

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS 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.

**APPELLANT'S STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL AND
DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL**

ROBERT E. TARDIF, JR. (the "Trustee" or the "Appellant"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (collectively, the "Debtors"), pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, hereby submits his statement of the issues to be presented on appeal and designation of the contents of the record on appeal to the United States District Court for the Middle District of Florida with respect to the:

Order on *In Camera* Review of Documents [Dkt. No. 945] (the "Order")

Issues to Be Presented on Appeal

Appellant intends to present the following issues on appeal with respect to the entry of the Order:

1. Whether the Bankruptcy Court's Order should be reversed so that SunTrust Bank is prevented from perpetrating a fraud on the Court¹ and 1,230 creditors who claim losses totaling \$318,164,754.01 by engaging in obstructive discovery tactics from February 8, 2011 through April 13, 2012 in order to conceal discoverable information in response to the Trustee's efforts to discharge his duties under 11 U.S.C. § 704(a) and exercise his rights under Rule 2004(b) of the Federal Rules of Bankruptcy Procedure.
2. Whether the Bankruptcy Court's Order should be reversed and remanded because the unique facts and circumstances of this case² warrant production of suspicious activity reports ("SAR") as well as all documents generated or received in the ordinary course of SunTrust Bank's business, which were part of its standard business practice of investigating suspicious activity, or were otherwise discoverable as "supporting documentation" underlying a SAR in order to prevent SunTrust Bank from perpetrating a fraud on the Court and 1,230 creditors who claim losses totaling \$318,164,754.01.
3. Whether the Bankruptcy Court's Order should be reversed due to SunTrust Bank's misrepresentation to the Court that it was only "produc[ing] each and every document withheld on the basis of the [suspicious activity report] [("[SAR]")] privilege to Chambers, under seal, for *in camera* review," in light of the Order's acknowledgment that some unspecified documents produced for *in camera* review were admittedly not subject to a SAR privilege because they *apparently* had previously been made available to the Trustee.
4. Whether the Bankruptcy Court's Order should be reversed and remanded in order to require a description of the documents produced by SunTrust Bank for *in camera* review based on SunTrust Bank's misrepresentation that only documents it believed were subject to the SAR privilege were produced for *in camera* review, so that the Trustee may appropriately evaluate and challenge such contention.
5. Whether SunTrust Bank's conduct in retrieving the box of documents which were the subject of the *in camera* review, contrary to Appellant's request, immediately upon entry of the Bankruptcy Court's Order and before the appeal period expired is a factor this Court should consider in determining whether the Bankruptcy Court's Order should be reversed and remanded.

¹ On March 19, 2013, the District Court granted SunTrust Bank's Motion to Dismiss aiding and abetting claims with prejudice because the case was filed 4 ½ months after SunTrust unilaterally closed the Debtors' accounts and outside the limitations period. *See Franz Lesti, et al. v. Wells Fargo Bank, N.A., et al.*, United States District Court for the Middle District of Florida, Case No. 2:11-cv-695-FtM-29DNF, Dkt. No. 72.

²All victims of the Debtor's Ponzi scheme were residents of foreign countries and, after being a fugitive of justice for 5 years, the Debtor pled guilty, was sentenced, and is currently incarcerated in Germany for using the bank accounts at issue in this appeal to defraud thousands of unsuspecting investors.

Designation of Contents of the Record on Appeal

04/11/2011	614 (36 pgs; 4 docs)	Motion to Compel Production of Documents from Suntrust Bank. Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (Attachments: 1 Exhibit A 2 Exhibit B 3 Exhibit C) (Samole, David) (Entered: 04/11/2011)
05/10/2011	628 (5 pgs)	Order Granting Motion To Compel Production of Documents from Suntrust Bank (Related Doc # 614). Signed on 5/10/2011. (Dorr, Paula) (Entered: 05/10/2011)
05/20/2011	636 (64 pgs; 6 docs)	Motion to Enforce the Court's Order Compelling Production of Documents and, Motion For Sanctions Against SunTrust Bank (Expedited Hearing Requested) (Related Doc # 628). Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (Attachments: 1 Exhibit A 2 Exhibit B 3 Exhibit C 4 Exhibit D 5 Exhibit E) (Samole, David) Modified on 5/23/2011 (Diana). (Entered: 05/20/2011)
06/14/2011	658 (3 pgs)	Order Granting Motion to Enforce the Court's Order Compelling Production of Documents and, Motion For Sanctions Against SunTrust Bank (Related Doc # 636). Signed on 6/14/2011. (Johnson, Diana) (Entered: 06/14/2011)
06/16/2011	659 (7 pgs)	Transcript Regarding Hearing Held 6-7-11 on Trustee's Motion to Enforce the Court's Order Compelling Production of Documents and for Sanctions Against SunTrust Bank (Doc. #636). To purchase a copy of this transcript, please contact Johnson Transcription Service: 813-920-1466 . Transcript access will be restricted through 09/14/2011. (Johnson Transcription Service) (Entered: 06/16/2011)
06/20/2011	670 (52 pgs; 7 docs)	Emergency Motion for Reconsideration and for Relief from the Sanctions Order Entered Against Suntrust Bank and Incorporated Memeorandum of Law (Related Doc # 658 , 636). Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (Attachments: 1 Exhibit Exhibit A to Emergency Motion 2 Exhibit Exhibit B to Emergency Motion 3 Exhibit Exhibit C to Emergency

		Motion 4 Exhibit Exhibit D to Emergency Motion 5 Exhibit Exhibit E to Emergency Motion 6 Exhibit Exhibit F to Emergency Motion) (Schellhase, Mark) Modified on 6/21/2011 (Diana). (Entered: 06/20/2011)
06/23/2011	673 (7 pgs)	Motion to Extend Time for Filing Notice of Appeal and Memorandum of Law Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (related document(s) 658). (Schellhase, Mark) (Entered: 06/23/2011)
07/05/2011	682 (71 pgs; 7 docs)	Response to <i>SunTrust Bank's Emergency Motion for Reconsideration and for Relief from Sanctions Order</i> Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (related document(s) 670). (Attachments: 1 Exhibit A 2 Exhibit B 3 Exhibit C 4 Exhibit D 5 Exhibit E 6 Exhibit F) (Samole, David) (Entered: 07/05/2011)
07/07/2011	683 (5 pgs; 2 docs)	Notice of Filing <i>Exhibit G</i> Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (related document(s) 682). (Attachments: 1 Exhibit G) (Samole, David) (Entered: 07/07/2011)
07/18/2011	690 (81 pgs; 8 docs)	Notice of Filing Trustee's Proposed Order Granting SunTrust Bank's Emergency Motion for Reconsideration and for Relief from the Sanctions Order Entered Against SunTrust Bank Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (related document(s) 670). (Attachments: 1 Exhibit A - Hearing Transcript 2 Exhibit B - Email & Draft Order 3 Exhibit C - Email & Draft Order 4 Exhibit D - Email & Draft Order 5 Exhibit E - Emails 6 Exhibit F - Trustee's Proposed Order 7 Exhibit G - SunTrust's Proposed Order) (Samole, David) (Entered: 07/18/2011)
07/22/2011	699 (5 pgs)	Order <i>Granting SunTrust Bank's Emergency Motion for Reconsideration and for Relief from the Sanctions Order (Vacates 6/14/11 Order)</i> (related document(s) 670 , 658). Signed on 7/22/2011 (Valencia, Dianna) Modified on 7/25/2011 (Diana). (Entered: 07/22/2011)

07/29/2011	703 (4 pgs)	Notice of Filing Certification of David S. Hendrix Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (related document(s) 699). (Schellhase, Mark) (Entered: 07/29/2011)
12/21/2011	764 (3 pgs)	Agreed Motion for 2004 Examination (for Leave) Filed by David A Samole on behalf of Spec. Counsel Thomas Tucker Ronzetti (Samole, David) (Entered: 12/21/2011)
12/29/2011	765 (2 pgs)	Order Granting Motion for 2004 Examination (Related Doc # 764) Signed on 12/29/2011. (Johnson, Diana) (Entered: 12/29/2011)
01/19/2012	778 (10 pgs; 2 docs)	Notice of Deposition Rule 2004 Examination of SunTrust Bank (related document(s) 775). Filed by David A Samole on behalf of Trustee Robert E Tardif Jr.. (Attachments: # 1 Exhibit A) (Samole, David) Modified on 4/2/2012 (Diana). (Entered: 01/19/2012)
02/28/2012	801 (114 pgs; 11 docs)	Motion to Compel Production of Documents and Testimony., in addition to Motion For Sanctions against SunTrust Bank and Memorandum of Law in Support Thereof (Expedited Hearing Requested) Filed by David A Samole on behalf of Trustee Robert E Tardif Jr. (related document(s) 699 , 778). (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Exhibit G# 8 Exhibit H# 9 Exhibit I# 10 Exhibit J) (Samole, David) (Entered: 02/28/2012)
03/13/2012	811 (47 pgs; 6 docs)	Response to Trustee's Motion to Compel Production of Documents and Testimony and for Sanctions Against SunTrust Bank Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (related document(s) 636). (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E) (Schellhase, Mark) (Entered: 03/13/2012)

04/10/2012	826 (2 pgs)	Order on Motion to Compel Production and for Sanctions. Suntrust to produce all documents on the basis of the SAR privileges to Chambers by April 13, 20112. The Court reserves ruling on Trustee's request for further examination of SunTrust Bank and award of fees and costs. All other issues taken under advisement. (related document(s) 801). Signed on 4/10/2012 (Diana) (Entered: 04/10/2012)
05/16/2012	831 (21 pgs)	Motion for Approval Of Amended Joint Prosecution And Cooperation Agreement Filed by Robert F Elgidely, Attorney for Trustee on behalf of Trustee Robert E Tardif Jr. (related document(s) 791). (Elgidely, Attorney for Trustee, Robert) (Entered: 05/16/2012)
05/17/2012	832 (49 pgs)	Transcript Regarding Hearing Held 4/2/12 on Motion to Compel Production of Documents filed by Trustee (Doc. #801); Response (Doc. #811). To purchase a copy of this transcript, please contact Johnson Transcription Service: 813-920-1466 (related document(s) 812). Transcript access will be restricted through 08/15/2012. (Johnson Transcription Service) (Entered: 05/17/2012)
05/22/2012	837 (2 pgs)	Order Granting Motion for Approval of Amended Joint Prosecution And Cooperation Agreement (Related Doc # 831). Signed on 5/22/2012. (Johnson, Diana) (Entered: 05/22/2012)
04/03/2013	927 (47 pgs; 4 docs)	Supplemental Response to Trustee's Motion to Compel Production Based on Judge Steele's Recent order in Case 2:11-cv-695FtM-29DNF Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (related document(s) 801 , 826). (Attachments: # 1 Exhibit A# 2 Exhibit Part 1 of Exhibit B# 3 Exhibit Part 2 of Exhibit B) (Schellhase, Mark) Modified on 4/4/2013 (Diana). (Entered: 04/03/2013)
04/13/2013	930 (11 pgs)	Reply to SunTrust Banks Supplemental Response To Trustees Motion To Compel Production Of Documents And Testimony And For Sanctions [Doc. 927] Filed by Robert F

		Elgidely, Attorney for Trustee on behalf of Trustee Robert E Tardif Jr. (related document(s) 801). (Elgidely, Attorney for Trustee, Robert) (Entered: 04/13/2013)
05/06/2013	942 (2 pgs)	Notice of Non Appeal of Judge Steele's Order of Dismissal with Prejudice in case 2:11 cv-695 FtM-29DNF Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank. (Schellhase, Mark) (Entered: 05/06/2013)
05/06/2013	943 (4 pgs)	Notice Of Non-Appealability Of District Courts Opinion And Order Dismissing Claims Against Suntrust Bank With Prejudice On Statute Of Limitations Grounds Filed by Robert F Elgidely, Attorney for Trustee on behalf of Trustee Robert E Tardif Jr. (related document(s) 942). (Elgidely, Attorney for Trustee, Robert) (Entered: 05/06/2013)
05/10/2013	945 (3 pgs)	Order on In Camera Review of Documents (related document(s) 801). Attorney Mark David Schellhase is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order. (Diana) (Entered: 05/10/2013)
05/10/2013	946 (2 pgs)	Notice of Serving Filed by Mark David Schellhase on behalf of Interested Party SunTrust Bank (related document(s) 945). (Schellhase, Mark) (Entered: 05/10/2013)
05/24/2013	954 (6 pgs; 2 docs)	Notice of Appeal. Of Order On In Camera Review Of Documents Filing Fee Not Paid or Not Required. Filed by Robert F Elgidely, Attorney for Trustee on behalf of Trustee Robert E Tardif Jr. (related document(s) 945). Appellant Designation due by 06/7/2013. (Attachments: # 1 Exhibit Order on In Camera Review of Documents)(Elgidely, Attorney for Trustee, Robert) (Entered: 05/24/2013)

Dated: June 7, 2013
Fort Lauderdale, Florida

Respectfully submitted,

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By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.
Florida Bar No. 111856

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellant's Statement Of Issues To Be Presented On Appeal And Designation Of Contents Of The Record on Appeal has been has been furnished to all creditors and/or interested parties registered on the Court's CM/ECF System and was also posted on the website "englerbk.com" in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures [Doc. 451], on the 7th day of June, 2013.

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.
Florida Bar No. 111856