

The Honorable Christopher M. Alston
Chapter 11
Hearing: U.S. Courthouse Seattle, Room
1206
January 12, 2018 at 9:30 a.m.
Response Date: January 5, 2018

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

In re

NO. 16-11767-CMA

Chapter 11

NORTHWEST TERRITORIAL MINT
LLC,

Debtor.

COHEN'S RESPONSE TO DIANE
ERDMANN'S MOTION TO
COMPEL ABANDONMENT

I. INTRODUCTION

Creditors Bradley Cohen and Cohen Asset Management Inc. (collectively "Cohen") agree with Ms. Erdmann that the Trustee should be compelled to abandon the Seized Property. However, this court should order the Seized Property returned to the King County Sheriff so that Cohen's execution on the property can proceed in the ordinary course.

II. RELEVANT FACTS

Cohen has a substantial judgment (in excess of \$25 million) against Ross Hansen personally. Mr. Hansen is not in bankruptcy and Cohen has undertaken significant efforts to collect his judgment from Mr. Hansen.

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COHEN'S RESPONSE TO DIANE
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COMPEL ABANDONMENT - 1

MPBA{17065/006/01534769-2}

1 Pursuant to a Writ of Execution of Personal Property issued by King County
2 Superior Court, the King County Sheriff entered Mr. Hansen's residence and seized
3 personal property belonging to Mr. Hansen (the "Seized Property")¹. The Sheriff
4 scheduled a sale of the Seized Property with the net proceeds to be paid to Cohen in
5 partial satisfaction of the judgment². The levy by the Sheriff on Mr. Hansen's
6 personal property perfected Cohen's security interest in the Seized Property. See,
7 *Robb v. Kaufman*, 81 Wn. App. 182, 188 – 9, 913 P.2d 828 (1996)("A levy of
8 execution creates a lien against the property seized.")

9 On June 22, 2016, this court entered an order determining that the automatic
10 stay provision of 11 U.S.C. § 362(a) applied to the seized items because the
11 Bankruptcy Estate claimed an interest in the Seized Property. The court ordered that
12 that Cohen's efforts to execute on the Seized Property be stayed pending a
13 determination in the bankruptcy court whether the Bankruptcy Estate owned an
14 interest in the Seized Property.

15 As directed by the court, the Bankruptcy Estate took possession of the seized
16 property from the Sheriff³. A corresponding order was entered in the Superior Court
17 staying Cohen's efforts to complete the execution on the Seized Property⁴. The stay
18 also halted any proceedings by third parties such as Ms. Erdmann to assert a claim
19 of interest in the Seized Property.

20 III. ARGUMENT

21 Cohen agrees with Ms. Erdmann that the court should compel the abandonment
22 of the Seized Property. In the year and half since this Court imposed a stay against
23

24 ¹ Exhibit 1 to the Declaration of Joseph A. Hamell

25 ² Exhibit 2, Dec. of Hamell

26 ³ Exhibit 3, Dec. of Hamell

⁴ Exhibit 4, Dec. of Hamell

1 the Seized Property, the Trustee has not taken any affirmative steps to establish that
2 it is property of the Debtor's bankruptcy estate. This is a strong indication of either
3 the lack of value that the Trustee gives to the Seized Property and/or the weakness
4 of the Trustee's claim.

5 While Cohen agrees the Seized Property should be abandoned, Ms. Erdmann's
6 proposed order directs that the Seized Property be abandoned to her. This would be
7 improper.

8 If the Seized Property is abandoned, the court should order the property
9 returned to the King County Sheriff because that is who possessed the Seized
10 Property at the time the automatic stay was invoked. All of the parties should be
11 returned to the "status quo ante" at the time the order of this court was entered.
12 Possession of the Seized Property belongs with the Sheriff so that the sale of the
13 Seized Property and any related proceedings in the Superior Court can move forward
14 in the ordinary course. That portion of Ms. Erdmann's proposed order which directs
15 the Seized Property be delivered to her should be denied and instead the order
16 should direct the Trustee to return possession of the Seized Property to the King
17 County Sheriff in the same capacity as it was being held at the time of the entry of the
18 stay order by this court.

19 **IV. CONCLUSION**

20 This court should compel the Trustee to abandon the Seized Property and direct
21 the Trustee to return possession of the Seized Property to the King County Sheriff so
22 that Cohen's execution on the property can proceed in the ordinary course.

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COHEN'S RESPONSE TO DIANE
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1 DATED this 5th day of January, 2018.

2 MONTGOMERY PURDUE BLANKINSHIP
3 & AUSTIN PLLC

4 By: /s/ Joseph A. Hamell

5 Joseph A. Hamell

6 WA State Bar No. 29423

7 Michael E. Gossler

8 WA State Bar No. 11044

9 Attorneys for Bradley S. Cohen and
10 Cohen Asset Management, Inc.

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COHEN'S RESPONSE TO DIANE
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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that I am, and at all times herein mentioned have been, a resident of the
4 State of Washington, over the age of eighteen years, not a party to or interested in
5 the above-mentioned action, and competent to be a witness herein.

6 On the date written below, I caused the above document to be electronically filed
7 with the Clerk of the Court using the CM/ECF system which will send notification of
8 such filing to the persons who have requested such notice.

9 DATED this 5th day of January, 2018, at Seattle, Washington.

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11 /s/ Leslie Preskitt
12 Leslie Preskitt

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COHEN'S RESPONSE TO DIANE
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