

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

In re: Case No. 8:99-bk-18423-PMG
Chapter 7

CAMELOT CASINO CRUISES, INC.,

Debtor.

**ORDER ON MOTION FOR THE RELEASE OF
FUNDS**

THIS CASE came before the Court for hearing to consider the Motion for the Release of Funds filed by Malcolm M. Babb.

The Motion relates to the sum of \$2,235.00 that Stephen L. Meininger, as the Trustee of this Chapter 7 estate (the Trustee), is currently holding in his trust account.

Malcolm M. Babb (Babb) contends that the funds represent the remaining balance of a \$5,000.00 nonrefundable payment that was made to him by Camelot Casino Cruises, Inc. (the Debtor) pursuant to the Debtor's prepetition lease of certain real property from Babb. In the Motion under consideration, therefore, Babb contends that the funds are not property of the bankruptcy estate, and that the Trustee should be directed release the funds to him.

In response, the Trustee asserts that the money had been tendered by the Debtor only as a refundable advance against future costs associated with the lease, and that the funds therefore became property of the estate upon the filing of the bankruptcy petition.

Background

The Debtor was engaged in the business of operating a gambling ship. Its primary asset was a vessel known as the M/V Excalibur.

On or about February 4, 1999, Babb met with two of the Debtor's officers for the purpose of negotiating the terms of the Debtor's lease of certain property from Little River Campground, Inc. and Brenda R. Babb. The property included a pier and dock located in South

Carolina that the Debtor proposed to use for berthing the Excalibur.

At or about the time of the meeting, Babb and the Debtor's officers contacted Pratt Gasque, Esquire, an attorney in South Carolina, and asked him to prepare a written lease agreement to document the terms of the parties' understanding.

A check dated February 3, 1999, was written on the Debtor's operating account, and made payable to the Pratt Gasque Trust Account in the amount of \$5,000.00. According to Babb, the check was intended to pay the fees incurred by Gasque for the preparation of the lease, with the balance of the funds to be applied to the Debtor's obligations under the lease.

Pursuant to his instructions, Gasque prepared a document entitled "Agreement of Lease." It appears that he charged the sum of \$500.00 for his services, and received that amount from the \$5,000.00 held in his trust account.

The Agreement of Lease prepared by Gasque was never signed by the parties.

On November 15, 1999, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code.

As of December 15, 1999, the sum of \$4,500.00 remained in Gasque's trust account. On that date, he wrote a check to Babb in the amount of \$2,250.00, and he also wrote a check to the Debtor in the amount of \$2,250.00.

The Debtor subsequently delivered its check to Babb.

In June of 2000, the Debtor's attorney instructed Gasque to stop payment on the check made payable to the Debtor and forwarded to Babb. In accordance with the instructions, Gasque stopped payment on the check, and re-issued a new check payable to the Debtor's attorney's trust account in the amount of \$2,235.00. (Doc. 420, Exhibit 3).

On June 4, 2001, the case was converted to a case under Chapter 7, and Stephen L. Meininger was appointed as Chapter 7 Trustee.

The funds represented by the re-issued check are the funds that are currently held by the Trustee, and are the subject of Babb's Motion for the Release of Funds.

Discussion

The issue in this case is whether the funds held by the Trustee are property of the chapter 7 estate within the meaning of §541 of the Bankruptcy Code. "The scope of §541(a)(1) is broad, and includes property of all types, tangible and intangible, as well as causes of action." In re Meehan, 102 F.3d 1209, 1210 (11th Cir. 1997)(citing United States v. Whiting Pools, Inc., 462 U.S. 198, 205 (1983)).

The funds at issue are the proceeds of a \$5,000.00 check initially written by the Debtor nine and one-half months prior to the filing of its bankruptcy petition. The \$5,000.00 check was made payable to the trust account of an attorney who had been asked to prepare a lease agreement between the Debtor and Babb. The lease agreement was never signed, and the fees incurred by the attorney to prepare the lease amounted to only \$500.00.

The Court finds that the funds held by the Chapter 7 Trustee are property of the estate that should not be released to Babb.

First, there are no documents in the record that reflect a stipulation between the Debtor and Babb as to how the check deposited in Gasque's trust account was to be used. Although Babb contends that the check was intended to pay Gasque's fees, with the balance to be applied to the Debtor's obligations to Babb under the lease, this arrangement was never reduced to writing. Instead, the only document evidencing the arrangement is the check itself, and the check was made payable to Gasque's trust account. It was not made payable to Babb.

Babb further contends that the Debtor had agreed that it would be entitled to a refund of the money only if it "withdrew" from the lease within ten days. According to Babb, the Debtor did not withdraw from the lease in the time permitted, and therefore is not entitled to any portion of the funds. (Doc. 420, p. 2).

This alleged agreement regarding the nonrefundable nature of the payment does not appear in the draft of the lease prepared by Gasque, or in any other document before the Court. Additionally, the alleged agreement was apparently unknown to Gasque himself, since he issued a check to the Debtor in December of 1999 for one-half of amount contained in the account.

Finally, contemporaneously with this Order, the Court is entering an Order on Chapter 7 Trustee's Motion for Summary Judgment as to Malcolm M. Babb's Request

for Payment of Administrative Expense, and an Order on Objection to Claim of Malcolm M. Babb. In those Orders, the Court finds that the proposed lease between the Debtor and Babb was never a valid, enforceable agreement because (1) it was not in writing as required by South Carolina law, and because (2) the memoranda and part performance alleged by Babb did not establish that the parties ever reached a meeting of the minds as to the essential terms of the lease. The parties' negotiations were never completed.

Under these circumstances, the Court finds that Babb is not entitled to the funds held by the Trustee. The record does not establish that the Debtor made a transfer of the funds to Babb, pursuant to an enforceable agreement, when it wrote the check to Gasque's trust account in February of 1999. See In re Diversified Products, Inc., 196 B.R. (N.D. Ind. 1996)(Money is property of the estate where it was transferred by the debtor to an attorney's trust account, prepetition, to fund a settlement that was ultimately unsuccessful.)

Babb's Motion should be denied.

Accordingly:

IT IS ORDERED that the Motion for Release of Funds, filed by Malcolm M. Babb, is denied.

DATED this 6th day of July, 2005.

BY THE COURT

/s/ Paul M. Glenn
PAUL M. GLENN
Chief Bankruptcy Judge