

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

In re
ULRICH FELIX ANTON ENGLER *et. alt.*
- Debtors -

Case No. 9:08-BK-04360-MGW
Chapter 7

CREDITOR'S PETITION FOR LEAVE TO AMEND INFORMAL PROOF OF CLAIM

The undersigned counsel for Creditor Martin HEIDRICH, hereby respectfully moves the Court to acknowledge his claim against the Debtor's estate, and asserts and reasons as follows:

FACTUAL BACKGROUND

1. In December 2006 Creditor HEIDRICH invested \$100,000.00 in Debtor's enterprise. See Loan Agreement (M Heidrich) dated Jan 22, 2007 attached hereto as *Exhibit 01* and Promissory Note (M Heidrich) dated Jan 22, 2007 attached hereto as *Exhibit 02*. The Debtor confirmed receipt of Creditor Heidrich's contribution as of December 15, 2006. See Acknowledgment of Payment (M Heidrich) [undated] attached hereto as *Exhibit 03* and Translation Acknowledgment of Payment (M Heidrich) [undated] attached hereto as *Exhibit 04*.

2. Subsequent to his contribution, between March and August of 2007, Creditor Heidrich received distributions of the Debtor totaling \$46,328.13. See Account Statements Heidrich March thru August 2007 attached hereto as *Composite Exhibit 05*.

3. On or about October 23, 2008, Creditor Martin Heidrich, Nachtigallenstrasse 2 in 49835 Wietmarschen/Germany, submitted proof of claims to the clerk of this Court and to the Trustee, copies of which are attached hereto as *Composite Exhibit 06*. Creditor Heidrich's claim is not included in the current claims register.

4. An amended proof of claim and supporting documents are submitted herewith as *Composite Exhibit 07*.

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ARGUMENT IN FURTHERANCE

I. The Court Should Permit Creditor Heidrich's Amended Proof of Claim Because There Is No Prejudice in Allowing Late Submission.

1. The Court should permit Creditor Heidrich's amended proof of claim, submitted herewith, because the Creditor submitted his original intent to make a claim against the debtor's estate prior to the bar date established by the Court. "Under some circumstances, actions by a claimant which do not amount to a formal proof of claim may constitute an informal proof of claim. [...] Not every document filed in the bankruptcy court will constitute an informal proof of claim, however; the document must apprise the court of the existence, nature and amount of the claim (if ascertainable) and make clear the claimant's intention to hold the debtor liable for the claim." In re Charter Co., 876 F.2d 861, 863-864 (11th Cir. 1989) (citations omitted). "An informal claim may be asserted, if it can be at all, only when it is apparent that the creditor intends to seek recovery from the estate and when the 'informal' proof of claim is 'filed' prior to the bar date." In re International Horizons Inc., 751 F.2d 1213, 1217 (11 Cir. 1985).

2. Here, the Court established a bar date to submit proof of claims against the Debtor's estate of November 3, 2008. See Bar Date Order dated July 3, 2008 [Docket No. 72]. Creditor Heidrich mailed his claim and supporting documents to the Court and the trustee on October 23, 2008, approximately 10 days prior to the bar date, and in time to ensure delivery by November 3, 2008. Either before, on, or shortly after November 3, 2008, Creditor Heidrich's submissions were presumably received. Hence, a constructive filing of an informal proof of claim should be inferred and Creditor Heidrich's submission be permitted.

II. The Court Should Accept the Amended Proof of Claim Establishing Creditor Heidrich's Claim Because Certain Data in the Informal Submission Require Clarification.

1. Absent prejudice or undue surprise, informal proofs of claim may be formally or informally amended. *Cf.* In re Franciscan Vineyards Inc., 597 F.2d 181, 183 (9th Cir. 1983).

2. Here, Creditor Heidrich computed his claim to be \$133,749.03. See IDocuments Constituting Informal Proof Claim attached hereto as *Composite Exhibit 06*. Creditor Heidrich 'invested' \$100,000 with the Debtor. See Loan Agreement (M Heidrich) dated Jan 22, 2007 attached hereto as *Exhibit 01* and Promissory Note (M Heidrich) dated Jan 22, 2007 attached hereto as *Exhibit 02*. The Debtor confirmed receipt of Creditor Heidrich's contribution as of December 15, 2006. See Acknowledgment of Payment (M Heidrich) [undated] attached hereto as *Exhibit 03* and Translation Acknowledgment of Payment (M Heidrich) [undated] attached hereto as *Exhibit 04*. He received distributions from the Debtor in the amount of \$46,328.13. See Account Statements Heidrich Feb thru Aug 2007 attached hereto as *Composite Exhibit 05*. His net loss is \$53,671.87. He also entitled to costs and reasonable attorney fees under the terms of the Promissory Note, and applicable case law.

WHEREFORE, Creditor Heidrich respectfully moves the Court to

- a. permit his claim of \$53,671.87 plus costs and reasonable attorney fees;
- b. accept the amended documentation and Proof of Claim to supplement his initial informal submission; and
- c. to grant any other relief the Court deems appropriate and necessary under the circumstances.

RESPECTFULLY SUBMITTED this 22nd day of January, 2012.

NABER PC

/s/ Helge Naber
Helge Naber (MT #7059)
300 Central Avenue Suite 320
Great Falls Montana 59401
Phone (406) 452 3100
Fax (406) 452 6599
ATTORNEY FOR CREDITOR
SEEKING ADMISSION *PRO HAC VICE*

• Clerk of Court Bankr. M.D. Fla.

via CM/ECF

• all parties so registered for electronic notification through the trial court's CM/ECF system in 9:08-BK-4360

via CM/ECF

CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that the foregoing PETITION FOR LEAVE was duly served by electronic means as stated herein through the trial courts' CM/ECF system on January 22, 2013.

NABER PC

By _____/s/ Helge Naber
300 Central Avenue Ste. 320 • Great Falls, MT 59401

