UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Terry A. Trexler,

Debtor.

Chapter 7

JUDGMENT

C/A No. 02-04126-W

Pursuant to the findings of fact and conclusions of law provided in the attached Order, the Trustee's motion for authority to sell property of the estate is granted, the objection by Hazelene Trexler and the Estate of James A. Trexler is overruled, and the Trustee is authorized to forthwith sell the property set forth in the Trustee's notice of sale dated June 11, 2004.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
October 15, 2004

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	Chapter 7
Terry A. Trexler,	**ORDER**
Debtor.	C/A No. 02-04126-W

This matter comes before the Court upon the Notice and Application for Sale of Assets Free and Clear of Liens Pursuant to 11 U.S.C. § 363 by Ralph C. McCullough, II, as Trustee for Terry A. Trexler ("Terry Trexler" or the "Debtor") and the objection thereto filed on behalf of Hazelene Trexler and the Estate of James A. Trexler (together, the "Parents"). After having considered the record of the case[1] and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:[2]

FINDINGS OF FACT

1. Debtor filed for bankruptcy under Chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") on April 2, 2002.

2. Prior to his filing, certain transfers of real and personal property were made from Debtor to an entity known as I.P., L.L.C.[3] and transferred from I.P., L.L.C. to various members of Debtor's family in a sequence of events. As a result of these transfers, and based upon other allegations of wrongdoing, an adversary proceeding was

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[1] The record of the case includes adversary proceeding no. 03-80003, hereinafter referenced, that was cited by the parties in their pleadings relating to the sale herein, at the hearing on this matter, and in the parties' proposed orders.

[2] The Court notes that to the extent one of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of fact, they are so adopted.

[3] It is undisputed that Debtor formed I.P., L.L.C. in September 1998. The Complaint alleges that Debtor is the sole manager and only member of I.P., L.L.C.

filed by Ralph C. McCullough, II, as Trustee for the Estate of Terry A. Trexler, South Carolina Supreme Court, The Commission on Lawyer Conduct as an entity of the Court, The Lawyers Fund for Client Protection, and Richard Ralphs v. I.P., L.L.C. Trexler Enterprises, L.L.C., James A. Trexler, James W. Trexler, Hazelene Trexler, Julie C. Trexler, and Terry A. Trexler (the "Adversary Proceeding") (collectively, the defendants will be referred to as the "Defendants"), which sought to set aside fraudulent transfers, set aside preferential transfers, pierce the corporate veil, and further alleged conspiracy. Specifically, the complaint initiating the Adversary Proceeding (the "Complaint") set forth certain transfers as follows:

a. Transfer of two parcels of a farm located in Sumter County, South Carolina, at 920 East Brewington Road (consisting of a total of three parcels purchased by Debtor in August 1998) to I.P., L.L.C. (the Court will generally refer to the real property, regardless of which parcel, as the "Brewington Road Property"). Parcel A is a forty-five acre tract, Parcel B is a nineteen-acre tract, and Parcel C is a one-acre tract. Parcels A and B were transferred from Debtor to I.P., L.L.C. in October 1998.[4]

b. Transfer of horses Debtor owned to I.P., L.L.C. and to Trexler Enterprises in October 1998.[5]

c. Transfer of personal property, furniture, equipment and other property of Debtor's from Debtor to I.P., L.L.C. beginning in October 1998.

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[4] The Court is unaware of the disposition of Parcel C. It appears that the Parcel is either still in the name of Debtor, was transferred to I.P., L.L.C., in which case such transfer was avoided by the Order and Judgment described hereinafter, or was incorporated into Parcel A or B.

[5] To the extent this transfer refers to the transfer of sixteen (16) horses that the Parents admit were owned by Debtor individually, there is no dispute that these particular horses are property of the estate and subject to the claims of creditors. Further, any offspring of those horses are likewise property of the estate and subject to the claims of creditors. See generally Northwestern Nat. Bank v. Freeman (1898) ("According to the maxim, 'Partus sequitur ventrem,' the brood of all tame and domestic animals belong to the owner of the dam or mother.") (citation omitted); 4 AM. JUR. 2D Animals § 10 (May 2004) (same).

d. Transfer of Parcel A from I.P., L.L.C. to Debtor on January 28, 1999, and from Debtor back to I.P., L.L.C.

e. Transfer of 83% of ownership of Debtor in I.P., L.L.C. to James A. Trexler, James W. Trexler, Hazelene Trexler and Julie C. Trexler.[6]

f. Transfer of real property from I.P., L.L.C. to Debtor in March 1999. Following refinancing in which Debtor allegedly received $30,951.31, the real property was transferred back to I.P., L.L.C.[7]

g. Transfer of Parcel A from I.P., L.L.C. to James W. Trexler and the Parents in October 2001.

h. Transfer of Parcel A from James W. Trexler and the Parents to James W. Trexler and Julie C. Trexler in December 2001.

3. The Defendants, with the exception of James A. Trexler who passed away prior to being served with the Complaint, defaulted in the Adversary Proceeding, resulting in an Order and Judgment voiding the transfer of the Brewington Road Property from Terry Trexler to I.P., L.L.C. on October 22, 1998 and all subsequent transfers; determining that all horses located at the Brewington Road Property are subject to the claims of creditors of the estate; that the transfer of all horses from Debtor to the corporate Defendants is void; that all personal property identified is subject to the claims of the creditors of the estate; and finally issuing a judgment against James A. Trexler[8] and

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[6] James W. Trexler and Julie C. Trexler are the brother and sister-in-law of Debtor.

[7] The Complaint does not specifically indicate which real property was transferred, and the Parents dispute that any property was transferred at that time.

[8] The reference to "James A. Trexler" versus "James W. Trexler" appears to be a typographical error inasmuch as the Complaint specifically seeks a judgment against James W. Trexler and Julie C. Trexler in the amount of $277,561.71.

Julie C. Trexler in the amount of $277,561.71. All of the Defendants appealed the Court's Order and Judgment.

4. Subsequently, the Estate of James A. Trexler sought to intervene in the Adversary Proceeding pursuant to Fed. R. Civ. P. 24, Fed. R. Bankr. P. 7024. Although the Trustee asserted that the Estate of James A. Trexler had no direct and substantial interest in the property or transactions involved within the meaning of Fed. R. Civ. P. 24, the Trustee ultimately consented to the motion to intervene and the Court granted the motion on September 11, 2003.

5. During the pendency of the appeal, the Trustee filed a motion to sell all of the real property and improvements, personal property, and all horses (and their offspring) and other livestock related to the Brewington Road Property on October 17, 2003. Counsel for the Defendants submitted a letter to the Court dated October 20, 2003, inquiring as to his need to file a formal objection to the sale due to the pendency of the appeal. Despite counsel's unorthodox approach in requesting advice from the Court as to whether he needed to file an objection to a pleading, and requesting a phone call from the Court so advising, the Court responded by letter indicating that if *any of his clients* oppose the motion, a timely response appeared necessary. The only objection filed was by Terry Trexler – no objection was filed by the Parents.

6. The Court held a hearing on the motion to sell on December 16, 2003. Following argument of counsel, the Court overruled the objection of Terry Trexler and entered an Order authorizing the sale of assets free and clear of liens and encumbrances, including, but not limited to, all real property and improvements located at the Brewington Road Property, all personal property, and all horses and their offspring as

well as other livestock located on the property. The Court further ordered that since the originally noticed date to sell the property had passed, the Trustee was to file and serve on all creditors and interested parties an application to sell the property setting forth the new sale date and including the terms and conditions.[9]

7. The District Court entered an Order on December 22, 2003 granting a temporary stay of the sale of any assets during the pendency of the appeal. The stay was lifted by the District Court upon Order dated April 15, 2004.

8. On appeal, the District Court for the District of South Carolina affirmed the Court's Order and Judgment on April 15, 2004 against all of the Defendants with the exception of Hazelene Trexler (and James A. Trexler, who was not in default), thus relieving her from default.

9. Following entry of the District Court's Order on April 15, 2004, the Trustee re-noticed the sale for July 13, 2004. The Parents objected for the first time on June 28, 2004.[10]

10. At or around this same time, the Parents filed motions to amend their answers to the Complaint in the Adversary Proceeding to assert two additional defenses. The motion to amend was heard by the Court and granted on June 29, 2004, in a written order entered on June 30, 2004. The two additional defenses the Parents asserted were (1) a resulting trust exists in their favor as to all real and personal property and horses, and (2) that the real property, when purchased, was partnership property and not subject to claims of Debtor.

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[9] The subsequent notice dated June 11, 2004 contained substantially similar terms and conditions as the prior notice.

[10] The objection also indicates that James W. Trexler (or "Jim Trexler") was objecting to the sale. At a hearing held on this matter, counsel corrected his pleadings and clarified that the only objecting parties were the Parents.

11. The objection to the sale filed by the Parents on June 28, 2004 raised these same grounds and argued that a sale pursuant to § 363 was not proper as they are the rightful owners of the property.

12. At a hearing held on the Parents' objection to the sale, the Court heard arguments of the parties, addressed herein, as to whether the Parents had standing to object to the sale, including whether the transfers voided are "preserved for the benefit of the estate" pursuant to 11 U.S.C. § 551, the Parents' claim of a resulting trust, the Parents' claim of ownership through a partnership, and whether the Parents are bound by the Order entered on December 22, 2003 authorizing a sale of the assets.

SUMMARY OF ARGUMENT AND PROCEDURAL POSTURE OF CASE

Each party presented argument and extensive briefs in the form of proposed orders to the Court concerning the Parents' objection to the sale. Further, the Parents responded to the four (4) grounds asserted by the Trustee as to why their objection to the sale should be overruled.[11] Accordingly, for the reasons addressed herein, the Court is able to fully adjudicate all matters relating to the objection by the Parents to the sale of Debtor's assets.

While the effect of Hazelene Trexler's relief from default now permits her to participate in the Adversary Proceeding, Hazelene and the Estate of James A. Trexler were never barred from participating in the separate and distinct matter of Debtor's bankruptcy case or with respect to the Trustee's motion to sell dated October 17, 2003. They have conceded in their proposed orders submitted to the Court that all transfers are now void, even transfers to and from them as a result of the partial disposition of the

[11] The Parents' argument before the Court, as well as their proposed orders submitted to this Court, addressed each point raised by the Trustee.

Adversary Proceeding by the affirmed Order and Judgment, but assert that the effect of such voided transfers is that title of the Brewington Road Property, and other property transferred, is once again in the name of Debtor.[12] Therefore they argue that they should be able to assert a resulting trust or partnership interest theory as against Debtor with respect to such property.

While the issues with respect to the sale may overlap with those defenses set forth in the Parents' amended answers, the aim of the Adversary Proceeding is the avoidance of transfers, a result that has been achieved, at least partially, by the affirmed Order and Judgment. The effect of the avoidances and relief already ordered may eliminate the need to proceed further formally. The Complaint thus differs from the motion to sell property of the estate in that the Parents' objection to the motion involves whether certain assets are property of the estate that can be sold, and the preliminary issue with respect to the objection is the Parents' standing do so. While the issues that remain undetermined in the Adversary Proceeding because the Parents are not in default appear related to the Parents' objection to the Trustee's motion to sell under § 363(f), they are not the same nor are necessarily interdependent. The Court has carefully kept the two matters procedurally separate because they implicate separate legal standards and allow separate determinations affecting differing parties; i.e. the motion to sell affects all creditors in and parties in interest and not just the parties relating to the Adversary Proceeding. The Trustee's motion to sell has been pending since October 2003. Accordingly, the liquidation and distribution of assets of the estate for the benefit of creditors has been

[12] The Parents never raise the effect of Hazelene Trexler's relief from default with respect to the voided transfers, nor argue that it alters the effect of avoiding all transfers, instead focusing upon an argument that title to the assets is now in the name of Debtor.

held in abeyance for some time and is now ripe for adjudication. The Court must apply the law regarding sales pursuant to § 363 to the issues before the Court.

In order to determine whether the Trustee can sell property of the estate pursuant to § 363, the Court will first ensure that the assets sought to be sold are in fact property of the estate. See In re Signal Hill-Liberia Avenue Ltd. P'ship, 189 B.R. 648, 651-52 (E.D. Va. 1995). See also Mid-Atlantic Supply Inc. v. Three Rivers Aluminum Co. (In re Mid Atlantic Supply Co.), 790 F.2d 1121 (4th Cir. 1986) (property of the estate does not include property in which debtor only legal title but not an equitable interest pursuant to § 541(d)). The Parents have raised two specific arguments as to why the assets the Trustee seeks to sell are not property of the estate. The Parents also responded to the Trustee's arguments as to why their objection should be overruled. These four arguments raise the following issues:

a. Whether the Trustee must bring an action under § 550 to recover assets in order to bring them within property of the estate based on the facts herein;

b. Whether the real property, i.e. the Brewington Road Property, should be held in a purchase money resulting trust for the benefit of the Parents;

c. Whether the Brewington Road Property is partnership property and not property of Debtor's; and

d. Whether the Parents are bound by the Court's Order dated December 22, 2003 authorizing a sale of these assets as property of the estate.

If the Parents' theories as to why the assets the Trustee seeks to sell are not property of the estate fail, then the Trustee is entitled to proceed with liquidation. As such, this Order addresses the standing of the Parents to successfully defeat a sale of

Debtor's assets as asserted by the Parents regarding a resulting trust or partnership interest (as well as other arguments made by them in response to the Trustee). While any one of the grounds cited above, or a combination thereof, may adjudicate the matter, the Court will nevertheless address each argument made by the parties.

CONCLUSIONS OF LAW

I. 11 U.S.C. § 551

The Parents argue that the Trustee does not have grounds to sell any of the assets as he did not bring an action pursuant to § 550 to recover the assets for the estate. The Parents assert that since the transfers of all of the assets have been effectively avoided, they are now in the name of Debtor. The Trustee argues that title is now in the name of the Trustee, and that he need not bring an action under § 550 inasmuch as transfers avoided are automatically preserved for the benefit of the estate pursuant to § 551. Regardless of in whose name the Brewington Road Property or other property is titled, the Court finds the relevant analysis to be that of the interplay among §§ 550, 551, and 541(a)(4).

11 U.S.C. § 551 provides:

> Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.[13]

11 U.S.C. § 550 provides, in relevant part:

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[13] The phrase "only with respect to property of the estate" has been misinterpreted as restricting avoided transfers from becoming property of the estate only if the avoided transfer involved estate property. It is generally understood that this construction is incorrect, and that "[t]he clear purpose of the phrase is to limit only the subrogation powers of section 551, not to restrict the reach of sections 551 and 541 in bringing avoided transfers within the bankruptcy estate." David G. Epstein et al., Bankruptcy § 6-87, vol. 2 at 205-06 (West ed.1992). In other words, the purpose of the limitation is to prevent the trustee from "asserting an avoided lien that floats, such as a tax lien, against after-acquired property of the debtor." Id.

> (a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from –
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> (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
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> (2) any immediate or mediate transferee of such initial transferee.

Sections 550 and 551 are not co-dependent and provide separate remedies. Section 550 is a recovery mechanism that is only necessary when the avoidance powers of § 551 do not provide complete relief. David G. Epstein et al., Bankruptcy § 6-80, vol. 2 at 205-06 (West ed.1992). When the relief sought is avoidance of a transfer in order to bring the interest which the transfer created part of the estate, § 551 will provide, in most circumstances, complete relief. In other words, the effect of § 551 is to completely nullify the avoided transfer "even in the absence of recovery from transferees under section 550." Id.

The interplay between §§ 550 and 551 has been addressed by the United States District Court for the District of South Carolina in Dunes Hotel Assocs. v. Hyatt Corp., 245 B.R. 492 (D.S.C. 2000). In Dunes, the District Court considered whether a debtor could avoid a leasehold interest without triggering a § 550 recovery analysis. The District Court noted that avoidance and recovery are distinct concepts, and that "§ 550(a) is not a necessary concomitant to avoidance." Id. at 499. The District Court concluded that if the leasehold interest were permitted to be avoided, it would automatically be preserved for the benefit of the estate pursuant to § 551 and become part of the estate pursuant to § 541(a)(4),[14] without the need to resort to § 550's recovery provisions.

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[14] Section 541(a)(4) provides:

> (a) The commencement of a case . . . creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

A recent decision by the Sixth Circuit similarly concludes. Suhar v. Burns (In re Burns), 322 F.3d 421, 427-28 (6th Cir. 2003). In Burns, the trustee sought to avoid a mortgage on debtor's real property pursuant to § 544. The mortgagor asserted that notwithstanding the avoidance, it was entitled to a lien pursuant to § 550(e) which provides that good faith transferees from whom a trustee recovers property under § 550(a) are entitled to a lien to the extent set forth therein. The Sixth Circuit concluded that the Trustee properly avoided the mortgage interest, and that pursuant to § 551, when a transfer is avoided, the transfer is "preserved for the benefit of the estate." Id. at 427-28. Further, § 541(a)(4) provides that any interest preserved under § 541(a)(4) is part of the bankruptcy estate. The Sixth Circuit found that "recovery was not necessary, because the code itself provided for the interest's return to the estate." [15] Id. Numerous cases have similarly held. In re Carpenter, 266 B.R. 671 (Bankr. E.D. Tenn. 2001) (once interest avoided, it is preserved for estate's benefit and becomes property of the estate); Eisen v Allied Bancshares Mortgage Corp. (In re Priest), 268 B.R. 135, 139 (Bankr. N.D. Ohio 2000) (once avoided, transfer becomes asset of the estate); Glanz v. RFJ Int'l Corp. (In re Glanz), 205 B.R. 750, 757-58 (Bankr. D. Md. 1997) (avoidance is meaningful event in and of itself). See also Pogge v. Abner (In re Abner), 288 B.R. 538, 539 (Bankr. C.D. Ill. 2001) (fraudulent transfer of real estate avoided by trustee was preserved for benefit of the estate).

> (4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

11 U.S.C. § 541(a)(4).

[15] The Sixth Circuit further notes that § 550 may be necessary to recover property in which a party holds a possessory interest in the property. Burns, 322 F.3d at 428. In the matter before the Court, the Parents state that the title of all assets transferred is now in the name of Debtor. Even though the Trustee contends that title is in his name, as previously noted, in either case the interest avoided was the fee simple interest in the Brewington Road Property, which automatically became property of the estate upon avoidance.

In the matter before the Court, the Trustee need not bring an action pursuant to § 550 in order to bring the avoided transfers into the estate – all of the transfers avoided (as acknowledged by the Parents) pursuant to § 548 are automatically preserved for the benefit of the estate by operation of § 551 and that interest is property of the estate pursuant to § 541(a)(4). There is no analysis to be done with respect to the transfer – once it is avoided, it becomes part of the estate. This occurs "*regardless of whether the interest could have been avoided by a competing creditor in a prepetition state court proceeding.*" In re Van De Kamp's Dutch Bakeries, 908 F.2d 517, 519 (9th Cir. 1990). In Van De Kamp's, the trustee was permitted to avoid a transfer of a security interest as a fraudulent conveyance and preserve the interest for the benefit of the estate pursuant to § 551. The objecting party consisted of a Trust that had recorded a lien following the transfer and contested the preservation of the transfer under § 551, arguing that since they could have avoided the same interest in a prepetition state court proceeding, the interest is not susceptible to preservation. The Trust argued that preservation under § 551 is permitted "only to the extent that the interest is otherwise valid under state law." Id. at 518. The Court noted as follows:

> [The Trust] could have brought an action in state court prior to the commencement of the bankruptcy action to avoid the fraudulent transfer but chose not to do so. Now they ask this court to determine how such an action would have concluded, and to grant them a status they might have attained absent the bankruptcy proceedings. This we cannot do.

Id. at 519. In so ruling, the court cited the legislative history of § 551 and concluded that preservation under § 551 is automatic, and there is no indication that the court should determine how competing interests would have fared in state court.[16] Id. See also Dunes,

[16] The court further emphasized that it does not disagree with the principle that a trustee who avoids an interest succeeds to the priority that interest enjoyed over competing interests.

245 B.R. at 503 (when transfer is avoided, interest becomes property of the estate "without further ado"); Barclays American/Mortgage Corp. v. Wilkinson (In re Wilkinson), 186 B.R. 186, 193 (Bankr. D. Md. 1995) (noting that transfers are automatically preserved for benefit of estate, regardless of whether interest could have been avoided in a prepetition state court proceeding, in considering whether position of subsequent lienors should be improved following avoidance of reformation of deed). Any claim that a competing interest may potentially have arising out of a 'hypothetical' prepetition state court action does not affect the operation of § 551 and § 541(a)(4).

Similarly, the Parents are seeking to sidestep the application of automatic preservation for the estate of an avoided transfer. When the transfers were avoided by the Trustee, from the initial transfer of Parcel A of the Brewington Road Property (and personal property, furniture and equipment) from Terry Trexler to I.P. and all subsequent transfers, the avoidance of such transfers was for the benefit of the estate, regardless of how competing interests might have fared in a prepetition action.[17] The avoided transfer of real property was the fee simple interest in the Brewington Road Property with respect to the initial transfer from Debtor to I.P., L.L.C. as well as the last transfer to James W. and Julie Trexler. Section 550 is not necessary to "recover" the Brewington Road Property from James W. and Julie Trexler, because no one presently disputes that the transfers to them are void and preserved for the benefit of the estate.[18] The Parents argue,

[17] This proposition does not ignore any right that a perfected secured creditor with priority may have against the Trustee. The Parents have not asserted that they hold such an interest.

[18] As previously referenced, the Parents do not address the effect of the non-default status of the Parents with respect to any transfers voided to or from them. Instead, they argue that the Brewington Road Property and other assets transferred are in the name of Debtor for which they can attack based upon a resulting trust or partnership interest theory.

however, that title of the Brewington Road Property is now in the name of Debtor.[19] Regardless of in whose name the title is placed, § 551 clearly provides that the estate steps into the shoes of the interest holder for the estate's benefit. Further, all of the property transferred and avoided under § 551 is simultaneously rendered property of the estate pursuant to § 541(a)(4) ("[a]ny interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title."), which can thus be sold pursuant to § 363, without the need to resort to § 550's recovery provisions. Accordingly, the conjunctive application of §§ 551 and 541(a)(4) appears to answer the question of whether the Trustee is entitled to sell the assets as property of the estate pursuant to § 363 and leads the Court to overrule the Parents' objection on these grounds. Nevertheless, the Court shall consider the Parents' state law arguments upon which they assert that the subject property is not property of the estate.

II. RESULTING TRUST

The Parents further assert that Debtor is holding all property, both real and personal, located at the Brewington Road Property in a purchase money resulting trust for them, thus their rights to that property are superior to that of the Trustee. The Parents do not specifically delineate which property is held in a purchase money resulting trust for their benefit, but it appears that they are referring to the Brewington Road Property and improvements thereon. They additionally note that most of the personal property is not titled. Inasmuch as the Parents have asserted a *purchase money* resulting trust, and the

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[19] The Parents cite this Court's decision in Campbell v. Haddock (In re Haddock), 246 B.R. 810 (Bankr. D.S.C. 2000) as support for the proposition that title to any property transferred is not in the name of the Trustee. The Court in Haddock found that a transfer of certain real estate was void and of no effect and that the real estate was thus property of the estate. However, the Court's ruling does not specifically reference "title." Further, the conclusion in Haddock does not detract from the ruling of the Court herein – it is the operation of §§ 551 and 541(a)(4) that are controlling.

property for which the Parents assert they have provided the purchase money is for the Brewington Road Property, the Court will consider whether, under any theory consistent with the argument of the Parents, they are entitled to a resulting trust with respect to the Brewington Road Property.[20] See Glover v. Glover, 268 S.C. 433, 435, 234 S.E.2d 488, 489 (S.C. 1977) (purchase money must be paid at time of transaction). Due to their claim of a resulting trust, the Parents argue that their interest is superior to that of the Trustee's under state law.

The Trustee contends that the Parents are judicially estopped from claiming a resulting trust in that they have repeatedly characterized the purchase money, the initial $60,000 down payment, as a "loan" to Debtor and a loan cannot form the basis for the creation of a resulting trust. There is no question that judicial estoppel would apply to the Parents' characterization of the transaction as a loan, however it is unnecessary to reach the issue because the Parents concede in their proposed order submitted to the Court that they have characterized the payment as a loan.[21] However, they argue that there is no

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[20] Despite the reference in their Amended Answers that a resulting trust should be granted in the Parents in all property, both real and personal, located at the Brewington Road Property, the Parents make no specific reference to any of the horses sought to be sold in their discussion regarding a resulting trust, and instead focus upon the payment of the initial $60,000 down payment to purchase the Brewington Road Property. Thus, they have appeared to abandon their resulting trust theory with respect to the horses. The adjudication with respect to the horses, and other personal property to the extent applicable, will be discussed hereinafter.

[21] Although the Parents appear to have abandoned any argument that the $60,000 paid from the Parents to Terry Trexler was something other than a loan in their proposed order, the Court finds that to the extent that the Parents are attempting to suddenly switch positions (as implied by counsel on the record of the hearing on this matter prior to submission of their proposed order), judicial estoppel appears applicable. The record is replete with representations from the Parents that the initial payment made from Hazelene to Terry Trexler was a loan. Judicial estoppel is generally applied when the following factors are present: (1) the party to be estopped must be asserting a position that is factually incompatible with a position taken in a prior judicial or administrative proceeding and the position sought to be estopped must be one of fact rather than law or legal theory; (2) the prior inconsistent position must have been accepted by the tribunal; and (3) the party to be estopped must have taken inconsistent positions intentionally for the purpose of gaining unfair advantage. Shadow Factory Films, Ltd. v. Swilley (In re Swilley), C/A No. 02-9234, Adv. Pro. No. 02-80347, slip op. at 16 (Bankr. D.S.C. Apr. 17, 2003). The doctrine is intended to "prevent a party from playing fast and loose with the court, and to protect the essential integrity of the judicial process." 1000 Friends v. Browner, 265 F.3d 216, 226 (4th Cir. 2001). The application of judicial estoppel is in the

prohibition under South Carolina law against a loan being used as the basis to form a purchase money resulting trust.

The Parents cite no South Carolina case law in support of their position that South Carolina would not prohibit the creation of a resulting trust based upon the facts herein. To the contrary, the South Carolina Supreme Court has ruled on this precise issue. Surasky v. Weintraub, 73 S.E. 1029, 1031 (1912). The Supreme Court in Surasky noted the following long-standing principle:

> The rule is well settled that where one person lends money to another, to be used by the borrower in the purchase of land, no resulting trust arises in favor of the lender in the land purchased by the borrower, title to which is taken in the latter's name.

Id. at 1031. The Supreme Court further indicated that the rule has equal application even in instances where the lender and borrower agree that the interest in the land to be purchased should vest in the lender to the extent of the loan made. Id. The Court nevertheless found that while there can be no resulting trust, an equitable mortgage may arise in favor of the lender. Id. at 1032. The Parents have not pled their entitlement to an equitable mortgage, thus they appear to have waived such relief. Regardless, while entitlement to an equitable mortgage may provide the Parents with an argument to certain proceeds, it does not provide the Parents with the ability to thwart a sale of Debtor's assets.[22]

The principle cited by the Supreme Court appears to remain well-settled:

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discretion of the court. Id. The Court has reviewed the pleadings within which the Parents made such representation and considered the factors necessary for application of judicial estoppel and finds the doctrine appears applicable. Additionally, traditional principles of waiver may apply, see First Union Comm'l Corp. v. Nelson, Mullins, Riley and Scarborough (In re Varat Enters., Inc.), 81 F.3d 1310, 1317 (4th Cir. 1996) (waiver applies in the bankruptcy context), as well as res judicata, collateral estoppel and/or laches. However, since the elements of judicial estoppel appear to be met in this case, the Court need not further address these additional grounds for relief.

[22] The Court is not espousing on the merits of such relief based upon the facts of this case.

> Where a transfer of property is made to one person and the purchase price is advanced by another as a loan to the transferee, no resulting trust arises.

RESTATEMENT (SECOND) OF TRUSTS § 441 (April 2004). Generally, "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." RESTATEMENT (SECOND) OF TRUSTS § 441 cmt. a. (April 2004). However, a resulting trust does not arise "if the person by whom the purchase price is paid manifests an intention that the transferee should have the beneficial interest in the property transferred." RESTATEMENT (SECOND) OF TRUSTS § 445 cmt. a. (April 2004). Such an intention is exhibited if it appears that the payor intended to make a loan of the purchase price to the transferee. Id.; RESTATEMENT (SECOND) OF TRUSTS § 441 cmt. a. (April 2004). Accordingly, no resulting trust arises where the purchase money is intended to be a loan.[23] See, e.g., Tiller v. Owen, 243 Va. 176, 180, 413 S.E.2d 51, 53 (Va. 1992) (a resulting trust does not arise where the payor paid the purchase money as a loan to the transferee); Reed v. Reed, 217 Ga. 303, 311, 122 S.E.2d 253, 259 (Ga. 1961) (in order to create a resulting trust, it must be shown that money was not a loan); Agribank, FCB v. Whitlock, 251 Ill. App. 3d 299, 309, 621 N.E.2d 967, 975 (Ill. App. Ct. 1993) (parents who loaned money to children for purchase of a farm were precluded from claiming a resulting trust in the property); Lifemark Corp. v. Merritt, 655 S.W.2d 310, 317 (Tex. App. 1983) (cases universally deny resulting trust where one

[23] The rule that no resulting trust can apply where a transfer is made to one person and the purchase price advanced by another as a loan is not to be confused with circumstances in which a transferee pays the purchase price as a loan to another. See RESTATEMENT (SECOND) OF TRUSTS § 448 (April 2004) ("a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter"); Campbell v. Campbell, 300 S.C. 68, 386 S.E.2d 305, 306 (S.C. Ct. App. 1989) (citing § 448 of the Restatement based upon facts analogous to those described in § 448).

provides purchase money by way of mere loan to another).[24] Accordingly, inasmuch as the Parents admit that the funds given to Debtor by the Parents was in the form of a loan, a necessary element of a purchase money resulting trust is absent and cannot be applied in this case. Therefore the argument provides no basis for the Parents' objection to the sale, and it is overruled.

III. DE FACTO PARTNERSHIP

The Parents additionally assert an alternative theory that the real property - the Brewington Road Property - was property of a "de facto" partnership when title was taken in Debtor's name in August 1998. In their Amended Answers, the Parents assert that:

> It was the intention of the family members that this property would be transferred to some type of legal entity for the benefit of the family members.

(Amended Answers, ¶ 43). This argument of the Parents' misses the point because the Brewington Road Property was transferred to this "partnership" – admitted by the Parents to be an entity known as I.P., L.L.C. Accordingly, Terry Trexler did exactly what the Parents claim he failed to do. The transfer of the Brewington Road Property into the "partnership" or "family enterprise" was actually accomplished by Terry Trexler's transfer (in fact, several transfers) of the real property into I.P., L.L.C. (referred to by the Parents on some occasions as the "family enterprise"), and this transfer (and transfers thereafter) was voided by this Court's Order and Judgment and affirmed on appeal. To

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[24] Additionally, no presumption of a resulting trust attaches when the conveyance is from a parent to a child. Bowen v. Bowen, 352 S.C. 494, 499, 575 S.E.2d 553, 559 (S.C. 2003). Instead, a presumption then arises that the purchase was intended as a "gift or advancement." The presumption, however, is rebuttable. Id. Nevertheless, since the Parents concede that the purchase money was a loan, and the absence of a loan is a necessary element in order to establish a resulting trust, the Court need not determine whether the Parents can overcome any presumption that may arise that they intended the advancement as a gift to Terry Trexler. See RESTATEMENT (SECOND) OF TRUSTS § 441 cmt a. (April 2004) (no inference of resulting trust where advancement is gift or loan).

the extent the Parents argue that Terry Trexler failed to place title for the benefit of the family *before* the transfer of the Real Property into I.P., L.L.C., they are attempting to make an end run around this Court's Order and Judgment avoiding the transfer to I.P., L.L.C. – the enterprise as admitted by the Parents to be for the benefit of the family. I.P., L.L.C. *is* the "partnership" that the Parents are asserting was to be formed on behalf of the family.[25]

Additionally, the Court notes that in the chain of transfers, I.P., L.L.C. actually transferred the Brewington Road Property to the Parents in October 2001. At that point in time the Parents had exactly what they assert they were entitled to all along. It is undisputed that the Brewington Road Property was transferred to them in October 2001 and that they subsequently transferred the property to James W. and Julie Trexler in December 2001. There is no indication that the Brewington Road Property was transferred thereafter. The Parents should not be heard to complain that the Brewington Road Property was not titled correctly when the property was subsequently transferred to them and titled in their name, and they voluntarily participated in the transfer out of their name. Accordingly, it appears that the Parents waived any argument that the Brewington Road Property was not properly titled for their benefit.

Further, as admitted by the Parents, through avoidance this transfer to James W. and Julie Trexler has been preserved, as previously discussed, "for the benefit of the

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[25] The Parents have consistently asserted in their pleadings filed with this Court that Debtor filed the necessary papers with the South Carolina Secretary of State to form I.P., L.L.C. *on behalf of himself and his family members*. They have referred to I.P., L.L.C. as follows: "the family enterprise, I.P., L.L.C." in their Objection to Sale (p.4), and referred to I.P., L.L.C. as the legal entity formed on behalf of the family in their Amended Answers (¶ 43), the Affidavit of Hazelene Trexler in support of their Objection to Sale and in support of their Motion for Summary Judgment, and in numerous representations made to the Court in hearings held in this bankruptcy case and accompanying Adversary Proceeding that I.P., L.L.C. was the entity formed for the benefit of the family. Accordingly, based upon principles previously noted earlier in this Order, the Parents are estopped from asserting otherwise at this advanced stage of the litigation.

estate" pursuant to § 551. By operation of § 541(a)(4), the avoided transfer becomes property of the estate.

In any event, the Parents' claim of ownership of the Real Property through a partnership is not determinative, because the Trustee has a separate judgment against I.P., L.L.C. – the "partnership." The Court's Order and Judgment voided all transfers from Terry Trexler to I.P., L.L.C. and all transfers thereafter, and the Trustee has a judgment to liquidate all assets of I.P., L.L.C. The Order and Judgment entered September 17, 2003, adjudicates all assets owned by I.P., L.L.C. and determines that they are subject to the claims of the creditors of Debtor's estate. The Complaint sought a judgment that "*all assets of IP . . . are assets of the estate,*" I.P., L.L.C. is in default, and the Trustee has a judgment against I.P., L.L.C. Accordingly, even if the Brewington Road Property is an asset of the "partnership" – that is, I.P., L.L.C. – the Trustee is authorized to sell it by virtue of the Court's Order and Judgment against I.P., L.L.C., affirmed on appeal. Further, the Order and Judgment extends to all assets of I.P., L.L.C., which includes all of the horses located at the Brewington Road Property[26] (Exhibit 2 to the October 17, 2003 and June 11, 2004 notices of sale).[27]

The Order and Judgment further permitted a "reverse" piercing of the corporate veil due to the allegations of the Plaintiffs, and the Court's Order and Judgment was affirmed by the District Court. All assets of I.P., L.L.C. (the "family partnership") are

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[26] The Order and Judgment found that all 102 horses are property of the corporate defendants – defined therein as I.P., L.L.C. and Trexler Enterprises. The parties do not refer to Trexler Enterprises in their argument and proposed orders to the Court and instead focus upon I.P., L.L.C. In any event, Trexler Enterprises is a party in default in the Adversary Proceeding and did not file an objection to the sale of assets herein.

[27] The transfer of personal property, furniture and equipment transferred by Debtor to I.P., L.L.C. was voided by entry of this Court's Order and Judgment, which authorized the sale of such. Accordingly, those assets are no longer assets of I.P.,L.L.C. but can be sold by the Trustee as property of the estate. See (Exhibit 1 to the October 17, 2003 and June 11, 2004 notices of sale).

assets of the estate for the reasons set forth therein, and the Trustee has a judgment providing that those assets are subject to the claims of creditors of the estate. Therefore, to the extent that the Parents assert rights through a de facto partnership that became I.P., L.L.C., their rights, if any, to "partnership" property is unequivocally subordinate to the Trustee's claims against the "partnership" and his ability to sell its assets. Accordingly, the Parents' objection to the sale by the Trustee on these grounds is overruled.

IV. RES JUDICATA

Finally, the Trustee argues that the Parents are bound by the Court's Order of December 2003 authorizing a sale of the assets based upon their failure to object or appeal. The Parents assert that until this Court granted the Parents the right to amend their answers and assert new defenses, these grounds were not available as a basis for an objection.

The Parents confuse the two proceedings (the sale of assets and the Adversary Proceeding). Merely because the Parents' arguments with respect to the Adversary Proceeding are similar or even identical to those they would raise in response to the October 17, 2003 motion to sell does not transform them into a common matter or procedure. First, the Court notes that the Parents were neither prohibited nor relieved from objecting to the sale by virtue of their default in the separate Adversary Proceeding. More significantly, James A. Trexler (or his estate) was never adjudicated a defaulting party in the Adversary Proceeding, thus the Parents argument that they could not assert their basis for an objection is unfounded.

Res judicata is a broad principle that prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether

they were asserted or determined in a prior proceeding. The elements of res judicata are the following: (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits. Meekins v. United Transportation Union, 946 F.2d 1054, 1057 (4th Cir. 1991); Shadow Factory Films, Ltd. v. Swilley (In re Swilley), 295 B.R. 839, 844 (Bankr. D.S.C. 2003).

With respect to the first element, this Court entered an Order Authorizing Sale of Assets Free and Clear of Liens upon motion of the trustee following a hearing held on December 16, 2003. Notice of the motion dated October 17, 2003, was provided to all creditors and parties in interest, including counsel for the Parents.[28] In response to the motion, counsel for the Parents submitted a letter in October 2003 to the Court stating that it was his understanding that due to the appeal of the Adversary Proceeding all matters would be placed on hold. Further, counsel inquired as to the need to file a formal objection. The Court responded, clearly indicating that all matters relating to the Adversary Proceeding were being held in abeyance, but that matters relating to Debtor's bankruptcy case were to proceed. The letter confirmed that the Court was proceeding with the Trustee's motion to sell, and stated that "[i]f your clients oppose the Trustee's Notice of Opportunity for Hearing and Application for Sale of Assets Free and Clear of Liens, a timely response appears to be necessary."[29]

The only objection filed to the October 17, 2003 motion was that of Debtor. In the objection, Debtor cited as grounds the appeal of the Adversary Proceeding and

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[28] L. Henry McKellar has indicated to this Court that he represents all of the Trexler family involved herein, including the Parents, as well as I.P., L.L.C. and Trexler Enterprises, in the bankruptcy case and Adversary Proceeding.

[29] Correspondence referred to has been filed on the Court's electronic docket and is thus a part of Debtor's bankruptcy case.

contended that a sale of assets would be prejudicial. Counsel appeared at the hearing to prosecute the objection of Debtor. Following argument of the Trustee and counsel for Debtor, the Court overruled Debtor's objection and granted the Trustee's motion to sell the Brewington Road Property and improvements thereon; personal property located at the Brewington Road Property, attached to the October 17, 2003 and June 11, 2004 notice of sale as Exhibit 1; and all horses and their offspring described as approximately 115 Arabian horses located at the Brewington Road Property as well as any other livestock located there.[30] Proceedings regarding a sale of property of the estate are core proceedings pursuant to 28 U.S.C. § 157. Further, Debtor did not appeal the Order granting the motion to sell. Accordingly, the Order granting the Trustee's motion constitutes a final judgment on the merits. See First Union Comm'l Corp. v. Nelson, Mullins, Riley and Scarborough (In re Varat Enters.), 81 F.3d 1310, 1415-16 (4th Cir. 1996) (confirmation order was considered final and on the merits where court had jurisdiction over matter, adequate notice was given, a hearing was held and parties to the dispute attended and participated).

The second element of res judicata requires an identity of the cause of action in both the earlier and the later suit. The preclusive effect exists not only as to claims that were presented during the earlier litigation, but it also:

> Prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.

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[30] At the time of the Court's Order and Judgment in September 2003 the Trustee approximated that there were 102 horses located at the Brewington Road Property, however the October 17, 2003 and June 11, 2004 notices of sale indicate approximately 115 horses are located at the Brewington Road Property. Some of the horses are registered with a national registry for Arabian horses. With respect to all of the horses, the Trustee previously testified that he was informed by Debtor that none of the animals on the farm were placed on the farm by third parties.

Meekins, 946 F.2d at 1057-58. See also Varat, 81 F.3d at 1316. The Fourth Circuit has adopted the "transactional approach" to determining whether an identity of the cause of action exists. The "transactional approach" examines whether the new claim arises out of the same transaction or series of transactions as the claim in the prior judgment. Meekins, 946 F.2d at 1058. In the matter before the Court, the June 11, 2004 motion to sell delineates the exact same property for sale as that set forth in the October 17, 2003 motion to sell which resulted in an Order of this Court granting the motion. The terms and conditions are substantially the same, but the June 11, 2004 notice provides a new sale date. This subsequent notice was necessary in that the previous sale had been postponed due to issues raised by Debtor, and due to a later temporary stay issued by the District Court, which was lifted on April 15, 2004.

The Parents contend that they did not have the ability to assert new defenses at the time surrounding the October 17, 2003 notice of sale due to their default in the Adversary Proceeding. This argument has no merit. First, Debtor was also in default in the Adversary Proceeding at the time counsel for the Parents filed an objection to the sale on behalf of Debtor. Additionally, neither James A. Trexler nor his estate were in default although he failed to file an objection.[31] Further, as previously discussed, the Adversary Proceeding and the matters relating to the Trustee's ability to sell property of the estate are separate proceedings. While some of the theories asserted may overlap, the Parents have never been barred from raising an objection to the Trustee's motion to sell. To the contrary, the Court responded in the affirmative to counsel for the Defendant's question posed to the Court as to whether he needed to object to such a sale in October 2003. In

[31] An Order granting the Estate of James A. Trexler's motion to intervene was granted on September 9, 2003.

fact, Debtor did interpose an objection which was adjudicated by the Court. Finally, "it is the substance of the actions that must be compared and not their form." Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484 (4th Cir. 1981) (quoting Astron Indus. Assoc. v. Chrysler Motors Corp., 405 F.2d 958, 961 (5th Cir. 1968)). All issues relating to the property fall within the same transaction provided for in the Order granting Trustee's October 17, 2003 motion to sell, thus the second element for application of res judicata is met.

Finally, identity of the parties or their privies is necessary for application of res judicata. The same creditors and parties and interest were provided notice with respect to the October 17, 2003 notice of sale and the June 11, 2004 notice providing a new sale date. Counsel for Debtor and the Parents was present at the hearing, yet the objection to the sale filed by counsel only indicates that it is on behalf of Debtor.[32]

According to the claims made by the Parents, they appear to be parties in interest to the motion to sell in that they allegedly have a "pecuniary interest in the distribution of assets to creditors." See Grausz v. Englander, 321 F.3d 467 (4th Cir. 2003). In Grausz, the Fourth Circuit considered whether the identity of parties element of res judicata was met with respect to a fee application for which debtor did not object and a later legal malpractice claim brought by him arising out of same core of operative facts. The debtor argued that he was not a party in interest to the fee application and thus was not required to object at that time. The Fourth Circuit disagreed, finding that he was in fact a party in interest in that he had a "pecuniary interest" in the distribution of assets to creditors. Id. at 472-73. The Parents appear to contend that they have a pecuniary interest with respect

[32] To the extent counsel for Debtor argues that his objection was effectively on behalf of all parties, that objection was overruled by the Court on the merits, thus res judicata would be equally applicable.

to the motion to sell assets.[33] Due to the identity of parties or their privies with respect to the October 17, 2003 motion to sell and the June 11, 2004 motion to sell the identical assets, the third element of res judicata is met and the Parents are bound by this Court's Order authorizing the sale of assets.

The application of res judicata in this case is consistent with principles of due process. The Parents had notice of the motion and failed to object, and their counsel was present at the hearing and litigated Debtor's objection. See Spartan Mills v. Bank of America, 112 F.3d 1251, 1256-57 (4th Cir. 1997). In Spartan Mills, a creditor brought an action to enforce a lien against proceeds from sale of debtor's property. The creditor failed to object, following notice of the time period to do so, to the priority lien of a bank and later failed to object to notice of a sale of assets free and clear of liens. The creditor subsequently filed an action seeking a declaratory judgment that its lien was superior. The Fourth Circuit affirmed the district court's finding that the creditor was bound by the bankruptcy court's order regarding priority of liens after receiving notice and failing to timely object. Id. at 1257-58.

In the matter before the Court, the notice regarding the motion to sell afforded the Parents due process in that it appears to be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Accordingly, having been afforded sufficient due process, they are bound by the Court's Order granting the Trustee's motion to sell by principles of res judicata.

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[33] The Parents have filed a proof of claim in this case in the amount of $1,108,656 for "money loaned" as well as contribution and expenses to I.P., L.L.C. pursuant to § 550(e).

Additionally, the Parents' claims are precluded by principles of waiver. Waiver is a doctrine closely related to res judicata. County Fuel Co. v. Equitable Bank Corp., 832 F.2d 290, 293-94 (4th Cir. 1987). Waiver is applied when "a party voluntarily or intentionally relinquishes a known claim right." Varat, 81 F.3d 1310 (finding party in interest's failure to object to claim prior to confirmation may operate as a waiver). The Parents' failure to object to the Trustee's proposed sale of Debtor's assets operates as a waiver of their ability to raise an objection to sale of those same assets. See County Fuel Co., 832 F.2d at 293 (claim for breach of contract waived due to debtor's failure to assert counterclaim to creditor's proof of claim); Nash County Bd. of Educ., 640 F.2d at 493 (party waived its right to maintain second suit that was identical with earlier action).[34]

Accordingly, under either principle, the Parents are bound by this Court's unappealed Order and Judgment authorizing a sale of Debtor's assets free and clear of liens, thus they lack the ability to interpose their present objection. Additionally, having considered the Parents' grounds for objecting on the merits, the Court finds no theory upon which the Parents could successfully attack the Trustee's present ability to liquidate the assets of Debtor's estate and finds that the Parents thus lack standing.

V. CONCLUSION

In their objection, the Parents present three (3) arguments upon which they assert an interest in the property subject to sale that would prohibit the Trustee's sale. All of these arguments are precluded as a matter of law. Therefore, the Parents' objection to a sale as noticed by the Trustee is overruled. The Parents' claim of a resulting trust or partnership interest theory with respect to the Brewington Road Property (or any other

[34] The doctrines of equitable estoppel and/or collateral estoppel may also be applicable in this case. However, since the elements of res judicata and waiver appear to be met, the Court need not address these additional grounds for relief.

property) fails for the reasons stated herein. Further, all of the horses located at the Brewington Road Property were adjudicated property of I.P., L.L.C. (and/or Trexler Enterprises). The Court's Order and Judgment, affirmed on appeal with respect to the corporate Defendants, authorizes reverse piercing of the corporate veil. Accordingly, all horses, and their offspring[35] (and any other livestock as stated in the Order and Judgment) located at the Brewington Road Property are subject to the claims of creditors of the estate and can be sold by the Trustee. Additionally, Debtor's transfer of personal property, furniture, and equipment from Debtor to I.P., L.L.C. was voided by this Court's Order and Judgment affirmed on appeal and can be sold by the Trustee as property of the estate.

With respect to any voided transfers, the operation of §§ 551 and 541(a)(4) operates to bring the avoided interest into the estate without the need to recover pursuant to § 550 based upon the facts herein. Finally, the Parents are bound by the Court's unappealed Order authorizing a sale of assets in December 2003. The Trustee is also entitled to pursue, on behalf of the estate, its monetary judgment against James and Julie Trexler in the amount of $277,561.71. Therefore, the Trustee is authorized to sell the assets set forth in the notice of sale, including the Brewington Road Property and improvements located at the Brewington Road Property, all personal property, and all horses and their offspring as well as other livestock located on the Brewington Road Property.

Accordingly, it is hereby

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[35] As previously noted, offspring of the horses originally noticed by the Trustee to be sold are property of the estate.

ORDERED that the Trustee's motion for authority to sell property of the estate having been noticed twice and fully adjudicated upon notice and hearing is granted and the Parents' objection is overruled; and it is further

ORDERED that the Trustee shall file with the Court and serve on all creditors and parties in interest notice setting forth the new sale date for the limited purpose of providing notice of the time and date of sale. The notice shall not state nor provide a further opportunity to object to any party; and it is further

ORDERED that the Trustee is authorized to forthwith sell the property set forth in the Trustee's notice of sale dated June 11, 2004.

AND IT IS SO ORDERED.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
October 15, 2004