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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: April 28, 2017
Hearing Time: 9:30 a.m.
Response Date: April 21, 2017

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

10 In re:

11 NORTHWEST TERRITORIAL MINT, LLC,
12 Debtor.

Case No. 16-11767-CMA

**TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH RICHARD
BRESSLER PURSUANT TO
BANKRUPTCY RULE 9019**

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15 **I. INTRODUCTION**

16 Mark Calvert, the Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC
17 ("NWTM" or "Debtor") files this motion seeking approval of a settlement agreement with Richard
18 Bressler ("Bressler"), who is a 50% owner of Medallic Art Company, LLC ("Medallic" or
19 "MACLLC"). As described below, the terms of the settlement significantly enhance the Trustee's
20 ability to prevail on his claim for substantive consolidation against MACLLC. If the settlement is
21 approved, Ross Hansen, who holds a bare managerial interest in MACLLC, but no legitimate
22 economic interest, will be the *only* voice with an interest in Medallic in opposition to substantive
23 consolidation. As more fully described below, the settlement agreement with Bressler is in the best
24 interests of the estate and should be approved by this Court.

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26 TRUSTEE'S MOTION TO APPROVE SETTLEMENT
WITH RICHARD BRESSLER - 1
500350953 v3

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II. FACTS

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2 1. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in
3 the United States. The Debtor's business is primarily comprised of (a) the sale of precious metals
4 such as gold, silver, and platinum; and (b) the custom-minting of medallions, coins, and other
5 awards. On April 11, 2016, the Bankruptcy Court entered an order appointing Mark Calvert as
6 chapter 11 Trustee.

7 2. Bressler is a member and fifty percent interest holder in MACLLC, a Nevada limited
8 liability company. Bressler invested Three Million Dollars (\$3,000,000) to acquire his interest in
9 MACLLC in July of 2009. Bressler's investment in MACLLC was made with the intention of
10 becoming a passive, financial investor only, with no management or operational role, and for the
11 purpose of realizing a desired rate of return analogous to a capital lease. The remaining fifty percent
12 ownership interest in MACLLC is nominally held by Ross B. Hansen ("Hansen") and a corporate
13 affiliate of Hansen, known as Medallic Art Corporation. Hansen's purported interest in Medallic was
14 acquired with Two Million Dollars (\$2,000,000) of funds of the Debtor. Under the terms of
15 MACLLC's Limited Liability Company Agreement, managerial control over Medallic is presently
16 vested in Medallic Art Corporation, which is solely owned and controlled by Hansen.

17 3. In August of 2016, MACLLC, under the exclusive control of Hansen, filed a
18 complaint against the Trustee, commencing Adversary Proceeding No. 16-01196 (the "Medallic
19 Litigation") in this Court. The Trustee has answered Medallic's complaint and asserted
20 counterclaims. Bressler is not a party to the Medallic Litigation.

21 4. Among the claims at issue in the Medallic Litigation, is the Trustee's claim that
22 Medallic should be substantively consolidated with the bankruptcy estate of NWTM, or,
23 alternatively, that Medallic is the alter ego of NWTM (collectively, the "Substantive Consolidation
24 Claims"). If the Court orders substantive consolidation of Medallic and NWTM, the assets of
25 Medallic and NWTM will be consolidated into a single pool from which the claims of creditors of
26

1 both entities will be satisfied. Substantive consolidation will also have the effect of extinguishing
2 intercompany claims between Medallic and NWTM.

3 5. The Trustee's Substantive Consolidation Claims are premised on the following facts,
4 among others: MACLLC has no business operations of its own; creditors of MACLLC, including
5 accountants, lawyers, and regulatory authorities, have been paid by NWTM; MACLLC has no
6 payroll or independent employees; employees of NWTM performed services on behalf of
7 MACLLC; there were numerous transfers that NWTM made to or for the benefit of MACLLC, and
8 the absence of accurate accounting by NWTM and MACLLC makes it virtually impossible to
9 account for all such transfers; MACLLC and NWTM were held out to third parties as a single
10 economic unit and a number of creditors perceived them as such; NWTM paid all operating
11 expenses of MACLLC; and MACLLC asserts the existence of numerous oral agreements between
12 the parties for which there are no written and signed documentation.

13 6. In the Medallic Litigation, the Trustee has also alleged the existence of fraudulent
14 transfers made to Medallic, which include more than \$3.3 million worth of cash transfers from
15 NWTM to or for the benefit of Medallic. Bressler received approximately \$763,000 in distributions
16 on account of his ownership interest in MACLLC which payments were all ultimately funded by
17 NWTM. In 2013, NWTM ceased making distributions to MACLLC and MACLLC ceased making
18 distributions to Bressler on account of his investment.

19 7. The Trustee believes that, without Bressler's knowledge, the Mint and Medallic were
20 operated by Hansen prior to the bankruptcy in a manner which exhibited attributes of a Ponzi
21 scheme in that orders of bullion customers of the Mint were fulfilled primarily from later customer
22 deposits, while NWTM made false and misleading statements and concealed material facts from
23 bullion customers in order to induce them to extend credit to NWTM. The Trustee believes that
24 since at least 2009, NWTM was insolvent and without sufficient assets to satisfy outstanding
25 customer orders.

1 8. The Trustee has formulated a plan of reorganization for the consolidated NWTM that
2 is premised on the continued operations of the substantively consolidated Mint to drive profits that
3 will be distributed to pay the claims of creditors in this case. The chapter 11 plan of reorganization
4 has been drafted, but not yet filed with the Court and the Court has not yet considered approval of a
5 disclosure statement in connection with the plan of reorganization. Resolution of the Substantive
6 Consolidation Claims is important to the furtherance of the estate's interests in achieving
7 confirmation of a plan of reorganization.

8 9. In early March of 2017, the Trustee and Bressler entered into settlement negotiations
9 related to the Medallic Litigation, ultimately agreeing to the terms of the settlement agreement
10 attached to the declaration of Mark Calvert filed in support of this Motion ("Decl. Calvert") as
11 Exhibit A (the "Settlement Agreement").

12 10. Under the terms of the Settlement Agreement, Bressler stipulates and agrees not to
13 oppose the proposed substantive consolidation of MACLLC with the bankruptcy estate of NWTM.
14 Furthermore, to the extent that Bressler obtains management control over MACLLC, he will cause
15 MACLLC to stipulate to, and not oppose, the proposed substantive consolidation. If the Court does
16 not order substantive consolidation, Bressler further stipulates to and agrees not to oppose the
17 Court's determination that MACLLC is an alter ego of NWTM. To the extent that Bressler obtains
18 managerial control over MACLLC, he will cause MACLLC to stipulate to and not oppose a
19 determination that MACLLC is an alter ego of NWTM. In return, if the Court substantively
20 consolidates NWTM with MACLLC, or finds that NWTM is the alter ego of NWTM, Bressler will
21 be granted an allowed general unsecured claim in this case in the amount of Three Million Dollars
22 (\$3,000,000). Bressler will not be entitled to any other claim in the case.

23 11. Under the terms of the Settlement Agreement the bankruptcy estate and Bressler
24 release all claims against one another. Such mutual releases are conditioned upon (i) the parties'
25 fulfillment of their obligations under the Settlement Agreement and (ii) the Court's substantive
26 consolidation of Medallic and NWTM or determination that Medallic is the alter ego of NWTM.

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III. ISSUE

Whether the Court should approve the terms of the Settlement Agreement between Bressler and the Trustee where the Settlement Agreement will have the result of eliminating the only opposition to substantive consolidation by a creditor or equity security holder with a legitimate economic interest in MACLLC—thereby significantly enhancing the Trustee’s case for substantive consolidation.

IV. EVIDENCE RELIED UPON

This Motion relies on the Declarations of Mark Calvert and Brian Peterson, as well as the pleadings and papers on file with the Court.

V. ARGUMENT

Compromises are a “normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court has great latitude in approving compromise agreements and may approve a compromise if it is “fair and equitable.” *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The Court does not have to decide the numerous questions of fact and law raised by a motion to compromise. *In re Planned Protective Serv., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). Nor should the Court conduct a “mini-trial” on the issues of law and fact raised by the settlement. *See In re W.R. Grace & Co.*, 475 B.R. 34, 78 (D. Del. 2012) (citation omitted). Rather, the Court should “canvass the issues” to ensure the settlement does not fall “below the lowest point in the range of reasonableness.” *Id.* (citation and quotation omitted); *see also In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010 (“[T]he Court is not required to conduct a full evidentiary hearing as a prerequisite to approving a compromise.”)).

The focus of the Court’s inquiry is whether the settlement entered into by the Trustee was reasonable given the particular circumstances of the case. *Bache & Co. v. Loeffler (In re Equity Funding Corp. of Am.)*, 519 F.2d 1274, 1277 (9th Cir. 1975). An order approving a compromise will

1 be upheld absent abuse of discretion. *Goodwin v. Mickey Thompson Entm't Group, Inc.* (*In re*
2 *Mickey Thompson Entm't Group, Inc.*), 292 B.R. 415, 420 (BAP 9th Cir. 2003).

3 Specifically, to determine whether a compromise is “fair and equitable,” the Court should
4 consider: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered
5 in collection; (3) the litigation’s complexity and its attendant expense, inconvenience and delay; and
6 (4) the paramount interest of the creditors with a proper deference to their reasonable view. *Martin v.*
7 *Kane* (*In re A & C Prop.*), 784 F.2d 1377, 1381 (9th Cir. 1986). A bankruptcy court “does not have
8 to be convinced that the settlement is the best possible compromis[e]” but rather must conclude that
9 the settlement falls within a “range of reasonableness” based on a comparison of the “terms of the
10 compromise with the likely rewards of the litigation.” *In re TSIC, Inc.*, 393 B.R. 71, 78-79 (Bankr.
11 D. Del. 2008) (internal citations and quotations omitted). Settlements and compromises “are
12 favored in bankruptcy” because they “minimize litigation and expedite the administration of a
13 bankruptcy estate . . .” *Myers v. Martin* (*In re Martin*), 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9
14 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)); see also *ACC Bondholder Grp. v. Adelpia*
15 *Commc'ns Corp.* (*In re Adelpia Commc'ns Corp.*), 361 B.R. 337, 348 (Bankr. S.D.N.Y. 2007).

16 **A. The Settlement Enhances the Trustee’s Likelihood of Success in the Medallic**
17 **Litigation.**

18 The Trustee believes that the Settlement Agreement is reasonable and in the best interests of
19 the estate. The Settlement is the result of arms-length negotiations between the Trustee and Bressler.
20 The benefits of the Settlement Agreement to the bankruptcy estate are significant. Bressler’s consent
21 to substantive consolidation significantly enhances the Trustee’s likelihood of success on his
22 substantive consolidation claims.

23 The standard for substantive consolidation is set forth by the Ninth Circuit Court of Appeals
24 in *In re Bonham*, 229 F.3d 750 (9th Cir. 2000). In *Bonham*, the Ninth Circuit adopted the standards
25 for substantive consolidation set forth in *In re Augie/Restivo Banking Co. Ltd.*, 860 F.2d 515 (2d Cir.
26 1988), articulating a two-part disjunctive test. The test requires bankruptcy courts to “consider

1 whether creditors dealt with the entities as a single economic unit and did not rely on their separate
2 identity in extending credit or whether the affairs of the debtor are so entangled that consolidation
3 will benefit all creditors.” *In re Clark*, 548 B.R. 246, 254 (9th Cir. BAP 2012) (emphasis added)
4 (citing *In re Bonham*, 229 F.3d at 766)). “The presence of either factor is a sufficient basis to order
5 substantive consolidation.” *In re Bonham*, 229 F.3d at 766.

6 A court’s determination to order substantive consolidation “stems from a weighing of the
7 equities and must be tailored to meet the needs of each particular case.” *In re Clark*, 548 B.R. at 254.
8 In considering the equities, a court may weigh the benefits of substantive consolidation against the
9 harm to the entity being consolidated. The Ninth Circuit Court of Appeals in *Bonham*, considered
10 (and rejected) the argument of objecting investors that the bankruptcy court “failed to properly
11 weigh the benefits of substantive consolidation against the harm” to them. *In re Bonham*, 229 F.3d at
12 767. The court stated that in weighing the benefits versus the harm of substantive consolidation, the
13 “harm” typically measured “is the harm to the entity which is being substantively consolidated.” *Id.*

14 While it is the interests of creditors and not equity interest holders that must be considered in
15 assessing the balance of benefits and harms of substantive consolidation¹, the material economic
16 interest holders in Medallic are Bressler and the NWTM bankruptcy estate (whose interest is
17 nominally held by Hansen). There are no prepetition creditors of MACLLC (other than NWTM and
18 possibly the Hoffs who support or do not object to substantive consolidation).² Medallic has

19 ¹ In *In re Murray Indus., Inc.*, 119 B.R. 820 (Bankr. M.D. Fla. 1990), the only objections to proposed substantive
20 consolidation was a creditor (who as an insider), and an equity holder. The court cited *Augie/Restivo* for the proposition
21 that the sole purpose of substantive consolidation is to ensure “the equitable treatment of all creditors.” *Id.* at 830. While
22 there was “no doubt that equity security holders have a stake in the Debtors’ corporation in which they have an interest,”
23 their interests were subordinate to those of creditors. In ordering substantive consolidation, the court stated that the
24 equities of the case “clearly favor[ed] the *entire* creditors’ constituency over the interest of the equity security interest
25 holders.” *Id.* at 832. Similarly, in *In re LLS America, LLC*, 2012 WL 2042503 (9th Cir. BAP 2012), the Ninth Circuit
26 Bankruptcy Appellate Panel affirmed the bankruptcy court’s decision ordering substantive consolidation. In so doing, the
BAP articulated the principle that substantive consolidation is an equitable remedy “available for the benefit of
creditors,” and noted that the only parties who appealed the substantive consolidation order were the equity holders in
entities subject to the substantive consolidation and that “[n]o creditor has appealed.” *Id.* at *11.

² Medallic’s answers to the Trustee’s interrogatories identified only the Hoffs as creditors of Medallic. The Trustee
recently conducted a 30(b)(6) deposition of Mr. Hansen as the corporate representative of MACLLC. During that
deposition, the only creditors identified by Mr. Hansen were MACLLC’s legal counsel (engaged for purposes of the

1 previously argued strenuously that Bressler is an innocent party who would be harmed by
2 substantive consolidation and that it would be inequitable to eliminate his interests in MACLLC
3 through substantive consolidation. Bressler's stipulation to substantive consolidation eliminates
4 these arguments.

5 **B. The Bressler Settlement is Fair and Reasonable.**

6 The Trustee believes that the Settlement Agreement is in the best interests of the estate and
7 that it is fair and reasonable. The benefits conferred upon Bressler by the Trustee under the
8 Settlement Agreement—a waiver of claims against Bressler and allowance of a general unsecured
9 claim in favor of Bressler in the amount of \$3 million—constitute fair consideration for the benefits
10 of the Settlement Agreement. Under the Settlement Agreement, Bressler is only entitled to an
11 allowed claim and releases of claims by the Trustee in the event that the Court orders substantive
12 consolidation or determines that MACLLC is the alter ego of NWTM and Bressler's consent to
13 substantive consolidation contributes heavily in supporting the estate's claims for substantive
14 consolidation.

15 **VI. CONCLUSION**

16 Based on the above, the Trustee respectfully requests that the Court approve the Bressler
17 Settlement Agreement.

18 Dated this 7th day of April, 2017.

19
20 K&L GATES LLP

21 By /s/Michael J. Gearin

22 Michael J. Gearin, WSBA #20982

23 David C. Neu, WSBA #33143

24 Brian T. Peterson, WSBA #42088

25 Attorneys for Mark Calvert, Chapter 11 Trustee

26 Medallie Litigation), and two individuals—including Mr. Hansen's live-in girlfriend, Diane Erdmann—who Mr. Hansen explained funded payment of legal fees to MACLLC's counsel, and Mr. Hansen and Ms. Erdmann who were purported to be recently hired "employees" of MACLLC.

CERTIFICATE OF SERVICE

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The undersigned declares as follows:

That she is a Sr. Practice Assistant in the law firm of K&L Gates LLP, and on April 7, 2017, 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 April 7, 2017, she caused the foregoing document to be placed in the mail to the Parties at the addresses 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 7th day of April, 2017 at Seattle, Washington.



Benita G. Gould