

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

IN RE:	:	Chapter 13
	:	
THOMAS EDGAR HAYES and	:	Case No. 11-42579-PWB
RAELYNNE HAYES,	:	
	:	
Debtors.	:	
	:	

**ORDER WITH REGARD TO APPLICATION OF
DEBTORS FOR UNCLAIMED FUNDS**

The Chapter 13 Trustee in this case deposited \$ 2,287.13 into the registry of this Court as funds payable on a proof of claim filed by MGIC Credit Assurance Corp. ("MGIC") [Docket No. 46]. Counsel for the Debtors filed an application seeking disbursement of these funds to the Debtors [Docket No. 47], which the Court denied because it showed no basis on which the Debtors would be entitled to the funds. [Docket No. 51].

The Debtors filed a *pro se* request for reconsideration of the Court's order. [Docket No. 53]. In this pleading, the Debtors assert that, after dismissal of this case, they made arrangements through a consent judgment in a state court proceeding for payment of the debt owed to MGIC in installments. The Court gave notice of the Debtor's request for the funds to MGIC and its counsel in the State Court proceeding and of a hearing thereon. [Docket No. 54].

The matter came on for a hearing as scheduled on December 12, 2012. Ms. Hayes and the attorney for the Chapter 13 trustee appeared at the hearing, but no one appeared on behalf of MGIC.

The Chapter 13 trustee sent distributions in the amount of the funds in question to MGIC in accordance with the provisions of the Debtors' confirmed plan. Because MGIC did not claim

its distributions, the trustee paid the funds into the Court's registry under 11 U.S.C. § 347. [Docket No. 46].

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 "notice to the United States attorney and 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).

As the Chapter 13 trustee advocated at the hearing, funds paid into the registry of the Court ordinarily belong to the creditor who filed the proof of claim on account of which the Chapter 13 trustee made the distribution. Nevertheless, to be entitled to unclaimed funds, a creditor must establish a present entitlement to them. *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).


At the hearing, Ms. Hayes confirmed that a payment arrangement with MGIC exists and that all payments due under that arrangement have been made. Moreover, she confirmed, the amount to be paid to MGIC under that payment arrangement does not take into account the unclaimed funds. In other words, MGIC has not applied the unclaimed funds to reduce the amount that is owed.

Because MGIC has agreed to accept payments on its debt on an installment basis, it does not appear that MGIC has a present entitlement to the unclaimed funds. MGIC did not appear in this proceeding to assert any basis on which the unclaimed funds should be disbursed to MGIC.

In these circumstances, the Debtors are entitled to the unclaimed funds. It is, therefore,

of \$ 2,287.13, being the unclaimed funds deposited into this Court on account of the proof of claim filed by MGIC.

IT IS SO ORDERED this 14 day of December, 2012.


Paul W. Bonapfel
United States Bankruptcy Judge

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