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FILED  
NOV 21 2002  
CLERK U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
By Deputy Clerk

8 Attorneys for R. Todd Neilson, Chapter 11 Trustee  
9 of the Bankruptcy Estate of Reed E. Slatkin

LOGGED  
NOV 14 2002

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA, NOV 21 2002  
12 NORTHERN DIVISION

13 In re:  
14 REED E. SLATKIN,  
15 Debtor.  
16 \_\_\_\_\_  
17 RONALD RAKOW and DENISE DelBianco,  
18 Plaintiffs,  
19 v.  
20 R. TODD NEILSON, Chapter 11 Trustee,  
21 Defendant.  
22 \_\_\_\_\_

23 Case No. ND 01-11549-RR *dm*  
24 Adv. No. 02-01083  
25 Chapter 11  
26 [PROPOSED] FINDINGS OF FACT  
27 AND CONCLUSIONS OF LAW  
28 DATE: October 25, 2002  
TIME: 10:00 a.m.  
PLACE: 1415 State Street  
Courtroom 201  
Santa Barbara, CA 93101  
[Judge Riblet]

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*dm*

1 The motion of defendant R. Todd Neilson (the "Trustee"), chapter 11 trustee of the  
2 bankruptcy estate of Reed E. Slatkin ("Slatkin"), for summary judgment pursuant to  
3 Fed.R.Bankr.P. 7056 against plaintiffs Ronald Rakow ("Rakow") and Denise DelBianco  
4 ("DelBianco") (collectively the "Rakow Parties") came on regularly for hearing on October  
5 25, 2002, at 10:00 a.m. before the Court. Susan I. Montgomery, Esq. appeared on behalf  
6 of the Trustee. Julia Brand, Esq. appeared on behalf of DelBianco. All other appearances  
7 were stated on the record. The Court, having considered all of the pleadings and evidence  
8 before it, hereby makes the following findings of fact and conclusions of law:

9 **Slatkin's Ownership of Paintings**

10 1. Prior to January 1, 2001, Slatkin and Mary Jo Slatkin owned the following  
11 paintings (the "Paintings"): (i) Seascape by William Trost Richards, 1872; (ii) Twilight on  
12 the Plains, Platte River, Colorado by Worthington Whittredge; (iii) Rocca di Secca by  
13 Albert Bierstadt, circa 1858; (iv) The Berkshires, Massachusetts by Thomas Hart Benton,  
14 circa 1923; (v) Raspberries by Lilli Martin Spencer, circa 1859-60; (vi) Sunset by  
15 Frederick Edwin Church, circa 1865; (vii) Rocky Mountains by Thomas Moran; (viii)  
16 View of East Hampton by Thomas Moran, circa 1900; and (ix) Southern California  
17 [Pasadena] Picnic by Thomas Moran, circa 1910. Ex. 7 (Ronald Rakow May 21, 2002,  
18 Rule 2004 examination transcript vol. II ("Rakow trans. II"), pp. 285-86 and Ex. 1 to  
19 Rakow trans. II, ¶ 1).

20 **Agreements to Purchase Paintings**

21 2. According to Rakow, in or about August 1998, Rakow entered into an oral  
22 agreement with Slatkin whereby Rakow could purchase from Slatkin his "major American  
23 art collection" at any time by arranging to pay Slatkin the then market value. Ex. 7  
24 (Rakow trans. II, pp 307-310).

25 3. In January 2001, Rakow assigned his right to purchase the Paintings to  
26 DelBianco. Ex. 7 (Rakow trans. II, pp. 315).

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1 4. Accordingly to Rakow and DelBianco, DelBianco purchased the Paintings  
2 from Slatkin on the third Friday of January 2001 for \$1.2 million. The price was deducted  
3 from amounts Slatkin purportedly owed to DelBianco under an option agreement in  
4 connection with Informix stock. Ex. 9 (DelBianco May 13, 2002, Rule 2004 examination  
5 transcript vol. II ("DelBianco trans. II"), pp. 273-76); Ex. 7 (Rakow trans. II, pp. 316-19).

6 **Delivery of the Paintings**

7 5. In January 2001, following DelBianco's purported purchase of the Paintings,  
8 the Paintings remained in Slatkin's home. Ex. 9 (DelBianco trans. II, pp. 276-77).

9 6. DelBianco removed the Paintings from Slatkin's home no earlier than April  
10 29, 2001. Ex. 9 (DelBianco trans. II, pp. 256-57, and Ex. 1 to DelBianco trans. II, ¶ n);  
11 Ex. 7 (Rakow trans. II, pp. 324-25).

12 7. The delay in taking delivery of the Paintings was because Rakow and  
13 DelBianco were too busy to take delivery of the Paintings. Ex. 15 (Rakow trans. II,  
14 pp. 322-24); Ex. 16 (DelBianco trans. II, pp. 276-77).

15 8. The Paintings were not bulky or difficult to move and DelBianco moved the  
16 Paintings with her son without elaborate packing. Ames decl., ¶ 3; Ex. 15 (Ronald Rakow  
17 June 12, 2002, Rule 2004 examination transcript vol. III ("Rakow trans. III") (Rakow  
18 trans. II, pp. 405-07); Ex. 16 (DelBianco trans. II, pp. 257-58); Ex. 17 (Mary Jo Slatkin  
19 September 12, 2002 deposition transcript, pp. 46, ll. 3-6, 91-95).

20 **Failure to File Financing Statement or Publish Notice of the Transfer**

21 9. Prior to the transfer of the Paintings from Slatkin to DelBianco in January  
22 2001, and thereafter, no financing statement was ever filed in the office of the California  
23 Secretary of State in accordance with Chapter 5 of the Commercial Code. Ex. 8, (Rakow  
24 trans. III, p. 411); Ex. 10 (Denise DelBianco June 14, 2002, Rule 2004 examination  
25 transcript vol. III ("DelBianco trans. III"), pp. 340-41); Ex. 11; Ex. 12; Ex. 13.

26 10. At no time was notice of the transfer of the Paintings published in any  
27 newspaper of general circulation. Ex. 8 (Rakow trans. III, p. 412); Ex. 10 (DelBianco  
28 trans. III, p. 341).

1 **Existence of Slatkin Creditors**

2 11. Prior to the purported transfer of the ownership of the Paintings to DelBianco  
3 in January 2001, and at all times thereafter, John Poitras, Stuart Stedman, Gregory Abbott,  
4 Anthony Podell, Michael Azeez, and George Kriste were creditors of Slatkin, and were  
5 owed not less than \$57,453,922. Declaration of John K. Poitras, ¶ 2; Ex. 1; Declaration of  
6 Stewart W. Stedman, ¶ 2; Ex. 2; Declaration of Gregory Abbott, ¶ 2; Ex. 3; Declaration of  
7 Anthony W. Podell, ¶ 2; Ex. 4; Declaration of Michael Azeez, ¶ 2; Ex. 5; and Declaration  
8 of George V. Kriste, ¶ 2; Ex. 6.

9 **Bankruptcy and Commencement of This Adversary Proceeding**

10 12. On May 1, 2001, Slatkin commenced this bankruptcy proceeding by filing a  
11 voluntary petition for relief under chapter 11 of the Bankruptcy Code. Reitman decl.,  
12 ¶ 2.a.

13 13. The Trustee was appointed on or about May 16, 2001. Reitman decl., ¶ 2.b.

14 14. On June 4, 2002, Rakow and DelBianco filed Rakow and DelBianco v. R.  
15 Todd Neilson, Adv. No. 02-01083. Reitman decl., ¶ 2.c.

16 **CONCLUSIONS OF LAW:**

17 **Jurisdiction and Venue**

18 1. This Court has jurisdiction of this action under 28 U.S.C. § 1334 in that this  
19 proceeding arises in a case under title 11, and the claims asserted herein arise under title  
20 11, In re Reed E. Slatkin, Case. No. ND 01-11549-RR, a chapter 11 case pending in the  
21 United States Bankruptcy Court for the Central District of California, Northern Division.

22 2. This is a core proceeding under 28 U.S.C. § 157, and the parties have  
23 consented to the entry of final orders and judgment by the Bankruptcy Court.  
24 Rakow/DelBianco Complaint, ¶ 1; Reitman decl., ¶ 7, Ex. 14 (Trustee's Answer, ¶ 1).

25 3. Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).

26 **The Transfer of Paintings to Rakow/DelBianco is Void**

27 4. The transfer of the Paintings from Slatkin to DelBianco in January 2001 is  
28 void under Cal.Civ.Code § 3440 in that:

1 a. there was no actual delivery and continuous change of possession of the  
2 Paintings concurrent with Slatkin's transfer of the Paintings to DelBianco in January 2001;  
3 and

4 b. creditors of Slatkin existed in January 2001, when the Paintings were  
5 transferred by Slatkin to DelBianco, and at all times thereafter.

6 5. The transfer of the Paintings from Slatkin to DelBianco in January 2001 is not  
7 exempted under Cal.Civ.Code § 3440.1 from the provisions of Cal.Civ.Code § 3440, in  
8 that:

9 a. no financing statement was filed with respect to the Paintings in the  
10 Office of the California Secretary of State prior to the date of the intended transfer of the  
11 Paintings from Slatkin to DelBianco, or at anytime thereafter, as required by Cal.Civ.Code  
12 § 3440.1(h)(1); and

13 b. no notice of the intended transfer of the Paintings was published in a  
14 newspaper of general circulation in the Central District of California where the Paintings  
15 were located, or in any other newspaper, ten days prior to the transfer or at any other time  
16 as required by Cal.Civ.Code § 3440.1(h)(2).

17 6. The Trustee stands in the shoes of Slatkin's creditors at the time of his  
18 bankruptcy pursuant to 11 U.S.C. § 544.

19 7. Because the transfer of Paintings from Slatkin to DelBianco was void as  
20 against his creditors, the Paintings were property of the Slatkin bankruptcy estate pursuant  
21 to 11 U.S.C. § 541 on the date of Slatkin's bankruptcy.

22 8. The Slatkin Estate, not Rakow or DelBianco, is the lawful owner of the  
23 Paintings.

24 9. The Trustee, as the representative of the Slatkin Estate is entitled to a  
25 judgment declaring the Estate to be the lawful owner of the Paintings, entitled to possess,  
26 control and dispose of the Paintings.

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1           10.    The Trustee need not establish as an element of Cal.Civ.Code § 3440 that  
2 Slatkin misled creditors regarding his ownership of the Paintings after their purported  
3 transfer to DelBianco and Rakow or obtained additional credit based thereon.

4           **IT IS SO ORDERED.**

5                       *Nov*  
6 DATED: ~~October~~ 21, 2002

*Robin Riblet*  
\_\_\_\_\_  
THE HONORABLE ROBIN L. RIBLET  
UNITED STATES BANKRUPTCY JUDGE

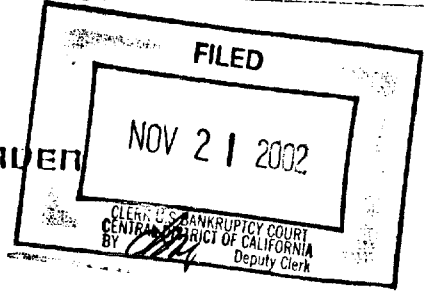
8  
9 Proposed by:

10 GUMPORT, REITMAN & MONTGOMERY

11 By: *Susan I. Montgomery*  
12                       \_\_\_\_\_  
                      Susan I. Montgomery  
13 Attorneys for R. Todd Neilson, Chapter 11 Trustee  
                      of the Bankruptcy Estate of Reed E. Slatkin

NOTE TO USERS OF THIS FORM:  
Physically attach this form as the last page of the proposed Order or Judgment.  
Do not file this form as a separate document.

Name Reed E. Slatkin	(DEBITOR TITLE) Debtor.	CHAPTER 11 CASE NUMBER: ND 01-11549-RR
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NOTICE OF ENTRY OF JUDGMENT ON ORDER  
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 118(1)(a)(iv), that a judgment or order entitled (specify):

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW

was entered on (specify date):

NOV 21 2002

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (specify date):

NOV 21 2002

Dated: NOV 21 2002

JOB D. CERETTO  
Clerk of the Bankruptcy Court

By: [Signature]  
Deputy Clerk

6.

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