

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-MGW

Debtor.

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**TRUSTEE'S REQUEST FOR HEARING ON**  
**MOTION FOR AUTHORITY TO SELL PROPERTY**  
**OF THE ESTATE FREE AND CLEAR OF LIENS**  
**(EXPEDITED CONSIDERATION REQUESTED)**

COMES NOW the Trustee in the above-styled case, ROBERT E. TARDIF JR., and requests that the Court hold an expedited hearing on the Trustee's Motion to Sell (Doc. No. 528) to rule and give direction and states as follows:

1. On November 22, 2010, the Trustee filed a Motion to Sell pursuant to 11 U.S.C. § 363 to sell property commonly known as Neely Farm to Jonathan Fenn Trust for \$2,188,200.00.
2. In the lead up to signing the agreement, Fenn was verbally advised that the Trustee was required to entertain higher bids for the property, but was not going to be actively shopping Fenn's offer to others, but would rather continue to list the property with the broker retained by the estate.
3. In discussions with Fenn, he was advised that higher offers would need to be 10% higher than his offer. This language does not appear in any of the signed documents.
4. Historically, the Trustee had used a few different forms concerning sales and one form did contain higher offer threshold language. The motion used in this case did not contain a threshold for higher offers.
5. In the motion to sell the Trustee set the deadline for receipt of higher offers at December 13, 2010 at 5:00 p.m. The property involved is in Idaho, which is in the Mountain Time zone. The motion did not specify a governing time zone.
6. On December 13, 2010, the Trustee's broker received an offer from Russell Schwendiman just about 6:00 p.m. E.S.T., but prior to 5:00 p.m. M.S.T. The amount of the offer was \$2,334,450.00 – about 8% higher than the initial offer.
7. The motion provided that any higher offers must be accompanied by an earnest money deposit in the form of a cashiers check equal to 10% of the higher offer.
8. When Schwendiman's offer was received, it was not accompanied by an earnest money deposit. Schwendiman's agent did email the Trustee's agent expressing hesitancy over sending a large earnest money to Florida.
9. On December 14, 2010, at approximately 5:00 p.m. M.S.T., Schwendiman posted a 10% deposit with a title company in Idaho in excess of \$230,000.00.
10. Fenn's initial offer is a cash closing this month (December). Schwendiman's offer is a closing in mid January 2011.

11. From the timeline reflected above, Fenn does not believe the Trustee should consider the Schwendiman offer as he believes it was not received by the deadline noted in the motion and was not accompanied by an earnest money deposit.
12. The Trustee advised, however, that given the amount by which the offer exceeded the Fenn offer and the fact that the Trustee acts in a fiduciary capacity he was not going to merely submit an Order on the motion to sell without advising the Court of the events that occurred.
13. The Trustee advised both individuals that he would be willing to conduct a brief auction between the parties, but it appears that Fenn does not wish to participate in an auction process.
14. Fenn has stated that he did not negotiate a break-up fee based upon the discussion about higher offers being 10% higher than his offer, notwithstanding the fact that there is no language in the agreement.
15. Given the foregoing, the Trustee has uncertainty about how to proceed. Apart from the foregoing, the time frames to object have run and no objections have been filed.
16. Neither offer has any contingencies that the Trustee believes would prevent a closing by either party.

WHEREFORE the Trustee moves the Court to set a preliminary hearing on an expedited basis so that the Trustee may receive the direction of the Court and to proceed accordingly.

*Certificate of Service*

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on December 15, 2010 electronically to the Assistant United States Trustee, by regular U.S. Mail to Ulrich Felix Anton Engler and Private Commercial Office, Inc., 1217 Cape Coral Parkway # 121, Cape Coral FL 33904, Jonathan S. Fenn Revocable Trust, c/o C. Timothy Lindstrom, P.O. Box 7622, Jackson, WY 83002 and Russell Schwendiman, P.O. Box 608, Ririe, Idaho 83443, and by either regular U.S. Mail or electronic notice to all creditors and parties in interest according to the Motion to Limit Notice (Doc No. 418) and Court's Order Granting Trustee's Motion to Establish Certain Notice, Case Management and Administrative Procedures (Doc. 451).

/s/ Robert E. Tardif Jr.  
Robert E. Tardif Jr., Trustee  
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