

Honorable Christopher M. Alston
Chapter 11

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

DIANE ERDMANN'S RESPONSE
AND OBJECTION TO MOTION
FOR 2004 EXAMINATION AND
SUBPEONA

Relief Requested: Dianne Erdmann requests that the application for BR 2004 examination and subpoena of her personal financial information be denied; and, that shortened time for hearing be denied.

Background: Dianne Erdmann is the named Defendant in a now pending adversary proceeding entitled *Calvert vs Erdman*, Adv. Case number 16-01217-CMA. Trial in that matter is scheduled for January 30, 2018, with a discovery cut-off date of December 29, 2017.

Ms. Erdmann has been subjected to a deposition examination on June 2, 2016, by the Trustee's counsel. The deposition lasted approximately four hours and fifteen minutes. The next day, she was deposed in the case entitled *Cohen vs. Ross Hansen, et. al.*, King County Superior Court case number 12-2-05611-3.

DIANE ERDMANN'S RESPONSE AND OBJECTION TO
EX PARTE MOTION FOR 2004 EXAMINATION – Page 1

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1 Further, she has testified and was cross-examined in a bankruptcy evidentiary hearing
2 in these proceedings on June 22, 2016, and as a rebuttal witness on July 6, 2016.

3 Now, the Trustee desires permission to require her to appear and ‘give testimony
4 regarding [her] assets, including precious metals which she has purchased, sold or possessed
5 and to permit the inspection of [her assets].’¹ The Trustee requests permission to subpoena
6 personal bank statements, purchase, sale source of funds, and inspect her assets possessed by
7 her.²

8 Ms. Erdmann has sought alternative counsel to represent her, since notice of her
9 lawyer’s motion to withdraw. She has recently retained the undersigned counsel to assist her
10 in the pending adversary proceeding. However, counsel is unavailable to appear on her behalf
11 in any hearings through June 30, 2017.

12 **Support:** This Response is supported by the subjoined Declaration of Diane Erdmann and the
13 Declaration of Thomas P. Quinlan filed herewith.

14 **Legal Argument:** Ms. Erdmann objects to the Court authorizing a BR 2004 examination
15 and subpoena of her personal financial records and property.

16 1. Under BR 2004, the Court can authorize the examination of any person concerning the
17 acts, conduct, and financial condition of the Debtor. There is no authority to examine a non-
18 debtor’s finances, financial records or assets, much less the broad brush stroke encompassed
19 in the Trustee’s far reaching application.

20 2. The Court has the discretion to deny the application, or alternatively to limited the
21 scope of questions to be asked, *See, In re Mantolesky*, 14 BR 973 (MA 1981); and the number
22

23 ¹ DKT No. 1052, page. 5

² DKT. No. 1052, page 5

1 of documents and things that be produced pursuant to subpoena. *Freeman vs. Seligson*, 405
2 F.2d 1326 (DC Cir. 1968). In no event should the Trustee be allowed to revisit or re-examine
3 Ms. Erdmann on the subject matters addressed in her pervious deposition. The examination
4 of a non-debtor into the business affairs or dealings with a debtor should not delve into the
5 private affairs of a witness. *Mantolesky*, supra at 976.

6 3. When there is collateral litigation pending in the bankruptcy case, it is not appropriate
7 to utilize BR 2004 examination as a procedure to circumvent the discovery rights afforded by
8 the applicable rules of civil procedure, i.e., notice of deposition, 30 days to respond to request
9 for production, protective order, etc. *U.S. vs Jackson*, 836 F.2d 324 (7th Cir. 1987). A BR
10 2004 examination is not appropriate when there is a pending adversary proceeding involving
11 the witness. *In re Dinubilo*, 177 BR 932 (ED CA 1993).

12 4. There is no exigency for shortened time on the appointed date given the case adversary
13 scheduling order. Should the Court proceed, counsel for Ms. Erdmann will not be present for
14 argument.

15 5. If the Trustee believes that Ms. Erdmann testimony is not consistent, the proper forum
16 is in the adversary-where he is free at trial to use the purported inconsistencies to impeach or
17 challenge her. She is requesting relief from the barrage of litigation she is facing.

18 **Conclusion:** The Bankruptcy Court should deny the application for BR 2004 examination of
19 Dianne Erdmann, and authorization of subpoena. If the Court does grant the application and
20 allow such examination, it should limit its scope of subject matter and time. The date of
21 examination should be determined upon mutually agreeable dates within a reasonable window
22 of time.

1 Dated this 15th day of June, 2017.

2 SMITH ALLING, P.S.

3 /s/ Thomas P. Quinlan
4 Thomas P. Quinlan WSBA#21325
5 Attorney for Dianne Erdmann

6 **DECLARATION**

7 Diane Erdmann, being first duly sworn upon oath deposes and states:

- 8 1. I am over eighteen years old and state the following based upon my personal
9 knowledge.
- 10 2. On June 2, 2016, I was subjected to a deposition examination by the Trustee's counsel.
11 The deposition lasted approximately four hours and fifteen minutes. I was asked many
12 repetitive questions about my personal finances and assets in detail. Attached as Exhibit A is a
13 copy of the transcript. Nowhere do I say I do not have assets.
- 14 3. The following day, I was deposed in the case entitled *Cohen vs. Ross Hansen, et. al.*,
15 King County Superior Court case number 12-2-05611-3. In that instance, I was asked
16 numerous questions about Ross Hansen and his assets, as well as mine. Attached as Exhibit B
17 is a copy of the transcript. Nowhere do I say I do not have assets.
- 18 4. On June 22, 2016, I testified and was cross-examined in a bankruptcy evidentiary
19 hearing in these proceedings, and as a rebuttal witness on July 6, 2016. After a long, detailed,
20 and very expensive evidentiary hearing, I prevailed over the Trustee's allegations. The
21 Bankruptcy Court's Judgement has been affirmed. Now, this application come on the heels of
22 the District Court's decision in my favor.

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DIANE ERDMANN'S RESPONSE AND OBJECTION TO
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1 5. Now, the Trustee desires permission to require me to appear and 'give testimony
2 regarding my assets, including precious metals which I have purchased, sold or possessed and
3 to permit the inspection of the same. The Trustee also requests permission to subpoena my
4 personal bank statements, purchases, sale source of funds, and assets possessed by me.

5 6. I sought alternative counsel to represent me, since notice of my previous lawyer's
6 motion to withdraw. I have had a challenge doing so in Seattle, King County area given
7 conflicts of lawyers and the apparent complexities of the bankruptcy. I recently retained
8 attorney Thomas P. Quinlan to assist me in the pending adversary proceeding. Unfortunately,
9 Mr. Quinlan is unavailable to appear on my behalf in any hearings through June 30, 2017 due
10 to an unavoidable conflict on his calendar.

11 I state the foregoing under threat of perjury under the laws of the United States of
12 America.

13 Signed this 16th day of June, 2017 at Auburn, Washington.

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15 /s/Diane Erdmann
16 Diane Erdmann
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