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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9 FRESNO DIVISION

10 In re) Case No. 96-12396-B-7
11 Russell Glenn Minor,)
12 Debtor.)
_____)

13 **MEMORANDUM REGARDING APPLICATION**
14 **FOR PAYMENT OF UNCLAIMED FUNDS**

15 This disposition is not appropriate for publication. Although it may cited for
16 whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no
precedential value. See 9th Cir. BAP Rule 8013-1.

17 CitiCorp., NA (“CitiCorp.”), successor-in-interest to Commercial Credit
18 Corp. (“Commercial Credit”) has filed an Application for Payment of Unclaimed
19 Funds (the “Application”) relating to monies which the chapter 13 trustee deposited
20 with the Treasurer of the United States pursuant to 11 U.S.C. § 347(a). The total
21 amount at issue is \$163.24 (the “Unclaimed Funds”). When Russell Glenn Minor
22 (the “Debtor”) was in bankruptcy, Commercial Credit filed two proofs of claim
23 which stated that they were fully secured by personal property (claim docket #06 &
24 07 - the “Secured Claims”). The Unclaimed Funds represent post-petition payments
25 which the Debtor was required to pay through the chapter 13 trustee, on account of
26 those Secured Claims. Because the Application does not establish that any money is
27 still owed to CitiCorp. on account of the secured claims, the Application will be
28 denied.

1 **Background.**

2 This bankruptcy was filed under chapter 13 in April 1996. The Debtor's
3 counsel was Thomas H. Armstrong, Esq. M. Nelson Enmark, Esq., was appointed
4 as the chapter 13 trustee ("Enmark"). The Debtor's chapter 13 plan was confirmed
5 in June 1996 (the "Plan"). The Debtor apparently made the Plan payments until he
6 voluntarily converted the case to chapter 7 in January 1999. In March 1999,
7 Enmark filed his accounting and final report to conclude his administration of the
8 chapter 13 case. The Debtor received a chapter 7 discharge in July 1999 and this
9 case was closed in October 1999.

10 Commercial Credit filed the Secured Claims in the chapter 13 in June 1996.
11 The Secured Claims were filed in the amount of \$3,580 and \$1,993. Enmark's final
12 report and account showed that each Secured Claim was allowed in the amount of
13 \$1,000. The balance was allowed and provided for as unsecured claims.¹ There
14 was no objection to the Secured Claims and Enmark made some distributions to
15 Commercial Credit on account thereof. However, several of those checks were not
16 cashd by Commercial Credit. After 90 days, Enmark stopped payment of the
17 uncashed checks pursuant to 11 U.S.C. § 347(a) which provides in pertinent part:

18 Ninety days after the final distribution under section 726, 1226, or 1326 of
19 this title in a case under chapter 7, 12, or 13 of this title, as the case may be,
20 the trustee shall stop payment on any check remaining unpaid, and any
 remaining property of the estate shall be paid into the court and disposed of
 under chapter 129 of title 28.

21 In October and November 1999, Enmark deposited the Unclaimed Funds
22 with the clerk of the court representing the uncashed checks that were issued to
23 Commercial Credit.

24 **Procedure for Recovering Unclaimed Funds.**

25 Once the Unclaimed Funds were sent to the clerk of the court, they were
26

27 ¹Enmark's final report shows that there were no distributions made on account of
28 unsecured claims.

1 deposited with the Treasurer of the United States and became subject to the
2 jurisdiction of 28 U.S.C. § 2041 which provides in pertinent part:

3 All moneys paid into any court of the United States, or received by the
4 officers thereof, in any case pending or adjudicated in such court, shall be
5 forthwith deposited with the Treasurer of the United States or a designated
6 depositary, in the name and to the credit of such court.

7 This section shall not prevent the delivery of any such money *to the rightful*
8 *owners* upon security, according to agreement of parties, under the direction
9 of the court. (Emphasis added.)

10 Unclaimed funds deposited with the Treasurer of the United States remain so
11 deposited until claimed. The trustee is required to file with the clerk of the court a
12 list of all known names and addresses of the entities and the amounts which they
13 may be entitled to claim from the money that is deposited pursuant to section 347.
14 *Fed.R.Bankr.P. 3011*. Unclaimed funds that have been deposited in the court for
15 five years shall escheat to the United States pursuant to 28 U.S.C. § 2042. No
16 money paid into the court shall be withdrawn except by court order. An entity
17 entitled to any money deposited with the court may, on petition to the court, and
18 “*full proof of the right thereto*,” obtain an order directing payment of said money.
19 *Id.* (Emphasis added.)

20 The procedure for a proper claimant to recover its money is prescribed in this
21 court’s Guidelines Pertaining to Applications for Payment of Unclaimed Funds,
22 Revised December 19, 2007, and is summarized as follows:

23 A request for an order releasing unclaimed funds shall be made in a written
24 petition, application, or motion in compliance with Local Bankruptcy Rule 9014-1.
25 The burden of proving an entity’s entitlement to unclaimed funds rests with the
26 entity. An Application for payment of unclaimed funds must be supported by
27 competent evidence; it must comply with *Fed.R.Bankr.P. 9004(a) & (b)*; and it must
28 comply with the general requirements for forms set forth in Federal and local rules
of bankruptcy procedure. The Application must contain, *inter alia*, the following
information:

- a. The exact dollar amount of the dividend check(s) issued by the trustee to the original creditor/claimant and the date that the funds were deposited with the court as unclaimed funds;
- b. The name, address and telephone number of the original claimant (including documentation establishing identity, such as; a birth certificate, unexpired passport, or valid driver's license) and a brief history of the original creditor/claimant (from filing the claim to present) which includes, if applicable, any sale, merger, consolidation, buy-out, dissolution, marriage or death of the original claimant together with any supporting documentation;
- c. The petitioner's/applicant's/movant's identity and relationship to the original claimant;
- d. If the petitioner/applicant/movant is the claimant's agent, a statement that the claimant has authorized it to collect the funds, supported by an original power of attorney containing the claimant's notarized signature and such a grant of authority;
- e. If the petitioner/applicant/movant is the claimant's agent, the date copies of the petition/application/motion and any supporting documents were mailed to the claimant; and
- f. The date copies of the petition/application/motion and any supporting documents were mailed to the U.S. Attorney.

An application for unclaimed funds may be filed by a representative of the original claimant. However, any order authorizing distribution of unclaimed funds must require that the check be issued payable to the claimant and the representative applicant jointly so that both must endorse it. Upon receipt of an application for payment of unclaimed funds, and payment of the appropriate fees, the Financial Administrator of the court will review the application and accompanying documents for completeness, determine whether the notice requirements have been met, and verify that the unclaimed funds remain on deposit and that they are being paid to the proper creditor or to an agent entitled to receive unclaimed funds on behalf of the proper creditor. The application, the supporting documentation and the proposed order are then presented to the appropriate judge.

The Application Does Not Show That Any Money is Still Owed to the "Fully Secured" Creditor.

The court's analysis here focuses on the terms "rightful owner" and "right thereto" as prescribed in 28 U.S.C. §§ 2041 & 2042. In support of the Application,

1 CitiCorp. submitted the documents required by the court's Guidelines. However,
2 Commercial Credit's claims were fully secured. As a fully secured creditor,
3 Commercial Credit/CitiCorp. has always had recourse against the collateral, and it is
4 not entitled to receive the uncashed payments that were returned to Enmark unless
5 money is still owed on the underlying obligations. CitiCorp. has that burden of
6 proof.

7 More than ten years have passed since this bankruptcy case was closed.
8 Once the case was closed, Commercial Credit had a right to demand payment of its
9 Secured Claims or repossess its collateral. Based on the passage of time, the court
10 can infer that either the Debtor has resolved any outstanding default in the Secured
11 Claims, or the collateral has been repossessed and sold in compliance with
12 California law. Under either scenario, CitiCorp. is no longer entitled to collect
13 additional payments unless CitiCorp. can show that a deficiency remains on its
14 Secured Claims and can account for how those monies would be applied. Absent
15 such a showing, then it appears that the Unclaimed Funds should be returned to the
16 Debtor.

17 The record does not establish that either the Debtor or his counsel received
18 any notice that some of the chapter 13 payments were unclaimed by Commercial
19 Credit. The Debtor and his counsel did not receive any notice that Enmark was
20 sending the Unclaimed Funds to the clerk of the court. CitiCorp.'s Application was
21 not served on the Debtor or his counsel. The Application reveals nothing about the
22 current status of CitiCorp.'s collateral and the Debtor has not had an opportunity to
23 oppose the Application or respond with an accounting to show whether any money
24 is still owed to CitiCorp.²

25
26 ²Presumably, the Debtor and/or his attorney received a copy of Enmark's final report and
27 account showing monies paid to Commercial Credit on account of the Secured Claims, but there
28 is nothing in the system that required Enmark to give notice that some of the checks were
uncashed by Commercial Credit, or that Enmark had deposited some of the payments with the

Conclusion.

In summary, and absent proof to the contrary, it appears to the court that the Debtor may be the proper party to claim the Unclaimed Funds. At the very least, the Debtor is entitled to receive notice of CitiCorp.'s Application and an opportunity to assert his own claim for return of the monies. The Debtor may submit an application for release of the Unclaimed Funds, either by stipulation with, or on notice to CitiCorp. If CitiCorp. disagrees, then the matter can and should be resolved with a noticed motion.

Based on the foregoing, CitiCorp. has not sustained its burden of proof to show that it is still entitled to receive the Unclaimed Funds. Accordingly, the Application for Unclaimed Funds submitted by CitiCorp., NA, successor-in-interest to Commercial Credit Corp. will be denied without prejudice. CitiCorp. and/or the Debtor may file a motion(s) on notice to the other party for an order directing release of the Unclaimed Funds supported by proper evidence as to whom they should go to.

Dated: July 14, 2010

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

clerk of the court. The Debtor would have to initiate a search of the court's registry to determine if there are any unclaimed funds on account of his bankruptcy case.