WRITTEN DECISION - NOT FOR PUBLICATION

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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re CHADWICK C. COLLINS Debtor,	Case No. 11-19790-PB7 Adv. No. 13-90063-PB ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
NANCY L. WOLF, Chapter 7 Trustee Plaintiff, v. CHARLES G. COLLINS, JANELLE L. COLLINS, and CHADWICK C. COLLINS, Defendants.	

BACKGROUND

Defendants Chadwick and Janelle are husband and wife. Defendant Charles is Chadwick's father. In December of 2002, Chadwick and Janelle purchased the residence at 1480 Beechtree,

San Marcos, California (the Property). The grant deed reflects that they took title as "Husband and Wife as Joint Tenants."

On August 5, 2002, the Defendants all executed a Purchase Agreement that had been prepared by Charles. The Purchase Agreement provided that Chadwick and Janelle would sell the Property to Charles for $385,000. The terms of the Purchase Agreement required Charles to pay $93,000 and to assume Chadwick and Janelle's outstanding mortgage obligation of $292,000.

The Purchase Agreement also provided that title to the Property would be held by Charles in joint tenancy with the Collins Family Trust (Trust), but the Trust was to have no financial interest or control over the Property during the life of Charles. According to Defendants, Chadwick and Janelle moved out and Charles took control of the Property. He renovated the Property and rented it out. Since 2002, Charles has claimed all income and expenses for the Property on his state and federal tax returns. Chadwick and Janelle have claimed neither expenses nor income from the Property.

The terms of the Purchase Agreement notwithstanding, title to the Property was never transferred out of Chadwick and Janelle's names. In 2008 Chadwick refinanced the mortgage on the Property. However, according to Defendants, Charles has made all payments on the original and refinanced note (at least as of the date of the opposition).

On December 7, 2011, Chadwick filed a petition under chapter 7. Plaintiff, Nancy L. Wolf was appointed chapter 7 trustee

(Trustee). At the time the petition was filed, title to the Property remained in the names of Chadwick and Janelle as joint tenants. On March 7, 2013, the Trustee commenced this adversary proceeding against the Defendants. In the complaint she alleges that Chadwick and Janelle retained title to the Property and hence the Property is property of Chadwick's bankruptcy estate. The Trustee also alleges that although title is held as joint tenants, Chadwick and Janelle hold the Property as community property.

Defendants counter that Chadwick and Janelle hold only bare legal title, and that a resulting trust was created in favor of Charles. They also contend that, to the extent Chadwick and Janelle retained title to the Property, they did so as joint tenants. The Defendants have moved for Summary Judgment on these issues. The Court took the matter under submission. For the reasons set forth below, the Court denies the motion with respect to the resulting trust in favor of Charles. The Court grants the motion with respect to the assertion that title is held by Chadwick and Janelle as joint tenants.

DISCUSSION

The ultimate issue here is whether the Property is part of the Debtor's bankruptcy estate, and, if so, to what extent. Bankruptcy Code § 541(a) provides that the property of the estate

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includes "all legal or equitable interests of the debtor in property." However, § 541(d) goes on to provide:

> Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

The Bankruptcy Code itself does not determine the existence and scope of a debtor's interest in property: these threshold issues are properly resolved by reference to state law. Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979).

Resulting Trust

Despite the terms of the Purchase Agreement, title was never transferred from Chadwick and Janelle to Charles. Defendants do not dispute that title to the Property is, and at all times relevant hereto was, held by Chadwick and Janelle. Nevertheless, Defendants contend that under California law a resulting trust was created in favor of Charles based upon the parties' intent to transfer all beneficial interest in the Property to Charles in 2002, Charles' payment in full of the down payment, his assumption of all financial obligations, and Charles' exclusive use and control of the Property since 2002. As a legal matter, Defendants are correct that if a resulting trust had been created

in 2002, the Property would not be included in Debtor's bankruptcy estate. However, upon review of the California case law, the Court finds that as a matter of law a resulting trust cannot be created where there has been no transfer of title. Thus, under the facts of this case, no resulting trust was created in favor of Charles.

Under California law,

> [a] resulting trust arises by operation of law from a *transfer of property* under circumstances showing that the transferee was not intended to take the beneficial interest.... Ordinarily a resulting trust arises in favor of the payor of the purchase price of the property where the purchase price, or a part thereof, is paid by one person and the *title is taken* in the name of another. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired.

Lloyds Bank California v. Wells Fargo Bank, 187 Cal.App.3d 1038, 104243, 232 Cal.Rptr. 339 (1986) (emphasis added). As explained in Mazzera v. Wolf:

> A resulting trust, or "intent- enforcing trust," may arise where the purchase price is paid by one person, in whole or in part, and the title is taken in the name of another.

30 Cal. 2d at 537.

In each of the cases cited by the Defendants, and those discovered by the Court, there was some transfer of title. Each of the cases involved at least three participants which the Court identifies as a Transferor, a Transferee and an Intended Beneficiary. Under the appropriate circumstances, the California

courts have imposed a trust in favor of the Intended Beneficiary though title was transferred from Transferor to Transferee. No case has imposed such a trust where, as here, there was no Transferor nor Transferee.

In In re Cecconi, 366 B.R. 83, 112 (Bankr.N.D.Cal. 2007), the non-debtor spouse used her separate property funds to purchase property from a third party. Title was taken as community property, but the court found a resulting trust in favor of non-debtor spouse as her separate property.

In Owings v. Laugharn, 53 Cal.App.2d 789, 791-92, 128 P.2d 114 (1942), bankrupt husband had purchased property from a third party using his wife's separate property money, but took title in his own name. The court determined that equity regarded the purchase as made in trust for the wife.

In Seabury v. Costello, 209 Cal. App. 2d 640, 642-43 (1962), one sister purchased real property from a third party using money from a loan upon which she was solely liable. However, for planning purposes title was taken in the name of both sisters as joint tenants. The California appeals court upheld the trial court's imposition of a resulting trust in favor of the sister who paid for the property. Id. at 645.

In Mazzera v. Wolf, Wolf purchased the subject property from a third party and took title in his name. 30 Cal. 2d 531, 533 (1947). A business associate, Mazzera, unsuccessfully sought the imposition of a resulting trust.

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Each of the cases involve a transfer of title, but simply not to the party that provided the consideration. Defendants have cited no case, and the Court has found none, in which a resulting trust was upheld where there was no initial transfer of title.

As noted above, state law determines property interests. The resulting trust cases date back at least to 1908. See Moultrie v. Wright, 154 Cal. 520 (1908). In the 105 years since, no California court has publicly imposed a resulting trust where there was no transfer of title. This Court is not willing to extend this California state law beyond where the state courts have seen fit.

Accordingly, the Court denies the motion for summary judgment on the issue of resulting trust where title was never transferred by Chadwick and Janelle.

Community Property

Defendants also seek summary adjudication that the Property was owned by them as joint tenants as provided in the grant deed, not as community property as alleged by the Trustee. The Trustee concedes that when title to property is taken in joint tenancy, it is presumed to be held in joint tenancy with each spouse owning an undivided one-half interest. She contends, however, that the presumption is rebutted in this case by the subsequent conduct of Chadwick and Janelle with respect to the Property. The Court disagrees.

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Under California law, property taken by spouses as joint tenants may be shown to be community property according to the intention, understanding or agreement of the parties. Gudelj v. Gudelj, 41 Cal.2d 202, 212 (1953). The Trustee is correct that whether the evidence is sufficient to overcome the presumption of joint tenancy is a question of fact. Id. However, in response to the motion and the undisputed joint tenancy grant deed, the Trustee provided no facts to the contrary at all.

The grant deed provides that Chadwick and Janelle took title as joint tenants. In an effort to refute the presumption created thereby, the Trustee relies upon the loan applications Chadwick made in 2002 and 2008. The Trustee contends that Chadwick represented in his loan application that he owned 100% of the value of the Property, and thus must have considered the Property community property. The Court sees no such representation.

The Trustee bases her assertion on the fact that in the box entitled "Present Market Value" Chadwick entered the full value of the Property, as opposed to the value of his 50% joint interest. This, according to the Trustee, indicates that Chadwick held an undivided community property interest in the Property. Thus, argues the Trustee, he must have been asserting to the bank that he had an interest in the entire Property, which would be the case if he and Janelle held it as community property.

The Trustee's position is belied by express statements in the 2002 and 2008 loan applications. In the 2002 application,

under the heading "Manner in which Title will be held" the loan application provides "TENANTS BY SEVERALTY." In response to the question "How did you hold title to the home?" Chadwick responded "jointly with [my] spouse."

The 2008 application was more clear. Under the heading "Manner in which Title will be held" the application provides "JOINT TENANTS."

Further, attached to both of the applications were current appraisal reports. Thus, it was clear that when Chadwick filled in the box entitled "Present Market Value" he was reporting the full value of the Property, in which he held a joint interest. At best, the loan applications are ambiguous. They certainly do not amount to evidence that Chadwick and Janelle intended to hold the Property as community property sufficient to overcome the presumption based upon the grant deed.

The Trustee then argues that the fact that the proposed transfer under the Purchase Agreement to Charles and the Collins Family Trust, in which the Collins' children were beneficiaries, suggests "that each had joint control of 100% of the beneficial interest in the property." The Court sees no such suggestion. A husband and wife holding property as joint tenants could agree to transfer the property into a trust, just as any joint tenants. That simple transfer indicates no intent of the parties to alter the manner in which title was held as between them.

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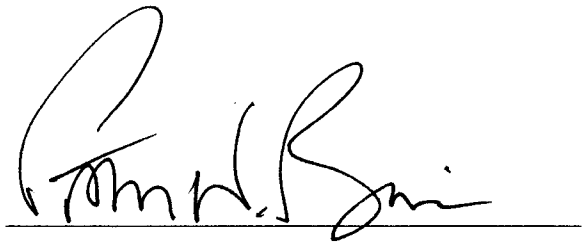
CONCLUSION

For the foregoing reasons, the Court denies Defendants' motion with respect to the resulting trust argument. The Court grants Defendants' motion for summary adjudication that the Property is held as joint tenants, not as community property. Counsel for the Defendants shall file and serve an order consistent herewith within thirty (30) days of the entry of this Memorandum Decision.

IT IS SO ORDERED.

DATED: SEP 9 2014



PETER W. BOWIE, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In re Bankruptcy Case No(s).: 11-19790-PB7 Chadwick C. Collins
Adversary No(s)., if any: 13-90063-PB Nancy L. Wolf v. Charles G. Collins, Janelle L. Collins, and Chadwick C. Collins

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

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Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on September 9, 2014.

Lisa Cruz

Lisa Cruz, Deputy Clerk

Notice Recipients

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