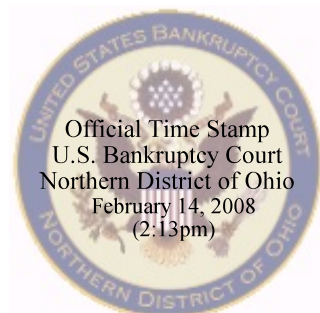


NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 05-95601
	)	
KEVIN PRINT,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
RICHARD A. BAUMGART, TRUSTEE,	)	Adversary Proceeding No. 07-1144
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	
HERBERT PRINT, et al.,	)	
	)	
Defendants.	)	

The chapter 7 trustee filed a complaint to avoid a transfer of real estate made by the debtor as a fraudulent transfer or, in the alternative, to impose a constructive trust on real property owned by the defendants, Herbert, Doris, and Paulette Print. The trustee has moved for partial summary judgment against defendants Herbert Print and Doris Print on the constructive trust issue. For the reasons set forth below, the trustee’s motion is denied.<sup>1</sup>

**JURISDICTION**

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

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<sup>1</sup> In the court’s view, the value of this opinion is solely to decide the dispute between the parties, rather than to add anything to the general bankruptcy jurisprudence. For that reason, the opinion is not intended for commercial publication.

## BACKGROUND AND PROCEDURAL POSTURE

These are the undisputed facts based on the chapter 7 file and the evidence offered in connection with the summary judgment motion:

In his chapter 7 petition, the debtor Kevin Print listed his address as 27337 Wheaton Place, Olmsted Township, Ohio 44138 (the “Wheaton Property”). Schedule J lists total monthly expenses of \$4,436.00, including \$1,186.00 for rent or home mortgage payment (excluding real estate taxes and property insurance) and \$100.00 for home maintenance. The debtor scheduled \$57,409.00 in unsecured debt and no secured debt, with no executory contracts or unexpired leases.

The defendants in this action are the debtor’s parents, Herbert and Doris Print, and the debtor’s wife, Paulette Print.<sup>2</sup> The motion for summary judgment is directed against Herbert and Doris Print, only. Herbert and Doris Print purchased the Wheaton Property in November 2004. They currently own an undivided two-thirds interest in the Wheaton Property, as they transferred one-third of their interest to Paulette Print sometime in December 2005. For the time period of December 2004 through the present day, Paulette and Kevin Print have paid the mortgage payments, real estate taxes, and homeowner’s insurance on the Wheaton Property.<sup>3</sup> Herbert and Doris Print have admitted that they did not pay any maintenance costs for, or make any improvements to, the Wheaton Property from the time since they purchased the property until October 16, 2005, when the debtor filed his bankruptcy case.<sup>4</sup>

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<sup>2</sup> The court entered judgment against the fourth defendant, Bank of America, N.A. (Docket 19).

<sup>3</sup> Docket 36, ¶ 2.

<sup>4</sup> Docket 45, at 4.

The chapter 7 trustee filed this adversary proceeding on March 29, 2007, approximately one year after the debtor received his discharge.<sup>5</sup> The complaint contains four counts against Herbert and Doris Print: (1) a request to set aside an alleged fraudulent transfer between the debtor and his parents regarding property located at 19505 Pawnee Avenue, Cleveland, Ohio 44119 (count I); (2) a request to recover funds of \$46,850.00 in lieu of recovering the Pawnee Avenue property (count II); (3) a request to impose a constructive trust over the Wheaton Property (count III); and (4) a request to determine the validity, priority, and amount of liens, claims, and interests in and to the Wheaton Property (count IV).<sup>6</sup> On January 2, 2008, the trustee filed a motion for partial summary judgment on count III.<sup>7</sup> Herbert and Doris Print (“the defendants”) objected,<sup>8</sup> and the trustee replied.<sup>9</sup>

## **DISCUSSION**

### **I. The Summary Judgment Standard**

Summary judgment is appropriate 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); *see also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v.*

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<sup>5</sup> Case no. 05-95601, docket 8, 13.

<sup>6</sup> Docket 1, ¶¶ 7–33.

<sup>7</sup> Docket 44. Specifically the trustee requests “(1) a judgment imposing a constructive trust over the real estate located at 27337 Wheaton Place, Olmsted Township, OH 44138 . . . and [2]) a determination that the Debtor, Kevin Print, has an ownership interest in the Wheaton Property.” (Docket 44, at 1–2).

<sup>8</sup> Docket 45.

<sup>9</sup> Docket 46.

*Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. A fact is material if its resolution will affect the determination of the underlying action. *Tenn. Dep't of Mental Health & Mental Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996). “The substantive law determines which facts are ‘material’ for summary judgment purposes.” *Hanover Ins. Co. v. Am. Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994) (citations omitted). An issue is genuine if a rational trier of fact could find in favor of either party on the issue. *Schaffer v. A.O. Smith Harvestore Prods., Inc.*, 74 F.3d 722, 727 (6th Cir. 1996) (citation omitted).

If the moving party meets this burden, the burden shifts to the non-moving party to show the existence of a material fact which must be tried. *Id.* The non-moving party “may not rest upon the mere allegations . . . of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Those facts may be shown “by any of the kinds of evidentiary materials listed in Rule 56(c) . . . .” *Celotex Corp.*, 477 U.S. at 324.

When addressing a motion for summary judgment, all reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co.*, 33 F.3d at 730. 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 (6th Cir. 1989).

## **II. Constructive Trust**

State law, in this case Ohio's, determines the interests of parties in real estate, including the question of whether a constructive trust should be imposed. *See Poss v. Morris (In re Morris)*, 260 F.3d 654, 665–66 (6th Cir. 2001). Under Ohio law, a constructive trust is defined as:

“[A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice.”

*Ferguson v. Owens*, 459 N.E.2d 1293, 1295 (Ohio 1984) (per curiam) (quoting 76 AM. JUR. 2D *Trusts* § 221 (1975)).

A constructive trust is an equitable remedy, “imposed not because of the intention of the parties but because the person holding the title to property would profit by a wrong, or would be unjustly enriched if he were permitted to keep the property.” See *Univ. Hosps. of Cleveland, Inc. v. Lynch*, 772 N.E.2d 105, 117 (Ohio 2002) (internal quotation marks and citation omitted). This remedy is used to protect against unjust enrichment, usually where property has been obtained by fraud. *Id.* A finding of fraud, however, is not a necessary element of a constructive trust, which may also be imposed “where it is against the principles of equity that the property be retained by a certain person even though the property was acquired without fraud.” *Ferguson*, 459 N.E.2d at 1295; see also *Groza-Vance v. Vance*, 834 N.E.2d 15, 27 (Ohio Ct. App. 2005) (“[W]here the holder of legal title to property holds title against equity and good conscience and will be unjustly enriched by retaining title, Ohio courts have not required that the holder obtained title by fraudulent or questionable means before imposing a constructive trust.”). The party seeking to impose a constructive trust must prove his case by clear and convincing evidence. *Estate of Cowling v. Estate of Cowling*, 847 N.E.2d 405, 411 (Ohio 2006).

The trustee in this case seeks to impose a constructive trust under a theory of unjust enrichment.<sup>10</sup> The Supreme Court of Ohio has stated that “[u]njust enrichment occurs when a person ‘has and retains money or benefits which in justice and equity belong to another[.]’ . . .” *Johnson v. Microsoft Corp.*, 834 N.E.2d 791, 799 (Ohio 2005) (quoting *Hummel v. Hummel*, 14 N.E.2d 923, 927 (Ohio 1938)).

### **III. The Summary Judgment Motion**

The trustee argues that it would be unjust to allow the parent-defendants to retain title to the Wheaton Property as the debtor and his spouse are the only people who live at the property and they have made all the payments related to it. If the debtor were found to have an interest in the property, that interest could be sold for the benefit of his unsecured creditors. The trustee concludes from this that the defendants will be unjustly enriched if they are permitted to retain title to the property.

To support this conclusion, the trustee offers the defendants’ responses to his requests for admissions. This evidence shows that the defendants do not reside at the Wheaton Property, and that from the period of December 2004 to the present, they did not make any mortgage payments, pay any real estate taxes, pay any insurance premiums, or provide for the maintenance expenses

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<sup>10</sup> Docket 44, at 6. The trustee cites the three-prong standard for quasi-contract relief as the standard for establishing a claim of unjust enrichment. (Docket 44, at 6–7 (citing *Hambleton v. R.G. Barry Corp.*, 465 N.E.2d 1298, 1302 (Ohio 1984) (per curiam)). The court does not find this standard applicable. Unjust enrichment is the equitable concept that describes the recovery of money or property based, not on a contractual obligation, but on a legal and moral duty to perform as governed by the principles of fairness and justice. Quasi-contract relief, as well as quantum meruit and restitution, is a common law remedy designed to prevent a person from being unjustly enriched. See *Johnson v. Microsoft Corp.*, 834 N.E.2d 791, 799 (Ohio 2005); *Donald Harris Law Firm v. Dwight-Killian*, 853 N.E.2d 364, 367 (Ohio Ct. App. 2006); 66 AM. JUR. 2D *Restitution and Implied Contracts* §§ 8–9 (2007).

on the Wheaton Property. This evidence also shows that there is no written rental agreement between the defendants and Kevin and Paulette Print relating to the Wheaton Property.

The trustee's evidence, however, does not contain any context showing that, in justice or equity, the Wheaton Property belongs to the debtor and not to the defendants. In other words, the evidence shows that the defendants are being enriched, but not that this enrichment is unjust. The argument that the defendants' retention of title in the Wheaton Property prejudices the debtor's creditors is not enough to show that the defendants hold title to the property against equity and good conscience and that they will be unjustly enriched by retaining that title. Even if the creditors would benefit from a holding granting the debtor an interest in the Wheaton Property, the Supreme Court of Ohio has stated that, "[t]he doctrine of constructive trust does not allow a court to disregard existing legal rights merely to fashion a result that it deems fairer than that created by the parties." *Univ. Hosps. of Cleveland, Inc.*, 772 N.E.2d at 118.

In the context of this motion, the trustee must show by clear and convincing evidence that a constructive trust is necessary to prevent the unjust enrichment of the defendants. The trustee's evidence does not meet this standard. As this is a motion for summary judgment against the defendants, the court must draw all reasonable factual inferences in favor of the defendants. *Hanover Ins. Co.*, 33 F.3d at 730. In doing so, the court finds material issues of fact that remain unanswered. For instance, the trustee's evidence does not explain why the debtor and his wife make the payments on the Wheaton Property. In viewing all factual inferences in the light most favorable to the defendants, the circumstances surrounding this transaction could be as benign as an informal rental agreement between parent and son. Moreover, the trustee does not proffer any evidence showing Paulette Print's contribution to the expenses relating to the Wheaton Property.

As the resolution of these, and other, issues is necessary for the determination of whether the defendants have been unjustly enriched, the court concludes that genuine issues of material fact remain unanswered at this stage in the proceeding. The court finds, therefore, that the trustee has not met his burden of showing that he is entitled to judgment as a matter of law.

**CONCLUSION**

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

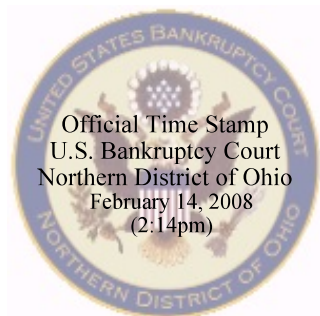


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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge




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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 05-95601
KEVIN PRINT,	)	Chapter 7
	)	Judge Pat E. Morgenstern-Clarren
Debtor.	)	
_____	)	
RICHARD A. BAUMGART, TRUSTEE,	)	Adversary Proceeding No. 07-1144
	)	
Plaintiff,	)	
	)	<b><u>ORDER</u></b>
v.	)	
HERBERT PRINT, et al.,	)	
	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion entered this same date, the plaintiff-trustee's motion for summary judgment is denied. (Docket 44).

IT IS SO ORDERED.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge