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Honorable Christopher M. Alston
Chapter 11
Location: Seattle, Courtroom 7206
Hearing Date: June 22, 2016

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

11 In re:

Case No. 16-11767-CMA

12 NORTHWEST TERRITORIAL MINT, LLC,

13 TRUSTEE'S REPLY IN SUPPORT OF
14 TRIAL BRIEF FOR EVIDENTIARY
15 HEARING SCHEDULED FOR JUNE 22,
16 2016

17 **I. INTRODUCTION**

18 Mark Calvert, Chapter 11 Trustee (the "Trustee") for the Northwest Territorial Mint, LLC
19 ("NWTM"), in the above-captioned proceeding, by and through his attorneys, K&L Gates, LLP,
20 respectfully submits this reply in support of the Trustee's trial brief related to the June 22, 2016
21 evidentiary hearing.

22 **II. REPLY**

23 Ms. Erdmann contends that the funds at issue in this matter were originally derived from a
24 life insurance policy. The trial brief submitted by Ms. Erdmann, however, confirms that Ms.
25 Erdmann has absolutely no documentation supporting her bare allegation that the money she
26 obtained some twenty-three (23) years ago is the source of the retainer funds at issue. Ms. Erdmann
cannot provide documentation describing when or how she acquired the \$99,460 in gold coins and
the \$50,000 in cash that were used to pay the Debtor's retainer. As will be demonstrated by the

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1 Trustee at trial, Ms. Erdmann’s position is neither credible nor factually supportable.

2 Ms. Erdmann also argues in her trial brief that the funds at issue never ceased to be her
3 property and were never transferred to any other party. *See* Dkt. No. 410, p. 7. Assuming, *arguendo*,
4 that Ms. Erdmann had some interest in the retainer funds prior to May 31, 2016, her contention that
5 they remained her property once paid to the TTLG trust account is belied by the terms of the
6 engagement agreement between the Debtor and Mr. Tracy. Mr. Tracy’s signed engagement letter
7 with the Debtor specifically provides that TTLG “will not open a file until we have a signed
8 engagement letter and a retainer from you.” The engagement letter supports the position that even
9 the source of the retainer was funds from a third party, such funds were to be paid *on the Debtor’s*
10 *behalf* and that the Debtor thereafter retained an interest in such funds. Ms. Erdmann has provided
11 no written understanding, between her and TTLG or her and the Debtor, demonstrating that the
12 funds she provided to Mr. Tracy were to remain her own, and refunded to her in the event that the
13 retainer was not earned by TTLG.

14 Ms. Erdmann erroneously states that the Trustee bears the burden of proving that the funds at
15 issue belong to the bankruptcy estate. As set forth in the Trustee’s Trial Brief (Dkt. No. 411), the
16 Court has already recognized, at the hearing on May 6, 2016, that Ms. Erdmann has demanded
17 turnover of the funds and put into issue the source of the funds with which the retainer was paid. As
18 such, Ms. Erdmann needs to provide the evidence “prov[ing] her claims.” The funds at issue are
19 presently held in Mr. Tracy’s trust account established for *the Debtor*. Ms. Erdmann, who was not a
20 client of Mr. Tracy, has asserted a right to the funds and demanded that they be returned to her as
21 opposed to the Debtor. As already indicated by this Court, Ms. Erdmann has the burden of proof at
22 trial. *See also In re Wheeler*, 252 B.R. 420, 425 (W.D. Mich. 2000) (stating that it is well established
23 that the burden of proof is on party seeking turnover of property of estate).

24 According to Ms. Erdmann’s trial brief, the filing by Ms. Erdmann of a bar complaint cannot
25 violate the stay because “a bar complaint to a regulatory agency is a privileged action that comes
26

1 with civil immunity.” Dkt. No. 410, p. 10.¹ The rule cited by Ms. Erdmann, ELC 2.12, which
2 applies to “communications” does not apply in this case. ELC 2.12 provides, in relevant part, that
3 “no lawsuit predicated [on communications to the WSBA] may be instituted against any grievant . . .
4 .” Here, the Trustee has not filed a lawsuit against Ms. Erdmann based upon communications she has
5 made to the WSBA. Rather, the Trustee asserts that Ms. Erdmann violated the automatic stay
6 provisions by virtue of her filing of the complaint with the WSBA. The act of filing the complaint
7 itself was an attempt to exercise control over the property by creating leverage against Mr. Tracy and
8 pressuring him to release the funds at issue. Additionally, Ms. Erdmann completely ignores the fact
9 that ELC 2.12 is irrelevant to Mr. Hansen. Mr. Hansen demanded to Mr. Tracy, directly, that he
10 release the retainer funds to Ms. Erdmann. Mr. Hansen even verbally threatened Mr. Tracy, stating
11 that he would make Mr. Tracey’s life “a living hell.” Mr. Hansen’s actions and threats are not
12 protected by ELC 2.12. For all of these reasons, Ms. Erdmann’s arguments regarding ELC 2.12
13 should be rejected by this Court.

14 III. CONCLUSION

15 The evidence at trial will demonstrate that Diane Erdmann and Ross Hansen looted assets
16 from NWTM prior to the bankruptcy, and that such assets were the ultimate source of the retainer
17 funds that Ms. Erdmann has demanded that Mr. Tracy turnover.

18 DATED this 20th day of June, 2016.

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20 K&L GATES LLP

21 By /s/ David C. Neu
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26 ¹ The Trustee notes that Ms. Erdmann’s bar complaint against Mr. Tracy was dismissed on June 17, 2016.