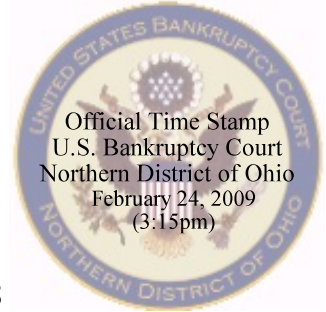


UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 08-13408
	)	
GREGORY E. CURRY,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
LAUREN A. HELBLING, TRUSTEE,	)	Adversary Proceeding No. 08-1225
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b><u>MEMORANDUM OF OPINION</u></b> <sup>1</sup>
GREGORY CURRY, et al.,	)	
	)	
Defendants.	)	

Plaintiff Lauren Helbling, chapter 7 trustee for the bankruptcy estate of Gregory Curry, moves for summary judgment under 11 U.S.C. § 548 and Ohio Revised Code § 1336.05(A) to avoid the allegedly fraudulent transfer of real property from the debtor to his parents, James and Evelyn Curry. For the reasons stated below, the trustee’s motion for summary judgment is granted in part and denied in part.

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<sup>1</sup> In the court’s view, the value of this opinion is 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.

## **I. JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered 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)(A), (H), (K), (N), and (O).

## **II. PROCEDURAL HISTORY**

The chapter 7 trustee filed a complaint to avoid the transfer of real property from the debtor to his parents, James and Evelyn Curry (sometimes, the Currys), which the trustee amended on August 29, 2008.<sup>2</sup> The Currys and the debtor filed separate answers.<sup>3</sup> The IRS was dismissed and the Cuyahoga County treasurer's claim was resolved by agreed order.<sup>4</sup> The remaining parties filed a joint pretrial statement, stipulating to certain facts.<sup>5</sup> The trustee now moves for summary judgment, the debtor and the Currys oppose the motion, and the trustee filed a reply.<sup>6</sup>

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<sup>2</sup> Docket 11. The amended complaint also seeks a determination of the validity, priority, and extent of liens against the property, as well as the authority to sell the property for the benefit of the bankruptcy estate. However, only the fraudulent transfer claims were raised by the motion and are, therefore, the only issues decided by the court.

<sup>3</sup> Docket 14, 24.

<sup>4</sup> Docket 21, 25.

<sup>5</sup> Docket 19.

<sup>6</sup> Docket 27, 28, 29, 30.

### III. FACTS<sup>7</sup>

These are the relevant facts at this point in the proceedings:

1. James and Evelyn Curry are the parents of the debtor, Gregory Curry.
2. From 1987 to December 8, 2005, James and Evelyn Curry owned real property located at 5915 Sweet Birch Drive, Bedford Heights, Ohio (the property).
3. By affidavit, the debtor states that his parents told him in 2005 that they were going to put the property in his name “because they had been informed that should they be required to go into a nursing home, they could lose their home.”
4. On December 8, 2005, James and Evelyn Curry transferred the property to their son, without consideration. By affidavit, the debtor states that his understanding was that the property was to be in his name for his parent’s benefit depending on what happened as it related to their going into a nursing home. He did not consider it a gift.
5. By affidavit, the debtor states that James and Evelyn Curry continued to maintain the property and pay the taxes. They did not pay rent to the debtor and he did not schedule the property on any tax forms.
6. By affidavit, the debtor states that he found himself in financial difficulty in early 2008. He advised his parents that “if their home was still in [his] name, it should be transferred back [to them as he] may have to file a bankruptcy sometime in the future.”
7. On February 26, 2008, the debtor transferred his ownership in the property to James and Evelyn Curry, without consideration.
8. At the time of the February 2008 transfer, the debtor’s liabilities exceeded his assets.
9. The debtor filed his chapter 7 case on May 7, 2008.

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<sup>7</sup> The facts put forward by the debtor’s affidavit are identified as such. The remaining facts are drawn from the joint pretrial statement, the debtor’s answers to the trustee’s request for admissions, and an affidavit in support of the summary judgment motion verifying documents.

#### **IV. POSITIONS OF THE PARTIES**

The trustee asserts that because the debtor transferred the property to the Currys within three months before the petition date for no consideration, at a time when the debtor was insolvent, the transfer is an avoidable fraudulent transfer under 11 U.S.C. § 548 and Ohio Revised Code § 1336.05. These facts are not disputed and, the trustee states, support summary judgment in her favor as a matter of law.

The defendants, however, challenge the nature of the debtor's interest in the property. They all contend that the debtor held only bare legal title for the Currys' benefit at the time of transfer, based on the Currys having paid all expenses related to the property. Beyond that, they raise slightly different arguments. The Currys argue that the debtor's bare legal title has no economic value. They contend further that the debtor obtained that title through a fiduciary relationship (child to parent), which the court should now acknowledge by imposing a constructive or resulting trust on the interest held by the debtor.<sup>8</sup> The debtor posits that either a constructive trust or a resulting trust existed prepetition, based on the Currys having paid all of the expenses associated with the property and their intention that the debtor hold it in trust for them. Because this gave the Currys an equitable interest in the property, the debtor argues, his creditors would be unjustly enriched if the transfer were undone and the property sold to benefit those creditors. The debtor also refers to mistake as a ground for imposing a trust, but without elaborating on that position.

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<sup>8</sup> Docket 29.

## V. DISCUSSION

### A. Summary Judgment Standards

The standards for granting summary judgment are found in federal rule of civil procedure 56 (made applicable here by federal rule of bankruptcy procedure 7056). The Sixth Circuit has expressed the summary judgment standard as follows:

Summary judgment for [the movant] is appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). However, [the movant] bears the burden of proving that there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

*Nance v. Goodyear Tire & Rubber Co.*, 527 F.3d 539, 546-47 (6th Cir. 2008), *cert. denied*, --- S.Ct. ----, 2009 WL 425106 (Feb. 23, 2009). Further:

In evaluating the evidence presented, a court must draw all inferences in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). A genuine issue of material fact exists when there are “disputes over facts that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). However, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita*, 475 U.S. at 587, 106 S.Ct. 1348.

*Savedoff v. Access Group, Inc.*, 524 F.3d 754, 762 (6th Cir. 2008). If the movant meets its burden of proof, the non-moving party has an affirmative duty to point to those portions of the record that create a genuine issue of material fact:

In responding to a proper motion for summary judgment, the nonmoving party “cannot rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact, but must ‘present affirmative evidence in order to defeat a properly supported motion for summary judgment.’” The nonmoving party must introduce more than a scintilla of evidence to overcome the summary judgment motion. It is also not sufficient for the nonmoving party merely to “show that there is some metaphysical doubt as to the material facts.” Moreover, “[t]he trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.”

*Youngstown Osteopathic Hosp. Ass’n v. Pathways Ctr. for Geriatric Psychiatry, Inc.* (*In re Youngstown Osteopathic Hosp. Ass’n*), 280 B.R. 400, 407 (Bankr. N.D. Ohio 2002) (citing *Liberty Lobby, Matsushita, and Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989)) (emphasis added).

A cohesive reading of rule 56(a) and (d) demonstrates that partial summary judgment on a portion of a claim may be entered under appropriate circumstances. *See McCord v. Jaspan Schlesinger Hoffman, LLP* (*In re Monahan Ford Corp. of Flushing*), 390 B.R. 493, 501 (Bankr. E.D.N.Y. 2008); *In re Monster Worldwide Litigation, Inc.*, 549 F.Supp.2d 578, 582 (S.D.N.Y. 2008); *McDonnell v. Cardiothoracic & Vascular Surgical Associates, Inc.*, No. C2-03-0079, 2004 WL 1234138, at \*2 (S.D. Ohio May 27, 2007); *France Stone Co. v. Charter Twp. of Monroe*, 790 F.Supp. 707, 710 (E.D. Mich. 1992). Partial summary judgment should not, however, be granted where such a motion seeks “the resolution of a merely evidentiary matter en route to summary judgment, or [ ] an adjudication of an issue of fact which would not be dispositive of an issue or even part of an issue.” *Id.*

**B. 11 U.S.C. § 548**

The trustee relies on this portion of bankruptcy code § 548:

**§ 548. Fraudulent transfers and obligations**

(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property . . . made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

\* \* \*

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation . . . .

11 U.S.C. § 548. Thus, the trustee must show that the following facts are not in dispute:

- (1) the debtor had an interest in the property;
- (2) the debtor transferred that interest to the Currys;
- (3) the transfer occurred within the two years before the debtor filed his bankruptcy case;
- (4) the debtor received less than reasonably equivalent value in exchange for the transfer of the property; and
- (5) the debtor was insolvent when the transfer occurred.

*See* 11 U.S.C. § 548(a)(1)(B)(i), (ii)(I). Proof of these facts would also establish the trustee's entitlement to judgment as a matter of law.

The stipulated facts establish that the debtor executed a deed conveying the property to the Currys for no consideration, within two years before the petition date, at a time when the debtor's liabilities exceeded his assets, rendering him insolvent.<sup>9</sup> Accordingly, the trustee is entitled to summary judgment in her favor on the last four elements required to prove that a fraudulent transfer occurred under 11 U.S.C. § 548. As discussed below, however, the defendants have raised a genuine issue of material fact with respect to the nature of the interest held by the debtor in the property. Summary judgment avoiding the February 2008 transfer cannot, therefore, be granted on that remaining issue.<sup>10</sup>

### **C. The Debtor's Interest in the Property**

A debtor's bankruptcy estate includes all legal and equitable interests in property held by the debtor when the case is filed. 11 U.S.C. § 541(a). If the debtor holds only legal title to certain property and does not have an equitable interest in it, the equitable interest does not become part of the estate. 11 U.S.C. § 541(d). The nature and extent of a debtor's interest in property is determined by state law, in this case Ohio's. *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 451 (2007) (citation omitted) (property interests are determined by state law). After that, "federal bankruptcy law dictates to what extent that interest is property of the estate." *XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.)*, 16 F.3d 1443, 1450 (6th Cir. 1994) (citations omitted). Property held by a debtor in trust for another is not property of the bankruptcy estate. *Begier v. IRS*, 496 U.S. 53, 59 (1990).

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<sup>9</sup> See 11 U.S.C. § 101(32)(A).

<sup>10</sup> For the same reason, the trustee is not entitled to summary judgment under Ohio Revised Code § 1336.05(A) as to the debtor's interest in the property.



In Ohio, ownership of real property is determined by legal title.

Where the term ‘owner’ is employed with reference to land or buildings, it is commonly understood to mean the person who holds the legal title. . . . Consequently, to be the owner of real property, the person must hold legal title to the property, not simply an equitable interest in the property.

*Victoria Plaza Limited Liability Company v. Cuyahoga County Board of Revision*, 86 Ohio St.3d 181, 183, 712 N.E.2d 751, 753-54 (1999) (internal citations omitted). The debtor, then, had an ownership interest in the property under Ohio law before he transferred it. That interest is “an interest of the debtor in property” that would become property of his estate under § 541(a)(4), if the transfer is avoided under § 548. If, however, the debtor did not own the property before the transfer, but merely held legal title as trustee for the benefit of the Currys, there is no “interest of the debtor in property” for purposes of 11 U.S.C. § 548 or Ohio Revised Code § 1336.05(A).

#### **D. Implied Trusts**

Stated generally, an implied trust is a remedy imposed by law where equity requires a finding that one person holds legal title in trust for another. The two kinds of implied trusts at issue here are constructive trusts and resulting trusts.

##### **1. Constructive Trusts**

The Sixth Circuit has recognized that Ohio law permits a bankruptcy court to enforce a constructive trust that was created by state law before the petition date. *Poss v. Morris (In re Morris)*, 260 F.3d 654 (6th Cir. 2001) (citing *Omegas*). A constructive trust may be created either by a judicial decision, or by operation of law to prevent unjust enrichment. *McCafferty v. McCafferty*, 96 F.3d 192, 198 (6th Cir. 1996) (citation omitted). Where imposing a constructive trust would not run counter to the policy of ratable distribution, the court’s “task is to determine

whether Ohio law impressed the property in dispute with a constructive trust prior to the time [the debtor] filed [the] petition.” *Poss*, 260 F.3d at 667. “There must be some specific legal principle or situation which equity has established or recognized, to bring a case within the scope of the doctrine [of constructive trust].” *Croston v. Croston*, 18 Ohio App.2d 159, 164, 247 N.E.2d 765, 768 (Ohio Ct. App. 1969). The critical question, then, is whether a constructive trust existed in favor of the Currys *before* the debtor filed his chapter 7 case. The argument that the court should impose a trust now, if one did not exist before the filing, is unavailing. The argument that state law imposed a trust before the petition date must, however, be analyzed further.

The Supreme Court of Ohio has defined a constructive trust 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.

*Estate of Cowling v. Estate of Cowling*, 109 Ohio St.3d 276, 280-81, 847 N.E.2d 405, 411 (2006) (quoting *Ferguson v. Owens*, 9 Ohio St.3d 223, 225 (1984)). “A constructive trust is, in the main, an appropriate remedy against unjust enrichment . . . .” *Ferguson*, 9 Ohio St. 3d at 226. “Unjust enrichment occurs when ‘a person has and retains money or benefits which in justice and equity belong to another.’” *Johnson v. Microsoft Corp.*, 106 Ohio St. 3d 278, 286, 834 N.E.2d 791, 799 (2005). The party seeking the benefit of this doctrine must prove both that the opposing party was enriched *and* that the enrichment was unjust. *The Andersons, Inc. v. Consol, Inc.*, 348

F.3d 496, 502 (6th Cir. 2003) (citing *Giles v. Hanning*, No. 2001-P-0073, 2002 WL 1173512, at \*2 (Ohio Ct. App. May 31, 2002)). “A plaintiff’s responsibility for his own detrimental position breaks the requisite causal connection between the defendant’s benefit and the plaintiff’s loss.” *Gaymar Inds., Inc. v. First Merit Bank, N.A.*, No. 08–3487, 2009 WL 383690, at \*2 (6th Cir. Feb. 18, 2009) (citing *The Andersons, supra*). If unjust enrichment is proven by clear and convincing evidence, equity provides a remedy by converting the title holder into a trustee for the transferor. *Ferguson*, 9 Ohio St. 3d at 225.

To avoid summary judgment on this issue, the defendants must show that a genuine issue of fact exists as to whether the debtor was unjustly enriched when the Currys transferred the property to him, to the detriment of the Currys, such that the law imposed a constructive trust in favor of the Currys at that time.<sup>11</sup> The undisputed facts show the opposite situation. The Currys willingly and intentionally transferred the property to their son because they were trying to protect it from their own creditors if they had to enter a nursing home. There was no prepetition transfer to the legal detriment of the Currys; instead, they freely transferred title to their son for their own reasons. Similarly, the debtor may have been enriched by the transfer, but the defendants did not present any facts showing that he was *unjustly* enriched at the time. As a result, the trustee is entitled to summary judgment that Ohio law did not impose a constructive trust in favor of the Currys on the property prepetition.

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<sup>11</sup> Although the defendants suggest that the debtor’s creditors would be unjustly enriched by liquidation of property that, in equity, belongs to the Currys, this is an incorrect statement of the law as applied to these facts. The proper focus of this argument is whether a constructive trust existed prepetition based on the unjust enrichment of the debtor to the detriment of the Currys.

## 2. Resulting Trusts

A resulting trust arises under Ohio law when a legal title is transferred under circumstances showing, by clear and convincing evidence, that the parties did not at that time intend for the transferee to take a beneficial interest in the property. *Stevens v. Radey*, 117 Ohio St.3d 65, 68, 881 N.E.2d 855, 859-60 (2008).

There are three general situations in which resulting trusts are imposed: (1) where an express trust fails, in whole or in part, (2) where an express trust is performed without exhausting the trust estate; and (3) purchase money trusts. . . . A purchase-money resulting trust arises where title to property is transferred to one person, but the purchase price is paid by another. Such a situation raises an inference that the title-holder is not intended to possess a beneficial interest in the property.

*Brate v. Hurt*, 174 Ohio App.3d 101, 109, 880 N.E.2d 980, 985 (Ohio Ct. App. 2007) (internal quotations and citations omitted). The parties' intent is the cornerstone of a finding that property is held in a resulting trust by one person for another.

In this case, the debtor provided sworn testimony via his affidavit that when his parents transferred the property to him prepetition, they all intended that the Currys would remain the beneficial owners of the house, as evidenced by the Currys continuing to pay all expenses related to the house. This is sufficient to raise a genuine issue of material fact as to whether the Currys are the beneficial owners of the property by operation of a resulting trust that existed prepetition. The trustee is not, therefore, entitled to summary judgment on this issue.

The parties did not address the legal issue of whether, under Ohio law, a purchase money resulting trust may be created after the property is originally acquired (in this case, when the Currys transferred the property to their son) or whether it is limited to the time frame of the

original transaction (in this case, when the Currys purchased the home). The parties are to address this in their trial briefs.

## **VI. CONCLUSION**

For the reasons stated, the plaintiff-trustee's motion for summary judgment is granted in part under 11 U.S.C. § 548 and Ohio Revised Code § 1336.05(A) as to (1) the facts of the transfer, the timing, the lack of consideration, and the debtor's insolvency; and (2) the constructive trust defense. Summary judgment is denied as to the nature of the debtor's interest in the property based on the resulting trust defense.

A separate order reflecting this decision will be entered in accordance with the directive of rule 56(d).

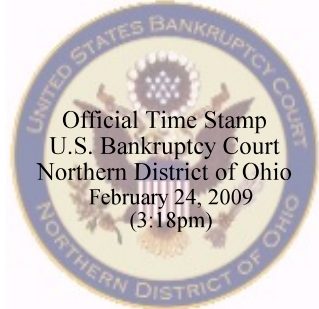


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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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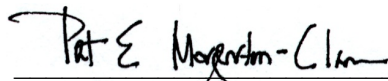
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
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In re:	)	Case No. 08-13408
	)	
GREGORY E. CURRY,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
LAUREN A. HELBLING, TRUSTEE,	)	Adversary Proceeding No. 08-1225
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b><u>ORDER GRANTING IN PART</u></b>
GREGORY CURRY, et al.,	)	<b><u>AND DENYING IN PART</u></b>
	)	<b><u>PLAINTIFF'S MOTION FOR</u></b>
Defendants.	)	<b><u>SUMMARY JUDGMENT</u></b>

For the reasons set forth in the memorandum of opinion entered this same date, the plaintiff's motion for summary judgment is granted in part, under 11 U.S.C. § 548 and Ohio Revised Code § 1336.05(A), with the court finding that the debtor transferred the real property located at 5915 Sweet Birch Drive, Bedford Heights, Ohio on February 26, 2008 to James and Evelyn Curry for no consideration while he was insolvent; and as to the defendants' constructive trust defense. The plaintiff's motion for summary judgment is denied as to the nature of the debtor's interest in the property.

IT IS SO ORDERED.

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