

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

ILLINOIS DEPARTMENT OF REVENUE,

Appellant,

v.

TOTAL FINANCE INVESTMENT INC., CAR
OUTLET HOLDING INC., CAR OUTLET AC LLC,
FULL SERVICE AUTO REPAIR AC LLC, TODO
SEGURO AC LLC, TODO SEGURO PREMIUM
FINANCE AC LLC, and TOTAL FINANCE AC LLC,

Reorganized Debtors-Appellees.

Case No. 19-CV-06427

Judge Charles R. Norgle

On appeal from the U.S. Bankruptcy
Court for the Northern District of
Illinois, No. 19-bk-03734

**UNCONTESTED RULE 8009(f) MOTION TO FILE BANKRUPTCY COURT
TRANSCRIPTS UNDER SEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(f), the reorganized debtors-appellees, Total Finance Investment Inc., Car Outlet Holding Inc., Car Outlet AC LLC, Full Service Auto Repair AC LLC, Todo Seguro AC LLC, Todo Seguro Premium Finance AC LLC, and Total Finance AC LLC (collectively, the “Reorganized Debtors-Appellees”), hereby move to file under seal transcripts from certain bankruptcy court proceedings that have been designated as part of the record on appeal but are not currently available for remote electronic access. In support of this motion, the Reorganized Debtors-Appellees submit the accompanying Declaration of Amy F. Nogid and state as follows:

1. This case is before this Court on appeal from a bankruptcy court decision ordering Appellant, the Illinois Department of Revenue (“IDOR”), to issue certain tax credit memoranda.
2. In its initial designation of items for the record on appeal, IDOR designated four bankruptcy court hearing transcripts, including two—from the March 7, 2019 and July 18, 2019 proceedings—that had not previously been filed as part of the bankruptcy court proceedings. *See* Dkt. No. 11 at 6; *cf.* Fed. R. Bankr. P. 8009(b)(1)(A). For those two, IDOR filed transcript



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orders with the relevant court reporters and the bankruptcy court, as required by the federal rules. Dkt. No. 11 at 6, 11.

3. Those transcripts were not included in the record on appeal (Dkt. No. 11) filed in this court because they are not available for remote electronic access until February 12, 2020. In the Northern District of Illinois, a transcript is available for viewing at the court’s “public terminal” only for the first 90 days after any transcript is filed with the clerk’s office—it is not available for remote electronic access via the court’s CM/ECF system. *See Judicial Conference Policy Regarding the Availability of Transcripts of Court Proceedings* 1, available at https://www.ilnd.uscourts.gov/assets/documents/forms/e-transcripts/e-transcript_bar_notice.pdf. When a bankruptcy court transcript is designated as part of the record on appeal during this 90-day period, “the bankruptcy clerk must *not* transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal.” Fed. R. Bankr. P. 8009(f) (emphasis added).

4. On November 15, 2019, IDOR notified the Court that the March 7 and July 18 transcripts were available for viewing at the bankruptcy court. Dkt. No. 16. IDOR also shared those transcripts with the Reorganized Debtors-Appellees. Declaration of Amy F. Nogid ¶¶ 3–4.

5. The Reorganized Debtor-Appellees intend to rely on one or both of those transcripts in their Appellee Brief, which is due by February 7, 2020. Accordingly—and in order to ensure the completeness of the record on appeal—the Reorganized Debtor-Appellees request leave to file under seal in this Court the transcripts of the March 7, 2019 and July 18, 2019 bankruptcy court proceedings. True and complete copies of those transcripts are submitted as Exhibits 1 and 2 to the Nogid Declaration. Declaration of Amy F. Nogid ¶¶ 3–4, Exs. 1–2.

6. Though counsel for IDOR does not believe that this motion is necessary in light of docket entry No. 16, IDOR does not contest this motion. *Id.* ¶ 5.

WHEREFORE, the Reorganized Debtors-Appellees respectfully request that the Court grant this motion and accept the transcripts of the March 7, 2019 and July 18, 2019 bankruptcy court proceedings for filing under seal in accordance with Fed. R. Bankr. R. 8009(f).

Dated: February 4, 2020

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Counsel for Reorganized Debtors-Appellees

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true and correct copies of the Reorganized Debtors-Appellees' NOTICE OF MOTION & UNCONTESTED RULE 8009(f) MOTION TO FILE BANKRUPTCY COURT TRANSCRIPTS UNDER SEAL, as well as the accompanying DECLARATION OF AMY F. NOGID in support of that Motion, were served upon all parties of record via the U.S. District Court for Northern District of Illinois' Electronic Filing System on this 4th day of February, 2020.

/s/ Joshua D. Yount
Joshua D. Yount

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DECLARATION OF AMY F. NOGID IN SUPPORT OF REORGANIZED DEBTOR-
APPELLEES' UNCONTESTED RULE 8009(f) MOTION TO FILE BANKRUPTCY
COURT
TRANSCRIPTS UNDER SEAL

I, Amy F. Nogid, hereby declare as follows:

1. I am an attorney with the law firm of Mayer Brown LLP and counsel for the Reorganized Debtors-Appellees in this matter. The following facts are of my own personal knowledge, and if called as a witness, I could and would testify competently to their truth.

2. I submit this declaration in support of the Reorganized Debtor-Appellees' Uncontested Motion to File Bankruptcy Court Transcripts Under Seal.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of proceedings that occurred before the Honorable Judge Doyle of the United States Bankruptcy Court for the Northern District of Illinois on March 7, 2019, in case number 19 B 03734 (*In re Total Finance Investment, et. al.*)—which I received via email from the Illinois Department of Revenue (“IDOR”) on January 9, 2020.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the transcript of proceedings that occurred before the Honorable Judge Doyle of the United States Bankruptcy Court for the Northern District of Illinois on July 28, 2019, in case number 19 B 03734 (*In re Total Finance Investment, et. al.*)—which I received via email from IDOR on January 9, 2020.

5. I have spoken with counsel for IDOR regarding the Reorganized Debtors-Appellees' accompanying motion. IDOR has indicated, both verbally and via emails dated January 31, 2020, that IDOR does not contest the Reorganized Debtors-Appellees' motion, though it does view the motion as unnecessary to ensure that the district court has a complete record of the proceedings below.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, NY on February 3, 2020.

By: 

Amy F. Nogid