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The Honorable Christopher M. Alston
Chapter 13
Location: Seattle, Courtroom 7206
Hearing Date: June 17, 2016, 9:30 AM
Response Deadline: June 10, 2016

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

In re

NORTHWEST TERRITORIAL MINT,
LLC

Debtor.

Bankruptcy No. 16-11767-CMA

**DIANE ERDMANN'S NOTICE AND
MOTION TO DETERMINE
APPLICABILITY OF AUTOMATIC
STAY**

NOTICE

PLEASE TAKE NOTICE that Diane Erdmann has filed a motion seeking instruction from the Court regarding the applicability of the automatic stay to certain proceedings ongoing and anticipated in the Washington Superior Court in King County, Case No. 16-2-05611-3 (the "Motion").

PLEASE ALSO TAKE NOTICE that a hearing on the Motion will be held on Friday, June 17, 2016 at 9:30 AM before the Honorable Christopher M. Alston, United States Bankruptcy Judge, in Room 7206 of the United States Bankruptcy Court, 700 Stewart Street, Seattle, Washington 98101.

IF YOU OPPOSE THE MOTION, you must file a written response with the Court Clerk, serve two copies on the Judge's chambers and deliver copies to the undersigned no later than the response date, which is by June 10, 2016. If no response is timely filed and served, the

1 Court may, in its discretion, grant the Motion prior to the hearing, without further notice, and
2 strike the hearing.

3 MOTION

4 Creditor Diane Erdmann hereby seeks instruction from the Court regarding the
5 applicability of the automatic stay to certain proceedings ongoing and anticipated in the
6 Washington Superior Court in King County. Bradley Cohen and Cohen Asset Management,
7 Inc. (“Cohen”), creditors herein, are currently engaging in state-court supplemental proceedings
8 regarding a foreign judgment against Debtor Northwest Territorial Mint, LLC and its principal
9 Ross Hansen (the “State Court Proceeding”), and have seized assets in satisfaction of that
10 judgment that are set to be sold on June 15, 2016. Some of the seized property belongs to Ms.
11 Erdmann, and at least some belongs to the Debtor herein; some of that property is also part of
12 the same collection of precious metals (the “Erdmann Coins”) that the Trustee herein has
13 claimed are property of the bankruptcy estate, and about which the parties are currently set to
14 hold an evidentiary hearing on June 22, 2016 (the “Evidentiary Hearing”). In order to protect
15 her personal property from being sold, Ms. Erdmann is required to engage in the State Court
16 Proceeding and litigate the ownership of the property that was seized; with respect to the
17 Erdmann Coins, such litigation in the state court is duplicative with the Evidentiary Hearing, as
18 well as potential future litigation that may be brought by the Trustee to recover alleged
19 fraudulent conveyances. Ms. Erdmann seeks guidance regarding the applicability of the
20 bankruptcy stay to the State Court Proceeding, and a determination as to the proper forum for
21 litigation about the ownership of the Erdmann Coins and other seized property.

22 I. STATEMENT OF FACTS

23 A. Seizure of Property in the State Court Proceeding

24 On March 10, 2016, Cohen filed in the King County Superior Court a foreign judgment
25 against the Debtor, Ross Hansen, and Steven Earl Firebaugh. Since Debtor’s bankruptcy filing,
26 Cohen has continued efforts to collect on the judgment and to discover assets of the judgment

1 debtors for that purpose.

2 On April 27, 2016, the King County Sheriff appeared at the home of Ms. Erdmann and
3 Mr. Hansen (along with Cohen’s counsel) and seized personal property including coins and
4 bullion (including the remaining Erdmann Coins), computers, and paper records. It also appears
5 that some of the property that was seized may belong to the Debtor; the Trustee is aware of this
6 property, and has obtained an affidavit from an employee of the Debtor regarding it, which
7 affidavit was produced to Ms. Erdmann in discovery. Declaration of Daniel J. Bugbee
8 (“Bugbee Decl.”), Ex. A (Affidavit of Derrin Tallman).

9 On May 3, 2016, Cohen filed an *Ex Parte* motion seeking to have the Sheriff copy the
10 paper records and hard drives on the two computers seized by the Sheriff, and to have those
11 copies turned over to Cohen. The court entered Cohen’s proposed order on the same day. Ms.
12 Erdmann filed a motion to show cause why the order should not be vacated, as the computer
13 that belongs to her contains attorney-client privileged communications. The show cause hearing
14 was held on May 27, 2016, but Superior Court has yet to rule. The computers may also contain
15 records related to the Debtor.

16 On May 13, 2016, Cohen filed a second motion in the Superior Court for an order
17 authorizing the Sheriff to break and enter in aid of execution on the foreign judgment. In
18 support of that motion, Cohen re-filed a Writ of Execution previously entered on May 30, 2016
19 directing the Sheriff to seize personal property of Mr. Hansen and the Debtor. Cohen’s
20 proposed order on the second motion was entered on the same day (May 13), and authorizes the
21 Sheriff to break and enter into *any* buildings and enclosures that the Sheriff “deems necessary
22 to effectuate the March 30, 2016 writ of execution.” Bugbee Decl., Ex. B (Writ of Execution)
23 and Ex. C (Second B&E Order).

24 **B. Discovery Ongoing in the State Court Proceeding**

25 As part of the supplemental proceedings, Cohen issued a Subpoena and Notice of
26 Deposition to Diane Erdmann on April 26, 2016. Through these, Cohen sought to depose Ms.

1 Erdmann and to obtain a variety of documents from her. Most of the requested documents
2 pertain to Ms. Erdmann's personal finances; some, however, relate to the Debtor. In particular,
3 item L on the list of requested documents is "Any and all vault logs (personal or related to
4 Northwest Territorial Mint)"; item M is, "Any and all documents related to any deposits of any
5 value made on behalf of Ross Hansen or Northwest Territorial Mint, including with attorneys."
6 *See* Bugbee Decl., Ex. D (Subpoena).

7 In response to the Subpoena and Notice of Deposition, Ms. Erdmann filed a Motion for
8 Protective Order within the State Court Proceeding. Cohen's response to the motion made clear
9 that the discovery sought was intended to help Cohen discover assets of the Debtor, and assets
10 that the Debtor may have transferred to Ms. Erdmann, which assets may be subject to a
11 fraudulent transfer claim. *See* Bugbee Decl., Ex. E (Cohen's Response). On May 26, the
12 Superior Court denied the motion and ordered Ms. Erdmann to respond to all of Cohen's
13 discovery requests on or before June 13, 2016. In denying the motion, the Superior Court relied
14 in part on a declaration from Michael Gearin, counsel for Trustee Mark Calvert, stating that the
15 Trustee was aware of the discovery in the State Court Proceeding and did not object. Bugbee
16 Decl., Ex. F (Cohen Supplemental Brief); Ex. G (Gearin Declaration).

17 C. Anticipated State-Court Litigation Over Property Seized by the Sheriff

18 Much of the property seized by the Sheriff, including her computer, belonged to Ms.
19 Erdmann personally. Washington law provides a procedures for someone in Ms. Erdmann's
20 position to make a claim against property that has been levied upon.

21 Under RCW 6.19.030(1):

22 An adverse claimant to property levied on may demand and receive
23 the property from the sheriff who made the levy, upon making and
24 delivering to the sheriff an affidavit that the property is owned by
25 the claimant or that the claimant has a right to the immediate
26 possession thereof, stating on oath the value thereof, and giving to
the sheriff a bond, with sureties in double the value of such property.

Alternatively:

1 Without giving a bond, an adverse claimant who delivers to the
2 sheriff an affidavit as described in subsection (1) of this section may,
3 on motion made within seven days after delivering the affidavit,
4 appear in the court specified in RCW 6.19.050, with notice to the
5 sheriff and to the attorney of record for the levying creditor, if any,
6 otherwise to the levying creditor, and set a hearing at which the
7 probable validity of the claim stated in the affidavit can be
8 considered. If the court, after the hearing, finds that the claim is
9 probably valid, it shall direct the sheriff to release the claimed
10 property to the claimant; otherwise, the court shall direct the sheriff
11 to continue to hold the property unless the claimant gives a bond as
12 provided in subsection (1) of this section.

13 RCW 6.19.030(2). Under either scenario, the case “shall stand for trial” with the adverse
14 claimant being the plaintiff and the sheriff and levying creditor being the defendants. RCW
15 6.19.050.

16 A Sheriff’s sale of all the seized property (including the Erdmann Coins and any
17 property that belongs to the Debtor) is currently set for June 15, 2016 at 10:00 AM. *See* Bugbee
18 Decl., Ex. H (Sheriff’s Notice of Sale of Personal Property). In order for Ms. Erdmann to
19 protect her personal property from being sold, she must submit an affidavit pursuant to RCW
20 6.19.030 and initiate litigation under RCW 6.19.050 against Cohen and the King County
21 Sheriff. This litigation will be an attempt to regain control of Ms. Erdmann’s personal property
22 that was seized within the State Court Proceeding, and will require Ms. Erdmann to fully
23 litigate the question of who owns the remaining Erdmann Coins and the other property that was
24 seized by the King County Sheriff. While Ms. Erdmann specifically disclaims ownership of
25 any of the seized property that belongs to Debtor, and does not believe that the property she
26 seeks to control is property of Debtor’s bankruptcy estate, there are causes for concern.

First, Ms. Erdmann must identify what specific seized property belongs to her. Ms.
Erdmann, however, has not had an opportunity to inspect the property that was seized in order
to determine which belongs to her and which does not. The King County Sheriff’s office has
provided an inventory list and a series of color photographs, most of which are very blurry and

1 do not provide sufficient detail to identify individual items (e.g. some photos are of bags of
2 items, and individual items cannot be seen). *See* Bugbee Decl., Ex. I (inventory and photos). In
3 order to tailor the RCW 6.19.050 litigation to only that property that belongs to Ms. Erdmann,
4 she will have to engage in discovery about the property that was seized. Some of that property
5 belongs to Debtor, and some of it is disputed by the Trustee (e.g. the Erdmann Coins);
6 therefore, Ms. Erdmann will be forced to conduct discovery about property of the estate.

7 Second, recent events have made clear that the Trustee, Mark Calvert, believes the
8 estate may have claims to certain property that Ms. Erdmann asserts belongs to her, including
9 the Erdmann Coins. At the upcoming Evidentiary Hearing, Ms. Erdmann and the Trustee will
10 submit evidence regarding whether the Erdmann Coins constitute property of the bankruptcy
11 estate such that her efforts to recover the proceeds of the coins are stayed and the proceeds
12 must be paid over to the Trustee.

13 Ms. Erdmann maintains that both the Erdmann Coins and their proceeds, along with
14 other property seized through the State Court Proceeding, are her personal property and are not
15 property of the estate. However, the property that Ms. Erdmann will seek to recover through the
16 RCW 6.19.050 litigation does include some of the Erdmann Coins, about which there is an
17 ongoing dispute in this Court. To the extent the Trustee later seeks to recover from Ms.
18 Erdmann any of the property she claims within the State Court Proceeding, Ms. Erdmann does
19 not wish to also defend herself against a claim that she violated the stay by seeking to regain
20 possession of that property through litigation in the state court. In discussions about this very
21 issue, counsel for the Trustee has acknowledged the possibility that the Trustee could later
22 bring suit against Ms. Erdmann to recover this property; such a suit would require Ms.
23 Erdmann to re-litigate the very issues that would be adjudicated by the state court under RCW
24 6.19.050: the true ownership of the seized property. Bugbee Decl., ¶ 9.

1 **II. ISSUE PRESENTED**

2 Whether litigation over ownership of the seized property is within the exclusive
3 jurisdiction of the bankruptcy court, or alternatively, may take place in the state court without
4 violating the bankruptcy stay.

5 **III. ARGUMENT AND AUTHORITIES**

6 Ms. Erdmann believes that the discovery and asset seizures ongoing in the State Court
7 Proceeding may already be a violation of the bankruptcy stay. The stay prohibits the
8 continuation of a judicial proceeding against the debtor, and Trustee Calvert has indicated in a
9 filing to this Court that the State Court Proceeding is “stayed” as to the Debtor. ECF No. 227-3
10 (Schedule B3.7), line 7.12. “Discovery is considered part of the ‘continuation’ of a proceeding
11 and is, therefore, subject to the automatic stay.” *In re Manown*, 213 B.R. 411, 412 (Bankr. N.D.
12 Ga. 1997). Even discovery against Ms. Erdmann is a violation of the stay to the extent that
13 Cohen seeks information about the Debtor’s assets or “for the purpose of identifying possible
14 fraudulent conveyances.” *In re Richard B. Vance & Co.*, 289 B.R. 692, 697-98 (Bankr. C.D. Ill.
15 2003) (third-party subpoena seeking information about property of bankruptcy debtor for
16 purposes of formulating fraudulent conveyance claims was violation of stay).

17 Moreover, Cohen has actually seized assets belonging to the Debtor and is preparing to
18 have those assets sold at a June 15, 2016 Sheriff’s sale. Cohen has also recently obtained the
19 Second B&E Order granting authority for the same actions to occur again through additional
20 asset seizures. The language of the Second B&E Order expressly authorizes Cohen to execute
21 against assets of the Debtor.

22 That aside, however, Ms. Erdmann is concerned about whether she herself will be
23 considered to have violated the stay if she engages in discovery and litigation to further her
24 claim against the seized property within the State Court Proceeding. Because the seized
25 property includes property of the estate and other disputed property, Ms. Erdmann will have no
26 choice but to conduct discovery about property of the estate in order to determine which

1 property belongs to her and which does not, and then she must assert that she owns some of
2 that property to the exclusion of all others (including the Trustee).

3 Through the State Court Proceeding, Ms. Erdmann will be forced to litigate her rights to
4 the Erdmann Coins—which is entirely redundant with the litigation currently pending before
5 this Court. The outcome of the RCW 6.19.050 litigation will be a final adjudication of Ms.
6 Erdmann’s rights to the property seized by the Sheriff, and therefore of the rights of all others
7 (including, presumably, the Trustee) to the same property. Because some of that property does
8 belong to Debtor, the state court adjudication will necessarily require a determination that the
9 property awarded to Ms. Erdmann does not belong to Debtor. This will constitute an
10 adjudication of the rights of the Trustee to that property. Actions quieting title to property as
11 against the Debtor are violations of the automatic stay. *See, e.g., In re Chautauqua Capital*
12 *Corp.*, 135 B.R. 779, 782 (Bankr. W.D. Pa. 1992) (quiet title action was commenced in
13 violation of automatic stay and is void).

14 In addition, this Court has exclusive jurisdiction over all property of the Debtor as of the
15 commencement of the bankruptcy, which includes that portion of the seized property that
16 belongs to Debtor. *See* 28 U.S.C. § 1334(e)(1); *In re Gunter*, 410 B.R. 178, 181 (Bankr.
17 E.D.N.C. 2008) (“Section 1334(e)(1) of Title 28 of the United States Code confers exclusive
18 jurisdiction to the district court (which the district court transfers to the bankruptcy court
19 pursuant to a general order of reference) of all property of the estate and of all property of the
20 debtor as of commencement of the case.”). The issues that will be adjudicated through a
21 proceeding under RCW 6.19.050 are issues solely within the jurisdiction of the bankruptcy
22 court. Again, if Ms. Erdmann is forced to litigate in state court in order to prevent her personal
23 property from being sold by the Sheriff, she can later be subject to attack by the Trustee and be
24 forced to re-litigate the same issues again in this Court. Ms. Erdmann should not be required to
25 litigate the same issues twice in two separate forums. *See In re Cline*, 282 B.R. 686, 695 (W.D.
26 Wash. 2002) (citing *In re Williams*, 244 B.R. 858 (S.D.Ga.2000) with favor, and stating, “The

1 Court held that the function of Section 1334(e) (giving the district court in which the title 11
2 case is commenced exclusive jurisdiction over the debtor's property wherever located) is to
3 ensure that only one court administers the bankruptcy estate of a debtor.”) (emphasis added).
4 Further, there is a risk of getting conflicting decisions from the state court and this Court, which
5 can only be prevented by litigating in a single forum.

6 IV. CONCLUSION

7 Ms. Erdmann is caught in an impossible situation. On one hand, the bankruptcy stay
8 may apply (and Ms. Erdmann believes it does) to the State Court Proceeding; the Superior
9 Court, however, has ruled that it does not and has ordered Ms. Erdmann to comply with
10 discovery requests therein. If the stay applies and Ms. Erdmann continues participating in the
11 State Court Proceeding (including through litigation under RCW 6.19.050), she can later be
12 forced to spend the time and money re-litigating the same issues again in the bankruptcy court
13 when the Trustee brings a claim against the same property. Further, Ms. Erdmann is being
14 forced to conduct discovery and litigate the same factual and legal issues in both state and
15 federal court proceedings—the source and ownership of the Erdmann Coins (part of which
16 were liquidated to pay the advance fee deposit of Todd Tracy, and the rest of which were seized
17 by Cohen). It is unclear why the Trustee will claim in one proceeding that these coins are
18 property of the estate (hence the need for the pending Evidentiary Hearing), but not object to
19 the adjudication of the same issues in the State Court Proceeding.

20 On the other hand, the stay may not apply to the State Court Proceeding, meaning the
21 seized property must not be property of the Debtor’s estate and the Trustee should be
22 foreclosed from bringing a claim against Ms. Erdmann for that property in the future. The
23 Trustee’s counsel, however, has acknowledged that the Trustee might bring such a claim. Thus,
24 even if the stay does not apply, Ms. Erdmann may still be forced to litigate these issues twice –
25 once in the State Court Proceeding and again in the bankruptcy court – unless this Court sets
26

1 forth at the outset that the seized property is not within its jurisdiction and not subject to the
2 stay.

3 While Ms. Erdmann's believes it is proper to litigate the question of who owns the
4 seized property within the bankruptcy court, her primary objective is to litigate the issue only
5 once, whether in the bankruptcy court or the state court. If the issues are litigated twice, not
6 only will Ms. Erdmann incur double the costs and expenses, but there is a chance that the two
7 courts will reach opposite conclusions and leave Ms. Erdmann with a complete lack of clarity
8 as to her rights in the property.

9 In order to ensure that Ms. Erdmann will not run afoul of the bankruptcy stay, and will
10 not be forced to litigate the ownership of the seized property twice, she needs this Court's
11 instruction. Thus, Ms. Erdmann requests that the Court make a determination as to whether
12 litigation about the ownership of the seized property is within the exclusive jurisdiction of the
13 bankruptcy court, or alternatively, may take place in the State Court Proceeding without
14 violating the bankruptcy stay.

15
16 DATED this 27th day of May, 2016.

17 DBS | Law

18 By /s/ Daniel J. Bugbee

19 Daniel J. Bugbee, WSBA #42412

20 Dominique Scalia, WSBA#47313

21 Attorneys for Diane Erdmann
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify on May 27, 2016, I caused the foregoing document to be electronically
3 filed with the Clerk of the Court using the CM/ECF system which, pursuant to Local Rule 5005-
4 1(c)(1), causes parties who are registered ECF participants to be served by electronic means.

5 Dated this 2nd day of May, 2016, at Seattle, Washington.

6
7 DBS | Law

8
9 By /s/ Dominique R. Scalia
10 Dominique R. Scalia