

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re

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

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

CHAPTER 7
(Substantively Consolidated)

Debtors.

TRUSTEE'S NOTICE OF FILING EXCERPTS OF DEPOSITION TESTIMONY OF DAVID DOUGLAS AND DOUGLAS INVESTMENTS, LLC IN SUPPORT OF MOTION TO SUBSTANTIVELY CONSOLIDATE NON-DEBTOR DOUGLAS INVESTMENTS, LLC WITH AND INTO THE DEBTORS' BANKRUPTCY ESTATES

NOTICE IS HEREBY GIVEN that ROBERT E. TARDIF, JR. (hereinafter the "Trustee"), as Trustee for the Chapter 7 Bankruptcy Estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (hereinafter referred to collectively as the "Debtors"), by and through his undersigned counsel, has filed the excerpts of the deposition testimony of David Douglas and Douglas Investments, LLC attached hereto as Composite Exhibit "A" and the exhibits attached hereto as Composite Exhibit "B" in support of the Trustee's Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates [D.E. 212] with the Clerk of this Court, summarized as follows:¹

¹ A complete copy of the deposition transcript of David Douglas and Douglas Investments, LLC was filed in the adversary proceeding styled *Robert E. Tardif, Jr., Chapter 7 Trustee v. Fidelity National Financial, Inc. and Fidelity National Timber Resources, Inc.*, Case No. 9:09-ap-01026-ALP as Docket Entry Number 65. Citations to the transcript shall be referred to herein as "DI, p. _____, line(s) _____."

1. David Douglas (hereinafter “Douglas”) knew Ulrich Engler (hereinafter “Engler”) was a day trader, that Private Commercial Office, Inc. (hereinafter the “Corporate Debtor”) was in the day trading business, and recognized that the use of funds intended to be invested in the securities markets for purchases of real property would be unauthorized. *See* DI, p. 28, lines 5 and 6; p. 221, lines 9 – 11, p. 225, lines 5 – 8; and p. 322, lines 12 – 24.

2. Engler and Douglas discussed how Douglas Investments, LLC (hereinafter “Douglas Investments”) should be formed; Engler indicated that he did not want his name to appear on the corporation as a member or manager because he was concerned that if any assets were discovered in his name such assets would be subject to “double taxation” or reachable by his ex-spouses; and Engler was not named as a member or manager of Douglas Investments because of his concerns about “double taxation” and “divorce” issues. *See* DI, p. 159, p. 160; p. 161, lines 1 – 17; p. 162, lines 18 – 25 (stating “[t]hat [Engler] did not want to be a member of any LLC that could trace him back to Germany in the United States”); p. 163; and p. 164, line 1.

3. Since Engler refused to take title to property in his own name because of his concerns over “double taxation” and “divorce” issues, he became Douglas’ “silent partner” and funded purchases of real property which were titled in the name of Douglas Investments only and Engler and Douglas agreed to share profits from the re-sale of those properties pursuant to “business loan agreements.” *See* DI, p. 31, lines 14 – 25; p. 32, lines 1 – 3; p. 82, lines 17 – 23; p. 158, line 25; p. 159, lines 1 – 22; p. 160, lines 3 – 13; p. 383, lines 23 – 25; and p. 384, lines 1 - 4.

4. Engler transferred funds to Douglas Investments for the purchase of a single family residence located at 8 Cold Springs Lane, Victor, Idaho as well as a 2006 Hummer H2, V.I.N. 5GRGN23077H111472, and titled those assets in the name of Douglas Investments in

order to address Engler's concerns over "double taxation" and "divorce" issues. *See* DI, p. 291, lines 19 – 24; p. 292, lines 4 – 22; and p. 324, lines 3 – 23.

5. In the period August 3, 2006 to July 31, 2007, the Corporate Debtor transferred \$40,815,000 to Douglas Investments. *See* DI, p. 164, lines 12 – 24; p. 165, lines 2 –24; and Trustee's Exhibit 100.

6. Unlike any of the prior loan transactions in which Douglas had been involved as a borrower, Engler and the Corporate Debtor did not require Douglas and/or Douglas Investments to, (and Douglas and/or Douglas Investments did not), apply for the "loans" totaling \$40,815,000, execute any personal guarantees to secure the repayment of the "loans," record a mortgage or perfect a security interest to collateralize the "loans," permitted the "loan" documents to be prepared by the "borrower" Douglas Investments, reflected the incorrect name of the "lender" as Engler rather than the Corporate Debtor, reflected the incorrect amount of the "loan" proceeds, provided for funding of the "loan" proceeds prior to execution of the "loan" documents, and were executed after the transactions upon which they were based. *See* DI, p. 155, lines 19 – 25; p. 156, lines 1 – 25; p. 157, lines 1 – 5 and 17 - 23; p. 176, lines 5 – 13; p. 177, lines 12 – 17; p. 179, lines 1 – 10; p. 187, lines 10 – 17; p. 189, lines 21 – 25; p. 190, lines 1 – 8; p. 194, lines 3 – 25; p. 195, lines 1 – 4; p. 203, lines 9 - 25; p. 204, lines 1 – 5; p. 209, lines 15 – 25; p. 210; p. 211, lines 5 – 10; p. 213, lines 5 – 25; p. 214; p. 215, lines 1 – 15; p. 217, lines 15 – 23; p. 219, lines 5 – 8; p. 361, lines 22 – 25; pp.. 362 - 371; and p. 372, lines 1 – 21.

7. Under the "loan" agreements, the "lender" (Engler) was entitled to not only repayment of principal and interest but, also, a portion of the profits from the re-sale of the properties. *See* DI, p. 22, lines 9 – 14; p. 23, lines 18 – 25; p. 24, lines 1 – 3; p. 42, lines 15 – 25;

p. 43; p. 49, lines 17 – 25; p. 157, lines 24 and 25; and p. 158, lines 1 – 23; p. 176, lines 14 – 22; p. 177, lines 2 – 11; and p. 192, lines 2 – 6.

8. The only sources of income or revenue which Douglas Investments ever had were the \$40,815,000 transferred by the Corporate Debtor or rental income generated from property acquired with the funds transferred. *See* DI, p. 165, line 25; p. 166, lines 1 – 10; p. 171, lines 7 – 25; p. 172; p. 173, lines 6 – 12; p. 174, line 25; p. 175, lines 1 – 4; p. 186, lines 23 -25; p. 187, lines 1 – 9; p. 205, lines 15 – 25 and p. 206, lines 1 – 10.

9. Engler requested Douglas to add Douglas' spouse, Debra Douglas, as a member of Douglas Investments in the event of Douglas' death and the operating agreement of Douglas Investments was amended in order to specify that Engler would become the sole member of Douglas Investments upon their deaths and would be the sole person in charge to manage the business and affairs of Douglas Investments. *See* DI, p. 58, lines 10 – 15; p. 282, lines 15 – 24; p. 283, lines 19 – 22; p. 284, lines 18 – 25; p. 285; p. 286, lines 1 – 10; p. 298, lines 10 – 25; and Trustee's Exhibits 115, 116, and 120.

10. Fidelity National Timber Resources, Inc. (hereinafter "Fidelity Timber") requested financial statements from Engler and Engler refused to provide financial statements or recent bank statements "because he was very opposed to anybody knowing his business" and "because he was a very private person." *See* DI, p. 230, lines 4 – 25; pp. 232 - 234; p. 236, lines 2 – 22; and p. 254, lines 9 – 25.

11. Fidelity Timber did not request or receive financial statements or bank statements from Douglas or Douglas Investments at any time. *See* DI, p. 229, lines 6 – 24; p. 230, line 3; and p. 235, lines 17 – 25.

12. Douglas Investments merely received specific transfers from the Corporate Debtor intended for Fidelity Timber and disbursed those transfers to Fidelity Timber because Engler specifically earmarked those transfers for the transaction with Fidelity Timber, Douglas and/or Douglas Investments did not have any discretion concerning the use and/or disposition of those transfers, and Douglas and/or Douglas Investments did not use any of their own funds or the funds of any of their affiliates for transfers to Fidelity Timber. *See* DI, p. 196, lines 11 – 25; p. 197, lines 1 – 12; and p. 312, lines 13 - 23.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for 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
David C. Cimo, Esq.
Florida Bar No. 775400
Theresa Van Vliet, Esq.
Florida Bar No. 374040

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Notice Of Filing Excerpts Of Deposition Testimony Of David Douglas And Douglas Investments, LLC In Support Of Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates has been filed with the Court and thereby furnished to all creditors and parties in interest registered on the Court's CM/ECF System (including Douglas Szabo, Esq., Henderson, Franklin, Starnes & Holt, P.A., 1715 Monroe Street, P.O. Box 280, Fort Myers, FL 33902 and Steven M. Berman, Esq., Shumaker, Loop & Kendrick, LLP, 101 East

Kennedy Boulevard, Suite 2800, Tampa, FL 33602) and has additionally been furnished via first class mail to Fidelity National Timber Resources, Inc., c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801; Janet D. Robnett, Esq., McEuen Terrace, 701 Front Avenue, Suite 101, Post Office Box E, Coeur d'Alene, ID 83816; and Sean Moulton, Esq., Moulton Law Office, P.O. Box 631, 60 E. Wallace, Driggs, Idaho 83422, on the 14th day of May, 2010.

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