

The Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm 7206
Hearing Date: Friday, April 27, 2018
Hearing Time: 9:30 am
Response Date: April 27, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re
NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

Memorandum of Law in Support of
Limited Objections to Renewed Motion
for Sale of Dies and Associated work by
the Debtor, either as Meddalic Owned or
NWTM Owned

Comes now, the American Numismatic Association (“ANA”), Dick Johnson (“Johnson”), Friedrike Merck (“Merck”), Daniel Altshuler (“Altshuler”), Don Everhart (“Everhart”), Gould Studios, Don Wiegand and the Wiegand Foundation (collectively “Wiegand”) by and through their attorney, John E. Kennedy and Michelle Carmody Kaplan, of Kaplan Law PLLC, and hereby submit this Limited Objection to Trustee’s Renewed Motion For Order Approving the Sale of Certain of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances to Medalcraft Mint, Inc. (Dkt. No. 1556).

I. GENERAL OBJECTIONS

These limited objections relate only to the sale of “Medallic” company assets (archives, dies, sample strikes, specimens, galvanos, sculpts, written files and reproduction files dated on

1 or after January 1, 1998) (collectively “Dies and Associated Works”), and associated racks.¹
2 To the extent the sale includes any Dies and Associated Works that do not fall into the limited
3 category above, Interested Parties, including the New York Numismatic Club, Gary Marks,
4 Heidi Wastweet, Karen Worth, Manship Artists Residency, Karen Worth, Bob Palmisano,
5 Jared Grove and Grove Minting Company, the heirs of Berthold Nebel, the Heirs of Marcel
6 Jovine, the Heirs of Walker Hancock, the National Sculpture Society, Jared Grove and Grove
7 Minting Company, and Bob Palmisano join in this objection.

8 The Motion for Order approving the sale provides that the proposed sale includes
9 “certain company owned dies associated with any customer for whether there has been a sale
10 in the last 20 years.” (Dkt. No. 1556 – page 3, lines 11-12). However, the Asset Purchase
11 Agreement attached to the Calvert Declaration provides “Medallic company owned dies and
12 trim tools which were created on or after January 1, 1998 and associated racks.” (Dkt. No.
13 1557 – page 7). The difference between when a die was “created” versus the use of that die in
14 the last 20 years is significant, as some historical dies have been used more recently for re-
15 strikes or re-orders.

16 To be clear, Interested Parties would request the following language be included in any
17 order of sale:

18 “This sale includes only dies, archives, sample strikes, finished
19 coins, specimens, galvanos, sculpts, written files and reproduction files
20 related to Medallic Art created or dated after January 1, 1998. In the event
21 any assets are discovered that do not fall within this category shall be
22 returned immediately and shall not be retained by buyer.”

23 **II. INCORPORATION OF PREVIOUSLY SUBMITTED OBJECTIONS, 24 DECLARATIONS AND LEGAL MEMORANDUMS**

25 Section 363 of the Bankruptcy Code does not provide authority for the Debtor to sell
26 property it does not own. *See Folger Adam Sec., Inc. v. DeMatties/MacGregor, JV*, 209 F.3d

¹ Interested Parties are unclear what is included in “associated racks”.

1 252, 263 (3d Cir. 2000) (property not part of the bankruptcy estate is not subject to a section
2 363 sale). Interested Parties have briefed the issue regarding their ownership of the dies and
3 associated intellectual property that has been stored by debtor. Interested Parties herein adopt
4 their objections and Supporting Declarations previously submitted to the Court: (Dkt. No. 1406
5 – Marks and Wastweet Ojbection); (Dkt. Nos. 1407 and 1412 – Declarations of Wastweet and
6 Marks); (Dkt. No. 1408 – Objection of NYNC); (Dkt. Nos. 1409, 1410, 1411 – Declarations
7 of Marinescu, Miller and Anderson); (Limited Objection of Dick Johnson, Friedrike Merck,
8 American Numismatic Association, Dkt. Nos. 1523, 1524 and 1525); (Declarations of Dick
9 Johnson and Agnela Dey, Dkt. Nos. 1521 and 1522) and (Limited Objection to Medlcraft
10 Sale, Dkt. No. 1520)

11 12 **III. ADITIONAL OBJECTIONS**

13 *a. Debtors Motion and Supporting Declarations Lack the Specificity Necessary* 14 *for Interested Parties and Other Similarly Situated Parties to Know Whether* 15 *the Sale Includes Property Not Owned by the Debtor*

16 The Motion to Sell Assets to Medalcraft lacks any detail that would identify what dies
17 or associated property are being included as part of the sale. It is unclear whether any or all of
18 the property that Interested Parties claim ownership of is included in the sale. As it relates to
19 the lack of specificity in both the Motion and the APA with Medalcraft, Interested Parties make
20 the following objections.

21 1. In the Motion, the Trustee refers to “the Medallic trade name, website,
22 customer lists, archives, tools, specific machinery, certain company owned Medallic dies and
23 other property”. (Dkt. No. 1457, p. 1). The distinction between what is part of the “Medallic”
24 asserted assets and NWTM assets, or if there is a distinction, is unclear at best. The “Renewed
25 Notice” seems to indicate that the sale includes both NWTM and Medallic dies and associated
26

1 works. Dkt. No. 1559. The Notice refers several times to “NWTM and Medallic customers”.
2 The Trustee should be required to specifically identify any distinctions between what is being
3 sold as “Medallic” and what is considered NWTM.

4 2. The proposed APA with Medalcraft identifies the Assets being
5 purchased in Section 1.1. (Dkt. No. 1462-1, p. A-1) The following categorized “Assets” need
6 to be clarified and specifically identified in order for Interested Parties to know whether they
7 include property owned by the Interested Parties.

8
9 **(b) Medallic marketing materials and image library**

10 Both the marketing materials and image library likely include copyrighted material of
11 Interested Parties. For example, the Municipal Coins & Medallions page of the Medallic Art
12 Company webpage includes a picture of the City of Whitefish, Montana Centennial Coin
13 designed by Marks. *See* Marks Supplement Declaration, Exhibit J. Compare this to the Die
14 that was returned to Marks, *Marks Declaration* (Dkt. No. 1412, Exhibit D). Marks does not
15 consent to the transfer or display of his designed Whitefish coin and does not consent to any
16 license or transfer of his copyright in the artwork. *Marks Supp. Decl.* page 1.

17
18 There are literally thousands of images contained in the marketing materials and image
19 library. Trustee has not alleged that the Debtor has any rights or interests in the copyrighted
20 works that may be contained in the library. Again, consistent with the supplemental briefing
21 on intellectual property and copyright law, the Debtor does not have the right to transfer the
22 right to display even if it can transfer the pictures themselves.

1 (d) **Medallic archives, written files, electronic files (ACT**
2 **database) and reproduction samples.**

3 Of all the categories, this section has the most associated danger to the artists and
4 customers that have done business with the Debtor in the past.

5 **i. Reproduction Samples**

6 Interested Parties assume that this category refers to what is called “Specimens” in the
7 industry. On information and belief, Debtor, and Medallic Art Company before them, would
8 strike one extra medal with every run. These “specimens” are then kept in drawers at Medallic
9 Art Company. This means that for limited edition runs of 100 medals may be increased to 101
10 if Debtor is allowed to sell them.

11
12 However, Debtor has not and cannot allege it has the legal authority to sell these
13 Specimens. The copyright and artwork belongs to either the customer or the artist, but not to
14 the Debtor. At the very least, Debtor should be required to provide the Court and Interested
15 Parties a digital copy of the “Specimen Book” that identifies each of the Specimens and
16 identifies the dies used to create them.

17
18 **ii. Medallic Archives**

19 Neither the Motion to approve the APA, the APA itself, or the supporting Declarations
20 identify what is included in the Medallic Archives. Does this include historic bas-relief sculptures
21 used to create dies? If so, Interested Parties object to the sale of its copyrighted material. Does
22 it include galvanos (metal shells which replicate a bas-relief design)? If so, Interested Parties
23 object to the sale of its copyrighted material. If it includes drawings, concepts, pictures (for
24 example a photograph of one of the former Presidents of the New York Numismatic Club),
25 then Interested Parties object to the sale of its copyrighted material and intellectual property.
26

1 *Inc. (In re Savage Indus., Inc.)*, 43 F.3d 714, 720 (1st Cir. 1994). Section 363(f) requires notice
2 and a hearing before assets can be sold outside of the ordinary course of business.

3 *b. Renewed Sale Does Not Provide Required Intellectual Property Language*

4 The Proposed Sale does not include language that protects the intellectual property of the
5 artists and/or customers who own the intellectual property. Interested Parties proposed language
6 in its brief regarding Intellectual Property and the Court proposed additional language at the
7 hearing held on March 6, 2018.

9 *c. Renewed Sale Fails to Exclude Objecting Parties Dies and Associated Works*

10 After the March 9, 2018 hearing, the Court held that objecting parties' dies would be
11 excluded from any sale. The Trustee's Renewed Motion fails to exclude these artists and/or
12 customers without any proposed resolution to objections regarding ownership of the dies and
13 associated works.

15 *d. Renewed Sale fails to provide additional notice to Medallic Customers*

16 At the conclusion of the March 9, 2018 hearing, the Court indicated that the Trustee should
17 provide at least 21-days notice of the sale as well as a 60-day objection period for customers to
18 object to the sale of their dies or associated works. The Renewed Motion fails to provide any
19 additional notice. There was also discussion regarding notice in national trade publications but
20 the Trustee has provided no additional notice through these publication mediums.

21 DATED this 27th day of April 2018.

22 **MORLEY THOMAS LAW**

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