

**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 MOTION PURSUANT TO FED. R. BANKR. P. 6004(g) FOR ENTRY OF AN ORDER UNDER SECTIONS 363(b)(1), 332, and 105(a) DIRECTING THE BANKRUPTCY ADMINISTRATOR TO APPOINT A CONSUMER PRIVACY OMBUDSMAN TO ASSIST IN PROTECTING THE PRIVACY OF CERTAIN CONSUMERS WHOSE PERSONALLY IDENTIFIABLE INFORMATION MAY BE SOLD TO A THIRD PARTY ALONG WITH CERTAIN ASSETS OF THE DEBTORS

S. Gregory Hays, the chapter 11 bankruptcy trustee (the "Trustee") appointed in the above captioned cases, hereby moves the Court pursuant to Rule 6004(g) of the Federal Rules of Bankruptcy Procedure for entry of an order under Sections 363(b)(1), 332, and 105(a) of Title 11 of the United States Code (as amended, the "Bankruptcy Code") directing the Bankruptcy Administrator to appoint a consumer privacy ombudsman to protect the privacy of certain consumers whose personally identifiable information may be sold to a third party along with certain assets of the Debtors. In support of this motion, the Trustee respectfully 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 363(b)(1), 332, and 105(a) 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.

Summary of Request for Relief and Reasons for Appointment of Ombudsman

6. The reason for this motion is that the Trustee has, or is going to, request authority from the Court to sell certain consumer credit accounts, notes, receivables, security instruments, insurance policies and other ancillary products (the "Accounts") owned by the Debtors pursuant to Sections 363(b) and (f) of the Bankruptcy Code.

7. The Accounts are going to be sold to a third party and, among other things, they may contain mailing addresses, phone numbers, dates of birth, social security numbers, and other information regarding customers of the Debtors. This information meets the definition of "personally identifiable information" under Section 101(41A) of the Bankruptcy Code. It was

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.

collected by the Debtors when they made loans to their customers and, without this information, the Accounts will have little or no value to a third party buyer.

8. Section 363(b)(1) of the Bankruptcy Code allows a trustee to sell personally identifiable information as part of an asset sale, but only if the debtor has a privacy policy in effect on the date of its bankruptcy filing that does not prohibit the transfer of such information. By contrast, if a debtor's privacy policy does prohibit the transfer of this information to third parties, a trustee may not sell the personally identifiable information unless the bankruptcy court approves the sale after first appointing a consumer privacy ombudsman to help protect the privacy of the consumers whose information is being sold.

9. In this case, the Debtors' had a two (2) page privacy policy in effect on the Petition Date. The privacy policy prohibits the Debtors from sharing personally identifiable information regarding their customers to nonaffiliated third parties. A true and correct copy of the privacy policy is attached as **Exhibit "A."**² More specifically, the section titled "Reasons we can share your personal information" on page one states that personal information regarding customers will not be shared with nonaffiliates and the section titled "Definitions" on page two contains a disclaimer which states that "We do not share information with companies not related by common ownership or control."

10. Due to the restrictions contained in the Debtors' privacy policy, the Trustee may not sell or transfer the Accounts unless the Court approves the sale after appointing a consumer privacy ombudsman to determine the potential losses or gains that will be experienced by the Debtors' customers if their personally identifiable information is sold to a third party.

² The privacy policy applies to each of the Debtors and to Best Buy Autos of Bainbridge, Inc. Specifically, the top of Page 2 of the privacy policy states that "This privacy policy is being provided by The Money Tree Inc. and applies to The Money Tree Inc. and all its subsidiaries and affiliates."

REQUEST FOR RELIEF

11. The Trustee, pursuant to Section 332(a) of the Bankruptcy Code, requests that the Court order the Bankruptcy Administrator to select one (1) disinterested individual (other than the Bankruptcy Administrator) to review the Debtors' privacy policy and other information related to the personally identifiable information that will be sold along with the Accounts. This person should be appointed not later than seven (7) days prior to any hearing on the Trustee's motion to sell the Accounts so that the ombudsman will have sufficient time to conduct his or her review of the privacy policy and the personally identifiable information in advance of the hearing.

12. The Trustee will cooperate and coordinate with the Bankruptcy Administrator to select an appropriate individual to serve as ombudsman.

13. The Trustee will further require as part of any agreement to sell the Accounts that the third party buyer must institute and abide by a privacy policy that is the same or is substantially similar to the Debtors' privacy policy that was in effect on the Petition Date. This should give the Debtors' customers the same level of privacy that they would have received had their personally identifiable information simply been retained by the Debtors.

Notice

14. Notice of this motion 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], and (e) 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

15. 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 directing the Bankruptcy Administrator to appoint a consumer privacy ombudsman to protect the privacy of the Debtors' customers whose personally identifiable information may be sold to a third party along with the Accounts and grant such further relief as is just and proper.

Respectfully submitted,

/s/ Bradley R. Hightower

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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 26th day of July, 2012:

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

Bill D. Bensinger
Max A. Mosley
Baker, Donelson, Bearman, Caldwell & Berkowitz
1600 Wells Fargo Tower
420 20th Street North
Birmingham, Alabama 35203

Jan M. Hayden
Baker, Donelson, Bearman, Caldwell & Berkowitz
201 St. Charles Avenue
New Orleans, Louisiana 70170

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

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

/s/ Bradley R. Hightower

OF COUNSEL

EXHIBIT A
PRIVACY POLICY, THE MONEY TREE

FACTS**WHAT DOES THE MONEY TREE INC. DO WITH YOUR PERSONAL INFORMATION?****WHY?**

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

WHAT?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Name, address, telephone number and social security number
- Employer, income and financial position
- Account balance and payment history on transactions with affiliates
- Information from consumer reporting agencies

HOW?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons The Money Tree Inc. chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does The Money Tree Inc. share?	Can you limit this sharing?
For our everyday business purposes - Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	YES	NO
For our marketing purposes – To offer our products and services to you	YES	NO
For joint marketing with other financial companies	NO	WE DON'T SHARE
For our affiliates' everyday business purposes- information about your transactions and experiences	YES	NO
For our affiliates' everyday business purposes- Information about your creditworthiness	YES	YES
For nonaffiliates to market to you	NO	WE DON'T SHARE

To limit our sharing

- Call 1-800-264-5160 extension 1100 or
- E-mail optout@themoneytreeinc.com and list your name and the city in which you made your loan.

Please note:

If you are a *new* customer, we can begin sharing your information 30 days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions?

Call 1-800-264-5160 extension 1100 or e-mail to optout@themoneytreeinc.com

Who we are

Who is providing this notice?	This privacy policy is being provided by The Money Tree Inc. and applies to The Money Tree Inc. and all its subsidiaries and affiliates.
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What we do

How does The Money Tree Inc. protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does The Money Tree Inc. collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> ▪ Complete a loan application with us or one of our affiliates <p>We also collect your personal information from others, such as credit bureaus and affiliates.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> ▪ sharing for affiliates' everyday business purposes – information about your creditworthiness ▪ affiliates from using your information to market to you ▪ sharing for nonaffiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing.</p>
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account.

Definitions

Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies:</p> <p>The Money Tree of Georgia Inc.; The Money Tree of Florida Inc.; The Money Tree of Louisiana, Inc. <i>f/k/a</i> Money To Lend of Louisiana, Inc.; Small Loans, Inc.; Small Loans, Inc. <i>d/b/a</i> Money To Lend; Interstate Motor Club, Inc.; The Money Tree/VanMart, Inc.; Home Furniture Mart Inc.; Best Buy Autos of Bainbridge Inc.; Money To Lend, Inc.; Buyer's Choice Motor Company; Buyer's Choice Finance Company</p>
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> ▪ <i>We do not share information with companies not related by common ownership or control.</i>
Joint Marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> ▪ None

Other Important Information

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