

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.)

NOTICE OF MOTION

To: *U.S. Trustee William T Neary, Office of the U.S. Trustee
See attached service list

PLEASE TAKE NOTICE that on Tuesday, September 15, 2009, at 10:30 a.m., we will appear before the Honorable Jacqueline P. Cox, Courtroom 619, Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, and then and there present our **CHAPTER 7 TRUSTEE'S AMENDED MOTION FOR AUTHORITY TO OPERATE THE DEBTOR'S BUSINESS PURSUANT TO § 721 OF THE BANKRUPTCY CODE**, a copy of which is attached hereto and served upon you herewith.

Dated: September 11, 2009

/s/ David P. Leibowitz
Chapter 7 Trustee

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**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.)
)

**CHAPTER 7 TRUSTEE'S AMENDED MOTION FOR AUTHORITY TO OPERATE
THE DEBTOR'S BUSINESS PURSUANT TO 11 U.S.C. § 721**

David P. Leibowitz, as Chapter 7 Trustee (the "Trustee"), for the Estate of IFC Credit Corporation (the "Debtor"), by and through undersigned counsel and pursuant to § 721 of Title 11, United States Code (the "Bankruptcy Code) seeks an order of this Court to operate the business of the Estate. In support of this Motion, the Trustee respectfully represents the following:

Jurisdiction & Venue

1. This Court has jurisdiction over this Application pursuant to 28 USC §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 USC §§ 1408 and 1409(a).
3. By Internal Operating Procedure 15 of the United States District Court for the Northern District of Illinois, the District Court has referred all bankruptcy cases to the Bankruptcy Court for initial determination.

Factual and Procedural Background

4. The Debtor, one of the top 100 leasing companies in the United States, filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code and the Office of the United States Trustee appointed David P. Leibowitz as Chapter 7 Trustee for the Debtor's Estate on July 27, 2009 (the "Petition Date" or "Date of Appointment").

5. After the Date of Appointment, the Trustee had numerous meetings with the Debtor's executive officers and is of the opinion that the value of the Debtor could be maximized

for the benefit of its creditors by continuing to operate the Debtor's business pursuant to § 721 of the Bankruptcy Code.

6. The Court granted the Trustee's request to operate the Debtor's business under § 721 of the Bankruptcy Code on August 14, 2009 (the "§ 721 Order"). (Docket No. 107.)

7. Pursuant to the § 721 Order, the Court allowed the Trustee to operate the Debtor's business through and including September 15, 2009.

8. On August 14, 2009, the Court also entered an order allowing the Trustee to use cash collateral on an interim basis (the "Interim Cash Collateral Order"). (Docket No. 106.)

9. The Interim Cash Collateral Order allowed the Trustee to use cash collateral through September 4, 2009 and set a final hearing on the Trustee's use of cash collateral for September 3, 2009 (the "Cash Collateral Hearing")

10. Certain parties in interest objected to the Trustee's use of final cash collateral (the "Objecting Parties"). However, at the Cash Collateral Hearing, the objections were resolved and the Court entered a second interim order ("Second Interim Cash Collateral Order") allowing the Trustee to use certain cash collateral through and including November 6, 2009. (Docket No. 177.) Additionally, the Court directed the Objecting Parties to withdraw their respective objections.

Requested Relief

11. By this Motion, the Trustee seeks authority to continue to operate the Debtor's business on an interim basis pursuant to § 721 of the Bankruptcy Code.

12. The scope and nature of the Debtor's business is such that it cannot be ceased immediately. Moreover, since the Petition Date, the Trustee has had an opportunity to have a better understanding of the Debtor's business and daily operations.

13. The Trustee submits that allowing the continued operation of the Debtor's business through and including November 6, 2009 is in the best interest of the Estate.

14. Additionally, the Trustee submits that amending and superseding the § 721 Order will provide a more lucid understanding of the Trustee's role, obligations, and involvement with the Debtor and this case on a day-to-day basis.

15. Based on the foregoing, the Trustee asks the Court to amend and supersede the § 721 Order by entering an order in substantially the same form as the proposed order attached hereto and incorporated herein as Exhibit A.

Basis for Requested Relief

16. The Bankruptcy Code provides that “[t]he court may authorize the Trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.” 11 U.S.C. § 721. Authority to operate a business in Chapter 7 proceedings is appropriate “in a limited number of situations, such as where it appears that a business could be sold for a greater price as a going concern than would be obtained in ordinary liquidation.” *In re A&T Trailer Park, Inc.*, 53 B.R. 144, 147 (Bankr. D.Wyo. 1985).

17. The Court has discretion in considering requests to operate a debtor's business under §721. *See In re Heissinger Res. Ltd.*, 67 B.R. 378, 384 (Bankr. C.D. Ill. 1986).

18. The statutory option for a Chapter 7 Trustee to run a debtor's business on a limited basis contemplates circumstances where preserving assets so that it may result in an increased benefit to the estate as opposed to immediate cessation of operations and piecemeal liquidation. *See, e.g., In re Quarter Moon Livestock Co.*, 116 B.R. 775, 782 (Bankr. D. Idaho 1990) (authorizing Trustee to operate debtor's cattle business “to wait until fall to roundup and sell the cattle herd, and to maintain the livestock until that time”).

19. As noted previously, the Trustee believes operating the Debtor's Estate is essential to the preservation of the value of the Debtor's business, property, and assets. Courts in this District regularly authorize Chapter 7 Trustees to operate a debtor's estate where, as here, it is in the best

interest of the estates. *See, e.g., In re Knight-Celotex, LLC*, 09-12200 (Bankr. N.D. Ill. 2009)(Hollis, J.); *In re Goldblatt Bargain Stores, Inc.*, 03-10796 (Bankr. N.D. Ill. 2003)(Wedoff, J.).

20. Based on the foregoing, the Trustee submits that authorizing the Trustee to operate the business of the Debtor for a limited period, as proposed in Exhibit A, is in the best interest of the Estate and consistent with the orderly liquidation of the Estate. *See* 11 U.S.C. § 721.

Notice

21. Notice of this Application has been given to: (a) the Office of the United States Trustee for this District; (b) counsel for the Debtor; (c) creditors holding the 20 largest unsecured claims against the Debtor on a consolidated basis as identified in the Debtor's petitions, or their legal counsel (to the extent known); and (f) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, David P. Leibowitz, as the Chapter 7 Trustee for the Estate of IFC Credit Corporation, respectfully requests that this Court enter an order (i) granting this Motion; (ii) authorizing the Trustee to continue to operate the Debtor's business on an interim basis through November 6, 2009 pursuant to 11 U.S.C. § 721; and (iii) granting such other relief as the Court deems just and proper.

Dated: September 11, 2009

**David P. Leibowitz, as Chapter 7 Trustee for the
Estate of IFC Credit Corporation**

By: /s/ David P. Leibowitz
David P. Leibowitz

David P. Leibowitz (ARDC # 1612271)
Jonathan T. Brand (ARDC # 6294885)
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**IN THE UNITED STATES BANKRUPTCY COURT
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EASTERN DIVISION**

In re:)	Chapter 7
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IFC Credit Corporation,)	Case No. 09 B 27094
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)	Hon. Jacqueline P. Cox
Debtor.)	

**ORDER GRANTING CHAPTER 7 TRUSTEE'S AMENDED MOTION
TO OPERATE THE DEBTOR'S BUSINESS PURSUANT TO 11 U.S.C. § 721**

Upon the Amended Motion (the "Amended Motion") of David P. Leibowitz, not individually, but as the Chapter 7 Trustee (the "Trustee") for the Estate of IFC Credit Corporation (the "Debtor"), for entry of an order authorizing the Trustee to operate the Debtor's business through November 6, 2009, pursuant to § 721 of Title 11 of the United States Code (the "Bankruptcy Code"); and it appearing that the relief requested by the Amended Motion is necessary to avoid immediate and irreparable harm to the Debtor's Estate; and good, adequate and sufficient cause has been shown to justify the immediate entry of this order; and it appearing that the relief requested is in the best interests of the Debtor's Estate, its creditors and other parties in interest; and the Court having jurisdiction to consider the Amended Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Amended Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Amended Motion; and due and proper notice of the Amended 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 ORDERED that:

EXHIBIT A

I. Trustee's Operation of the Debtor's Business

1. The Motion is granted and the original Order authorizing the Trustee to operate the Debtor's business through and including September 15, 2009 is hereby amended and superseded in its entirety by this Order, retroactive to July 27, 2009 (the "Petition Date").

2. The Trustee is hereby authorized to operate the Debtor's business on an interim basis from the Petition Date through and including November 6, 2009.

3. The Trustee shall have full power and authority with respect to the control, management, operation and investigation of the Debtor and its Estate, and the Trustee is hereby empowered and authorized to immediately take possession of the Debtor, and the all officers, directors, shareholders and members and all persons claiming through them are removed from control and management of the Debtor (collectively, the "Former Management"). The Former Management and their agents shall hereinafter refrain from occupying or being present at any of the Debtor's premises without prior written permission from the Trustee. The Trustee shall take and receive exclusive and complete custody, control and possession of all assets of the Debtor.

II. Trustee's Professionals & Debtor's Post-Petition Employees

4. All who are acting or have acted on behalf of and at the request of the Trustee are protected and privileged with the same protections of this Court as the Trustee has. For the purposes of clarity, with respect any Former Management authorized by the Trustee to remain at the Debtor to assist with this case, such protections apply only to post-petition actions taken at the request of the Trustee. The Court shall retain exclusive jurisdiction to preside over any actions filed concerning the appointment of the Trustee and the administration of his duties. No action may be brought against the Trustee, or those that have acted on his behalf, for any purpose whatsoever except upon further order of this Court.

5. The Trustee, in his sole discretion and business judgment, may deal with, hire or terminate employees (including current or former employees of the Debtor), collection agents, equipment leasing servicing agents, or other professionals as is necessary or appropriate for the day-to-day management, maintenance and operation of the Debtor.

6. The Trustee, in his sole discretion and business judgment, and by separate order of this Court, shall have full power to hire and retain and otherwise obtain the advice and assistance of such legal counsel, accounting, and forensic and business management professionals as may be necessary to the proper discharge of the Trustee's duties. All reasonable expenses and fees incurred in connection therewith shall be submitted to the Court according to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

III. Scope of the Trustee's Authority

7. The Trustee holds all of the Debtor's assets and property for the benefit of all creditors and the Estate as their interest may appear and be adjudicated. All creditors and other parties in interest that have actual or constructive notice of this order shall be bound thereby and may not undertake any action against the Debtor or its property without further order of this Court.

8. The Trustee, in his sole discretion and business judgment, shall take and keep exclusive and complete custody and control of the Debtor to prevent waste thereto and shall have the power to: (i) manage the daily operations of the Debtor's equipment lease servicing (ii) collect all income derived from the Debtor's business operations and retain the remainder for eventual disposition as directed by the Court by separate order; (iii) arrange for the preservation of the Debtor and its operation; and (iv) arrange for the orderly liquidation of the Debtor's business, unless otherwise ordered by the Court. The Trustee, in his sole discretion and business judgment, is granted all powers necessary and usual in such cases for the protection, possession, control, management, and operation of the Debtor's business during the interim period that this order is

effective, including but not limited to the power to pay post-petition sales and personal property taxes, provide bills of sale or payoff letters to lessees that paid off loans pre-petition, administer and attend to litigation pending in state and federal courts either brought by or against the Debtor pre-petition, and attend to all other aspects of the Debtor's operations in the ordinary course of business for cash or on credit on such terms as the Trustee deems advisable in his sole discretion and business judgment.

9. The Trustee, in his sole discretion and business judgment, may take any other steps necessary that are deemed, by the Trustee, in his sole discretion, to be in the ordinary course of the Debtor's business which the Trustee determines, in his sole discretion and business judgment, are in the best interest of the Debtor's Estate and consistent with an orderly liquidation of the Estate.

10. Notwithstanding anything to the contrary, the Trustee shall at all times act in accordance with the operating budget attached as Exhibit A to the Second Interim Cash Collateral Order, or any subsequent budget either agreed to pursuant to the terms of the Second Interim Cash Collateral Order or entered by the Court (the "Operating Budget").

Dated: September ____, 2009.

HON. JACQUELINE P. COX
UNITED STATES BANKRUPTCY JUDGE

Prepared By:

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Jonathan T. Brand (ARDC # 6294885)
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
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IFC Credit Corporation,)	Case No. 09 B 27094
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Debtor.)	Hon. Jacqueline P. Cox

**ORDER GRANTING CHAPTER 7 TRUSTEE'S AMENDED MOTION
TO OPERATE THE DEBTOR'S BUSINESS PURSUANT TO 11 U.S.C. § 721**

Upon the Amended Motion (the "Amended Motion") of David P. Leibowitz, not individually, but as the Chapter 7 Trustee (the "Trustee") for the Estate of IFC Credit Corporation (the "Debtor"), for entry of an order authorizing the Trustee to operate the Debtor's business through November 6, 2009, pursuant to § 721 of Title 11 of the United States Code (the "Bankruptcy Code"); and it appearing that the relief requested by the Amended Motion is necessary to avoid immediate and irreparable harm to the Debtor's Estate; and good, adequate and sufficient cause has been shown to justify the immediate entry of this order; and it appearing that the relief requested is in the best interests of the Debtor's Estate, its creditors and other parties in interest; and the Court having jurisdiction to consider the Amended Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Amended Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Amended Motion; and due and proper notice of the Amended 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 ORDERED that:

I. Trustee's Operation of the Debtor's Business

1. The Motion is granted and the original Order authorizing the Trustee to operate the Debtor's business through and including September 15, 2009 is hereby amended and superseded in its entirety by this Order, retroactive to July 27, 2009 (the "Petition Date").

2. The Trustee is hereby authorized to operate the Debtor's business on an interim basis from the Petition Date through and including November 6, 2009.

3. The Trustee shall have full power and authority with respect to the control, management, operation and investigation of the Debtor and its Estate, and the Trustee is hereby empowered and authorized to immediately take possession of the Debtor, and the all officers, directors, shareholders and members and all persons claiming through them are removed from control and management of the Debtor (collectively, the "Former Management"). The Former Management and their agents shall hereinafter refrain from occupying or being present at any of the Debtor's premises without prior written permission from the Trustee. The Trustee shall take and receive exclusive and complete custody, control and possession of all assets of the Debtor.

II. Trustee's Professionals & Debtor's Post-Petition Employees

4. All who are acting or have acted on behalf of and at the request of the Trustee are protected and privileged with the same protections of this Court as the Trustee has. For the purposes of clarity, with respect any Former Management authorized by the Trustee to remain at the Debtor to assist with this case, such protections apply only to post-petition actions taken at the request of the Trustee. The Court shall retain exclusive jurisdiction to preside over any actions filed concerning the appointment of the Trustee and the administration of his duties. No action may be brought against the Trustee, or those that have acted on his behalf, for any purpose whatsoever except upon further order of this Court.

5. The Trustee, in his sole discretion and business judgment, may deal with, hire or terminate employees (including current or former employees of the Debtor), collection agents, equipment leasing servicing agents, or other professionals as is necessary or appropriate for the day-to-day management, maintenance and operation of the Debtor.

6. The Trustee, in his sole discretion and business judgment, and by separate order of this Court, shall have full power to hire and retain and otherwise obtain the advice and assistance of such legal counsel, accounting, and forensic and business management professionals as may be necessary to the proper discharge of the Trustee's duties. All reasonable expenses and fees incurred in connection therewith shall be submitted to the Court according to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

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7. The Trustee holds all of the Debtor's assets and property for the benefit of all creditors and the Estate as their interest may appear and be adjudicated. All creditors and other parties in interest that have actual or constructive notice of this order shall be bound thereby and may not undertake any action against the Debtor or its property without further order of this Court.

8. The Trustee, in his sole discretion and business judgment, shall take and keep exclusive and complete custody and control of the Debtor to prevent waste thereto and shall have the power to: (i) manage the daily operations of the Debtor's equipment lease servicing (ii) collect all income derived from the Debtor's business operations and retain the remainder for eventual disposition as directed by the Court by separate order; (iii) arrange for the preservation of the Debtor and its operation; and (iv) arrange for the orderly liquidation of the Debtor's business, unless otherwise ordered by the Court. The Trustee, in his sole discretion and business judgment, is granted all powers necessary and usual in such cases for the protection, possession, control, management, and operation of the Debtor's business during the interim period that this order is

effective, including but not limited to the power to pay post-petition sales and personal property taxes, provide bills of sale or payoff letters to lessees that paid off loans pre-petition, administer and attend to litigation pending in state and federal courts either brought by or against the Debtor pre-petition, and attend to all other aspects of the Debtor's operations in the ordinary course of business for cash or on credit on such terms as the Trustee deems advisable in his sole discretion and business judgment.

9. The Trustee, in his sole discretion and business judgment, may take any other steps necessary that are deemed, by the Trustee, in his sole discretion, to be in the ordinary course of the Debtor's business which the Trustee determines, in his sole discretion and business judgment, are in the best interest of the Debtor's Estate and consistent with an orderly liquidation of the Estate.

10. Notwithstanding anything to the contrary, the Trustee shall at all times act in accordance with the operating budget attached as Exhibit A to the Second Interim Cash Collateral Order, or any subsequent budget either agreed to pursuant to the terms of the Second Interim Cash Collateral Order or entered by the Court (the "Operating Budget").

Dated: September ____, 2009.

HON. JACQUELINE P. COX
UNITED STATES BANKRUPTCY JUDGE

Prepared By:

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Jonathan T. Brand (ARDC # 6294885)
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IFC Credit Corporation - Case # 09-27094
Operating Budget Through 9/4/09

	<u>Week Ending</u>				
	<u>8/7/2009</u>	<u>8/14/2009</u>	<u>8/21/2009</u>	<u>8/28/2009</u>	<u>9/4/2009</u>
<u>Cash inflows:</u>					
Lease payments (primarily residuals)	70,000	30,000	65,000	30,000	30,000
Miscellaneous	5,000	5,000	5,000	5,000	5,000
Lease payment (passthru) (4)	180,000	40,000	40,000	40,000	40,000
Total cash inflows	255,000	75,000	110,000	75,000	75,000

<u>Cash Outflows:</u>					
<u>Pre-Petition</u>					
Sales Taxes (trust fund)		0			
Employee insurance premium (3)	0	7,355	0		
Total Pre-Petition	0	7,355	0	0	0

<u>Post-Petition</u>					
Gross Salaries - current employees (5)		114,000	0	48,400	
Employer taxes		8,700	0	3,700	
Insurance Premium - Current Employees		25,000			0
Commissions				0	
Travel expenses, Purcell, Laury & Eli		13,100	0	7,500	0
Expense reimbursement - Bankruptcy filing		7,800			
Outside Payroll services			500		300
Copier Equipment rental			1,200		
Computer maintenance		400	550		
Software support agreements				15,000	
Postage / UPS / Fed Ex		500		500	
Insurance - D & O liability coverage			59,000		
Insurance - Liability			4,700		
Insurance - crime, workman comp, auto telephone service		5,365		5,000	
Office rent (includes electrical, water, taxes)			25,000		
Shutdown of Pioneer operations			5,000		
Outside storage			750		
Sales tax				20,000	
Other	0	2,500	2,500	2,500	2,500
Total Post Petition	0	177,365	99,200	102,600	2,800

<u>Case Administration:</u>					
Lakelaw - Trustee Counsel		0			
Morris Anderson - F/A		0			
Shaw Gussis - Trustee Special Counsel		0		0	
Garden City - Noticing Agent (6)		0	75,000		
Total Case Administration	0	0	75,000	0	0
Total Cash Outflows	0	184,720	174,200	102,600	2,800

<u>Cash flow summary:</u>					
Opening cash balance	471,450	726,450	616,730	552,530	524,930
Cash inflow	255,000	75,000	110,000	75,000	75,000
Cash outflow	0	184,720	174,200	102,600	2,800
Ending cash balance	726,450	616,730	552,530	524,930	597,130

Notes:

- (1) Payroll scheduled to be paid on July 31, 2009 previously stayed by court order.
- (2) Includes unpaid salaries, FICA expense and unused vacation/personal time off (PTO) to terminated employees.
- (3) Employee dental & vision premium previously withheld (July) but not paid.
- (4) Lease payments (passthru) may be payable to various lease holders. Amount of claims are currently unknown.
- (5) Wages are for post-petition services performed from 7/27 through 8/14, and for services from 8/15 thru 8/28
- (6) Projected cost to prepare creditor matrix, schedules and SOFA, and related postage

