

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

In re:)	Case No. 09-27094
)	
IFC CREDIT CORPORATION,)	Chapter 7
)	
)	The Honorable Jacqueline P. Cox
)	
Debtor.)	Hearing: August 18, 2010 at 10:30 a.m.

LIMITED OBJECTION OF FP HOLDINGS, INC., FIRST PORTLAND CORPORATION, FPC FUNDING II, LLC, AND PIONEER CAPITAL CORPORATION OF TEXAS TO CHAPTER 7 TRUSTEE’S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF APTC, LLC d/b/a ADVANCE PROPERTY TAX COMPLIANCE AS PROPERTY TAX SPECIALISTS

FP Holdings, Inc. (“**FP Holdings**”), First Portland Corporation (“**FPC**”), FPC Funding II, LLC (“**FPC II**”), and Pioneer Capital Corporation of Texas (“**Pioneer**”) (collectively, the “**Objectors**”), by their undersigned counsel, Greenberg Traurig, LLP, file this objection (the “**Objection**”) to the Chapter 7 Trustee’s *Application for Entry of an Order Authorizing the Retention and Employment of APTC, LLC d/b/a Advance Property Tax Compliance as Property Tax Specialists* [Docket No. 780] (the “**Tax Retention Motion**”). In support of this Objection, the Objectors respectfully state as follows:

BACKGROUND

1. On July 27, 2009 (the “**Petition Date**”), IFC Credit Corporation (the “**Debtor**”) filed a petition under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”).

2. David P. Leibowitz has been appointed the chapter 7 trustee (the “**Trustee**”) in the Debtor’s above-captioned case.

3. The Trustee filed the Tax Retention Motion on August 4, 2010.

4. The Tax Retention Motion seeks to retain APTC, LLC d/b/a Advance Property Tax Compliance (“**APTC**”) as the Trustee’s property tax specialist to file property tax returns and otherwise to assist in property tax compliance issues.

LIMITED OBJECTION

5. The Objectors do not object to the principal relief sought by the Tax Retention Motion, *i.e.*, the retention of APTC as the Trustee’s property tax specialists. The Objectors object to the Tax Retention Motion only to the extent that it purports to resolve or seeks to resolve ownership issues pertaining to leases and lease equipment, which are currently being adjudicated in an adversary proceeding filed by the Objectors, Adversary Case No. 10-00453 (the “**Adversary Proceeding**”), seeking declaratory judgment with regard to such ownership issues. The Objectors dispute any claim of ownership by the Trustee in the Tax Retention Motion that is contrary to the allegations of the Objectors’ Complaint in the Adversary Proceeding, and specifically reserve all claims and rights with respect thereto.

6. As of the Petition Date, FP Holdings was a wholly owned subsidiary of the Debtor, FPC was a wholly owned subsidiary of FP Holdings, and FPC II was an indirect wholly owned subsidiary of FP Holdings and FPC.

7. As of the Petition Date, Pioneer was a wholly owned subsidiary of the Debtor.

8. On November 17, 2009, the Bankruptcy Court entered its Order Granting Motion of Arthur Levinson and Leonard Ludwig to Lift the Automatic Stay to Foreclose on Certain Pledged Stock (the “**November 17 Order**”).

9. The November 17 Order lifted the automatic stay to permit Arthur Levinson (“**Levinson**”) and Leonard Ludwig (“**Ludwig**”) to exercise their remedies pursuant to those certain Stock Pledge Agreements made effective December 31, 2008 by and between IFC Credit

Corporation as debtor and Levinson and Ludwig as secured parties, pledging 500 shares of common stock of FP Holdings (the “**FP Holdings Stock**”) and 60,000 shares of common stock of Pioneer (the “**Pioneer Stock**”) to Levinson and Ludwig.

10. The FP Holdings Stock constitutes 100% of the ownership of FP Holdings.

11. The Pioneer Stock constitutes 100% of the ownership of Pioneer.

12. On December 21, 2009, following proper statutory notice and public advertisement and marketing, Levinson and Ludwig held a public sale to sell the FP Holdings Stock and the Pioneer Stock.

13. Levinson and Ludwig purchased the FP Holdings Stock and the Pioneer Stock at the public sale, and closed on the purchase on or about January 1, 2010. Consequently, as of January 1, 2010, the Objectors are no longer subsidiaries of the Debtor.

14. After the public sale of the FP Holdings Stock and the Pioneer Stock, Levinson and Ludwig obtained access for the first time to the unconsolidated financial records of the Debtor, separately identifying the Objectors’ assets and liabilities.

15. According to the unconsolidated financial records of the Debtor, as of July 31, 2009, FPC is the owner of approximately \$83 million in direct finance leases (the “**Leases**”), as well as all equipment and liabilities associated with the Leases.

16. Moreover, since the public sale of the FP Holdings Stock and the Pioneer Stock, Levinson and Ludwig have begun to obtain access for the first time to the tax filings and other tax records prepared and filed by the Debtor and the Objectors.

17. These tax filings and tax records, prepared and signed under penalty of perjury, further confirm that one or more of the Objectors, and not the Debtor, are the owners of the Leases and thus any equipment related to those Leases.

18. Since the Petition Date, the Trustee and his agents have continued to file tax returns and other tax filings identifying one or more of the Objectors, and not the Debtor, as the owner of the Leases.

19. Likewise, since the entry of the November 17 Order, the Trustee has asserted that the Objectors, not the Debtor, are responsible for certain tax and other liabilities that have arisen as a result of the Objectors' being identified as the owners of the Leases.

20. In particular, following the entry of the November 17 Order, the Trustee and his agents have transmitted or caused to be transmitted to the Objectors and the Objectors' agents various communications and demands from tax authorities regarding taxes purportedly owed by the Objectors on incomes and revenues arising from the Leases. The Trustee and his agents have taken the position that the Objectors, not the Debtor, are responsible for these tax liabilities.

21. Moreover, following the public sale of the FP Holdings Stock and the Pioneer Stock, the Trustee's counsel has transmitted to FPC's counsel certain pleadings regarding claims asserted against FPC in connection with the Leases. The Trustee and his counsel have taken the position that FPC, not the Debtor, is responsible for defending these claims and is ultimately liable for any judgments entered on these claims.

22. Thus, among other documents, the Debtor's own unconsolidated financial records, tax filings, and tax records all reflect that the Leases, and thus any equipment related to the Leases, are the Objectors' property, and not property of the Debtor's estate.

23. Moreover, the Trustee himself has confirmed that the Leases are the Objectors' property, by taking the position that the Objectors, and not the Debtor, are responsible for tax liabilities and certain other liabilities associated with the Leases.

24. Notwithstanding the foregoing, the Trustee has asserted that the Leases are property of the Debtor's estate, and that the Objectors have no ownership rights or interests in the Leases or any equipment related to the Leases.

25. The Trustee's assertion of ownership rights to the Leases is contradicted by the Debtor's own unconsolidated financial records, tax filings, and other tax records, and directly contrary to the Trustee's own prior position regarding the Objectors' alleged responsibility for tax and other liabilities associated with the Leases.

26. The Objectors have filed the Adversary Proceeding, seeking declaratory judgment with regard to these ownership issues. The Adversary Proceeding is pending.

27. Paragraph 6 of the Tax Retention Motion states that the Debtor "entered into equipment lease agreements with businesses around the country and served as the lessor under those agreements and retained title (i.e. owned) to [sic] the equipment that is the subject of such lease agreements." To the extent that this paragraph is intended to assert that the Debtor is the owner of any Leases or equipment that belong to the Objectors, as alleged in the Adversary Proceeding, the Objectors dispute and object to that claim of ownership, and reserve their right to have such ownership issues resolved in the pending Adversary Proceeding.

WHEREFORE, the Objectors requests that, in the event that this Court grants the Tax Retention Motion, it do so without resolving any issues of lease or equipment ownership, and without prejudice to Objectors' pending claims in the Adversary Proceeding.

Dated: August 11, 2010

FP HOLDINGS, INC., FIRST PORTLAND CORPORATION, FPC FUNDING II, LLC, and PIONEER CAPITAL CORPORATION OF TEXAS

By: /s/ Matthew T. Gensburg
One of Their Attorneys

Matthew T. Gensburg, ARDC # 6187247
Gregory E. Ostfeld, ARDC # 6257163
Greenberg Traurig, LLC
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Phone: (312) 456-8400
Fax: (312) 456-8435
gensburgm@gtlaw.com
ostfeldg@gtlaw.com