

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:15-bk-2224-PMG

Constance S. Francis,

Debtor.

Chapter 7

Robert Altman, Chapter 7 Trustee,

Plaintiff,

vs.

Adv. No. 3:15-ap-294-PMG

Hillsboro-Harpeth Corporation,
a Florida corporation,

Defendant.

**ORDER ON (1) DEFENDANT’S MOTION FOR SUMMARY JUDGMENT,
AND (2) PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT**

THIS CASE came before the Court for hearing to consider (1) Defendant Hillsboro-Harpeth Corporation’s Motion for Summary Judgment, and (2) Plaintiff, Robert Altman, Chapter 7 Trustee’s Cross-Motion for Summary Judgment. (Docs. 10, 19).

The Chapter 7 Trustee commenced this action by filing a Complaint to avoid a constructively fraudulent transfer of real property from the Debtor to the Defendant. The Defendant asserts that the

transfer is not avoidable, because the Debtor held the property only as a trustee for the benefit of the Defendant under a resulting trust.

In Florida, real property is presumed to be held as titled, and the burden of establishing an unrecorded trust rests on the party claiming its existence.

In this case, the record does not show that the Debtor held the property in a resulting trust, primarily because (1) the Debtor acquired the property after submitting a written application to the seller to purchase the property as her home, (2) the Warranty Deed from the seller transferred the property to the Debtor in fee simple, and (3) no documentation was produced to indicate that the Deed did not confer full ownership of the property on the Debtor.

Consequently, the Debtor's subsequent transfer of the property to the Defendant for no consideration was constructively fraudulent, and the Trustee's Cross-Motion for Summary Judgment should be granted.

Background

On September 19, 2014, the Debtor transferred certain real property to the Defendant, Hillsboro-Harpeth Corporation. (Doc. 1, ¶ 6; Doc. 5). The property at issue is a residential condominium located at 1845 Old Moultrie Road, Unit 3, St. Augustine, Florida (the Property).

On May 14, 2015, approximately eight months after the transfer, the Debtor filed a petition under Chapter 7 of the Bankruptcy Code.

On September 1, 2015, the Chapter 7 Trustee filed a Complaint to Avoid and Recover Fraudulent Transfer of Property. (Doc. 1). The Complaint contains three Counts. Count I is an action to avoid the transfer of the Property from the Debtor to the Defendant pursuant to §548(a)(1)(B) of the Bankruptcy Code; Count II is an action to avoid the transfer pursuant to §544(b)(1) of the Bankruptcy Code.

Code and §726.106 of the Florida Statutes; and Count III is an action to recover the Property or the Property's value for the benefit of the estate under §550(a) of the Bankruptcy Code.

The Debtor passed away on November 13, 2015. (Main Case, Doc. 25).

Discussion

To prevail in an action to avoid a constructively fraudulent transfer, a plaintiff must prove “two central elements.” First, the plaintiff must show that the debtor received less than reasonably equivalent value in exchange for the transfer of the property. Second, the plaintiff must show that the debtor was insolvent at the time of the transfer. In re Teltronics, Inc., 540 F.3d 481, 485 (Bankr. M.D. Fla. 2015).

In this case, the parties agree that the Debtor transferred the Property to the Defendant pursuant to a Warranty Deed dated September 19, 2014, and the Defendant does not dispute the Debtor's insolvency at the time of the transfer.

The only defense asserted by the Defendant relates to the nature of the property interest that was owned and transferred by the Debtor. (Doc. 5).

According to the Defendant, the Debtor purchased the Property on June 11, 2014, with money provided by the Defendant, and the Debtor and the Defendant agreed at the time of purchase that the Property would be owned by the Defendant. (Doc. 11, ¶¶ 4-6). The Defendant asserts, therefore, that the Debtor held the Property only as the trustee of a resulting trust, and that the Defendant was the beneficial owner of the Property pursuant to the trust. Consequently, the Defendant contends that the Debtor's transfer of the Property to the Defendant on September 19, 2014, was for adequate consideration and did not result in a diminution of the Debtor's estate. (Doc. 10).

The Defendant and the Trustee have filed Cross-Motions for Summary Judgment with respect to the Defendant's sole defense to the Complaint. (Docs. 10, 19).

The Court has considered the record presented by the Cross-Motions, and finds that the Defendant failed to show that the Debtor held the Property in a resulting trust.

A. The Special Warranty Deed to the Debtor

It is presumed that a person owns all of the property that stands in his name. In re Woolum, 279 B.R. 865, 869 (Bankr. M.D. Fla. 2002).

In Florida, real property is presumed to be held as it is titled unless the debtor is able to rebut the strong presumption in favor of a recorded deed. *Reasoner v. Fisikelli*, 114 Fla. 102, 153 So. 98, 105 (Fla. 1934); *see also In re Schiavone*, 209 B.R. 751, 756 (Bankr. S.D. Fla. 1997). And where any real estate has been conveyed, such a conveyance "shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at the time." Fla. Stat. § 689.10.

In re Sanchez-Villalba, 2013 WL 537496, at 4 (S.D. Fla.). In other words, real property "is deemed to be held as titled," unless the opposing party is able to rebut the strong presumption that favors a recorded deed, and that disfavors "any secret reservation." In re Sanchez-Villalba, 2012 WL 627746, at 2 (Bankr. S.D. Fla.).

In this case, the Debtor acquired the Property through a Special Warranty Deed dated June 11, 2014. (Exhibit to Doc. 19). The Special Warranty Deed states (1) that the grantor of the Property was Hometown Community Development Corporation, dba Homestrong USA; (2) that the grantee of the Property was the Debtor, Constance S. Francis; and (3) that the grantor conveyed the Property to the Debtor in fee simple. The Deed does not identify any other person or entity as a grantee of the Property, and does not identify the Debtor as the trustee or agent for any trust. Additionally, the record

does not show that there was any “subsequently recorded instrument evidencing an equitable interest in favor of the Defendant.” In re Cario, 2012 WL 1122887, at 5 (Bankr. S.D. Fla.).

Consequently, it is presumed that the Debtor owned the fee simple interest in the Property pursuant to the Special Warranty Deed, unless the Defendant can overcome the presumption by showing that the Debtor held some other interest. In re Sanchez-Villalba, 2013 WL 537496, at 4.

B. Resulting trusts

A resulting trust “occurs where the facts demonstrate an intention that one party hold legal title to the property for the benefit of another or for some other purpose, but the parties fail to execute documents establishing the trust.” In re Sanchez-Villalba, 2013 WL 537496, at 5. “The concept of a resulting trust is not found in contract but ‘arises by implication of law and is founded on the presumed intention of the parties that the one furnishing the money should have the beneficial interest, while the other held title for convenience or for a collateral purpose.’” In re Distefano, 442 B.R. 146, 149 (Bankr. S.D. Fla. 2010)(quoting In re Todd, 391 B.R. 504, 508 (Bankr. S.D. Fla. 2008)).

1. Burden of proof

“The burden of establishing the existence of a trust relationship is on the party claiming the benefit of such a relationship.” In re Distefano, 442 B.R. at 149(quoting In re Kirk, 381 B.R. 800, 803 (Bankr. M.D. Fla. 2007)(citing Georgia Pacific Corp. v. Sigma Serv. Corp., 712 F.2d 962, 969 (5th Cir. 1983)).

Documentary evidence is sufficient to impose a resulting or constructive trust if it is “strong, clear and convincing as to leave no doubt as to the existence of the trust”. (Citations omitted). Additionally, a debtor may rely on parole evidence but such “evidence must be clear, strong, unequivocal, unmistakable, and must establish the fact of the payment by the beneficiary beyond a reasonable doubt.” (Citations omitted).

In re Sanchez-Villalba, 2012 WL 627746, at 2. Where a party seeks to establish a resulting trust by parol evidence, the party bears the burden “to remove every reasonable doubt as to [the resulting trust’s] existence by clear, strong, and unequivocal evidence.” In re Sanchez-Villalba, 2013 WL 537496, at 5(quoting United States v. Kaplan, 277 F.2d 405, 409 (5th Cir. 1960)(quoting Fox v. Kimball, 92 Fla. 401, 109 So. 465 (Fla. 1926)).

2. Application

In this case, the record shows that the Defendant furnished the money for the Debtor to purchase the Property in 2014, and the Debtor acknowledged in her bankruptcy papers that she did not contribute to the purchase price. (Doc. 11; Main Case, Doc. 1).

Even though the Defendant funded the Property’s initial purchase, however, the record does not establish the existence of a resulting trust by clear, unequivocal evidence. The Court reaches this conclusion based on the following factors:

1. The Debtor was a personal friend of the Defendant’s president, Moreau Estes, prior to the purchase. (Doc. 11, ¶ 3). There is no indication in the record that the Debtor and Moreau Estes were also business associates.
2. According to the Statement of Financial Affairs filed in her bankruptcy case, the Debtor’s total income in 2014 was \$11,633.75. (Main Case, Doc. 1).
3. The Debtor acquired the Property from an entity known as Hometown Community Development Corporation d/b/a Homestrong USA (Homestrong), which is a non-profit community development organization that promotes successful home ownership through the creation of affordable housing opportunities. (Doc. 20, ¶ 3).
4. At the time of purchase, the Property was offered by Homestrong to buyers with low to moderate income. (Doc. 20, ¶¶ 6, 9).
5. In May of 2014, the Debtor submitted a written Application to Homestrong to purchase the Property as a person with low to moderate income. In connection with the Application, the Debtor supplied certain information regarding her monthly income and expenses, and also submitted a hand-written statement explaining why she wanted to

participate in Homestrong's affordable home program. (Exhibit to Doc. 19; Doc. 20, ¶ 9).

6. On May 27, 2014, the Debtor signed an Affidavit of "Owner Occupied Transaction" to satisfy the program's requirement that she would live in the home as her primary residence. (Exhibit to Doc. 19; Doc. 20, ¶ 11).

7. Homestrong accepted the Debtor's application, and sold the Property to the Debtor pursuant to a Special Warranty Deed dated June 11, 2014.

8. No documentation was produced to indicate that the Warranty Deed did not confer full ownership of the Property on the Debtor.

From this record, the Court cannot find that the Debtor intended to purchase and hold the Property in trust for the Defendant's benefit. Instead, the record shows that the Debtor was in poor financial condition, and that she applied to Homestrong to purchase an affordable home. The record is also consistent with the Defendant's willingness to provide financial assistance for the purchase because the Defendant's president was a personal friend of the Debtor.

. Homestrong accepted the Debtor as a purchaser, and the Special Warranty Deed from Homestrong conveyed a fee simple estate in the Property to the Debtor. In re Sanchez-Villalba, 2013 WL 537496, at 7.

The Defendant did not show that there was any subsequently recorded document or declaration indicating that the Debtor held only bare legal title to the Property, or that the Property was subject to a resulting trust in favor of the Defendant. In re Sanchez-Villalba, 2012 WL 627746, at 3. Additionally, the events in this case are unlike the arrangement in In re Todd, 391 B.R. 504, 508 (Bankr. S.D. Fla. 2008), where the same family owned the subject property both before and after the debtor held title, but temporarily "parked" the property with the debtor for other reasons.

Under these circumstances, the Court finds that the record does not show by clear and unequivocal evidence that the Debtor held the Property in a resulting trust for the Defendant.

Conclusion

The Chapter 7 Trustee commenced this action by filing a Complaint to avoid a constructively fraudulent transfer of real property from the Debtor to the Defendant. The Defendant asserts that the transfer is not avoidable, because the Debtor held the Property only as a trustee for the benefit of the Defendant under a resulting trust.

In Florida, real property is presumed to be held as titled, and the burden of establishing an unrecorded trust rests on the party claiming its existence.

In this case, the record does not show that the Debtor held the Property in a resulting trust, primarily because (1) the Debtor acquired the Property after submitting a written application to the seller to purchase the Property as her home, (2) the Warranty Deed from the seller transferred the Property to the Debtor in fee simple, and (3) no documentation was produced to indicate that the Deed did not confer full ownership of the Property on the Debtor.

Consequently, the Debtor's subsequent transfer of the Property to the Defendant for no consideration was constructively fraudulent, and the Trustee's Cross-Motion for Summary Judgment should be granted.

Accordingly:

IT IS ORDERED that:

1. Defendant Hillsboro-Harpeth Corporation's Motion for Summary Judgment is denied.
2. Plaintiff, Robert Altman, Chapter 7 Trustee's Cross-Motion for Summary Judgment is granted.

3. The transfer of the Property from the Debtor, Constance S. Francis, to the Defendant on September 19, 2014, is avoided pursuant to §548(a)(1)(B) of the Bankruptcy Code, and pursuant to §544 of the Bankruptcy Code and §726.106(1) of the Florida Statutes, and the Trustee may recover the Property or the Property's value pursuant to §550(a) of the Bankruptcy Code.

4. A separate Summary Final Judgment will be entered consistent with this Order.

DATED this 14 day of July, 2016.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN

United States Bankruptcy Judge