



IT IS ORDERED as set forth below:

Date: May 15, 2015

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	CASE NUMBER: 08-43367-PWB
	:	
BELINDA ANN OLIVER,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
	:	JUDGE BONAPFEL

ORDER DENYING APPLICATION FOR UNCLAIMED FUNDS

Belinda Ann Oliver (the “Debtor”) initiated this case with a petition under Chapter 13 on October 8, 2008. Her schedules disclosed a debt to HomEq Servicing Corp. (“HomEq”) of \$45,000 secured by a second mortgage on her residence, with an arrearage of \$14,000. [Docket No. 1 at 11]. HomEq filed a proof of claim which, as amended, asserted a debt of \$54,262.99 and an arrearage of \$23,844.22. [Claim No. 1-1].

On March 27, 2009, the Court confirmed [Docket No. 29] the Debtor's "Second Amended Chapter 13 Plan" [Docket No. 26]. The confirmed plan provided for payment of HomEq's arrearage of \$23,844.22 from payments made by the Debtor to the Chapter 13 Trustee and the Debtor's continuation of regular installment payments directly to HomEq, as 11 U.S.C. §1322(b)(5) permits. Later, the Debtor converted the case to Chapter 7. [Docket No. 101].

During the time that the Chapter 13 case was pending, the Trustee disbursed \$19,285.68 to HomEq on account of its arrearage claim. [Docket No. 108 at 2]. Because HomEq did not claim \$14,693.06 of these disbursements, the Chapter 13 Trustee paid that amount into the registry of the Court as unclaimed funds pursuant to 11 U.S.C. §347(a). [Docket No. 114]. Debtor filed an application for the disbursement of the unclaimed funds to her. [Docket No. 133].

In the Chapter 7 case, the Debtor filed a motion to "strip off" the second mortgage. [Docket No. 123]. The Court granted the motion by order entered on February 19, 2014. [Docket No. 127].

Neither the strip-off of HomEq's lien nor the Debtor's discharge eliminated the debt. HomEq has no lien and no right to collect its debt as a personal liability of the Debtor. But the debt continues to exist, and it has not been paid.

Unclaimed funds paid into court under 11 U.S.C. §347(a) 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. *See generally In re Applications for Unclaimed Funds*, 341 B.R. 65 (Bankr. N.D.Ga. 2005).

Upon the Trustee's distribution of the subject funds to HomEq, it became the owner of those funds. It was entitled to them under the terms of the confirmed Chapter 13 plan. The later conversion of the case and stripping of HomEq's lien had not effect on HomEq's ownership of the funds.

Because the Debtor is not the owner of the unclaimed funds, she is not entitled to them. It is, therefore, hereby ORDERED that her application be, and it is hereby is, denied

This Order has not been prepared for publication and is not intended for publication.

[End of Order]

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