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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: Friday, July 6, 2018
Hearing Time: 9:30 a.m.
Response Date: June 29, 2018

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

9 In re:

10 NORTHWEST TERRITORIAL MINT,
11 LLC,

12 Debtor.

Case No. 16-11767-CMA

MOTION FOR ORDER AUTHORIZING THE
SALE OF REMAINING PROPERTY OF THE
ESTATE FREE AND CLEAR OF ALL LIENS,
CLAIMS, INTERESTS, AND ENCUMBRANCES

13 **I. INTRODUCTION**

14 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
15 ("NWTM" or the "Debtor"), submits this Motion requesting approval of the sale by the Trustee, at
16 auction, or through private sale, of the remaining miscellaneous items of the Debtor's property (the
17 "Remaining Property"). The Remaining Property includes items located in Dayton, Nevada, and
18 Green Bay, Wisconsin. The Remaining Property does not include any custom coining dies. The
19 Trustee must vacate the Dayton, Nevada premises by the end of July. It is therefore imperative that
20 he sell the Debtor's remaining property before that date, otherwise, the Trustee will be unable to
21 realize any value for the estate for the items located in Dayton. The Motion is supported by the
22 Declaration of Mark Calvert filed concurrently herewith. In support of this Motion, the Trustee
23 respectfully represents as follows:
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MOTION FOR ORDER APPROVING SALE OF
DEBTOR'S REMAINING PROPERTY - 1

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1 **II. BACKGROUND**

2 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under
3 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark
4 Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

5 The Trustee’s goal in this case has been to maximize the recovery of creditors. Since May
6 2017, the Trustee has engaged in marketing efforts related to a potential sale of the business. The
7 Trustee entertained expressions of interest from multiple parties including offers to purchase the
8 assets of the estate on a going concern basis and for substantially all of the assets of the estate, but no
9 concrete offer materialized for such a sale on terms which provided any meaningful return to the
10 estate. Because no concrete offer materialized, and because of the inadequate cash resources
11 available to the Trustee, the Trustee closed the custom minting business on December 29, 2017 and
12 prepared to liquidate the assets of the estate via auction.

13 While the Trustee prepared to sell the Debtor’s assets at auction, he engaged in negotiations
14 with multiple buyers for various aspects of the Debtor’s assets. Ultimately, the Trustee separately
15 researched agreements with Industrial Assets Corp. (“Industrial Assets”) and Medalcraft Mint, Inc.
16 (“Medalcraft”) for the purchase and sale of certain assets of the Debtor. On March 14, 2018, the
17 Court approved the Trustee’s sale of substantially all of its equipment and machinery to Industrial
18 Assets Corp. for \$1.95 million. *See* Dkt. No. 1531. The Trustee has also reached agreement with
19 American Numismatic Society for the sale of older Medallion dies, medals, plaques, and other objects
20 and archives that were created prior to January 1, 1998. The sale to American Numismatic Society
21 was recently approved by this Court.

22 According to the Court’s *Order Granting in Part and Denying in Part Motion for Relief from*
23 *the Automatic Stay and Related Relief* (“Relief From Stay Order”) (Dkt. No. 1450), the automatic
24 stay is modified to allow Bob and Connie Hoff (the “Hoffs”) to commence proceedings under
25 Nevada law to take possession of the Dayton Premises on or after June 30, 2018, if the Trustee has
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1 not vacated the Premises by that date. The Trustee and the Hofffs agreed to extend that date to
2 July 31, 2018.

3 While the Trustee has already liquidated substantially all of the Debtor's assets, he still must
4 liquidate the Remaining Property for the benefit of the estate. The majority of the Remaining
5 Property is comprised of miscellaneous items of property located in Dayton, Nevada and Green Bay,
6 Wisconsin. The Remaining Property includes, but is not limited to the following: two vehicles, a gun
7 safe, refrigerators, metal detector, microwaves, a television, retail merchandise furniture, office
8 furniture, equipment, appliances, and raw materials. The Trustee has compiled pictures and written
9 descriptions of much or all of the Remaining Property, which are described on Exhibit A attached to
10 the Declaration of Mark Calvert filed in support of the Motion. However, the Trustee also seeks the
11 authority to sell any and all additional items of Remaining Property that may not be on the list
12 attached hereto, wherever such property is located. The Trustee does not, by the Motion, seek to sell
13 any custom coining dies.

14 By this Motion, the Trustee seeks authority to sell the Remaining Property by private sale or
15 public auction, whichever he determines is in the best interest of the estate. Additionally, Industrial
16 Assets Corp., which previously purchased substantially all of the Debtor's equipment and
17 machinery, has expressed a willingness to assist the Trustee's sale efforts with respect to the
18 Remaining Property. The Trustee therefore also requests that he be authorized to pay Industrial
19 Assets a 10% commission on sales of any of the Remaining Property for which Industrial Assets
20 brings forward a buyer—whether at an auction conducted by Industrial Assets, or through private
21 sales.

22 The only party, of which the Trustee is aware, that may assert an interest in the Remaining
23 Property is the Hofffs. By virtue of the Relief from Stay Order, the Hofffs have a post-petition lien on
24 all assets of the bankruptcy estate to secure any administrative claim they may be allowed under
25 Section 507(a)(2) of the Bankruptcy Code that arises from the Trustee's use of the Dayton premises
26 prior to the time the Trustee vacates. Additionally, the Hofffs hold an alleged-prepetition security

1 interest in the estate's assets that is subject to bona fide dispute for the reasons articulated by the
2 Trustee in prior pleadings. *See, e.g.*, Dkt. No. 1556. A copy of the security agreement of the Hoffs is
3 attached to the Declaration of Connie Hoff at Dkt. No. 1330, Ex. D. The Trustee asserts that the
4 Hoffs' security agreement was not property perfected because the Hoffs' initial financing statement
5 lapsed, and a new financing statement was only filed after the commencement of the bankruptcy
6 case. As described below, the Hoffs' asserted liens do not provide an impediment to the Trustee's
7 ability to sell the Remaining Property at auction or through private sales.

8 **III. EVIDENCE RELIED UPON**

9 This Motion relies on the arguments set forth herein, the Declaration of Trustee Mark Calvert
10 filed in support of the Motion, the pleadings and records on file in this case, and the arguments of
11 counsel, if any.

12 **IV. ARGUMENT**

13 The Court should authorize the Trustee to sell, whether by public auction or private sales, all
14 Remaining Property of the estate free and clear of liens, claims, interests, and encumbrances. In
15 addition, the Trustee asks that he be authorized to pay Industrial Assets a 10% commission on items
16 of the Remaining Property for which Industrial Assets brings forward a buyer.

17 Section 363(b) of the Bankruptcy Code provides that the Trustee is authorized to sell assets
18 outside the ordinary course of its business. While the text of the Bankruptcy Code does not provide
19 the standard for determining when it is appropriate for a court to authorize the sale of property of
20 the estate, courts often approve a proposed sale if such sale is based upon the sound business
21 judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9 F.3d 389, 395 (3d Cir. 1996); *In*
22 *re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). Here, the Trustee's desire to sell the Debtor's
23 Remaining Property is based on his sound business judgment and is in the best interests of the estate.

24 Here, a sound business reason exists for the proposed sale. Namely, the objective of the
25 Trustee's proposed sale is to maximize the proceeds of such sale for the benefit of the bankruptcy
26 estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d

1 558, 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, “a primary objective of the Code [is] to
2 enhance the value of the estate at hand”); *In re Integrated Res, Inc.*, 147 B.R. 650, 659 (S.D.N.Y.
3 1992) (“It is a well-established principle of bankruptcy law that the objective of bankruptcy rules
4 and the [Debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall
5 benefit possible for the estate.”) (alteration in original) (quoting *In re Atlanta Packaging Products,*
6 *Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

7 The sale of assets outside of the ordinary course of business may be conducted by public
8 sale, or a private sale, under the appropriate circumstances. *See In re Bakalis*, 220 B.R. 525, 531
9 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate
10 property under the Bankruptcy Code is conducted by a trustee, who has ample discretion . . . to
11 conduct public or private sales of estate property.”) (internal quotations and citation omitted).

12 Here, the Trustee wishes to obtain approval to sell either buy public auction or private sale.
13 The Trustee, with the assistance of Industrial Assets, may be able to liquidate much of the
14 Remaining Property without the use of a public auction. Nevertheless, he wishes to retain the
15 flexibility to sell the Remaining Property by whatever means necessary.

16 Approval of the Motion is in the best interests of the estate. The Remaining Property, much
17 of which is located in Dayton, Nevada, must be liquidated before the end of July, at which time the
18 Hoffs will be permitted to proceed with an unlawful detainer action. Additionally, the Remaining
19 Property is of de minimis value when compared with the value of substantially all of the Debtor’s
20 physical assets, which have already been sold by the Trustee. It would be overly expensive and time
21 consuming for the Trustee to file multiple individual sale motions each time he negotiates a sale for
22 a piece of the Remaining Property.

23 **A. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h)**

24 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
25 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. As noted
26 herein, it is necessary for the Trustee to quickly consummate the sale of as much of the Remaining

1 Property as possible. It is therefore in the best interests of the estate to waive the 14 day stay under
2 Fed. R. Bank. P. 6004(h).

3 **B. The Proposed Sale Satisfies the Requirements of 11 U.S.C. § 363(f)**

4 The Trustee requests that the sale by auction be free and clear of liens, interests, and
5 encumbrances. Pursuant to 11 U.S.C. § 363(f), a Trustee may sell property of the estate under
6 11 U.S.C. § 363(b) free and clear of any interest in such property of any entity other than the estate
7 only if (1) applicable non-bankruptcy law permits sale of such property free and clear of such
8 interest; (2) such entity consents; (3) such interest is a lien and the price at which the property is to
9 be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona
10 fide dispute; *or* (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
11 money satisfaction of such interest. 11 U.S.C. § 363(f) (emphasis added). Here, there are multiple
12 bases upon which the Court should authorize the Trustee to sell the Debtor's Remaining Property
13 "free and clear."

14 Here, the Trustee is aware of no parties with an alleged interest in the Remaining Property
15 other than the Hoffs. If no creditors object to the sale, the sale free and clear will be permitted under
16 11 U.S.C. § 363(f)(2). Moreover, even if alleged secured creditors object to the sale, the sale free
17 and clear is permissible under 11 U.S.C. § 363(f)(5) because there are legal and equitable
18 proceedings in which a lienholder could be compelled to accept a money satisfaction of such lien,
19 including the disposition of collateral under the default remedies provided in Washington's Uniform
20 Commercial Code (Chapter 62A.9A RCW) or in a receivership proceeding pursuant to RCW
21 7.60.260.

22 In addition, the Motion satisfies the requirements of 11 U.S.C. § 363(f) because the alleged
23 prepetition lien interest in the property (asserted by the Hoffs) are subject to a bona fide dispute by
24 the Trustee. The Hoffs' alleged prepetition security interest is subject to a bona fide dispute because
25 it is subject to avoidance. The Trustee disputes that the Hoffs hold a perfected security interest in the
26 assets listed on Exhibit "B" to the Security Agreement. Medallic Art Limited Partnership ("MALP")

1 executed the Security Agreement on July 10, 2009. On July 10, 2009, the Hoffs' attorney filed a
2 UCC-1 financing statement with the State of Nevada. The initial financing statement expired after
3 five years, *i.e.*, July 10, 2014. The Hoffs did not file a continuation statement prior to the expiration
4 of the initial UCC-1, causing their security interest to lapse and become unperfected.

5 Following the filing of this bankruptcy case, the Hoffs realized their security interest had
6 become unperfected and attempted to perfect it with a new financing statement. The Hoffs
7 attempted to file a new UCC-1 financing statement on April 21, 2016. The Hoffs further filed an
8 amendment to their April 21, 2016 financing statement on May 17, 2016, which purported to add
9 Medallic Art Company, LLC ("MACLLC") as a debtor. MACLLC is the successor in interest to the
10 defunct MALP, and it was substantively consolidated with the Debtor *nunc pro tunc* as of April 1,
11 2016. Thus, the Hoffs' May 17, 2016 financing statement amendment was filed post-petition as to
12 MACLLC. The hypothetical lien creditor referenced in section 544 of the Bankruptcy Code is one
13 holding a lien as of the date of the commencement of the case. Thus, any lien of the Hoffs is subject
14 to avoidance under 11 U.S.C. § 544, and therefore is subject to a bona fide dispute.

15 Furthermore, section 363(f) of the Bankruptcy Code is satisfied because any lienholder also
16 will be adequately protected by having its liens, if any, attach to the proceeds of the sale in the same
17 order of priority, with the same validity, force, and effect that such creditor had prior to such sale,
18 subject to any claims and defenses that the Trustee and the Debtor's bankruptcy estate may possess
19 with respect thereto. For all of these reasons, the proposed sale free and clear of liens should be
20 approved.

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DEBTOR'S REMAINING PROPERTY - 7

501580179 v3

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V. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order in the form proposed by the Trustee authorizing the Trustee to liquidate the Remaining Property free and clear of liens, claims, interests, and encumbrances.

DATED this 15th day of June, 2018.

K&L GATES LLP

By /s/ Brian T. Peterson
Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
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 June 15, 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.

Also on June 15, 2018, she caused the foregoing document to be deposited in the U.S. mail to the Party 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 15th day of June, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz