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MAR 19 2018

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY  DEPUTY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re: LAWRENCE D. BEIMAN, Debtor.
STEVEN P. KARTZMAN, as Chapter 7 Trustee, Plaintiff, vs. RANDI BEIMAN, Defendant.

Case No.: 15-10488 (JKS)

Chapter 7

Judge: John K. Sherwood

Adv. Pro. No.: 17-01030 (JKS)

**DECISION AND ORDER REGARDING PLAINTIFF'S MOTION
AND DEFENDANT'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

The relief set forth on the following pages, numbered two (2) through fourteen (14), is hereby **ORDERED**.



HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Dated: March 19, 2018

APPEARANCES:

Mellinger, Sanders & Kartzman, LLC

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INTRODUCTION

Steven P. Kartzman (the "Trustee") filed this suit on behalf of the estate of Lawrence D. Beiman (the "Debtor") against the Debtor's wife, Randi Beiman (the "Defendant"). The Trustee seeks a declaratory judgment that the Debtor has an equitable interest in the Beiman family home located at 163 Windham Road, Hillsdale, New Jersey (the "Windham Property"), even though title to the Windham Property has been solely in Defendant's name since it was purchased in 2003. The Trustee also seeks a declaratory judgment that the Debtor has an equitable interest in a \$6,000 bonus payment to the Debtor, which was transferred to Defendant, and four bank accounts with combined balances of over \$13,000 as of the date of the Debtor's bankruptcy filing.¹ The Trustee seeks to establish that the Debtor has an ownership interest in these assets – the Windham Property, the bonus and the bank accounts – so that he can liquidate them and distribute the proceeds to the Debtor's creditors. Based on the evidence in the record, the Court concludes that the bonus is property of the estate but the Windham Property is not. As to the bank accounts, the Court is of the view that they are probably property of the estate, but issues of fact preclude summary judgment. These decisions are discussed in more detail below.

PROCEDURAL HISTORY

On January 12, 2015, the Debtor filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. On January 10, 2017, the Trustee filed this adversary proceeding against the Defendant. On January 26, 2017, the Defendant filed her answer to the complaint.² On October 23, 2017, the Trustee filed a motion for summary judgment on counts one, two and

¹ Compl. for Avoidance, Recovery of Transfers Pursuant to 11 U.S.C. §§ 544, 548 and 550, ECF No. 1.

² ECF No. 5.

three of the Complaint.³ On November 22, 2017, the Defendant filed her opposition and cross-motion for summary judgment on count one.⁴ On January 18, 2018, the Trustee filed its response to Defendant's opposition and cross-motion.⁵ The Court held oral argument on February 6, 2018 and reserved decision.

JURISDICTION

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334(b), 157(a), and the Standing Order of Reference from the United States District Court for the District of New Jersey dated July 23, 1984, as amended September 18, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (H) and (O). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

STATEMENT OF FACTS

In 1999, the Defendant purchased real property at 54 High Street in Closter, New Jersey (the "High Street Property") for \$205,000. The High Street Property was originally rented by the Debtor and the Defendant and used as their marital home. The Defendant decided to purchase the property following their leasehold tenancy. To purchase the home, the Defendant received \$30,000 as a gift from her mother and secured a no-income verification loan from Country Wide Mortgage.⁶

The Trustee asserts that the purchase of the High Street Property was in the Defendant's name because the Debtor had bad credit and could not obtain a mortgage loan even though he had sufficient income to pay the carrying costs for the High Street Property. In support of that

³ ECF No. 14.

⁴ ECF No. 18.

⁵ ECF No. 21.

⁶ Def.'s Certification in Opp'n to Pl.'s Mot. for Partial Summ. J., ¶¶ 4-7, ECF No. 18.

assertion, the Trustee listed nine judgments that were obtained against the Debtor between 1988 and 1999 totaling \$13,653.41.⁷ However, the Defendant testified at deposition that she was unaware of any judgments or liabilities against the Debtor prior to purchasing the High Street Property.⁸

In 2003, the Defendant sold the High Street Property for \$330,000. After satisfying the outstanding mortgage and paying other closing expenses, the Defendant netted approximately \$130,000 in proceeds.⁹ Soon after closing on the High Street Property, the Defendant purchased the Windham Property for \$415,000 to be used as the family residence.¹⁰ The Defendant obtained another no-income verification loan from Country Wide Mortgage in the amount of \$273,000 in order to buy the property. The Defendant also used a second \$30,000 gift from her mother and approximately \$130,000 in net proceeds from the High Street Property sale to pay for the Windham Property.¹¹ Just as with the High Street Property, the title and mortgage for the Windham Property were solely in the Defendant's name.¹²

The Trustee asserts that the Windham Property was purchased solely in the Defendant's name due to the Debtor's ongoing credit issues and inability to obtain a mortgage. In further support of that assertion, the Trustee listed an additional six judgments against the Debtor that were dated between the time of the High Street Property purchase and Windham Property purchase totaling \$30,389.25.¹³ Similar to the High Street Property, the Defendant testified at deposition

⁷ Compl., ¶¶16-17, ECF No. 1.

⁸ Certification of Steven P. Kartzman, Chapter 7 Trustee, in Supp. of Mot. for Partial Summ. J., Ex. A, Beiman Dep. 18:24 – 20:10; 24:17 – 24:24; 27:6 – 27:15; 29:21 – 29:23, ECF No. 14.

⁹ Compl., ¶ 21, ECF No. 1; Def.'s Answer to Compl., ¶ 21, ECF No. 5.

¹⁰ *Id.* at ¶ 23; *Id.* at ¶ 23.

¹¹ *Id.* at ¶ 25; *Id.* at ¶ 25.

¹² Def.'s Certification in Opp'n to Pl.'s Mot. for Partial Summ. J., ¶¶ 7, 9-11, ECF No. 18.

¹³ Compl., ¶¶ 27-28, ECF No. 1.

that the title and mortgage were in her name at the urging of her mother and that she was unaware of any judgments or liabilities against the Debtor prior to purchasing the Windham Property.¹⁴

As with the High Street Property, the financial obligations relating to the Windham Property, including mortgage payments, utilities, improvements, repairs and various other bills, were paid solely using the Debtor's income from 2003 to 2013.¹⁵ In 2013, the Defendant started working but only contributed an annual income of less than \$3,000 through 2016.¹⁶

In addition, the Debtor received a \$6,000 bonus from his employer some time following the petition date, January 12, 2015. The Trustee asserts that this post-petition payment was for pre-petition services as part of the Debtor's employment. This is supported by a letter obtained from the Debtor's employer, which states that the bonus was for 2014.¹⁷ The Trustee asserts that the Debtor's income, including the bonus, "was placed in an account in Defendant's name to avoid any attempts to reach the same by the Debtor's creditors."¹⁸ It is alleged that the payments were made this way because "the Debtor owed no less than \$269,554.85 to his creditors."¹⁹

Finally, this adversary proceeding addresses four bank accounts held in the Defendant's name. The Trustee alleges that the accounts held solely in the Defendant's name must be turned over to the estate pursuant to § 542(a) because almost all the funds originated from the Debtor's income. According to the Trustee, the accounts contained \$13,149.71 as of the petition date.²⁰ However, the Defendant asserts that she is the owner of a checking account, savings account, and

¹⁴ Certification of Steven P. Kartzman, Chapter 7 Trustee, in Supp. of Mot. for Partial Summ. J., Ex. A, Beiman Dep. 10:6 – 10:16; 15:22 – 16:4; 29:21 – 29:23, ECF No. 14.

¹⁵ *Id.* at 13:8 – 13:17; 14:7 – 15:21; 18:3 – 18:21; 25:5 – 25:11; 27:16 – 28:1.

¹⁶ *Id.* at 22:9 – 22:18; 27:16 – 28:1.

¹⁷ Certification of Steven P. Kartzman, Chapter 7 Trustee, in Supp. of Mot. for Partial Summ. J., Ex. I, ECF No. 14.

¹⁸ Compl., ¶¶ 48-49, ECF No. 1.

¹⁹ *Id.* at ¶ 51.

²⁰ *Id.* at ¶¶ 40-46.

two IRA accounts. She claims that the two bank accounts total \$2,055.44 and that even if the two IRA accounts are included in the calculation, the cumulative total is \$10,116.94 as of the petition date.²¹

SUMMARY JUDGMENT STANDARD

Pursuant to Federal Rules of Civil Procedure 56(c), a motion for summary judgment will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “The summary judgment movant must show initially that there is no genuine issue of material fact.”²² “Once the movant has met that initial burden, the nonmovant must present evidence establishing that a genuine issue of material fact exists, making it necessary to resolve the difference at trial.”²³ “A court must view the evidence in the light most favorable to the nonmovant when deciding a summary judgment motion.”²⁴ However, “[t]he nonmovant, rather than rely on mere allegations, must present actual evidence raising a genuine issue of material fact.”²⁵ “A fact is material only if it might affect the action's outcome under governing law.”²⁶

²¹ Certification of Leonard S. Singer in Opp'n to Pl.'s Mot. for Summ. J. and in Supp. of Def.'s Cross-Mot. for Partial Summ. J., ¶¶ 2-6, ECF No. 18.

²² *Knauss v. Dwek*, 289 F. Supp. 2d 546, 549 (D.N.J. 2003) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

²³ *Id.* (citing *Celotex Corp.*, 477 U.S. at 324).

²⁴ *Id.* (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

²⁵ *Id.* (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986)).

²⁶ *Id.* (citing *Anderson*, 477 U.S. at 248).

ANALYSIS

1. The Estate Does Not Have An Equitable Interest In The Windham Property

Both the Trustee and the Defendant are moving for summary judgment as to the claim asserting that the Windham Property is property of the Debtor's estate.²⁷

In bankruptcy cases, "state law generally determines what interest, if any, a debtor has in property."²⁸ Any such interest held by a debtor under state law prior to the commencement of a bankruptcy case is also held by a bankruptcy trustee as of the date a petition is filed.²⁹ Thus, the Court looks first to what rights the Debtor has regarding the Windham Property under New Jersey state law as a non-title-holding spouse.

Under New Jersey law, a non-title-holding spouse has a right to joint possession of the home as well as a potential economic interest – the right to share in the value of the equity in the home for the purpose of equitable distribution. N.J.S.A. 3B:28-3(a) provides that "[d]uring life every married individual shall be entitled to joint possession with his spouse of any real property which they occupy jointly as their principal matrimonial residence and to which neither dower nor curtesy applies." In addition, "[t]he right to joint possession makes the marital residence subject to equitable distribution upon dissolution of the marriage."³⁰

The New Jersey Supreme Court has held that "ordinarily, equitable distribution of marital assets arises only with the adjudication of divorce."³¹ The court in *In re Kane*, 628 F.3d 631, 641

²⁷ ECF No. 14; ECF No. 18.

²⁸ *O'Dowd v. Trueger (In re O'Dowd)*, 233 F.3d 197, 202 (3d Cir. 2000); see also *Butner v. United States*, 440 U.S. 48, 55 (1979) (stating that "[p]roperty interests are created and defined by state law.").

²⁹ *In re Integrated Solutions, Inc. v. Service Support Specialties, Inc. (In re Integrated Solutions, Inc.)*, 124 F.3d 487, 493 (3d Cir. 1997).

³⁰ *In re Rosa*, 261 B.R. 136, 139 (Bankr. D.N.J. 2001) (citing *Arnold v. Anvil Realty Inv., Inc.*, 233 N.J. Super. 481, 485 (App. Div. 1989)).

³¹ *Carr v. Carr*, 120 N.J. 336, 343 (1990).

(3d Cir. 2010) considered a wife's equitable distribution claim in her ex-husband's bankruptcy case. Describing the nature of a spouse's equitable distribution rights under New Jersey law, the court stated "that when [the debtor] filed for bankruptcy, she had an *interest* in an equitable distribution of marital property . . . by virtue of having initiated a divorce action in which she was seeking equitable distribution—but she did not have a *right* to it. Her claim qualified as a contingent, equitable interest in (marital) property that could not ripen into a vested property interest—i.e., a tangible asset—until entry of a judgment of divorce." (Emphasis in original). Thus, for the Debtor's potential economic interest in the Windham Property to become reality, a judgment of divorce would have to be entered which gives the Debtor his equitable distribution rights. Section 541(a)(5)(B) of the Bankruptcy Code recognizes that a property interest that a debtor acquires within 180 days of the filing of the petition as a result of a divorce decree becomes property of the estate. Since the 180-day period has passed in this case and the Debtor has not been granted an equitable distribution interest in the Windham Property pursuant to a divorce judgment, the Debtor's contingent economic interest in the home under New Jersey law does not become property of the estate.

The Trustee also asserts that the Debtor is entitled to an equitable interest because he has paid for the mortgage, property taxes, insurance, maintenance and renovations, which have generated equity in the Windham Property. The Trustee relies on several bankruptcy cases where the courts found the debtors had an equitable interest in real properties and ordered that the properties in question be included in the debtors' estates. But these cases are distinguishable.

For example, *In re NJ Affordable Homes*, No. 05-60442 (DHS), 2006 Bankr. LEXIS 4498 (Bankr. D.N.J. 2006) addressed the issue of whether the estate of a debtor that committed massive

fraud through a Ponzi scheme could include properties the debtor purchased and managed in the names of various investors. The court decided that the many properties should be included in the debtor's estate due to "the unique facts and circumstances of the fraud perpetrated by [the debtor]" and further reasoned that "the mere fact that title to a property is in the name of [a third party] does not mean that [the debtor] does not have an equitable interest in the property, however speculative that interest may be."³² This Court has no issue with the analysis of the court in *NJ Affordable Homes*. But the "peculiar facts"³³ of that case – a massive scheme to defraud investors and lenders of millions – cannot seriously be compared to the decision of the Debtor and Defendant in this case to keep the home in the wife's name.

The Trustee's motion cites various other cases where courts have found that a debtor had an equitable interest in property.³⁴ Those cases are distinguishable on one or more of the followings grounds: (1) They involved property that was once owned by the debtor and then transferred to the spouse or other third party (usually in the face of creditor pressure), (2) The debtor represented that he had an interest in the property or used the property to obtain credit, (3) The debtor's funds were used to acquire the property. None of these factors are present here. The Debtor never held an ownership interest in either the High Street Property or Windham Property. Ownership of the marital home by Defendant has been the state of affairs since 1999. Both properties were purchased using \$30,000 gifts from the Defendant's mother and no-income

³² *In re NJ Affordable Homes*, 2006 Bankr. LEXIS 4498 at *33.

³³ *Id.* at *34.

³⁴ *In re Kauffman*, 675 F.2d 127 (7th Cir. 1981); *In re Cook*, 126 B.R. 261 (Bankr. E.D. Tex. 1991); *In re Olivier*, 819 F.2d 550 (5th Cir. 1987); *In re Keeney*, 227 F.3d 679 (6th Cir. 2000); *In re Howard*, 55 B.R. 580 (Bankr. E.D. N.C. 1985); *In re Lawson*, 122 F.3d 1237 (9th Cir. 1997); *In re McGavin*, 220 B.R. 125 (Bankr. D. Utah 1998); *Springel v. Prosser (In re Prosser)*, 2011 Bankr. LEXIS 411 (Bankr. U.S.V.I. 2011).

verification mortgage loans obtained solely by the Defendant. And, there is no evidence that the Debtor ever portrayed himself as the owner of either home to demonstrate his credit-worthiness.

The Trustee also notes that the Debtor owed judgment creditors at the time of the purchase of both properties. Accepting this statement as true, these judgment creditors were not defrauded because the Debtor never owned either of the properties. Thus, he did not transfer title to the properties to his wife to hinder, delay or defraud these judgment holders. The fact that the Debtor's income was used for mortgage payments and improvements to the properties by itself does not give rise to an equitable interest in the Windham Property. The Court is not aware of any case where a debtor was deemed to have an equitable interest in property where the debtor did not transfer the property pre-bankruptcy or otherwise engage in fraudulent conduct. The Trustee does not allege that the Debtor acted to hinder, delay or defraud creditors and the Court finds no evidence of same.

Based on the undisputed facts, the Court finds that the estate does not have an equitable interest in the Windham Property. Therefore, the Trustee does not have the power to sell the Windham Property under § 363(h) of the Bankruptcy Code and distribute the proceeds under § 363(j). The Plaintiff's motion for partial summary judgment as to count one is denied and the Defendant's cross-motion for partial summary judgment as to count one is granted.

2. The Bonus Deposited Into The Defendant's Account Is Avoidable

The Trustee alleges that the \$6,000 bonus deposit into the Defendant's bank account must be included in the Debtor's estate pursuant to § 541 of the Bankruptcy Code and the transaction is avoidable pursuant to § 549(a). The Court agrees.

In cases where the debtor receives post-petition payment for pre-petition services, courts have held that the payment is property of the debtor's estate. For example, in *Holber v. Segal (In re Segal)*, 2016 U.S. Dist. LEXIS 43251, *23 (E.D. Pa. 2016), the court held that "[t]he exception in § 541(a)(6) for post-petition earnings of the debtor is construed narrowly to encompass only those payments received by the debtor post-petition that are 'attributable to post-petition services actually rendered by the debtor.'"³⁵ Thus, so long as the post-petition transfer is sufficiently attributable to pre-petition services performed by the Debtor, it must be included in the Debtor's bankruptcy estate.

Here, the bonus was deposited into the Defendant's bank account after the petition date. The only evidence in the record concerning the period for which the bonus was paid is the letter from the Debtor's employer which states that the Debtor "received a 2014 bonus in the amount of \$6,000."³⁶ This statement by the Debtor's employer demonstrates that the \$6,000 payment is on account of pre-petition services.

The Defendant cited two New Jersey state court cases in which employees were granted bonuses by their employers but the courts held that because the bonuses could not be contractually enforced, they did not vest until the employees received them.³⁷ The Defendant alleges that the Plaintiff failed to prove that the bonus was a vested pre-petition contractual right but does not provide any evidence to rebut the employer's letter. As previously mentioned, "[t]he nonmovant, rather than rely on mere allegations, must present actual evidence raising a genuine issue of material fact."³⁸ Thus, the Court relies on the express statement contained in the employer's letter.

³⁵ (quoting *Longaker v. Boston Sci. Corp.*, 715 F.3d 658, 662 (8th Cir. 2013)).

³⁶ Certification of Steven P. Kartzman, Chapter 7 Trustee, in Supp. of Mot. for Partial Summ. J., Ex. I, ECF No. 14.

³⁷ *Lutz v. Ryno*, 1 N.J. 363 (1949); *Matter of Gregorui's Estate*, 153 N.J. Super. 44 (App. Div. 1977).

³⁸ *Knauss*, 289 F. Supp. 2d at 549 (citing *Anderson*, 477 U.S. at 249).

Pursuant to § 549(a), the Court finds that the transfer of the bonus to Defendant is avoidable because it involved a post-petition transfer of monies attributable to the Debtor's pre-petition services. As a result, Plaintiff's motion for partial summary judgment is granted as to count three.

3. There Are Genuine Issues Of Material Fact Regarding Whether The Estate Has An Equitable Interest In The Defendant's Bank Accounts

The Trustee alleges in count two that the four bank accounts held solely in the Defendant's name must be turned over to the estate pursuant to § 542(a) because almost all the funds deposited into the accounts were from the Debtor's income. Unlike the Windham Property, which was held in Defendant's name since 2003, the Debtor's pre-petition income was his own.

The Trustee cites to N.J.S.A. § 17:16I-4, which states in pertinent part:

“Unless a contrary intent is manifested by the terms of the contract, or the deposit agreement, or there is other clear and convincing evidence of a different intent at the time the account is created:

- a. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit. In the absence of proof of net contributions, the account belongs in equal shares to all parties having present right of withdrawal....”

The Trustee concedes that these accounts are not joint accounts. However, he argues that N.J.S.A. § 17:16I-4 should still apply because the accounts were utilized as if they were joint accounts since the funds were used to pay for household expenses and mostly originated from the Debtor's income. The Trustee further asserts the payments were made this way because “the Debtor owed no less than \$269,554.85 to his creditors.”³⁹ While the Court suspects that most of the funds in the Defendant's accounts are property of the Debtor's estate, the Defendant has raised issues

³⁹ Compl., ¶ 51, ECF No. 1.

concerning the amounts in the accounts and whether all or some of the accounts that belong to the Debtor are exempt property. If the parties cannot resolve this issue, a trial will be necessary on June 13, 2018. The Trustee's motion for partial summary judgment as to count two regarding the Defendant's four bank accounts is denied.

CONCLUSION

Upon review of the record before the Court, the Defendant's cross-motion for partial summary judgment is granted as to count one and Plaintiff's motion for partial summary judgment is denied as to count one because the Court finds that the Debtor did not have an equitable interest in the Windham Property as of the petition date. Based on this finding, counts five and six of the Complaint should also be dismissed.

The Court grants partial summary judgment in favor of the Trustee as to count three because the record demonstrates that the bonus was for the Debtor's pre-petition services even though it was transferred into the Defendant's account after the petition date.

Finally, the Court denies the Trustee's motion for partial summary judgment as to count two regarding the Defendant's four bank accounts because there are genuine issues of material fact.