

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

WAYNE LEE TAYLOR,
CAROLE ANN TAYLOR

Case No. 96-40543

Debtor(s).

WAYNE LEE TAYLOR,
CAROLE ANN TAYLOR,

Plaintiff (s) ,

v.

Adversary No. 96-4091

BOB G. KEARNEY,

Defendant(s).

OPINION

This case involves a dispute between the debtors and the Chapter 13 trustee concerning the rights to certain funds being held by the Chapter 13 trustee which were paid by the debtors prior to their conversion of the Chapter 13 case to a Chapter 7 proceeding. A Chapter 13 plan was never confirmed. The debtors' counsel maintains that the funds being held by the Chapter 13 trustee are no longer property of the Chapter 13 estate, nor are they property of the debtors' Chapter 7 estate, and, consequently, the funds belong to the debtors. The trustee contends that, pursuant to this Court's preconfirmation distribution order, the trustee is obligated to distribute funds being held by the trustee, even prior to confirmation, to the creditors of the debtors.

It is uncontroverted that if the Chapter 13 trustee is not entitled to the funds he is holding, they belong to the debtors. It is also clear that if the Court had not entered a preconfirmation distribution order, these funds would necessarily belong to the debtors since no Chapter 13 plan was ever confirmed. See 11 U.S.C. § 348(f)(1)(A); In re Bobroff, 766 F.2d 797, 802-03 (3d Cir. 1985) (property acquired by Chapter 13 debtors after filing does not constitute property of Chapter 7 estate upon conversion but belongs to the debtors). The preconfirmation distribution order does not alter this outcome. That order

directs the trustee to distribute the proceeds being paid pursuant to the proposed plan even though no confirmation has occurred. It protects the trustee from liability for distributing proceeds prior to confirmation. It does not authorize the trustee, once the case has been converted, to continue to make payments pursuant to the proposed Chapter 13 plan. Rather, once the Chapter 13 trustee has knowledge of the conversion of a case where no plan has been confirmed, the trustee is required to turn over any funds held by him to the debtors.

Therefore, the Court finds for the plaintiff debtors and against the defendant Chapter 13 trustee on the plaintiffs' complaint.

SEE WRITTEN ORDER.

ENTERED: December 12, 1996

/s/ Kenneth J. Meyers
United States Bankruptcy Judge