uncovered is of vital interest to
8 Ms. Atwell and other creditors whose precious metal investments are missing and for which there is
9 presently no account.³ The mysterious disappearance of the Bullion and millions of dollars in precious
10 metal investments of hundreds of other creditors is so to speak the "two thousand ton gorilla" in the
11 room (i.e., in this case). For the Trustee to serve the best interest and needs of creditors, he must try to
12 solve this "mystery" and find, if possible, the creditors' missing metals and/or get to the bottom of what
13 happened with respect thereto. To do otherwise would be a dereliction of a trustee's duties.

14 It is beyond serious question that Ms. Erdmann, as the primary employee of the Debtor
15 responsible for the storage and management of bullion at the Debtor's facilities along with Mr. Hansen
16 as the Debtor's CEO, bears the statutory duty to cooperate with the Trustee. 11 USC §521(a)(3) and (4).
17 They are in the unique and strategic position of knowing or having should have known what happened
18 to the Bullion and precious metal investments of all creditors. The Trustee must be able to examine Ms.
19 Erdmann and Mr. Hansen about the above described evidence which was unknown at the time of prior
20 examinations as well as any other additional information/evidence that may hereafter come to light as a
21 result of the 2004 exam sought by the Trustee. Otherwise, the ends of justice will not be served.

22 In her trial brief (Docket No. 410 at 3, lines 18-20), Ms. Erdmann stated:
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³ The Bullion with the imprint of the Perth Mint logo and serial numbers is identifiable which makes it potentially traceable and thus of particular interest in investigating the disposition of precious metals in the case.

1 As will be better articulated by Ms. Erdmann and Mr. Hansen themselves, their
2 work at NWTM was more than a job – it was their passion, their hobby, and the
way they spent the vast majority of their time.

3 The examinations of Ms. Erdmann and Mr. Hansen pursuant to FRBP 2004 is an ideal opportunity if not
4 outlet for them to pursue the “passion” Ms. Erdmann describes and will allow them to help the Trustee
5 and the creditors to ascertain the disposition and status of their investments. Thus the Court in the sound
6 exercise of its discretion must permit the FRBP 2004 examinations which the Trustee requested to
7 proceed.
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9 CONCLUSION

10 Therefore, the Court should overrule the Erdmann Objection and grant the Motion.

11 Dated this 21st day of June, 2017

12 KRIEGMAN LAW OFFICE, PLLC

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14
15 /s/ Bruce P. Kriegman
16 Bruce P. Kriegman, WSBA #14228
17 Attorney for Adrienne Atwell

18 CERTIFICATE OF SERVICE

19 The undersigned certifies that on the 21st day of June, 2017 he caused this memorandum to be
20 filed on the Court’s case management/electronic case file system (“ECF”) for the above-entitled case
21 and thereby served said notice upon all of the parties who have registered their respective e-mail
addresses with ECF and/or appeared or requested special notice in the case which includes but is not
22 limited to the Trustee’s attorneys and the attorneys for Ms. Erdmann and Mr. Hansen.

23 DATED this 21st day of June, 2017

24 KRIEGMAN LAW OFFICE, PLLC

25
26 /s/ Bruce P. Kriegman
27 Bruce P. Kriegman