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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: January 12, 2018
Hearing Time: 9:30 a.m.
Response Date: January 5, 2018

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

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

Case No. 16-11767-CMA
TRUSTEE'S RESPONSE TO MOTION
TO COMPEL ABANDONMENT

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13 Mark Calvert, Trustee (the "Trustee") for the Northwest Territorial Mint, LLC ("NWTM"),
14 in the above-captioned proceeding responds to the Motion to Compel Abandonment (the "Motion")
15 filed by Diane Erdmann and states as follows:

16 **I. BACKGROUND FACTS**

17 On March 16, 2016, the Superior Court for King County granted a writ of execution of
18 personal property (the "Writ")¹ to Bradley Stephen Cohen in case no. 16-2-05611-3 KNT (the
19 "Cohen Lawsuit"). The Writ was granted in enforcement of judgments held by Mr. Cohen against
20 Ross Hansen and NWTM in the amounts of \$25.5 million and \$12.5 million respectively. As a
21 result of the Writ, the King County Sheriff seized approximately \$150,000 worth of coins and
22 precious metals (the "Seized Property") from the home shared by Diane Erdmann and Ross Hansen.
23 Bugbee Decl., Exhibit I.

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25 ¹ A copy of the Writ is attached as Exhibit B to the Declaration of Daniel J. Bugbee in Support of
26 Diane Erdmann's Motion to Determine Applicability of Automatic Stay [Dkt No. 344] (the "Bugbee
Decl.").

1 On May 27, 2016, Diane Erdmann filed a Motion to Determine Applicability of Stay (the
2 “Stay Motion”) seeking clarification that she could litigate her claim to ownership of the Seized
3 Property in King County Superior Court without violating the automatic stay of 11 U.S.C. §362.
4 Dkt. No. 337. In the Stay Motion, Diane Erdmann made the assertion that some of the seized
5 property belongs to her, and that “some of” the Seized Property belongs to NWTM. Stay Motion at
6 6:2-6. The Trustee filed a response to the Stay Motion, asserting that the estate holds an interest in
7 the Seized Property. On June 22, 2016, following a hearing on the Stay Motion, the Court entered
8 an order that states in relevant part, “[a]ny efforts to sell, dispose, or gain control of an interest in the
9 Seized Property in the [Cohen Litigation] is stayed pursuant to 11 U.S.C. §362(a); and [a]ll litigation
10 . . . to determine ownership of the Seized Property is subject to exclusive jurisdiction of this Court
11 unless and until this Court makes a final determination that the Seized Property, or any of it, is not
12 property of the Debtor’s bankruptcy estate.” Dkt. No. 435. The Court further ordered that the
13 Seized Property be turned over to the Trustee to hold pending any determination as to ownership.
14 *Id.* To date, the Court has not determined ownership of the Seized Property.

15 II. ARGUMENT

16 Diane Erdmann seeks to compel abandonment of the Seized Property pursuant to 11 U.S.C.
17 §554(b), which provides that a trustee may be compelled to abandon property that is burdensome to
18 the estate or of inconsequential value. Diane Erdmann, however, has not provided any evidence,
19 beyond a self-serving declaration that virtually all of the Seized Property belongs to her, that
20 establishes that the Seized Property is of inconsequential value to the estate.² Nor has she even
21 attempted to argue that the Seized Property (principally valuable precious metals) is burdensome to
22 the bankruptcy estate.

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25 _____
26 ² It is Diane Erdmann’s burden to establish a basis for abandonment. *See, e.g., In re Heil*, 141 B.R.
112, 114 (Bankr. N.D. Texas 1992).

1 Abandonment of an asset of the estate is the exception, not the rule, and as the Ninth Circuit
2 Bankruptcy Appellate Panel has recognized, absent an attempt by a trustee to administer worthless
3 property, abandonment should rarely be ordered. *In re Viet Vu*, 245 B.R. 644, 647 (9th Cir. BAP
4 2000). As set forth in the Trustee's response to the Stay Motion, the Trustee believes that the Seized
5 Property, which consists of coins and precious metals such as those sold by NWTM, belong to the
6 Debtor. To date, the Court has not adjudicated Diane Erdmann's claim of ownership as she has not
7 brought an adversary proceeding seeking such a determination as required by Federal Rule of
8 Bankruptcy Procedure 7001(2). Because the Seized Property has been in possession of the Trustee,
9 there has been no compelling reason for the Trustee to initiate litigation over ownership.

10 Given the potential value of the Seized Property to the estate, approximately \$150,000, there
11 is simply no legal basis for the Court to order abandonment. It is certainly not an established fact
12 that the Seized Property is of inconsequential value, and the Seized Property does not burden the
13 estate, in that there is minimal expense associated with storing the Seized Property. Moreover, as is
14 set forth in the accompanying Declaration of Mark Calvert, the Trustee does not believe adjudication
15 of the ownership of the Seized Property will impose an economic burden on the estate.

16 In sum, the Seized Property is of potential considerable value to the estate and represents
17 little if any burden. Accordingly, the Court should deny Diane Erdmann's motion to compel
18 abandonment.

19 DATED this 5th day of January, 2018.

20
21 K&L GATES LLP

22
23 By /s/ David C. Neu
24 Michael J. Gearin, WSBA #20982
25 David C. Neu, WSBA #33143
26 Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on January 5, 2018, 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.

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 5th day of January, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz