




SO ORDERED.

SIGNED this 03rd day of November, 2008.


LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Texas
San Antonio Division

IN RE

JOSEPH A. CHAFFIN

DEBTOR

BANKR. CASE NO.

99-51329-C

CHAPTER 7

ORDER DENYING APPLICATION TO DISBURSE UNCLAIMED FUNDS

CAME ON for consideration the foregoing matter. An application to disburse unclaimed funds, totaling \$20,947.28, was filed by Charlene J. Keys, self-identified as a person with Keys Research, 23630 S.E. 440th St., Enumclaw, Washington, seeking a dividend for “Joseph A. Chaffin” with a mailing address of 9723 Hidden Rock, San Antonio, Texas. According to the application, the identified intended recipient did not receive a distribution originally “because the debtor did not receive the check at the address on the Trustee’s Report of 9723 Hidden Rock, San Antonio, TX 78250, which is still the current address of the debtor.” In other words, the application appears to have been made on behalf of the debtor, Joseph A. Chaffin, whose address was and still is 9723 Hidden Rock, San Antonio, TX 78250.

According to the chapter 7 Trustee's Deposit of Unclaimed Dividends, disbursements were in fact due to *Joseph Chaffin, Jr.* on two claims (Claim Numbers 11A and 11B), totalling \$20,847.28. The listed address for Joseph Chaffin, Jr. was "c/o Carl Kolb, P. O. Box 876, San Antonio, Texas 78293. A review of the docket in the case shows that Joseph Chaffin, Jr. is the *son* of the debtor. The debtor, Joseph A. Chaffin, and Theresa Chaffin were divorced at some point during the pendency of the bankruptcy case (there is an order of severance dated March 17, 1999). Theresa entered an appearance on behalf of her son, acting as next friend. The correct recipient of the unclaimed funds is thus not the debtor, Joseph A. Chaffin, but the debtor's *son*, Joseph Chaffin, Jr., through his next friend (and mother) Theresa Chaffin..

The current application by Charlene J. Keys thus appears to have been filed on behalf of the *debtor*, not on behalf of the son, the rightful claimant to the funds. The court says "appears" because there is also an attachment to the application, an affidavit purporting to be that of *Joseph A. Chaffin, Jr.*, and bearing what purports to be his signature. However, the affidavit is not "sworn to and signed" –*i.e.*, it does not contain a jurat. Instead, it has an "acknowledgment." The two are not the same. *See Wilde v. Buchanan*, 303 S.W.2d 518, 519 (Tex.Civ.App. – Austin 1957, writ ref'd n.r.e.), *Conn, Sherrod & Co. v. Tri-Electric Supply Co.*, 535 S.W.2d 31, (Tex.Civ.App. – Tyler 1976, writ ref'd n.r.e.). In addition, there is nothing attached to the application (such as a driver's license) to confirm that the signature of Joseph A. Chaffin, Jr. on the affidavit is genuine. The fact that the application itself seems to indicate that it is on behalf of the father, and not the son, that Ms. Keys is making the application raises serious questions about the *bona fides* of this application.

Section 2042 of title 28 controls the disposition of funds deposited in the court's registry. That section permits a claimant to obtain such funds if it (1) files an application, (2) notifies the U.S. Attorney, and (3) shows within the body of the application itself that it is entitled to the monies by

providing full proof of the right thereto.” *See* 28 U.S.C. § 2042; *In re Bradford Prod.*, 375 B.R. 356, 358 (Bankr. E.D.Mich. 2007). An application has in fact been filed, though it is unclear whose application it really is – the son’s or the father’s. The first requirement is thus here suspect. The pleading was served on the U.S. attorney, fulfilling the second requirement. The failings detailed above, however, demonstrate that the application falls well short of the third requirement of “full proof of a right” to the monies on hand. It is worth noting that the fact that some creditors cannot be located and so do not receive their distributions does not transform the unclaimed funds into a surplus to be distributed back to the debtor. *See id.*

Because this application is defective, it is denied.

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