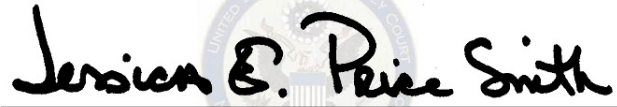


IT IS SO ORDERED.

Dated: 26 June, 2013 02:59 PM



*Jessica E. Price Smith*

JESSICA E. PRICE SMITH  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
Eastern Division

IN RE:

IN PROCEEDINGS UNDER CHAPTER 7

MILLARD P. THOMAS, III,

CASE NO. 12-14916

Debtor.

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LAUREN A. HELBLING, TRUSTEE

ADVERSARY PROC. NO. 13-1012  
JUDGE JESSICA E. PRICE SMITH

Plaintiff,

v.

MILLARD P. THOMAS, III, et. al.,

Defendants.

**ORDER**

The matter before the Court is the Trustee's motion for summary judgment against Defendant Millard P. Thomas, Jr. The Trustee asks this Court to declare, as a matter of law, that Millard Thomas, Jr. has no interest in his personal residence and that she may sell the property for the benefit of the Debtor's creditors. For the reasons set forth below, the Trustee's motion is denied.

The Trustee's complaint alleges that a September 4, 2003 deed titled "Transfer on Death Deed" effected a present transfer of real estate owned by Millard P. Thomas, Jr. to his son, Millard P. Thomas, III and daughter, Brion Thomas. Although the deed was intended to take effect on his death, the Trustee asserts that the deed was defective and that the property was transferred with general warranty covenants. Therefore, the real estate became property of the bankruptcy estate of Millard P. Thomas, III, upon the filing of his bankruptcy petition and the Trustee is entitled to administer it as part of the estate.

Millard Thomas, Jr., asserts that the property is held by his son and daughter in a constructive trust for his benefit. He alleges that he has made all mortgage and property tax payments on the property himself. Further, Mr. Thomas asserts that the property was transferred as a result of legal malpractice and that he signed two subsequent deeds, under advice of counsel, to correct the mistake.

It is undisputed that the debtor holds legal title to the property. Bare legal title is not sufficient to grant the motion for summary judgment, since 11 U.S.C. § 541(d) excludes from the estate property in which "the debtor holds, as of the commencement of the case, only legal title and not an equitable interest." If, in fact, the property is held in a constructive trust for Mr. Thomas, Jr. the Trustee cannot sell the property. Under Ohio law, a constructive trust can arise by operation of law and exists "where a person holding legal title to property is subject to an equitable duty to convey it to another on ground that he would be unjustly enriched if he were permitted to retain it" *McCafferty v. McCafferty*, 96 F.3d 192, 198 (6<sup>th</sup> Cir. 1996). A constructive trust in Ohio is "an application of the equitable maxim 'equity regards done that which ought to be done.'" *Id.*

This matter will proceed to trial to determine the existence of a constructive trust on the property. Therefore, the Trustee's motion for summary judgment is denied. Millard Thomas Jr.'s opposition is sustained.

**IT IS SO ORDERED.**