

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)
) Chapter 7
IFC CREDIT CORPORATION,) Case No. 09 B 27094
) Hon. Jacqueline P. Cox
Debtor.)
) Hearing Date: January 12, 2010
) Hearing Time: 9:30 a.m.

NOTICE OF MOTION

TO: Please see attached service list.

PLEASE TAKE NOTICE that on Tuesday, January 12, 2010 at 9:30 a.m., I shall appear before the Honorable Judge Jacqueline P. Cox at Everett McKinley Dirksen United States Courthouse, located at 219 South Dearborn Street, Courtroom 619, Chicago, IL 60604, and then and there present **Askounis & Darcy, P.C.'s Motion to Dismiss**, a copy of which is attached hereto and served upon you.

Askounis & Darcy, P.C.,

By: /s/ Alex Darcy
Thomas V. Askounis (IL#0077720)
Alex Darcy (IL # 6220515)
C. Randall Woolley (IL#6280067)
Askounis & Darcy, PC
401 North Michigan Avenue
Suite 550
Chicago, IL 60611
(312) 784-2400 Telephone
(312) 784-2410 Facsimile
taskounis@askounisdarcy.com
adarcy@askounisdarcy.com
rwoolley@askounisdarcy.com

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2009, I electronically filed **Askounis & Darcy, P.C.'s Motion to Dismiss** with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, which will send automatic notice to the following:

Janice A Alwin janice.alwin@bfkn.com
Terence G Banich tbanich@shawgussis.com, mcarter@shawgussis.com
Courtney E Barr cbarr@lockelord.com, docket@lockelord.com
Paige E Barr paige.barr@kattenlaw.com
William J. Barrett william.barrett@bfkn.com
Jason J Ben jben@kayescholer.com
Carly Berard cberard@rockfuscollc.com
Ira Bodenstein ibodenstein@shawgussis.com
Jonathan T Brand jbrand@lakelaw.com
Francis X Buckley fxbuckleyjr@thompsoncoburn.com
Christine L Childers cchilders@jenner.com, docketing@jenner.com
Sara H Doran sara.doran@troutmansanders.com
William J Dorsey , janice.mueller@kattenlaw.com;ecfdocket@kattenlaw.com
Barbara J Dutton duttonlaw@aol.com, lisar@duttonlaw.com
William J Factor wfactor@wfactorlaw.com
Andrea L Frost afrost@kayescholer.com
Matthew Gensburg gensburgm@gtlaw.com, chiedoocket@gtlaw.com;carlsonk@gtlaw.com
Adam B Goodman adam@thegoodmanlawoffices.com
Emily S. Gottlieb emily_gottlieb@gardencitygroup.com,
kenneth_freda@gardencitygroup.com;paul.kinealy@gardencitygroup.com
Daniel T. Graham dgraham@fvldlaw.com
Allen J Guon aguon@shawgussis.com
John W Guzzardo jguzzardo@shawgussis.com
Cindy M. Johnson cjohnson@jnlegal.net, dnewby@jnlegal.net
Vincent E. Lazar vlazar@jenner.com, lyap@jenner.com;docketing@jenner.com
David P Leibowitz dleibowitz@lakelaw.com, czuniga@lakelaw.com;ECF@lakelaw.com
David P Leibowitz dleibowitz@lakelaw.com, il64@ecfcbis.com;ECF@lakelaw.com
Mitchell Lieberman mlieberman@noonanandlieberman.com,
knoonan@noonanandlieberman.com;igarza@noonanandlieberman.com
Inez M Markovich imarkovich@dpattorneys.com, climbach@dpattorneys.com
Gini S. Marziani gsmarziani@davismcgrath.com,
mjoseph@davismcgrath.com,lmiller@davismcgrath.com
Kelly J McClintic kmclintic@keatingshure.com, kkeating@keatingshure.com
Kristin T Mihelic kmihelic@formanlaw.com
Lauren N. Nachinson Lauren.Nachinson@quarles.com, Faye.Feinstein@quarles.com
William T Neary USTPRegion11.ES.ECF@usdoj.gov
Ethan Ostrow ostrowe@gtlaw.com, carlsonk@gtlaw.com

Ann E Pille ann.pille@dlapiper.com, apille@reedsmith.com
George Rosenberg grosenberg@co.arapahoe.co.us
Marylynne K Schwartz mschwartz@shawgussis.com, bharrington@shawgussis.com
John P Sieger john.sieger@kattenlaw.com
Ernest D Simon esimon@erniesimon.com
Michael J. Small msmall@foley.com, khall@foley.com
James B. Sowka jsowka@seyfarth.com
Pia N Thompson pthompson@ksnlaw.com
Jessica Tovrov jessica@tovrovlaw.com
David P. Vallas vallas@wildman.com, fleming@wildman.com;ecf-filings@wildman.com
David O. Yuen dyuen@tresslerllp.com, jborcia@tresslerllp.com;tresslerdocket@tresslerllp.com
Carrie A Zuniga czuniga@lakelaw.com

And I certify that on the 15th of December, 2009, I served the same upon the following non-CM/ECF participants before the hour of 5:00 p.m. via U.S. Mail:

Blackman Kallick
10 South Riverside Plaza
9th Floor
Chicago, IL 60606

Robert S Bressler
Foley & Lardner LLP
321 North Clark Street Suite 2800
Chicago, IL 60654-5313

Robert M Charles
Liebman Conway Olejniczak & Jerry SC
PO Box 23200
Green Bay, WI 54305-3200

James Coston
Mcneily Roenfeld & Coston
53 W Jackson Ste 1142
Chicago, IL 60604

Robert W Dremluk
Seyfarth Shaw LLP
620 Eighth Avenue
32nd Floor
New York, NY 10018

Susan R Fuertes
14910 Aldine-Westfield Road
Houston, TX 77032

David B Goodman
Shaw Gussis et al.
321 N. Clark St.
Ste. 800
Chicago, IL 60654

John M Holowach
Johnson and Newby
39 S. LaSale Street
Suite 820
Chicago, IL 60620
JHolowach@JNLegal.net

IBM Corporation
Beverly H Shideler
Two Lincoln Centre
Oakbrook Terrace, IL 60618

Stephen D Oppenheim
One Tower Square-S102A
Claim Counsel
Hartford, CT 06183

J Alexandra Rhim
BuchalterNemer
1000 Wilshire Boulevard
Suite 1500
Los Angeles, CA 90017

John B Simon
Jenner & BlockLLP
353 N Clark St
Chicago, IL 60654-3456

Deirdre M Richards
Lamm Rubenstone LLC
3600 Horizon Blvd Suite 200
Trevose, PA 19053

By: /s/ Alex Darcy

**IN THE UNITED STATES BANKRUPTCY COURT
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) Chapter 7
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) Hon. Jacqueline P. Cox
Debtor.)

MOTION TO DISMISS

NOW COMES Creditor Askounis & Darcy, P.C. for its Motion to Dismiss pursuant to 11 U.S.C. §707(a) (the “Motion”), and states as follows:

Pursuant to 11 U.S.C. §707(a), the bankruptcy court may dismiss a case for cause. Cause exists to dismiss IFC Credit Corporation’s (the “Debtor”) Chapter 7 bankruptcy case because the bankruptcy petition was improperly filed *pro se* on July 27, 2009. The Illinois courts require corporations to be represented by counsel. In re Tivoli Gardens, Inc., 1999 WL 984392, * 1 (N.D. Ill. Oct. 25, 1999); Berg v. Mid-Am. Industrial, Inc., 293 Ill.App.3d 731, 688 N.E.2d 699 (Ill.A pp. Ct. 1997).

In response to the previously filed motions to dismiss, the Trustee asserts that this Court can rely primarily on certain sections of the Bankruptcy Code in determining that it has jurisdiction. However, the only cases in this district interpreting the standing of a corporate debtor which filed a petition *pro se* hold that the filing is void. Since the filing is void, “equitable” principles cannot be used to escape its effect. A void act cannot be corrected. See In re M.W., 232 Ill.2d 408, 416 905 N.E.2d 757 (Ill. 2009)(lack of subject matter jurisdiction cannot be cured through consent of the parties); Wierzbicki v. Gleason, 388 Ill.App.3d 921, 931, 906 N.E.2d 7 (Ill.App.Ct. 2009)(order entered without jurisdiction is void). Since the petition was improperly filed, the Court lacked

jurisdiction to consider the Debtor's case. That the motion to dismiss was brought three months after the petition was filed does not confer subject matter jurisdiction on this Court. A challenge to the bankruptcy court's subject matter jurisdiction is proper at any time. See Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379, 381 (7th Cir. 2001). A party cannot waive subject matter jurisdiction. Id.

That the Trustee reviewed the issue and decided that the improper filing did not prevent this matter from proceeding does not save the Debtor from dismissal. It is well established that parties cannot, by agreement, confer subject matter jurisdiction upon a court. See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701, 102 S.Ct. 2009 (1982); see also Scaccianoce v. Hixon Mfg. & Supply Co., 57 F.3d 582, 585 (7th Cir. 1995). Federal courts have jurisdiction to determine their own jurisdiction. See Flores-Leon v. I.N.S., 272 F.3d 433, 437 (7th Cir. 2001). Continuing a bankruptcy that is a nullity is a disservice to creditors, excluding First Chicago Bank & Trust, which only recently learned of the rule and will be further harmed if this case is dismissed later, after appeal.

Although First Chicago Bank & Trust delayed in filing its motion to dismiss, the Trustee is equally blame worthy for not moving to dismiss in a timely manner. The remaining creditors may have already been injured if the right to pursue preference claims has been lost due to the Trustee's insistence on proceeding despite the lack of jurisdiction. The Court must promptly rule on the existence of subject matter jurisdiction in order to prevent further injury to creditors.

WHEREFORE, Askounis & Darcy, P.C. respectfully requests that this Court find that sufficient cause exists to dismiss the Chapter 7 bankruptcy proceedings of the Debtor pursuant to 11

U.S.C. §707(a), and grant such other and further relief as this Court deems just.

Askounis & Darcy, P.C.,

Dated: December 15, 2009

By: /s/ Alex Darcy
Thomas V. Askounis (IL#0077720)
Alex Darcy (IL # 6220515)
C. Randall Woolley (IL#6280067)
Askounis & Darcy, PC
401 North Michigan Avenue
Suite 550
Chicago, IL 60611
(312) 784-2400 Telephone
(312) 784-2410 Facsimile
taskounis@askounisdarcy.com
adarcy@askounisdarcy.com
rwoolley@askounisdarcy.com

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ORDER DISMISSING CHAPTER 7 CASE

This matter having come before the Court upon Askounis & Darcy, P.C.'s Motion to Dismiss Chapter 7 Case ("Motion"); the Court having reviewed the Motion; due and proper notice of the Motion having been provided, and it appearing that no other or further notice need to be provided; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED that this case is dismissed as void *ab initio*.

Dated:

Honorable Jacqueline P. Cox
United States Bankruptcy Judge

Prepared by:
Thomas V. Askounis (IL#0077720)
Alex Darcy (IL # 6220515)
C. Randall Woolley (IL#6280067)
Askounis & Darcy, PC
401 North Michigan Avenue
Suite 550
Chicago, IL 60611
(312) 784-2400 Telephone
(312) 784-2410 Facsimile
taskounis@askounisdarcy.com
adarcy@askounisdarcy.com
rwoolley@askounisdarcy.com