

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
OAKWOOD HOMES CORPORATION,)	Case No. 02-13396 (PJW)
<u>et al.</u> ,)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: March 20, 2003 at 4:00 p.m.
)	Hearing Date: March 27, 2003 at 2:00 p.m.
)	

DEBTORS' SUPPLEMENTAL APPLICATION FOR AN ORDER, PURSUANT TO SECTION 327 OF THE BANKRUPTCY CODE AND FED. R. BANKR. P. 2014, EXPANDING THE SCOPE OF THE EMPLOYMENT AND RETENTION OF BRANDON L. CHRISTIE AS AIRCRAFT BROKER, *NUNC PRO TUNC* TO JANUARY 22, 2003 AND APPROVING THE TERMS OF THE SUPPLEMENTAL ENGAGEMENT LETTER DATED JANUARY 22, 2003

The above-captioned debtors and debtors-in-possession, Oakwood Homes Corporation, et al. (collectively the "Debtors"), hereby apply (the "Supplemental Application") for entry of an order under section 327 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") expanding the scope of the employment and retention of Brandon L. Christie ("Christie"), as aircraft broker for the Debtors in these Chapter 11 cases *nunc pro tunc* to January 22, 2003 (the "Start Date"), and approving the terms of the supplemental engagement letter dated January 22, 2003, attached as Exhibit "A" hereto (the "Supplemental Engagement Letter"). In support of this Supplemental Application, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Supplemental Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Supplemental Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought in the Supplemental Application are section 327 of the Bankruptcy Code and Bankruptcy Rule 2014.

BACKGROUND

3. On November 15, 2002 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

PRIOR RETENTION ORDER

4. On January 22, 2003, the Debtors requested this Court's authorization to retain Christie to market and potentially sell one of the Debtors' aircraft (the "Original Retention Application"). (D.I. 322). On February 12, 2003, the Debtors filed a certification of no objection with respect to the Original Retention Application.

RELIEF REQUESTED AND BASIS FOR RELIEF REQUESTED

5. The Debtors have now developed a need for Christie's expertise in connection with the marketing and sale of the Debtors' remaining aircraft (the "Additional Property"). By this Supplemental Application, the Debtors request that (a) the Court enter an order authorizing the Debtors to expand the scope of Christie's employment and retention as broker for the Debtors, *nunc pro tunc* to the Start Date, to expressly include the Additional

Property and (b) the Court approve the terms and conditions of Christie's expanded retention as set forth in the Supplemental Engagement Letter.

6. The Debtors based their selection of Christie as broker on Christie's knowledge of and familiarity with the Additional Property and extensive experience and knowledge in the field of aircraft sales.

7. The Supplemental Engagement Letter describes (a) the additional services that Christie anticipates performing for the Debtors in these Chapter 11 cases and (b) the terms of Christie's proposed engagement by the Debtors. In addition to the services Christie was previously authorized to perform on the Debtors' behalf pursuant to the Original Retention Order, the Debtors anticipate that Christie will market the Additional Property for potential sale.

8. All services that Christie will provide will be (a) at the request of the Debtors and (b) appropriately directed by the Debtors. At the request of the Debtors or their counsel, the scope of such services may be broadened as the need arises in these cases.

9. The Debtors require a knowledgeable broker to render these essential professional services. As noted above, Christie has substantial relevant expertise and experience and is well qualified to perform these services.

10. Pursuant to the Supplemental Engagement Agreement, and subject to the Court's approval, Christie will earn a commission upon any transaction that includes the sale of the Additional Property, regardless of whether such sale is arranged by Christie. The Supplemental Engagement Agreement provides that the amount of the commission earned will be \$25,000.

11. No retainer has been paid to Christie for his services under the Supplemental Engagement Agreement or any other agreement.

12. Due to the nature of his services and the fact that Christie will not be compensated by the Debtors unless and until a transaction involving the Additional Property is consummated pursuant to an order of this Court, the Debtors propose that Christie be paid his commission in accordance with the Supplemental Engagement Agreement at the time such commission becomes due and without further order of the Court. This Court and other courts in this district have approved similar relief. See, e.g., In re Inacom Corp., No. 00-2426 (PJW) (Bankr. D. Del. Aug. 16, 2000); In re The Cosmetic Center, Inc., No. 99-888 (PJW) (Bankr. D. Del. Aug. 26, 1999); In re Access Beyond Technologies, Inc., No. 98-2276 (MFW) (Bankr. D. Del. Feb. 2, 1999).¹

13. To the best of Debtors' knowledge, information and belief, Christie represents no interest adverse to the Debtors or their estates in the matters for which he is proposed to be retained, except to the extent set forth in the Affidavit Of Brandon L. Christie As Proposed Aircraft Broker For The Debtors And Debtors In Possession, Annexed to the Original Retention Application as Exhibit "B" and incorporated herein by reference (the "Christie Affidavit"). Based upon the Christie Affidavit, the Debtors believe that Christie represents no interest adverse to the Debtors or their estates in the matters in which he is to be engaged. However, given his diverse practice and client base, Christie may represent clients in matters unrelated to these cases who may be creditors or parties in interest. The Debtors believe that Christie is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. The Debtors submit that their employment of Christie would be in the best interest of the Debtors and their estates and creditors.

14. During the ninety days prior to the Petition Date, Christie received no payments from the Debtors and Christie is owed nothing on account of prepetition services

¹ Copies of these unreported orders are available from Debtors' counsel upon request.

rendered. As of the Petition Date, Christie was owed nothing on account of services rendered.

15. The Debtors request approval of the Supplemental Application *nunc pro tunc* to the Start Date. The relief requested is warranted by the extraordinary circumstances presented by these cases. Indeed, the Third Circuit has identified “time pressure to begin service” and absence of prejudice as factors favoring *nunc pro tunc* retention. See In re Arkansas Co., 798 F.2d 645, 650 (3d Cir. 1986); see also In re Indian River Homes, Inc., 108 B.R. 46, 52 (D. Del. 1989), app. dismissed, 909 F.2d 1406 (3d Cir. 1990). The complexity and significance of the matters for which Christie is to be retained has required Christie to devote substantial resources to his engagement with the Debtors and begin service as soon as possible. Further, given the short period which has elapsed since the Start Date, the Debtors believe that no creditor or other party in interest will be prejudiced by the *nunc pro tunc* approval of the Supplemental Application.

NOTICE

16. No trustee or examiner has been appointed in these Chapter 11 cases. Notice of this Supplemental Application has been given to (a) the United States Trustee, (b) counsel to the Committee, (c) the Debtors’ principal prepetition and postpetition secured lenders, and (d) the other parties on the general service list being maintained in these cases. In light of the nature of the relief requested in this Supplemental Application, the Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

17. No prior application for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order

approving this Supplemental Application and granting the Debtors such other and further relief as the Court deems just and proper.

Dated: February 27, 2003
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Michael G. Busenkell

Robert J. Dehney (No. 3578)
Derek C. Abbott (No. 3376)
Michael G. Busenkell (No. 3933)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 658-9200

- and -

RAYBURN COOPER & DURHAM, P.A.
C. Richard Rayburn
Albert F. Durham
Patricia B. Edmondson
1200 Carillon, 227 West Trade Street
Charlotte, North Carolina 28202-1675
(704) 334-0891

Co-Counsel for Oakwood Homes Corporation, et al.,
Debtors and Debtors In Possession

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