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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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IN RE: )  
NORTHWEST TERRITORIAL MINT, LLC, )  
Debtor. ) 16-11767-CMA

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TRANSCRIPT OF THE DIGITALLY RECORDED PROCEEDINGS  
BEFORE THE HONORABLE CHRISTOPHER M. ALSTON  
AUGUST 5, 2016  
(RULING ONLY)

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APPEARANCES

FOR THE CHAPTER 11 TRUSTEE:

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1 SEATTLE, WASHINGTON; AUGUST 5, 2016

2 --oOo--

3

4 THE COURT: All right. The Court --

5 MR. POWERS: May I have a couple of minutes,  
6 Your Honor? Or is that --

7 THE COURT: Well, I'm ready to rule.

8 MR. POWERS: Okay.

9 THE COURT: And the reason I don't need to hear  
10 from you any further, Mr. Powers, is I'm largely denying the  
11 motion.

12 A lot of concerning allegations have been raised  
13 by the trustee, and I do know the trustee took this seriously.  
14 I think everyone is taking this matter seriously. It's a  
15 serious matter. And it is an allegation that there has been,  
16 essentially, contemptuous action by Mr. Hansen.

17 We'll start off with the law here. 362(a)(3):  
18 any act to obtain possession of property of the estate or of  
19 property from the estate or to exercise control over property  
20 of the estate.

21 I did look at that Ninth Circuit case the  
22 trustee cited, Zumbun. I looked at that over the lunch hour.  
23 It's a very short decision that just basically recited the  
24 statute. That was involving an effort by someone to actually  
25 take some asset of the estate and was found to be in

1 violation. And one of the arguments the creditor raised on  
2 appeal was that the debtor didn't have any interest in the  
3 property. And the Court just quickly said, Well, that's  
4 meaningless because of this language: "property from the  
5 estate."

6 In fact, it was property of the estate in that  
7 case, so it's not applicable here. And I don't believe that  
8 this provision means that someone who was the former CEO can't  
9 come back to the premises and say, I'd like to get my stuff  
10 back.

11 Now, there is differing testimony as to whether  
12 he lied, whether he used artifice, whether he committed some  
13 sort of improper act in an attempt to get documents. But I  
14 don't believe that 362(a)(3) prohibits the basic concept of  
15 trying to get your stuff back from the estate if it's not  
16 property of the estate.

17 As the trustee's brief notes, Section 362(a)  
18 automatically stays a broad range of collection and  
19 enforcement actions against a debtor and its property. That's  
20 In re Johnston, 321 B.R. 262, 275 (D. Ariz. 2005). And I  
21 think that is why the trustee's motion largely cannot be  
22 granted today. Because I'm not seeing actions to collect or  
23 enforce. That's what we think of when we think about the  
24 automatic stay.

25 In order for a party to commit a willful stay

1 violation, the party must know of the automatic stay. Well,  
2 that's the case here. No problem. And its actions must be  
3 willful under *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210  
4 (9th Cir. 2002).

5           The Court's power to impose sanctions under  
6 Section 105 is a civil contempt power. That's from *In re*  
7 *Dyer*, 322 F.2d 1178 (9th Cir. 2003). Under *Dyer*, the Court is  
8 only able to award compensatory damages because Section 105(a)  
9 limits the Court to remedies necessary to enforce the  
10 Bankruptcy Code. The party seeking sanctions has the burden  
11 to show a violation by clear and convincing evidence. *FTC v.*  
12 *Affordable Media, LLC*, 179 F.3d 1228 (9th Cir. 1999).

13           The trustee relies on the *Morgan Guaranty Trust*  
14 *Company of New York v. American Savings & Loan Association*  
15 case. That's 804 F.2d 1487, 1492, Footnote 4 (9th Cir. 1986),  
16 which stated that Courts hold that the automatic stay may be  
17 violated by communications containing threats or harassment,  
18 including by, for instance, giving notice of intent to  
19 terminate a lease. But in that case and those other cases,  
20 the landlords were threatening to terminate a lease unless the  
21 debtor/tenant pays. This is, again, an action to collect on a  
22 debt that is owed. That is the type of threat we're talking  
23 about here.

24           So going through the specific allegations, the  
25 first allegation is that Ms. Krum was told to destroy

1 machinery of the estate and delete computer files.

2           Now, we have conflicting testimony. And to get  
3 to the bottom of it, I would need to have an evidentiary  
4 hearing. But the Court concludes that even if it accepted the  
5 testimony of Ms. Krum, this does not fall within the category  
6 of a violation under Section 362(a)(3). Again, going back to  
7 the efforts to collect and enforce, we don't have that here.  
8 There may be some other conduct that is in violation of the  
9 code or the rules. But this Court does not find it to be a  
10 violation of the automatic stay. It's certainly not clear and  
11 convincing evidence of an attempt to violate the automatic  
12 stay.

13           With respect to the six boxes that were shipped  
14 to Dayton, Nevada, again, the trustee says there was an  
15 attempt to assert control over the six boxes. And, again,  
16 conflicting testimony. But the reality is that the boxes went  
17 from one facility controlled by the trustee to another  
18 facility controlled by the trustee. I don't find clear and  
19 convincing evidence of a real attempt to obtain possession or  
20 control of assets of the estate.

21           If that was the intent, it was a pretty poor  
22 job. Because he should have shipped them off to his home or  
23 some other place, like the principals did in the Cinevision  
24 case. And that's where the principles of the debtor actually  
25 diverted accounts receivable to another entity, away from the

1 debtor. A clear violation of the automatic stay. That's not  
2 the situation we have here.

3           Next is Mr. Hansen's alleged interference with  
4 the sale of the assets in Texas. I can't get to a violation  
5 of the stay based upon the evidence here.

6           First, with respect to Mr. Hansen's assertions  
7 that the property that was being sold actually belonged to  
8 Medallic Art, he may be lying. I don't know. I'm not making  
9 that determination today. But parties have a right to assert  
10 their interests in property, and that can't be a violation of  
11 the stay. Unlike what Ms. Erdmann did with respect to the  
12 retainer -- and I'll come to that in a second -- is that she  
13 didn't seek a determination. She actually went out and tried  
14 to get the retainer or the deposit funds without getting  
15 permission or a ruling from this Court first.

16           Mr. Hansen came in saying, Hey, that stuff  
17 belongs to Medallic. He may not be telling the truth, but  
18 that's for the Court to decide in some other proceeding. But  
19 the fact that he may have been lying can't be a violation of  
20 the automatic stay.

21           Similarly, his attempt to acquire the assets  
22 through what the trustee would say is artifice, or making  
23 false statements on an ability to actually close on a sale,  
24 also cannot be a violation of the stay. I think if there were  
25 lies made in connection with that process made to this Court,

1 the trustee can bring a motion or report it to the U.S.  
2 Attorney or take some sort of action if he thinks there have  
3 been lies that have been made.

4 But if I start finding that someone who attempts  
5 to buy property through a 363 sale either doesn't have all the  
6 money or they've made some statements that don't turn out to  
7 be true, it could mean that that would chill the 363 process.  
8 Lying isn't a violation of a stay. So even if I were to  
9 accept everything the trustee advances, I would not find a  
10 violation of 362(a)(3).

11 With respect to the attempts to obtain records  
12 that belong to Medallic -- and I've kind of touched on that  
13 already -- Mr. Hansen testified he was just trying to get his  
14 documents back. There's conflicting testimony as to whether  
15 or not he was asking politely or falsely making statements to  
16 obtain the documents. But in either case, it appears to be  
17 not in dispute that he was seeking records belonging to  
18 Medallic.

19 Now, who knows what he might have done, should  
20 someone let him have access to the records at the company. I  
21 understand the trustee's concern. But that's not clear and  
22 convincing evidence that he was attempting to get control over  
23 assets of the estate. And as I said earlier, coming back to  
24 the debtor's property and saying, I want my stuff back, I  
25 don't see how that could constitute a violation of the stay.



1 I'll turn to the retainer last. But let's turn  
2 to the alleged efforts to convince employees to walk out  
3 without notice or leave the employ of the debtor, essentially  
4 to harm the efforts to reorganize.

5 Again, there's conflicting testimony. If it is  
6 true, it's very troubling. But I don't see how that's an  
7 effort to get control over assets of the estate. I don't  
8 accept -- and I don't know of any case citing where the  
9 employer-employee relationship with a debtor is an asset over  
10 which someone can assert control.

11 And I truly am concerned that if I were to find  
12 that someone talking to employees about leaving, to come to  
13 work or for any other reason, would prevent someone from ever  
14 contacting employees to -- and these are folks that might want  
15 to talk to prospective employers. I don't think that's the  
16 purpose of the stay. And I think it would lead to Pandora's  
17 Box that would result in harm to employees of Chapter 11  
18 debtors.

19 So even if Mr. Hansen was saying "leave" in  
20 order to harm the company, that may be actionable under  
21 Section 521; but I don't see it as a violation of the stay.

22 As to the retainer with the Tracy Law Group, as  
23 I said earlier, I made extensive findings after a two-day  
24 evidentiary hearing. Mr. Hansen was not a party to that  
25 proceeding, so I'm not sure that those findings are binding on

1 him. I can rule today that even if I found that he violated  
2 the stay by attempting to obtain the deposit proceeds from  
3 Mr. Tracy, there's still no harm to the estate. As I said in  
4 the ruling, the estate would not be entitled to any damages.  
5 I'm not seeing any put forth today.

6 So I can rule that there is a question of fact  
7 that would require an evidentiary hearing if the trustee  
8 wanted to pursue an order for contempt with respect to the  
9 retainer. But I'm going to rule that the estate is not going  
10 to recover anything. So that doesn't seem like a very good  
11 exercise, but that would be -- I suppose I can leave it at  
12 that. I'm not denying the motion as to the Tracy retainer.  
13 But I am denying any request for compensatory damages with  
14 respect to that alleged violation.

15 The bottom line is that this has been a very  
16 expensive process. I don't have to tell the parties that.  
17 But it appears that the behavior that has caused Mr. Calvert  
18 consternation has ceased. And this motion is to send a  
19 message. I can send the message that if these allegations are  
20 true, they're terrible. And Mr. Hansen understands that if  
21 these things are true, it's not good. Maybe criminal. I  
22 don't know. But the reality is, even if I find them all true,  
23 I can't find them to be a violation of the automatic stay.

24 So I'm denying the motion. To be perfectly  
25 clear, I am not condoning any actions. I'm not finding that

1 what Mr. Hansen said is true. I'm not accepting his version  
2 of the facts. They may not be. And I'm not inviting the  
3 trustee to bring an action under 521. Let me also be clear  
4 that it appears that the conduct that has caused all of this  
5 expense hasn't happened for a long time. And I would hope  
6 that it's done. If for no other reason, if Mr. Hansen engaged  
7 in anything close to this conduct, he knows he's going to  
8 incur a whole bunch of legal fees again.

9           So I'm denying the motion, except with respect  
10 to whether or not Mr. Hansen is in contempt for violating the  
11 stay with respect to the retainer, but only as to the issue of  
12 whether or not he is in contempt, not as to the issue of  
13 whether the estate is entitled to any compensatory damages.

14           I will prepare a form of order.

15           Is there anything further, Mr. Gearin?

16           MR. GEARIN: I don't think so, Your Honor.

17           THE COURT: All right. Thank you.

18           Mr. Powers, anything further?

19           MR. POWERS: Nothing further, Your Honor.

20           THE COURT: All right. I will prepare that  
21 order. I'll try to get that out next week. Thank you all.

22           MR. POWERS: Thank you very much for your time,  
23 Your Honor.

24           THE COURT: Thank you.

25           (The proceedings were concluded.)

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3 CERTIFICATE

4 I, Shari L. Wheeler, court reporter and court-approved  
5 transcriber, certify that the foregoing is a correct  
6 transcript from the official electronic sound recording of the  
7 proceedings in the above-entitled matter. Some editing  
8 changes may have been made at the request of the Court.

9 These pages constitute the original or a copy of the  
10 original transcript of the proceedings, to the best of my  
11 ability.

12  
13 Signed and dated this 23rd day of August, 2016.

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15  
16 by /s/ Shari L. Wheeler

17 SHARI L. WHEELER, CCR NO. 2396  
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