

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

Case No. : 04-26039-BKC-PGH

B&B Plastics, Inc.,

Chapter 7

Debtor.

DENNIS PIXTON

Plaintiff.

v.

Adv. Proc. No. 04-2369-BKC-PGH-A

**B&B Plastics, Inc., and
SONYA SALKIN, Trustee,**

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING TRUSTEE'S CROSS-MOTION FOR SUMMARY JUDGMENT**

This Cause came before the Court on Dennis Pixton's (the "Plaintiff") Motion for Summary Judgment (the "Motion"). B&B Plastics, Inc., (the "Debtor") and Sonya Salkin (the "Trustee") filed a Response and Cross-Motion for Summary Judgment (the "Cross-Motion"). The Plaintiff filed a Reply to the Cross-Motion. The parties filed a Joint Stipulation of Facts on May 2, 2005. The Court having considered the motions and memoranda, and being otherwise fully advised in the premises hereby **DENIES** the Motion and **GRANTS** the Cross-Motion.

Facts

This case involves whether funds formerly held in the Debtor's attorney's trust account, and now held by the Trustee, constitute property of the estate, which would be available for distribution to all creditors of the Debtor. On October 5, 2004, the Debtor filed a petition under Chapter 7 of the Bankruptcy Code. Among the items listed on its schedules are funds in the

amount of \$224,299.67, which were being held by Richard Bagdasarian, Esq., (“Bagdasarian”). Bagdasarian was trial counsel for the Debtor in a patent infringement case brought by the Plaintiff in the District Court for the Southern District of Florida (the “District Court”), *Dennis M. Pixton v. B&B Plastics, Inc., a Florida Corporation d/b/a Gambler, Michael Surman, individually and, Russell Bringger*, Case No. 99-6360-CIV-Marra (the “District Court Case”).

In 1992, the parties entered into a licensing agreement, which provided that the Debtor would pay royalties to the Plaintiff in exchange for the exclusive right to make and sell the Plaintiff’s patented design for a fishing lure. The Debtor made royalty payments to the Plaintiff until sometime in 1998 when the Plaintiff rejected the payments, claiming that the Debtor had breached the licensing agreement. On November 1998, the Plaintiff notified the Debtor that it was terminating the licensing agreement. However, the Debtor attempted to affirm the licensing agreement by continuing to make the royalty payments, which it deposited into Bagdasarian’s trust account.

In the District Court Case, the Plaintiff sued the Debtor for patent infringement. The Debtor counterclaimed for patent invalidity, unfair competition, violation of the Lanham Act¹, and breach of contract. During the District Court Case, the Debtor sought permission to deposit a portion of the royalty payments with the District Court pursuant to Rule 67 of the Federal Rules of Civil Procedure. In its Motion for Leave to Make Deposit in Court (the “Motion for Leave”), the Debtor requested that it be permitted to deposit future sums into the Court registry because “[t]he Plaintiff may be entitled to additional royalties . . .” Also in the Motion for Leave, the Debtor requested relief wherein “. . . the Court direct the final disposition of the funds shall be

¹15 U.S.C. § 1125.

determined by subsequent Order of the Court.” The Plaintiff did not object to the funds being deposited in the District Court registry. However, no court order was entered determining the custody of the funds, and the royalty payments remained in Bagdasarian’s account.

It appears that the Motion for Leave was not specifically heard by the District Court, but the issue of the funds in Bagdasarian’s account was addressed in a September 15, 2000 hearing on the Plaintiff’s Motion for Reconsideration of Order of Dismissal. At that hearing, the following exchange took place between the District Court and Bagdasarian:

The [c]ourt: By the way, there was \$60,000.00 in an escrow account. Where is that money?

Mr. Bagdasarian: It is still in escrow.

The [c]ourt: Earning interest?

Mr. Bagdasarian: No sir. We got to a point where we were waiting to hear what happened. We didn’t know what to do. It is money that my client willingly put in escrow.

...

The [c]ourt: In whose account is it?

Mr. Bagdasarian: Mine, your honor.

The [c]ourt: Well, take it out of your account and put it in an escrow account that bears interest.

Mr. Bagdasarian: Yes, sir, I will do it right away.

The funds were never put in an escrow account as ordered by the District Court, but instead remained in Bagdasarian’s account. The only distribution of funds from the account occurred by agreement of the parties in April 2002. Bagdasarian disbursed \$15,000.00 from the account to the Plaintiff’s counsel, Richard Saccocio. Neither party has indicated why this distribution took place, and there is no District Court order regarding this distribution.

The District Court Case went to trial in June 2004. The jury returned a verdict finding that the Debtor had infringed the Plaintiff’s patents and awarded the Plaintiff \$852,925.00 in damages. During the jury’s deliberations, it asked the District Court “[w]hat is the disposition of the escrow money?” The District Court replied: “[r]egarding your question as to the disposition

of the escrow money, the court will enter an order relative to distribution of the escrow money after you have resolved the questions presented to you on the verdict form.” On July 12, 2004, the District Court entered a Final Judgment in favor the Plaintiff awarding him \$852,925.00 plus interest. The Debtor was enjoined from making, using, offering, or selling any fishing lure² that infringes the Plaintiff’s patents. All of the Debtor’s counterclaims against the Plaintiff were denied. However, the Final Judgment did not address or dispose of the funds that still remained in Bagdasarian’s account.

On August 2, 2004, the District Court entered an order denying the Debtor’s Motion for a New Trial (the “Order Denying New Trial”).³ In the Order Denying New Trial, the District Court mentioned a writ of garnishment against the Debtor’s trial counsel regarding the funds he held for the Debtor and ordered as follows:

Plaintiff has filed a motion to seal a motion for writ of garnishment. The writ of garnishment is directed to Defendant’s counsel, Richard C. Bagdasarian, seeking an answer as to whether counsel is indebted to [the Debtor]. Presumably, this motion for a writ is directed to the escrow account mentioned above. This account contains approximately \$224,000.00 in royalties that have not been paid to Plaintiff. The money in escrow is apparently held in Attorney Bagdasarian’s trust account. The Court finds no grounds not to grant the writ. However, the writ appears superfluous, given that Attorney Bagdasarian, as an officer of the court, is obligated not to disperse money from his trust account without proper authorization.

On September 27, 2004, the Plaintiff filed a Motion Regarding Escrowed Funds seeking to clarify the status of the funds held in Bagdasarian’s account and to release the funds to the

²The Final Judgment described the device as a “fishing weight.”

³In August 2004, the Debtor appealed the Final Judgment of the District Court to the Court of Appeals for the Federal Circuit. The Trustee abandoned this appeal on behalf of the Debtor’s estate.

Plaintiff. The Debtor filed a Reply to Motion Regarding Escrowed Funds on or about September 29, 2004. These motions were pending when the Debtor filed its Bankruptcy petition.

After the commencement of the bankruptcy case, the Trustee became aware of the funds held by Bagdasarian. She made a demand for turnover of the funds to Bagdasarian on or about October 5, 2004. In response to the Trustee's demand, Bagdasarian turned \$233,332.40 over to the Trustee.⁴ On December 28, 2004, the Plaintiff filed the present adversary complaint.

Conclusions of Law

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E). This is a proceeding to determine property of the estate pursuant to 11 U.S.C. § 541(a).

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to bankruptcy proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that Summary Judgment is appropriate if the Court determines that the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In considering a motion for summary judgment, “the court’s responsibility is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party.” *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 11 (2d

⁴The propriety of Bagdasarian’s turning the funds over to the Trustee, and any sanctions for breach of the District Court’s oral ruling on September 15, 2000, is an issue for the District Court, not this Court.

Cir. 1986), *cert. denied*, 480 U.S. 932 (1987) (citing *Anderson*, 477 U.S. at 248). Summary Judgment is appropriate when, after drawing all reasonable inferences in favor of the party against whom summary judgment is sought, no reasonable trier of fact could find in favor of the non-moving party. *Anderson*, 477 U.S. at 248-49.

In a motion for summary judgment, the moving party initially bears the burden of establishing the absence of a genuine issue as to any material fact. *See Celotex*, 477 U.S. at 322 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159 (1970)). That burden can be satisfied by demonstrating the absence of evidence supporting the nonmovant's case. *See id.* at 325. When a motion for summary judgment is made and supported by the movant, Federal Rule of Civil Procedure 56(e) requires the nonmoving party to set forth specific facts demonstrating that genuine issues of material fact remain for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 586-87 (1986). The party opposing a summary judgment motion "must do more than simply show that there is some metaphysical doubt as to the material facts," and mere conclusions are not enough to create an issue of material fact. *Matsushita*, 475 U.S. at 586.

The Plaintiff argues that money held by the court in trust, or held *in custodia legis*⁵ by the court, is not property of a debtor's estate in bankruptcy. The Plaintiff asserts that because the funds were not property of the estate, it was unlawful for Bagdasarian to turn over the funds to the Trustee. The Plaintiff also argues that since the Debtor deposited the royalty payments into Bagdasarian's trust account, the Debtor cannot now claim ownership of the royalties paid pursuant to the license agreement. In addition, the Plaintiff argues that the funds deposited into

⁵*In custodia Legis* "is defined as "in the custody of the law." Black's Law Dictionary explains that "[t]he phrase is traditionally used in reference to property taken into the court's charge during pending litigation." Black's Law Dictionary 771 (7th ed. 1999).

Bagdasarian's trust account were in escrow because the District Court's order of September 15, 2000, turned Bagdasarian's account into an "effective surrogate for an escrow agreement."

Therefore, the Plaintiff concludes that the Debtor did not have legal title to the disputed funds when it filed its bankruptcy petition, and the funds should either be turned over to the Plaintiff or to the District Court.

The Trustee argues that the funds in the Debtor's attorney's account were not in an escrow account nor were they being held in *custodia legis* because the funds were not the subject of an explicit escrow agreement and were never in the custody of the District Court. The Trustee further argues that because the funds were never placed into a court registry, were never subject to a written escrow agreement, and were never distributed to the Plaintiff prior to the filing of the Debtor's chapter 7 petition, the funds are property of the Debtor's estate. The Trustee concludes that to hold otherwise than the funds are property of the estate "would be to allow an unsecured judgment creditor who garnishes within the preference period to have a superior claim over the Trustee's avoiding powers."

"A debtor's estate in bankruptcy consists of 'all legal and equitable interests of the debtor in property as of the commencement of the case.'" *T & B Scottsdale Contractors, Inc. v. United States*, 866 F.2d 1372, 1376 (11th Cir. 1989) (quoting 11 U.S.C. § 541(a)(1)). "The extent and validity of the debtor's interest in property is a question of state law." *Scanlon v. NASD (In re Scanlon)*, 239 F.3d 1195, 1197 (11th Cir. 2001) (quoting *T & B Scottsdale Contractors*, 866 F.2d at 1376). "Under Florida law, 'legal title to property placed in an escrow account remains with the grantor until the occurrence of the condition specified in the escrow agreement.'" *Id.* (quoting *Dickerson v. Central Fla. Radiation Oncology Group*, 225 B.R. 241, 244 (M.D.Fla. 1998)). However, "funds that are deposited into an escrow account by a debtor, for the benefit of

others, cannot be characterized as property of the estate.” *Id.* (quoting *Feltman v. Bd. of County Comm’r of Metro. Dade County (In re S.E.L. Maduro)*, 205 B.R. 987, 990-91 (Bankr. S.D.Fla. 1997)).

The fundamental question facing the Court is how to characterize the account held by the Debtor’s counsel. The Court holds that the disputed funds were not held in an escrow account because there was no written escrow agreement or court order which specified the terms of such agreement or the conditions under which the funds in the account would be released.

The Plaintiff cites *Branch v. United States*, 100 U.S. 673, 674 (1879), as support for the argument that funds deposited into a court registry are held in trust for the benefit of the one ultimately entitled to the funds. In *Branch*, 100 U.S. at 673, the United States Marshall seized cotton belonging to the appellant pursuant to the Confiscation Act. The cotton was sold pursuant to a court order, and the proceeds were paid to the clerk of the court. *Id.* The clerk deposited the money into a bank that the Secretary of the Treasury had designated as a depository of public money. *Id.* When the bank failed, a dividend was paid to the court and the claimants to the funds, but a balance still remained. *Id.* at 674. The claimants sued the United States for the balance of the funds because the cotton seized in the underlying condemnation suit was not liable to confiscation. *Id.*

The Supreme Court held that the money deposited with the clerk of the court was held as a trust pending the litigation. *Id.* Although the money was deposited into a bank designated as a depository for treasury purposes, the money did not belong to the Treasury. *Id.* The Court held that no one could withdraw the contested funds except for the court hearing the case or the clerk of that court, and “[the money] was held for the benefit of whomsoever in the end it should be found to belong.” *Id.* The Plaintiff argues that this case is analogous to *Branch* because the funds

deposited by the Debtor into Bagdasarian's account were held by him "for the benefit of whomsoever in the end [they] should be found to belong." The Plaintiff argues that this case is also analogous to *Branch* because Bagdasarian was not authorized to disperse the funds to the Trustee without an order from the District Court.

The Plaintiff also cites *Baxter v. United Forest Products, Co.*, 406 F.2d 1120, 1125 (8th Cir. 1969), as authority for the argument that the funds paid into Bagdasarian's account were royalties belonging to the Plaintiff. In *Baxter*, a lumber company purchasing another company brought suit to affirm a purchase agreement because the forfeiture provisions in the contract made rescission impractical. 406 F.2d at 1122 The district court relied on Rule 67 of the Federal Rules of Civil Procedure⁶ in ordering all monies due and payable under the contract to be deposited into the registry of the court. *Id.* at 1122-23.

The Sixth Circuit reversed the district court in holding that the lumber company had no recognizable interest in the funds in the court registry because it affirmed the purchase contract. *Id.* at 1125. Once it affirmed the contract, the money paid by the plaintiff-company under the contract legally belonged to the defendants. *Id.* The Sixth Circuit explained that paying the funds

⁶Rule 67 of the Federal Rules of Civil Procedure provides:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Title 28 . . . The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

into the court registry did not deprive the defendants of ownership of the funds because the court was merely holding the funds in trust for “the rightful owner.” *Id.* The Sixth Circuit further explained that Rule 67 applies “only to a fund that is in dispute,” and the funds in the case were not in contest because the lumber company elected to affirm the contract and sue the defendants in tort. *Id.* at 1126.

The Plaintiff argues that the present case is analogous to *Baxter* because the funds in Bagdasarian’s trust account were held under supervision and by order of the District Court. As in *Baxter*, the Plaintiff asserts that the District Court’s supervision of the funds and Bagdasarian’s custodianship of the account did not deprive the Plaintiff of ownership of the funds. The Plaintiff concludes that the Debtor’s election to affirm the license agreement and sue the Plaintiff for its breach means that the Debtor disclaimed ownership of the funds when the funds were deposited into Bagdasarian’s account and that the Debtor cannot now claim ownership of the royalties paid pursuant to the license agreement.

However, this case is unlike *Baxter* because, in this case, the Plaintiff sued the party that placed the funds into the contested account for patent infringement; whereas, in *Baxter*, the party that placed the funds into the court’s registry sued the defendants for a determination of ownership of the funds in the court’s registry. In this case, the Plaintiff did not seek a determination of the ownership of the funds in Bagdasarian’s trust account. In addition, the money paid into Bagdasarian’s trust account is not a direct proxy for damages for patent infringement. The District Court explicitly declined to determine ownership of the funds in Bagdasarian’s trust account during the trial phase of the District Court Case. Instead, the District Court indicated that it would enter a separate order on the disposition of the funds after the jury returned its verdict.

In addition, the conditions that would trigger the release of the funds to the claimants in *Baxter* were clear. *See Baxter*, 406 F.2d at 1123, 1127. The court in *Baxter* held that any damage to the Plaintiff would not entitle it to the balance of the funds remaining in the court registry because the Plaintiff affirmed the contract. *Id.* at 1127. Therefore, the Plaintiff had no interest in the funds in the registry, but could only recover damages arising out of the alleged excess consideration paid on the contract. *Id.* The court affirmed the disbursement of funds from the registry after it established a particular defendant's entitlement to those funds. *Id.* In this case, the District Court never determined ownership of the funds in Bagdasarian's account and never determined under what conditions it would allow their disbursement.

The Plaintiff also argues that the Trustee, on behalf of the Debtor, is pursuing inconsistent forms of relief to the detriment of the Plaintiff as did the lumber company in *Baxter*. *See Baxter*, 406 F.2d at 1125. Although both cases involve monetary disputes, the Plaintiff in this case did not sue for possession or turnover of the funds. Instead, the Plaintiff initiated the underlying suit for patent infringement and not for turnover of the funds in Bagdasarian's account. Another difference from *Baxter* is that in this case *the Trustee*, not the Debtor, is asserting an interest in the funds. The Trustee is a different party than the Debtor, and the Trustee may assert a different position than the Debtor did in pre-bankruptcy litigation. *See An-Tze Cheng v. K & S Diversified Inv., Inc. (In re An-Tze Cheng)*, 308 B.R. 448, 455 (B.A.P. 9th Cir. 2004) (position taken by trustee in litigation inconsistent with position taken by Debtor in litigation where trustee not a party, is not an inconsistency that warrants judicial estoppel).

Futhermore, the Plaintiff necessitated the Debtor's putting the royalty payments into Bagdasarian's trust account when he refused to accept the royalty payments from the Debtor. Now the Plaintiff seeks the turnover of those funds, which he previously refused to accept. It is

the *Plaintiff's* course of action which most closely resembles the lumber company's pursuit of inconsistent forms of relief in *Baxter*. Moreover, without some indication from the District Court that it intended that the funds in Bagdasarian's account were held in trust for the benefit of the Plaintiff, this Court cannot find that the funds in Bagdasarian's account were earmarked for the Plaintiff in case a jury verdict was rendered in his favor.

In addition, the Plaintiff argues that this case resembles *Baxter* because Bagdasarian paid \$15,000.00 to the Plaintiff in April 2002 in "tacit recognition that sooner or later the royalties would go to [the Plaintiff]." In *Baxter*, 406 F.2d at 1125, "the district court itself tacitly recognized that the fund belonged to the defendants by disbursing a small portion of it to some of the defendants . . ." The difference between the cases is that in *Baxter*, the district court disbursed some of the funds to a group of shareholders that were not accused of fraud after it determined that the defendants were entitled to them. In this case, the attorney for the Debtor dispersed the funds by some agreement of the parties, and not by an order of the District Court. Unlike *Baxter*, there is no tacit recognition by the District Court through Bagdasarian's disbursement that the funds belonged to the Plaintiff. The condition that triggered this disbursement was not the result of a clear court order that indicated the Plaintiff had title to the funds in the account.

The Plaintiff also makes a similar argument that money deposited into court by a debtor, or held in *custodia legis*, prepetition is not property of the debtor's estate. He cites *Mid-Jersey Nat'l Bank v. Fidelity-Mortgage Investors*, 518 F.2d 640 (3d Cir. 1975); *In re: Casco Chem. Co.*, 335 F.2d 645 (5th Cir. 1964); *Saper v. West*, 263 F.2d 422 (2d Cir. 1959); and *In re Celotex Corp.*, 128 B.R. 478 (Bankr. M.D.Fla. 1991), as support for the general proposition that money deposited with a court or held in *custodia legis* is not property of the estate. These cases are

distinguishable from the present case. These cases deal with money in a court registry that a party posted as a supersedeas bond to stay execution of a judgment, money a party deposited by means of a certificate of deposit to stay execution of a judgment, money a non-debtor party deposited in an interpleader action but admitted liability on a sum certain, or money a party deposited with a court pursuant to a judgment. *See In re Celotex Corp.*, 128 B.R. at 480-482 (supersedeas bonds posted to stay execution of adverse personal injury judgment pending appeal)⁷; *Mid-Jersey Nat'l Bank*, 518 F.2d at 642 (certificate of deposit paid to clerk of court to stay execution of adverse summary judgment pending appeal); *In re Casco Chem. Co.*, 355 F.2d at 646-49 (contested funds in court registry not deposited by debtor, but instead as result of interpleader action); *Saper*, 263 F.2d at 426-27 (contested funds deposited with clerk of court by order of court and after judgment of court).

In each case, the funds were deposited under court supervision pending the results of an appeal, interpleader, or other court action. The deposits took place upon the condition that the funds would be disbursed to the prevailing party after appeals were exhausted or the interpleader action was completed. In this case, the Debtor deposited the funds into Bagdasarian's account well before the Plaintiff received his favorable judgment and in an effort to fulfill its contractual obligations under the license agreement, and not as the result of an adverse judgment or other court ruling. The conditions that would trigger the disbursements in the above cases were clear. In this case, the conditions, if any, that would trigger disbursement of the funds remain obscure.

⁷The court in *In re Celotex Corp.*, 128 B.R. at 481, distinguished *Mid-Jersey Nat'l Bank*, because the latter case was decided under pre-Code law and did not address the "expansive view established by Congress in Section 541 and Section 362 of the Bankruptcy Code." However, the court in *Celotex*, 128 B.R. at 482, determined that its holding that supersedeas bonds in place at the time of filing a bankruptcy petition are protected from creditors during the appeal process was consistent with *Mid-Jersey*.

The Plaintiff also argues that despite the Trustee's point that under Florida law legal title to property placed in an escrow account remains with the grantor until the occurrence of the condition specified in the escrow agreement, funds deposited into an escrow account by a debtor, for the benefit of others, are not property of the estate. The Plaintiff cites *In re Scanlon*, 239 F.3d 1195, 1198 (11th Cir. 2001), as authority for this proposition. In *Scanlon*, 239 F.3d at 1196, a securities dealer, who had defrauded investors, entered into a settlement agreement with the National Association of Securities Dealers (NASD), which required the dealer to forward funds to a temporary escrow account. The settlement then required that the funds be transferred to an independent escrow agent for distribution to the dealer's customers that were harmed by his securities violations. *Id.* The dealer's mother-in-law deposited \$650,000.00 into the escrow account to satisfy the settlement. *Id.* Before the funds could be transferred to an independent escrow agent from the dealer's attorney's temporary escrow account, the dealer filed for bankruptcy. *Id.* The NASD wanted permission from the bankruptcy court to distribute the funds, but the trustee claimed that the money in the temporary escrow account was property of the estate. *Id.* The bankruptcy court and the district court held that the money in the temporary escrow account was not property of the estate. *Id.* at 1196-97.

The Eleventh Circuit affirmed the district court because the money in the escrow account, although deposited by the debtor's mother, was not intended to benefit the debtor. *Scanlon*, 239 F.3d at 1198. The escrow account was established pursuant to a written NASD order that directed the funds to be distributed to those customers defrauded by the debtor. *Id.*; *see also NASD v. Scanlon (In re Scanlon)*, 242 B.R. 533, 534 (Bankr. S.D.Fla. 1999).⁸ The Eleventh

⁸The Eleventh Circuit supported the bankruptcy court's factual finds. *In re Scanlon*, 239 F.3d at 1197.

Circuit also noted that the debtor did not have control over the funds in the temporary escrow account, and he could not control who would receive the funds. *Id.* Similarly, the debtor's counsel could not release the funds in the escrow account without the approval of the bankruptcy court or by the consent of all the parties involved. *Id.* The Eleventh Circuit concluded that the funds in the escrow account were not property of the estate because even if the debtor had legal title to the funds by virtue of his repayment of his mother-in-law's loan, those funds were merely in the escrow account temporarily "while *en route* to compensating others." *Id.*

The Plaintiff argues that the money in Bagdasarian's account cannot be property of the estate for substantially the same reasons as those advanced by the Eleventh Circuit in *Scanlon*. Like the defrauded investors in *Scanlon*, the Plaintiff argues that he is the party for whose benefit the trust account was established. In addition, while the debtor's attorney in *Scanlon* had possession of the temporary escrow account, he did not have control of it. In this case, the Plaintiff argues that the same can be said of the Debtor's attorney, Bagdasarian, because the District Court ordered him not to disperse money from his trust account without proper authorization. The Plaintiff concludes that the Debtor should not benefit from its attorney's defiance of the District Court by merely retaining possession of funds that rightly belong to the Plaintiff.

The Plaintiff is correct that there are significant similarities between the present case and *Scanlon*. In both cases, neither attorney had authority to distribute the money without permission from court to do so. However, there is an important difference between this case and *Scanlon*. In *Scanlon*, the escrow account was set up pursuant to an agency order, which provided that the funds would be dispersed to the victims of the debtor's fraud. In this case, the funds in Bagdasarian's trust account were voluntarily deposited by the Debtor well in advance of the

current litigation. In addition, the money in the temporary escrow in *Scanlon* was specifically deposited there to compensate the victims of the debtor's wrongdoing. The claimants to the fund presumably would have received a distribution if they showed that they were victims of the debtor's fraud. *See Scanlon*, 239 F.3d at 1198-99. In this case, the funds, while meant for the Plaintiff as royalties from the licensing agreement, are not clearly the Plaintiff's property. The Plaintiff rejected the licensing agreement and won an award of damages for patent infringement in the District Court Action. The Plaintiff was not given ownership of the funds in Bagdasarian's account. The District Court did not indicate that if the Plaintiff was successful in its patent infringement case, then he would receive the funds in Bagdasarian's trust account.

Finally, the Plaintiff argues that an escrow can be established by judicial action. The Plaintiff cites *Shron v. M & G Promo Serv., Ltd. (In re Anthony Sicari, Inc)*, 151 B.R. 60, 62 (S.D.N.Y. 1993), as support for this argument. The Trustee counters that an escrow must result from a specific written agreement with definite triggering conditions. The difference between this case and the judicially established escrow in *Sicari*, 151 B.R. at 62, is that the escrow in that case was created upon clear terms with a clear triggering condition for the release of the funds. In *Sicari*, the escrow resulted from a real estate contract. *Id.* The debtor-purchaser received its deed, but then stopped payment on its check for the purchase. *Id.* The seller sued the debtor, but then cancelled its *lis pendens* upon the debtor's deposit of \$240,000 into the court registry. *Id.* The court explained: "[t]he deposit into court was made in order to protect the seller's interest in securing payment based upon prior delivery of the deed." *Id.* In finding that the money in escrow was not property of the estate, but also not a preference to the seller, the court reasoned that "[t]he stoppage of the check and the transfer of the property had occurred virtually simultaneously. The net result of the series of events involved here was that the debtor had to

pay for the real estate it got.” *Id.* at 63

The crucial difference in this case is that the funds held by Bagdasarian were not deposited by agreement or court order. In addition, there is no evidence as to the conditions that would trigger the release of the funds. In *Sicari*, the escrow was set up in consideration for the seller’s dropping the *lis pendens*. 151 B.R. at 62. In this case, there was no similar consideration in establishing the contested account. Instead, the Debtor unilaterally made deposits into the trust account.

All of the cases cited by the Plaintiff are distinguishable from this case because in all of the cited cases, the deposits were made into the various funds pursuant to a court order or under agreements that specified the terms under which the funds were held. The funds were either established pursuant to an agreement, interpleader or similar court disposition, or to prevent execution of a judgment. The funds were to be dispersed under clear conditions that specified which party was entitled to the fund and what conditions would trigger the dispersal. In this case, the fund was not established by agreement of the parties, and the District Court Action did not determine either who had title to the fund or under what conditions it would be distributed. Accordingly, the Court finds that the funds in Bagdasarian’s trust account were not held in escrow, and, as such, the Debtor retained a legal interest in the funds. *See T & B Scottsdale Contractors, Inc.*, 866 F.2d at 1376 (debtor’s estate in bankruptcy consists of all legal and equitable interests of the debtor in property). In this case, since the purported escrow account was never established, the funds are property of the estate. *See Wilson v. United Sav. of Texas (In re Missionary Baptist Found. of Am. Inc.)*, 792 F.2d 502, 506 (5th Cir. 1986) (where condition of escrow was unfulfilled, funds in escrow became property of the estate).

Conclusion

The Plaintiff's Motion is **DENIED**. The Trustee's Cross-Motion is **GRANTED**. The funds from Bagdasarian's trust account, now in possession of the Trustee, are property of the estate.

ORDER

1. The Plaintiff's Motion for Summary Judgment is **DENIED**.
2. The Trustee's Cross-Motion for Summary Judgment is **GRANTED**.
3. The funds in the Trustee's custody are property of the estate.
4. The Court will enter a Judgment reflecting the Courts findings of fact and conclusions of law contemporaneously with this Order.

Ordered in the Southern District of Florida on August 10, 2005.

Paul G. Hyman, Jr.
United States Bankruptcy Judge