

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

In re:

Case No. 3:06-bk-1309-PMG

CF GOMMA USA, INC.,

Debtor.

Chapter 7

**ORDER ON (1) OMEGA CONSULTING'S MOTION FOR THE RELEASE
OF UNCLAIMED FUNDS AND (2) SPECIALTY STAMPINGS, LLC'S
MOTION FOR PAYMENT OF UNCLAIMED FUNDS**

THIS CASE came before the Court for hearing to consider (1) the Motion for the Release of Unclaimed Funds filed by Omega Consulting, and (2) the Motion for Payment of Unclaimed Funds filed by Specialty Stampings, LLC.

On January 27, 2009, the Trustee filed a Report of Unclaimed Funds in this case. The Report reflects that a distribution check in the amount of \$67,667.43 had been mailed to Specialty Stampings, LLC, but that Specialty Stampings, LLC had not presented the check for payment. The funds are currently on deposit in the Registry of the Court.

The issue before the Court is whether the funds should now be paid to Specialty Stampings, LLC, as the holder of an allowed claim in this case, or whether the funds should be paid to a third party who claims an interest in the funds by virtue of a final Default Judgment entered against Specialty Stampings, LLC after the claim was filed.

Background

On May 10, 2006, an Involuntary Petition under Chapter 7 was filed against CF Gomma USA, Inc. (Doc. 1).

On August 2, 2006, the Court entered an Order for Relief under Chapter 7 of the Bankruptcy Code, and Gordon P. Jones was subsequently appointed as the Chapter 7 Trustee. (Docs. 19, 25).

On November 20, 2006, Specialty Stampings, LLC (Specialty) filed a Proof of Claim in the Chapter 7 case. (Claim Number 114). The Claim was filed as a general unsecured claim in the amount of \$344,079.21, and was based on goods sold and services performed prior to the filing of the involuntary petition.

The Chapter 7 Trustee did not object to the Claim.

On September 12, 2008, the Trustee filed his Final Report of Estate. (Doc. 253). In the Final Report, the Trustee indicated that he consented to the allowance of Specialty's claim in the filed amount of \$344,079.21.

On January 27, 2009, the Trustee filed a Report of Unclaimed Funds. (Doc. 260). The Report reflects that a distribution check in the amount of \$67,667.43 had been mailed to Specialty, but that Specialty had not presented the check for payment. The Report further indicates that the Trustee had delivered the funds to the Clerk of the Court as unclaimed property.

On May 28, 2009, the Court entered an Order Directing Second Disbursement of Funds. (Doc. 265). In the Order, the Court authorized the Trustee to make an additional distribution to Specialty, as the holder of an allowed unsecured claim, in the amount of \$283.35.

On September 10, 2009, the Trustee filed a second Report of Unclaimed Funds. (Doc. 277). The Report reflects that a check in the amount of \$283.35 had been mailed to Specialty, but that Specialty

had not presented the check for payment. The Report further indicates that the Trustee had delivered the funds to the Clerk of the Court as unclaimed property.

The Motions

The total amount of \$67,950.78 has been deposited into the Registry of the Court in relation to Specialty's allowed claim. The funds represent two checks that were mailed to Specialty in connection with the Trustee's distribution to unsecured creditors, but which were not cashed by Specialty within ninety days of the disbursement.

Two Motions have been filed seeking the release of the funds deposited into the Court Registry.

A. Specialty's Motion

Specialty Stampings, LLC filed a Motion for Payment of Unclaimed Funds. (Doc. 270).

Specialty was engaged in the business of manufacturing and selling automobile parts. (Doc. 278).

In 2005, Specialty provided goods and services to CF Gomma USA, Inc., the Debtor in this bankruptcy case. As a result of these business transactions, the Debtor became indebted to Specialty in the amount of \$344,079.21. (Docs. 270 and 278, Exhibit D).

On May 10, 2006, the involuntary petition under Chapter 7 of the Bankruptcy Code was filed against CF Gomma USA, Inc.

On November 20, 2006, Specialty filed its Proof of Claim in the Debtor's Chapter 7 case. The Claim was filed as a general unsecured claim in the amount of \$344,079.21, and was based on the prepetition transactions between the parties.

No Objections were filed to the Claim, and the Trustee attempted to disburse the total sum of \$67,950.78 to Specialty on account of the allowed claim. Consequently, Specialty asserts that the funds in the Registry of the Court should be paid to it as the rightful holder of the claim.

B. Omega's Motion

Omega Consulting (Omega) filed a Motion for the Release of Unclaimed Funds. (Doc. 267).

Omega contends that it is entitled to receive the funds in the Registry of the Court because it is the holder of an unpaid judgment against Specialty. Specifically, Omega contends that an entity known as J & P Associates, Inc. obtained a Default Judgment against Specialty in Michigan on May 2, 2007. The Default Judgment was entered in favor of J. & P. Associates, Inc. and against Specialty in the principal amount of \$137,630.42. (Doc. 267, Exhibit B).

Omega further contends that J & P Associates, Inc. assigned its rights and interest in the Judgment to Omega pursuant to a General Assignment and Declaration executed on behalf of J & P Associates on June 19, 2009. (Doc. 267, Exhibit A). Consequently, Omega asserts that the funds that were originally payable to Specialty should now be paid to it, because it is the holder of an outstanding judgment against Specialty.

Discussion

Specialty's Motion for Payment of Unclaimed Funds should be granted, and Omega's Motion for the Release of Unclaimed Funds should be denied. The record establishes that Specialty is the rightful owner of the funds that were deposited into the Court's Registry, and that Specialty is entitled to delivery of the funds pursuant to the statutes governing moneys paid into the Court.

The Trustee delivered the funds to the Clerk of Court pursuant to §347(a) of the Bankruptcy Code.

Section 347(a) provides:

11 U.S.C. §347. Unclaimed property

(a) Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate

shall be paid into the court and disposed of under chapter 129 of title 28 [28 USC §§2041 et seq.]

11 U.S.C. §347(a). "Section 347(a) requires a trustee to pay into the bankruptcy court any distributions payable to a creditor that the creditor does not timely claim. The unclaimed funds paid into the court are to be disposed of under chapter 129 of title 28 of the United States Code." In re Applications for Unclaimed Funds Submitted in Cases Listed on Exhibit "A," 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005).

Section 2041, which is contained in chapter 129 of title 28, provides:

§ 2041. Deposit of moneys in pending or adjudicated cases

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depository, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

28 U.S.C. § 2041(Emphasis supplied). Additionally, §2042 of title 28 provides:

§ 2042. Withdrawal

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

28 U.S.C. § 2042.

Unclaimed funds that are deposited into the court registry pursuant to §347 and §2041 "are held in trust for those persons found rightfully entitled to them." In re Parker, 400 B.R. 55, 59 (Bankr. E.D. Pa. 2009)(citing In re Johnson, 2008 WL 2338089, at 1 (Bankr. D.C. 2008)).

"The court can distribute the deposited funds to only the persons having an ownership interest in the funds (namely, in the language of the governing statutory provisions, the 'rightful owners' (28 U.S.C. § 2041) or the 'person entitled thereto' (28 U.S.C. 2042))." In re The National Latina/o Lesbian, Gay, Bisexual & Transgender Organization, 2008 WL 78780, at 2 (Bankr. D.C.)

It is generally recognized that the "creditors whose distributions were returned remain the rightful owners of the unclaimed dividends." In re Payroll Express Corporation, 2008 WL 5396609, at 3 (Bankr. S.D.N.Y.).

Sections 2041 and 2042, contained in Chapter 129 of title 28, direct that unclaimed funds may only be disbursed to the "rightful owners" upon "full proof of the right thereto." Only the creditor to whom distribution was made is the rightful owner of the unclaimed funds.

In re Rush Hampton Industries, Inc., 379 B.R. 192, 193 (Bankr. M.D. Fla. 2007). "The rightful owners of those funds are the holders of the proofs of claim on account of which the Trustee made the distribution." In re Rush Hampton, 379 B.R. at 194.

The applicable provisions of chapter 129 direct the Court to disburse unclaimed funds to the "rightful owners," 28 U.S.C. §2041, upon "full proof of the right thereto," 28 U.S.C. §2042. A creditor to whom a distribution in a bankruptcy case is payable retains a property interest in such funds. See Leider v. United States, 301 F.3d 1290, 1296 (Fed. Cir. 2002). Under statutory requirements and due process principles, the Court has the duty to protect the original claimant's property interest by making sure the unclaimed funds are disbursed to their true owner. . . .

The "rightful owner" of unclaimed funds paid into the Court under §347(a) is the holder of the proof of claim on account of which the trustee made the distribution.

In re Applications for Unclaimed Funds Submitted in Cases Listed on Exhibit "A," 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005).

"The burden is upon the claimant to establish proper ownership by a preponderance of the evidence." In re Parker, 400 B.R. 55, 59 (Bankr. E.D. Pa. 2009)(citing Hansen v. U.S., 340 F.2d 142, 144 (8th Cir. 1965); In re Johnson, 2008 WL 2338089, at 1 (Bankr. D.C. 2008)).

Application

In this case, it is undisputed that Specialty filed a Proof of Claim in the bankruptcy case, and that the claim was allowed as filed. (Doc. 253). It is also undisputed that the Trustee mailed two checks to Specialty as distributions on account of its allowed unsecured claim. The checks were not presented for payment, and the funds were delivered to the Clerk of Court.

In its Motion, Specialty contends that it is the creditor and claimant in the Chapter 7 case of CF Gomma USA, Inc., and requests the entry of an Order authorizing payment of the dividend on its Claim. Specialty asserts that the original dividend checks had not been claimed solely because it discontinued its business operations, and the checks had been mailed to its former business address. (Doc. 278, p. 3).

A copy of a Unanimous Written Consent of the holders of a majority of the membership interests of Specialty is attached to the Motion. According to the Consent, the members resolved to (1) wind down Specialty's business operations, liquidate its assets, distribute the proceeds according to applicable law, and dissolve the company; and to (2) appoint Ron Turcotte of Aurora Management Partners as the Chief Liquidating Officer of Specialty, and authorize Turcotte to take all necessary actions in Specialty's name to effect the liquidation. (Doc. 270, Exhibit B).

The Motion for Payment of Unclaimed Funds is signed by Ron Turcotte as the Chief Liquidating Officer of Specialty Stampings, LLC, and the person authorized to collect Specialty's assets.

Under these circumstances, the Court finds that Specialty is the holder of the allowed claim against the estate, and is the rightful owner of the funds held in the Court's Registry.

In its separate Motion for release of the funds, Omega acknowledges Specialty's ownership interest in the dividend. "Creditor, Specialty Stampings LLC, appears to have a vested and appreciable interest in recovering the unclaimed funds totaling \$67,667.43 pursuant to established bankruptcy court jurisprudence." (Doc. 267, pp. 2-3).

Omega contends, however, that it is entitled to recover the funds based on principles of equity, because it is the holder of an unpaid judgment against Specialty. According to Omega, its status as a judgment creditor of Specialty creates a beneficial interest in the funds that should be recognized by the Court. (Doc. 267).

Omega's Motion for release of the funds should be denied. As set forth above, §2041 provides for the delivery of unclaimed funds to their rightful owner, identified as the holder of the allowed claim against the estate. In re Payroll Express, 2008 WL 5396609, at 3; In re Rush Hampton, 379 B.R. at 194; In re Applications for Unclaimed Funds, 341 B.R. at 69.

Omega is not the holder of a claim against the bankruptcy estate. Instead, Omega seeks to reach the funds to satisfy its independent claim against Specialty. Omega's Motion essentially is a collection device unrelated to the bankruptcy case or the purpose for which the funds were deposited.

Generally, funds paid into the Court Registry are considered to be held in *custodia legis*, and are not subject to garnishment. Corporation Company of Miami v. Mikelis, 467 F.Supp. 826, 826-27 (S.D. Fla. 1979). The doctrine of *custodia legis* "prohibits any attachment of property in a court's registry that

would prevent the court from allocating the property in accord with the purpose for which it was deposited." United States v. Van Cauwenberghe, 934 F.2d 1048,1062 (9th Cir. 1991).

Although Omega's Motion is not styled as an action for garnishment or attachment, the effect is the same: Omega is asking the Court to authorize the release of Specialty's property to Omega as a postjudgment method of collecting a debt. Such a request interferes with the Court's purpose of delivering the property to its rightful owner and should be denied.

Additionally, it is significant that PNC Bank, N.A. has appeared in this matter and asserts that it holds a properly perfected security interest in Specialty's accounts receivable, including the payment due from the Debtor in this case. (Doc. 282). Specifically, PNC Bank contends that its predecessor entered into a Loan and Security Agreement with Specialty in 1998, and that the security interest created by the Agreement was perfected by the filing of a UCC-1 Financing Statement in Delaware prior to the filing of the bankruptcy petition. (Doc. 278). Consequently, PNC Bank asserts that any alleged rights of Omega in the payment owed to Specialty are subordinate to the Bank's prior perfected security interest. (Doc. 282).

PNC Bank has not sought to recover the unclaimed funds directly from the Court's Registry. Instead, PNC Bank requests only that the Court grant Specialty's Motion and authorize the disbursement of the unclaimed funds to Specialty, so that the property can be distributed to Specialty's creditors in accordance with the priorities established by applicable law. (See Doc. 270, Exhibit B; Transcript, p. 9).

Based on the record, the Court finds that Omega is not entitled to any distribution from the Registry on account of its alleged beneficial interest in the funds. Omega's Motion was filed as a postjudgment effort to collect a debt and should be denied. The funds are held in trust for their rightful

owner, and any disbursement of the funds to Omega would interfere with the Court's duty to protect the interest of the original claimant. In re Parker, 400 B.R. at 59; In re Applications for Unclaimed Funds, 341 B.R. at 69.

Conclusion

The issue before the Court is whether certain unclaimed funds should be paid to Specialty Stampings, LLC, as the holder of an allowed claim in this case, or whether the funds should be paid to Omega Consulting, which claims an interest in the funds by virtue of a Default Judgment entered against Specialty after the claim was filed.

Specialty's Motion for Payment of Unclaimed Funds should be granted. Specialty is the holder of the allowed claim upon which disbursement was made, and is the rightful owner of the funds within the meaning of §2041 of title 28.

Omega's Motion for the Release of Unclaimed Funds should be denied. The Motion is a postjudgment collection effort, and any release of the funds to Omega would interfere with the Court's duty to protect the interests of the rightful claimant.

Accordingly:

IT IS ORDERED that:

1. The Motion for the Release of Unclaimed Funds filed by Omega Consulting is denied.
2. The Motion for Payment of Unclaimed Funds filed by Specialty Stampings, LLC is granted.

The Clerk of Court for the United States Bankruptcy Court shall pay the unclaimed funds in the total

amount of \$67,950.78 to the order of Aurora Management Partners, 4485 Trench Road, Suite 340, Suwanee, Georgia 30024.

DATED this 14 day of December, 2009.

BY THE COURT

/s/ Paul M. Glenn

PAUL M. GLENN
Chief Bankruptcy Judge