

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:) Chapter 11
)
SMALL LOANS, INC,)
et al.¹) Case No.: 11-12254 (WRS)
)
)
)
)
Debtors.)

STIPULATION AND AGREED ORDER EXTENDING TIME TO TAKE ACTION TO
DETERMINE THE DISCHARGEABILITY OF ANY DEBT OWING
TO THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION
PURSUANT TO 11 U.S.C. § 1141(d)(6)

WHEREAS, the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, (the “Code”), was amended in 2005 to add Section 1141(d)(6), which provides that “the confirmation of a plan does not discharge a debtor that is a corporation from any debt * * * (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit” (EMPHASIS ADDED);

WHEREAS, Section 1141(d)(6) of the Code contains no provision requiring a governmental unit to seek court determination that the kind of debt specified is excepted from discharge, as there is no comparable statutory language such as, or reference to, Section 523(c) of the Code, which only applies in the case of a Chapter 7 or 11 debtor, who is an individual;

WHEREAS, no known published decision has been issued in which a court has determined that Section 523(c) of the Code is applicable with respect to the dischargeability of a

¹ The Debtors in these cases are Small Loans, Inc. Case No. 11-12254; The Money Tree Inc., Case No. 11-12255; The Money Tree of Louisiana, Inc., Case No. 11-12256; The Money Tree of Florida Inc., Case No. 11-12257; and The Money Tree of Georgia Inc., Case No. 11-12258.

debt under Section 1141(d)(6) of the Code, and the staff of the United States Securities and Exchange Commission (“**Commission**”)² does not concede the applicability of Section 523(c) to Section 1141(d)(6), but recognizes that if Section 523(c) were applicable, then an action to determine the dischargeability of a debt pursuant to Section 523(a)(2) in this case would have to be filed on or before April 9, 2012 in accordance with Bankruptcy Rule 4007(c);

WHEREAS, the staff of the Commission is currently investigating potential claims, if any, that it may assert against the Debtors;

WHEREAS, the Commission staff has not filed a proof of claim in this case on behalf of the Commission and is not required to do so until the governmental unit bar date of June 13, 2012, or such later time as set by the court;

WHEREAS, the Commission staff needs additional time to investigate to avoid being forced to make a premature determination of whether a nondischargeable claim lies against the Debtors merely to protect the Commission’s rights pursuant to Section 1141(d)(6) of the Code;

WHEREAS, the necessity to file an action by the Commission staff pursuant to Section 1141(d)(6) before its investigation has progressed sufficiently may well result in an unnecessary expenditure of the judicial resources of this Court, and necessarily incur time and expense for the Debtors and other parties in interest, which, for this reason and the reasons set forth above, constitute cause for extending the deadline set forth in Bankruptcy Rule 4007(c), to the extent it is applicable to a determination pursuant to Section 1141(d)(6) of the Code; and

WHEREAS, in view of the foregoing, the Debtors have agreed, without waiver of any other defenses or rights, that the Commission shall have until June 13, 2012, or such later date as

² The Commission is the agency of the United States of America responsible *inter alia* for the enforcement and regulation of the federal securities laws, and is a domestic governmental unit within the meaning of Section 1141(d)(6) of the Code.

may be ordered by the Court, to file a complaint or take whatever action may be required, if any, to determine the dischargeability of any debt that may be owing by the Debtors to the Commission pursuant to Section 1141(d)(6) of the Code and that this Stipulation is without prejudice to the Commission staff's right to seek a further extension if appropriate;

BASED UPON THE FOREGOING STIPULATION OF THE PARTIES HERETO:

1. The date by which the Commission must file its complaint or other action, if any, in these Chapter 11 cases to determine the dischargeability of any debt that may be owing by the Debtors to the Commission, pursuant to Section 1141(d)(6) of the Code, shall be June 13, 2012, or such later date as may be ordered by the Court, without prejudice to the Commission's right to seek a further extension of the date.

2. Nothing in this Stipulation and Agreed Order constitutes a determination that any deadline exists to seek a determination of nondischargeability under Section 1141(d)(6) of the Code.

IT IS SO ORDERED.

PREPARED AND AGREED TO BY:

By: /s/ Susan R. Sherrill-Beard

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