



IT IS ORDERED as set forth below:

Date: July 10, 2013

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

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

IN RE:	:	
	:	Chapter 7
TYLER ALVIN LEE SMITH and	:	
JENNIFER ANN SMITH,	:	Case No. 07-42139-PWB
	:	
Debtors.	:	
	:	

**ORDER WITH REGARD TO UNCLAIMED FUNDS
OF NEW SOUTH FEDERAL SAVINGS BANK**

The Debtors filed this case under Chapter 13 on August 31, 2007. The Court confirmed their amended Chapter 13 plan on December 14, 2017. [Docket No. 20].

New South Federal Savings Bank filed a proof of claim for a debt of \$12,922.08 secured by a 2003 Mazda Protégé automobile. [Proof of Claim No. 4].¹ The Chapter 13 Trustee disbursed \$9,184.70 to New South under the plan [Docket No. 55] prior to conversion of this

¹The proof of claim requests that notices also be sent to the law firm of Ellis, Painter, Ratterree and Adams. David Adams of this firm filed a notice of appearance in the case. [Docket No. 10].

case to Chapter 7 on November 4, 2011. [Docket No. 49]. Because New South failed to claim \$1,048.54 of those funds, the Chapter 13 Trustee paid that sum into the Court pursuant to 11 U.S.C. § 347(a). [Docket No. 52].

The case was ultimately dismissed on January 17, 2012. [Docket No. 63]. The Debtors did not receive a discharge.

David Sicay-Perrow has filed an application for payment of the unclaimed funds to New South “c/o CSC Logic” at an address in Irving, Texas (the “Application”). [Docket No. 65].

Section 347(a) provides for disbursement of unclaimed funds pursuant to 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. Under chapter 129's requirements and due process principles, the Court has the duty to make sure that unclaimed funds are disbursed to their true owner. *Cf. Leider v. United States*, 301 F.3d 1290, 1296 (Fed. Cir. 2002).

Because the Court typically considers an application for unclaimed funds payable on a proof of claim in a bankruptcy case *ex parte*, the Court must insist on a claimant's exact compliance with legal requirements relating to the authority of an individual or entity to act on behalf of the claiming party and a definitive showing that it is actually entitled to the funds. *See generally In re Applications for Unclaimed Funds*, 341 B.R. 65 (Bankr. N.D.Ga. 2005).

In addition, a creditor applying for unclaimed funds must affirmatively show that it has a “present entitlement to the unclaimed funds sought.” *In re Acker*, 275 B.R. 143, 145 (Bankr. D.D.C. 2002). *Accord, In re Scott*, 346 B.R. 557 (Bankr. N.D. Ga. 2006). An applicant seeking unclaimed funds due to distributions that were made on account of a secured claim must show

that it has an enforceable debt that has not been satisfied (through payment or disposition of collateral), and that an amount is currently due and payable to which the unclaimed funds may lawfully be applied.

New South's application does not meet these standards.

First, Mr. Sicay-Perrow, who filed the Application, is an attorney admitted to the bar of this Court, and the application notes his bar number. But the Application does not state the capacity in which he is signing it. It is probable that he is submitting it as a lawyer for New South, but the Application does not clearly state this.²

Second, the Application fails to explain why a check payable to New South should be sent to CSC Logic. The Court's duty to direct funds to their lawful owner requires the Court to have further information about this in the context of this case.³

Third, the Application does not provide any information from which the Court can determine that New South presently holds a debt to which these funds may lawfully be applied.

New South's claim was secured by a motor vehicle. If such a claim has been satisfied through repossession and sale, if the creditor has not complied with requirements for pursuing a deficiency claim after a repossession and sale, or if the debtor has paid the debt, the creditor is not entitled to the unclaimed funds. *See In re Scott*, 346 B.R. 557 (Bankr. N.D. Ga. 2006); *In*

²The issue is important. If Mr. Sicay-Perrow is acting as a lawyer for New South, the Court presumes that he has authority to do so. If he is acting as an attorney-in-fact, the Court requires a power of attorney or other proof of his authority to act on behalf of New South, which the Application does not contain.

³This could be resolved, for example, if Mr. Sicay-Perrow, as New South's lawyer, expressly states in an application that his client wants the check mailed to CSC Logic.

re Acker, 275 B.R. 143 (Bankr. D.D.C. 2002). The Application does not contain any information with regard to these matters.

For these reasons, the Court must deny the Application, without prejudice. The Court will permit New South to seek disbursement of the unclaimed funds by supplementing the record by the filing of additional papers and documents that (1) clarify Mr. Sicay-Perrow's capacity; (2) appropriately explain to whom a check for the funds should be directed; and (3) establish New South's current entitlement to the funds. Any such supplemental filing shall be filed and served (1) on the Debtors at their addresses of record in this case and, if different, at the last-known addresses that New South has for them and (2) on the Debtors' attorney of record in this case.

The Clerk is directed to mail a copy of this Order to the persons on the attached Distribution List.

[END OF ORDER]

DISTRIBUTION LIST

Tyler Alvin Lee Smith
5016 Collard Valley Road
Aragon, GA 30104

Jennifer Ann Smith
5016 Collard Valley Road
Aragon, GA 30104

Michael H. York
York & York, P.C.
PO Box 246
Cedartown, GA 30125

David R. Sicay-Perrow
Sicay-Perrow, Knighten, Bohan, P.C.
Suite 3475, Georgia-Pacific Center
133 Peachtree Street, NE
Atlanta, GA 30303

David W. Adams
Ellis Painter et al
P O Box 9946
Savannah, GA 31412-9946