

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 98-53857
)	
DONALD TAYLOR,)	CHAPTER 7
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	ORDER CLOSING CASE
)	

This case came on for hearing (“Hearing”) before the Court on January 30, 2007 pursuant to the Notice of Receipt of Additional Proceeds of Settlement (“Notice”)(docket #41) filed by the Chapter 7 Trustee, Kathryn A. Belfance (“Trustee”), and the Second Application To Pay Special Counsel Patrick J. Hart (“Application”)(docket #42) for services rendered as counsel to the Trustee. Trustee participated in the Hearing telephonically.

I.BACKGROUND

This Chapter 7 case was commenced on December 4, 1998 with the filing of a voluntary petition. This Court entered an order granting Trustee’s Application To Employ Attorney Patrick J. Hart of Scanlon & Gearinger Company as special counsel on May 21, 1999 (docket #15). Mr. Hart assisted the Trustee in the litigation of a personal injury claim by negotiating a settlement in Franklin County Common Pleas Case No. 97CVH12-10867, *Benjamin et. al. v. The P.I.E. Mutual Insurance Company*. On December 27, 1999, this Court granted Trustee’s Motion To Compromise and Settle Litigation between debtor, Donald

Taylor (“Debtor”) and University Neurosurgeons of Cleveland, Inc. et. al. for the sum of \$450,000 (docket #23), and on December 28, 1999, granted Mr. Hart’s Application For Attorney’s Fees (docket #24) in the amount of \$150,000, with expenses of \$46,724.68. The Trustee’s Final Report and Account was filed on October 12, 2000, showing receipts totaling \$450,315.67 (docket #28). The Order of Final Allowance was entered on December 15, 2000 reflecting the fact that the unsecured creditors were paid 100% with interest (docket #32). The case was closed on May 30, 2001.

On September 14, 2006 Trustee filed a Motion to Reopen Debtor’s Chapter 7 case (“Motion”)(docket #38). The subject of Trustee’s Motion was the “proceeds from a settlement claim of approximately \$300,000 remaining in the bankruptcy estate, which is to be administered by her for the benefit of creditors of the within case.” An order granting the Motion (“Order”) was entered September 18, 2006 (docket #39). Trustee states in her Notice that on October 14, 2006, she received a check in the amount of \$315,000 as an initial 35% distribution from the Office of the Ohio Insurance Liquidator.

During the Hearing, Trustee emphasized repeatedly to the Court that neither she nor Mr. Hart had reason to anticipate additional payment from the personal injury litigation, and that receipt of these funds came as a complete surprise. Additionally, Trustee informed the Court of several operative and previously unknown facts which were not disclosed in the Motion. First, Debtor is now deceased. He died on February 19, 2005, and his estate is being administered by the Portage County Probate Court under Case No. 2005 ES 00231, *Estate of: Donald Taylor* (“Estate”). Debtor’s Estate is an Administration with the fiduciary listed as Derrick Taylor. Further, Trustee’s Motion alluded to the typical pattern of the existence of unsatisfied claims, which was unquestionably the basis upon which this Court granted the Motion. However, Trustee advised the Court during the Hearing that the creditors of Debtor’s bankruptcy estate were paid in full with interest. As a whole, these facts present a different scenario and dictate a different outcome.

II. DISCUSSION

The section of the Bankruptcy Code governing distribution of estate property in Chapter 7 cases is 11 U.S.C. 726(a).¹ This section establishes the order in which claims are

¹§ 726. **Distribution of property of the estate:**

(a) Except as provided in section 510 of this title, property of the estate shall be distributed--

paid. If those claims are fully satisfied and money still remains, then the trustee turns over that balance to the debtor. *See 11 U.S.C. 716(a)(6)*. Stated inversely, a Chapter 7 debtor only becomes entitled to a distribution when all other claims are paid in full. *Id*; *see also In re Air Safety International, L.C.*, 336 B.R. 843, 856-857 (S.D. Fla. 2005), citing *Perry v. First Citizens Fed. Credit Union*, 304 B.R. 14, 22 (D. Mass 2004), *aff'd*, 391 F.3d 282 (1st Cir. 2004). This particular strategy “is designed to prevent debtors from receiving an unfair windfall, at the expense of their creditors.” *In re Air Safety International, LC*. 336 B.R. at 857, citing *In re El Paso Refinery, L.P.*, 244 B.R. 613, 619 (Bankr. W.D. Tex. 2000).

III. CONCLUSION

The crucial fact here is that the creditors in Debtor’s bankruptcy estate were paid in full. Thus, by operation of law in accordance with the scheme of distribution set forth in 11 U.S.C. 726(a), the surplus proceeds which are the subject of this matter belong to Debtor, more specifically to Debtor’s Estate, to be administered in conformity with the laws of the State of Ohio. Trustee has advanced no basis upon which this Court has jurisdiction over this proceeding. Accordingly, the Order reopening Debtor’s bankruptcy estate was entered unnecessarily and in error.

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- (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commences distribution under this section;
 - (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is--
 - (A) timely filed under section 501(a) of this title;
 - (B) timely filed under section 501(b) or 501(c) of this title; or
 - (C) tardily filed under section 501(a) of this title, if--
 - (i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and
 - (ii) proof of such claim is filed in time to permit payment of such claim;
 - (3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;
 - (4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;
 - (5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and
 - (6) sixth, to the debtor.

Based on the foregoing, Debtor's bankruptcy estate is hereby closed, and Trustee's Application is denied for lack of jurisdiction. The issues raised in Trustee's Application are more properly the subject of consideration for the Portage County Probate Court. Trustee is responsible for payment of the required filing fee associated with the Motion.

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cc: (via electronic mail) Kathryn A. Belfance, Trustee

(via regular mail) Frank Cimino
250 S. Chestnut St. #18
Ravenna, Ohio, 44266

(via regular mail) Derrick Taylor
1527 Benjamin Ct.
Kent, Ohio 44240