UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	:	CASE No. 16-20572 (JJT)
	:	
NORWICH EYE CARE, P.C.,	:	CHAPTER 7
DEBTOR.	:	
	:	RE: ECF No. 11

ORDER DENYING THE TRUSTEE'S MOTION
TO AUTHORIZE THE RETURN OF ESTATE FUNDS TO THE DEBTOR

Before the Court is the Chapter 7 Trustee's Motion to Authorize the Return of Estate Funds to the Debtor (ECF No. 11, the "Motion"). For the reasons set forth below, the Motion is DENIED.

The return of estate funds to the Debtor would be inconsistent with the Supreme Court's holding in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017), which determined that a bankruptcy court may not approve a structured dismissal that provides distributions in contravention of the ordinary priority rules, absent consent of affected creditors. *Id.* at 983. Though *Jevic* confronted a Chapter 11 case, the Supreme Court's admonitions apply with equal force in the context of Chapter 7: "In Chapter 7 liquidations, priority is an absolute command—lower priority creditors cannot receive anything until higher priority creditors have been paid in full." *Id.* (citing 11 U.S.C. §§ 725, 726).

While the U.S. Trustee urges this Court to recast the Motion as seeking to abandon assets, under § 554 of the Bankruptcy Code, rather than seeking to distribute them, this case does not present the conventional abandonment of a burdensome or unmonetized asset. Instead, the Chapter 7 Trustee seeks to abandon money to the Debtor because distribution of the relatively

modest sum at issue, approximately $3,300, among many creditors may not be cost-effective, may incur disproportionate administrative costs, or may simply benefit priority or secured creditors. This Court is not unmindful of such concerns, but neither is the Bankruptcy Code and its related rules. *See* 11 U.S.C. § 347(a); Fed. R. Bankr. P. 3010-11.

When estate funds are unclaimed, or they are insufficient to provide a dividend of at least five dollars to a particular creditor, *see* Fed. R. Bankr. P. 3010, "the trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code." Fed. R. Bankr. P. 3011. "Funds are unclaimed when the disbursement agent . . . has done everything he is required to do to distribute the funds, reasonable notice of the availability of the funds has been given to the intended recipient and the intended recipient has done nothing for a period of time sufficient to evince a lack of interest in the funds or an abandonment of his right to the funds." *In re IBIS Corp.*, 272 B.R. 883, 890 (Bankr. E.D. Va. 2001) (noting that a check mailed to a creditor that is not returned and not cashed within a reasonable period is unclaimed).

If the Chapter 7 Trustee has provided the secured creditor in this case with reasonable notice of the availability of the funds, and the secured creditor has relinquished those funds through inaction, then the funds would be unclaimed by that creditor. *See id.* To the extent any such unclaimed funds are insufficient to provide dividends to particular creditors of at least five dollars, then those funds "shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code." Fed. R. Bankr. P. 3010. The Court will not ignore the plain language of § 347, or circumvent related bankruptcy rules, so that funds may revert to a Chapter 7 debtor with no creditor having been served by the bankruptcy process.

Invoking the doctrine of abandonment does not alter this conclusion. A movant seeking to abandon estate property "has the burden of proving that such property interest is burdensome to the estate or that it is of inconsequential value and benefit to the estate." *In re Winsted Mem'l Hosp.*, 249 B.R. 588, 595 (Bankr. D. Conn. 2000) (internal quotations omitted). It is no answer, and certainly no *prima facie* case, that complying with bankruptcy rules is burdensome or that dividends deemed consequential therein are somehow not consequential by virtue of a Chapter 7 or U.S. Trustee's fiat.

The Court credits the Trustees' concerns regarding efficiency and the potential appearance of self-dealing by unscrupulous Chapter 7 trustees. Nonetheless, a Chapter 7 Trustee may not substitute his business judgment, or that of any Guidelines of the U.S. Trustee's Office, concerning the cost-effective administration of a modest estate for the considered judgment embodied in the Federal Rules of Bankruptcy Procedure.

The Chapter 7 Trustee shall administer the estate pursuant to § 347 and the Federal Rules of Bankruptcy Procedure. To the extent any funds remain unclaimed, those funds shall be transferred to the Clerk's office in accordance with those rules, and made available for claims by creditors, or eventual escheat to the U.S. Treasury. *See* Fed. R. Bankr. P. 3010-11; *see also* 28 U.S.C. § 2041; Standing Order No. 6 Re Disposition of Unclaimed Funds (D. Conn. Sept. 22, 1998).

IT IS SO ORDERED at Hartford, Connecticut this 12th day of April 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut