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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: Friday, July 27, 2018
Hearing Time: 9:30 a.m.
Response Date: July 20, 2018

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

10 In re:

11 NORTHWEST TERRITORIAL MINT, LLC,
12 Debtor.

Case No. 16-11767-CMA

MOTION FOR ORDER APPROVING SALE
OF UNCLAIMED NWTM DIES FREE AND
CLEAR OF LIENS, CLAIMS, INTERESTS,
AND ENCUMBRANCES TO MEDALCRAFT
MINT, INC.

15 **I. INTRODUCTION**

16 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
17 ("NWTM" or the "Debtor"), submits this Motion, which requests entry of an order approving the
18 sale of the unclaimed NWTM dies to Medalcraft Mint, Inc. ("Medalcraft") free and clear of all liens,
19 claims, interests, and encumbrances. Approval of the sale to Medalcraft is in the best interests of the
20 estate and should be approved by the Court.

21 **II. BACKGROUND**

22 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under
23 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark
24 Calvert as Chapter 11 Trustee. *See* Dkt. No. 51.

25 MOTION FOR ORDER APPROVING SALE OF
26 UNCLAIMED NWTM DIES FREE AND CLEAR OF ALL
LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES
TO MEDALCRAFT MINT, INC.- 1

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1 The Trustee's goal in this case has been to maximize the recovery of creditors. Since
2 May 2017, the Trustee has engaged in marketing efforts related to a potential sale of the business.
3 The Trustee entertained expressions of interest from multiple parties including offers to purchase the
4 assets of the estate on a going concern basis and for substantially all of the assets of the estate, but no
5 concrete offer materialized for such a sale on terms which provided any meaningful return to the
6 estate. Because no concrete offer materialized, and because of the inadequate cash resources
7 available to the Trustee, the Trustee closed the custom minting business on December 29, 2017 and
8 prepared to liquidate the assets of the estate via auction.

9 While the Trustee prepared to sell the Debtor's assets at auction, he engaged in negotiations
10 with multiple buyers for various aspects of the Debtor's assets. Ultimately, the Trustee separately
11 reached agreements with Industrial Assets Corp., Medalcraft, and the American Numismatic Society
12 for the purchase and sale of certain assets of the Debtor.

13 The Debtor owns various coining dies used to produce custom products. Certain former
14 customers have asserted an interest in some of the coining dies. Ultimately, the Court approved the
15 sale of Medallic Art Company coining dies in separate sales to Medalcraft and American
16 Numismatic Society. However, to date, the Trustee has not sold the Debtor's coining dies produced
17 and owned under the "NWTM" name rather than the "Medallic" name.

18 On March 30, 2018, the Trustee filed his *Motion to Approve (I) Deadline to Assert Claims*
19 *with Respect to Ownership of NWTM Coining Dies; and (II) Settlement Protocol to Resolve Claims*
20 *to Ownership of NWTM Dies (the "Die Settlement Motion")* [Dkt. No. 1560]. After several hearings,
21 the Court approved, on May 21, 2018, an order (the "Die Ownership Order") authorizing the Trustee
22 to settle disputes over ownership of coining dies created by NWTM ("NWTM Dies") and approving
23 a form of notice to NWTM customers (the "Die Settlement Notice").

24 The Die Settlement Motion was prompted by a desire to identify and segregate the NWTM
25 dies from customer-owned dies and settle disputes as to any dies for which there was contested
26 ownership. The Die Ownership Order established a deadline, of June 21, 2018, to assert an interest

1 in, or ownership of, a NWTM die. The Die Ownership Order further provided that a claim of any
2 party other than the bankruptcy estate of Northwest Territorial Mint to ownership of a NWTM die
3 was deemed waived and extinguished unless such party (i) contacted the Trustee in writing asserting
4 an interest in a NWTM die; and (ii) provided evidence of an interest in the die.

5 The Trustee provided notice by mail and email of the Die Ownership Order to more than
6 14,000 customer addresses. The date by which a party was to assert an interest in, or ownership of, a
7 NWTM Die has passed. Approximately 300 customers asserted an interest in the NWTM Dies by
8 the court-imposed deadline. Those parties are identified in the *List of Parties Asserting an Interest in*
9 *Northwest Territorial Mint Coining Dies* [Dkt. No. 1762]. The NWTM Dies that are the subject of
10 those parties' claims of ownership are not included in the proposed sale contemplated by this
11 Motion.

12 The Trustee has reached an agreement with Medalcraft for the sale of the unclaimed NWTM
13 Dies in which no parties asserted an interest by the court-imposed deadline (the "Unclaimed NWTM
14 Dies"). Medalcraft has agreed to purchase the Unclaimed NWTM Dies in exchange for \$75,000. The
15 terms of the agreement with Medalcraft were the result of arms-length negotiations between the
16 Trustee and Medalcraft. The Trustee believes that the agreement is fair, reasonable, and guarantees a
17 certain return for the estate. All of the Unclaimed NWTM Dies are located at the Debtor's Dayton,
18 Nevada facility. It is uncertain whether the Trustee would be able to find another buyer before he is
19 forced to vacate the Dayton facility at the end of July. Moreover, there are very few entities in the
20 custom-minting business for whom the Unclaimed NWTM Dies would have any value at all.

21 The Trustee has communicated with multiple interested purchasers regarding the sale of the
22 Debtor's assets, including coining dies, over the course of more than ten months. Based on his
23 experience in marketing the assets which are the subject of this sale, the Trustee believes that the
24 price offered for the assets is reasonable. The Trustee believes that it is in the best interests of the
25 estate to consummate the sale to Medalcraft.

1 The Trustee seeks to sell the Unclaimed NWTM Dies free and clear. There is only one party
2 that could potentially assert an interest in the Unclaimed NWTM Dies: Robert and Connie Hoff. On
3 February 14, 2018, the Court entered its Order Granting in Part and Denying in Part Motion for
4 Relief from the Automatic Stay (Dkt. No. 1450). By that order, the Court granted a post-petition lien
5 on all assets of the bankruptcy estate to secure any administrative claim they may be allowed under
6 Section 507(a)(2) that arises from the Trustee's use of the Dayton Premises prior to the time the
7 Trustee vacates the Dayton Premises. The Trustee believes that the Hoff's are adequately protected
8 by having the lien attached to the proceeds. The Trustee further believes that the Hoff's will not
9 oppose the sale.

10 III. EVIDENCE RELIED UPON

11 This Motion relies on the arguments set forth herein and the Declarations of Trustee Mark
12 Calvert filed in support of this Motion.

13 IV. ARGUMENT

14 The Court should approve the Trustee's proposed sale to Medalcraft, free and clear of liens,
15 claims, interests, and encumbrances. Section 363(b) of the Bankruptcy Code provides that the
16 Trustee is authorized to sell assets outside the ordinary course of its business. While the text of the
17 Bankruptcy Code does not provide the standard for determining when it is appropriate for a court
18 to authorize the sale of property of the estate, courts often approve a proposed sale if such sale is
19 based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9
20 F.3d 389, 395 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

21 A. The Proposed Sale Meets the Requirements for a Sale Under 363(b).

22 Here, a sound business reason exists for the proposed sale to Medalcraft. Namely, the
23 objective of the Trustee's proposed sale is to maximize the proceeds of such sale for the benefit of
24 the bankruptcy estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores,*
25 *Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, "a primary objective of
26 the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res, Inc.*, 147 B.R. 650,

1 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of
2 bankruptcy rules and the [Debtor’s] duty with respect to such sales is to obtain the highest price or
3 greatest overall benefit possible for the estate.”) (alteration in original) (quoting *In re Atlanta*
4 *Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). The Trustee has closed the
5 Debtor’s operations and proposes the sale to Medalcraft with an aim to maximize the recovery for
6 the benefit of the estate.

7 The sale of assets outside of the ordinary course of business may be conducted by a public
8 sale, or a private sale under appropriate circumstances. See *In re Bakalis*, 220 B.R. 525, 531 (Bankr.
9 E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate property
10 under the Bankruptcy Code is conducted by a trustee, who has ample discretion . . . to conduct
11 public or private sales of estate property.”) (internal quotations and citation omitted). The proposed
12 sale to Medalcraft is the highest and best concrete offer that the Trustee has received to date and the
13 Trustee does not believe he could obtain a higher and better offer within a reasonable period of time.

14 For purposes of 11 U.S.C. § 363(m), a “good faith purchaser” is one who buys “in good
15 faith” and “for value.” *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992). “The
16 requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course
17 of the sale proceedings.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir.
18 1992) (quotations omitted). The “lack of good faith is shown by ‘fraud, collusion between the
19 purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other
20 bidders.’” *In re Ewell*, 958 F.2d at 281 (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*,
21 786 F.2d 900, 902 (9th Cir. 1985)); see also *In re Abbotts Dairies*, 788 F.2d at 147.

22 Here, the sale of the Unclaimed NWTM Dies are the result of arm’s length negotiations
23 between the Trustee and Medalcraft. It is not the result of any fraud or collusion between the Trustee
24 and Medalcraft or between the Debtor and Medalcraft. Medalcraft is therefore a good-faith buyer
25 within the meaning of 11 U.S.C. § 363(m). Furthermore, the proposed purchase price of \$75,000, is
26

1 fair and reasonable, and represents the highest and best concrete offer that the Trustee has received
2 for the Unclaimed NWTM Dies.

3 **B. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h).**

4 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
5 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. As noted
6 herein, the Trustee must vacate the Dayton premises where the Unclaimed NWTM Dies are located
7 by the end of July, only four days after the hearing on this Motion. Because it is necessary that the
8 sale close quickly and that the Trustee vacate the Dayton premises before the end of the month, the
9 Trustee asks that the Court waive the stay under Fed. R. Bankr. P. 6004(h).

10 **C. The Proposed Sale Satisfies the Requirements of 11 U.S.C. § 363(f).**

11 Pursuant to 11 U.S.C. § 363(f), a Trustee may sell property of the estate under 11 U.S.C. §
12 363(b) free and clear of any interest in such property of any entity other than the estate only if (1)
13 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such
14 entity consents; (3) such interest is a lien and the price at which the property is to be sold is greater
15 than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; *or* (5)
16 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of
17 such interest. 11 U.S.C. § 363(f) (emphasis added). Here, there are multiple bases upon which the
18 Court should authorize the Trustee sale of the Unclaimed NWTM Dies “free and clear.”

19 First and foremost, by the terms of the Die Settlement Order, no customers have the right or
20 ability to assert an interest in any of the Unclaimed NWTM Dies. Moreover, the Trustee has
21 provided notice of this Motion to the creditors and parties in interest as required by the Court, so that
22 if any entity claims a lien on the assets being sold, they will have an opportunity to object. If no such
23 creditor objects, the sale free and clear will be permitted under 11 U.S.C. § 363(f)(2). Moreover,
24 even if alleged secured creditors object to the sale, the sale free and clear is permissible under
25 11 U.S.C. § 363(f)(5) because there are legal and equitable proceedings in which a lienholder could
26 be compelled to accept a money satisfaction of such lien, including the disposition of collateral

1 under the default remedies provided in Washington's Uniform Commercial Code (Chapter 62A.9A
2 RCW) or in a receivership proceeding pursuant to RCW 7.60.260.

3 Additionally, Section 363(f) of the Bankruptcy Code is satisfied because any lienholder also
4 will be adequately protected by having its liens, if any, attach to the proceeds of the sale in the same
5 order of priority, with the same validity, force, and effect that such creditor had prior to such sale,
6 subject to any claims and defenses that the Trustee and the Debtor's bankruptcy estate may possess
7 with respect thereto. For all of these reasons, the proposed sale free and clear of liens should be
8 approved.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order in
11 the form proposed by the Trustee, granting the Motion, authorizing his proposed sale to Medalcraft,
12 and for such other relief as the Court deems appropriate under the circumstances.

13 DATED this 6th day of July, 2018.

14
15 K&L GATES LLP

16
17 By /s/ David C. Neu
18 Michael J. Gearin, WSBA #20982
19 David C. Neu, WSBA #33143
20 Brian T. Peterson, WSBA #42088
21 Attorneys for Mark Calvert, Chapter 11 Trustee
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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a senior practice assistant in the law firm of K&L Gates LLP, and on July 6, 2018, 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.

Also on July 6, 2018, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC
c/o Ross Hansen, Member
P.O. Box 2148
Auburn, WA 98071-2148

The Medalcraft Mint Inc.
2660 W. Mason Street
Green Bay, WI 54303

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 6th day of July, 2018 at Seattle, Washington.


Benita G. Gould

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