

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re

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

ULRICH FELIX ANTON ENGLER and  
PRIVATE COMMERCIAL OFFICE, INC.,

CHAPTER 7  
(Substantively Consolidated)

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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. 9:09-ap-01026-ALP

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL,  
INC. and FIDELITY NATIONAL TIMBER  
RESOURCES, INC. f/k/a FIDELITY NATIONAL  
RANCH PROPERTIES, INC.,

Defendants.  
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**TRUSTEE'S MOTION TO PERMIT DEFENDANTS TO PARTICIPATE IN MAY 21,  
2010 HEARINGS BY TELEPHONE AND RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION TO CONTINUE HEARINGS SET FOR MAY 21, 2010**

ROBERT E. TARDIF, JR. (hereinafter the "Trustee"), as Trustee for the Chapter 7 Bankruptcy Estates of Ulrich Felix Anton Engler and Private Commercial Office, Inc. (hereinafter referred to collectively as the "Debtors"), by and through his undersigned counsel, hereby files his Motion To Permit Defendants To Participate In May 21, 2010 Hearings By Telephone And Response In Opposition To Defendants' Motion To Continue Hearings Set For May 21, 2010, and states in support thereof as follows:

1. On May 5, 2010, non-creditors Fidelity National Financial, Inc. and Fidelity National Timber Resources, Inc. (hereinafter referred to collectively as the “Fidelity Defendants”) filed Motions To Continue Hearings Set For May 21, 2010 [Main Bankruptcy Case, D.E. 362 and Adversary Proceeding, D.E. 56] (hereinafter referred to collectively as the “Motion to Continue”).

2. In the Motion to Continue, the Fidelity Defendants request this Court to continue two routine, non-evidentiary hearings because such hearings apparently do not take precedence over one of their attorney’s out-of-state continuing legal education and networking events and because no other attorney in the 250 attorney law firm is capable of covering the hearing in such attorney’s absence.

3. Since the Trustee has absolutely no objection to the Fidelity Defendants participation in the hearings by telephone and respectfully requests this Court to permit same, the only purpose which would be served by granting the Motion to Continue would be to further impede or delay the actions necessary to properly administer the main bankruptcy case and the progress of the above-captioned adversary proceeding.

4. For the foregoing and following reasons, the Trustee respectfully requests this Honorable Court to enter an Order permitting the Defendants to participate in the May 21, 2010 hearings by telephone and denying the Defendants’ motion for continuance of such hearings.

5. On April 20, 2010, the Trustee filed a Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors’ Bankruptcy Estates Effective As Of The Date Of The Entry Of The Order On This Motion in the main bankruptcy case [D.E. 212] (hereinafter the “Motion to Consolidate”).

6. On April 23, 2010, the Court scheduled a preliminary hearing on the Motion to Consolidate for May 21, 2010 at 9:00 a.m. [D.E. 232].

7. On April 30, 2010, the Trustee filed a Motion To Compel Deposition Of William P. Foley, II in the adversary proceeding citing the Fidelity Defendants' dilatory actions in connection therewith [D.E. 51] (hereinafter the "Motion to Compel").<sup>1</sup>

8. On May 4, 2010, the Court scheduled a hearing on the Motion to Compel for May 21, 2010 at 9:15 a.m.

9. On May 5, 2010, the Fidelity Defendants filed the Motion to Continue the preliminary hearing on the Motion to Consolidate and the hearing on the Motion to Compel because their lead counsel, Steven M. Berman, had an out-of-state continuing legal education and networking event and such hearings required his personal attention and appearance.

10. As set forth in the Motion to Continue, however, Mr. Berman (or one of his colleagues) is fully capable of participating in these routine, non-evidentiary hearings by telephone because he is not scheduled to speak at the continuing legal education and networking event until the day after the hearings, May 22, 2010. See Motion to Continue, Exhibit A.

11. Moreover, Mr. Berman's colleague and co-counsel of record, Seth P. Traub, has previously appeared for the Fidelity Defendants at an April 15, 2010 hearing in the adversary proceeding and has otherwise been actively involved in connection therewith.

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<sup>1</sup> As a result of the Fidelity Defendants resistance of the Trustee's multiple, good faith efforts to coordinate the date and time of the deposition of Mr. Foley and to advance the progress of the adversary proceeding, the Trustee was forced to unilaterally file a notice of deposition of Mr. Foley on April 8, 2010 for May 21, 2010 and an amended notice of deposition on April 30, 2010 for May 27, 2010 in Kalispell, Montana [D.E. Nos. 41 and 49]. Mr. Foley is the Chairman of Fidelity National Financial, Inc., Chief Executive Officer of Fidelity National Timber Resources, Inc., and was intimately involved in the transactions which are the subject of the adversary complaint as evidenced by the Fidelity Defendants' deposition testimony and document production which will be separately filed with the Court.

12. The Motion to Continue does not cite any scheduling conflicts for Mr. Traub on May 21, 2010.

13. The Trustee and the creditors of the bankruptcy estate would also be prejudiced by a continuance of the May 21, 2010 hearings. The Trustee has notified the numerous creditors of the bankruptcy estate, the majority of whom are from Germany, of the preliminary hearing scheduled on the Motion to Consolidate and certain of those creditors may have made travel arrangements to attend such hearing. Additionally, the Trustee has re-noticed the deposition of Mr. Foley for May 27, 2010 in Kalispell, Montana and a determination must be made on the Motion to Compel prior to such time.

14. Local Bankruptcy Rule 5071-1 provides, in pertinent part, as follows:

(f) No hearing for which all creditors have received notice may be cancelled. In the event that a matter has been settled in the advance of such a hearing, it will still be called for hearing.

15. For the foregoing reasons, the Trustee respectfully submits that this Court should enter an Order permitting the Fidelity Defendants to participate in the May 21, 2010 hearings by telephone and denying the Motion to Continue for lack of good cause.<sup>2</sup>

**WHEREFORE**, the Trustee respectfully requests this Honorable Court to enter an Order permitting the Fidelity Defendants to participate in the May 21, 2010 hearings by telephone,

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<sup>2</sup> In the last sentence of the Motion to Continue, the Fidelity Defendants make the incredibly false statement that the Trustee failed to appear for a deposition on April 28, 2010. As reflected by the deposition transcript of David Douglas, which took place immediately prior to the scheduled deposition of the Trustee, the Trustee was actually seated in the deposition room from 1 p.m. to 6:40 p.m. awaiting the conclusion of Mr. Douglas' deposition and only when such deposition concluded at a late hour requested that the Fidelity Defendants re-schedule his deposition for a mutually convenient date and time in Fort Myers or Tampa, Florida. The Fidelity Defendants assertion in this regard is completely disingenuous and is intended to mislead or prejudice this Court.

denying the Motion to Continue, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Trustee's Motion To Permit Defendants To Participate In May 21, 2010 Hearings By Telephone And Response In Opposition To Defendants' Motion To Continue Hearings Set For May 21, 2010 has been filed with the Court and thereby furnished to all creditors and parties in interest registered on the Court's CM/ECF System on the 10<sup>th</sup> day of May, 2010.

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