

**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

**SUPPLEMENT TO CHAPTER 11 TRUSTEE'S APPLICATIONS AND MOTIONS
AUTHORIZING EMPLOYMENT AND RETENTION OF PROFESSIONALS
TO DISCLOSE POTENTIAL CONFLICT OF INTEREST**

S. Gregory Hays, the chapter 11 bankruptcy trustee (the "Trustee") appointed in the above captioned case, hereby supplements the applications and motions previously filed by the Trustee for orders pursuant to Sections 327(a) and 328(a) of Title 11 of the United States Code (as amended, the "Bankruptcy Code") and Fed. R. Bank. P. 2014(a), 2016 and 5002 authorizing the employment and retention of professionals. The purpose of this supplement is to give notice to creditors and parties in interest regarding a potential conflict of interest that the Trustee has identified regarding the Trustee's administration of the Debtors' multiple estates. In support of this supplement, the Trustee respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction over this matter 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).
2. Venue of these cases is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are Sections 105(a), 327(a), 327(c), and 328(a) of the Bankruptcy Code.

Background

4. 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

5. 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

6. On April 30, 2012, the Court ordered the appointment of the Trustee pursuant to Section 1104(a) of the Bankruptcy Code and the Trustee was appointed to administer the following five (5) related bankruptcy estates:

- A. The Money Tree, Inc.
- B. The Money Tree of Louisiana, Inc.
- C. The Money Tree of Florida Inc.
- D. The Money Tree of Georgia Inc.
- E. Small Loans, Inc.

Trustee's Employment of Professionals

7. Subsequent to the Trustee's appointment, the Trustee obtained authorization from the Court to employ each of the following professionals:

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.

- A. Christian & Small LLP was hired as the Trustee's general legal counsel with regard to each of the Debtors' five (5) estates [ECF Docket No. 338].
- B. Hays Financial Consulting, LLC was hired as the Trustee's accountants with regard to each of the Debtors' five (5) estates [ECF Docket No. 339].
- C. Renova Partners, LLC was hired as the Trustee's brokers with regard to each of the Debtors' five (5) estates [ECF Docket No. 340].
- D. Ogletree, Deakins, Nash, Smoak & Stewart, P.C. was hired as the Trustee's labor and employment attorneys to represent each of the Debtors' five (5) estates [ECF Docket No. 359].
- E. Dowdy & Whittaker was hired to prepare all federal and state tax returns for tax year 2011 for each of the Debtors' five (5) estates [ECF Docket No. 359].
- F. Beard & Beard, LLC was hired as the Trustee's collection attorneys to pursue collection of debts owed by customers of each of the Debtors' five (5) estates [ECF Docket No. 359].²

8. The Trustee now seeks to supplement the applications and motions previously filed in this matter regarding the Trustee's employment and retention of these professionals because the Trustee has identified a potential conflict of interest that must be disclosed to creditors and parties in interest.

Disclosure of Potential Conflict of Interest and Summary of Relief Requested

9. Each of the Debtors' five (5) estates being administered by the Trustee has its own assets, liabilities, claims, and causes of action. Based on the Trustee's investigation into the

² The Trustee has also requested authority to employ International Aviation Marketing, Inc. as the Trustee's aircraft broker to sell an airplane owned by The Money Tree, Inc. But the Trustee's employment of International Aviation Marketing, Inc. is not relevant to this supplement because, unlike the other professionals hired by the Trustee, International Aviation Marketing, Inc. is only going to perform services for a single estate (The Money Tree, Inc.) rather than all five (5) of the estates.

assets, liabilities, claims, and causes of action held by each of the estates, the Trustee has determined that potential conflicts may arise between the estates 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. Due to these potential conflicts that may arise between the estates, the Trustee has determined that it will likely be in the best interest of the creditors and parties in interest of all of the estates if the estates are substantively consolidated such that all creditors holding general unsecured claims are paid from the same pool of assets and similarly situated creditors across all of the estates receive the same pro rata payment on their claims. To the extent that the Court later approves a substantive consolidation of the estates, there should not be any conflict with regard to the Trustee's employment of professionals because the professionals will essentially be representing only a single estate. However, because the Trustee desires to continue gathering in assets and taking certain other actions for the benefit of all of the Debtors' creditors before seeking substantive consolidation of the estates, the Trustee is supplementing his applications and motions regarding the professionals previously employed by the Trustee in this matter.

11. The Trustee already disclosed this same conflict in the Trustee's motion for an order approving the Trustee's request to pay allowed interim fees to professionals from any of the bank accounts held by the Debtors' estates without regard to whether the professional receiving payment performed services specifically for the benefit of the estate from which some or all of the funds are paid [ECF Docket No. 394]. The Court granted that motion [ECF Docket No. 464]. The Trustee now requests that the Court enter an order which provides that all creditors and parties in interest shall have twenty one (21) days from the date of service of this supplement

to object to or otherwise take issue with the Trustee's employment of the professionals described herein but only with respect to the potential conflict of interest that may arise by having the professionals represent all of the estates simultaneously. In other words, because creditors and parties in interest previously had the opportunity to object to the employment of the professionals described herein (and did not do so) and the employment of these professionals has been approved by the Court, the Trustee wants the Court's order to limit the basis upon which a creditor or party in interest may object to the single issue of whether it is a conflict of interest for the professionals to simultaneously represent all of the Debtors' estates. Objections grounded upon any other basis should not be considered.

REQUEST FOR RELIEF

12. The Trustee seeks the entry of a court order giving creditors and parties in interest the opportunity to object to the professionals described herein representing the Trustee with regard to each of the Debtors' five (5) estates. The Trustee believes that it is proper to allow the professionals to simultaneously represent all of the estates, but nonetheless wants to give creditors and parties in interest an opportunity to object regarding the conflict issue.

13. The Trustee acknowledges that some courts have held that it is improper for a single trustee or the professionals employed by that trustee to concurrently represent multiple estates; however, "courts have generally declined to formulate bright-line rules concerning the criteria for disqualification but have favored instead an approach which gives the bankruptcy court discretion to evaluate each case on its facts, taking all circumstances into account." *See In re. BH & P Inc.*, 949 F.2d 1300, 1315 (3rd Cir. 1991) (citing to numerous other supporting cases regarding the discretion given to bankruptcy courts on this issue).

14. The central inquiry in determining whether a single trustee or the professionals employed by that trustee may simultaneously represent multiple estates is "whether creditors will actually be prejudiced by any conflicts of interest that are inherent in the posturing of jointly-administered estates." *See In re. Petters Co., Inc.*, 401 B.R. 391, 412 (Bankr. D. Minn. 2009). Even where there is the potential for conflicts of interest to develop though, "Rule 2009(c)(2) clearly recognizes the considerations that can support the appointment of a single trustee for related cases: economy; the focusing of expertise; the advantage of building familiarity with complex facts and relationships; efficiency in considering and acting in administration; and greater ease in presenting common disputes to the court." These same factors should be used to determine whether a single professional or set of professionals may simultaneously perform services for multiple related estates.

15. In these cases, creditors, parties in interest, and the Court have all expressed concern regarding the amount of professional fees that were incurred by the estates prior to the Trustee's appointment; therefore, considerations of economy are particularly important to the Trustee regarding his employment of the professionals described herein. The Trustee believes that employing a separate set of professionals in each of the Debtors' five (5) estates would likely cause a substantial duplication of effort as each of the estates followed a separate path to gather in its assets and sort out its liabilities. The extra costs associated with doing this would be massive and reduce even further the likely distribution to the Debtors' general unsecured creditors.

16. For these reasons, the Trustee wants to employ a single set of professionals to simultaneously perform services for all five (5) of the Debtors' estates. At the same time, the

Trustee recognizes the potential for conflicts of interest to develop between the estates and wants to give creditors and parties in interest the opportunity to be heard regarding this issue.

Notice

17. Notice of this supplement has been given to (a) the Bankruptcy Administrator, Teresa R. Jacobs, (b) counsel for the Debtors, (c) counsel for the Omnibus Official Committee of Unsecured Creditors, (d) the Limited Service List described in the Order Limiting Notice, Establishing Additional Notice Procedures and Approving Alternative Form of Notice Via Website [ECF Docket No. 91], (e) counsel for U.S. Bank National Association, in its capacity as Indenture Trustee, and (f) those persons who have requested notice pursuant to Fed. R. Bankr. P. 2002. The Trustee submits that, in light of the relief requested, no other or further notice need to be given.

No Prior Request

18. No prior request for the relief demanded herein has been made to this or any other court.

WHEREFORE, the Trustee, S. Gregory Hays, respectfully requests that the Court enter an order giving creditors and parties in interest twenty one (21) days from the date of service of this supplement to object to the Trustee's employment of the professionals described herein on the limited basis that a potential conflict of interest may develop regarding the professionals' simultaneous representation of all five (5) of the Debtors' estates and grant such further relief as is just and proper.

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 or by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 18th day of July, 2012:

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

/s/ Bradley R. Hightower

OF COUNSEL