

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.

**MOTION FOR TURNOVER OF PAYMENTS
OWED TO THE BANKRUPTCY ESTATE**

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 his undersigned counsel, hereby files his Motion For Turnover Of Payments Owed To The Bankruptcy Estate pursuant to Section 542(b) of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”), and states in support thereof as follows:

1. On April 16, 2010, the Trustee filed a Complaint against Autoquest of Southwest Florida, Inc. (hereinafter “Autoquest”) for unjust enrichment and to avoid and to recover fraudulent transfers pursuant to Sections 544, 548, and 550 of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”) and Chapter 726 of the Florida Statutes, Case No. 9:10-ap-00435-MGW (hereinafter the “Adversary Proceeding”).

2. As reflected by Exhibit A to the Complaint, PCO loaned \$1,500,000 and \$400,000 to Autoquest on February 16, 2007 and May 18, 2007 respectively (hereinafter referred to as “Loan 1” and “Loan 2,” respectively). True and correct copies of the cancelled check and

wire transfer confirmation are attached hereto as Composite Exhibit A and are incorporated herein by this reference.

3. On May 10, 2010, Autoquest advised the Trustee that Loan 1 was evidenced by a promissory note dated February 14, 2007 which provided that the loan accrued interest at the rate of two percent per annum, that such interest was payable annually in February, that the loan matured in 2013, that two interest payments [in the amount of \$30,000 each] were owed, and that the loan remained outstanding. A true and correct copy of the e-mail is attached hereto as Exhibit B and is incorporated herein by this reference.

4. On May 10, 2010, Autoquest filed an Answer and Affirmative Defenses to the Complaint. Significantly, Autoquest did not assert a claim for offset against the Debtors and acknowledged the existence of Loan 1 in the Answer. *See* Adversary Proceeding, D.E. 6, ¶¶ 12

5. With respect to Loan 2, PCO's wire transfer confirmation states that it was a "short term loan repayable until June 8, 2007" and there is no evidence that such loan has been repaid to the bankruptcy estate.

6. For over three years, Autoquest has had the use, benefit and enjoyment of the Debtors' funds totaling \$1,900,000.

7. Since the two interest payments on Loan 1 and the principal balance of Loan 2 are liquidated, matured, and undisputed obligations of Autoquest, such payments are subject to immediate turnover to the Debtors' bankruptcy estate pursuant to Bankruptcy Code Section 542(b).

8. The Trustee has made several requests for a copy of the promissory note for Loan 1 but, Autoquest has failed and/or refused to provide a copy of same.

9. The Trustee has also obtained information that the maturity date reflected on the promissory note for Loan 1 was altered in order to extend the due date for repayment of the principal.

WHEREFORE, the Trustee respectfully requests this Honorable Court to enter an Order requiring Autoquest to turnover the two interest payments owed on Loan 1 and the principal balance of Loan 2 forthwith and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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By: /s/ Robert F. Elgidely
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Motion For Turnover Of Payments Owed To The Bankruptcy Estate has been filed with the Court on the Court's Case Management/Electronic Case Filing System and therefore served upon all creditors and parties in interest registered thereon including RICHARD JOHNSTON, JR., ESQ., Fowler White Boggs P.A., 2235 First Street, Fort Myers, Florida 33901, on the 22nd day of September, 2010.

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