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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re CASE NO. 9:08-BK-04360-MGW

ULRICH F. ENGLER, CHAPTER 7
PRIVATE COMMERCIAL OFFICE INC. (substantively consolidated)
et. alt.
- Debtors -

CREDITOR'S OPPOSITION TO TRUSTEE'S SIXTH OMNIBUS OBJECTION TO CLAIMS

Creditor Werner MÜLLER, by and through counsel, hereby objects to Trustee Sixth Omnibus Objection dated 18 Aug 2015 [Docket No. 1135], and presents and reasons as follows:

1. Trustee's Sixth Omnibus Objection seeks to reduce the value of creditor Werner MÜLLER's Claim No. 531 by \$12,026.00 based on Debtors' repayments upon the principal investment. Trustee's Sixth Omnibus Objections seeks to further reduce the value of creditor Werner MÜLLER's Claim No. 531 by an additional \$6,570.00 based upon creditor's claim for disallowed interest. See Trustee's Sixth Omnibus Objection to Claims filed 18 Aug 2015 [Docket No. 1135]

2. Creditor Werner MÜLLER agrees to the proposed downward adjustment of his claim by \$6,570.00 based upon claiming interest.

3. However, creditor Werner MÜLLER holds 2 instruments executed and acknowledged by the Debtors. The first is a promissory note acknowledging an investment of \$12,000.00. See Promissory Note dated 9 Oct 2006 attached hereto as *Exhibit 01*. The note indicated in the very top line, in German, that

"Funds have already been wired yes no on 18/9/06"

and is signed by the debtor. The second is a promissory note acknowledging an investment of \$40,000.00. See Promissory Note dated 24 Apr 2007 attached hereto as *Exhibit 02*. This note also indicates in the very top line, in German, that

“Funds have already been wired yes no on 4/4/07”

and is signed by the debtor.

4. The Trustee has not provided any further evidence that \$12,026.00 of the principal investment of \$52,000.00 were indeed repaid to the creditor, on what date, and what the method of payment may have been. A proof of claim “constitutes prima facie evidence of the validity and amount of the claim. [...] The burden then shifts to the objecting party to come forward with enough substantiations to overcome the claimant’s prima facie case.” Waltson v. PYOD LLC, 606 Fed. App. 543, 546 (11th Cir. 2015) (citing Benjamin v. Diamond, 563 F.2d 692, 701 (5th Cir. 1977)). Therefore, the Trustee has not met the burden to overcome creditor Werner MÜLLER prima facie Claim No. 531 with regards to an alleged repayment of principal to the extent of \$12,026.00 because the objection is not supported by any factual substantiation.

WHEREFORE, creditor Werner MÜLLER hereby respectfully moves the Court to

- a. disregard Trustee’s Sixth Omnibus Objection to Claims with respect to Claim No. 531;
- b. allow creditor Werner MÜLLER’s Claim No. 531 in the amount of \$52,000.00; and
- c. grant the creditor any other relief the Court deems appropriate under the circumstances.

Respectfully submitted on 18 November 2015.

/s/ Helge Naber
ATTORNEY FOR CREDITOR
appearing pro hac vice

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF APPEARANCE & REQUEST FOR NOTICE has been distributed to all creditors and/or interested parties currently registered with the Court’s CM/ECF electronic filing and notification system on **18 November 2015**.

/s/ Helge Naber
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ATTORNEY FOR CREDITOR
APPEARING PRO HAC VICE