UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

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DIST. OF SOUTH CAROLINA

IN RE:

George Fred Blackwell and Linda Gail Blackwell,

Debtors.

C/A No. 98-02748-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Trustee's objection to confirmation of the Debtors' Chapter 13 Plan is sustained.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 2, 1998.

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J.G.S.

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IN RE:	C/A No. 98-02748-W
George Fred Blackwell and Linda Gail Blackwell,	**ORDER**
Debtors.	Chapter 13

THIS MATTER comes before the Court upon the Trustee's objection to confirmation of the Debtors' Chapter 13 plan pursuant to 11 U.S.C. § 1325(a)(4).[1] Based upon the evidence and testimony submitted, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On March 30, 1998, the Debtors Linda Gail Blackwell ("Ms. Blackwell") and George Fred Blackwell ("Mr. Blackwell") (jointly referred to as "Debtors") filed a joint Chapter 13 petition. On April 10, 1998, the Debtors filed a Chapter 13 plan which provides, *inter alia*, for the payment of 25% to unsecured creditors of their allowed claims. Schedule A reflects two parcels of real estate. The first is located at 2 Pisgah Circle, Greenville, South Carolina, which is a lot and mobile home in which the Debtors reside. The second parcel of real estate ("the real estate", "the real property", or "the property") is located at 210 Pisgah Drive, Greenville, South Carolina and Schedule A reflects the following notation as to this property:

> House and lot located at 210 Pisgah Dr. Greenville. The debtors spouse's father deeded this house in the debtor's spouse's name in

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[1] Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, shall be by section number only.

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June 1996, in case he was placed in a nursing home due to his health. He is still living in this house at this time. He is 100% equitable owner, she holds the legal title only! Market value of the house is $32,000.

Ms. Blackwell testified that her father, Carl Mathis, Jr. ("Mr. Mathis"), transferred title to this real estate which serves as his residence by fee simple deed for $1.00 plus Love and Affection stated as the consideration, to her name on July 11, 1996 and that while Mr. Mathis began receiving Medicare benefits after the transfer, the transfer was not to her knowledge for the purposes of making him eligible for Medicare or Medicaid. Ms. Blackwell also testified that Mr. Mathis and his now deceased wife made all payments on the house, paid taxes and insurance on the real estate and made all repairs to the property. Each year, the tax bill is sent to the Debtor as title owner but her father gives her cash for the taxes and, as she does with his other bills, she pays it by her check. She also testified that she had never been told and did not know why Mr. Mathis wanted to transfer the property but suspected that it was "in case anything should happen to him" and because he "worries a lot about things" since her mother died. While presently the mortgage is paid, Mr. Mathis openly occupies and treats the house as his, pays all expenses and makes all maintenance and repairs associated therewith. Mr. Mathis is sixty-eight (68) years old and lives entirely off of social security. The only exhibit that was introduced into evidence was the deed filed July 11, 1996 which conveyed the property in fee simple without reservation of a life estate or other interest in the property. Ms. Blackwell stated that there is no written document that gives her father the right to remain living in the house for his lifetime or any other type of benefit from the property but that such is her expectation. The parties stipulated that the value of this real estate is $32,838.00. The Trustee asserts that after deducting hypothetical costs of sale,

the equity in this property is $26,735.00.

The Court conducted a confirmation hearing on July 2, 1998. While the Chapter 13 Trustee did not file a formal written objection, at the hearing he refused to recommend confirmation taking the position that the Debtors' Chapter 13 Plan did not meet the Chapter 7 liquidation analysis of § 1325(a)(4) because the house and lot located at 210 Pisgah Drive were property of the Debtors' estate.[2] The Debtors take the position that while Ms. Blackwell has the title to the property, it is equitably owned by Mr. Mathis and therefore should not be considered property of the estate.

The parties have stipulated that they have agreed to all other matters related to §1325(a)(4) and therefore the sole remaining issue for this Court is whether any interests in this real estate should be included in the best interest of creditors test pursuant to § 1325(a)(4).

CONCLUSIONS OF LAW

Section 1325(a)(4) of the Bankruptcy Code, which is commonly referred to as the "best interest of creditors test" provides that the Court shall confirm a Chapter 13 plan if:

> (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

11 U.S.C. § 1325(a)(4). The Trustee takes the position that the Debtor, Ms. Blackwell, is the 100% owner of the property as a result of her unconditioned title interest and, pursuant to the

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[2] On July 7, 1998, this Court entered an order which allows an amended plan to be confirmed without further notice or hearing upon the trustee's recommendation if the Trustee's objection is sustained and the Debtors submit an amended plan which is satisfactory to the Trustee.

liquidation analysis of § 1325(a)(4), the unsecured creditors would receive more in a Chapter 7 liquidation than through the confirmation of the Debtors' current Chapter 13 Plan and therefore confirmation must be denied. The Debtors take the position that the real property is not property of the estate pursuant to § 541(a) because Mr. Mathis is the equitable owner of the real estate and Ms. Blackwell simply holds bare legal title. Based upon the stipulation of the parties, if the Court finds that Mr. Mathis is the equitable owner of the real estate, the Debtors' current Chapter 13 plan with certain agreed upon changes can be confirmed; however, if the Court finds that the Debtor, Ms. Blackwell, has an interest in the real estate which has some value, the Chapter 13 Plan as currently filed cannot be confirmed.

The Debtors take the position that they hold this real property in either a constructive or resulting trust for the benefit of Mr. Mathis. The difference between these two trusts has been succinctly stated by the Bankruptcy Court for the Eastern District of Arkansas.

> Constructive trusts are generally imposed where fraudulent conduct of the legal owner exists such that retention by the legal owner is unjust. See, e.g., In re N.S. Garrott & Sons, 772 F.2d 462. Resulting trusts exist where property is purchased in the name of one person with money furnished by another. Andres, 613 S.W.2d at 406; First National Bank of Roland v. Rush, 30 Ark.App. 272, 785 S.W.2d 474, 478 (1990). There is no requirement that fraud be shown for a resulting trust to exist. See Rush, 30 Ark.App. 272, 785 S.W.2d at 478.

In re Cowden, 154 B.R. 531, 534 at fn. 3 (Bkrtcy.E.D.Ark. 1993). While Federal Bankruptcy Law determines the effect of legal or equitable interests in property, the Court must look to State Law to determine the nature and extent of that interest. Butner v. United States, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979) and In re Cowden, 154 B.R. 531 (Bkrtcy.E.D.Ark. 1993).

Because it is the Blackwells who assert that this real property is the res of an alleged trust for the benefit of Mr. Mathis, the burden of proof will be upon them to prove its existence.

> Included in property of the estate under § 541 is any property held by the estate in trust. In this case, a constructive trust ex maleficio arose from the wrongdoing of Robert Johnson. Though the trustee must turn over the property to the beneficiaries, those beneficiaries are required to identify to the bankruptcy court the trust funds and sufficiently trace those funds. Id. (citing Central States Corp. v. Luther, 215 F.2d 38 (10th Cir.1954) cert. denied 348 U.S. 951, 75 S.Ct. 438, 99 L.Ed. 743 (1955)); Morris Plan Indus. Bank v. Schorn, 135 F.2d 538 (2d Cir.1943); Malone v. Gimpel, 151 F.Supp. 549 (N.D.N.Y.1956). The burden is upon a claimant to prove the existence of an alleged trust. Sonnenschein v. Reliance Ins. Co., 353 F.2d 935 (2d Cir.1965). A claimant must, therefore, prove in a bankruptcy proceeding the existence of a trust and his rights to it.

In re Johnson, 960 F.2d 396 (4th Cir. 1992).

In this case, pursuant to South Carolina law, it does not appear that a constructive trust should be found to exist as there are no inequitable circumstances or fraudulent conduct that would lead to its creation.

> A constructive trust results from fraud, bad faith, abuse of confidence or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Searson v. Webb, 208 S.C. 453, 38 S.E.2d 654 (1946), cited in Lollis v. Lollis, 291 S.C. 525, 354 S.E.2d 559 (1987). A constructive trust will arise whenever circumstances under which property was acquired make it inequitable that the property should be retained by him who holds legal title, as against another, provided some confidential relationship exists between the two and provided the raising of the trust is necessary to prevent failure of justice. In re Thames, 21 B.R. 704 (Bankr.S.C.1981). Where a party obtains legal title to property which he is not equitably entitled to retain against another who obtains beneficial ownership, then a constructive trust will be imposed by operation of law to protect the interest of the beneficial owner. Wolfe v. Wolfe, 215 S.C. 530, 56 S.E.2d 343 (1949). The test employed by South Carolina courts in deciding whether a

> constructive trust should be imposed is simply whether the contested property is acquired under circumstances rendering it inequitable that the property should be retained by the holder of bare legal title as against the equitable owner. Baptist Foundation for Christian Education v. Baptist College at Charleston, 282 S.C. 53, 317 S.E.2d 453 (App.1984) cert granted 284 S.C. 366, 326 S.E.2d 649, cert. dismissed 285 S.C. 456, 330 S.E.2d 287 (1985). See also Lollis v. Lollis.

In re Cambridge Mortg. Corp., 92 B.R. 145 (Bkrtcy.D.S.C. 1988). In order to establish a constructive trust, the evidence must be clear, definite and unequivocal, Doe v. Roe, 323 S.C. 445, 475 S.E.2d 783 (S.C. App. 1996), and in this case, that burden has not been met.

The Debtors also take the position that a resulting trust exists and cite this Court to a recent Supreme Court of South Carolina decision, Hayne Federal Credit Union v. Bailey, 489 S.E.2d 472, 327 S.C. 242 (1997). In Hayne, a father had purchased real estate but titled the property in his son's name. A credit union subsequently foreclosed on the property and the father filed a counterclaim and asserted that he was the owner of the property based upon a resulting trust in his favor. The Supreme Court of South Carolina found that the father's fraudulent actions in purchasing property for his own benefit but putting the title in his son's name with the intention of concealing the property from his creditors, precluded the father from establishing a resulting trust. The Debtors cite this opinion for the proposition that "[t]he 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." Hayne Federal Credit Union v. Bailey, 489 S.E.2d at 475. However, when the transfer is to a spouse or child, the presumption is that the transfer was a gift.

> But when the conveyance is taken to a spouse or child, or to any other person for whom the purchaser is under legal obligation to

> provide, no such presumption attaches. On the contrary, the presumption in such a case is that the purchase was designated as a gift or advancement to the person to whom the conveyance is made. Lollis v. Lollis, 291 S.C. 525, 354 S.E.2d 559 (1987). This presumption, however, is one of fact and not of law and may be rebutted by parol evidence or circumstances showing a contrary intention. Legendre v. South Carolina Tax Comm'n, 215 S.C. 514, 56 S.E. 2d 336 (1949).

Hayne Federal Credit Union v. Bailey, 489 S.E.2d at 476. In this case, since Ms. Blackwell is the child of Mr. Mathis, the presumption of the transfer was that it was a gift. In order to rebut this presumption, the Debtors must demonstrate a contrary intention by definite, clear, unequivocal and convincing evidence. ACLI Government Securities, Inc. v. Rhodes, 764 F.2d 1033 (4th Cir. 1985) ("In order to establish a resulting trust, the evidence must be definite, clear, unequivocal and convincing"). The Debtors have failed to meet their burden.

The transfer in question occurred after many years in which Mr. Mathis and his wife held legal title to the property and enjoyed its benefits. It does not fall within the purchase money resulting trust scenario described in the Hayne case. Furthermore, the critical element of the grantor's intention at the time of the transfer is not clear from the evidence presented to the Court. Mr. Mathis did not appear nor testify at the hearing. No extrinsic evidence was presented which definitely indicated his intention at the time of the transfer to Ms. Blackwell. Ms. Blackwell testified that she did not know the reason for the transfer other than Mr. Mathis "worried a lot about things", and further that she had no discussions regarding the transfer with Mr. Mathis. It could be true that Mr. Mathis intended to either gift the entire property to Ms. Blackwell or at least the remainder interest to her upon his death - both of which have value and preclude confirmation of the present plan. For those reasons, the presumption of a gift has not

been rebutted and the Trustee's objection is sustained. See Lollis v. Lollis, 291 S.C. 525, 354 S.E.2d 559 (1987).

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 2, 1998.

CERTIFICATE OF MAILING
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Bankruptcy [illegible] hereby certifies
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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH
Deputy Clerk

Blackwell
Cooper
WKS
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