

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re

Case No. 6:04-bk-08162-KSJ
Chapter 7

JOANNE COURSON BECKNER,

Debtor.

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**ORDER GRANTING
CHAPTER 7 TRUSTEE'S MOTION FOR SECOND DISBURSEMENT OF FUNDS**

This case came on for hearing on March 3, 2009, on the Motion filed by the Chapter 7 Trustee, Carla Musselman, seeking a second disbursement of funds in the amount of \$2,553.51 to administrative creditors in this case (Doc. Nos. 106 and 107) and the Motion filed by Jordan Beckner, the debtor's husband, for Payment, by Way of Subrogation, on Claim 2 (Doc. No. 110).

The facts are undisputed. Smith Orthodontics performed services for the debtor's daughter in the amount of \$2,874.00. The Chapter 7 trustee filed a Proof of Claim on behalf of Smith Orthodontics; no party, including the debtor, objected to the allowance of this claim. The Chapter 7 trustee later distributed \$2,553.51 to Smith Orthodontics as an unsecured creditor in partial payment of their Proof of Claim. Shortly thereafter, Smith returned the trustee's check stating that no money was owed.

Apparently, someone, perhaps the debtor or her husband, paid Smith Orthodontics in order to induce it to complete orthodontia services to the debtor's daughter. The question now is whether the remaining unpaid administrative creditors, including the trustee and her professionals, should receive this refunded amount of \$2,553.51, or, instead, whether the debtor's husband should receive the money as a subrogee, since he allegedly paid the amount due to Smith Orthodontics.

Both the debtor, Joanne Beckner, who filed this case on July 16, 2004, and her husband, Jordan Beckner, who filed a separate case on February 6, 2003, Case No. 6:03-bk-01166-KSJ, were indebted to Smith Orthodontics. Neither the debtor nor her husband introduced any credible evidence as to who paid the claim due to Smith Orthodontics. Payment may have come from the debtor, her husband, or, for that matter, another third party.

Section 509 of the Bankruptcy Code provides, "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment." Here, although Mr. Beckner asserts he made the payment to Smith Orthodontics, there was no evidence presented of such payment. As such, he has no subrogation rights under Section 509 of the Bankruptcy Code.

Rather, the trustee's request to disburse the returned funds totaling \$2,553.51, first to the remaining unpaid unsecured creditors in the amount of \$319.51, and then, \$2,234.00 on a pro rata basis, to the unpaid administrative claimants, as follows, is appropriate:

REMAINING UNPAID UNSECURED CREDITORS

<u>CLAIM NO.</u>	<u>NAME OF CLAIMANT</u>	<u>AMOUNT OF CLAIM</u>	<u>AMOUNT PREVIOUSLY PAID (DOC NO. 104)</u>	<u>UNPAID CLAIM AMOUNT</u>

01	SCOTT VANLUE, M.D., P.A.	\$2,408.17	\$2,139.63	\$268.54
11	FLORIDA HOSPITAL LAB	\$457.12	\$406.15	\$50.97
TOTALS		\$2,865.29	\$2,545.78	\$319.51

REMAINING UNPAID ADMINISTRATIVE CLAIMANTS

<u>NAME OF CLAIMANT</u>	<u>AMOUNT OF CLAIM</u>	<u>AMOUNT PREVIOUSLY PAID (DOC NO. 104)</u>	<u>UNPAID CLAIM AMOUNT</u>	<u>PRO RATA DISTRIBUTION</u>
Carla Musselman, Trustee Trustee Compensation	\$2,750.47	\$1,000.00	\$1,750.47	(43%) \$960.62
Zimmerman, Kiser & Sutcliffe, PA c/o Richard Webber II, Esquire Attorney for Trustee Fees	\$2,930.00	\$1,500.00	\$1,430.00	(35%) \$781.90
RICHARD WEBBER II, PA Attorney for Trustee Fees	\$1,875.00	\$1,000.00	\$875.00	(22%) \$491.48
TOTALS	\$7,555.47	\$3,500.00	\$4,055.47	\$2,234.00

Accordingly, it is

ORDERED:

1. The Motion by the Chapter 7 Trustee, Carla Musselman (Doc. Nos. 106 and 107) is granted. The Trustee shall disburse the returned \$2,553.31 as outlined above.
 2. The Motion by Jordan Beckner (Doc. No. 110) is denied.
- DONE AND ORDERED in Orlando, Florida, on March 20, 2009.

/s/ *Karen S. Jennemann*
KAREN S. JENNEMANN
United States Bankruptcy Judge