

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re

CASE NO. 9:08-bk-04360-MGW

ULRICH FELIX ANTON ENGLER,
PRIVATE COMMERCIAL OFFICE, INC.,
and PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7
(Substantively Consolidated)

Debtors.

**TRUSTEE'S MOTION TO APPROVE COMPROMISE OF
CONTROVERSY WITH GERHARD HOELTKE AND INES HOELTKE
IN ADVERSARY PROCEEDING NUMBER 9:10-ap-00459-MGW**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4(a)(5), the Court will consider this Motion without further notice or hearing unless a party in interest files an objection within 21 days from the date this Motion is entered on the docket. If you object to the relief requested in this Motion, you must file your objection with the Clerk of the Court at Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Suite 555, Tampa, Florida 33602 and serve a copy on the Trustee's attorney, Robert F. Elgidely, Esq., Genovese, Joblove & Battista, P.A., 200 East Broward Boulevard, Suite 1110, Fort Lauderdale, Florida 33301, and a copy on the Office of the United States Trustee, 501 East Polk Street, Suite 1200, Tampa, Florida 33602.

If you file and serve an objection to this Motion within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection to this Motion within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in this Motion, will proceed to consider the Motion without further notice or hearing and may grant the relief requested.

ROBERT E. TARDIF, JR. (hereinafter the "Trustee"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (hereinafter sometimes referred to individually as "Engler," "PCO," and "PCOM," respectively, or collectively as the "Debtors"), by and through

undersigned counsel, hereby files his Motion To Approve Compromise Of Controversy With Gerhard Hoeltke And Ines Hoeltke In Adversary Proceeding Number 9:10-ap-00459-MGW (hereinafter the “Hoeltke Adversary”) pursuant to Section 105(a) of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (hereinafter the “Bankruptcy Rule(s)”), and states in support thereof as follows:

I. THE MAIN BANKRUPTCY CASE

1. On March 31, 2008 (hereinafter the “Petition Date”), a group of creditors filed involuntary petitions for relief under Chapter 7 of the Bankruptcy Code against Engler and PCO with the Clerk of this Court.¹

2. On April 29, 2008, the Court entered Orders for Relief against Engler and PCO.

3. On April 30, 2008, the Trustee was appointed and continues to serve as the permanent Chapter 7 Trustee for the Debtors’ bankruptcy estates.

4. On June 24, 2008, the Court entered an Order substantively consolidating the assets and liabilities of the Debtors’ bankruptcy estates.

5. On April 23, 2010, the Court entered an Order substantively consolidating the assets and liabilities of PCOM with and into the bankruptcy estates of Engler and PCO *nunc pro tunc* to March 31, 2008.

II. THE HOELTKE ADVERSARY

6. On April 16, 2010, the Trustee filed the Hoeltke Adversary in order to avoid and to recover transfers by PCO to Gerhard Hoeltke and Ines Hoeltke (hereinafter sometimes

¹ The bankruptcy cases were commenced approximately four months after the County Court of Mannheim, Germany issued an international warrant for Engler’s arrest with respect to criminal charges involving the perpetration of a Ponzi scheme and approximately one month before the Public Prosecutor’s Office of Mannheim, Germany issued a request for Engler’s arrest and extradition to the United States Government. Engler is currently a fugitive of justice.

referred to individually as “G. Hoeltke” and “I. Hoeltke,” respectively, or collectively as the “Hoeltkes”) in the amount of \$1,504,857.87. *See Hoeltke Adversary*, D.E. 1.

7. On May 17, 2010, the Hoeltkes filed an Answer to the Complaint contending that they repaid the transfers to Engler and that they had possession of receipts signed by Engler in which he acknowledged repayment of the transfers. *See Hoeltke Adversary*, D.E. 6.

8. During their depositions on January 10 and 28, 2011, the Hoeltkes continued to maintain that they repaid the transfers to Engler and produced copies of receipts purportedly signed by Engler in which he allegedly acknowledged repayment of the transfers.

9. On June 2, 2011, the Trustee filed an Amended Complaint in order to avoid and to recover a transfer by PCO through SAI Fort Myers M, LLC d/b/a Mercedes Benz of Fort Myers to Ines Hoeltke in the amount of \$44,758.33 for the purchase of a 2007 Mercedes Benz E350, V.I.N. WDBUF56X77B021748 (hereinafter the “Mercedes Benz Transfer”). *See Hoeltke Adversary*, D.E. 37.

10. On July 5, 2011, the Hoeltkes filed an Answer to the Amended Complaint in which they asserted that they repaid 89% of the Mercedes Benz Transfer to Engler. *See Hoeltke Adversary*, D.E. 42.

11. On July 7, 2011, the parties participated in Mediation and determined that it was in their best interests to resolve the Hoeltke Adversary pursuant to the terms and conditions of the Settlement Agreement attached hereto as Exhibit “1.”

12. Under the Settlement Agreement, the Hoeltkes agreed to:

- (a) execute Financial Affidavits under penalty of perjury which fully disclose their income, expenses, assets and liabilities;

- (b) make a lump sum payment in the amount of \$50,000.00 to the Debtors' bankruptcy estates;
- (c) transfer title to, and deliver possession of, a 2010 Honda Crosstour, V.I.N. 5J6TF1H37AL004928, with approximately 2,722 miles to the Debtors' bankruptcy estates;
- (d) execute Special Warranty Deeds conveying fee simple title to the following six parcels of vacant land to the Debtors' bankruptcy estates (free and clear of all liens/encumbrances except ad valorem taxes):
 - (i) 111 N.W. 24th Avenue, Cape Coral, Florida 33993;
 - (ii) 300 N.W. 18th Place, Cape Coral, Florida 33993;
 - (iii) 1144 S.W. 3rd Street, Cape Coral, Florida 33991;
 - (iv) 1140 S.W. 3rd Street, Cape Coral, Florida 33991;
 - (v) 204 Truman Avenue, Alva, Florida 33920; and
 - (vi) 2216 Jefferson Avenue, Alva, Florida 33920.

13. The transactions contemplated by the Settlement Agreement will be consummated as expeditiously as possible following entry of an Order authorizing the compromise.

14. The execution of the Settlement Agreement and the consummation of the transactions contemplated thereby will not constitute an admission or acknowledgement of any wrongdoing or impropriety by the Hoeltkes.

III. BASES FOR RELIEF

15. Bankruptcy Code Section 105(a) provides in pertinent part that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

16. Bankruptcy Rule 9019(a), which governs the approval of compromises and settlements, provides that “[o]n motion by the trustee and after notice and a hearing, a court may approve a compromise or settlement.”

17. A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996).

18. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio 1987); and *In re Mobile Air Drilling Co.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985).

19. In reviewing proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984).

20. As stated by the United States Supreme Court in *Protective Committee v. Anderson*, 300 U.S. 414, 424 (1968), under the Act, to approve a proposed settlement, a court must find that the settlement was “fair and equitable” based on an educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

21. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), which provides additional guidance as to whether a compromise should be approved. *Justice Oaks* established the following four-part test for approval:

- (a) The probability of success in litigation;
- (b) The difficulties, if any, to be encountered in the matter of collection;
- (c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

22. Under the well-established standard for consideration of the merits of a settlement, in determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *In re World Health Alternatives, Inc.*, 344 B.R. at 296; and *In re Key3Media Group, Inc.*, 336 B.R. 87, 92-93 (Bankr. D. Del. 2005)).

23. The proposed settlement between the Trustee and the Hoeltkes would allow the Trustee to avoid the uncertainty, expense, inconvenience and delay associated with further litigation and would provide an opportunity to settle such claims on terms favorable to the Debtors’ bankruptcy estates.

24. Applying the foregoing standards, the Trustee respectfully submits that the proposed settlement with the Hoeltkes is fair, reasonable, in the best interests of the Debtors’ bankruptcy estates and creditors, and should be approved pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019(a).

WHEREFORE, the Trustee respectfully requests this Honorable Court to enter an Order granting this Motion to Approve Compromise of Controversy, approving the settlements with the Hoeltkes, and for such further relief as the Court may deem appropriate.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Special Counsel to the Trustee
200 East Broward Boulevard, Suite 1110
Fort Lauderdale, Florida 33301
Telephone: (954) 453-8000
Telecopier: (954) 453-8010

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.
Florida Bar No. 111856

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Motion To Approve Compromise Of Controversy With Gerhard Hoeltke And Ines Hoeltke In Adversary Proceeding Number 9:10-ap-00459-MGW has been furnished to all creditors and/or interested parties registered on the Court's CM/ECF System and was also posted on the website "englerbk.com" in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures [C.P. 451], on the 18th day of July, 2011.

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re

CASE NO. 9:08-bk-04360-MGW

ULRICH FELIX ANTON ENGLER,
PRIVATE COMMERCIAL OFFICE, INC.,
And PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7
(Substantively Consolidated)

Debtors.

ROBERT E. TARDIF, JR., AS TRUSTEE
FOR THE CHAPTER 7 BANKRUPTCY
ESTATES OF ULRICH FELIX ANTON
ENGLER AND PRIVATE COMMERCIAL
OFFICE, INC.,

ADV. PROC. NO. 9:10-ap-00459-MGW

Plaintiff,

v.

GERHARD HOELTKE and
INES HOELTKE,

Defendants.

**MEDIATOR'S REPORT AND NOTICE
OF COMPLETION OF MEDIATION**

In accordance with the Court's Order of Referral to Mediation, dated 6/2, 2011,
a mediation conference was held on July 7, 2011, and the results of that conference are indicated
below:

(a) The following individuals were present:

1. Parties (name and capacity) –

ROBERT E. TARDIF, ESQ., PLAINTIFF
GERHARD AND INES HOELTKE, DEFENDANTS

2. Counsel (name and party representing) –

ROBERT F. ELGIDELY, ESQ.

DARRIN R. SCHUTT, ESQ.

(b) The following parties failed to appear and/or participate as ordered:

NONE.

(c) The outcome of the mediation conference was:

The dispute has been completely resolved and counsel (or parties) have been instructed to file an appropriate settlement agreement and motion for approval of the settlement within ten (10) days, as follows:

The case has been partially resolved and counsel (or parties) have been instructed to file a stipulation regarding those claims or issues which have been resolved within ten (10) days.

The following issues remain for this Court to resolve:

Trustee will provide a financial affidavit to be completed by the defendants under penalty of perjury fully disclosing nature, extent and location of their assets and liabilities within 14 days; By close of business July 11 Defendants shall tender payments to Defendant's counsel's trust account in the amount of \$50,000, pending approval of this settlement, and thereafter transferred to Trustee; Trustee fully responsible for expenses of

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[Handwritten signature]

mediation by close of business July 11, 2011. Defendants shall turn over possession of a 2011 Honda Accord Cross Tour and title thereto as well as all documents pertaining to its purchase by Defendants, to trustee's designated

___ The case has not been resolved and should proceed for final evidentiary hearing.

___ Other representative; Trustee shall bear full risk of loss to the vehicle after turnover on July 11, 2011; Defendants shall deliver to escrow fully executed special warranty deeds to the following properties, free and clear of all encumbrances except ad valorem taxes:

Dated: July 7, 2011

Approved: [Signature]
[Signature]
[Signature]

LOUIS X. AMATO, P.A.
P. O. Box 1242
Frostproof, Florida 33843
(863) 635 2000
(863) 635 0908 (Fax)
louisa@louamato.com

Counsel: [Signature]
[Signature]

By: /s/ Louis X. Amato
LOUIS X. AMATO
Fla. Bar No. 171719

cc: Counsel of Record
Parties
Mr. Chas. G. Kilcoyne - Mediation Coordinator

Continued:

- a) 111 N.W. 24 AVE. Cape Coral, 33993 ;
- b) 300 NW 18 Place " " 33993 ;
- c) 1144 S.W. 3rd St. " " 33991 ;
- d) 1140 S.W. 3rd St. " " 33991 ;
- e) 204 Truman Ave, Alva, FL 33920 ;
- f) 2216 Jefferson Ave, " " " ;

By July 15, 2011 Trustee shall file a motion to approve this settlement.

Upon entry of an order approving the settlement and transfer of all consideration payable to Trustee, the parties shall execute a joint motion and order dismissing the action with prejudice.