

1 Michael J. Gearin, WSBA # 20982
David C. Neu, WSBA # 33143
2 Brian T. Peterson, WSBA # 42088
K&L GATES LLP
3 925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
4 (206) 623-7580

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: Friday, September 16, 2016
Hearing Time: 9:30 a.m.
Response Date: September 9, 2016

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

9 In re:
10 NORTHWEST TERRITORIAL MINT, LLC,
11 Debtor.

Case No. 16-11767-CMA

**TRUSTEE'S REPLY TO RESPONSE TO
MOTION FOR STAY PENDING APPEAL
REGARDING BANKRUPTCY COURT'S
MEMORANDUM OPINION AND
FURTHER ORDER ON MOTION FOR
AUTHORITY TO WITHDRAW AS
ATTORNEY FOR DEBTOR**

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15 Mark Calvert, as Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC
16 ("NWTM") replies to Diane Erdmann's Response to Motion for Stay Pending Appeal Regarding
17 Bankruptcy Court's Memorandum Opinion and Further Order on Motion for Authority to Withdraw
18 as Attorney for Debtor (the "Response") as follows:

19 **I. REPLY**

20 **A. The Trustee is Entitled to a Stay as a Matter of Right Under Rule 7062.**

21 The primary issue addressed at the evidentiary hearing held by this Court on June 22 and July
22 6, 2016 (the "Evidentiary Hearing") was the estate's interest in the Deposit Funds.¹ Bankruptcy
23 Rule 7001 is clear in its mandate that a proceeding to determine the extent of an interest in property
24

25 ¹ Unless otherwise defined, the capitalized terms in this Reply maintain the definitions set-forth in
26 the Trustee's Motion for Stay Pending Appeal Regarding Bankruptcy Court's Memorandum
Opinion and Further Order on Motion for Authority to Withdraw as Attorney for Debtor.

1 “[is an] adversary proceeding.” Fed. R. Bankr. P. 7001. Diane Erdmann received all of the
2 benefits that she would have received in an adversary proceeding.² The parties were provided with
3 ample opportunity to conduct discovery, and the Court required formal briefing, as it would have in
4 any adversary proceeding. But for the filing of a complaint, the Court followed essentially the same
5 procedure afforded by an adversary proceeding, and its treatment of the matter as a contested matter
6 was harmless to Diane Erdmann.³ It would not be harmless to the Trustee, however, to find that the
7 Trustee is not entitled to a stay as a matter of right based on a procedural technicality. By express
8 rule, Rule of Bankruptcy Procedure 7062 applies to matters to determine an interest in property.
9 Therefore, the Trustee is entitled to a stay as a matter of right, and as set-forth in the Motion, the
10 Court should set a minimal supersedeas bond. Alternatively, as set-forth in the Motion, the Court
11 should exercise its explicit discretion and deem Rule 7062 applicable. Under Rule of Bankruptcy
12 Procedure 9014(c), the Court may make rule 7062 applicable to contested matters.

13 B. The Trustee is Entitled to a Discretionary Stay Under Rule 8007.

14 For the reasons set-forth in the Motion, even if the Court were to determine that Rule 7062
15 does not apply, and decided not to exercise its discretion under Rule 9014 as discussed above, the
16 Court should stay the Order for the reasons set-forth in the Trustee’s opening motion. In the interest
17 of brevity, the Trustee will not repeat his arguments in this Reply. Suffice it to say, he does not
18 agree with Ms. Erdmann’s characterization of his likelihood on appeal, or the balance of harms. The
19 fact that Ms. Erdmann will incur litigation costs on appeal is not a factor that outweighs the harm
20 that the estate will suffer if a stay is not granted. Ms. Erdmann has represented that the Deposit
21 Funds represent a substantial portion of her assets. Diane Erdmann’s Reply in Support of Motion to

22 _____
23 ² Ms. Erdmann complains that she did not receive the benefit of notice pleading. The Trustee’s
24 filings in response to Tracy Law Group’s Motion for Authority to Withdraw as Attorney for Debtor
25 and Diane Erdmann’s objection thereto explicitly set-out the Trustee’s basis for a claim of an interest
26 in the Deposit Funds. Ms. Erdmann received, from these filings, far more information than would be
required in standard notice pleadings.

³ *In re Copper King, Inc.*, 918 F.2d 1404, 1406 (9th Cir BAP 1990) (finding treatment of a matter
governed by Rule 7001 to be harmless error).

1 Determine Applicability of Automatic Stay [Dkt. No. 408] at p.2. It is a near certainty that Ms.
2 Erdmann will immediately spend or disburse the Deposit Funds if a stay is not granted, leaving the
3 Trustee without recourse if he prevails on appeal. Moreover, the Trustee has commenced an
4 adversary proceeding, Adv. Pro. No. 16-01217, asserting causes of action against Ms. Erdmann to
5 avoid fraudulent transfers and for imposition of a constructive trust. The Trustee has also filed a
6 motion for a preliminary writ of attachment, seeking attachment of, among other things, Ms.
7 Erdmann's interest in the Deposit Funds. The estate will suffer harm if the Deposit Funds are
8 released before such writ issues, in that Ms. Erdmann will likely disburse the Deposit Funds in the
9 interim.

10 **II. CONCLUSION**

11 For the foregoing reasons, the Trustee respectfully renews his that the Memorandum Opinion
12 and Further Order on Motion for Authority to Withdraw as Attorney for Debtor be stayed pending
13 appeal.

14 Dated this 13th day of September, 2016.

15 K&L GATES LLP

16 By /s/ David C. Neu

17 Michael J. Gearin, WSBA #20982

18 David C. Neu, WSBA #33143

19 Brian T. Peterson, WSBA #42088

20 Attorneys for Mark Calvert, Chapter 11 Trustee

CERTIFICATE OF SERVICE

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The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on September 13, 2016, 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 September 13, 2016, she caused the foregoing document to be mailed to the Debtor at the address listed below:

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

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 13th day of September, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans