

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Room 7206
Hearing Date: August 5, 2016
Hearing Time: 9:30 a.m.
Response Date: July 29, 2016

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

Case No. 16-11767-CMA

RESPONSE OF ROSS HANSEN TO
MOTION FOR CONTEMPT

I. INTRODUCTION

The Trustee's motion for contempt against Mr. Hansen seeks to expand the scope of the stay under section 362 of the Bankruptcy Code far beyond what the statute provides. Most of the alleged conduct by Mr. Hansen would not, even if true, violate the automatic stay. Some of the Trustee's allegations are half-truths stitched together create the appearance of violations of the stay. Other allegations are simply not true. The Trustee's motion is more about litigation tactics than any real concerns by the Trustee. It should be denied.

II. THE AUTOMATIC STAY

The Trustee's motion does not specify the subsection of section 362 that he alleges Mr. Hansen violated – the Trustee's failure to do so invites scrutiny of what is and is not actually stayed under the statute. The only subsection that is even arguably at issue here is section 362(a)(3), which stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" Other than citation to *Mayor*

1 v. *Wolkowitz (In re Cinevision Int'l, Inc.)*, 2016 WL 638729 (B.A.P. 9th Cir.), an unpublished
2 decision decided on a wholly different set of facts, the Trustee's motion never discusses how
3 Mr. Hansen's conduct actually violates section 362(a)(3) or any other subsection of section 362.

4 As an initial matter, section 362(a)(3) by its terms does not stay actions by Mr. Hansen
5 that are not directed to "property of the estate." See *Mwangi v. Wells Fargo Bank (In the*
6 *Matter of Mwangi)*, 764 F.3d 1168 (9th Cir. 2014) (section 362(a)(3) does not apply to exempt
7 property because it is not property of the estate). It is undisputed that there is a Nevada limited
8 liability company named Medallic Art Company LLC ("Medallic"), and that Northwest
9 Territorial Mint, the Debtor ("NWTM"), does not own a membership interest in that entity.
10 Neither the membership interests in nor assets of Medallic (whatever they may be) are property
11 of the bankruptcy estate being administered by this Trustee. It may well be that the Trustee will
12 someday seek to gain ownership of those interests or assets through legal action, but he has not
13 done so to date.

14 Other allegations directed to Mr. Hansen's efforts to obtain copies of his personal papers
15 from the offices of NWTM, efforts which have been rebuffed by the Trustee, also do not
16 involve property of the estate. It is worth noting that the Trustee has not only refused to let
17 NWTM employees provide Mr. Hansen with copies of his personal papers, he has also refused
18 to provide Mr. Hansen with personal mail received by NWTM. Mr. Hansen's personal mail,
19 including correspondence related to health care, is not property of the estate. Efforts to retrieve
20 them can not violate the automatic stay.

21 Second, there is no allegation that Mr. Hansen has actually obtained property of the
22 estate, obtained property from the estate, or exercised control over property of the estate. The
23 Trustee has gone to great lengths to prevent Mr. Hansen from having any access to the Debtor's
24 premises, even to collect his personal papers and belongings.

25 Third, section 362 does not stay actions that are expressly allowed under the
26 Bankruptcy Code. *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir.1991), *cert.*

1 *denied*, 502 U.S. 1048 (1992). It is therefore not a violation of the automatic stay for Mr.
2 Hansen to assert his rights or the rights of Medallic in these proceedings. It is not a violation of
3 the automatic stay to object to a motion made by the Trustee, including the Trustee's motion to
4 sell the assets in Texas. Were it otherwise, no party could ever assert its rights to dispute
5 ownership of property in a bankruptcy proceeding and bankruptcy trustees would get to make
6 whatever claims they wish without challenge. The Trustee has cited no authority for such a
7 ridiculous position.

8 Finally, the fact that Mr. Hansen may disagree with the Trustee's approach to this case is
9 not a violation of the automatic stay. Neither is it a violation of the automatic stay for Mr.
10 Hansen to express his views about the Trustee's handling of the case to anyone who will listen.
11 The Trustee has not sighted any case holding that the entry of an order by a bankruptcy court
12 appointing a trustee in a case suspends the First Amendment rights of any party-in-interest. It
13 would be a stretch to suggest that comments by a party-in-interest that are critical of a trustee
14 are automatically transformed into violations of the automatic stay.

15 The same applies to conversations between Mr. Hansen and current and former
16 employees of NWTM. While the Trustee may threaten to discharge any employee who speaks
17 to Mr. Hansen, just because the Trustee says it is so does not make either an employee's
18 decision to talk to Mr. Hansen or Mr. Hansen's decision to talk to employees a violation of the
19 automatic stay. By way of example, Mr. Wagner obviously willingly spoke to Mr. Hansen
20 during the June 3, 2016 bankruptcy hearing. No one forced him to have a discussion with Mr.
21 Hansen. Indeed, as Mr. Hansen's declaration indicates, Mr. Wagner willingly engaged in
22 conversation with him at the hearing, it was Mr. Wagner who invited Mr. Hansen to call him
23 over the weekend, and it was Mr. Wagner that raised concerns about the Trustee selling
24 NWTM's assets and putting everyone, including him, out of work.

25 Finally, the Trustee makes an argument that Mr. Hansen's conduct violated the order
26 appointing Mr. Calvert as Trustee. The Trustee does not explain how the order appointing him
27

1 trustee expanded the scope of the automatic stay in particular, or the form order appointing him
2 somehow expanded the authority granted to any trustee under the Bankruptcy Code.

3 **III. THE TRUSTEE'S ALLEGATIONS DO NOT**
4 **AMOUNT TO VIOLATIONS OF THE AUTOMATIC STAY**
5 **OR ARE NOT SUPPORTED BY THE FACTS**

6 The specific allegations in the Trustee's motion will be addressed in the order they
7 appear.

8 **A. The Vault Passwords.**

9 The Trustee alleges that Mr. Hansen's objections to changing of combinations to vaults
10 constituted a violation of the stay. The Trustee's motion omits material facts. Mr. Hansen did
11 not object to the Trustee taking control of NWTM's assets in Seattle. He did object, in writing,
12 to Mr. Calvert locking him out of the Nevada facility (as to which Mr. Hansen is landlord) and
13 changing combinations to the Nevada vault containing what he contends are Medallic's assets.
14 Hansen Decl., Exh. A.

15 Moreover, while Mr. Hansen claims that Medallic assets are not property of the estate,
16 he has not taken control of those assets. The unpublished *Cinevision* case cited by the Trustee
17 presents an entirely different factual pattern. In *Cinevision*, prior to the conversion of the
18 debtor's case to Chapter 7 and appointment of the trustee, the debtor's principals moved
19 physical assets of the debtor to a new company formed by them and diverted the proceeds of
20 receivables to the new company. The Chapter 7 trustee demanded that the debtor's principals
21 turn the assets over to the trustee, and the debtor's principals refused. The BAP upheld a
22 finding by the bankruptcy court that the failure to turn over property of the estate was a
23 violation of the automatic stay.

24 That is not the case here. The Trustee is in possession of all assets, whether owned by
25 NWTM or Medallic. The Trustee has refused to let Mr. Hansen so much as inspect the assets
26 that he claims are owned by Medallic. Mr. Hansen is entitled to assert Medallic's interests in
27 these proceedings without fear of violating the automatic stay. Writing a letter to a trustee

1 asserting that assets in the trustee's control are not property of the estate is surely not a
2 violation of section 362(a)(3).

3 **B. The Boxes Sent To Nevada.**

4 The Trustee contends it was a violation of the stay by Mr. Hansen for Ms. Erdmann to
5 send six boxes from NWTM's Seattle facility to the NWTM operation in Nevada while Mr.
6 Hansen was still in charge of the NWTM. If Mr. Hansen had wanted to secret assets from Mr.
7 Calvert, he would not have sent them from one facility controlled by NWTM to another facility
8 controlled by NWTM. While Mr. Vugteveen's declaration contains hearsay on hearsay (what
9 Mr. Calvert told him Mr. Hansen said), it also establishes that there is a significant archive of
10 materials at Dayton extending back many years. Other than Mr. Vugteveen's statement that six
11 boxes was a bigger than normal shipment, the Trustee provides no evidence of any effort by
12 Mr. Hansen to hide assets of NWTM.

13 The Trustee's allegation is more telling for what it omits. This case has now been
14 pending for several months. For reasons of his own, the Trustee has taken a very personal and
15 antagonistic approach to Mr. Hansen. The Trustee has had employees track Mr. Hansen's every
16 move by tracking the location of his cell phone. Employees of NWTM have broken into
17 premises not owned or controlled by NWTM for the purpose of finding assets allegedly held by
18 Mr. Hansen. Deposition of Dave Huffman, taken May 26, 2016, Hansen Decl; Ex. D. The
19 Trustee has intercepted Mr. Hansen's personal mail, including personal medical records. After
20 all of the Trustee's cloak-and-dagger activity, the best argument that the Trustee can come up
21 with is that Mr. Hansen allegedly sought to conceal assets by sending six boxes from one
22 NWTM facility to another facility operated by NWTM, which is under the control of the
23 Trustee.

24 **C. Mr. Hansen's Desire to Acquire the Assets of the Debtor.**

25 Mr. Hansen has made no secret of his view that the Trustee's approach to this case will
26 not result in a meaningful return to creditors, and rightly so. The Trustee has advised the Court
27

1 and the Unsecured Creditor's Committee that he expects to incur fees and expenses totaling
2 more than \$4 million over the next year. The Trustee told parties present at the 341 meeting
3 that he believes the Debtor's assets are worth only \$5 million. If that is true, 80% of the value
4 of the Debtor will go to professionals, and only 20% will go to creditors.

5 The Trustee offers no explanation or case law to support the proposition that it is a
6 violation of the automatic stay to be critical of a trustee's approach to a case, or to suggest that
7 there are other solutions that might provide more benefit to creditors. Nor does the Trustee
8 offer any statutory or case law support for the proposition that it is a violation of the automatic
9 stay to ask employees of a debtor whether they are interested in working for another employer
10 if that party ends up running a new entity that buys the debtor's assets.

11 Once again, however, the Trustee fails to disclose all of the facts with respect to Mr.
12 Hansen's communications with employees. On April 13, 2016, the day after he left NWTM,
13 Mr. Hansen wrote the following to the Trustee:

14 Mark:

15 Whether or not I am to be employed with Northwest Territorial
16 Mint has nothing to do with my position as managing member of
17 Medallie Art Company and the fiduciary responsibility that title
18 holds. However, your position on this relatively simple issue
19 could affect any other relationship I might contemplate with you.

20 Mark--Diane and I have made it abundantly clear that we want to
21 do everything we can to assist you in your efforts to reorganize
22 NWTM. However, as we discussed yesterday, your actions
23 Monday and Tuesday were both demeaning to Diane and I and do
24 not serve to benefit our creditors or employees.

25 When you announced to the management team that I had no
26 authority and I had no place in the organizational chart, combined
27 with the fact that neither Diane nor I are employees of NWTM, I
don't know what you are asking me if I resigned from. Feeling
very much in danger, your two volunteers left the building under
what can only be described as an extremely hostile atmosphere.

Announcing to the managers that I and the company are currently
the subject of a six-month criminal FBI investigation was an

1 incredibly bonheaded move, further exacerbated by your giddy
2 announcements to all present every time the FBI called you. It
 literally made Diane and I physically ill.

3 As this information has now filtered through the company, I have
4 received numerous calls from employees who are now afraid to
5 stay, afraid that they might be wrapped up in this FBI
6 investigation. Your direct threat to my managers that they will
7 get an automatic five years in prison should any malfeasance
 (real or imagined) occur during you tenure has further
 undermined the morale and confidence in this company. I can
 only imagine what your motivations were.

8 You mentioned to me that you wanted to cut a significant number
9 of employees. I suspect no cuts will be necessary, as due to your
10 actions a number of them will be leaving soon. Unfortunately,
 not the ones we would choose.

11 I've worked at this company for 35 years and walking out was not
12 an easy decision. Diane and I consider the employees and many
13 of the customers and vendors to be more than just colleagues, but
14 friends as well. I told you yesterday that I can't be a good
 mechanic to help you fix this company if you take away all my
 tools.

15 Hansen Decl., Exh. A.

16 In response, on April 16, 2016, Mr. Calvert circulated what he called a "Suppression
17 Memo," in which Mr. Calvert told all employees that anyone communicating with Mr. Hansen
18 or Ms. Erdmann would be immediately terminated. Hansen Decl. Exh B. Shortly thereafter,
19 Mr. Hansen wrote the following to his long-time assistant, Maura Richardson:

20 Ironically, the company letter prohibiting contact with me
21 generated a large amount of employee phone calls to me, most of
22 whom were outraged about it and asked if they should quit in
23 protest. It seems that Mr. Calvert has a bit of a mutiny going on.
24 I have urged all to remain calm and do their work, there can only
25 be one captain of a ship and Mr. Calvert is currently it. Do your
26 best to help quell this rebellion, as our long-term objective is to
27 save the company and we can't do it devoid of employees.

1 Mr. Hansen was not, therefore, telling employees to quit working for NWTM. Rather,
2 Mr. Hansen was telling employees to soldier on, despite the challenges presented the Trustee's
3 treatment of Mr. Hansen and Ms. Erdmann. That is not a violation of the automatic stay.¹

4 **D. The Engraving Machine.**

5 The Trustee includes in his motion allegations that Mr. Hansen asked an employee to
6 disable equipment and delete files from a computer. The allegations are based on a declaration
7 signed by Destiny Krum, a NWTM employee. The Trustee is only making Ms. Crum available
8 for deposition on the date this brief is due to be filed with the Court, and refused to move the
9 hearing on the motion to allow the results of the deposition to be included in this memorandum.
10 This memorandum will be supplemented with the results of Ms. Krum's deposition and other
11 depositions of declarants prior to the hearing on this matter. That said, Mr. Hansen did not
12 instruct Ms. Krum to destroy assets – doing so would have been inconsistent with his desire to
13 see the company survive.

14 **E. The Tombal Sale.**

15 The Trustee claims that Mr. Hansen's objection to the Tombal sale process and effort to
16 participate in the sale was a violation of the automatic stay. As indicated above, the
17 participation in proceedings in a bankruptcy case is not a violation of the automatic stay.
18 *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir.1991). The fact that the Trustee
19 vehemently disputes Mr. Hansen's claims does not convert Mr. Hansen's participation into a
20 violation of the automatic stay.

21 **F. Retrieval of Records.**

22 The Trustee claims that the fact that Mr. Hansen and Ms. Erdmann went to the NWTM
23 in May to pick up copies of records prepared for him related to Medallic was a violation of the
24 stay. The Trustee supports his claim with a declaration from Mr. Huffman, the same employee
25 that guided the surreptitious surveillance efforts on Mr. Hansen. The documents Mr. Hansen

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27 ¹ Declarations filed by the Trustee make allegations about Mr. Hansen's pre-petition conduct
towards employees. None of the allegations are relevant to this motion.

1 and Mr. Erdmann went to pick up were records related to Medallic. When Mr. Huffman told
2 them to leave, they did. The Trustee does not cite any authority for the proposition that going
3 to pick up copies of records related to Medallic is a violation of section 362(a)(3). Mr. Hansen
4 has not returned to NWTM's offices since.

5 **G. Return of Retainer.**

6 The Court has already heard extensive testimony regarding the retainer held by Mr.
7 Tracy. For purposes of this motion, the Trustee claims that a request by Mr. Hansen that Mr.
8 Tracy return the retainer to Ms. Erdmann (which was provided for in Mr. Tracy's engagement
9 letter) was a violation of the stay. Of course, it is not a violation of the stay if the retainer was
10 Ms. Erdman's property, and not property of the estate. Clearly, Mr. Hansen believed that was
11 the case at the time, and that is Ms. Erdman's legal position today. It was not and is not a
12 violation of the stay to assert one's claim that property is not property of the estate.

13 **IV. CONCLUSION**


14 Surely the Trustee has better ways to expend NWTM's resources than stitching together
15 a series of unsupportable allegations and half-truths to gain some perceived tactical litigation
16 advantage over Mr. Hansen. None of the events that have actually occurred, taken separately or
17 together, constitute a violation of the stay of section 362(a)(3). If the Trustee has real claims
18 against Mr. Hansen, he should bring them. In the meantime, the Court should deny this motion.

19
20 DATED this 29th day of July, 2016.

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