

# **EXHIBIT 7**

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

IFC CREDIT CORPORATION,  
an Illinois corporation,

Plaintiff,

V.

TISSUE PRODUCTS TECHNOLOGY CORPORATION, a Wisconsin corporation, ECO-FIBRE, INC., a Wisconsin Corporation, PARTNERS CONCEPTS DEVELOPMENT, INC., a Wisconsin Corporation, OCONTO FALLS TISSUE, INC., a Wisconsin Corporation, RONALD H. VAN DEN HEUVEL, an individual, and SPIRIT CONSTRUCTION SERVICES, INC., a Delaware corporation,

**Defendants.**

Case No.: 07 C 4351

Honorable Judge Dow

Magistrate Judge Cole

**IFC CREDIT CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT**

The Plaintiff, IFC CREDIT CORPORATION (IFC”), hereby moves for summary judgment on all four counts of its Complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in support of its motion, states as follows:

## INTRODUCTION

1. Plaintiff's claims arise out of a Settlement Agreement entered into by and among the parties (other than SPIRIT CONSTRUCTION SERVICES, INC. ("Spirit Construction")) in April of 2007, that resolved a lawsuit then pending in the U.S. District Court for the Northern District of Illinois. (The Settlement Agreement is attached to the Complaint as Exhibit "A," and

is attached as an exhibit to IFC's List of Exhibits to its Rule 56 Statement (hereinafter, "IFC's List of Exhibits") at Tab "1"). Defendants admit they executed said agreement. (Stat. ¶13). The Settlement Agreement required Defendants to pay a Total Settlement Amount of \$23.4 million to IFC.

2. Defendants paid an Initial Settlement of \$20 million to IFC at the time the Settlement Agreement was executed, and TPTC and PCDI were required to pay the balance of the Total Settlement Amount -- \$3.4 million -- in ten (10) monthly installments. (Stat. ¶¶14, 15).

3. Defendants TISSUE PRODUCTS TECHNOLOGY CORPORATION ("TPTC"), PARTNERS CONCEPTS DEVELOPMENT, INC. ("PCDI"), ECO-FIBRE, INC., ("Eco-Fibre"), OCONTO FALLS TISSUE, INC. ("Oconto Falls"), and RONALD H. VAN DEN HEUVEL ("Ron Van Den Heuvel"), and each of them, breached the Settlement Agreement within a month of its execution when TPTC and PCDI failed to make the first of ten (10) monthly payments due to IFC in April of 2007. (Stat. ¶25). Defendants further breached the Settlement Agreement by TPTC and PCDI's failure to make the remaining nine (9) monthly payments. (Stat. ¶25).

4. The failure to make the monthly payments also constituted a breach by Defendants TPTC and PCDI of a Master Lease for certain equipment that was entered into in connection with the Settlement Agreement. (Stat. ¶¶16, 28, 33 and 36). Pursuant to the Master Lease, as amended, Defendants TPTC and PCDI were required to make ten (10) monthly Lease

Rental Payments of \$390,220 (said payments included the monthly payments due under the Settlement Agreement). (Stat. ¶33).

5. Citing financial difficulties, Defendants PCDI and TPTC initially requested IFC agree that the monthly payments be pushed back by a month, and then two. After allowing Defendants a two-month “grace period” to make the payments, IFC finally gave notice of default to all Defendants in June of 2007, declared the balance of the payments due under both agreements to be immediately due and owing (which then totaled approximately \$4 million exclusive of interest, late charges, and costs), and also made demand on the Guaranty given by Ron Van Den Heuvel. (Stat. ¶¶26 and 29). Defendants’ failed to cure their default and Ron Van Den Heuvel failed to honor the Guaranty. (Stat. ¶¶ 33, 36, and 47).

6. In August of 2007, Plaintiff filed its four-count Complaint. Count I asserts a claim for breach of the Settlement Agreement against all Defendants, except Spirit Construction; Count II asserts a claim for breach of the Master Lease against PCDI and TPTC; Count III asserts a claim against Ron Van Den Heuvel on his Guaranty; and Count IV seeks injunctive relief against PCDI, TPTC, and Spirit Construction, and those acting in concert with them, based on the Continuing Pledge Agreement.

7. Defendants filed a single Answer to the Complaint, admitting execution of each of the subject Agreements, as attached to the Complaint (Stat. ¶¶13, 16, 17 and 23), admitting that none of the required payments had been made (Stat. ¶30), admitting that IFC has fully performed its obligations under the subject agreements (Stat. ¶¶ 41 and 44), and admitting their

receipt of the default notice. (Stat. ¶30). Defendants’ asserted their failure to make any of the required payments did not constitute a “default” of the Agreements. Even so, Defendants’ Answer set forth no affirmative defenses.<sup>1</sup>

8. As shown below, there are no material facts in dispute with respect to IFC’s claims, and the evidence proves that IFC is currently owed \$3.4 million by Defendants PCDI, TPTC, Eco-Fibre, Oconto Falls, and Ron Van Den Heuvel, and each of them, on the Settlement Agreement. The evidence is equally clear that PCDI and TPTC owe IFC approximately \$5 million on the Master Lease Agreement, including principal, pre-judgment interest, and late charges. Ron Van Den Heuvel, personally, is indebted to IFC in the amount of \$5 million on the Guaranty. In addition, IFC is entitled to repossess all of its equipment in the possession and control of Defendants, including sixteen (16) After Dryers, and all of Defendants’ rights or interests in those After Dryers should be terminated, as a consequence of their failure to comply with the Agreements. Summary judgment in favor of IFC and against the Defendants on all four (4) of its claims is thus appropriate.

### **THE PARTIES**

9. Plaintiff, IFC, is an Illinois corporation that provides lease-financing to commercial and industrial entities. (Stat. ¶1). IFC’s principal place of business is in Morton Grove, Illinois (Stat. ¶1), making Plaintiff a citizen of Illinois for purposes of establishing diversity jurisdiction in this Court.

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<sup>1</sup> Defendants also did not file a Jury Demand.

10. All of the Defendant companies (other than Spirit Construction) are owned, either directly or indirectly, by Ron Van Den Heuvel (Stat. ¶7). TPTC, PCDI, Eco-Fibre, and Oconto Falls are all Wisconsin corporations, having their principal places of business in Wisconsin (Stat. ¶¶4, 5, and 6). Ron Van Den Heuvel is a resident of Wisconsin (Stat. ¶7). Therefore, TPTC, PCDI, Eco-Fibre, Oconto Falls, and Ron Van Den Heuvel are all citizens of Wisconsin for purposes of establishing diversity jurisdiction in this Court. The primary business of the Van Den Heuvel entities at the time the Settlement Agreement was executed was the operation of a paper mill. (Stat. ¶6).

11. Spirit Construction is managed by Steve Van Den Heuvel, Ron's brother. Ron Van Den Heuvel is a minority shareholder of Spirit Construction (Stat. ¶8). Spirit Construction is a Delaware corporation, having its principal place of business in Atlanta, Georgia (Stat. ¶8). Thus, Spirit Construction is a citizen of both Delaware and Georgia for purposes of establishing diversity jurisdiction in this Court.

12. Venue is proper in this Court, as a substantial part of the events giving rise to IFC's claims occurred in this judicial district, and the controlling agreements contain forum-selection clauses designating this judicial district as the exclusive jurisdiction and venue for this action. (See ¶20 of the Settlement Agreement; ¶25 of the Master Lease; the paragraph titled "Governing Law and Venue" of the Continuing Pledge Agreement; and the eighth paragraph of the Guaranty by Ron Van Den Heuvel).

### **THE SETTLEMENT AGREEMENT DOCUMENTS**

13. On April 13, 2007, IFC entered into a Settlement Agreement with Defendants TPTC, PCDI, Eco-Fibre, Oconto Falls, and Ron Van Den Heuvel. (Stat. ¶13). Pursuant to the Settlement Agreement, Defendants (other than Spirit Construction)<sup>2</sup> were required to pay IFC a “Total Settlement Amount” of \$23.4 million as consideration for the settlement of Plaintiff’s claims and dismissal of the pending lawsuit. (See ¶1 of the Agreement). Defendants paid IFC the Initial Settlement Amount of \$20 million on or about April 17, 2007, pursuant to the Agreement, and the remaining \$3.4 million was required to be paid by TPTC and PCDI “in ten (10) equal and consecutive monthly payments of \$340,000 each.” These payments were identified in the Agreement as the “Series Payments.” (See ¶1.(d) of the Settlement Agreement).

14. At the time the Settlement Agreement was entered into, IFC was the owner of sixteen (16) After Dryers, which are used in connection with the processing of pulp into paper products. (Stat. ¶¶10 and 23). These After Dryers had been sold to IFC by PCDI several years earlier, and then leased-back to PCDI as part of an equipment financing by IFC (this financing arrangement is typically known as a sale-and-lease-back). (Stat. ¶23). The After Dryers were in the possession of Defendants TPTC and PCDI in anticipation that the companies would purchase the After Dryers from IFC in connection with several anticipated plant-construction projects that PCDI was expecting to be involved in. (Stat. ¶10).

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<sup>2</sup> Spirit Construction was initially sued herein as an interested party on the belief it was already in possession of or would soon come into the possession of certain construction-contract fees to be paid to PCDI and TPTC that had been “pledged” to IFC as collateral by TPTC and PCDI. (Stat. ¶8). From the deposition testimony of Spirit Construction’s President taken in April of 2008, Plaintiff discovered that Spirit Construction misrepresented to Plaintiff at the time the Settlement Agreement was executed the likelihood that Defendants TPTC and PCDI would soon be receiving any substantial sums as subcontractors under those construction contracts. (Stat. ¶21). According to Spirit Construction’s president, neither TPTC nor PCDI were ever seriously considered by Spirit Construction to be likely sub-contractors in connection with the construction contracts. In any event, those construction contracts are still not funded.

15. As part of the Settlement Agreement, IFC, as Lessor, and TPTC and PCDI, as lessees, entered into Master Lease No. 801109 (the “Master Lease”), pursuant to which PCDI and TPTC leased nine (9) After Dryers from IFC. (Stat. ¶16). (A copy of the Master Lease, with corresponding lease schedules and amendments thereto, is attached to the Complaint as Exhibit “D” and is attached as an exhibit to IFC’s List of Exhibits at Tab “2”). Nine (9) lease schedules to the Master Lease, including certain amendments, were initially executed by the parties. (Stat. ¶16).

16. After the Settlement Agreement was executed, but shortly before the \$20 million of the Total Settlement Amount was paid, IFC agreed to lend PCDI and TPTC an additional \$440,000. (Stat. ¶23). The parties accordingly executed a Master Amendment Agreement to the Master Lease, and a tenth Lease Schedule was executed. (Stat. ¶23). (A true and correct copy of the Master Amendment Agreement is attached to the Complaint as Exhibit “B” and is attached as an exhibit to IFC’s List of Exhibits at Tab “3”; Lease Schedule No. 10 is attached to the group exhibit at Tab “2.”). The additional \$440,000 was deducted from the Initial Settlement Payment of \$20 million made to IFC. (Stat. ¶23).

17. PCDI and TPTC also pledged certain collateral to IFC as security for their Settlement Agreement and Master Lease obligations. In the “Continuing Pledge Agreement,” PCDI and TPTC represented to IFC that they were subcontractors engaged by Spirit Construction in connection with four construction contracts for the construction of 3 new paper mills and the reconstruction of the existing mill owned by Oconto Falls. These construction contracts are referred to as the “EPC” Contracts. PCDI and TPTC pledged to IFC their right to

receive any EPC-Contract payments from Spirit Construction until IFC had been paid the \$3.9 million. (A copy of the “Continuing Pledge Agreement” is attached to the Complaint as Exhibit “C” and is attached as an exhibit to IFC’s List of Exhibits at Tab “4”). (Stat. ¶¶17, 18).

18. Defendant Spirit Construction represented to IFC in the Acknowledgement of and Consent to Assignment that Spirit Construction had engaged TPTC and PCDI as “subcontractors in connection with said contracts and that a substantial sum of money in excess of \$3,900,222.00 will become owing to them pursuant to said contracts.” (Stat. ¶19). (See the “Acknowledgement of and Consent to Assignment” executed by Spirit Construction, which is Schedule “B” to the Continuing Pledge Agreement, at Tab “4”). Spirit Construction also represented to IFC that “the terms of the EPC Contracts remain in full force and effect and that [TPTC] and [PCDI] are subcontractors there under and that neither we nor TPTC or PCDI are presently in breach of the terms of the EPC Contracts.” Spirit Construction further represented to IFC that “the terms of this Acknowledgement of and Consent to Assignment shall not be varied or modified without your prior consent.” (See the Acknowledgement of and Consent to Assignment, at Tab “4;” and Stat. ¶19). Although IFC was also told by Ron Van Den Heuvel in March of 2008 that the EPC Contracts still had to be “funded,” he also represented to IFC that the funding of the EPC Contracts would occur in just a few weeks. (Stat. ¶20).

19. IFC relied upon the above-described representations of PCDI, TPTC, and Spirit Construction in entering into the Settlement Agreement. (Stat. ¶¶20, 21).

20. TPTC and PCDI were also allowed to retain possession of an additional seven (7) After Dryers owned by IFC pursuant to a bailment agreement contained in the Settlement Agreement. (See ¶9 of the Settlement Agreement). (Stat. ¶22).

21. Defendant RONALD H. VAN DEN HEUVEL (“Ron Van Den Heuvel”) also executed a guaranty of Defendants TPTC and PCDIs’ Master Lease obligations. (Stat. ¶43). (A copy of Ron Van Den Heuvel’s Guaranty is attached to the Complaint as Exhibit “F” and is attached as an exhibit to IFC’s List of Exhibits at Tab “5”). Pursuant to his Guaranty, Ron Van Den Heuvel agreed his obligations to IFC were “primary” and that IFC has the right to enforce its rights under the Guaranty without having first commenced an action or obtained a judgment against PCDI or TPTC. (See the fourth paragraph of the Guaranty). (Stat. ¶45).

#### **DEFENDANTS FAIL TO MAKE THE PAYMENTS**

22. Pursuant to the Master Lease, as amended, the first Lease Rental Payment of \$390,200 (which included the first Series Payment required under the Settlement Agreement) was due on April 20, 2007. (Stat. ¶25).

23. Before the first Lease Rental Payment was due, Defendants’ requested a thirty-day “grace period” on the start of the monthly payments, and IFC agreed that the first Lease Rental Payment could be paid in May of 2007 along with the second rental payment. (Stat. ¶26). On May 16, 2007, by a letter sent to IFC via e-mail, PCDI citing unexpected financial problems, requested a second extension -- this time asking that it be allowed to make its April and May payments on June 10th. (Stat. ¶27; See the letter attached at Tab “6” of the List of Exhibits).

IFC agreed to this request, and PCDI and TPTC still failed to make either the April or May rental payments on June 10th, as promised. Defendants also failed to make the June payment on June 20th, as required. (See the e-mail sent by IFC to PCDI and TPTC dated June 21, 2007, which is attached as an exhibit to the List of Exhibits at Tab “7.”) (Stat. ¶27).

24. IFC made verbal demand for the three delinquent Lease Rental Payments on or about June 25, 2007, but Defendants’ failed to make those payments. (Stat. ¶28).

25. On June 25, 2007, IFC notified the Defendants by letter that they were in default of their obligations under the Master Lease. (Stat. ¶29). Said notice also confirmed that IFC was declaring the balance of the Rental Lease Payments immediately due and owing as a result of the default in accordance with Paragraph 17 of the Master Lease. (A copy of said Letter dated June 25, 2007 is attached to the Complaint as Exhibit “E” and is attached as an exhibit to IFC’s List of Exhibits at Tab “8”). (Stat. ¶29).

26. In response to IFC’s default notice, PCDI sent a letter to IFC dated June 25, 2007 via e-mail requesting an additional five (5) weeks to make the rental payments. In the letter, Ron Van Den Heuvel acknowledged that PCDI was experiencing financial problems and stated “PCDI has been unable to make the monthly installment payments per the terms of the agreement.” Even so, he reiterated that “the terms of the lease call for 10 monthly installments of \$390,000 with the first payment being made on May 16, 2007 and the final payment being

made February 16, 2007.”<sup>3</sup> (See the letter dated June 25, 2007, sent by PCDI to IFC, which is attached to IFC’s List of Exhibits at Tab “9”). (Stat. ¶30). Ron Van Den Heuvel did not, either in this letter, or in any other communication wherein he requested IFC’s forbearance, make any assertion that TPTC and PCDIs’ failure to make its Lease Rental Payments was caused, even in part, by IFC. Nor did any other employee or agent of Defendants ever inform IFC that they considered IFC to be responsible for TPTC and PCDI’s inability to make the monthly payments. (Stat. ¶31).

27. On June 29, 2007, IFC rejected Ron Van Den Heuvel’s forbearance proposal, and again made demand for “immediate payment” of the delinquent Lease Rental Payments. (See the letter dated June 29, 2007, sent by IFC’s counsel to TPTC, PCDI and Ron Van Den Heuvel which is attached to IFC’s List of Exhibits at Tab “10”). Defendants’ failed to cure their defaults, and have made none of the Lease Rental Payments or the Series Payments. In addition, Ron Van Den Heuvel has failed to satisfy his obligations under the Guaranty. (Stat. ¶32).

28. Spirit Construction’s president, Steve Van Den Heuvel, testified at his deposition conducted on April 8, 2008, that the four (4) EPC Contracts described in the Pledge Agreement and related schedules were not in full force and effect in April of 2007, that Spirit Construction had not engaged either PCDI or TPTC as subcontractors under those agreements and that neither PCDI nor TPTC is owed a “substantial sum of money,” as represented in the Acknowledgement of and Consent to Assignment he executed. In addition, Steve Van Den Heuvel testified that

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<sup>3</sup> The date given for the first payment is off by a month, and the date given for final payment apparently contains a typo. The final monthly payment was due on February 16, 2008. In addition, the monthly rental amount was actually \$390,220.

Spirit Construction has no plan to engage PCDI or TPTC as subcontractors in the event the EPC Contracts eventually become effective. (Stat. ¶35).

### **COUNT I - CLAIM UNDER SETTLEMENT AGREEMENT**

29. Plaintiff seeks summary judgment in its favor in the amount of \$3.4 million against all Defendants except Spirit Construction on Count I, based on Defendants' breach of the Settlement Agreement. As described above and based on the pleadings and undisputed evidence, Defendants admit they executed the Settlement Agreement (¶17 of the Answer); they admit IFC has fully performed its obligations under that Agreement, and Defendants admit that PCDI and TPTC have not made any of the Series Payments (Stat. ¶¶27 and 30). Defendants also admit that, in their own words, they have "a payment obligation to IFC Credit" in the amount of \$3.4 million. (Stat. ¶28). They also admit to having received the notice of default, wherein IFC accelerated the balance owed pursuant to the Agreement, and they did not cure said default within ten (10) days. (Stat. ¶30). Defendants have asserted no affirmative defenses to Count I of Plaintiff's Complaint.

30. Therefore, as there are no facts in dispute with regard to Count I, Plaintiff is entitled to summary judgment against all Defendants, except Spirit Construction, in the amount of \$3.4 million dollars, plus pre-judgment interest calculated at the statutory rate on said amount as and from June 29, 2007.

### **COUNT II -- CLAIM UNDER MASTER LEASE AGREEMENT**

31. Plaintiff seeks summary judgment in its favor in the amount of \$5,062,515.12 as of June 18, 2008, against PCDI and TPTC on Count II, based on the breach by TPTC and PCDI

of the Master Lease Agreement. Defendants TPTC and PCDI have likewise admitted they executed the Master Lease and the related Lease Schedules, and amendments thereto. (Stat. ¶16). They also admit they have not made the Monthly Lease Rental Payments. (Stat. ¶30). Defendants further admit that IFC has fully performed all of its obligations under the Master Lease Agreement. (Stat. ¶41). Moreover, they admit to having received notice of their default (¶35 of the Answer), and they admit they have not cured same since receiving such notice.<sup>4</sup> Defendants have asserted no affirmative defenses to Count II of Plaintiff's Complaint.

32. Pursuant to Paragraph 18 of the Master Lease, IFC is entitled to reimbursement for all reasonable attorneys' fees and costs incurred in enforcing its rights under the Master Lease. (See the Master Lease, at Tab "2").

33. Based on the Affidavit of Marc Langs, the Chief Financial Officer of IFC, submitted in connection with this motion, which is attached to IFC's List of Exhibits at Tab "11," IFC is now entitled to a judgment in the amount of \$5,062,515.12 against PCDI and TPTC for the unpaid Lease Rental Payments, contract-interest, and late charges (calculated through June 18, 2008). IFC is further entitled to reimbursement of its reasonable attorneys' fees and court costs, which continue to be incurred, and to other costs incurred, including certain funding costs, including, but not limited to, waiver and default fees paid to funding partners. All such fees will be established by affidavit upon entry of summary judgment in IFC's favor.

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<sup>4</sup> Although it is not part of the pleadings in this case, it appears from the deposition testimony of the Defendants' principals and the letters from Ron Van Den Heuvel that Defendants had hoped that the construction projects contemplated at the time the Settlement Agreement was entered into would soon be executed and financed, and that Defendants would obtain the funds necessary to pay IFC from the proceeds of those contracts. (See, specifically, the letters from Ron Van Den Heuvel attached to IFC's List of Exhibits at Tabs "6" and "9"). Execution of those construction contracts appears to be stalled beyond hope, while Defendants' obligations to IFC remain uncontroverted and unsatisfied.

34. Plaintiff is also entitled to an order requiring Defendants to return the sixteen (16) After Dryers to IFC, and an order declaring that any and all rights or interests of the Defendants in the After Dryers are terminated as a consequence of their default of the Settlement Agreement and Master Lease Agreement.

### **COUNT III -- CLAIM ON GUARANTY**

35. Plaintiff also seeks judgment in its favor in the amount of \$5,062,515.12, plus reasonable attorneys' fees and costs against Ron Van Den Heuvel on Count III based on Ron Van Den Heuvel's failure to honor the Guaranty. As with the other agreements, Ron Van Den Heuvel admits he executed the Guaranty (Stat. ¶43); admits IFC performed all of its obligations under the terms of the Master Lease and Guaranty (Stat. ¶44); admits he received the demand-for-payment made by IFC in June of 2007 (Stat. ¶46); and admits he has not fulfilled his obligations to IFC on that Guaranty. (Stat. ¶46). Defendant Van Den Heuvel has asserted no affirmative defenses to Count III of the Complaint.

### **COUNT IV -- CLAIM TO REPOSSESS ALL AFTER DRYERS AND RECEIVE PAYMENTS RECEIVED BY PCDI AND TPTC FROM SPIRIT CONSTRUCTION**

36. Based on the misrepresentations made to IFC by PCDI, TPTC and Spirit Construction, and their default of the Agreements, IFC is entitled to an order requiring TPTC and PCDI, and those acting in concert with them, to surrender to IFC the sixteen (16) After Dryers and related equipment in their possession and control. Moreover, based on the written misrepresentations made by PCDI, TPTC, and Spirit Construction in the Pledge Agreement and related documents described more fully above, IFC is entitled to a permanent injunction prohibiting Spirit Construction from paying, transferring or assigning any money to TPTC or

PCDI until such time as IFC's judgment against TPTC and PCDI is satisfied in full. Moreover, IFC is entitled to a lien on any monies to be paid to TPTC and PCDI by Spirit Construction for any reason, whether pursuant to the EPC Contracts or otherwise. Defendants have asserted no affirmative defenses to Count IV of the Complaint.

37. In support of this Motion, Plaintiff submits its Memorandum of Law and a Rule 56.1 Statement of Uncontested Facts.

**WHEREFORE**, Plaintiff, IFC CREDIT CORPORATION, hereby moves for summary judgment on Counts I through IV of its Complaint.

Dated: June 18, 2008

Respectfully submitted,

**IFC CREDIT CORPORATION**

By: /s/ Edward J. Underhill  
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