

IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

In Re:

ULRICH FELIX ANTON ENGLER

Case No. 9:08-bk-04360-ALP

Debtor.

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**OBJECTION BY CHAPTER 7 TRUSTEE TO  
MOTION FOR RELIEF FROM STAY FILED BY  
CONGRO FINANZ AG AND PRIMUS GMBH**

COMES NOW the Chapter 7 Trustee, ROBERT E. TARDIF JR., and objects to the Motion for Relief from Stay filed by Congro Finanz AG and Primus GMBH and states as follows:

1. Congro Finanz AG and Primus GMBH claim to have unavoidable statutory liens by the service of various writs of garnishment within the 90-day period before filing, which the Trustee disputes. While the timing of the any lien may be dictated by statute, the creditors have nothing more than judicial liens since the liens are created, if at all, by the service of a writ of garnishment issued out of a purely judicial proceeding.
2. A review of the affidavits of service reflects that many of the writs of garnishment have not even been properly served. Therefore, even if the creditors' arguments are accepted, no valid lien has been created by any writ that has not been properly served.
3. Upon information and belief, the Trustee does not believe that service of a writ of garnishment in Idaho creates an unavoidable statutory lien as suggested and argued by the creditors.

4. Notwithstanding the alleged proper service of any writs of garnishment, the Trustee argues that all liens created within the 90-day prepetition period constitute avoidable preferences and the voidability of such liens are not governed by Section 545. The Court cannot sanction a “shotgun approach” to the claimed creation of statutory liens to the detriment of all of the creditors of the Debtor for the benefit of two creditors. The allowance of the claimed liens is absolutely contrary to the principles and concepts governing preference litigation.
5. Notwithstanding the alleged proper service of any writs of garnishment and the unavailability of liens created by service, the Trustee is the owner of any and all claims involving fraudulent transfers of assets of the Debtor.
6. Notwithstanding the alleged proper service of any writs of garnishments and the unavailability of liens created by service, the Trustee is the owner of any debt and/or property due to the Debtor to the extent that no debt was due to the Debtor upon service of the writs and to the extent that the garnishees hold no property due or belonging to the Debtor on the date of service.
7. The Trustee has reviewed and adopts the arguments contained in the Objection and Amended Objection to the Motion for Relief from Stay filed by the Petitioning Creditors.

Certificate of Service

I HEREBY CERTIFY that the foregoing has been electronically filed and served via the CM/ECF system or by regular U.S. Mail on the following on May 28, 2008.

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