

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION**

In Re:)	Case No: 11-12254-WRS-11
)	
SMALL LOANS, INC., et al.)	Chapter 11
)	
Debtors.)	Jointly Administered

**CHAPTER 11 TRUSTEE'S LIMITED OBJECTION TO FIRST INTERIM
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
SUBMITTED BY WARREN, AVERETT, KIMBROUGH & MARINO, LCC
FINANCIAL ADVISORS FOR THE DEBTOR**

S. Gregory Hays, the chapter 11 bankruptcy trustee (the "Trustee") appointed in the above captioned case, hereby files the following limited objection to the First Interim Application for Compensation and Reimbursement of Expenses Submitted by Warren, Averett, Kimbrough & Marino, LLC Financial Advisors for the Debtor [ECF Docket No. 360] (the "First Interim Application"). In support of this objection, the Trustee states as follows:

Jurisdiction

1. The 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. The statutory bases for the relief requested herein are Sections 105(a), 328(a), 328(c), 330(a), and 331 of the Bankruptcy Code.

Background

3. On December 16, 2011 (the "Petition Date"), Small Loans, Inc., The Money Tree, Inc., The Money Tree of Louisiana, Inc., The Money Tree of Florida Inc., and The Money Tree

of Georgia Inc. (collectively, the "Debtors") filed voluntary chapter 11 bankruptcy cases in this Court.¹

4. The Debtors' history and the events leading up to their bankruptcy filings have already been set out in numerous pleadings filed with this Court and the Trustee will not retread over the same ground again here.

Appointment of Trustee

5. On April 30, 2012, the Court ordered the appointment of the Trustee pursuant to Section 1104(a) of the Bankruptcy Code. The Trustee now files this limited objection to the First Interim Application filed by Warren, Averett, Kimbrough & Marino, LLC ("Warren Averett").

Limited Objection Regarding Fees for Prepetition Work and Payment of Professional Fees from Retainer

6. In its First Interim Application, Warren Averett requests that the Court enter an order awarding to Warren Averett interim professional fees and expenses totaling \$131,615.54. Of this amount, Warren Averett states that it is holding \$65,847.00 paid by the Debtors as a cash retainer and that it is owed a balance in the amount of \$65,768.54.

7. The Trustee objects to Warren Averett applying the \$65,847.00 retainer that it received from the Debtors towards the payment of its fees and expenses.

8. The Trustee objects to Warren Averett applying the retainer to its fees and expenses because the Trustee does not know the specific Debtor's bank account from which Warren Averett obtained the retainer and, for the reasons previously explained in the Chapter 11

¹ The Money Tree, Inc. filed Case No. 11-12255-WRS-11; The Money Tree of Louisiana, Inc. filed Case No. 11-12256-WRS-11; The Money Tree of Florida Inc. filed Case No. 11-12257-WRS-11; and The Money Tree of Georgia Inc. filed Case No. 11-12258-WRS-11. These cases and the chapter 11 case filed by Small Loans, Inc. are being jointly administered by this Court pursuant to the Order for Joint Administration entered by the Court on January 4, 2012.

Trustee's Motion Pursuant to Fed. Bankr. R. 2016(a) for Entry of an Order Under Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Allowance and Payment of Interim Compensation and Expenses [ECF Docket No. 394], application of the retainer prior to the Court's entry of an order establishing procedures for payment of interim fee applications may lead to a potential conflict between the estates being administered by the Trustee.

9. Specifically, the Trustee is administering five (5) separate estates, each of which has its own assets, liabilities, claims, and causes of action. Potential conflicts may arise because certain of the estates may have causes of action against each other; creditors may have claims payable by more than one estate; and there may be disagreement between creditors or parties in interest regarding which assets are owned by a particular estate.

10. The Trustee is concerned that the retainer may have been paid from the account of a particular Debtor but that the work performed by Warren Averett may not directly benefit that Debtor. The Trustee does not want to sit on his hands and allow the retainer to be applied to the payment of Warren Averett's fees and expenses and then later receive an objection by a creditor or party in interest which claims that the retainer should have been returned to the particular Debtor who paid the retainer and that the fees and expenses claimed by Warren Averett should have been paid out of another estate's bank account. Instead, the Trustee requests that the Court permit the Trustee to pay any interim fees awarded by the Court to Warren Averett from the retainer as well as from one or more of the estate bank accounts being operated by the Trustee, in the Trustee's sole discretion, and without regard to whether Warren Averett performed services specifically for the benefit of the estate from which some or all of the funds are paid.

11. The Trustee further objects to the payment of any prepetition fees or expenses claimed by Warren Averett. Any such fees or expenses must be waived by Warren Averett.

WHEREFORE, the Trustee, S. Gregory Hays, objects to the First Interim Application for Compensation and Reimbursement of Expenses Submitted by Warren, Averett, Kimbrough & Marino, LLC Financial Advisors for the Debtor on the limited bases stated herein.

Respectfully submitted,

/s/ Bradley R. Hightower

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Bankruptcy Trustee

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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 only on this the 25th day of June, 2012:

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Those persons who have requested notice pursuant to Fed. R. Bankr. P. 2002

/s/ Bradley R. Hightower

OF COUNSEL