IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:	)	
	)	Case No.: 3:12-bk-08921
MOORE FREIGHT SERVICE, INC.	)	Chapter 11
and	)	
G.R.E.A.T. LOGISTICS, INC.	)	Judge Keith Lundin
	)	
Debtors.	)	Hearing Date: June 10, 2014
	)	Hearing Time: 9:00 a.m.

SG EQUIPMENT FINANCE USA CORP.'S OBJECTION TO REORGANIZED DEBTOR'S MOTION AND SUPPLEMENTAL MOTION TO COMPEL COMPLIANCE WITH CONFIRMATION ORDER AND PLAN OR, ALTERNATIVELY, TO HOLD SG EQUIPMENT FINANCE USA CORP. IN CONTEMPT OF COURT

COMES NOW, SG EQUIPMENT FINANCE USA CORP. ("SGEF"), by and through its undersigned counsel, and files this Objection to Moore Freight Service, Inc.'s Motion and Supplemental Motion for an Order Compelling Compliance With Confirmation Order and Plan or, alternatively, Holding SGEF in Contempt of Court (the "Motion"), and in support thereof avers as follows:

Preliminary Statement

1. The Motion by Moore Freight Service, Inc. (sometimes referred to as the "Reorganized Debtor") has no basis in law or fact under the Confirmation Order or the Second Amended Joint Plan of Reorganization (the "Plan) to enjoin SGEF from continuing enforcement of its Judgment against non-debtor Dan Moore ("Moore"), and, therefore, the Motion should be denied in its entirety. For the same reason, there is also no basis to hold SGEF in contempt of court, since SGEF is complying with the Confirmation Order and Plan as precisely drafted.

2. The point of contention between the Reorganized Debtor and SGEF, and Moore, is the interpretation of Section 10.5 of the Plan. The Reorganized Debtor and Moore claim that

the terms contained in that section prohibit creditors, like SGEF, from enforcing their rights and remedies against third-parties, like Moore, who hold an obligation of "Debtors" so long as there is no default in payments required under the Plan.

3. However, Section 10.5 of the Plan does not apply to SGEF because SGEF is not enforcing a claim against Moore for an obligation of "Debtors." The Plan specifically defines "Debtors" as meaning both the Reorganized Debtor and co-debtor G.R.E.A.T. Logistics, Inc.

4. SGEF's claim against Moore is for his obligation of the singular "Debtor," which is specifically defined in the Plan as meaning only "Moore Freight Service, Inc."

5. In other words, SGEF is not subject to the restriction contained in Section 10.5 because SGEF does not possess, nor is it enforcing, a claim against Moore for an obligation of both Moore Freight Service, Inc. and G.R.E.A.T. Logistics, Inc. (the "Debtors"), but rather SGEF is only enforcing its claim against Moore for an obligation of Moore Freight Service, Inc. ("Debtor") only. As expressly written, Section 10.5 does not prohibit SGEF from enforcing its rights against Moore for an obligation of Debtor.

6. SGEF is mindful, but disagrees, that Section 10.5 may not have been drafted as the Reorganized Debtor intended. However, when the Plan is viewed as a whole, there can be no doubt that Section 10.5 was intended to only apply to third-party obligations of both Debtors, not just one of them. To be certain, there are at least 21 separate instances where the Plan expressly states when a certain provision distinctly applies to "any" or "either" of the Debtors. This distinction does not exist in Section 10.5. It also does not appear in Section 10.9, which is the only other provision in the Plan that refers to third-party obligations. Accordingly, there is no doubt in how Section 10.5 was intended to be drafted and no occasion for interpreting the terms of Section 10.5 other than as written.

7. The terms and conditions of the Confirmation Order and Plan are clear and unambiguous. SGEF relied upon these precisely drafted terms when it voted to accept the Plan. If the Reorganized Debtor erred in how it drafted Section 10.5, the Reorganized Debtor, and not creditors like SGEF, should bear the consequences. To now modify the Plan beyond its plain terms, as the Reorganized Debtor would have it, creditors like SGEF would be severely prejudiced and Moore's independent obligations to such creditors would be vastly altered, if not completely eliminated. The Reorganized Debtor, however, would not face any prejudice. In fact, the Reorganized Debtor would actually benefit if SGEF is able collect against Moore, because any amount collected from Moore would offset the Reorganized Debtor's obligations to SGEF.

8. The Plan was drafted by the Reorganized Debtor, and it should be enforced according to its plain terms. This is a well-settled tenet of contract principles, which must be applied here.

9. Perhaps knowing this and the infirmities of its Motion, the Reorganized Debtor filed its Supplemental Motion asserting an additional, but unrelated, reason for the relief requested in the Motion. However, the Supplemental Motion is equally baseless and clearly intended to harass SGEF. In the Supplemental Motion, the Reorganized Debtor attaches a single Invoice, dated April 12, 2014, that it apparently received from SGEF which seeks payment for amounts that are purportedly "past due" and in excess of what SGEF is entitled to receive under the Plan.

10. This Invoice was generated by mistake and sent in error. However, rather than contacting SGEF or its counsel about the obvious error, which the Invoice states should be done if the recipient has any questions concerning the Invoice, SGEF and its counsel first learned of

the Reorganized Debtor's objection to the Invoice through the Supplemental Motion. Since then, SGEF admitted to the mistake in sending the Invoice and immediately rectified the error so that it will not happen again.

11. However, the Reorganized Debtor is apparently not satisfied and seeks to capitalize on the inadvertent mistake through its Supplemental Motion and by serving its First Discovery Requests to SGEF which purports to be in connection with its Motion, but are, in fact, completely unrelated. The discovery requests seek documents related to the Invoice that was sent in error, including all of SGEF's internal communications regarding the Reorganized Debtor's account, pre-petition and post-petition payment histories, and all documents that show how SGEF's mistake has been rectified.

12. This is harassment. Given that SGEF acknowledged the inadvertent error, retracted the Invoice, and stated that the error has since been rectified, there is no basis whatsoever for the Supplemental Motion and discovery requests. Indeed, the Reorganized Debtor has not provided a single reason why such discovery is needed. Simply, because there is none, other than to harass and malign SGEF and augment the baseless arguments contained in the Motion. Indeed, if sanctions are to be issued, they should be imposed against the Reorganized Debtor and its counsel for the antics they have brought before this Court.

SUMMARY OF FACTS

13. Dan Moore is the President of the Reorganized Debtor.[1]

14. SGEF is a secured creditor of the Reorganized Debtor pursuant to a certain pre-petition Master Loan and Security Agreement by and between SGEF and the Reorganized

[1] Attached as Exhibit "A" is an Affidavit of Confession of Judgment (the "Confession") executed by Moore on April 5, 2013.

Debtor and related Promissory Notes (collectively, the "Loan Documents") executed by the Reorganized Debtor in favor of SGEF. See Confession at ¶¶ 2(a)-(e).

15. Moore personally guaranteed the Reorganized Debtor's obligations under the Loan Documents pursuant to a Personal Guaranty, dated January 28, 2011, that Moore executed and delivered to SGEF. See Confession at ¶ 2(h).

16. On or about October 17, 2012, the Reorganized Debtor filed a motion to extend the automatic stay to include any actions against Moore. (Docket #86).

17. SGEF, along with other creditors, filed an objection to that motion. (Docket # 147).

18. The motion, along with SGEF's motion for relief from the automatic stay, was resolved pursuant to an order (the "Adequate Protection Order;" Docket # 715) whereby, among other things, SGEF agreed to forbear on the prosecution of its pending lawsuit against Moore until the earlier of August 1, 2013 or the occurrence of any other forbearance condition (including timely adequate protection payments) as set forth in the Adequate Protection Order. See Confession at ¶ 2(m).

19. In consideration for the forbearance, Moore executed and delivered to SGEF an Affidavit of Confession of Judgment (the "Confession"). See Confession at ¶ 2(n).

20. In the Confession, Moore confessed, among other things, that as of March 8, 2013, the amount of $698,105.99 (the "Confessed Amount") was justly due and owing to SGEF. See Confession at ¶¶ 3-4.

21. Moore agreed that upon the earlier of August 1, 2013 or the occurrence of any other Forbearance Condition (as defined in the Confession), SGEF shall be entitled to seek entry of judgment against him in the Confessed Amount, less any and all payments received by SGEF

under the Adequate Protection Order, plus default interest at the rate of 18% per annum from March 9, 2013 to the date of entry of judgment, and thereafter at the same per annum rate until the judgment, plus all accrued interest and reasonable attorneys' fees and costs thereon, is satisfied in full. See Confession ¶ 5. Moore further agreed that such judgment would be entered in the Office of the Clerk of New York County, State of New York. See Confession at ¶ 1.

22. To obtain such judgment, Moore agreed that SGEF shall only be required to provide the court with an affidavit by SGEF attesting to the occurrence of a Forbearance Condition and describing the amount due. See Confession at ¶ 6.

23. On July 24, 2013, Debtors' Joint Chapter 11 Plan of Reorganization and Disclosure Statement were filed with the Court. (Docket #s 739 and 740). At such time, the Reorganized Debtor knew or should have known that SGEF was entitled to enforce its rights under the Confession against Moore as early as August 1, 2013. Despite that, the Reorganized Debtor did not include any language in the Joint Plan of Reorganization and Disclosure Statement that would prohibit or restrict SGEF from doing so. In fact, the definitions for "Debtor" and "Debtors" and the terms of Section 10.5 of the Joint Plan of Reorganization are identical to Section 10.5 of the Plan.

24. After August 1, 2013 had passed, and pursuant to the Confession, SGEF was permitted to seek entry of judgment against Moore.

25. On September 16, 2013, Debtors' Amended Joint Plan of Reorganization and Amended Disclosure Statement were filed with the Court. (Docket #s 793 and 794). At such time, the Reorganized Debtor knew or should have known that SGEF had become entitled, as of August 1, 2013, to enforce its rights and remedies under the Confession. Despite that, the Reorganized Debtor did not include any language in the Amended Joint Plan of Reorganization

and Amended Disclosure Statement that would prohibit or restrict SGEF from doing so. The definitions for "Debtor" and "Debtors" and the terms of Section 10.5 of the earlier Joint Plan of Reorganization remained unchanged in the Amended Joint Plan of Reorganization.

26. On or about October 21, 2013, SGEF sought entry of judgment against Moore.

27. At such time, SGEF received at total of $276,000.00, representing proceeds from the sale of SGEF's collateral and adequate protection payments due under the Adequate Protection Order.[2]

28. After crediting all $276,000.00 to the Confessed Amount, there remained due and owing by Moore to SGEF the principal amount of $422,105.99. See Santagato Aff. at ¶ 15.

29. As such, on October 22, 2013, Judgment was entered by the Clerk of the Supreme Court, New York County, in favor of SGEF and against Moore, in the principal amount of $422,105.99, plus default interest at the rate of 18% per annum in the sum of $47,252.74, plus costs in the amount of $225.00, for a total amount of $469,583.73. Attached as Exhibit "C" is a copy of the Judgment.

30. Moore did not dispute the Judgment or the amount therein, either before or after entry of the Judgment in New York, even though he expressly reserved his right to do so in his Confession. See Confession at ¶ 8.

31. After the Judgment was entered in New York, SGEF filed a Summons for Enforcement of Foreign Judgment and Notice of Filing with the Clerk of Court for the Circuit Court of Knox County for full faith and credit of the Judgment in the State of Tennessee (the "Collection Action"). The Summons and Notice of Filing were served upon Moore on or about

[2] Attached as Exhibit "B" is the Affidavit of Steven Santagato, filed in the New York action, on behalf of SGEF ("Santagato Aff."), at ¶ 14.

February 1, 2014. Attached as Exhibit "D" are copies of the Summons and Notice of Filing, together with the return of service upon Moore.

32. On February 12, 2014, Debtors' Second Amended Joint Plan of Reorganization was filed with the Court. (Docket # 959). At such time, the Reorganized Debtor knew or should have known that SGEF had obtained the Judgment against Moore and was pursuing enforcement of that Judgment. Despite SGEF's actions, the Reorganized Debtor still did not include any language in the Plan and Amended Disclosure Statement that would prohibit or restrict SGEF from enforcing the Judgment. The definitions for "Debtor" and "Debtors" and the terms of Section 10.5 of the Plan remained unchanged from their earlier versions filed with the Court.

33. Shortly thereafter, on or about February 14, 2014, the Confirmation Order was entered in the Bankruptcy Proceedings confirming the Reorganized Debtor's Plan. Attached as Exhibit "E" is a copy of the Confirmation Order with accompanying Plan.

ARGUMENT

THE REORGANIZED DEBTOR'S MOTION AND SUPPLEMENTAL MOTION SHOULD BOTH BE DENIED

a. Section 10.5 of the Plan Should Be Interpreted Pursuant to Its Plan and Unambiguous Terms

34. In its Motion, the Reorganized Debtor argues that Section 10.5 of the Plan, which was confirmed after entry of the Judgment, prohibits SGEF from continuing its efforts to enforce the Judgment against Moore. The Reorganized Debtor's argument arises from a misplaced interpretation of Section 10.5 which requires a reading of its terms that is different than what is actually written. Indeed, the actual terms of Section 10.5 do not support the Reorganized Debtor's argument at all.

35. "In interpreting a confirmed plan, courts use contract principles, since the plan is effectively a new contract between the debtor and its creditors." In re Dow Corning Corp., 456 F.3d 668, 676 (6th Cir. 2006). "State law governs those interpretations, and under long-settled contract law principles, if a plan term is unambiguous, it is to be enforced as written, regardless of whether it is in line with parties' prior obligations." Id. "'The cardinal rule for interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention, consistent with legal principles.'" Maggart v. Almany Realtors, Inc., 259 S.W.3d 700, 703-704 (Tenn. 2008) citing Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc., 521 S.W.2d 578, 580 (Tenn. 1975). "In interpreting contractual language, Tennessee courts look to the plain meaning of the words in the document to ascertain the parties' intent." Allstate Ins. Co. v. Watson, 195 S.W.3d. 609, 611 (Tenn. 2006). "If the language is clear and unambiguous, the literal meaning controls the outcome of the dispute." Id. "The interpretation should be one that gives reasonable meaning to all of the provisions of the agreement, without rendering portions of it neutralized or without effect." Maggart, 259 S.W.3d at 704.

36. Ordinary rules of contract interpretation require that clear and unambiguous terms must be enforced without further interpretation, even if enforcement produces harsh results. See Memphis Housing Authority v. Thompson, 38 S.W.3d 504, 510 (Tenn. 2001); see also Guiliano v. Cleo, Inc., 995 S.W.2d 88, 101 (Tenn. 1999) ("it is not the duty of courts of common law to relieve parties from the consequences of their own improvidence.").

37. Section 10.5 of the Plan, in relevant part, states as follows:

> **Effect on Third Parties**. Except as otherwise expressly provided in this Plan, nothing contained in the Plan or in the documents to be executed in connection with the Plan shall affect any Creditor's rights as to any third party, except that as long as Debtors are not in default in payments required under the Plan, no creditor holding a personal guaranty executed on or before the Petition Date or otherwise having a claim against any

> individual for an obligation of **Debtors** arising prior to the Petition Date whether by agreement, operation of state or federal law or otherwise (the "Third Party Obligation"), whether or not such Third Party Obligation has been reduced to judgment, may take any action to collect, reduce to judgment, or otherwise enforce such Third Party Obligation. (Emphasis added).

See Exhibit E.

38. The terms of Section 10.5 are repeated in paragraph L of the Confirmation Order.

39. Neither Section 10.5 nor paragraph L applies to SGEF nor does it prohibit or enjoin SGEF from enforcing the Judgment because SGEF is not a creditor holding a personal guaranty or otherwise have a claim against any individual for an obligation of "Debtor**s**."

40. Article I of the Plan lists the definitions to capitalized terms contained in the Plan.

41. Under Section 1.23 of Article I, the term "Debtors" is defined as including both "Moore Freight Service, Inc. and G.R.E.A.T. Logistics, Inc."

42. The Plan makes this contextual distinction because under Section 1.22, the singular term "Debtor" is defined to mean only "Moore Freight Service, Inc."

43. The Judgment arises out of Moore's Confession and Personal Guaranty for the obligations of Moore Freight Service, Inc. only (e.g., "Debtor"). Moore's Confession and Personal Guaranty are not for an obligation of both Moore Freight Service, Inc. and G.R.E.A.T. Logistics, Inc. (e.g., "Debtors"). Indeed, Moore himself admits that his Personal Guaranty was given to "secure a loan to [Debtor]" only. See Reorganized Debtor's Exhibit "4" at ¶ 12; Confession at ¶¶ 2(h) and 4. Therefore, given the clear and unambiguous language of Section 10.5 and the fixed definitions for "Debtor" and "Debtors", the prohibition contained in Section 10.5 simply does not apply to SGEF's enforcement of its Judgment against Moore.

44. The definitions assigned by the Reorganized Debtor to the terms "Debtor" and "Debtors" are clear and unambiguous. "For purposes of plan interpretation, an ambiguous

provision can reasonably be read more than one way." In re Settlement Facility Dow Corning Trust, 628 F.3d 769, 772 (6th Cir. 2010). Here, there is only one way that the term "Debtor" or "Debtors" can be read because each term was assigned a specific meaning. Ambiguity only exists when it is of uncertain meaning and may fairly be understood in more ways than one. See Winnett v. Caterpillar, Inc., 553 F.3d 1000, 1008 (6th Cir. 2009). "Ambiguity, however, 'does not arise in a contract merely because the parties may differ as to interpretations of certain of its provisions.'" Johnson v. Johnson, 37 S.W.3d. 892 (Tenn. 2001) citing Cookeville Gynecology & Obstetrics, P.C. v. Southeastern Data Sys., Inc., 884 S.W.2d 458, 462 (Tenn. Ct. App. 1994). Here, the Reorganized Debtor eliminated the possibility of any ambiguity by assigning a clear and separate meaning to the singular and plural forms of the term "Debtor" so as to not confuse the two. The Court should therefore apply the literal meaning provided to these terms in its interpretation of Section 10.5. See In re Official Committee of Unsecured Creditors of Apex Global Information Systems, Inc. vs. Qwest Commun., 405 B.R. 234, 246-247 (E.D. Michigan 2009) (court applied literal meaning of term defined in the contract); see also Lorillard Tobacco Co. v. American Legacy Foundation, 903 A.D.2d 728, 738 (Del. 2006) ("Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are *not* defined in a contract.") (Emphasis added).

b. Section 10.5 Should Be Read In Conjunction With the Plan as a Whole

45. In addition, a review of the Plan as a whole also reveals that the prohibition in Section 10.5 was intended to apply only to third-party obligations of both Debtors, not any or either of them. Throughout the Plan itself, there are no less than 21 separate instances where the Plan expressly clarifies when the term "Debtors" includes either or any of the Debtors, which clarification does not exist in Section 10.5. For example:

Section 3.1: "any of the Debtors"

Section 3.34: "either or both Debtors"

Section 3.35: "either or both of the Debtors"

Section 3.37: "either or both of Debtors" . . . "either of Debtors"

Article IV: "either of the Debtors"

Section 4.15: "any of the Debtors"

Section 7.1: "either of the Debtors"

Section 8.3: "either of the Debtors"

Section 9.1: "either of the debtors" . . . "either of the Debtors" . . . "either of the Debtors" . . . "either of the Debtors" . . . "either of the Debtors" . . . "Debtor (Moore Freight)"

Section 10.7: "either of the Debtors" . . . "either of the Debtors" . . . "either of the Debtors" . . . "either of the Debtors"

Section 11.18: "either of Debtors"

Article XII(h): "either of the Debtors" . . . "either of the Debtors"

46. Indeed, if, and only if, Section 10.5 explicitly states that it applies to "either" or "any" of the Debtors, like in the above referenced Sections, then SGEF would be subject to Section 10.5. But it doesn't. Accordingly, since Section 10.5 does not contain the same qualification that exists in the other Sections cited above, it does not, and cannot, apply to SGEF. See Guiliano, 995 S.W.2d at 95 ("All provisions in the contract should be construed in harmony with each other, if possible, to promote consistency and to avoid repugnancy between the various provisions of a single contracts."); Cantrell Supply, Inc. v. Liberty Mutual Ins. Co., 94 S.W.3d 381, 385 (Ky. 2002) ("The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms.").

47. If the Reorganized Debtor intended the term "Debtors" to mean either Moore Freight Service, Inc. or G.R.E.A.T. Logistics, Inc., then there would have been no reason to define the term "Debtor." Nor would there have been any need or reason, in any of the 21 referenced examples, to implement the terms "any" or "either" before the term "Debtors." Clearly, the intent was to make clear when certain provision referred to one or both "Debtors."

48. Also, apart from the foregoing differences, Section 10.9 of the Plan independently confirms that the prohibition of Section 10.5 only applies to third-party obligations of both Debtors; to wit:

> Notwithstanding anything herein to the contrary, neither this Plan nor the Confirmation Order affects any claims or causes of action against current or former officers, directors, shareholders or employees of **the Debtors** arising prior to or as of the Petition Date . . . . (Emphasis added).

49. Unlike all the other Sections where the term "any" or "either" of the Debtors is explicitly stated to clarify that such section applies to the Reorganized Debtor or G.R.E.A.T. Logistics, Inc., Section 10.9, like Section 10.5, makes no such qualification. As can be seen, the Plan goes to great lengths to differentiate the term "Debtor" from "Debtors," and makes clear when certain Sections applied to either or both of the Debtors. Moreover, as the Plan relates to third-party obligations, Sections 10.5 and 10.9 both refer to obligations of "Debtors," not either or any of them. SGEF relied upon these explicit distinctions set forth throughout the Plan, and because of them made no objection to the Plan.

50. Given its arguments, the Reorganized Debtor would have this Court read into Section 10.5 the terms "any" or "either" or words of like import, so as to preclude creditors from pursuing a claim against any individual for an obligation of *any or either* of the Debtors. However, unlike any of the 21 other instances where the Reorganized Debtor applied such terms, this is not what Section 10.5 states. Indeed, if the Reorganized Debtor, as drafter of the Plan,

intended to include such terms in Section 10.5, as it did in the 21 other instances, it would have done so, but it didn't. Therefore, this Court cannot, and should not, expand the reading of Section 10.5 beyond its precise and defined terms.

51. Moreover, the Reorganized Debtor's reliance upon the preamble set forth in the Definitions section of the Plan is misplaced. The relevant instructions contained in the preamble provide as follows:

> Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms.

52. By virtue of the fact that the Reorganized Debtor specifically chose to distinguish the terms "Debtor" and "Debtors," the meanings for the singular and plural forms of the term "Debtor" simply cannot be the same or equally applicable (hence, "Unless the context otherwise requires . . ."). When such terms are explicitly defined, they must be given their literal meaning and cannot be ignored or disregarded. Otherwise, the meaning for each of the purposefully-defined terms would effectively be emasculated and rendered meaningless.

53. Accordingly, the Reorganized Debtor's argument has no basis whatsoever under a plain reading of the Plan. Instead, it is actually belied by the clear and unambiguous terms and provisions of the Plan itself, especially with regards to third-party obligations (e.g., Sections 10.5 and 10.9).

c. Any Ambiguity Should Be Construed Against the Reorganized Debtor

54. In the event that the Court finds any ambiguity in Section 10.5, such ambiguity must be construed against the Reorganized Debtor. "It is fundamental that ambiguous language in a contract is construed against the drafter." In re 5877 Poplar, L.P., 268 B.R. 140, 147 (Bankr. W.D. Tenn. 2001); see In re Sims, 358 B.R. 217, 225 (Bankr. E.D. Pa. 2006) (ambiguities in plan

language must be construed against a debtor, as the drafter of the document); Allstate Ins., 195 S.W.3d at 612 ("An ambiguous provision in a contract generally will be construed against the party drafting it."). "Because a plan is a contract between a debtor and his creditors, any ambiguity in the terms of the plan must be construed against the debtor." In re Bivens, No. 08-31447 (Bankr. S.D. Ohio Sept. 30, 2009). "If there is any doubt as to whether the plan language forecloses a creditor's rights on a particular issue, the language is to be construed against the debtor who drafted the same." In re Mershon, 2005 WL 4030035 at *2 (Bankr. S.D. Ohio 2005); see In re Fawcett, 758 F.2d 588, 591 (11th Cir. 1985) ("the debtor as draftsman of the plan has to pay the price if there is any ambiguity about the meaning of the terms of the plan.").

d. Section 10.5 Is Consistent With Moore's Obligations to SGEF

55. In addition, the fact that Section 10.5 does not apply to third-parties, like Moore, who personally guaranteed an obligation of the single Debtor is entirely consistent with the Personal Guaranty that Moore delivered to SGEF, wherein he agreed as follows:

> Guaranty of Payment and Performance. . . . **This Guaranty is a guaranty of payment and performance, and not a guaranty of collection**, and Guarantor hereby undertakes and agrees that if Customer does not or is unable to punctually and completely pay or perform any Obligations for any reason, guarantor shall (i) punctually pay any such Obligations requiring the payment of money which Customer fails to pay promptly, as and when due, in each case, as an Obligation for payment due directly from Guarantor to SGEF and **without any abatement, reduction, setoff, defense**, counterclaim or recoupment, and (ii) punctually perform any and all Obligations not requiring the payment of money for the benefit of SGEF, as an Obligation for performance due directly from Guarantor to SGEF. **Guarantor shall be deemed to be primarily liable for each Obligation and not merely as a surety thereof.** This Guaranty is a continuing one and will be effective and binding upon Guarantor regardless of how long before or after the date hereof any Obligation may have arisen or will arise. The obligations of Guarantor hereunder shall be **absolute and unconditional**, **irrespective of any circumstances which might constitute a legal or equitable defense or discharge of his or her obligations hereunder or which otherwise limit enforceability against the Guarantor by SGEF**.
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> * * *

> Without limiting the generality of the foregoing, the obligations of Guarantor hereunder and SGEF's rights to enforce same **shall not be in any way affected by** (i) any insolvency, **bankruptcy**, liquidation, **reorganization**, dissolution, winding up or other proceeding involving or affecting Customer [Moore Freight Service, Inc.], Guarantor or others; . . . **Guarantor hereby waives any defenses which Guarantor may have or assert against enforcement of this Guaranty** or any obligation based upon suretyship principles or any impairment of collateral.

See sections 1 and 3 of Moore's Personal Guaranty, a copy of which is annexed as Exhibit "F."

e. SGEF Will Be Severely Prejudiced If the Terms of Section 10.5 are Modified

56. The bargain struck by SGEF and Moore under his Personal Guaranty was made at arm's length, and should not be disturbed by the Court. The Confession executed by Moore and delivered to SGEF, and the terms contained therein, should also not be upset by any unfounded interpretation or modification of the Plan. Otherwise, SGEF would lose the benefit of its bargain with Moore and be severely prejudiced because SGEF would effectively be stripped of a right that it had bargained for, and especially where it had relied upon Moore's promise that SGEF's rights to enforce his Personal Guaranty would not be affected by the instant proceedings. On the other hand, the Reorganized Debtor would face no prejudice whatsoever, and would, in fact, see its obligations to SGEF reduced if SGEF can collect its Judgment against Moore. Moore would also not face any prejudice as he had clearly and unequivocally allowed SGEF to take the actions as set forth in his Confession against him.

f. The Supplemental Motion Is Equally Baseless

57. After the Motion was filed, the Reorganized Debtor filed, on May 16, 2014, the Supplemental Motion which raises an additional, but unrelated, argument to the Motion. The Supplemental Motion asserts that SGEF has violated the Plan because it had sent an Invoice (attached to the Supplemental Motion as Exhibit A), dated April 12, 2014, to the Reorganized Debtor seeking "past due" payments of pre-petition obligations.

58. This Invoice was sent in error. SGEF first learned that the Invoice was inadvertently sent to the Reorganized Debtor when the Supplemental Motion was filed and received by its counsel. Prior to that, neither the Reorganized Debtor nor its counsel had contacted SGEF or its counsel to question the validity of the Invoice, even though the Invoice itself states that SGEF should be contacted regarding any questions arising from the Invoice.

59. Upon learning that the Invoice was sent, SGEF acknowledged that the Invoice was generated and sent in error and immediately rectified the problem. The problem arose when SGEF had re-booked the Reorganized Debtor's account to reflect the new payments due under the Plan and the old account, which generated the Invoice, was not rendered inactive. See Affidavit of Steven Santagato (at ¶¶ 3-4) attached as Exhibit "G."

60. These facts were explained to the Reorganized Debtor's counsel, who had previously requested SGEF's consent to a shortened time to respond to discovery requests relating to the Invoice that he had planned to serve. Given the explanation, SGEF's counsel questioned the need and relevancy of the Reorganized Debtor's request for documents related to an Invoice that has no significance whatsoever.

61. The Reorganized Debtor's counsel however, provided no justification for either the need or relevancy of the requested documents, and, instead, continued demanding an expedited production of SGEF's documents, which included "all internal communications about the account (all email, screen notes, and anything similar) – pre and post-confirmation. We'll also request documents showing the changes that SG says have been made to the statements, including identification of what information the statements will have going forward." A copy of the forgoing communications between counsel is attached as Exhibit "H."

62. The following day, on May 21, 2014, the Reorganized Debtor served its First Discovery Requests (attached as Exhibit "I") purportedly in connection with the Motion. On the morning of May 22, 2014, this Court issued an Order which granted the Reorganized Debtor's expedited motion to shorten SGEF's time to respond to such requests (Docket # 1005) to June 2, 2014. (Docket # 1007).[3]

63. SGEF submits that the Reorganized Debtor's tactics are nothing short of harassment borne out of its vindictiveness over SGEF's refusal to submit to a groundless interpretation of Section 10.5. The Reorganized Debtor's Supplemental Motion and Requests are completely baseless and intended only to impose an undue burden on SGEF, particularly where SGEF has acknowledged that the Invoice was inadvertently generated and sent in error, the error has been corrected, and the Invoice and any documents related to the Invoice are not relevant in any manner to the Motion itself.

g. There is No Basis To Hold SGEF in Contempt of Court

64. The Reorganized Debtor's requests that the Court hold SGEF in contempt of Court and that sanctions be assessed against it are also baseless. The Motion requests that an Order be issued compelling SGEF to comply with the Confirmation Order and Plan, *or in the alternative*, holding SGEF in contempt of Court. This does not make any sense.

65. If the request to compel SGEF to comply with the Confirmation Order and Plan is denied, then there would be no basis for the alternative relief to hold SGEF in contempt. Conversely, there is also no basis, as explained above, to hold SGEF in contempt even if it is

[3] SGEF had every intention of filing an objection to the May 21, 2014 expedited motion to shorten SGEF's time to respond to the discovery requests (see, e.g., Exhibit "G"), but the Order granting the motion was entered on the morning of May 22, 2104 at 8:41:59, shortly before the objection papers were about to be filed.

compelled to comply with the Plan as interpreted by the Reorganized Debtor. Either way, the alternative relief is not warranted.

66. The Reorganized Debtor has failed to demonstrate that SGEF failed and/or refused to comply with the Confirmation Order and Plan. As set forth above, by virtue of the plain and precise terms of the Plan – as drafted by the Reorganized Debtor, and relied upon by SGEF – SGEF is not bound by the prohibition set forth in Section 10.5. The terms of this section, including the definitions assigned to them, are clear and unambiguous. The basis of the Motion is premised entirely on the Reorganized Debtor's twisted interpretation of these terms that go beyond the actual meaning that the Reorganized Debtor assigned to them.

67. Indeed, the Reorganized Debtor has not shown any reason why the Plan should be interpreted in a manner other than what is written within its four corners. SGEF, however, has demonstrated precisely how and why Section 10.5 should be afforded its plain meaning, especially in conjunction with the Plan as a whole. For these reasons, there was never any basis for SGEF to seek this Court's interpretation of Section 10.5. If the Reorganized Debtor believed that the Plan should be interpreted beyond its plain terms, the onus was on it, not SGEF, to request that from the Court.

WHEREFORE, SGEF respectfully requests that this Honorable Court deny the Reorganized Debtor's Motion and Supplemental Motion in their entirety, and grant SGEF such other and further relief as this Court deems just and proper.

Dated: May 30, 2014

Respectfully submitted,

/s/ Roy C. DeSha, Jr.

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CERTIFICATE OF SERIVCE

The undersigned hereby states that on this 30th day of May, 2014, a true and correct copy of the foregoing was electronically filed with the Clerk of the United States Bankruptcy Court for the Middle District of Tennessee, and notice was provided to Debtors' Counsel at the address listed below and electronically served upon all parties receiving CM/ECF notice in this case as evidenced by the receipt generated at the time of filing.

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/s/ *Roy C. DeSha, Jr.*