

The Honorable Christopher M. Alston
Chapter 11
Hearing Date: June 23, 2017
Hearing Time: 9:30 a.m.
Hearing Location: Seattle – Room 7206
Response Date: June 21, 2017

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

OBJECTION OF ROSS HANSEN TO
MOTION FOR RULE 2004 EXAM

Ross Hansen objects to the Trustee’s Motion for Rule 2004 Examination. The Trustee’s request to start yet another round of litigation and discovery with Mr. Hansen and Ms. Erdmann fails to disclose the discovery already taken from Mr. Hansen and third parties. While the Court has wide latitude to authorize examinations under Rule 2004, the right to conduct Rule 2004 examinations is not unlimited, particularly where, as here, the request appears to have as much to do with litigation tactics as anything else. The Court should deny the Trustee’s latest request.

FACTS

This case was filed on April 1, 2016. Mr. Calvert was appointed as Chapter 11 Trustee on April 11, 2016. (ECF 45)

On April 25, 2016, the Trustee filed *ex parte* motions for broad Rule 2004 Examinations of Mr. Hansen, Ms. Erdmann, and Medallic Art Corporation. (ECF Nos. 109, 110, and 111) Orders granting the motions were entered by the Court. (ECF Nos. 132, 133, and 134) In May

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1 2016, the Trustee moved to sell assets located in Tomball, Texas. (ECF 200) Medallic Art
2 Corporation objected and Mr. Hansen sought to participate in the auction. He was ultimately
3 unsuccessful and the Court approved a sale to a third party. (ECF 374)

4 However, as part of that process, the Trustee learned that third parties provided or
5 proposed to provide funding to Mr. Hansen for the payment of legal fees and to finance the
6 purchase of the Tomball assets. (ECF 323, 324 and 325) The Trustee sought Rule 2004
7 Examinations of two of those parties, Mr. Parish and Olympic Trading Company. The Trustee
8 claimed that:

9 “The Trustee deems it essential to examine Michael Parish and records and documents
10 in his possession, custody or control as described in Exhibit A pursuant to Bankruptcy
11 Rule 2004, relating to the acts, conduct, or property, to the liabilities and financial
12 condition of NWTM, and to matters which may affect the administration of NWTM’s
estate.”).

13 (ECF 323 at 2) The Court granted the Trustee’s motion. (ECF 383) Presumably, if the Trustee
14 had discovered earth shaking facts from Mr. Parish, the Court would have heard about it.

15 The Trustee then brought a motion seeking to hold Mr. Hansen in contempt for alleged
16 violations of the automatic stay. (*See* ECF 460, 461) Extensive proceedings followed,
17 including depositions of Mr. Hansen and others. (*See, e.g.*, ECF 571, 572) The Trustee’s
18 motion was ultimately unsuccessful. (ECF 595)

19 Shortly after the Court denied the Trustee’s motion to hold Mr. Hansen in contempt, he
20 filed another motion, this time seeking to hold Mr. Hansen in contempt for the alleged failure to
21 comply with the April 25 2004 Order. (ECF 132) In a hearing on June 3, 2016, Mr. Hansen
22 had agreed to produce records in his possession, although it was clear that he did not have
23 much in his possession. Since the Trustee prohibited Mr. Hansen from going to Northwest
24 Territorial Mint’s offices, and his rental home had been the subject of a break and enter order
25 obtained by Mr. Cohen, Mr. Hansen plainly did not have much that he could produce.

26 Subsequent to the June 3 hearing, Mr. Hansen produced responsive records that were in his
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1 possession. Continuing the gambit that the Trustee had earlier used, the Trustee again
2 demanded that Mr. Hansen produce records that Mr. Hansen did not have. The Trustee initially
3 denied that records he demanded that Mr. Hansen produce were in the Trustee's possession.
4 The Trustee ultimately had to admit he did have records. The Trustee then similarly claimed
5 that he did not have certain long-closed brokerage account records, but later admitted that he
6 had some of them. (See ECF 644 and 645) The Trustee ultimately dropped his motion.

7 The current Rule 2004 motion covers some of the same issues in the original motion.
8 The Trustee's current motion failed to disclose, let alone describe, the testimony and documents
9 previously provided by Mr. Hansen and others. The Trustee's motion was filed at about the
10 same time the District Court denied the Trustee's appeal of this Court's decision in the matter
11 related to the retainer paid by Ms. Erdmann to Mr. Tracy. (ECF 1051) Under Judge Lasnik's
12 decision, Ms. Erdmann is entitled to the return of funds paid to Mr. Tracy.

13 DISCUSSION

14 Although Rule 2004 broadly authorizes discovery, "[t]here are limits to the scope of a
15 2004 examination. It may not be used "'for purposes of abuse or harassment' and it 'cannot
16 stray into matters which are not relevant to the basic inquiry.'" 9-2004 Collier on Bankruptcy ¶
17 2004.02[1] (2016) (citations omitted); see also *Farris-Ellison*, 2015 WL 5306600, at *3 (a Rule
18 2004 examination must be both "relevant and reasonable" and "may not be used to annoy,
19 embarrass or oppress the party being examined."). Moreover, "third parties subject to
20 examination pursuant to Rule 2004 are only [] those persons possessing knowledge of the
21 debtor's acts, conduct or financial affairs so far as this relates to a debtor's proceeding in
22 bankruptcy." *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993) (citations and quotations
23 omitted).

24 Mr. Hansen has been subjected to multiple motions by the Trustee, often shortly after
25 the Trustee is unsuccessful on a different motion. The Trustee has gone to great lengths to
26 discredit Mr. Hansen, including his effort to hold Mr. Hansen in contempt for failure to produce
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1 documents that were in the Trustee's possession.¹ The current motion is different only in that
2 the attack is on Ms. Erdmann. Here, the Trustee initially claimed that Ms. Erdmann had
3 testified that "she essentially had no assets." (ECF 1052 at 3) In recently filed papers, the
4 Trustee concedes that Ms. Erdmann testified that she had additional assets, but not enough to
5 cover all the legal fees advanced based on testimony taken in supplemental proceedings. ECF
6 1096. The timing of the Trustee's motion is again suspect, coming as it did at nearly the same
7 time as Judge Lasnik's affirmance of this Court's decision regarding the retainer paid to Mr.
8 Tracy – the Trustee will no doubt seek to avoid returning the balance of the retainer paid to Mr.
9 Tracy to Ms. Erdmann.

10 It is also noteworthy that the Trustee seeks blanket authority to issue subpoenas to any
11 third parties he chooses based on information provided by Ms. Erdmann or Mr. Hansen. As
12 with the 2004 Examination of Mr. Parish taken last year, the Trustee essentially requests
13 authority to seek unlimited discovery from anyone associated with Mr. Hansen or Ms.
14 Erdmann. There is no reason to give the Trustee a blank check to engage in endless discovery.

15 The Trustee's failure to fully disclose the extent of the discovery and depositions
16 already obtained on these issues is reason enough to deny the Trustee's motion. The fact that
17 the Trustee has pursued the same inquiries over the past year is all the more reason to deny the
18 motion.

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25 ¹ While the Trustee continues to claim that millions of dollars in precious metals were
26 missing when he was appointed Chapter 11 Trustee, the fact is that the financial reports filed by
27 the Trustee show that the he has liquidated millions of dollars of precious metals and other
assets since he was appointed, and continues to liquidate the assets of the company.

1 **CONCLUSION**

2 The Trustee's motion for a further Rule 2004 examination of Mr. Hansen should be
3 denied.

4 DATED this 21st day of June, 2017.

5 Davis Wright Tremaine LLP
6 Attorneys for Ross Hansen

7
8 By /s/ Ragan L. Powers
9 Ragan L. Powers, WSBA #11935

PROOF OF SERVICE

I certify that on June 21, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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19 DATED this 21st day of June, 2017.

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