

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

CHECKER FLAG LIGHTNING, LLC,  
Debtor.

Case No. DK 07-04223  
Chapter 7  
Hon. Scott W. Dales

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ORDER DENYING APPLICATION  
FOR RELEASE OF UNCLAIMED FUNDS

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

Before closing Case No. 07-04223, the Chapter 7 trustee attempted to satisfy the priority claims of Perfect Line, Inc. and Barnes & Thornburg, LLP<sup>1</sup> by tendering two checks, each jointly-payable. Because Perfect Line and B&T did not negotiate the checks, the trustee paid \$17,648.97 in unclaimed funds (the “Unclaimed Funds”) into the court and filed a Receipt of Unclaimed Funds. Later, the trustee prepared his final report (DN 102), which prompted the court to close the case. The Clerk has kept the Unclaimed Funds in the court’s registry pursuant to 28 U.S.C. § 2041, pending further order.

Several months after the court closed the case, a funds locator known as Dilks & Knopik, LLC (the “Funds Locator”), on behalf of Perfect Line, filed an Application for Release of Unclaimed Funds pursuant to 28 U.S.C. § 2042 (the “Application,” DN 104). By filing the Application, the Funds Locator seeks an order directing the Clerk to issue a check “to the order of Perfect Line Inc. and Dilks & Knopik, LLC.” The Application mentions B&T, but makes no

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<sup>1</sup> The court will refer to Perfect Line, Inc. as “Perfect Line” and to Barnes & Thornburg, LLP as “B&T.”

provision for including that entity as payee, even though the trustee's Receipt of Unclaimed Funds names B&T as one of the intended payees.

The court notes that a 'Split Fund Agreement' between Perfect Line and B&T is also included within the papers docketed as part of the Application, though the agreement post-dates the Application by several months.<sup>2</sup> The Split Fund Agreement directs the court to issue two checks, evenly splitting the Unclaimed Funds between Perfect Line and B&T, without making any provision for the Funds Locator. The court assumes that the Funds Locator is not a mere volunteer and, perhaps by way of assignment or as a "finder's fee," may have some stake in the Unclaimed Funds.

The court's authority to authorize withdrawal of the Unclaimed Funds derives from the Judicial Code, which provides in relevant part as follows:

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

. . . 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.

28 U.S.C. § 2042. Here, the trustee deposited the Unclaimed Funds with the Clerk pursuant to 11 U.S.C. § 347(a) and 28 U.S.C. § 2041. The Funds Locator, evidently as agent for Perfect Line only, filed the Application under 28 U.S.C. § 2042. From the Unclaimed Funds Receipt, however,

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<sup>2</sup> The Clerk time-stamped the Application as "filed" on February 2, 2012, but did not enter the Application on the docket until July 24, 2012. In the interim between filing and docketing, the parties apparently submitted the Split Fund Agreement for the court's consideration, but this document is neither time-stamped nor separately docketed. It appears that some or all of the parties submitted it informally to effect a resolution they reached regarding distribution of the Unclaimed Funds. The court understands and applauds the parties' desire to resolve their dispute consensually and informally, but must insist that parties—and court personnel—adhere to procedures for filing and docketing to ensure a clear, public record of proceedings, and to facilitate appellate review, if necessary.

it appears that B&T may also be a “claimant entitled to” the money within the meaning of that statute.

The right to the Unclaimed Funds has its origin in Perfect Line’s administrative expense claim for attorney fees for work B&T performed as petitioning creditors’ counsel. *See Application of Perfect Line, Inc. for Allowance and Payment of Professional Fees and Reimbursement of Expenses Incurred Pursuant To 11 U.S.C. § 503(3) and (4) (DN 35)*. In other words, Perfect Line has a right to the Unclaimed Funds, but B&T, who played a role in establishing that right, may be asserting a charging lien or other claim to the funds. The trustee, at least, regarded B&T as entitled to the distribution because he issued a joint check in the first place.

Regardless, because it appears from the court’s record that Perfect Line may not be solely entitled to the Unclaimed Funds, the court cannot authorize the Clerk to withdraw the funds *as requested in the Application*. In the words of the statute, Perfect Line has not offered “full proof of the right thereto,” given B&T’s record interest in the funds. *See 28 U.S.C. § 2042; DN 101*.

Nor, for that matter, is the court willing to regard the Application as somehow amended by the Split Fund Agreement. First, the Funds Locator—the only entity that actually petitioned for return of the Unclaimed Funds—is not a party to that agreement and may have a claim to the funds. Honoring the Split Fund Agreement may affect the Fund Locator’s rights. Second, honoring the Split Fund Agreement would depart from the statute, which requires a claimant to petition the court and give notice to the United States Attorney. B&T has not petitioned the court or given the statutory notice.

On the present record, the court cannot approve either the Application or the Split Fund Agreement: the former cuts out B&T, the latter cuts out the Funds Locator, and neither satisfies the statute. Though it seems likely that the Clerk will ultimately be authorized to return the Unclaimed Funds to Perfect Line and B&T with the consent of the Funds Locator, the court must adhere strictly to statutory authority regarding registry funds.

Accordingly, the court will deny the Application, as filed, but will give the parties an opportunity to amend it or otherwise address the court's concerns before that denial will take effect.

NOW, THEREFORE, IT IS HEREBY ORDERED that within 28 days after entry of this Order, Perfect Line, B&T and the Funds Locator may file a stipulation and proposed order, on notice to the United States Attorney, clearly stating their tripartite agreement to a proposed distribution of the Unclaimed Funds. If the United States Attorney does not object to the stipulation within 14 days after service upon him, the court will review the stipulation and, if acceptable, sign the proposed order.

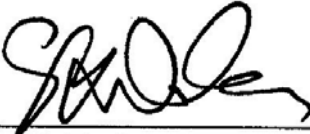
IT IS FURTHER ORDERED that if the parties do not timely comply with the immediately preceding paragraph, the Application (DN 104) shall be DENIED without prejudice and without further order or notice, and the Unclaimed Funds shall remain on deposit with the court.

IT IS FURTHER ORDERED that the Clerk shall serve this Order by first class United States Mail upon John T. Gregg, Esq., Perfect Line, Inc., Dilks & Knopik, LLC, Scott Chernich, Esq., the United States Trustee, and the United States Attorney.

**IT IS SO ORDERED.**

**Dated August 9, 2012**



  
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Scott W. Dales  
United States Bankruptcy Judge