UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Weldon Eugene Holtzclaw, Jr., Debtor(s).	C/A No. 20-03558-HB Adv. Pro. No. 21-80034-HB Chapter 11
Weldon Eugene Holtzclaw, Jr., Plaintiff(s), v. Marjorie Morgan, Defendant(s).	**ORDER**

THIS MATTER is before the Court on the motion to dismiss and abstain filed by Defendant Marjorie Morgan.[1] Morgan requests the Court: (1) dismiss Plaintiff Weldon Eugene Holtzclaw's causes of action for resulting trust, quantum meruit, trespass upon property, conversion of property, and objection to proofs of claims due to a lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) because they fall within the "domestic relations exception" to federal jurisdiction;[2] (2) dismiss the causes of action for constructive trust, resulting trust, quantum meruit, trespass upon property, conversion of property, and objection to proofs of claims pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted; and (3) abstain from hearing this adversary proceeding pursuant to 28 U.S.C. § 1334(c)(2) because it involves state law claims more appropriate for the family court to adjudicate. Holtzclaw filed a Response objecting to the requested relief.[3]

[1] ECF No. 4, filed July 21, 2021.
[2] Made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012.
[3] ECF No. 10, filed Aug. 2, 2021.

STANDARD OF REVIEW

"A defendant may challenge subject-matter jurisdiction in one of two ways: facially or factually." *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017) (citation omitted). "In a facial challenge, the defendant contends that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based." *Id.* (quotation marks and citations omitted). The plaintiff "is afforded the same procedural protection as she would receive under a Rule 12(b)(6) consideration . . ." *Id.* (quotation marks and citations omitted). "In that situation, the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). The "court evaluates the complaint in its entirety, as well as documents attached or incorporated into the complaint." *E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011) (citations omitted). "The court can [also] consider . . . concessions in the complainant's response to the motion to dismiss." *Arturet-Velez v. R.J. Reynolds Tobacco Co.*, 429 F.3d 10, 13 n.2 (1st Cir. 2005) (citations omitted). However, "materials outside the pleadings are not considered." *In re Jones*, 618 B.R. 757, 762 (Bankr. D.S.C. 2020) (quotation marks and citations omitted). If the Court considers materials "beyond these documents on a Rule 12(b)(6) motion . . . it converts the motion into one for summary judgment." *Kolon Indus., Inc.*, 637 F.3d at 448 (citing Fed. R. Civ. P. 12(b), 12(d), and 56). "Such conversion is not appropriate where the parties have not had an opportunity for reasonable discovery." *Id.* at 448-49 (citations omitted).

Morgan's assertion that this Court lacks subject matter jurisdiction over certain causes of action because they fall within the "domestic relations exception" to federal jurisdiction is a facial attack. She also seeks to dismiss some causes of action pursuant to Fed. R. Civ. P. 12(b)(6) and the parties have not had an opportunity to engage in discovery. As a result, the Court will only

consider and accept as true the factual allegations of Holtzclaw's Complaint and the admissions or clarifications gleaned from his Response to the Motion.

ALLEGATIONS OF THE COMPLAINT AND CONCESSIONS IN THE RESPONSE

In his Complaint, Holtzclaw alleges his father loaned him funds to purchase property located at 24 Goose Trail, Taylors, South Carolina ("Goose Trail Property"). He and Morgan then co-signed two promissory notes to fund the construction of a house on that property. He intended from the outset to pay all costs associated with the construction and ownership of the Goose Trail Property, investing over $300,000.00 to construct the home and improve the land.[4]

The deed to the Goose Trail Property only bears Morgan's name. However, Holtzclaw alleges he never intended to gift any portion of the property to Morgan and the parties never intended for Morgan to possess any ownership interest beyond holding title. Morgan was to hold only bare legal title because she was better able to obtain a construction loan and mortgage and was to later convey the Goose Trail Property to Holtzclaw. The Complaint fails to allege when this transfer was to occur or under what conditions. Holtzclaw alleges he has resided at the Goose Trail Property since the house was constructed, while Morgan has never lived there nor contributed to the improvement of the property.

Morgan asserts that she and Holtzclaw are married. On June 1, 2020, Morgan filed a complaint against Holtzclaw in the Greenville County, South Carolina Family Court, Thirteenth Judicial Circuit ("Family Court"), *Marjorie Morgan v. Weldon Eugene Holtzclaw, Jr.*, C/A No. 2020-DR-23-1803 (the "Domestic Proceeding"). In the Domestic Proceeding, Morgan seeks, *inter*

[4] It is not clear from the allegations of the Complaint whether some portion of this investment included the loans. However, Holtzclaw's Response states, "[t]he lot upon which the home was built was purchased approximately a year prior to the execution of the construction loan, which provided funding for construction of the home itself[,]" and "[i]t is also correct that [Morgan and Holtzclaw] co-signed the two notes as stated in the Motion and as is reflected in the documents attached to that Motion."

alia, dissolution of a purported marriage between her and Holtzclaw, spousal support, and an equitable distribution of property that includes the Goose Trail Property and property located at 12 West Darby Road, Greenville, South Carolina ("West Darby Property"). Holtzclaw asserts he and Morgan are not legal nor common law spouses and, therefore, she is not entitled to spousal support or an equitable division of property.

Despite Holtzclaw's denials, the Family Court entered an order on July 31, 2020 ("Family Court Order"), requiring, *inter alia*, that:

> 1. As an incident of support, within ten (10) days of the filing of this Order, [Holtzclaw] shall . . . pay the money necessary to bring all mortgage debt, property taxes, and insurance associated with the 12 West Darby Road, Greenville, South Carolina real property current and in good standing.
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> 2. As an incident of support, beginning immediately, [Holtzclaw] shall timely pay all mortgage debt, property taxes, and insurance associated with the 12 West Darby Road, Greenville, South Carolina real property.
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> 3. [Morgan] shall maintain temporary, exclusive use and possession of the former marital home located at 12 West Darby Road, Greenville, South Carolina, together with all furniture and fixtures located in this residence.
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> . . . .
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> 5. Each party shall be restrained from being physically present at the residence of the other party.
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> . . . .
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> 12. [Holtzclaw] shall maintain temporary exclusive possession of the home and real property located at 24 Goose Trail, Taylors, South Carolina, and timely pay and keep current any mortgage payments, taxes or insurance associated with this property.

Before the Domestic Proceeding was concluded, Holtzclaw filed a voluntary petition for Chapter 11 relief on September 15, 2020. Morgan has filed three proofs of claims asserting her interest in the bankruptcy estate.

Holtzclaw resides at the Goose Trail Property and Morgan resides at the West Darby Property. Holtzclaw asserts he also owns the West Darby Property[5] and Morgan allows her adult children and minor grandchildren to occupy it without giving valuable consideration in exchange for such use and without the permission of either the Family Court or this Court. Holtzclaw claims this deprives both himself and his creditors of the fair market value of rent for the West Darby Property, constitutes a trespass on his property, and seeks redress in this proceeding. Holtzclaw also alleges Morgan is holding and has refused to allow Holtzclaw to retrieve certain personal property, financial documents, and other miscellaneous property from that location.

Holtzclaw filed this adversary proceeding on June 21, 2021, claiming a one hundred percent (100%) equitable interest in the Goose Trail Property under theories of constructive trust, resulting trust, and/or quantum meruit and asserts it is property of the estate despite the fact it is titled in Morgan's name. He also seeks to restrict Morgan's use of the West Darby Property and objects to her proofs of claims. To accomplish this, Holtzclaw labels the following causes of action: (1) property of the estate; (2) constructive trust; (3) resulting trust; (4) quantum meruit; (5) turnover of property of the estate; (6) trespass; (7) conversion of property; and (8) objection to proofs of claims.[6] Morgan disagrees and asserts rights through her claim of a marriage between the parties in the Domestic Proceeding pending before the Family Court, and her proofs of claim filed herein.

[5] The Complaint only alleges the West Darby Property is "his property."
[6] Morgan does not seek dismissal of the causes of action labeled "property of the estate" or "turnover of property," but only that the Court abstain from hearing all matters in this adversary proceeding.

DISCUSSION AND CONCLUSIONS

I. SUBJECT MATTER JURISDICTION

Morgan relies on the "domestic relations exception" in support of her argument that this Court does not have jurisdiction to adjudicate Holtzclaw's causes of action for resulting trust, quantum meruit, trespass, conversion of property, and objection to proofs of claims. This jurisdictional exception dates to 1858, when the Supreme Court "disclaim[ed] altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony . . ." *Barber v. Barber*, 62 U.S. 582, 584 (1858). That holding was later reviewed and limited by *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), where the issue before the Supreme Court was "whether federal courts have jurisdiction . . . when the sole basis for federal jurisdiction is the diversity-of-citizenship provision of 28 U.S.C. § 1332." *Id.* at 691. The Supreme Court held that "the domestic relations exception . . . divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Id.* at 703.

The Fourth Circuit, as well as several other Circuit Courts, has held that the reasoning of *Ankenbrandt* and the domestic relations exception apply only to diversity jurisdiction and do not limit federal question jurisdiction under 28 U.S.C. § 1331. *United States v. Johnson*, 114 F.3d 476, 481 (4th Cir. 1997) ("The '[domestic relations] jurisdictional exception,' in the first place, is applied only as a judicially implied limitation on the diversity jurisdiction; it has no generally recognized application as a limitation on federal question jurisdiction." (citing *Ankenbrandt*, 504 U.S. at 700-01)); *see also Deem v. DiMella-Deem*, 941 F.3d 618, 623 (2d Cir. 2019); *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 947 (9th Cir. 2008); *United States v. Bailey*, 115 F.3d 1222, 1231 (5th Cir. 1997); *Flood v. Braaten*, 727 F.2d 303, 307 (3d Cir. 1984); *but see*

Kowalski v. Boliker, 893 F.3d 987, 995 (7th Cir. 2018) (holding that the domestic relations exception "appl[ies] to both federal-question and diversity suits").

Unlike the jurisdictional statute at issue in *Ankenbrandt*, the bankruptcy court's jurisdiction is provided under 28 U.S.C. § 1334, which grants the district courts "original and exclusive jurisdiction of all cases under title 11."[7] 28 U.S.C. § 1334(a). The district courts also "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). "[S]everal bankruptcy courts have held that the domestic relations exception does not limit the bankruptcy court's jurisdiction under § 1334." *In re Ament*, C/A No. 19-12187-J11, 2020 WL 354888, at *3 (Bankr. D.N.M. Jan. 21, 2020) (citing *In re Blixseth*, C/A No. 09-60452-7, 2011 WL 3274042, at *7 (Bankr. D. Mont. Aug. 1, 2011), *order amended on denial of reconsideration,* 463 B.R. 896 (Bankr. D. Mont. 2012) (holding that the domestic relations exception did not limit the court's jurisdiction under § 1334 and § 157); *In re Bandini*, 165 B.R. 317, 321 (Bankr. S.D. Fla. 1994) (finding *Ankenbrandt* "wholly inapplicable" because it was based on § 1332 rather than § 1334)). Because the domestic relations exception only applies to diversity jurisdiction, it does not preclude this Court from otherwise having jurisdiction under 28 U.S.C. § 1334. Accordingly, Morgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) is denied.

II. FAILURE TO STATE A CLAIM

Morgan seeks dismissal of Holtzclaw's causes of action for constructive trust, resulting trust, quantum meruit, trespass upon property, conversion of property, and objection to proofs of claims for failure to state a claim under Fed. R. Civ. P. 12(b)(6). A motion to dismiss pursuant to

[7] 28 U.S.C. § 157(a) authorizes district courts to refer the exercise of that jurisdiction to bankruptcy courts. The district court's local rules refer to this Court "all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11." Local Civ. Rule 83.IX.01 (D.S.C.) (citing 28 U.S.C. § 157).

Fed. R. Civ. P. 12(b)(6) tests the sufficiency of the complaint without resolving contests of fact or the merits of a claim. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992), *cert. denied*, 510 U.S. 828 (1993). The Court's inquiry is limited to determining whether the allegations constitute "a short and plain statement of the claim showing the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In deciding a motion to dismiss, the Court must draw all reasonable factual inferences in favor of the plaintiff. *Priority Auto Grp., Inc. v. Ford Motor Co.*, 757 F.3d 137, 139 (4th Cir. 2014).

To survive a motion to dismiss, factual allegations in the complaint must be sufficient to "raise a right to relief above a speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Consequently, a complaint will survive only if it contains "enough facts to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions . . . [and] [t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679 (citing *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

A. CONSTRUCTIVE TRUST

"While federal law creates the bankruptcy estate, the determination of property rights is controlled by state law." *In re Brittain*, 435 B.R. 318, 321-22 (Bankr. D.S.C. 2010) (citing *Am. Bankers Ins. Co. v. Maness*, 101 F.3d 358, 363 (4th Cir. 1996)). Under South Carolina law, a

constructive trust is an equitable remedy the Court may impose "whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty." *City of Charleston, S.C. v. Hotels.com, LP*, 520 F. Supp. 2d 757, 772 (D.S.C. 2007) (citing *SSI Medical Servs., Inc. v. Cox*, 392 S.E.2d 789, 793-94 (S.C. 1990)). "To state a cause of action for a constructive trust, [the plaintiff] need only state facts indicating that Defendants obtained property that they cannot in good conscious retain or withhold from another who is beneficially entitled to it." *In re Worldwide Wholesale Lumber, Inc.*, 372 B.R. 796, 813-14 (Bankr. D.S.C. 2007) (citing *SSI Medical Servs., Inc.*, 392 S.E.2d at 793-794). "South Carolina courts generally hold that fraud or the breach of a fiduciary duty are elements of a constructive trust; however, these elements are not always necessary to the imposition of a constructive trust." *Id.* at 813 (citing *Campbell v. Cathcart et al. (In re Derivium Capital, LLC)*, C/A No. 05-15042-W, Adv. Pro. No. 06-80163, slip op. at 16-17 (Bankr. D.S.C. Dec. 22, 2006) (denying a motion to dismiss based upon a trustee's failure to plead fraud with particularity in an action for a constructive trust)). "A constructive trust can arise by mistake of fact, abuse of confidence, or accident." *Id.* at 814.

Holtzclaw alleges the parties intended for him to hold the actual beneficial interest in the Goose Trail Property, only titled it in Morgan's name for convenience, and intended for Morgan to convey title to Holtzclaw at a later date. He makes no allegations that Morgan obtained title to the Goose Trail Property by accident, abuse of confidence, mistake, or fraud or that she acquired it through breach of trust or violation of a fiduciary duty. Rather, the decision to title the property in her name was mutual and intentional. Consequently, Holtzclaw's cause of action for

constructive trust seeking a transfer title to him fails to state a claim upon which relief can be granted and it must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

B. RESULTING TRUST

South Carolina provides:

> [e]quity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another. The general rule is that when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised in his behalf.

In re Macdonald, 622 B.R. 837, 855 (Bankr. D.S.C. 2020), *reconsideration denied* (Oct. 15, 2020), *aff'd sub nom. Furlow v. Macdonald*, C/A No. 2:20-CV-3820-DCN, 2021 WL 2982864 (D.S.C. Jul. 15, 2021) (quoting *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 249 (1997)). However, when the conveyance is to a spouse, child, or any other person for whom the purchaser is under a legal obligation to provide, the presumption "is that the purchase was designated as a gift or advancement to the person to whom the conveyance is made." *Hayne Fed. Credit Union*, 327 S.C. at 249 (citation omitted). These presumptions "may be rebutted by parol evidence or circumstances showing a contrary intention." *Id.* (citation omitted).

The Fourth Circuit has summarized:

> A party seeking to overcome the gift presumption and establish a resulting trust must prove by clear and convincing evidence that (1) it paid for the property (or committed to pay for the property), (2) with the intent to own it, (3) on the date of purchase. *Moore v. McKelvey*, 266 S.C. 95, 221 S.E.2d 780, 781 (1976); *Surasky v. Weintraub*, 90 S.C. 522, 73 S.E. 1029, 1031 (1912). The last requirement is important. South Carolina trust law is clear that a resulting trust "arises at the time . . . of [the] purchase, *or not at all*." *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129, 130 (1913) (emphasis added); *see also Hodges v. Hodges*, 243 S.C. 299, 133 S.E.2d 816, 819-20 (1963). "[T]he trust must be coequal with the deed, and cannot arise from any subsequent transactions." *Larisey*, 77 S.E. at 130. That a party pays for property and/or intends to own it *at some point in time* fails to establish a trust. *Green v. Green*, 237 S.C. 424, 117 S.E.2d 583, 589 (1960). For a resulting trust to arise, payment and intent must coincide with a deed's execution. *Larisey*, 77 S.E. at 130.

In re Pfister, 749 F.3d 294, 299 (4th Cir. 2014) (finding no resulting trust arose where the entire purchase price was financed and, therefore, was not paid for or intended to be paid for on the date of purchase by the party claiming a resulting trust and that party entered an agreement to lease the property from the title holders prior to claiming a resulting trust).

Accepting the factual allegations of Holtzclaw's Complaint as true, it appears that Holtzclaw contributed funds toward the purchase of the Goose Trail Property (through a loan from his father) and toward the subsequent financing for (and/or directly paying for a portion of) the construction of the home thereon. However, the property was titled in Morgan's name because she was better situated to obtain financing. Only Holtzclaw has lived at the property and he alleges the parties intended for him to hold the actual beneficial interest in the property since the date of purchase. At this early stage of the litigation, there are sufficient allegations to state a claim for relief that a resulting trust arose at the time the purchase was made, giving him some interest in the property, and Morgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) must be denied.

C. QUANTUM MERUIT

"Quantum meruit is an equitable doctrine which allows recovery for unjust enrichment under a quasi-contract theory." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 583 (2014) (citation omitted). "In such cases, the court, using its equitable powers, may order the defendant to pay to the plaintiff the value of the benefit conferred in order to prevent unjust enrichment." *Reg. v. Cameron & Barkley Co.*, 467 F. Supp. 2d 519, 531 (D.S.C. 2006) (citing *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868, 872 (2000)). "The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Stevens &*

Wilkinson of S.C., Inc., 409 S.C. at 583 (quotation marks and citation omitted). One situation in which quantum meruit may apply is when one party "transfer[s] property to another without receiving anything in return." *SMS Inv. Assocs., Inc. v. Peachtree City (Matter of SMS Inv. Assocs., Inc.)*, 180 B.R. 694, 700 (Bankr. N.D. Ga. 1995).

Holtzclaw alleges Morgan will be unjustly enriched if she retains the Goose Trail Property and all improvements thereon without paying adequate consideration, and he did not intend it as a gift. Accepting the factual allegations of Holtzclaw's Complaint as true, Morgan received a benefit in that title to the Goose Trail Property is in her name for which some consideration was provided by Holtzclaw. The parties intended for Morgan to hold title temporarily, with Holtzclaw receiving title at a later date, and it is inequitable for Morgan to retain title without paying its value. Accordingly, Holtzclaw's cause of action for quantum meruit states a claim upon which relief can be granted and Morgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) must be denied.

D. TRESPASS UPON PROPERTY

"A trespass is any interference with one's right to the exclusive, peaceable possession of his property." *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 139 (2013) (quotation marks and citation omitted). "To constitute actionable trespass, 'the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.'" *Winley v. Int'l Paper Co.*, C/A No. 2:09-2030-CWH, 2013 WL 12377131, at *7 (D.S.C. May 10, 2013) (quoting *Mack v. Edens*, 464 S.E.2d 124, 127 (S.C. Ct. App. 1995)). "The gist of trespass is the injury to possession, and generally either actual or constructive possession is sufficient to maintain an action for trespass." *Id.* (quoting *Hawkins v. City of Greenville*, 594 S.E.2d 557, 566 (S.C. Ct. App. 2004)).

Holtzclaw alleges that by allowing her children and grandchildren to occupy the West Darby Property that he asserts is "his property," Morgan is exceeding the permission granted to her by the Family Court Order. She is, therefore, trespassing on his property and depriving him and his creditors of the fair market value of rent. However, Holtzclaw concedes the Family Court Order unequivocally allows Morgan exclusive use and possession of the West Darby Property and does not contain any limitation thereon. Moreover, Holtzclaw has not demonstrated any right to collect rent on the West Darby Property while the Family Court Order is in effect. Accordingly, Holtzclaw's cause of action for trespass fails to state a claim upon which relief can be granted and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

E. CONVERSION OF PROPERTY

"Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 158 (2010) (quotation marks and citation omitted). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Clifton v. Nationstar Mortg., LLC*, C/A No. 3:12-02074-MB, 2013 WL 789958, at *3 (D.S.C. Mar. 4, 2013) (quoting *Regions Bank v. Schmauch*, 582 S.E.2d 432, 442 (S.C. Ct. App. 2003)). "Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention." *Id.* (citing *Schmauch*, 354 S.C. 648, 582 S.E.2d at 442).

Holtzclaw alleges Morgan is holding his personal property and will not let him retrieve it from the West Darby Property. Holtzclaw admits the Family Court Order provides Morgan shall have temporary, exclusive use and possession of the West Darby Property, including all furniture and fixtures located in the property, and Holtzclaw and Morgan are to be "restrained from being physically present at the residence of the other party." Any refusal by Morgan to allow Holtzclaw

to retrieve personal property from the West Darby Property appears consistent with the Family Court Order and does not evince a wrongful exercise of the right of ownership over Holtzclaw's personal property to the exclusion of his rights therein. As a result, Holtzclaw's cause of action for conversion fails to state a claim upon which relief can be granted and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

F. OBJECTION TO PROOFS OF CLAIM

Objections to proofs of claims are contested matters governed by Fed. R. Bankr. P. 9014. While "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, [it] may include the objection in an adversary proceeding." Fed. R. Bankr. P. 3007(b). A claim may be disallowed to the extent that such claim is unenforceable for a reason other than the claim being contingent or unmatured. *See* 11 U.S.C. § 502(b)(1); *In re Mazyck*, 521 B.R. 726, 730 (Bankr. D.S.C. 2014) ("Whether [creditor's] claims would be unenforceable outside of bankruptcy, and therefore disallowed pursuant to § 502(b)(1), is determined by looking to 'any applicable law,' including South Carolina statutes of limitations."). Holtzclaw's Complaint states a sufficient cause of action objecting to Morgan's claims and requesting they be disallowed because they are unenforceable under applicable law. Accordingly, Holtzclaw's objection to proofs of claims will not be dismissed under Fed. R. Civ. P. 12(b)(6).

III. ABSTENTION

Regarding any remaining causes of action, the Court must consider Morgan's request that abstention is mandatory under 28 U.S.C. § 1334(c)(2) because these claims require application of South Carolina domestic relations law. Section 1334(c)(2) provides:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title

> 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2). "If the following six factors are met, the court must abstain: (1) the motion to abstain was timely; (2) the action is based on a state law claim; (3) the action is a 'non-core', 'related to' proceeding; (4) Section 1334 provides the sole basis for federal jurisdiction; (5) the action is commenced in state court; and (6) the action can be timely adjudicated in state court." *BGC Partners Inc. v. Avison Young (Canada) Inc.*, C/A No. 2:15-CV-02057-DCN, 2015 WL 7458593, at *8 (D.S.C. Nov. 24, 2015) (emphasis in original) (quoting *In re Butterfield*, 339 B.R. 366, 372 (Bankr. E.D. Va. 2004)). The test for mandatory abstention is conjunctive; each of the factors must be satisfied before the Court must abstain. *Butterfield*, 339 B.R. at 373.

This Court has previously recognized "[t]he bankruptcy court has core and exclusive jurisdiction to determine what is property of the estate under § 541." *Anderson v. Campbell, et al. (In re Congaree Triton Acquisitions, LLC)*, Adv. Pro. No. 15-80147-JW, slip op. at 9 (Bankr. D.S.C. Mar. 16, 2016) (citing 28 U.S.C. § 1334(e); *In re Touch America Holdings, Inc.*, 401 B.R. 107, 117 (Bankr. D. Del. 2009) ("Various courts have concluded that matters requiring a declaration of whether certain property comes within the definition of 'property of the estate' as set forth in Bankruptcy Code § 541 are core proceedings.")). Because this adversary proceeding overall involves a determination of estate property under § 541, it is a core proceeding. Morgan, therefore, fails to meet the requirements for the Court to exercise mandatory abstention under 28 U.S.C. § 1334(c)(2).

IV. AUTOMATIC STAY

The Bankruptcy Code allows the Court to:

> [i]ssue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a); *see also In re Sanchez*, C/A No. 97-3072-T, 1997 WL 861753 (Bankr. E.D. Va. Nov. 7, 1997) (trustee filed adversary proceeding to sell certain real estate owned by the debtor and his nondebtor spouse and the court, *sua sponte*, granted relief from the stay for the equitable distribution to go forward in the pending state court divorce proceeding).

Section 362(a) provides, in relevant part, that the filing of a bankruptcy petition operates as a stay of:

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> ….
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

However, the filing of a bankruptcy petition does not operate as a stay:

> (A) of the commencement or continuation of a civil action or proceeding—
>
> . . . .
>
> (ii) for the establishment or modification of an order for domestic support obligations;
>
> . . . .
>
> (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate;
>
> . . . .
>
> (B) of the collection of a domestic support obligation from property that is not property of the estate[.]

11 U.S.C. § 362(b)(2).

In determining whether to lift the automatic stay, "[t]he court must balance potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied." *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992) (citation omitted).

> The factors that courts consider in deciding whether to lift the automatic stay include (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Id. (citations omitted).

In *In re Parast*, the family court entered a *pendente lite* order in the debtor's divorce proceeding requiring him to, *inter alia*, maintain payments on the spouse's residence and make other payments and obligations to care for the spouse and their children. 612 B.R. 710, 713 (Bankr. D.S.C. 2020). After the debtor failed to meet those requirements, he filed for Chapter 11 relief. *Id.* The spouse filed a motion for relief from stay to permit the family court to issue a final divorce decree, establish domestic support obligations, determine equitable distribution, and permit the collection of post-petition payments required under the *pendente lite* order, including commencing civil contempt proceedings in the family court. *Id.* at 714. Shortly thereafter, the debtor filed his own motion for relief from stay to allow the parties to return to family court to pursue dissolution of marriage, determine any modifications to an order for domestic support obligations, and determine child custody and visitation. *Id.*

The Court noted that an order was not required for the parties and the family court to proceed with matters expressly exempted from the automatic stay under § 362(b), including the dissolution of their marriage and the establishment and modification of an order for domestic

support obligations. This exemption does not include determining division or distribution of property of the estate. *Id.* at 718. For certain matters protected by the automatic stay, the Court held, in relevant part, the stay should be lifted under § 362(d) to permit the family court to determine equitable distribution of the parties' assets and liabilities. *Id.* at 722. Applying the *Robbins* factors, the Court found equitable distribution was primarily a matter of state law and within the family court's expertise and experience. Allowing the family court to determine the parties' respective rights would help establish the spouse's claims in the bankruptcy case and, thus, assist the Court in later determinations related to the liquidation of the debtors' assets and payment of claims. *Id.* at 722-23. The Court also reasoned that judicial economy would be served by lifting the stay because the family court (where the divorce proceeding was pending longer than the bankruptcy case) was the proper forum to address these contentious issues and the Court could focus on reorganization and liquidation. *Id.* at 723. Finally, the Court determined the bankruptcy estate would be protected by allowing the family court to determine the equitable distribution but delaying enforcement against property of the estate until further order of the Court. *Id.*

Pursuant to § 362(b)(2), the Court confirms the automatic stay does not apply to matters in the Domestic Proceeding seeking to dissolve any purported marriage (including determining whether Holtzclaw and Morgan are married) and to establish any resulting domestic support obligations. Regarding the parties' equitable distribution of property that is or may be property of the estate, the Court, *sua sponte*, finds the stay should be lifted pursuant to § 362(d) to allow the Family Court to make that determination. Following *Parast*'s reasoning, equitable distribution is determined by state law and the Family Court has greater expertise and experience in ruling on these issues and is better equipped for resolution. The Family Court must first determine if a marriage exists and if so, ascertain the parties' rights to marital property pursuant to applicable

non-bankruptcy law. Allowing the Family Court to do so promotes judicial economy because it will assist in setting Morgan's claims in this bankruptcy case and, therefore, help the Court focus on reorganization and payment of claims. Nevertheless, to adequately protect the estate, for so long as this bankruptcy case remains pending or until further order of this Court, Morgan must seek relief from this Court prior to transfer of title of any property of the bankruptcy estate and prior to enforcement of any judgment regarding ownership of property that is property of the bankruptcy estate. Should any further disputes arise regarding any conflict between the remaining causes of action in this adversary proceeding and the Domestic Proceeding, the parties may request additional clarification or relief by further motion or consent agreement.

IT IS, THEREFORE, ORDERED:

1. 11 U.S.C. § 362(b)(2) permits the Family Court to determine whether the parties are married and adjudicate Morgan's claims for dissolution of their purported marriage and request for spousal support;

2. the automatic stay is hereby lifted, *sua sponte*, pursuant to 11 U.S.C. § 362(d) to allow the Family Court to determine equitable distribution between Morgan and Holtzclaw. For so long as this bankruptcy case remains pending or until further order of this Court, Morgan must seek relief from this Court prior to transfer of title of any property of the bankruptcy estate and prior to enforcement of any judgment regarding ownership of property that is property of the bankruptcy estate;

3. Morgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) is denied;

4. Morgan's Motion to Abstain pursuant to 28 U.S.C. § 1334 is denied;

5. Morgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is granted in part and denied in part.

    a. Holtzclaw's causes of action for constructive trust, trespass upon property, and conversion are dismissed for failure to state a claim upon which relief can be granted.

    b. Holtzclaw's causes of action for resulting trust, quantum meruit, and objection to proofs of claims remain, along with the causes of action labeled "property of the estate" and "turnover of property of the estate" that were not addressed in the Motion to Dismiss.

c. Pursuant to Fed. R. Bankr. P. 7012(a), Morgan shall file an Answer as to the remaining causes of action within **fourteen (14) days** from entry of this Order; and

6. any remaining relief requested by Morgan is denied.

FILED BY THE COURT
08/27/2021

Chief US Bankruptcy Judge
District of South Carolina

Entered: 08/27/2021