

EXHIBIT 11

**UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION**

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

**RNS SERVICING, LLC, REBECCA ELLI AND STEVE CSAR’S RESPONSE TO
 TRUSTEE’S MOTION FOR LEAVE TO CONDUCT A RULE 2004 EXAM**

Now Come RNS Financial Services, LLC, Rebecca Elli and Steve Csar, by and through their counsel, and for their Response to the Trustee’s Motion for Leave to Conduct a Rule 2004 Exam, state as follows:

INTRODUCTION

The Trustee’s decision to seek a Rule 2004 exam of Steve Csar and Rebecca Elli is the culmination a successful smear campaign orchestrated by a disgruntled lessee, Devashish Corporation and its owner, Devang Parik, and his business acquaintance, Devang Shah. Particularly troubling to respondents is the Trustee’s carelessness in representing historical facts to the Court, all to give the Court the impression that mischief *may* be afoot when in fact nothing could be further from the truth.

While the legal standard for obtaining a Rule 2004 exam is low, the Court should impose restrictions on the Trustee’s inquiry precisely because the request is based on the flimsiest of grounds, the unsworn representation of a lawyer who is representing Devashish in a suit filed by RNS to collect a lease balance. Specifically, the Trustee intends to depose Ms. Elli and Mr. Csar over checks deposited by RNS completely lawfully in its bank account and quiz Ms. Elli and Mr. Csar as to when they received those checks, based solely on the dates written on the front of the

checks by the lessees/borrowers. To answer these questions, Ms. Elli and Mr. Csar need to know what checks are at issue so they can: 1) pull the “call notes” related to the lease account (the “call notes” are a software program which IFC used to monitor accounts); 2) review emails related to that account; 3) look at the physical files related to the account; 4) look at a pay history related to the account; 5) review deposit submissions made to the trustee and to the RNS account; and 6) confer between themselves to jog each other’s memory.

BACKGROUND

The Court may recall that IFC Credit Corporation (hereinafter “IFC” or the “Debtor”) operated as an equipment finance company. The Trustee liquidated IFC between 2009 and 2015 in an operating Chapter 7 bankruptcy. To liquidate the Debtor, the Trustee hired IFC’s former General Counsel, Rebecca Elli, who is an Illinois licensed attorney, and IFC’s former head of collections, Steve Csar. Ms. Elli and Ms. Csar worked for the Trustee without incident for more than 6 years, collecting on numerous equipment lease accounts and handling and resolving numerous state and local tax disputes and inquiries. Indeed, Ms. Elli has previously testified on behalf of the Trustee before this Court.

On June 24, 2014, in response to the Trustee’s counsel’s (Jonathan Brand’s) solicitation, Ms. Elli and Mr. Csar proposed to buy the Debtor’s remaining assets, after the Trustee concluded that the remaining collections were too troublesome and speculative to continue to be worthwhile. The Trustee and Ms. Elli and Mr. Csar arrived at a purchase price of \$10,000 cash, plus \$40,000 in services (continued tax services for the Estate). The parties memorialized their agreement in a written contract (the “Agreement”). A true and correct copy of the Agreement is attached hereto as **Exhibit A**. Ms. Elli and Mr. Csar formed RNS Services LLC to be the buyer. The Agreement provides that assets to be sold are *all the assets that are in existence as of the date of the*

Agreement. See the Agreement, ¶¶ 2.2, 3.1, 3.2 and 7.1. The sale is closed upon the Trustee tendering a Bill of Sale and RNS tendering payment, assuming the Agreement is approved by the Court. On July 30, 2014, the Trustee filed a Motion for Authority to Enter into the Agreement. See Doc. 1555. On August 6, 2014, the Trustee tendered the Bill of Sale to RNS. On August 7, 2014, the Court approved the Agreement. See Doc. 1560. The Agreement is dated August 8, 2014. See the Agreement, Page 1. On August 11, 2014, RNS tendered payment pursuant to the Agreement and on that same day, RNS's then counsel, Bill Barrett, confirmed the closing with the Trustee via email.

In the course of Ms. Elli's and Mr. Csar's work for the Trustee, Ms. Elli would remit payments received by the Estate to the Trustee on a periodic basis. On August, 7, 2014 (a Thursday), the day before the effective date of the Agreement, Ms. Elli remitted 12 checks to the Trustee via overnight mail. Ms. Elli also sent copies of the checks to the Trustee's assistant via email. A true and correct copy of Ms. Elli's August 7, 2014 email is attached hereto as **Exhibit B¹**.

Starting on August 12, 2014 (a Tuesday), RNS made deposits of payments it received from lessees between August 8, 2014 and August 12, 2014 on the accounts of the equipment lease assets it purchased.

During the course of attempting to extract the most benefit from its assets, RNS chose to litigate with certain lessees. In 2017, RNS sued Devashish of Rockaway Mall LLC for breach of an equipment lease and Devang Parik and Hiral Parikh for breach of their personal guaranties. Prior to RNS filing suit, **in the spring of 2014**, the Trustee, through Ms. Elli and Mr. Csar,

¹ In the interest of maintaining the privacy of lessees whose checks were remitted on August 7, 2014 by Ms. Elli, copies of the remitted checks are not admitted.

attempted to settle with Devashish. The negotiations proceeded to the point where Ms. Elli drafted a settlement agreement and remitted it to Devashish's then legal counsel, Wasserstrum & Fabiano, P.C., who approved of the agreement pending the inclusion of certain releases. The proposed settlement agreement called for Devashish to make four consecutive monthly installment payment of \$35,000, beginning in April 2014. Devashish, however, refused to execute the settlement agreement, and in fact, never signed it. Thereafter, the parties' settlement negotiations dragged on with Devashish remitting one payment of \$35,000 (drawn by Devang Shah who is not a party or guarantor to the lease) on approximately June 14, 2014, which Ms. Elli and Mr. Csar forwarded to the Trustee. Thereafter, both Mr. Csar and Ms. Elli cajoled the lessee to sign the settlement agreement and to honor the proposed terms, all with no effect. In mid/late August 2014, Devashish, again without signing the settlement agreement, remitted another \$35,000 check that was also dated May 2014 (again the check was drawn by Devang Shah). After sending a letter via email on August 19th saying that his business acquaintance – presumably Devang Shah - would no longer advance funds to cover settlement payments, Mr. Parik (on behalf of Devashish) went virtually silent for nearly a full year, refusing to engage in further settlement discussions. In 2016, nearly two years after the settlement discussions, RNS threatened to sue for the full contract balance. Devashish and Mr. and Mrs. Parik then took the position that Devashish had in fact settled for \$140,000 of which \$45,000 remained due. RNS rejected this argument, noting that it was Devashish that refused to execute the settlement agreement, meaning no settlement was in place. Not only did Devashish fail to execute the settlement agreement, but Devashish also failed to abide by the terms of any proposed settlement further establishing the non-existence of any settlement. As such, RNS took the position that it was owed the contract balance. RNS filed suit in the Circuit Court of Cook County seeking the remaining contract balance. The litigation is pending and is

postured as described above, with Devashish taking the position that it only owes approximately \$45,000 and RNS taking the position that Devashish owes more than four times that amount.

In an effort to create leverage in the state court case – where Devashish has no defensible legal position – Devashish’s counsel communicated with the Trustee, claiming that his clients remitted the initial \$70,000 (reflected in two checks of \$35,000 each drawn by Mr. Shah) in June 2014, implying that Ms. Elli and Mr. Csar held and later pocketed Devashish’s second \$35,000 check, which was credited to Devashish’s balance owed on September 4, 2014. This accusation is completely false, and neither Devashish nor the Trustee have offered a single piece of evidence to support this accusation other than the date on the check. However, as this Court certainly knows from its own experience and as the Trustee knows from operating an equipment leasing company for 7 years, borrowers and lessees hold checks all the time. This fact of life can be proved simply by looking at the remittance dates on the Debtor’s books compared to the dates written by the lessees on their checks.

ARGUMENT

A proponent of a Rule 2004 examination must establish “good cause” for the discovery requested and a basis to that relates to the “acts, conduct, or property or the liabilities and financial condition of the debtor” or “any matter which might affect the administration of the debtor’s estate.” *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008); Fed. R. Bankr. P. 2004. Rule 2004 examinations are often referred to as “fishing expeditions.” *In re J & R Trucking, Inc.*, 431 B.R. 818, 821 (Bankr. N.D. Ind. 2010).

Rule 2004 examinations cannot be used to abuse or harass a party and cannot “stray into matters which are not relevant to the basic inquiry.” *In re Washington Mutual, Inc.* 408 B.R. 45, 50 (Bankr. D. Del. 2009). Rule 2004 examinations should also not be “so broad as to be more

disruptive and costly to the party sought to be examined than beneficial to the party seeking discovery.” *In re Underwood*, 457 B.R. 635, 643 (S.D. Ohio 2011). Rule 2004 is inappropriate “where the information purportedly sought is either already well-known or within the would-be examiner’s possession.” *In re Symington*, 209 B.R. 678, 688 (Bankr. D. Md. 1997).

Here, the Trustee identifies how his inquiry is relevant to the administration of the estate, but fails to establish that his inquiry is based on “good cause.” *See* Doc. 1775. Devashish’s counsel’s unsworn representations to the Trustee supported solely by the May 30, 2014 date on the check (but no letter or other evidence of the checks having been actually sent on that date) is hardly significant considering RNS has been litigating with Devashish and Parik since early 2017. Indeed, because the Trustee seems to have credited Devashish’s counsel’s statement without question when it is of the most dubious trustworthiness, the Trustee now suspects that Ms. Elli and Mr. Csar pocketed other checks. Without giving notice to RNS, Ms. Elli or Mr. Csar, the Trustee filed a motion for 2004 exam for RNS’ bank records at JP Morgan Chase *for a full year*, even though the alleged “pocketing” occurred only in September 2014. *See* Doc. 1773. Based on his review of RNS’s private and confidential bank records, the Trustee jumped to the wholly unwarranted and completely wrong conclusion that RNS pocketed additional checks. The Trustee attempts to bathe himself in credibility by misstating the calendar dates relating to the asset sale; making the window for mischief much larger than it is. The Trustee attempts to back fill on his historical errors by asserting that his original Motion for 2004 Exam contained an “immaterial” misstatement of the relevant facts. Specifically, in his initial Motion for 2004 exam on JP Morgan Chase, the Trustee claimed that the Closing occurred on August 24th, implying that RNS was not entitled to accept payment on the assets until after this date. *Id.* **As noted above, the Agreement closed August 11, a point the Trustee now concedes.**

Furthermore, the Agreement states that RNS is entitled to all assets as of the date the Agreement is signed which was August 8 or the date the Trustee's Motion for Authority to Enter the Agreement was filed, July 30, 2014. *See* Agreement, ¶¶ 2.2, 3.1, 3.2, and 7.1. Recognizing that Ms. Elli and Mr. Csar forwarded checks on August 7, 2014 to the Trustee, the Court should realize that, contrary to the Trustee's representation, no period existed when RNS deposited funds that belonged to the Estate (All funds up through August 7, 2014 were given and deposited into the Estate; all funds after August 7 were given and deposited to RNS). The only possible exception to this chronology is if Devashish in fact sent the second check at the same time as the first check. The only evidence that this occurred is Devashish's counsel's representation to the Trustee which is not admissible evidence of any kind, and should be viewed with serious doubt considering his legal position is diametrically opposed to RNS in pending state court litigation.

Moreover, without providing Ms. Elli and Mr. Csar the names of the accounts and the checks of which the Trustee claims to have concerns, Ms. Elli and Mr. Csar cannot hope to accurately answer all of the Trustee's questions. The Trustee's inquiry is essentially an accounting inquiry which he intends to conduct like a memory quiz. Instead, the Court should force the Trustee to identify the checks about which he intends to inquire well in advance of any examination, and limit the inquiry to those checks.

To be clear, Ms. Elli and Mr. Csar are being smeared by Devashish. They worked diligently for the estate for nearly six years, and continue to this day to do work for the estate and remit payments to the estate (for tax refunds, etc.). The notion that they purposely stole the Estate's funds, requiring a full blown deposition, based solely on an opposing counsel's representation of disputed facts, is absurd. This request for an exam is not based on a "good faith" foundation but

instead the vindictive pettiness of a lessee with a long history of failing to honor agreement with the estate.

WHEREFORE, RNS SERVICING, LLC, REBECCA ELLI and STEPHEN CSAR respectfully requests that this Honorable Court enter an Order denying the Trustee's Motion for Rule 2004 Examination and for such further relief as this Court deems just and necessary.

RNS SERVICING, LLC

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