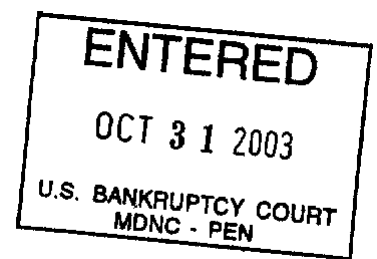


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE: )  
 )  
Matthew R. Chriscoe, ) Case No. 03-12584C-7G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on October 7, 2003, for hearing upon an objection by FNB Corp. to the Debtor's claim for property exemptions. Benjamin A. Kahn appeared on behalf of FNB Corp ("FNB") and James L. Tennant appeared on behalf of the Debtor. Having considered the evidence offered at the hearing, the matters of record in this case and the arguments of counsel for the parties, the court finds and concludes as follows:

1. On September 16, 2003, the Debtor filed an amended Schedule A in this case in which the Debtor listed a 50% interest in a residence and six-acre tract of realty located at 3052 Little Brook Road, Seagrove, North Carolina ("the Seagrove Property") which the Debtor valued at \$11,000.00. The Seagrove Property was not listed in the original Schedule A which the Debtor filed when this case was filed on July 30, 2003.

2. On September 16, 2003, the Debtor also filed in this case an amended claim for property exemptions in which he claimed a homestead exemption in the Seagrove Property.

3. The Seagrove Property was conveyed to the Debtor by his parents, Kelly R. Chriscoe and Penny C. Chriscoe on June 16, 2000.

4. On March 14, 2002, FNB instituted an action in the Superior Court of Randolph County entitled "FNB Corp. d/b/a First National Bank & Trust Company v. Kelly Ray Chriscoe, Penny C. Chriscoe and Matthew Ryan Chriscoe" requesting that the court declare that the transfer of the Seagrove Property to the Debtor was fraudulent under North Carolina law.

5. On February 28, 2003, a summary judgment was entered in the above-referenced suit adjudging that the transfer of the Seagrove Property to the Debtor constituted a fraudulent transfer and that the Seagrove Property was held by the Debtor subject to a constructive trust being impressed upon it in favor of FNB. There was no appeal from the summary judgment.

6. on September 18, 2003, FNB filed an objection to the Debtor's amended claim for property exemptions to the extent that the Seagrove Property was claimed as exempt property. Based upon the above-referenced summary judgment that was entered on February 28, 2003, FNB asserted that the Debtor held the Seagrove Property "subject to a constructive trust for the benefit of FNB, and therefore does not hold beneficial title to the [Seagrove] Property and cannot retain any portion of the property against the claim of FNB. ."

7. FNB's objection is based upon two propositions. FNB first contends that the summary judgment entered on February 28, 2003, is binding on the Debtor and establishes that the Debtor holds the Seagrove Property subject to a constructive trust in favor of FNB.

Secondly, FNB maintains that as trustee of a constructive trust, the Debtor has no beneficial interest in the Seagrove Property and may not claim an exemption in the property in contravention of the interest of FNB as the beneficiary of the constructive trust.

8. The starting point in determining the effect of the summary judgment as between FNB and the Debtor is 28 U.S.C. § 1738 which mandates that all federal courts accord full faith and credit to the judicial proceedings of state courts. This means that in determining the preclusive effect of a state court order or judgment, a federal court must look to the law of the state in which it was entered and give the order or judgment the same preclusive effect that it would receive in that state. Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380, 105 S.Ct. 1327, 1332, 84 L.Ed.2d 274 (1985) (28 U.S.C. § 1738 "commands a federal court to accept the rules chosen by the State from which the judgment is taken"); see also In re Calvert, 105 F.3d 315, 317 (6th Cir. 1997); In re McNallen, 62 F.3d 619, 624 (4th Cir. 1995); In re Moore, 186 B.R. 962, 968 (Bankr. N.D. Cal. 1995); In re First Actuarial Corp., 182 B.R. 178, 182 (Bankr. W.D. Mich. 1995). Accordingly, this court must look to North Carolina law in determining the preclusive effect of the state court summary judgment.

9. Under North Carolina law, which includes both res judicata and collateral estoppel, a final judgment or order, rendered by a court of competent jurisdiction, precludes the relitigation by a

party in a later action of any matter actually determined in a prior action in which such party or someone in privity with him was a party. Masters v. Dunston, 256 N.C. 520, 523, 124 S.E.2d 574 (1962) (citing Bryant v. Shields, 220 N.C. 268, 18 S.E.2d 161 (1942)). "It is fundamental that a final judgment, rendered on the merits by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue, as to the parties and privies, in all other actions involving the same matter."); Humphrey v. Faison, 247 N.C. 127, 133, 100 S.E.2d 524 (1957) ("[W]hen a fact has been agreed upon or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as the judgment or decree stands unreversed.") "Under a companion principle of res judicata, collateral estoppel by judgment, parties and parties in privity with them-even in unrelated causes of action-are precluded from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination." King v. Grindstaff, 284 N.C. 348, 356, 200 S.E.2d 799 (1973).

10. In the present case, the record reflects that the Debtor was a party to the state court proceeding in which the summary judgment was entered and that the court in that proceeding adjudicated that the conveyance to the Debtor was a fraudulent conveyance and that the Debtor held the Seagrove Property subject to a constructive trust in favor of FNB. The record further reflects that these adjudications were necessary determinations in resolving

the claims presented in the civil action in which the summary judgment was entered. It likewise appears from the record that no appeal was taken in state court and that the summary judgment is a final decree of the state court. Finally, it is clear that the Superior Court of Randolph County, the court in which the summary judgment was entered, is a court of competent jurisdiction. Therefore, under North Carolina law, the summary judgment is binding on the Debtor and precludes the Debtor from relitigating whether the property is subject to a constructive trust. Under 28 U.S.C. § 1738 this court must give the summary judgment the same effect in this case as it would be given in the North Carolina courts under North Carolina law. The result is that the summary judgment is binding on the Debtor in this proceeding and establishes that the conveyance to the Debtor was a fraudulent conveyance and that the Seagrove Property has been impressed with a constructive trust in favor of FNB.

11. Upon the entry of the summary judgment, the Debtor held the Seagrove Property subject to a constructive trust for the benefit of FNB and the Debtor's status became that of a trustee. A trustee of a trust, whether an express trust or a trust arising by operation of law such as a constructive trust, holds only bare legal title to the trust property and has no equitable interest in such property. See Mast v. Blackburn, 248 N.C. 231, 102 S.E.2d 812 (1958) (express trust); Garner v. Phillips, 229 N.C. 160, 47 S.E.2d 845 (1948) (constructive trust). When a bankruptcy case is filed by

a debtor who holds title to property that is subject to a trust, "the 'sole permissible administrative act' of the trustee or debtor in possession is to pay over or endorse over the property to the beneficiary or beneficiaries of the trust." In re Mid Atlantic Supply co., 790 F.2d 1121, 1126 (4th Cir. 1986) (citing Georgia Pacific Corp. v. Sigma, 712 F.2d 962, 968 (5th Cir. 1983)). In the present case, the Debtor, as a result of the imposition of the constructive trust, holds legal title to the Seagrove Property but holds no equitable interest in the property. Having no equitable interest in the property, he may not exempt the property away from FNB, the beneficiary of the constructive trust. See In re Naydan, 162 B.R. 204, 207 (Bankr. W.D. Ark. 1993) (holding that the debtors had no equitable interest in property subject to a constructive trust and therefore could not exempt such property). It follows that FNB's objection to Debtor's amended claim for property exemptions should be sustained.

IT IS SO ORDERED.

This 28 day of October, 2003.

**William L Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge