

**THIS OPINION IS NOT INTENDED  
FOR PUBLICATION**  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
04 MAY 17 AM 10:28  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re:	)	Case No. 03-13453
	)	
LUSHION WHITE,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
MARY ANN RABIN, TRUSTEE,	)	Adversary Proceeding No. 03-1346
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	<b><u>ON MOTION FOR SUMMARY</u></b>
LUSHION WHITE, et al.,	)	<b><u>JUDGMENT</u></b>
	)	
Defendants.	)	

The chapter 7 trustee filed a complaint to set aside a trust established by debtor Lushion White and also to recover real property which the trust transferred to the debtor's wife, Erma White.<sup>1</sup> The trustee now moves for summary judgment against the debtor and Erma White. (Docket 30). While the debtor answered the complaint, neither defendant filed anything in opposition to the trustee's motion and the time for doing so has elapsed. (Docket 12, 19).

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered in this district by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §157(b)(2).

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<sup>1</sup> The trustee also requests authority to sell the real property free and clear of liens or other interests and names additional parties as defendants. The trustee has entered into agreed orders with those other defendants.

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**SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c) (made applicable by FED. R. BANKR. P. 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden is then on the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves . . . .” *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng’g Co.*, 33 F.3d 727, 730 (6<sup>th</sup> Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6<sup>th</sup> Cir. 1989).

**FACTS**

Debtor-defendant Lushion White filed his chapter 7 case on March 21, 2003. At the time of the filing, his wife-defendant Erma White-held title to real property located at 31755 Sedgefield Oval, Solon, Ohio (the property). An entity known as the White Family Trust had transferred title to her by quit-claim deed on January 28, 2003.

Lushion White is the grantor and trustee of the White Family Trust. Details regarding the

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White Family Trust agreement itself, however, are not in evidence. The chapter 7 trustee provided a copy of a document titled "ABSTRACT TRUST AGREEMENT" to support her motion for summary judgment. That document is not the actual trust agreement as it provides that "[t]he use of this ABSTRACT of TRUST AGREEMENT is for convenience only, and the TRUST AGREEMENT is solely controlling as to provisions and interpretations, and any conflict between this ABSTRACT and the TRUST AGREEMENT shall be decided in favor of the TRUST AGREEMENT." The trust abstract states that the White Family Trust was established on October 8, 1997. It also states that there are multiple beneficiaries, with Lushion White being one of them.<sup>2</sup> The identity of the other beneficiaries is unclear. The trust abstract states further that the trust is revocable and includes a spendthrift provision. The terms of the revocation and spendthrift provisions are not in evidence.

**DISCUSSION**

The trustee requests summary judgment and an order setting aside the trust. She argues that the trust is not valid because of the debtor's status as the settlor, trustee, and sole beneficiary of the trust and because he retained control over the trust assets. As noted above, however, the evidence submitted on summary judgment does not demonstrate that the debtor was the sole beneficiary of the White Family Trust. In addition, it is difficult to assess this issue because the terms under which the trust can be revoked and the terms of the spendthrift provision are not in evidence. Summary judgment cannot, therefore, be granted on this issue.

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<sup>2</sup> This finding is based on paragraph one which states that the trust is for the benefit of the trustor and paragraph 7 which refers to "other named beneficiaries." Trustee's motion, Exh. A.

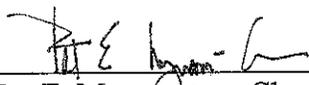
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The trustee also argues that the quit-claim transfer to Erma White is avoidable as a fraudulent transfer because Erma White did not give reasonably equivalent value in exchange for it. *See* 11 U.S.C. § 544. The trustee has the burden of proving the value of the transferred property and that there was inadequate consideration paid. The only evidence on this point is the quit-claim deed which states that the transfer was for “valuable consideration paid” and the trustee has not shown otherwise. The trustee has not, therefore, demonstrated the absence of a genuine issue of fact regarding the consideration. Summary judgment for the trustee on this issue is unavailable under the circumstances.<sup>3</sup>

**CONCLUSION**

For the reasons stated above, the trustee’s motion for summary judgment is denied. A separate order will be entered reflecting this decision.

Date: 17 May 2004

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk’s office email and the Bankruptcy Noticing Center on:

Mary Ann Rabin, Esq.  
Joan Kodish, Esq.  
Cynthia Rose, Esq.  
Cynthia Roselle, Esq.

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<sup>3</sup> This is without prejudice to the trustee’s right to seek a default judgment against Erma White who failed to respond to the complaint.

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	)	
LUSHION WHITE, et al.,	)	
	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion filed this same date, the trustee's motion for summary judgment is denied.

IT IS SO ORDERED.

Date: 17 May 2004

Pat E. Morgenstern-Clarren  
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United States Bankruptcy Judge

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