

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
DOTHAN DIVISION

In re: : Chapter 11  
: :  
SMALL LOANS INC. : Case No. 11-12254-WRS  
: :  
THE MONEY TREE INC. : Case No. 11-12255-WRS  
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THE MONEY TREE OF LOUISIANA, INC. : Case No. 11-12256-WRS  
: :  
THE MONEY TREE OF FLORIDA, INC. : Case No. 11-12257-WRS  
: :  
THE MONEY TREE OF GEORGIA, INC. : Case No. 11-12258-WRS  
: :  
Debtors :  
:

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**NOTICE OF INTENT TO PREVENT AUTOMATIC RENEWAL OF DEBENTURE, OR  
IN THE ALTERNATIVE, MOTION FOR RELIEF FROM STAY TO PREVENT  
AUTOMATIC RENEWAL OF DEBENTURE**

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Comes Now Creditor Robert W. Knox and, by and through his undersigned counsel of record, files this Notice of Intent to Prevent Automatic Renewal of Debenture, or in the alternative, Motion for Relief from Stay to Prevent Automatic Renewal of Debenture. Mr. Knox believes that he may exercise his contractual rights to prevent the automatic renewal of his April 11, 2008 Debenture No. X4453-XXXX without violating the terms of the automatic stay, 11 U.S.C. § 362. Nevertheless, Mr. Knox files this Motion out of an abundance of caution in the event that the Court finds that he must obtain stay relief to prevent such automatic renewal. In support of the Motion, Mr. Knox respectfully submits as follows:

**STATEMENT OF FACTS**

1. On April 11, 2008, Debtor The Money Tree, Inc. issued an April 11, 2008 Series A Variable Rate Subordinated Debenture, Debenture No. X4453-XXXX, to Robert W. Knox in

the principal amount of \$3,012.43 with a four-year term. A copy of this debenture signed by Robert W. Knox for redemption on April 20, 2012 is attached hereto as Exhibit "A."

2. According to Paragraph 4. "Extension of Maturity," **"The Maturity of this Debenture will be automatically extended from the original maturity date for a period equal to the original term of this debenture unless the debenture holder submits this debenture for redemption prior to 15 days after its original maturity date [...]."** (April 11, 2008 Debenture, Ex. A.) (Emphasis in original).

3. Accordingly, Mr. Knox's April 11, 2008 Debenture reached maturity on April 11, 2012. See (Ex. A).

4. Under the terms of the Debenture, Mr. Knox's April 11, 2008 Debenture is scheduled to be automatically extended on April 26, 2012 unless Mr. Knox submits his debenture for redemption.

5. Mr. Knox does not wish his April 11, 2008 debenture to automatically renew for another four-year period pursuant to Paragraph 4 of the Debenture.

6. Knowing that 11 U.S.C. § 362 stays payment on his Debenture at this time, Mr. Knox submits a signed copy of this April 11, 2008 Debenture (Ex. A) for redemption for the limited purpose of preventing the automatic renewal of his April 11, 2008 Debenture pursuant to the terms of the instrument.

### **JURISDICTION**

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157 (b) (2).

## ARGUMENT AND CITATION OF AUTHORITY

8. There is authority that an automatic renewal provision in a contract may remain effective in bankruptcy. See e.g. In re IMG Healthcare, LLC, 06-10059, 2008 WL 2695638, \*2 (Bankr. E.D. La. July 8, 2008) (holding that a pre-petition contract with an automatic renewal provision could renew automatically during bankruptcy where debtor failed to provide notice of non-renewal to the creditor); see also In re Country Club Estates at Aventura Maint. Ass'n, Inc., 227 B.R. 565, 568 (Bankr. S.D. Fla. 1998) (holding that an executory contract that was automatically renewed during bankruptcy constituted a continuation of the original prepetition executory contract that was subject to 11 U.S.C. § 365.)

9. Accordingly, Mr. Knox is concerned that if he does nothing, his April 11, 2008 debenture will automatically renew for a period of four years.

10. 11 U.S.C. § 362 generally stays a wide variety of collection efforts by creditors.

11. However, Courts have held that a party may terminate a contract based on its own terms without violating the automatic stay created by 11 U.S.C. § 362. In re Bolin Oil Co., 51 B.R. 936, 938 (Bankr. N.D. Ohio 1985) (“The Bankruptcy Code does not enlarge the rights of the debtor under a contract, and it doesn't prevent the termination of a contract by its own terms”)(emphasis added) (cited with approval by In re Auto Dealer Services, Inc., 110 B.R. 68, 70 (Bankr. M.D. Fla. 1990)); see also Valley Forge Plaza Associates v. Schwartz, 114 B.R. 60, 62 (E.D. Pa. 1990) (“The ability to terminate a contract on its own terms survives bankruptcy.”); In re Heaven Sent, Ltd. 37 B.R. 597 (Bankr. E.D. Pa. 1984) (same).

12. In Heaven Sent, a commercial insurance company provided the Chapter 11 debtor with auto insurance and workers’ compensation policies pre-petition that were set to expire during the bankruptcy. In re Heaven Sent Ltd., 37 B.R. 597, 598 (Bankr. E.D. Pa. 1984). The

debtor asked the bankruptcy court to direct the insurance company to renew the policies. Id. The Heaven Sent court refused to renew the policy on the grounds that “nothing in the Bankruptcy Code...enlarges the rights of a debtor under a contract nor prevents the termination of a contract by its own terms.” Id.

13. Similarly in Valley Forge, a sponsor of educational seminars booked space at the debtor’s hotel and convention center pre-petition and canceled the reservation post-petition, three months before the conference was scheduled to begin. Valley Forge Plaza Associates v. Schwartz, 114 B.R. at 61. The debtor claimed that this cancellation was a breach of contract that violated the automatic stay under 11 U.S.C. § 362. Id. at 62. First, the Court noted that the seminar sponsor did not breach the debtor’s contract with the debtor because the seminar sponsor timely canceled its reservation under the terms of its booking contract. Id. Second, the Court held that it would not use the automatic stay to invalidate the cancellation explaining that “To allow the automatic stay provisions to nullify Schwartz's cancellation would, in effect, give Valley Forge greater rights than the Booking Report contains. This is not permitted.” Id., 114 B.R. at 62-63.

14. Here, Paragraph 4 of the April 11, 2008 Debenture allows Mr. Knox to prevent the automatic renewal of the debenture and thereby terminate the debenture by submitting the debenture for redemption “prior to 15 days after its original maturity date.” Because the bankruptcy code does not prevent the termination of a contract by its own terms, Mr. Knox may submit his debenture for redemption within 15 days of April 11, 2012, to prevent its automatic renewal without violating the stay created by 11 U.S.C. § 362.

15. Recognizing that 11 U.S.C. § 362 stays his collection efforts, Mr. Knox is not seeking immediate payment of his debenture; he only wishes to prevent automatic renewal of the debenture under its terms.

16. If this Court determines that Mr. Knox would need stay relief to prevent the automatic renewal of his debenture, then Mr. Knox would respectfully request that this Court grant him relief from the automatic stay for the limited purposes of tendering his debenture for redemption to prevent its automatic renewal.

17. The purpose of the automatic stay is “to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor.” In re SCO Group, Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing St. Croix Condominium Owners v. St. Croix Hotel, 682 F.2d 446, 448 (3d Cir.1982)).

18. “However, the automatic stay is not meant to be absolute, and in appropriate instances relief may be granted.” In re SCO Group, Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007).

19. 11 U.S.C. § 362 (d) provides that, after notice and a hearing, the court shall grant relief from the stay by “terminating, annulling, modifying, or conditioning such stay – 1) ‘for cause,’ including the lack of adequate protection of an interest in property of such party in interest.”

20. Except for adequate protection, “cause” is not defined by § 362(d)(1); therefore, courts must decide on a case by case basis whether “cause” exists based on the totality of the circumstances. In re SCO Group, Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007).

21. The legislative history indicates that cause may be established by a single factor such as “a desire to permit an action to proceed ... in another tribunal,” or “lack of any connection with or interference with the pending bankruptcy case.” Matter of Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992).

22. Simply allowing Mr. Knox to prevent the automatic renewal of his April 11, 2008 debenture without receiving immediate payment does not interfere with Debtor’s reorganization because renewing the debenture is not necessary for the business to operate and will not provide Mr. Knox payment ahead of other creditors.

23. Should the maturity of a debenture become relevant in the future, it is important to Mr. Knox to prevent his April 11, 2008 debenture from automatically renewing.

WHEREFORE, Robert W. Knox respectfully requests that this Court issue the proposed order acknowledging that he can submit his April 11, 2008 debenture for redemption for the limited purpose of preventing its automatic renewal without violating 11 U.S.C. § 362, or, in the alternative, hold a hearing for the purpose of determining whether cause exists for providing Mr. Knox with relief from stay for the limited purpose of preventing the automatic renewal of his debenture.

RESPECTFULLY SUBMITTED THIS 23<sup>rd</sup> DAY OF APRIL, 2012.

BOUHAN, WILLIAMS & LEVY LLP

By: /s/ Andrew H. Dekle  
ANDREW H. DEKLE  
GEORGIA BAR NO. 847828

Post Office Box 2139  
Savannah, Georgia 31402-2139  
Telephone: (912) 236-2491  
Telefax: (912) 233-0811  
[ahdekle@bouhan.com](mailto:ahdekle@bouhan.com)