



ORDERED in the Southern District of Florida on May 4, 2015.

**A. Jay Cristol, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

In re:

MERENDON MINING (Nevada), INC.
a/k/a Milowe Brost,

Debtor.

_____ /

Case No. 09-11958-AJC

Chapter 7

MARCIA DUNN, Chapter 7 Trustee

Plaintiff,

v.

Adv. Proc. No. 10-03623-AJC

NORMAN R. FRANK, JAMESTOWN
DEVELOPMENT CO., LLC, A
COLORADO LIMITED LIABILITY
COMPANY, WORLDWIDE RENTAL
SERVICES, INC. A/K/A WORLDWIDE
MACHINERY, INC., GERALYNN T.
GRIEVE, LAWRENCE HITTLE,
MARTIN WERNER, LESLIE G.
TAYLOR, PAUL GARFINKLE, STATE
OF COLORADO DEPARTMENT OF
NATURAL RESOURCES, DIVISION OF
MINERALS AND GEOLOGY,

BOULDER COUNTY, COLORADO, BY
AND THROUGH ITS TAX COLLECTOR,
HILLARY HALL, CLERK OF COURT,
BOULDER COUNTY, COLORADO,
CLAIMANTS OF MERENDON MINING
(Nevada), INC. WHO FILED SECURED
CLAIMS, LEFT HAND DITCH
COMPANY, JOHN DOE NOS. 1
THROUGH 1,000, THE NAMES BEING
FICTITIOUS AND NOT PRESENTLY
KNOWN TO THE PLAINTIFF,

Defendants.

**DEFAULT FINAL JUDGMENT UPON SECOND AMENDED ADVERSARY
COMPLAINT FOR A DECLARATORY JUDGMENT TO DETERMINE THE VALIDITY,
EXTENT, AND PRIORITY OF ANY LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS IN THE BUENO AND BLACK ROSE MINING PROPERTIES LOCATED IN
BOULDER COUNTY, COLORADO, INCLUDING THE INTERESTS OF ANYONE
LAYING CLAIM TO THE ESTATE'S RIGHTS AND INTERESTS IN SUCH PROPERTIES,
PURSUANT TO 11 U.S.C. §363(p)(2) AND RULE 7001(2), FED. R. BANKR. P.**

THIS CAUSE having come before this Court for Status Conference, on April 27, 2015 at 10 a.m. (D.E. 161, COS of same D.E. 162) upon Plaintiff, Marcia Dunn, as the Chapter 7 Trustee (the "Trustee") for the substantively consolidated estate (the "Estate") of the Debtor, Merendon Mining (Nevada), Inc.'s ("Debtor" or "Merendon") December 16, 2011 Second Amended Complaint (the "Second Amended Complaint") (D.E. 125) seeking equitable and declaratory relief, brought pursuant to 11 U.S.C. §363(p)(2) and Fed. R. Bankr. P. 7001(2), by way of an order, judgment and decree from this Court determining the validity, priority, and extent of any liens, claims, encumbrances, and interests, including any interests of anyone laying claim to the estate's rights and interests in the mining properties generally known as the Bueno and Black Rose mines, located in Boulder County, Colorado, and the Trustee's Motion for Default Final Judgment on the Second Amended Complaint (the "Motion for Default Final Judgment") (D.E. 177);

and the Court, noticing that only counsel for Plaintiff appeared at the Status Conference, and having reviewed the Second Amended Complaint, having reviewed the record in this adversary proceeding (the “363 Adversary Proceeding”), the above referenced Chapter 7 Case of Debtor Merendon (the “Main Case”), the associated substantive consolidation adversary proceeding brought by the Trustee in Adversary Proceeding No. 09-02518-AJC (the “Subcon Adversary Proceeding”), and incorporating all of this Court’s previous findings, Orders and Judgments, in these three proceedings, and the Motion for Default Final Judgment, finds that:

The Chapter 7

1. On February 4, 2009, Petitioning Creditors Eileen McCabe, Jane L. Otto, and Diane Kaplan-Berk filed a Chapter 7 Involuntary Petition in the Southern District of Florida in the Main Case against the Debtor, Merendon, whose principal place of business was in Miami-Dade County, and on June 9, 2009, this court entered an Order for Relief (D.E. 29 in the Main Case).

2. On June 10, 2009, the Trustee was appointed (D.E. 30 in the Main Case.)

The Subcon Adversary

3. On December 15, 2009, the Trustee commenced the Subcon Adversary Proceeding (D.E. 65 in the main case, D.E. 1 in the Subcon Adversary Proceeding) against, (a) Merendon Mining (Colorado), Inc., a Colorado corporation, (b) Merendon Mining (Arizona), Inc., a Nevada corporation, (c) Merendon Mining (California), Inc., a Nevada corporation, (d) True North Productions, LLC, a Nevada corporation, and (e) Sentinel Mining Corporation, a Colorado corporation (collectively, the “U.S. Merendon Mining Entities”), requesting this Court, in relevant part, to,

a. pierce the corporate veil of the U.S. Merendon Mining Entities pursuant to 11 U.S.C. §544(b) and applicable state common law, and

b. declare, pursuant to applicable state and federal law, that the assets of the U.S. Merendon Mining Entities, including, but not limited to the following assets, are property of the Debtor's estate pursuant to 11 U.S.C. §541, and must be turned over to the Trustee pursuant to 11 U.S.C. §542.

i. title to Black Rose Mine, Jamestown, Boulder County, Colorado,

ii. title to Bueno Mine, Jamestown, Boulder County, Colorado, (together, the "Beuno and Black Rose Mines"),

iii. title to the mineral, gas and oil rights associated with the Bueno and Black Rose Mines,

iv. title to the equipment and inventory associated with the Bueno and Black Rose Mines, and

v. title to the gold and finished gold products associated with the Bueno and Black Rose Mines (collectively, the estate's interest in the Bueno and Black Rose Mines, including all mining claims and patents, and the property contained in (iv)-(vi) above that are located on-site at each mine shall be referred to in this Sale Motion as the "Bueno and Black Rose Mining Properties").

The legal descriptions for the Bueno and Black Rose Mines were attached to the complaint in the First Adversary case as part of Exhibit C (D.E. #1 in the Subcon Adversary Proceeding), and also attached as part of Exhibit A to the original complaint filed in this 363 Adversary Proceeding on September 29, 2010 (D.E. 1).

4. The Bueno and Black Rose Mining Properties also include any additional property contained in any deeds in the name of any of the U.S. Merendon Mining Entities in Boulder, Colorado, including, (a) the deed that makes up the Black Rose Mine (the “Black Rose Deed,” (D.E. 1.2), Warranty Deed dated December 29, 2004 from Norman R. Frank to Merendon Mining (Colorado), Inc., a Colorado corporation, recorded on January 20, 2005 in Boulder County, Colorado (Doc. No. 2659379), and (b) the deed that makes up the Bueno Mine (the “Bueno Mine Deeds”), (D.E. # 1.3), Warranty Deed dated December 29, 2004, from Jamestown Development Co., LLC, a Colorado Limited Liability Company, to Merendon Mining (Colorado) Inc. recorded on January 20, 2005 in Boulder County, Colorado (Doc. No. 265396).

5. On December 18, 2009, the Trustee filed a Motion for Substantive Consolidation of Non-Debtor Entities (the “Subcon Motion”), including the U.S. Merendon Mining Entities (D.E. 70 in the main case, D.E. 8 in the Subcon Adversary Proceeding).

6. On December 28, 2009, the U.S. Merendon Mining Entities were served at their respective businesses or registered agents’ addresses, with a summons (D.E. 4 in the Subcon Adversary Proceeding) and a copy of the Complaint in the Subcon Adversary Proceeding, the Subcon Motion, including the exhibits to each, and this Court’s Pretrial Order issued in the Subcon Adversary Proceeding (D.E. 5 in the Subcon Adversary Proceeding) (D.E. 9, D.E. 12, D.E. 13-3, pgs. 19-22, 39-42, 45 and 46 in the Main Case).

7. On January 27, 2010, this Court entered an Order (the “Subcon Order”) substantively consolidating, among other non-debtor entities, the U.S. Merendon Mining Entities, *nunc pro tunc*, to the Petition Date (D.E. #84 in the main case, D.E. 20 in the Subcon Adversary Proceeding).

8. On February 10, 2010, the Trustee filed a Motion for Partial Summary Judgment against the U.S. Merendon Mining Entities, for, in relevant part, the relief requested in ¶3 above (D.E. 27 in the Subcon Adversary Proceeding).

9. On February 19, 2010, this Court entered an Order setting a hearing on the Trustee's Motion for Partial Summary Judgment for March 11, 2010, and setting the deadline for filing objections by affidavit or memorandum for March 9, 2010 (D.E. 47 in the Subcon Adversary Proceeding), and on February 22, 2010, the Trustee filed and served a Notice Regarding Opposing Motions for Summary Judgment to the non-debtor defendant entities, including the U.S. Merendon Mining Entities. (D.E. 48 in the Subcon Adversary Proceeding). No opposition to the Motion for Summary Judgment was filed with this Court or served upon the Trustee.

10. On March 11, 2010, the Court entered an Order granting Partial Summary Judgment in favor of the Trustee (D.E. 62 in the Subcon Adversary Proceeding) (the "Judgment")—in part—piercing the corporate veil of the U.S. Merendon Mining Entities, determining that the Bueno and Black Rose Mining Properties are property of the Debtor's estate, substantively consolidating the Bueno and Black Rose Mining Properties into the Debtor's estate, extending the automatic stay over the Bueno and Black Rose Mining Properties, and providing that all persons or entities claiming an interest, by way of ownership or lien, in any of the Bueno and Black Rose Mining Properties, may file a claim or adversary proceeding, as appropriate in the Bankruptcy Case.

11. On March 12, 2010, the Trustee posted the Judgment to <http://gray-robinson.com/news.php?ACTION=view&CAT=1&ID=1475> in accordance with the Court's

Order of December 30, 2009 (D.E. 74 in the main case; D.E. 63 in the Subcon Adversary Proceeding).

12. On April 2, 2010, the Subcon Order and the Judgment were recorded in Boulder County, Colorado—the Subcon Order was recorded on March 4, 2010 (No. 03061827 and No. 03061908) and the Judgment was recorded on March 31, 2010 (No. 03066736).

This 363 Adversary

13. On September 29, 2010, the Trustee brought this instant 363 Adversary Proceeding against Defendants, and other now dismissed defendants (D.E. 1), in connection with the Trustee's attempts to sell these and other mines in the Main Case (D.E. 167, 245, 254 & 256 in the Main Case).

14. This Court has jurisdiction over this 363 Adversary Proceeding, pursuant to 28 U.S.C. §1334(b) and the standing Order of Reference to the Bankruptcy Court in the Southern District of Florida, entered by the United States District Court Southern District of Florida, pursuant to 28 U.S.C. §157(a).

15. Subject matter jurisdiction exists pursuant to 28 U.S.C. §157(b) as a case under title 11 and a core proceedings arising under title 11, or arising in a case under title 11 in accordance with 28 U.S.C. §157(b)(2).

16. Venue of this 363 Adversary Proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Sale of the Bueno and Black Rose Mining Properties

17. The last of these §363 Sale Motions, dated August 3, 2011, was for the sale of these Bueno and Black Rose Mining Properties (D.E. 256 in the Main Case).

18. Each of the Bueno and Black Rose Mining Properties consist of the mining rights and claims in mines, and partition thereof into allocable defined sections is impracticable due to

the unique character of such mines, location, relative comparable values thereof, and complex issues involving mining rights. Disparate values of one portion of a particular mine to another portion of a particular mine makes partition unworkable and impracticable.

19. On October 5, 2011, this Court entered an Order approving the sale of the Bueno and Black Rose Mining Properties (D.E. 284 in the Main Case).

20. As a result, on December 16, 2011, the Trustee dropped most of the defendants in this 363 Adversary Proceeding (D.E. #124), and moved for (D.E. 123) and was granted leave to (D.E. 126) and did file the Second Amended Complaint (D.E. 125).

21. The United States was separately dismissed on December 22, 2011 per stipulation and Order (D.E. 128 & 130).

Worldwide

22. On November 4, 2010, Defendant Worldwide Rental Services, Inc. A/K/A Worldwide Machinery, Inc. (“Worldwide”), a Colorado corporation, who was served with a summons via mail on October 5, 2010, and which asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties, entered an appearance through counsel (D.E. 15), and on November 24, 2010 filed its answer and affirmative defenses to the original complaint (D.E. 39), and on January 13, 2012 filed its answer and affirmative defenses to the Second Amended Complaint (D.E. 139).

23. On March 30, 2012, the Trustee and Worldwide moved to settle their dispute (D.E. 290 in the Main Case) which settlement was approved by this Court on April 25, 2012 (D.E. 293 in the Main Case), and resulted in Worldwide being paid \$88,817 on its secured claim from the sale the Bueno and Black Rose Mining Properties (The Boulder County Mines), approved by this Court on January 19, 2012 (D.E. 287 in the Main Case). As a result, Worldwide

is no longer a party in interest in this matter since it has already been paid on its secured claim from the proceeds of the sale of these mines. Judgment is entered herein to reflect Worldwide' s interest, and that it has been paid on its interest as a result of the approved settlement.

**Previous Answers and Counterclaims by Dismissed Parties
Have All Been Dismissed or Withdrawn**

24. All answers filed in this 363 Adversary Proceeding, other than that filed by Worldwide, were filed by now subsequently dismissed defendants, who are no longer parties to the Second Amended Complaint.

25. On November 17, 2010, the Counterclaim filed by a now subsequently dismissed party was also withdrawn (D.E. 34).

The Remaining Defendants to this Adversary

26. On October 19, 2010, the Complaint was amended to add (a) Defendant, Paul Garfinkle ("Garfinkle"), a Florida resident who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties, and (b) another subsequently dismissed defendant, and Garfinkle agreed to accept service of the same (D.E. 7 & 8).

27. On October 5, 2010, summonses were issued against, and requiring an answer be filed on or before November 4, 2010 by, remaining Defendants:

(a) Norman R. Frank ("Frank"), an individual who claimed an ownership interest in equipment at the Bueno Mine, but has not provided any evidence of ownership of such equipment. A letter attaching a list of the equipment was attached as Exhibit E to the original complaint (D.E. #1.6). Frank submitted to the Trustee additional documents that were attached as Composite Exhibit A to the First Amended Complaint (D.E. 8);

(b) Jamestown Development Co., LLC (“Jamestown”), a Colorado limited liability company which may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(c), Geralynn T. Grieve (“Grieve”), a Colorado resident who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties. In Boulder County, Colorado, there is a Warranty Deed dated April 28, 2006, from Merendon Mining (Colorado) Inc., a Colorado corporation, to Geralynn T. Grieve, recorded on May 10, 2006 (Doc. No. 2775630), which omits the legal description of the property. An Affidavit recorded on May 23, 2010 in Boulder County, Colorado attached a legal description for the Warranty Deed, which is Parcel I of the Bueno Mine. *See* D.E. 1.7 in the original complaint;

(d) Lawrence Hittle (“Hittle”), a Colorado resident who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(e) Martin Werner (“Werner”), a Florida resident, who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(f) Leslie G. Taylor (“Taylor”), an Oregon resident who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(g) State Of Colorado Department Of Natural Resources, Division Of Minerals And Geology (the “State of Colorado”), who may have asserted a claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(h) Boulder County, Colorado, By And Through Its Tax Collector, Hillary Hall (“Boulder Tax Collector”), who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(i) Clerk Of Court, Boulder County, Colorado (“Boulder Clerk”), who may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties;

(j) Claimants Of Merendon Mining (Nevada), Inc. Who Filed Secured Claims (“Secured Claimants”),

(k) Left Hand Ditch Company (“Left Hand”), a Colorado company which may have asserted a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties; and

(l) John Doe Nos. 1 Through 1,000, The Names Being Fictitious And Not Presently Known To The Plaintiff (“John Does”), the names being fictitious and not presently known to the plaintiff, may assert a lien claims, encumbrance, or other interest in the Bueno and Black Rose Mining Properties.

The Remaining Defendants

28. On October 5 and 6, 2010, summonses were issued and served by mail (D.E. 3 & 4) at their last known address upon remaining Defendants, (a) Frank, (b) Jamestown, (c), Grieve, and (d) Werner requiring an answer be filed on or before November 4, 2010. None of these Defendants have ever answered or otherwise responded to the Complaint. As such, Defaults are hereby entered against (a) Frank, (b) Jamestown, (c), Grieve, and (d) Werner.

29. On March 2 and 12, 2015, alias summonses were issued and served by mail (D.E. 165 & 170) at their last known address upon remaining Defendants, (a) Hittle, (b) Taylor, (c) the State of Colorado, (d) the Boulder Tax Collector, (e) the Boulder Clerk, and (f) Left Hand requiring an answer be filed on or before April 6, 2010. None of these Defendants have ever answered or otherwise responded to the Complaint.

Defaults Against the Remaining Defendants

30. None of the remaining Defendants have filed answers or otherwise responded to the Second Amended Complaint.

31. As such, on March 27, 2015, the Trustee moved for defaults (D.E. 171), and on April 8, 2015, defaults were entered, against the State of Colorado, Hittle, Taylor, the Boulder Tax Collector, the Boulder Clerk, and Garfinkle (D.E. 172), and on April 24, 2015, the Trustee moved default (D.E. 175), and on April 27, 2015, a default was entered, against Defendant, Left Hand (D.E. 176).

32. Further, no liens, claims, encumbrances, and interests against the Bueno and Black Rose Mining Properties have been filed as Proofs of Claims in the Main Case, nor any Adversary Proceeding, have been filed against those properties, that have not otherwise been settled or been resolved through the claims objection process.

33. As such, Defaults are hereby further entered against the Secured Claimants and the John Does.

**Defendants Interests in the Proceeds of the Sale of the
Bueno and Black Rose Mining Properties**

34. Requiring the Defendant to have proven the validity, priority or extent of their purported liens, claims, encumbrances, or interests was and is necessary to, (a) ensure that payment to a Defendant upon adjudication of their interests is warranted, proper, in the correct amount, and will discharge their interests, (b) assure the ultimate purchaser and the title insurance company insuring title, that a Debtor who is a seller of its own interest has paid, discharged or provided adequately for the payment and discharge of all interests, (c) ensure that marketable, or acceptable, title can be conveyed by Debtors to the ultimate purchaser of the Bueno and Black Rose Mining Properties, free and clear of all liens, claims, encumbrances, and

interests, including anyone laying claim to an ownership interest in the Bueno and Black Rose Mining Properties, and (d) assure compliance with the Sale Procedures in the Sale Motion.

35. All Defendants, except for Worldwide who has been paid on its interest, failed to prove the validity, priority, or extent of their liens, claims, encumbrances, or interests in the Bueno and Black Rose Mining Properties, and as such are precluded from receiving distribution of proceeds from the sale or other disposition thereof.

36. This Court has determined, that with the exception of Worldwide, that none of the Defendants have proven the validity, priority or extent of their respective liens, claims, encumbrances, and interests, including disputed ownership interests, pursuant to 11 U.S.C. §363(p)(2) in order to determine the amount of the distribution they would have been entitled to receive from the net proceeds from the sale of the Bueno and Black Rose Mining Properties, after costs and expenses of such sale, including all administrative expenses that have enabled the Trustee to recover and sell the Bueno and Black Rose Mining Properties.

Accordingly, based upon such findings, it is hereby ADJUDGED that:

37. A Final Declaratory Judgment is entered on the Second Amended Adversary Complaint, determining that there are no liens, claims, encumbrances, and interests in the Bueno and Black Rose Mining Properties, including any Defendants laying claim to the Estate's rights and interests in such property, which has now been sold, except for those interests of Worldwide that have already been determined as pursuant to the Court approved settlement between the Trustee and Worldwide, which interest has already been paid from the sale proceeds, as required by the settlement agreement.

38. Defendants, in this action, were required to prove their respective co-owner interests, and those who failed to do so, are precluded from either (i) asserting or proving title

and/or ownership of the co-owner interest, or (ii) sharing in the receipt of sale proceeds in accordance with the requirements of 11 U.S.C §363(p)(2).

39. This Court has determined in this Final Declaratory Judgment the interests of the Defendants after the sale of the Bueno and Black Rose Mining Properties, and finds that no Defendants, other than Worldwide, who properly asserted, and has been paid on its interest, hold an interest in the Bueno and Black Rose Mining Properties, or the proceeds of their sale.

40. Except for the payment of the settled interests of Worldwide, which has been paid from the proceeds of the sale of the Bueno and Black Rose Mining Properties to Worldwide, the Trustee held the amount realized from the sale of the Bueno and Black Rose Mining Properties in escrow pending the determination by this Court herein that no other Defendants hold any interests in such property, and the Trustee is now free to release the amounts she has held in escrow in order to make distributions upon all allowed administrative and creditor claims in this case.

41. No Defendants, who either asserted and/or held any claims or interests in one or more of the Bueno and Black Rose Mining Properties, including any liens, encumbrances, security interest, mortgages, tax liens, or judgments or a claim secured by one or more of the foregoing, attempted to prove by answer, claim, adversary proceeding, or motion, the validity, priority, or extent of their Liens and Encumbrances in accordance with the requirements of §363(p)(2). As such, no Defendants, other than Worldwide, who has already been paid on its interest, hold any such interest in the Bueno and Black Rose Mining Properties or the proceeds from their sale.

###

Submitted by:
Ivan Reich, Esq.
GrayRobinson, PA

Counsel for the Trustee
401 E. Las Olas Blvd., Suite 1000
Ft. Lauderdale, FL 33301
Telephone: 954-761-8111
Facsimile: 954-761-8112
Ivan.reich@gray-robinson.com

(Mr. Reich shall upon receipt serve a copy of this Order upon all Defendants, and file a certificate of service of the same).

\351016\4 - # 3419014 v1