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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 FRESNO DIVISION

6 In re) Case No. 11-11018-B-13
7 Ruthie Lee Anderson,)
8 Debtor.)
_____)

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10 **ORDER DENYING EX PARTE APPLICATION
FOR PAYMENT OF UNCLAIMED FUNDS**

11 Before the court is an ex parte application for payment of unclaimed funds filed
12 pursuant to 28 U.S.C. § 2042 by Charlene J. Keys, dba Keys Research (“Keys”), on
13 behalf of Shawnie Jackson for the Estate of Ruthie Lee Anderson (“Jackson”). Upon
14 dismissal of this case in 2012, the debtor, Ruthie Lee Anderson (“Anderson”) was entitled
15 to a refund of undisbursed monies in the amount of \$1,922.04, which she had paid to the
16 chapter 13 trustee. However, Anderson died shortly after the case was dismissed and the
17 trustee’s check to Anderson was never cashed. The trustee subsequently deposited the
18 funds with the clerk of the court. Jackson now requests release of those funds on the
19 grounds that she is Anderson’s heir and has the right under applicable non-bankruptcy
20 law to collect Anderson’s property. Because the documents provided by Jackson do not
21 adequately establish that fact in compliance with California law, the application will be
22 denied without prejudice.

23 **BACKGROUND AND FINDINGS OF FACT.**

24 This bankruptcy was filed, with the assistance of Jackson, in January 2011.¹
25 Michael H. Meyer, Esq., was appointed to serve as the chapter 13 trustee (“Trustee”). A
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28 ¹ Jackson appears to be Anderson’s daughter. She signed the petition on page 3 as a non-
attorney petition preparer.

1 five-year chapter 13 plan was confirmed in June 2011. However, Anderson was unable to
2 make her chapter 13 plan payments and the case was dismissed on the Trustee's motion
3 in May 2012.

4 The Trustee's final report, filed in January 2013, showed that Anderson was
5 entitled to a refund of undisbursed funds in the amount of \$1,922.04. Anderson died in
6 May 2013. For some reason, the Trustee's check to Anderson was not cashed before she
7 died and in December 2012, he tendered the money to the clerk of the court (the
8 "Unclaimed Funds" or "Funds"). The clerk then deposited the Funds with the United
9 States Treasury, where they remain.

10 In July 2014, Jackson, acting through Keys, submitted an Application for Payment
11 of Unclaimed Funds to the financial administrator of the court (the "Application"). The
12 Application included a notarized Agent Authorization, or power of attorney, authorizing
13 Keys to submit the Application on Jackson's behalf, the Individual Identification Form
14 for Unclaimed Funds, providing Jackson's name, phone number, and address, supported
15 by a copy of her driver's license, and a copy of Anderson's death certificate. With the
16 Application, Keys also submitted (1) an Affidavit of Ownership of the Unclaimed Funds
17 designating Jackson individually as the "owner" of the Unclaimed Funds and signed
18 under penalty of perjury by Jackson (the "Ownership Affidavit"); a Small Estate Affidavit
19 which is incomplete and unsigned by Jackson, and an incomplete Affidavit for Collection
20 of Personal Property.

21 The Application for Payment of Unclaimed Funds, in paragraph 1, states that the
22 owner of the Funds is: "Shawnie Jackson for the Estate of Ruthie Lee Anderson." The
23 Application states, in pertinent part:

24 d. The alleged owner is the estate of the deceased creditor/claimant
25 named in paragraph 1, as evidenced by the attached certified copies
of death certificate *and other appropriate probate documents.*

26 (Emphasis added.)
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1 However, the bases given for Jackson’s claim to the Unclaimed Funds is not
2 supported by the documents submitted with the Application.

3 **DISCUSSION AND CONCLUSIONS OF LAW.**

4 Pursuant to § 347 of the Bankruptcy Code, a trustee must deposit any unclaimed
5 property of the estate with the clerk of the court, and such property may only be
6 “disposed of under chapter 129 of title 28.” 11 U.S.C. § 347(a). Relevant to this case,
7 chapter 129 includes 28 U.S.C. §§ 2041 and 2042. Section 2041 permits the court to
8 release unclaimed funds to the “rightful owners,”² while § 2042 directs the court to do so
9 only after an entity claiming a right to the unclaimed funds, on application to the court,
10 shows “full proof of the right thereto.”³

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12 ² Section 2041 provides the following:

13 All moneys paid into any court of the United States, or received by the officers
14 thereof, in any case pending or adjudicated in such court, shall be forthwith
15 deposited with the Treasurer of the United States or a designated depository, in
16 the name and to the credit of such court.

17 This section shall not prevent the delivery of any such money to the *rightful*
18 *owners* upon security, according to agreement of parties, under the direction of
19 the court.

20 28 U.S.C. § 2041 (emphasis added).

21 ³ Section 2042 provides the following:

22 No money deposited under section 2041 of this title shall be withdrawn except by
23 order of court.

24 In every case in which the right to withdraw money deposited in court under
25 section 2041 has been adjudicated or is not in dispute and such money has
26 remained so deposited for at least five years unclaimed by the person entitled
27 thereto, such court shall cause such money to be deposited in the Treasury in the
28 name and to the credit of the United States. Any claimant entitled to any such
money may, on petition to the court and upon notice to the United States attorney
and *full proof of the right thereto*, obtain an order directing payment to him.

1 The bankruptcy court has a duty to ensure that unclaimed funds are disbursed to
2 the proper party. *In re Pena*, 456 B.R. 451, 453 (Bankr. E.D. Cal. 2011) (citing *In re*
3 *Scott*, 346 B.R. 557, 558 (Bankr. N.D. Ga. 2006)). Therefore, the burden rests on the
4 applicant to prove that it is presently entitled to the unclaimed funds sought. *Id.* (citing
5 *In re Acker*, 275 B.R. 143, 144 (Bankr. D.D.C. 2002)).

6 In the Eastern District of California, the procedure for recovering unclaimed funds
7 under 28 U.S.C. § 2042 is prescribed in the Guidelines Pertaining to Applications for
8 Payment of Unclaimed Funds (the “Guidelines”).⁴ Pursuant to these Guidelines, the
9 request for an order releasing unclaimed funds must be submitted in a written application.
10 The application is typically reviewed by the court on an ex parte basis, and it is generally
11 approved or denied without a hearing. The application for unclaimed funds must be
12 supported by competent evidence, and it must contain, *inter alia*, the following
13 information designed to show that the applicant is the proper entity to claim the money:

- 14 • The exact dollar amount of the dividend check issued by the trustee to the
15 original claimant and the date that the funds were deposited with the court
as unclaimed funds;
- 16 • The full name, address, and telephone number of the original claimant of
17 the funds;
- 18 • A brief history of the claim and the original claimant, which includes, if
19 applicable, any change of address, sale, merger, consolidation, buy-out,
20 dissolution, marriage, or death of the claimant together with any supporting
documentation, that addresses why the funds were not deliverable at the
time of the initial distribution;
- 21 • An affirmative statement as to why the alleged owner of the requested funds
22 is entitled to receive the funds;
- 23 • The alleged owner’s identity and relationship to the original claimant; and
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25 28 U.S.C. § 2042 (emphasis added).

26 ⁴ The Guidelines are available on the court’s website at
27 <http://www.caeb.uscourts.gov/documents/Forms/Guidelines/GL.Appl.pdf>.

- If the applicant is the agent or representative of the alleged owner of the funds, a statement that the alleged owner has authorized the applicant to collect the funds, supported by an original power of attorney containing the alleged owner's notarized signature and such a grant of authority.

The analysis here focuses on the terms "rightful owners" and "full proof of the right thereto" as prescribed by 28 U.S.C. §§ 2041 and 2042. Jackson must show that she is legally entitled to collect Anderson's property. Although Keys and Jackson have completed the Application substantially in compliance with the court's Guidelines, the Application still falls short of establishing Jackson's right to collect the Unclaimed Funds under applicable law. The bankruptcy court generally looks to state law to determine property rights. *See Butner v. United States*, 440 U.S. 48, 54–55 (1979). Since this case deals with succession rights in a decedent's property, the court must turn to the relevant provisions of the California Probate Code. The primary problem with the supporting documentation is the fact that the documents are inconsistent and incomplete. First, it is unclear whether Jackson is acting on her own behalf, as the representative of Anderson's estate, or as a beneficiary under Anderson's will.

The second and more difficult problem is the incompleteness and inconsistencies in Jackson's Affidavit of Ownership. This unsigned declaration has lines for the date and place signed, and for the "Signature of other claiming successor." Although blank, the "Printed name" is that of Jackson and the address listed is that of Jackson.

The attached "Small Estate Affidavit" is incomplete and also unsigned. Alternative responses are provided in this affidavit and the declarant is required to check those that are applicable. This document is necessary to show whether or not there are other successors, if the other successors have been given proper notice of Jackson's claim, and whether or not Jackson is claiming sole entitlement to Anderson's property or making the claim on behalf of all other successors.

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1 In addition, paragraph 5 of the Small Estate Affidavit affirms that all of
2 Anderson's debts, including funeral and burial expenses, have been paid or provided for.
3 Unless Anderson's obligations have been satisfied during the administration of her estate,
4 this is not consistent with the information in the record. Anderson listed approximately
5 \$5,400 of priority and unsecured debts in her bankruptcy case, and her plan provided for
6 0% payment to her unsecured creditors. No discharge was entered in the case.

7 The attached Affidavit for Collection of Personal Property is signed by Jackson,
8 but is also incomplete. This document is required to show whether Jackson is entitled to
9 recover Anderson's property based on a will, or by intestate succession, and that the value
10 of Anderson's personal property does not exceed \$50,000. Alternatively, Jackson must
11 show that she is claiming as the surviving spouse or dependent child of the decedent, and
12 that the personal property is less than the statutory amount. This affidavit fails to indicate
13 whether a personal representative has been appointed and discharged, or that more than
14 one year has elapsed since a closing statement was filed and as of that date \$50,000 has
15 not been exceeded. There is no identification of any other personal property that
16 Anderson may have owned.

17 It appears that Jackson is making a claim as the representative of Anderson's
18 Estate, however Jackson has not provided any information regarding whether Anderson
19 died with, or without a will, and whether or not a case is pending in probate court. The
20 court, therefore, is unable to determine whether Jackson is entitled to the Unclaimed
21 Funds in any capacity. Under California law, in the absence of a will, title to a decedent's
22 property vests immediately upon the decedent's death "to the decedent's heirs as
23 prescribed in the laws governing intestate succession." Cal. Prob. Code § 7000.

24 Even if Jackson is entitled to the Unclaimed Funds, vesting alone is not the end of
25 the inquiry and the vesting of a decedent's property does not mean the heir can
26 immediately obtain possession of the property. Under California law, the decedent's
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1 property is still “subject to administration under [the California Probate Code], except as
2 otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and
3 other persons as provided by law.” Cal. Prob. Code § 7001; *see also Trippet v. State*, 149
4 Cal. 521, 529–30 (1906) (“But the heir must await the completion of administration and
5 the determination of his heirship by the decree of administration before he can enter upon
6 the enjoyment and possession of his vested right.”). Here, Jackson has not indicated
7 whether Anderson’s estate is being or has been administered under California law and
8 whether Jackson is acting as the court-appointed personal representative with the right to
9 collect the Debtor’s property. *See* Cal. Prob. Code § 9650 (requiring a person holding
10 decedent’s property to surrender property to the personal representative upon request).
11 This information is typically evidenced by an order from the probate court.

12 In limited circumstances, a decedent’s heir may be entitled to receive tangible
13 personal property of the decedent by affidavit, and without having to procure letters of
14 administration or await probate of a will. *See* Cal. Prob. Code §§ 13100, 13101.⁵
15 However, Jackson has not made a showing that these circumstances exist. Although
16 Jackson did submit her Affidavit of Ownership, the supporting declarations were
17 unsigned. In addition, unsigned Small Estate Affidavit does not establish the statutory
18 prerequisites under California Probate Code § 13101 to permit expedited collection of the
19 Unclaimed Funds. Specifically, the Affidavit does not show that (1) “[n]o proceeding is
20 now being or has been conducted in California for administration of the decedent’s
21 estate,” Cal. Prob. Code § 13101(a)(4)(A); (2) “[t]he current gross fair market value of
22 the decedent’s real and personal property in California . . . does not exceed one hundred
23 fifty thousand dollars (\$150,000),” Cal. Prob. Code § 13101(a)(5); (3) “[a] description of
24 the property of the decedent that is to be paid, transferred, or delivered to the affiant,”
25 Cal. Prob. Code § 13101(a)(6); and (4) “[n]o other person has a superior right to the

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27 ⁵ The “affidavit” procedure cannot be used for real property. Cal. Prob. Code § 13115.

interest of the decedent in the described property,” Cal. Prob. Code § 13101(a)(9).

Once Jackson establishes the requirements under California Probate Code §§ 13100 to 13104 inclusive, the court “may rely in good faith on the statements in the affidavit . . . and has no duty to inquire into the truth of any statement in the affidavit.” Cal. Prob. Code § 13106(a). Satisfying these requirements will then be sufficient to establish the “full proof of the right thereto” required by 28 U.S.C. § 2042. At that time, Jackson will be entitled to have the property described in the Application delivered to her.⁶ *See* Cal. Prob. Code § 13105(a). Because Jackson has not made the showing required by California law that she is entitled to collect Anderson’s property by affidavit, the Application for Payment of Unclaimed Funds cannot be approved. Jackson may resubmit her Application with an affidavit that satisfies the statutory requirements found in California Probate Code §§ 13100 to 13104. Based on the foregoing,

IT IS HEREBY ORDERED that Shawnie Jackson's Application for Unclaimed Funds, filed on behalf of the Estate of Ruthie Lee Anderson, is DENIED WITHOUT PREJUDICE.

Dated: April 23, 2015

/s/ W. Richard Lee
W. Richard Lee
United States Bankruptcy Judge

⁶ It should be noted here that Jackson’s use of the “affidavit” procedure under California Probate Code §§ 13100–13116 may subject her to personal liability for the Debtor’s unsecured debts. *See* Cal. Prob. Code § 13109. The Debtor’s Schedule F showed approximately \$5,400 in priority and unsecured debts. Those debts may be enforced against Jackson up to the amount of the property she wants to recover from the court, \$1,922.04. Cal. Prob. Code § 13112(b). Thus, obtaining the Funds by affidavit may be a futile or even counterproductive effort.