

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**In re: PATSY SIMMONS, Debtor**

**No. 5:10-bk-73737  
Ch. 7**

**ORDER**

Before the Court is the *Motion For and Notice of Sale of Real and Personal Property Free and Clear of Liens* [motion to sell] filed by the Trustee and the corresponding objection filed by the debtor's sons, John White and Walter White. John White and Walter White argue that while the property is legally titled in the debtor's name, the property is not property of the estate because it is held in a resulting trust for the benefit of John White. Based on the evidence presented at the hearing held on December 5, 2012, the Court finds that while a resulting trust was established in 1998, it was later terminated and the subject property is property of the estate. Accordingly, the trustee's motion to sell is granted.

**BACKGROUND**

The property in question is a single lot of real property on which a house stood until the house was destroyed by fire in December 2011. The lot also includes improvements such as a shed. John White bought the house and underlying real property in 1998 and made a \$20,000 down payment to the seller. The warranty deed, dated February 4, 1998, listed both John White and the debtor as grantees. The debtor testified that she supplied no part of the down payment and was included on the deed because John White was unmarried and had no heirs at that time. John White executed a promissory note and mortgage with Arkansas National Bank, and the debtor was listed as an additional borrower on the promissory note for added security because of her good credit. The debtor testified that she was "taken off" the promissory note sometime in 2001, and that John White made all of the house payments to the bank between 1998 and 2003. Cancelled checks written from John White's bank account between 1999 and 2003 show that he made payments to Arkansas National Bank.

In 2003, John White and the debtor transferred the property between themselves multiple times,

and the deed for each transfer was recorded in Benton County. On January 30, John White executed a warranty deed conveying the property to the debtor. That same day, the debtor deeded the property to Patsy Simmons Limited Partnership, her company.<sup>1</sup> On March 28, the debtor on behalf of Patsy Simmons Limited Partnership deeded the property back to John White. Finally, on August 20, John White quitclaim deeded the property to the debtor. The debtor testified that John White transferred the property to her because his promissory note was approaching its due date and the debtor believed she could get a better interest rate at Simmons First National Bank [Simmons Bank] under her own name.<sup>2</sup> In addition, the debtor explained that beginning in 2003 or 2004, John White's income became less reliable. The debtor refinanced the property with Simmons Bank on July 1, 2004, and executed a promissory note and mortgage in her name only.

Since 2003, the property has been titled in the debtor's name only—with the exception of once in 2006 when the property was forfeited to the state for delinquent property taxes and subsequently redeemed by the debtor.<sup>3</sup> Despite the debtor's apparent ownership of the property, the debtor testified (and her sons argue) that the property has always been "John's house." John White lived in the house from its purchase in 1998 until approximately one year ago, when he was incarcerated. In addition, while the debtor has made the note payments since 2003 or 2004, John White reimbursed her for some of the payments over time. The debtor stated that John White was sporadically successful in gambling and other business ventures, and when she learned of his successes, she would "go nail him and get my money back." Counsel for John White and

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<sup>1</sup> The debtor's Schedule B lists her as owning Patsy Simmons Limited Partnership and CJW, LLC. CJW, LLC owns 5% of Patsy Simmons Limited Partnership. The schedules do not indicate that any other individual or entity owns an interest in these companies.

<sup>2</sup> The Court is unsure whether the debtor's explanation applies to John White's first transfer to her on January 30, his second transfer to her on August 20, or both.

<sup>3</sup> This was the second time the property had been forfeited to the state for delinquent taxes. The first time occurred in late 2002 or early 2003, when both John White and the debtor were on the title. The property was redeemed on January 29, 2003, just prior to John White's first transfer of the property to the debtor.

Walter White entered into evidence an amortization schedule that included the debtor's handwritten notations of amounts paid to the debtor for the note. The notations do not state who made these payments, but the debtor testified that these were amounts she received from John White as reimbursements for note payments she made between 2005 and 2009. Notations for 2010 and 2011 show that Walter White and his wife made the payments for those years.

## **ANALYSIS**

The Arkansas Supreme Court defines a resulting trust as a type of implied trust derived in equity. *Edwards v. Edwards*, 843 S.W.2d 846, 848-49 (Ark. 1992). When property is purchased by and for the benefit of one party, but the property is—for whatever reason—titled in another's name, a resulting trust may be found in favor of that party who provided the funds or consideration for the purchase. *Id.* The formation of a resulting trust relies on the intent of the parties at the time the property was acquired. *Spradling v. Spradling*, 142 S.W. 848, 850 (Ark. 1911). The timing of the payment of funds for the purchase of the property is essential to the formation of a resulting trust:

In order to constitute a resulting trust, the purchase money or a specified part of it must have been paid by another or secured by another at the *same time*, or previously to the purchase, and must be a part of the transaction. In other words, the trust results from the original transaction at the time it takes place and at no other time, and it is founded on the actual payment of money and upon no other ground.

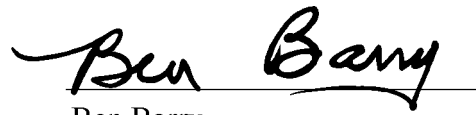
*Kerby v. Feild*, 38 S.W.2d 308, 311 (Ark. 1931) [emphasis added] (citing *Red Bud Realty Co. v. South*, 131 S.W. 340 (Ark. 1910) and *Reeves v. Reeves*, 264 S.W. 979 (Ark. 1924)). A resulting trust must be proven by clear and convincing evidence. *Edwards*, 843 S.W.2d at 849.

John White was not present at the hearing because he is currently incarcerated. However, the testimony of the debtor and Walter White (John White's mother and brother) shows that the property was acquired for the benefit of John White, even though both John White and the debtor were named on the deed. In addition, the evidence is uncontroverted that John White paid \$20,000 at the time of the purchase and then made note payments to the bank until 2003. Based on these facts, the Court finds by clear and convincing evidence that a resulting trust was

established in favor of John White, as the beneficiary, at the time the property was purchased in 1998. The only remaining question is whether the resulting trust continued once John White deeded the property to the debtor in 2003.

Arkansas case law provides little guidance on how and when a resulting trust, once established, is terminated. However, the Restatement (Second) of Trusts, which has been generally adopted and cited by Arkansas courts, addresses this issue specifically. Section 410 states that “[a] resulting trust terminates if the legal title to the trust property and the entire beneficial interest become united in one person.” Restatement (Second) of Trusts § 410 (1959). The comments to Section 410 state that the termination occurs whether the trustee transfers the property to the beneficiary or the beneficiary transfers the property to the trustee. In 2003, John White and the debtor (or her company) transferred the property between themselves three times: from John White to the debtor in January (and the debtor’s subsequent transfer of the property to her company); from the debtor’s company to John White in March; and from John White to the debtor in August. During those transfers, the legal title and the entire beneficial interest united at least once. The merging of interests most likely did not occur either time that John White deeded the property to the debtor—in January and August of 2003—because he did not convey the *entire* beneficial interest. As the debtor testified, John White maintained possession of the property even after he conveyed title to the debtor. However, at the time that the debtor’s company conveyed title back to John White on March 28, 2003, both the legal title and the entire beneficial interest united in one person, John White. Therefore, the Court finds that the resulting trust in favor of John White was terminated no later than March 2003. The Court will not speculate what interest, if any, John White retained once he deeded the property to the debtor in August 2003 after the resulting trust was terminated.

For the foregoing reasons, the Court finds that the resulting trust terminated in 2003 and the subject property is property of the estate. Accordingly, the trustee’s *Motion For and Notice of Sale of Real and Personal Property Free and Clear of Liens* is granted.

A handwritten signature in black ink that reads "Ben Barry". The signature is written in a cursive style and is positioned above a horizontal line.

Ben Barry  
United States Bankruptcy Judge  
Dated: 01/16/2013

cc: Jill J. Jacoway, trustee  
Stanley V. Bond  
Jason Wales  
United States Trustee