



IT IS ORDERED as set forth below:

Date: May 28, 2010

**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. 10-41489-pwb
WILLIAM EDWARD BUTLER,	:	
	:	Chapter 13
Debtor.	:	
_____	:	
WILLIAM EDWARD BUTLER,	:	
	:	
Movant,	:	CONTESTED MATTER
vs.	:	
	:	
DEUTSCHE RENTENVERSICHERUNG	:	
and DOD COMMUNITY BANK,	:	
	:	
Respondents.	:	
_____	:	

**ORDER DIRECTING PAYMENT OF BANK ACCOUNT INTO COURT REGISTRY
AND BAR ORDER REQUIRING RESPONDENTS AND ANY OTHER ENTITY
TO FILE CLAIM ASSERTING ANY RIGHT, TITLE, OR INTEREST IN
BANK ACCOUNT OR ITS PROCEEDS WITHIN 60 DAYS**

William Edward Butler (the “Debtor”) filed this Chapter 13 case on April 12, 2010. On May 3, 2010, the Debtor filed a “Motion for Release of Funds.” [19]. In the Motion, the Debtor

asserts that he is the owner of a personal checking account with DOD Community Bank (the “Bank”) and that Deutsche Renten Insurance, described as a “German pension group,” had attached the account in connection with a dispute relating to pension funds contributions for which Patriot Cuisines, LLC, is alleged to be liable. Mr. Butler filed a supplement to the Motion on May 20, 2010, that indicates that the proper name for the German entity is Deutsche Rentenversicherung Bund (“DRB”). [24]. It appears that DRB is a governmental agency responsible for the administration of a pension insurance program under German law. The Debtor also filed a notice that identifies his account with the Bank as Account No. 3681086767, Bank Routing No. 051005504 (the “Account”). [25].

Patriot Cuisines, LLC, is the Chapter 7 debtor in Case No. 10-41751 filed in this Court on April 30, 2010. Mr. Butler is the principal of Patriot Cuisines. Kyle A. Cooper has been appointed as interim trustee for the estate of Patriot Cuisines.

The Court held a hearing on the Motion on May 19, 2010. Although it appears that DRB and the Bank received copies of the Motion [19]¹ and of the notice of the hearing [22],² they did not appear at the hearing. The Debtor and the attorney for Mary Ida Townson, the Chapter 13 Trustee (the “Trustee”) did appear. At the hearing, the Debtor made representations that confirmed, as the Motion states, that the Bank has no interest in or lien on the account and that he does not owe any debt to the Bank.

The Court could not determine at the hearing the basis on which the Bank has apparently determined that the Account has been attached and that the Bank cannot properly honor its

¹See Certificate of Service attached to Motion, Docket No. 19 at 5 and 6.

²See Docket No. 22.

depositor's orders with regard to the Account. Further, the Court could not determine the legal authority on which DRB has attached the Account (or otherwise subjected the Account to its claim) or the legal and factual bases upon which DRB asserts a claim against the Debtor. Finally, the Court is concerned that DRB may be a governmental unit that may be entitled to assert sovereign immunity.

The Account constitutes property in which the Debtor had a legal ownership interest as of the commencement of his bankruptcy case and, as such, it is property of the estate under 11 U.S.C. § 541(a)(1). *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983). The United States District Court for the Northern District of Georgia has jurisdiction of this bankruptcy case, 28 U.S.C. § 1334(a), and exclusive jurisdiction "of all the property, wherever located, of the debtor as of the commencement of [the] case, and of property of the estate." 28 U.S.C. § 1334(e)(1). Because the Account is located in the United States of America, no question of the extra-territorial effect of this jurisdiction exists. Furthermore, because jurisdiction with regard to property of the estate is *in rem*, sovereign immunity does not preclude the exercise of jurisdiction over the Account. *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004).

This Bankruptcy Court is a unit of the United States District Court for the Northern District of Georgia, 28 U.S.C. § 151, with authority pursuant to 28 U.S.C. § 157(b)(1) to hear and determine core proceedings arising under the Bankruptcy Code (title 11 of the United States Code) that the District Court refers to it pursuant to 28 U.S.C. § 157(a). The District Court has referred all cases and proceedings under § 157(a) to this Bankruptcy Court pursuant to L.R. 83.7, N.D. Ga. One type of core proceeding is a proceeding to obtain an order to turn over property of the estate. 28 U.S.C. § 157(b)(2)(E).

By virtue of the foregoing provisions, this Court has authority to exercise jurisdiction of the Account. For the reasons that follow, the Court will direct the Bank to pay the amount in the Account into the registry of this Court, pending further Order of this Court, with the rights, claims, and interests of the Bank, DRB, the Debtor, the Trustee, and any other party in interest to attach to the funds in the Court's registry.

Subject to exceptions not applicable here, 11 U.S.C. § 542(b) provides:

[A]n entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee.”

Section 542(b), therefore, requires the Bank to pay the amount of the Account to the Trustee. The Debtor is entitled to possession of the amount paid as a Chapter 13 debtor under the provisions of 11 U.S.C. § 1306(b).

Because the Debtor's right to possession of the amount paid is derived from the Trustee's right to receive it in the first instance, the Debtor's use of the money is subject to the provisions of 11 U.S.C. § 363(c)(2). Section 363(c)(2) prohibits the use of “cash collateral” unless the entity with an interest in the cash collateral consents or the Court authorizes its use in accordance with the provisions of § 363. A deposit account is cash collateral, as are its proceeds. 11 U.S.C. § 363(a). Upon request of an entity with an interest in cash collateral, the court must prohibit or condition the use of cash collateral on the provision of adequate protection for such interest.

As a deposit account, the Account is cash collateral. Funds to which the Trustee, and by extension the Debtor, are entitled to receive by the Bank's payment of the amount in the Account as § 542(b) requires are similarly cash collateral. Because DRB's apparent attachment of the account amounts to the assertion of an interest in the Account, the Trustee, and by extension the

Debtor, cannot use any of the funds to which they are entitled unless DRB consents or the Court authorizes such use after notice and a hearing in accordance with procedures specified in FED. R. BANKR. P 4002(b). DRB has not consented, and no motion for the use of proceeds of the Account that provides adequate protection for DRB's interest has been filed.

In these circumstances, it is appropriate for the Court to enforce the provisions of § 542(b) and to provide adequate protection for any interest in the Account that DRB, the Bank, or any other entity has by directing the Bank to pay the amount in the Account into the registry of this Court, with any and all interests of DRB, the Bank, the Debtor, the Trustee, and any other party in interest to attach to the registry funds in accordance with their rights, claims, and interests, to the extent that said rights, claims, and interests are valid, perfected, enforceable, and not subject to avoidance, pending further order of this Court.

The Court has authority under 11 U.S.C. § 105(a) to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." The proper administration of this case and of the property of the Debtor and the Debtor's estate requires a determination of whether DRB, the Bank, or any entity other than the Debtor and the Trustee claims any right, title, or interest in the Account and the proceeds thereof and, if so, the nature, priorities, and extent of such interests and the legal and factual bases for any claim of any right, title, or interest in the Account and its proceeds.

Accordingly, in order to facilitate the administration of this case, the Court will order the Bank to file a statement with the Court providing information and copies of documents with regard to the Account and DRB's claims against it as specified below.

Further, the Court will require that the Bank, DRB, and any entity other than the Debtor or the Trustee claiming any right, title, or interest in the Account or its proceeds file with the

Court, on or before August 2, 2010, a claim that asserts such right, title, or interest, in accordance with the requirements set forth below. Any entity which claims any such right, title, or interest in the Account or its proceeds which fails to timely file such claim within said time shall be deemed to have waived any such right, title, or interest and shall be forever barred from asserting any such right, title, or interest in the Account or its proceeds, unless otherwise ordered by the Court for cause shown.

Based on, and in accordance with the foregoing, it is hereby **ORDERED and ADJUDGED** as follows:

1. The Bank shall, within **ten days** of entry of this Order, deposit into the registry of this Court the amount in the Account. The funds that the Bank pays into the registry of this Court are hereinafter referred to as the “Registry Funds.” The Bank may make the payment in the form of a check payable to the Clerk, United States Bankruptcy Court, Northern District of Georgia, directed to the attention of Lynn Saunders, Financial Department Supervisor, Room 1340, United States Courthouse, 75 Spring Street S.W., Atlanta, Georgia, 30303. The Bank may contact Ms. Saunders at (404) 215-1132, for further instructions regarding the deposit of Registry Funds.

2. Any right, title, or interest in the Account (including any interest arising as a lien or by virtue of any attachment or garnishment of the Account) of the Bank, DRB, the Debtor, the Trustee, or any other party in interest shall attach to the Registry Funds to the extent that such right, title, or interest in the Account is valid, enforceable, perfected, and not subject to avoidance.

3. The Registry Funds shall remain in the registry pending further Order of this Court.

4. On or before **August 2, 2010**, the Bank shall file with the Court a statement that: (a) explains the Debtor’s interest in the Account; (b) states whether the Bank has any claim against

the Debtor or asserts any rights of set-off with regard to the Account; (c) sets forth the factual and legal bases on which the Bank believes that DRB or any other entity has attached the Account, has otherwise used legal process that prevents the Bank from paying the amount in the Account to the order of the Debtor and to attach to said statement copies of any documents in its possession or control that evidence the claim of DRB or any other entity against the Debtor or the claim of DRB or any other entity to any right, title, or interest in the Account. The Bank shall attach to the statement copies of any documents in its possession or control that evidence any claim the Bank asserts or the claims of DRB or any other entity against the Debtor or the claim of DRB or any other entity to any right, title, or interest in the Account. The Bank shall serve the statement on the Debtor and the Trustee.

5. On or before **August 2, 2010**, the Bank, DRB, and any entity other than the Trustee or the Debtor which claims any right, title, or interest in the Account or its proceeds shall file a claim³ with the Court that: (1) states the basis and amount of any claim against the Debtor; (2) asserts any claim to any right, title, or interest in the Account or its proceeds and the nature, extent, and priority of such claim; (3) explains the factual and legal bases on which it asserts such right, title, or interest in the Account or its proceeds; and (4) includes, as attachments, copies of any documents that evidence its claim against the Debtor and its claim of any right, title, or interest in the Account or its proceeds. A copy of the statement shall be served on the Trustee and the Debtor. If the Bank, DRB, or any entity other than the Trustee or the Debtor claiming any right, title, or interest in the Account or its proceeds does not timely file such claim in accordance with this Order, then any claim of any right, title, or interest in the Account and

³The Bank may combine its claim, if any, with the statement it is required to file under paragraph 4 of this Order.

its proceeds shall be deemed waived, and the assertion of any claim of any right, title, or interest in the Account and its proceeds shall be forever barred. Accordingly, if DRB, the Bank, or any entity other than the Trustee or the Debtor does not timely file a claim as this paragraph requires, the Court will, without further notice and without a hearing, enter an Order or Orders divesting any right, title, or interest that any such non-filing entity has in the Account or its proceeds from the Registry Funds and authorizing disbursement of the proceeds as may be appropriate free and clear of any right, title, or interest of any entity that does not timely file a claim as this paragraph requires. If the Bank, DRB, or any other entity files a claim of any right, title, or interest in the Account or its proceeds as this paragraph requires, the Court will schedule a hearing on notice to the Debtor, the Trustee, and entities filing a claim to consider procedures for determining any issues relating to entitlement to the Registry Funds and their proper disbursement. **THIS IS A BAR ORDER.**

6. Documents shall be filed so as to be **actually received** by the Clerk on or before **August 2, 2010**, at the following address: Clerk, United States Bankruptcy Court, Room 339, 600 East First Street, Rome, GA 30161-3187.

The Clerk shall mail copies of this Order to the persons on the attached distribution list and all parties in interest in this case.

[End of Order]

Distribution List

William E. Butler
975 Poplar Springs Rd.
Dalton, GA 30720

Mary Ida Townson, Chapter 13 Trustee
Suite 2700 Equitable Building
100 Peachtree Street NW
Atlanta, GA 30303

Kyle A. Cooper
Trustee for Patriot Cuisines, LLC
Suite 104
615 Colonial Park Drive
Roswell, GA 30075

DOD Community Bank
Bank of America, N.A.
Attn: Brian T. Moynihan
President and CEO
100 North Tyrone Street
Charlotte, NC 28255

DOD Community Bank
Attn: Brandon Hopkins
AVP/Global Compliance Officer
300 Convent Street, Suite 400
San Antonio, TX 78205

Deutsche Rentenversicherung Bund
Attn: Dr. Herbert Rische, President
Ruhrstrasse 2
10709 Berlin, Germany

Deutsche Rentenversicherung Bund
Attn: Dr. Herbert Rische, President
10704 Berlin, Germany

Deutsche Rentenversicherung Bund
Ruhrstrasse 2
10719 Berlin, Germany