



IT IS ORDERED as set forth below:

Date: August 12, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE: :
: Case No.99-41154
TERRY M. BALLIEW and :
BARBARA J. BALLIEW, :
: Debtors. :
: _____ :
:

**ORDER AND NOTICE WITH REGARD TO
REQUEST OF DEBTORS FOR DISBURSEMENT OF
UNCLAIMED FUNDS PAID ON CLAIM OF AMSOUTH BANK**

The Debtors filed this Chapter 13 case on April 5, 1999, and their plan was confirmed on June 9, 2009. It appears that the plan provided for payment of ten percent of the amount of the unsecured claims.

Among the creditors in the case was Amsouth Bank, which filed two secured proofs of claim in the case, Proof of Claim No. 10 in the amount of \$23,879.03 on April 26, 1999, and Proof of Claim No. 16 in the amount of \$32,381.91 on May 3, 1999. The Trustee disbursed

\$15,845.10 on Claim No. 10 and \$14,444.67 on Claim No. 16.¹

On December 16, 2002, the Debtors filed an objection to allowance of a claim of AmSouth Bank [Docket No. 67], but did not specify which claim was the subject of the objection. The objection states, “AmSouth Bank has been paid in full and the claim should be reduced to zero.” A hearing was scheduled on the objection for January 22, 2003. Chambers’ notes reflect that no one appeared at the hearing in opposition to the claim.

In the meantime, the Chapter 13 Trustee on November 27, 2002, had filed a motion to dismiss the case [Docket No. 65], asserting a delinquency in plan payments. A hearing on the motion was scheduled for January 8, 2003, at which the parties announced that the case would be dismissed absent the Debtors’ compliance with agreed-upon conditions. The Trustee filed a Supplemental Report on January 29, 2003 [Docket No. 68], requesting dismissal of the case, and it was dismissed on January 31, 2003. [Docket No. 69].

Under the usual practice in this Court, the lack of opposition to the objection to AmSouth Bank’s claim would have led to counsel’s submission of a proposed order sustaining the objection and its entry if the Court found it appropriate. It does not appear that any such order was ever presented. In any event, the Court did not enter an order with regard to the objection to AmSouth Bank’s claim.

AmSouth Bank did not claim \$ 5,012.98 of the disbursements the Trustee made on its claims. Consequently, pursuant to 11 U.S.C. § 347, the Trustee paid these funds into the Court’s registry on April 17, 2003.

Douglas Bell (who appears to be a professional funds locator) has filed an application on

¹See Trustee’s Final Report and Accounting, Docket No. 73.

behalf of the Debtors for disbursement of these funds to the Debtors.² The application, signed by Mr. Bell under penalty of perjury, states, “The secured retail loan held by AmSouth Bank which the Debtors had initially listed on their obligations was discharged when the Chevrolet Rollback was sold in 2002 and the loan was fully paid with the proceeds.” Mr. Bell, of course, has no personal knowledge of this, and the Debtors, who might, have not themselves submitted an affidavit or statement under penalty or perjury concerning this fact.

The Application also states, “AmSouth Bancorporation’s assets were sold to Regions Financial Corporation in 2006” and that the bankruptcy recovery manager for Regions Bank, Mr. Ray Butler, informed Mr. Bell that its records showed no amount owing by Terry or Barbara Balliew and that Mr. Butler “had no problem with return of the funds to the Debtors.”

Section 347(a) of the Bankruptcy Code 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 court are to be disposed of under chapter 129 of title 28 of the United States Code. 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 that unclaimed funds are disbursed to their true owner. Because an application for unclaimed funds is typically considered *ex parte*, the Court must insist on exact compliance with legal requirements relating to the disbursement of

²The Application is not in proper form because the application itself does not clearly state the capacity in which Mr. Bell is acting. *See generally In re Applications for Unclaimed Funds*, 341 B.R. 65 (Bankr. N.D.Ga. 2005).

unclaimed funds.

The “rightful owner” of unclaimed funds paid into the Court under § 347(a) is, presumptively, the holder of the proof of claim on account of which the trustee made the distribution. In this case, the holder is AmSouth Bank. Although the Application asserts that any right to the claim was transferred to Regions Financial Corporation, that fact does not appear of record in this case, and the Application itself does not establish that fact.

In any event, the Application does not establish that the proceeds from sale of the collateral satisfied the claim such that its holder, even if it is Regions Financial Corporation, has no further interest in the unclaimed funds. In this regard, the Court will not accept the hearsay statement of Mr. Butler that no debt is owing.³ The Court cannot make a determination that the holder of a proof of claim does not have an interest in unclaimed funds unless either (1) the Application shows, with properly authenticated documentation, that an authorized representative of the entity acknowledges that fact or (2) the entity has had notice and an opportunity to be heard with regard to its interest in the unclaimed funds that complies with constitutional due process. Neither requirement has been met here.

Even if the debt on account of which the AmSouth proofs of claim were filed has been satisfied, the Debtors are not necessarily entitled to the funds. Upon dismissal of a case after confirmation, the Chapter 13 Trustee ordinarily disburses funds paid by the Debtor prior to dismissal in accordance with the terms of the Plan. Thus, it is possible that either the Chapter 13 Trustee or creditors of the Debtors may have the right to assert an interest in the funds or to

³Among other things, the Application states that Mr. Butler is a manager for Regions Bank, whereas the Application asserts that AmSouth’s assets were acquired by Regions Financial Corporation. These are two different entities, and there is no showing that Mr. Butler, a manager for Regions *Bank* is authorized to act on behalf of Regions *Financial Corporation*.

request that this case be reopened in order to administer the funds if nothing is owed on AmSouth Bank's proofs of claim.

In order to facilitate the eventual disbursement of the funds in question, the Court will require that the Chapter 13 Trustee and any unsecured creditors assert any interest in the unclaimed funds within 60 days from the date of entry of this Order. In the absence of any such assertion, the Court may enter an order determining that the only parties with an interest in the unclaimed funds are the Debtors, on the one hand, and AmSouth Bank or its successor or assignee, on the other. With regard to the latter issue, the Debtors shall have 60 days from the date of entry of this Order to amend the Application by attaching properly authenticated documentation to establish that AmSouth Bank or its successor or assignee agrees that it has no interest in the funds or by providing information (including a chain of title) as to the entity that currently owns the AmSouth proofs of claims and the names and addresses of one or more agents of such entity authorized to accept service with regard to this matter.

It is, therefore, hereby **ORDERED and ADJUDGED** and **NOTICE IS HEREBY GIVEN** as follows:

1. If the Chapter 13 Trustee or any party in interest in this case contends that the subject unclaimed funds should not be disbursed to the Debtors if the claims have been paid as the Debtors contend, an objection to disbursement of the funds to the Debtors must be filed within 60 days from the date of entry of this Order. Such objection may include a request that the case be reopened for the purpose of administering the funds. If no such objection is filed within said time, the Court may enter an Order determining that no party in interest other than the Debtors and AmSouth Bank or its successor or assignee has any interest in the subject funds, without further notice and without a hearing. If an objection is timely filed, the Court will schedule a

hearing on notice to the Debtors and any objecting party.

2. The Debtors may, within 60 days from the date of entry of this Order, amend their Application as set forth above. If no amendment is filed within said time, the Court may dismiss the Application, without prejudice, without further notice and without a hearing.

End of Order

Distribution List

Terry M. Balliew
720 Cash Road
Calhoun, GA 30701

Barbara J. Balliew
720 Cash Road
Calhoun, GA 30701

Douglas Bell
DREK Enterprise
100 Old Salem Avenue, Suite 800
Greer, SC 29650

Mary Ida Townson, Ch. 13 Trustee
Suite 2700, 100 Peachtree Street
Atlanta, GA 30303

All Creditors and Parties in Interest