

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:** ) **Chapter 11**  
 )  
**SMALL LOANS, INC., et al<sup>1</sup>** ) **Case No.: 11-12254 (WRS)**  
 )  
 )  
**Debtor.** )

**FIRST AND FINAL APPLICATION FOR PAYMENT OF COMPENSATION  
SUBMITTED BY BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC,  
AS COUNSEL FOR SMALL LOANS, INC., et al,  
DEBTORS AND DEBTORS-IN-POSSESSION**

1. **Name of Applicant: Baker Donelson Bearman Caldwell & Berkowitz, PC**
2. **Date of Application for Employment was filed: December 19, 2011**
3. **Date of Order Authorizing Employment: January 19, 2012 nunc pro tunc to 12/16/2011**
4. **Professional Services Provided to: Debtors**
5. **Period for which Compensation is Sought: December 16, 2011 through April 30, 2012**
6. **(a) Amount of Fees Sought: \$509,743.75 (b) Amount of Expenses Sought: \$29,393.91**
7. **This is an \_\_\_\_\_ Interim Application X Final Application**
8. **Disclosure of all prior Applications for Compensation:**

<u>Date Filed:</u>	<u>Period Covered</u>	<u>Fees Requested</u>	<u>Expenses Requested</u>	<u>Total Allowed</u>
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First Application

9. **Aggregate amount of fees and expenses allowed to date: \$0.00**
10. **Aggregate amount of fees and expenses paid to date: \$0.00**

<sup>1</sup> The related Debtors along with the last four digits of each Debtors' federal tax identification number and respective case numbers are Small Loans, Inc. (3224) Case No. 11-12254, The Money Tree Inc. (1386) Case No. 11-12255, The Money Tree of Georgia Inc. (9228) Case No. 11-12258, The Money Tree of Florida Inc. (5315) Case No. 11-12257, and The Money Tree of Louisiana, Inc. (2592) Case No. 11-12256. Case information and the Debtors' respective addresses can be found at the dedicated website for these cases: <http://www.kccllc.net/SmallLoansInc>.

**IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA  
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**FIRST AND FINAL APPLICATION FOR PAYMENT OF COMPENSATION  
SUBMITTED BY BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC,  
AS COUNSEL FOR SMALL LOANS, INC., et al,  
DEBTORS AND DEBTORS-IN-POSSESSION**

Baker Donelson Bearman Caldwell & Berkowitz, PC ("Applicant"), counsel to SMALL LOANS, INC., et al, Debtors and Debtors-in-possession ("Debtors"), files this First and Final Application (the "Application") for Compensation pursuant to sections 330 and 331 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and in furtherance thereof, states as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Application under 28 U.S.C. §157 and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. §157(b). Venue of these chapter 11 cases in this District is proper under 28 U.S.C. §§1408 and 1409.

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<sup>2</sup> The related Debtors along with the last four digits of each Debtors' federal tax identification number and respective case numbers are Small Loans, Inc. (3224) Case No. 11-12254, The Money Tree Inc. (1386) Case No. 11-12255, The Money Tree of Georgia Inc. (9228) Case No. 11-12258, The Money Tree of Florida Inc. (5315) Case No. 11-12257, and The Money Tree of Louisiana, Inc. (2592) Case No. 11-12256. Case information and the Debtors' respective addresses can be found at the dedicated website for these cases: <http://www.kccllc.net/SmallLoansInc>.

2. The statutory predicates for the relief requested herein are sections 330, 331 and 503 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **Background**

3. On December 16, 2011 (the "Petition Date"), the Debtors filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtors is operating its business and managing its property as Debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

4. On December 19, 2011, the Debtors filed an application seeking an Order authorizing the Debtors to employ and retain Applicant as counsel *nunc pro tunc* to December 16 2011. Applicant performed duties at the request of the Debtors since that date until April 30, 2012 when this Court entered an order appointing Greg Hays as Chapter 11 Trustee in these matters. The Application was approved on January 19, 2012. This Application seeks compensation for service rendered and expenses incurred from December 16, 2011 through and including April 30, 2012 (the "Application Period")

### **Relief Requested**

5. Applicant requests allowance of compensation for professional services rendered on behalf of and at the direction of the Committee during the Application Period in the amount of \$509,743.75. Applicant further requests approval of reimbursement of its actual and necessary out-of-pocket expenses incurred during the Application Period in the amount of \$29,393.91. All of the services for which the Applicant seeks compensation were performed for, on behalf of and at the direction of the Debtors.

6. The narrative below is a general summary of services rendered on behalf of the Debtors. A more complete detail of the services rendered on behalf of the Debtors is contained in the Exhibits attached hereto.

**Services Rendered By Applicant**

7. As more fully evidenced in the statements attached as Exhibit, Applicant has rendered significant professional services to, on behalf of, and at the direction of the Debtors. To ensure the best possible representation of the Debtors, Applicant has utilized its expertise in both bankruptcy and non-bankruptcy law including banking, corporate, commercial, and labor law.

8. Among the services Applicant has provided the Debtors is:

A. Assisted the Debtors in the preparation of the schedules, statements of financial affairs and monthly reports.

B. Consultation with the Debtors and their financial advisors concerning the administration of the Estates. In particular, Applicant consulted with Warren Averett personnel to assist in the preparation of the business plan and the analysis of leases.

C. Assisting and advising the Debtors regarding their duties as debtor in possession. Assisting and representing the Estate in connection with several litigated matters including the contested motion to appoint a trustee.

D. Analysis of potential causes of action for the benefits of the Estates, particularly the potential preference claims.

E. Drafting of a Plan and Disclosure Statement.

F. The performance of such other services as are in the interests of the Debtors, its creditors, and the estate.

The above lists many of the matters in which Applicant performed services. The following is a summary of the time devoted by the Applicant's personnel:

December 16, 2011 – April 30, 2012				
<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
M. Moseley	Of Counsel	119.4	\$360.00	\$42,984.00
M. Moseley	Of Counsel	367.3	\$375.00	\$137,737.50
C. Davis	Shareholder	0.3	\$395.00	\$118.50
J. Hayden	Shareholder	346.4	\$425.00	\$147,220.00
M. Powell	Shareholder	3.1	\$405.00	\$1,255.50
M. Rafter	Shareholder	6.8	\$430.00	\$2,924.00
S. Sherman	Shareholder	2.9	\$330.00	\$957.00
S. Sherman	Shareholder	18.3	\$345.00	\$6,313.50
B. Bensinger	Associate	107.2	\$295.00	\$31,781.00
B. Bensinger	Associate	2.1	\$320.00	\$672.00
B. Sheely	Associate	34.1	\$260.00	\$8,866.00
C. Kimbrough	Associate	8.9	\$175.00	\$1,557.50
D. Ferretti	Associate	9.6	\$200.00	\$1,920.00
D. Ferretti	Associate	81.8	\$225.00	\$18,405.00
J. Reif	Associate	73.8	\$190.00	\$14,022.00
K. Hinton	Associate	2.7	\$200.00	\$540.00
K. McGill	Associate	0.8	\$245.00	\$196.00
L. Carlisle	Associate	45.4	\$175.00	\$7,945.00
M. Combs	Associate	0.7	\$215.00	\$150.50
M. White	Associate	8.6	\$210.00	\$1,806.00
S. Pierce	Associate	0.9	\$225.00	\$202.50
D. Brady	Paralegal	3.6	\$145.00	\$522.00
K. Collins	Paralegal	4.7	\$190.00	\$893.00
K. Collins	Paralegal	10.9	\$200.00	\$2,180.00
L. Hunter	Paralegal	9.7	\$120.00	\$1,164.00
L. Hunter	Paralegal	17.9	\$125.00	\$2,237.50
M. Sellers	Paralegal	78.0	\$145.00	\$11,310.00
M. Sellers	Paralegal	148.3	\$165.00	\$24,469.50
T. Owen	Paralegal	84.8	\$175.00	\$14,831.25
T. Owen	Paralegal	131.8	\$185.00	\$23,828.00
C. Moffat	E-Discovery	4.2	\$175.00	\$735.00
				\$509,743.75

During the period, Applicant devoted approximately 1735.0 hours of professional services representing the Debtors. Applicant maintains contemporaneous records of the time expended in rendering these professional services.

9. For purposes of this application, the Applicant has categorized the hours expended by its personnel into seven category headings, as follows:

- General Case Administration
- Plan and Disclosure Statement
- Employment of Professionals and Fee Application
- Financing and Sale
- Schedules, Operating Reports and Other Filings
- Litigation and Investigation
- Claims Administration

### **General Case Administration**

<u>Name</u>	<u>Amount</u>
B. Bensinger	\$3,223.50
B. Sheely	\$2,288.00
C. Davis	\$118.50
D. Brady	\$290.00
D. Ferretti	\$2,722.50
J. Hayden	\$42,585.00
J. Reif	\$2,470.00
K. Collins	\$1,341.00
L. Carlisle	\$1,750.00
L. Hunter	\$2,639.00
M. Moseley	\$37,585.50
M. Powell	\$162.00
M. Sellers	\$12,853.00
S. Sherman	\$264.00
T. Owen	\$8,897.75
	<b>\$119,189.75</b>

### **Plan and Disclosure Statement**

<u>Name</u>	<u>Amount</u>
B. Bensinger	\$128.00
B. Sheely	\$5,304.00
C. Kimbrough	\$1,155.00
D. Ferretti	\$4,027.50
J. Hayden	\$26,647.50
J. Reif	\$1,292.00
K. Collins	\$680.00
M. Moseley	\$7,912.50
M. Sellers	\$2,141.00
T. Owen	\$2,997.00
	<b>\$52,284.50</b>

## Employment of Professionals and Fee Application

<u>Name</u>	<u>Amount</u>
J. Hayden	\$8,330.00
L. Carlisle	\$875.00
M. Moseley	\$16,677.00
M. Sellers	\$2,634.50
T. Owen	\$2,011.50
	<b>\$30,528.00</b>

## Financing and Sale

<u>Name</u>	<u>Amount</u>
D. Ferretti	\$1,530.00
J. Hayden	\$5,482.50
M. Moseley	\$23,997.00
M. Sellers	\$379.50
T. Owen	\$370.00
	<b>\$31,759.00</b>

## Schedules, Operating Reports and Other Filings

<u>Name</u>	<u>Amount</u>
B. Bensinger	\$206.50
J. Hayden	\$3,570.00
K. Collins	\$152.00
K. Hinton	\$196.00
L. Carlisle	\$1,102.50
M. Moseley	\$15,441.00
M. Sellers	\$3,855.50
T. Owen	\$13,832.50
	<b>\$38,356.00</b>

## Litigation and Investigation

<u>Name</u>	<u>Amount</u>
B. Bensinger	\$27,397.00
B. Sheely	\$1,248.00
C. Moffat	\$735.00
D. Brady	\$232.00
D. Ferretti	\$12,045.00
J. Hayden	\$52,848.75
J. Reif	\$10,260.00
K. Collins	\$900.00

### Litigation and Investigation (cont.)

<u>Name</u>	<u>Amount</u>
K. Hinton	\$540.00
L. Carlisle	\$3,027.50
L. Hunter	\$762.50
M. Combs	\$150.50
M. Moseley	\$77,946.00
M. Powell	\$1,143.50
M. Rafter	\$2,924.00
M. Sellers	\$9,659.50
M. White	\$1,806.00
S. Pierce	\$202.50
S. Sherman	\$7,006.50
T. Owen	\$9,839.00
	<b>\$220,673.25</b>

### Claims Administration

<u>Name</u>	<u>Amount</u>
B. Bensinger	\$1,114.50
B. Sheely	\$52.00
J. Hayden	\$7,800.00
L. Carlisle	\$1,190.00
M. Moseley	\$1,162.50
M. Sellers	\$4,367.75
T. Owen	\$1,266.50
	<b>\$16,953.25</b>

**TOTAL**

**\$509,743.75**

10. Applicant recognizes the numerous factors the Court must consider in determining whether to allow compensation. Applicant requests the Court to consider this application in light of Grant v. George Schumann Tire and Battery Co. 907 F.2d 874 (11th Cir. 1990) (establishing criteria for allowance of attorneys' fees and expenses in a bankruptcy case and the twelve factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 174 (5th Cir. 1974.)

A. Time and Labor Required: The time records attached hereto as Exhibit A accurately reflect the nature of each service undertaken and the time expended. Applicant and Applicant's firm have spent a total of approximately 1735.0 hours on this case during the Application Period.

B. Novelty and Difficulty of the Issues: The novelty and difficulty of the issues presented in this case warrant a full allowance of the fees requested. In the instant case, the Debtors had incurred significant unsecured liabilities which were owed to several thousand entities. The sheer volume of creditors increased the complexity of the case. Additionally, there were several matters presented to the court which were either litigated or involved extensive negotiation and attention by the Applicant in order to address. These matters included not only the contested motion to appoint a trustee, but also contested motions regarding the appointment of special counsel. Applicant assisted the Debtors in responding to extensive discovery request from parties in this matter, as well as the Security and Exchange Commission and the State of Georgia.

C. Customary Fees: All members of Applicant's firm charged their regular hourly rates or less, which rates are applicable to engagements for cases other than under this title. The rates charged are comparable to rates charged by other attorneys similarly situated performing similar work.

D. Whether the Fee is Fixed or Contingent: As in all bankruptcy proceedings where employment is accepted to represent a Debtors, fees for services rendered are subject to the review and approval of the Bankruptcy Court as to their reasonableness based upon the nature, extent, and value of such services, the time spent on such services, and the cost of comparable services other than in a bankruptcy case and, accordingly, in a sense, contingent; however, Applicant did not undertake representation in this matter on a contingent fee basis.

E. Preclusion of Other Employment Due to Acceptance of this Case:

To fulfill its obligations to the Debtors, it was necessary for Applicant to work closely with the Debtors and therefore, to reorganize the handling of various matters in its office to accommodate their schedules as well. At times, the urgency of matters which have arisen, have caused routine work to be delayed and other matters to be delegated to other personnel in Applicant's office.

F. Experience, Reputation, and Ability of Counsel: The attorneys in Applicant's office have had substantial experience in the handling of bankruptcy cases and have participated in the handling of numerous such matters in Bankruptcy Courts across the country. Applicant believes that the compensation herein requested, is reasonable, justified, and is supported by the undertakings and responsibilities required of and imposed upon Applicant in this proceeding. Attached hereto as **Exhibit "B"** are *curriculum vitae* of the principle professionals engaged in these matters. Due to the nature of the Debtors' business, Applicant used the available resources in its office to address the complex issues raised in the case.

G. Desirability of the case: Other than the time constraints placed on Applicants due to the number of contested matters, this case has not been an undesirable case for Applicant to undertake.

H. Awards in Similar Cases: The requested fee is comparable to awards in similar Chapter 11 cases.

I. Skill: Applicant has brought into this case its knowledge and experience in the bankruptcy and restructuring fields of law. Applicant has been diligent in representing the Debtors to the best of its ability. Applicant believes that it has exhibited the necessary skill and competence required for this case.

J. Time Limitations: Due to the condition of the business upon filing and the level of litigation, the engagement presented significant time limitations. Applicant has

vigorously and steadfastly performed the services required of it in handling these matters regardless of the time limitations imposed upon or required of Applicant.

K. Nature and Length of Professional Relationship with Client: Prior to its employment to represent the Debtors in these proceedings, Applicant had not represented or had any relation with the Debtors except as previously disclosed in the Application to Employ Baker Donelson Bearman Caldwell & Berkowitz, PC As Attorneys For The Debtor Nunc Pro Tunc to December 16, 2011 and its attendant Declaration Of Proposed Attorney And Disclosure Statement [46].

11. As set forth above, the Johnson v. Georgia Highway Express factors weigh in favor of approving the Applicant's lodestar figure based on the Applicant's customary hourly rates.

12. Further, the Legislative History at 124 Cong. Rec. H11092, H11092 (September 28, 1978), in discussing § 330(a) of the Bankruptcy Code, states as follows:

Section 330(a) contains the standard of compensation adopted in the H.R. 8200 as passed by the House rather than the contrary standard contained in the Senate amendment. Attorneys' fees in bankruptcy cases can be quite large and should be closely examined by the Court. However, bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under Title 11 at the same rate other attorneys or other professionals would be compensated for performing comparable services in a case that is other than a case under Title 11. Contrary language in the Senate report accompanying S. 2266 is rejected, and Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a Bankruptcy Code.

13. Applicant notes that in awarding compensation pursuant to §§ 330 and 331 of the Bankruptcy Code to professional persons employed under §§ 327 or 1103 of the Bankruptcy Code, the Court must take into account, among other factors, the cost of comparable

non-bankruptcy services. In pertinent part, § 330 of the Bankruptcy Code provides for: “(1) Reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; and (2) Reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a).

14. The legislative history of § 330(a) also states, among other things, that:

The effect of [Section 330] is to overrule...cases that require fees to be determined based on notions of conservatism of the estate and economy of administration. If [those cases] were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field. H.R. Rep. no. 595, 95th Cong., 1st Sess. 329 (1977); see also 124 Cong. Rec. H11, 091-92 (daily ed., Sept. 28, 1978); 124 Cong. Rec. S17,408 (daily ed., October 6, 1978).

15. If Applicant represented the Debtors in a non-bankruptcy matter, Applicant would charge and expect to receive on a current basis an amount at least equal to the amounts requested herein.

16. Pursuant to §§ 503(b)(2) and 504(a) of the Bankruptcy Code and Bankruptcy Rule 2016, Applicant states that it has no agreement or understanding with any other entity for the sharing of compensation to be received for services rendered and expenses incurred in connection with this case. Applicant has received no promise for compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code.

17. The Applicant's billing rates do not include as overhead components the charges for copying, long distance telephone calls, or other expenses set forth in the attached Exhibits. To maximize fairness to all clients, the Applicant's billing methods charges clients for copying and other office services only if they use those services. Applicant believes and submits that these charges are fair and reasonable.

18. In view of the foregoing, Applicant requests allowance of its reasonable compensation for the period in the amount of \$509,743.75, reimbursement of its actual and necessary expenses in the amount of \$29,393.91, and payment in the amount of \$539,137.66.

### **Conclusion**

19. As set forth above, the requested fee is reasonable compensation for the actual, necessary services the Applicant rendered on the Debtors' behalf. In addition, the expenses for which the Applicant seeks reimbursement were actual and necessary.

### **Notice**

20. Notice of this Application has been provided to: (i) the Office of the Bankruptcy Administrator, (ii) all secured creditors, and (iii) all those who have appeared in this case and requested notice.

WHEREFORE Applicant respectfully requests this Court to enter a final order: (1) approving fees in the amount of \$509,743.75 and expenses in the amount of \$29,393.91; (2) authorizing the payment to Applicant of \$539,137.66; and (3) such other and further relief as is just and proper.

Dated: Birmingham, Alabama  
June 26, 2012

By: /s/ Max A. Moseley  
Max Anderson Moseley  
Attorney for SMALL LOANS, INC., et al

BAKER DONELSON BEARMAN  
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Birmingham, Alabama 35203  
Telephone: (205) 244-3817  
Facsimile: (205) 488-3817

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing pleading upon the following via the ECF system or by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 26th day of June, 2012:

Teresa R. Jacobs  
U. S. Bankruptcy Administrator  
Frank M. Johnson, Jr. Federal Building  
One Church Street, Suite 103  
Montgomery, Alabama 36104

John D. Elrod  
R. Kyle Woods  
Greenberg Traurig, LLP  
The Forum-Suite 400  
3290 Northside Parkway, NW  
Atlanta, Georgia 30327

/s/ Max A. Moseley  
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Of Counsel