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IT IS SO ORDERED.



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

Dated: June 3, 2024

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:)	
)	
ROBERT LOUIS RACHEL, JR.)	Case No. 22-12008
)	Chapter 13
Debtor)	Judge Buchanan
)	
)	
SHANNON BROWNER)	Adv. No. 23-1012
)	
Plaintiff)	
)	
v.)	
)	
ROBERT LOUIS RACHEL, JR.)	
)	
Defendant)	
)	
)	
)	
)	
)	

MEMORANDUM OPINION GRANTING SUMMARY JUDGMENT TO PLAINTIFF SHANNON BROWNER AND DENYING SUMMARY JUDGMENT TO DEBTOR-DEFENDANT ROBERT LOUIS RACHEL, JR. [Docket Numbers 9 and 13]

This matter is before this Court on Plaintiff Shannon Browner (“Ms. Browner”)’s Motion for Summary Judgment [Docket Number 9]; Defendant-Debtor Robert Louis Rachel, Jr. (“Mr. Rachel”)’s Response [Docket Number 12]; and Ms. Browner’s Reply [Docket Number 15] as well as Mr. Rachel’s Motion for Summary Judgment [Docket Number 13]; Ms. Browner’s Response [Docket Number 14] and Mr. Rachel’s Reply [Docket Number 16]. In making a determination on the cross-motions for summary judgment, this Court is aided by the joint stipulations filed by the parties at Docket Number 8 (“Joint Stipulations”).¹

After Mr. Rachel filed his chapter 13 bankruptcy petition, Mr. Rachel’s ex-spouse, Ms. Browner, filed an adversary complaint asserting that she was awarded equity in the parties’ marital real property per the provisions of the parties’ separation agreement equal to the amount of \$34,000. She claims that, per the award, she has a separate interest in the residential real property that did not become part of Mr. Rachel’s bankruptcy estate and consequently, is not a dischargeable debt.

Following Mr. Rachel’s answer to the complaint, the parties filed cross-motions for summary judgment on the issue. For the reasons that follow, this Court determines that through the terms of the separation agreement incorporated into the state court’s divorce decree, a constructive trust was impressed upon the share of equity in real property awarded to Ms. Browner such that the property did not become part of Mr. Rachel’s bankruptcy estate. Accordingly, summary judgment is awarded to Ms. Browner and denied to Mr. Rachel.

¹ The parties stipulated that they had no objections to the exercise of this Court’s jurisdiction and the authority of this Court to enter final orders and judgments [*see* Joint Stipulations].

I. FACTUAL BACKGROUND

Mr. Rachel and Ms. Browning were married on September 6, 2014. Prior to their marriage, Mr. Rachel acquired fee simple title to what became the parties' marital residence at 3347 Robinet Drive in Hamilton County, Ohio (the "Real Property") on March 7, 2013.

Mr. Rachel and Ms. Browning dissolved their marriage in a *Final Judgment for Divorce Without Children* (the "Divorce Decree") that was entered on July 2, 2021 in the Domestic Relations Division of the Court of Common Pleas in Hamilton County Ohio. The Divorce Decree incorporated the parties' written Separation Agreement that was entered into by the parties knowingly and voluntarily while represented by separate legal counsel. The Divorce Decree and Separation Agreement were stipulated to by the parties and attached to their Joint Stipulations.

The Separation Agreement divided property and debts between Mr. Rachel and Ms. Browning. With respect to the Real Property, the Separation Agreement provided as follows:

3. REAL PROPERTY

3.1 Residence: Husband is the owner of real estate, which is considered marital property, which is situated in the County of Hamilton, State of Ohio, and more commonly known as 3347 Robinet Drive, Cincinnati, Ohio 45238 ("Residence").

3.2 The Residence is subject to the first mortgage with a current balance of approximately \$48,000 in favor of Wells Fargo. Other than the mortgage, interests, any easements, and other restrictions of record, and the installments of accrued real estate taxes and assessments due and payable hereafter, both parties warrant and represent there are no other liens, encumbrances, or clouds of title financially encumbering the Residence.

3.3 Husband shall receive all right, title and ownership interest in the Residence. Husband shall assume the marital mortgage debt.

3.4 Husband shall give Wife 50% of the marital equity, which is defined as September 6, 2014 until May 31, 2020, in the home. Parties agree that Husband shall make payments to wife in the amount of \$34,000 as a condition of gaining exclusive use and occupancy of the marital residence.

3.5 If the conditions outlined in Paragraph 3.4 have been met, effective 60 days after the filing of final decree, Husband shall have exclusive use and occupancy of the marital residence and shall be solely responsible for all expenses associated with the residence, including, but not limited to utilities, mortgage(s), property taxes and insurances, holding Wife harmless thereon. Husband shall pay all bills in full and on time.

In the event Husband has not completed the transfer in Paragraph 3.4, the 60 day effective date will be adjusted to begin on the actual date Husband renders Wife payment due under Paragraph 3.4.

[Joint Stipulations, attached Separation Agreement, Para. 3].² In addition, Section 15 labeled “TAX STATUS AND RESPONSIBILITY” provided, in pertinent part, that:

In affecting the division of property acquired by the parties during their marriage, they intend the division of property comprehended by this Agreement to be equitable in view of their respective contributions to the marriage. Neither party considers the division of property involved in this Agreement to constitute a transfer of property from one party to the other in exchange for a release or relinquishment of rights. Specifically for tax purposes, neither party considers this division of property to be a taxable event in and of itself and both parties believe that no tax is due as a result of this division of their property.

[Joint Stipulations, attached Separation Agreement, Para. 15.1].

Provisions of the Divorce Decree incorporating the Separation Agreement were also cited by the parties as relevant to the analysis. In the Divorce Decree, in a provision labeled “THIRD: DEBT”, a box was checked stating that “Nothing in this order shall prevent the Plaintiff and/or Defendant from being fully discharged from the debts allocated in this order in a bankruptcy proceeding except for any orders expressly for spousal support and the following debts: _____”. There were no debts listed in this provision. Furthermore, the provision labeled “FOURTH:

² Another relevant provision of the Separation Agreement is Paragraph 11 which states “Neither Husband nor Wife shall pay spousal support to the other.” [Joint Stipulations, attached Separation Agreement, Para. 11.1]. However, Paragraph 10 of the Separation Agreement, titled “Liabilities” and setting forth the division of credit card and other debts, noted that “[a]ll obligations set forth herein are considered domestic support obligations and are not dischargeable in bankruptcy.” [Joint Stipulations, attached Separation Agreement, Para. 10 and 10.7].

SPOUSAL SUPPORT,” specifically noted that “Neither the Plaintiff nor Defendant shall pay spousal support to the other.”³ [Joint Stipulations, attached Divorce Decree].

The parties stipulated that Mr. Rachel has not paid any portion of the \$34,000 owed to Ms. Browner as outlined in Paragraph 3.4 of the Separation Agreement.

On November 23, 2022, Mr. Rachel filed a chapter 13 bankruptcy petition and schedules [Case No. 22-12008, Docket Number 1]. In his schedules, Mr. Rachel listed his ownership of the Real Property, at which he currently resides, and claimed a homestead exemption in the Real Property to which no one objected making the property fully exempt. He further listed the \$34,000 owed to Ms. Browner as a non-priority unsecured debt in Schedule E/F. In his proposed chapter 13 plan, Mr. Rachel intends to pay his non-priority unsecured creditors 3% on their claims [*Id.*, Docket Number 6].

II. LEGAL ANALYSIS

A. Summary Judgment Standard

This Court addresses the parties’ motions for summary judgment under the standard set forth in Rule 56(a) of the Federal Rules of Civil Procedure (the “Civil Rules”) made applicable to this proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure. Civil Rule 56(a) provides that summary judgment is to be granted by this Court “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine” dispute exists only where “evidence is such that a reasonable

³ This provision is similar to the paragraph in the Separation Agreement providing that “[n]either Husband nor Wife shall pay spousal support to the other.” [Joint Stipulations, attached Separation Agreement, Para. 11.1].

[finder of fact] could return a [judgment] for the nonmoving party.” *Id.*; *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 270 (6th Cir. 2009).

To prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (dissent). If the burden is on the nonmoving party at trial, the movant must: 1) submit affirmative evidence that negates an essential element of the nonmoving party’s claim; or 2) demonstrate to the court that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim. *Id.* at 331-32. Thereafter, the opposing party “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citations omitted); *see also Anderson*, 477 U.S. at 249-250.

All inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita*, 475 U.S. at 587-88; *Anthony v. BTR Auto. Sealing Sys., Inc.*, 339 F.3d 506, 511 (6th Cir. 2003). Nonetheless, mere conclusory allegations or unsupported opinions of the nonmovant are insufficient to defeat a motion for summary judgment. *See Blaney v. Cengage Learning, Inc.*, 2011 U.S. Dist. LEXIS 43780, at *19-20, 2011 WL 1532032, at *7 (S.D. Ohio Apr. 22, 2011) (“Although the summary judgment standard requires that evidence of record be viewed in the light most favorable to the nonmoving party, it does not require that all bald assertions and subjective unsupported opinions asserted by the nonmoving party be adopted by the court”).

The standards for evaluating motions for summary judgment do not change where the parties present cross-motions for summary judgment. *Taft Broadcasting Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991). “The fact that both parties have moved for summary judgment does not mean that the court must grant judgment as a matter of law for one side or the other; summary

judgment in favor of either party is not proper if disputes remain as to material facts. Rather, the court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration." *Id.* (citations omitted).

B. Constructive Trust in Favor of Ms. Browner Impressed By the Divorce Decree

The parties' cross-motions for summary judgment highlight a difficult intersection between chapter 13 bankruptcy and domestic relations proceedings. While the "super discharge"⁴ afforded to successful chapter 13 debtors includes a discharge of non-support "debts" to a former spouse arising out of a divorce, the issue becomes more complex when it is not a debt but an award of marital property or distribution of assets to the former spouse that the debtor is attempting to discharge. Guiding the determination in this case is the United States Court of Appeals for the Sixth Circuit's holding in *McCafferty v. McCafferty (In re McCafferty)*, 96 F.3d 192 (6th Cir.

⁴ The "super discharge" is a term referring to the broad discharge afforded chapter 13 debtors pursuant to 11 U.S.C. § 1328(a)(2) which provides, in pertinent part:

(a) . . . as soon as practicable after completion by the debtor of all payments under the [chapter 13] plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt-

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a)[.]

11 U.S.C. § 1328(a). Not among the referenced types of § 523(a) debts specifically excepted from a chapter 13 discharge is a debt:

to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) [covering domestic support obligations] that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit[.]

11 U.S.C. § 523(a)(15). "In contrast to the non-dischargeability of a domestic support obligation, a debt to a former spouse that is not in the nature of support, described in 11 U.S.C. § 523(a)(15), which would be non-dischargeable in a Chapter 7 case is dischargeable in a Chapter 13 case. That is because 11 U.S.C. § 1328(a)(2) does not include § 523(a)(15) in the exception to discharge provision." *In re McKinley*, 2009 Bankr. LEXIS 1353, at *6, 2009 WL 1631816, at *3 (Bankr. W.D. Ky. June 10, 2009).

1996) and subsequent case law analyzing the dischargeability of property distributions in a pre-petition divorce decree.

1. *McCafferty* and the Requirements to Recognize a Constructive Trust

In *McCafferty*, a prepetition divorce decree entered in Ohio included a determination that the former wife, Ms. McCafferty, was entitled to one-half of the value of debtor Mr. McCafferty's pension as of the date of their pre-petition divorce, or \$100,250.21. 96 F.3d at 193. The decree noted that the \$100,250.21 was awarded to Ms. McCafferty as a "distribution of her interest in [Mr. McCafferty]'s retirement plan" and called the award a "property distribution" *Id.* at 193-194. Mr. McCafferty was ordered to pay the \$100,250.21 judgment in monthly installments of \$1,500. *Id.* at 194. Mr. McCafferty filed a chapter 7 bankruptcy petition seven months after the divorce decree was entered, listed his former wife as the holder of unsecured debts, and filed an adversary proceeding to discharge the \$100,250.21 judgment. *Id.*

To determine whether the \$100,250.21 award to Ms. McCafferty was dischargeable in the debtor's bankruptcy case, the Sixth Circuit began by examining the language of Bankruptcy Code Section 541(d) which states that "[p]roperty in which the debtor holds . . . only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d); *McCafferty*, 96 F.3d at 196. Section 541(d), as noted in *McCafferty*, "has often been invoked as the basis for excluding from a bankruptcy estate assets held in constructive trust by the debtor in favor of another." 96 F.3d at 196.

The Sixth Circuit then set forth how to determine whether a property division in a divorce decree is subject to a constructive trust. First, it must be determined that the divorce decree granted a separate property interest to the non-debtor former spouse under state law. *Id.* at 197; *Hines v.*

Hines (In re Hines), 356 B.R. 786 (Table), 2006 Bankr. LEXIS 1160, at *9, 2006 WL 3956493, at *3 (B.A.P. 6th Cir. June 29, 2006) (analyzing *McCafferty* and applying it in the context of a chapter 13 case). The Sixth Circuit noted that, under Ohio law, retirement benefits are marital property subject to equitable division upon termination of a marriage. *McCafferty*, 96 F.3d at 197 (citing Ohio Rev. Code § 3105.171); *Hines*, 2006 Bankr. LEXIS 1160, at *9, 2006 WL 3956493, at *3. “Under Ohio law, ‘[o]nce the division of property is fixed by the [domestic relations] court, both spouses are legally entitled to the share respectively allotted to them.’” *McCafferty*, 96 F.3d at 197 (citing *Zimmie v. Zimmie*, 11 Ohio St.3d 94, 97, 464 N.E.2d 142, 146 (1984)). Based on Ohio law and the language of the divorce decree stating that the \$100,250.21 judgment was for her interest in the debtor’s retirement plan, the Sixth Circuit held that the divorce decree awarded Ms. McCafferty a separate property interest in her portion of Mr. McCafferty’s pension benefits. *Id.*

Second, the Sixth Circuit concluded that the constructive trust must be “impressed” upon the property prior to the bankruptcy filing through a judgment or by operation of law in order to prevent unjust enrichment. *Id.* at 198-99; *Hines*, 2006 Bankr. LEXIS 1160, at *10, 2006 WL 3956493, at *3. In Ohio, “‘where there is a valid Domestic Relations Court order predating the bankruptcy, there has in fact been a judicial determination by a court in a separate proceeding that the Debtor’s property is held for the benefit of another.’” *McCafferty*, 96 F.3d at 198 (quoting with approval *McGraw v. McGraw (In re McGraw)*, 176 B.R. 149, 151-52 (Bankr. S.D. Ohio 1994) (“We agree that when a Debtor fails to turn over property divided under a domestic relations court order, that property may be subject to a constructive trust or equitable lien in favor of the spouse.”)). Consequently, because the divorce decree gave a separate property interest in the debtor’s pension plan to his former spouse, the Sixth Circuit concluded that the decree impressed

a constructive trust on the property to protect the former spouse's interest regardless of whether the court actually used the words "constructive trust" in the divorce decree. *Id.* at 198-99.

Third, acknowledging its prior holding in *Omeegas Group*, the Sixth Circuit reiterated that a constructive trust should not be recognized if it conflicts "with a major goal of federal bankruptcy law – ratable distribution among creditors." *Id.* at 196 (discussing *XL/Datacomp, Inc. v. Wilson (In re Omeegas Group, Inc.)*, 16 F.3d 1443, 1450-51 (6th Cir. 1994) and noting that when such a conflict occurs, "bankruptcy policy prevails"). While such a conflict did exist in *Omeegas Group*, the Sixth Circuit noted that the policy would not be relevant in situations where the property at issue is not subject to distribution to a debtor's creditors. *Id.* (citing *Begier v. I.R.S.*, 496 U.S. 53, 58, 110 S. Ct. 2258, 2262-63, 110 L.Ed.2d 46 (1990) (noting that, in the context of a bankruptcy trustee's avoidance powers under 11 U.S.C. § 547(b), the bankruptcy policy of equality of distribution among creditors of equal priority is not implicated if the property transferred by the debtor would not have been available for distribution to creditors). Because the pension benefits in *McCafferty* were not subject to the reach of the debtor's creditors in his bankruptcy case, the Sixth Circuit concluded that recognizing a constructive trust over the pension benefits in favor of his former spouse "would not hinder bankruptcy policy inasmuch as it would not diminish the pro rata share of any other creditors of the debtor." *Id.* at 197.

With those requirements met, the Sixth Circuit concluded that the award of pension benefits in the divorce decree to the non-debtor spouse "did not constitute property of the [debtor's] bankruptcy estate under 11 U.S.C. § 541 and was therefore not a dischargeable debt." *Id.* at 199-200.

2. Application of *McCafferty*

Ms. Browner asserts that all of the requirements for a constructive trust that the Sixth Circuit applied in *McCafferty* apply with equal force to the Divorce Decree in this case. She argues that the Divorce Decree's award to her of 50% of the marital equity in the Real Property is protected by a constructive trust such that it did not become part of Mr. Rachel's bankruptcy estate and is not a dischargeable debt. This Court agrees.

First, the Real Property at issue in this case, like the pension in *McCafferty*, was determined to constitute "marital property" subject to equitable division under Ohio law upon termination of the parties' marriage. *See* Joint Stipulations, attached Separation Agreement, Para. 3; *McCafferty*, 96 F.3d at 197 (citing Ohio Rev. Code § 3105.171). Once the award of 50% of the marital equity in the Real Property in the amount of \$34,000 to Ms. Browner became fixed in the Divorce Decree, she became legally entitled to her respective share. *Id.*; *see also Coffey v. Coffey (In re Coffey)*, 348 B.R. 775, 780 (Bankr. E.D. Tenn. 2006) ("The more persuasive argument made by the [former spouse] is that her right to an equitable division of marital property is not a prepetition debt. Rather, it is her property right that cannot be extinguished by the [debtor]'s discharge.")

Mr. Rachel argues that nothing in the Separation Agreement or Divorce Decree could be read to give Ms. Browner an actual property interest in the Real Property. Instead, Mr. Rachel was to pay Ms. Browner a sum of money, \$34,000, and that obligation constitutes a debt as defined under 11 U.S.C. § 101(5) and (12).⁵ However, the \$34,000 "payment" represents the value of the 50% share of the marital equity in the Real Property awarded to Ms. Browner in the Separation Agreement [*See* Joint Stipulations, Attached Separation Agreement, Para. 3.4]. Analyzing similar

⁵ Bankruptcy Code Section 101(12) defines a debt as "liability on a claim." Bankruptcy Code Section 101(5) defines a claim, in pertinent part as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."

language in a divorce decree's division of retirement benefits, the Bankruptcy Appellate Panel of the Sixth Circuit concluded that there is no substantive difference between an award of a division of property and an award of a sum of money representing that division of property. *Hines*, 2006 Bankr. LEXIS 1160, at *11-13, 2006 WL 3956493, at *4 (concluding that, under *McCafferty*, awarding the former spouse a sum of money "as and for her netted share of [the Debtor's] retirement" had the effect of impressing a constructive trust on her interest in the Debtor's retirement plan). Either way, the effect of such language is to award a separate property interest upon which a constructive trust is impressed. *Id.*; see also *Coffey*, 348 B.R. at 780 ("The Sixth Circuit has held that, where the state court has determined that a non-debtor is entitled to a portion of marital property and has awarded a money judgment against the debtor as a distribution of the non-debtor's interest in the property, the award does not constitute a dischargeable debt"). In accordance with *McCafferty* and *Hines*, this Court concludes that the language of the Divorce Decree and Separation Agreement awarded Ms. Browner a separate property interest.

Second, as in *McCafferty*, Ms. Browner was granted her separate property interest within a divorce decree entered by an Ohio domestic relations court. Through that judicial action, a constructive trust was impressed on her property interest that may be recognized in bankruptcy court even though the words "constructive trust" were not used by the state court. See *McCafferty*, 96 F.3d at 198-99.

Finally, like the pension in *McCafferty*, the Real Property at issue in this case is fully exempt and unreachable by Mr. Rachel's creditors. Accordingly, recognizing a constructive trust in favor of Ms. Browner with respect to her share of the marital equity in the Real Property does not diminish the pro rata share of any creditors of the debtor so that this major bankruptcy policy is not implicated. See *McCafferty*, 96 F.3d at 196-97.

3. Mr. Rachel's Other Arguments

Although the circumstances necessary to recognize a constructive trust appear to be met, Mr. Rachel contests *McCafferty*'s applicability.

First, Mr. Rachel argues that imposition of a constructive trust under Ohio law requires proof of financial misconduct, fraud or other wrongdoing that does not exist in this case. While constructive trusts are often applied in those contexts, Ohio courts also recognize that a constructive trust may be an "appropriate remedy against unjust enrichment" without proof of fraud or wrongdoing. *Ferguson v. Owens*, 9 Ohio St.3d 223, 226 459 N.E.2d 1293, 1295 (1984); *Dice v. White Family Cos.*, 173 Ohio App. 3d 472, 483, 878 N.E.2d 1105, 1113 (2007) (quoting *Ferguson* in its conclusion that "'A constructive trust is an equitable remedy that protects against unjust enrichment and is usually invoked when property has been obtained by fraud. . . .[A] constructive trust may also be imposed where it is against the principles of equity that the property be retained by a certain person even though the property was acquired without fraud.'"); *Croston v. Croston*, 18 Ohio App.2d 159, 162, 247 N.E.2d 765, 767 (Ohio Ct. App. 1969) (noting that a constructive trust "has been defined to arise where a person holding title to property is subject to an equitable duty to convey it to another on ground that he would be unjustly enriched if he were permitted to retain it" (internal quotation marks and citations omitted)). The Sixth Circuit relied on *Ferguson* and *Croston* when recognizing a constructive trust arising from a divorce decree to protect the non-debtor former spouse's property against unjust enrichment.⁶ *McCafferty*, 96 F.3d at 198.

⁶ Mr. Rachel compares this case to *Howard v. Howard (In re Howard)*, a case from the Middle District of Pennsylvania that, he argues, would not recognize a constructive trust impressed upon a former spouse's award of marital equity in real property. In Mr. Rachel's briefing, no citation for the *Howard* opinion he relies upon is provided. This Court's own research found a reported opinion in the *Howard* case at the point of determining whether or not the plaintiff (former spouse)'s allegations regarding a constructive trust were sufficient to withstand the debtor's motion to dismiss. See *Howard v. Howard (In re Howard)*, 541 B.R. 782 (Bankr. M.D. Pa. 2015). In that opinion, the bankruptcy court applied Pennsylvania law to determine whether the balance of an equity interest in real property owed to the debtor's

Second, Mr. Rachel argues that a constructive trust is not an available remedy under Ohio law in the context of a simple breach of contract. While generally true, the Sixth Circuit has held that under Ohio law, a wrongful retention of property cognizable in equity *will* give rise to a constructive trust particularly when the duty to convey that property arose through a court order or court approved agreement. *Poss v. Morris (In re Morris)*, 260 F.3d 654, 668-69 (6th Cir. 2001). Consequently, the Sixth Circuit has recognized a constructive trust to arise not only in the context of a court ordered divorce decree like the one at issue in this case but also a court approved settlement agreement when the agreement involves a duty to convey property to another. *Id*; *McCafferty*, 96 F.3d at 196-98. The Sixth Circuit's position finds further support in Ohio courts recognizing equitable claims, like unjust enrichment, to enforce provisions in a divorce decree. *See, e.g., Jones v. Jones*, 179 Ohio App.3d 618, 628-30, 903 N.E.2d 329, 336-39 (2008).⁷

Mr. Rachel argues, though, that the Separation Agreement did not convey any interest in the Real Property to Ms. Browner. He notes that there is no requirement in the Separation Agreement to record the Divorce Decree at the county recorder's office in order to perfect a lien

former spouse through a divorce decree was a claim against the debtor's estate or a property interest held by the debtor in constructive trust for the benefit of the ex-spouse. *Id.* at 787. Like Ohio law, a constructive trust under Pennsylvania law is an equitable remedy that may be imposed to avoid unjust enrichment. *Id.* at 788. However, that is where the state laws begin to diverge. The bankruptcy court concluded that to impose a constructive trust to avoid unjust enrichment under Pennsylvania law, a fraud or wrongdoing must occur. *Id.* at 789 (concluding that the non-debtor former spouse would have a basis for imposition of a constructive trust if able to prove that the debtor fraudulently retained the equity in the residence). As this Court has noted, Ohio law does not require proof of wrongdoing or fraud to impose a constructive trust. *See Ferguson*, 9 Ohio St.3d at 226 459 N.E.2d at 1295; *Dice*, 173 Ohio App. 3d at 483, 878 N.E.2d at 1113; *Croston*, 18 Ohio App.2d at 162, 247 N.E.2d at 767. And, indeed, no requirement of fraud or wrongdoing was imposed when the Sixth Circuit recognized a constructive trust arising under Ohio law from a divorce decree to protect the non-debtor former spouse's property interest against unjust enrichment. *McCafferty*. 96 F.3d at 198-200. Accordingly, an analysis of Pennsylvania law, such as that provided in *Howard*, is not applicable to a case such as this one involving a divorce decree granted under Ohio law. *See Hines*, 2006 WL 3956493, at *3 (recognizing that applicable state law controls these issues).

⁷ Ohio courts further recognize that while a separation agreement begins as a contract governed by contract law, it loses its contractual nature when incorporated into a divorce decree, and the means for enforcing it thereafter is through a power of contempt. *Jones v. Jones*, 179 Ohio App.3d at 628, 903 N.E.2d at 336 (citing *Wolfe v. Wolfe*, 46 Ohio St.2d 399, 350 N.E.2d 413 (1976) (other citations omitted)).

or transfer of the Real Property pursuant to Ohio Revised Code § 2329.02.⁸ Moreover, he argues that Section 15.1 of the Separation agreement makes clear that the division of property in the Separation Agreement was not a transfer of property. Reiterating his “duty to pay” argument, Mr. Rachel concludes that the Separation Agreement merely creates a debt and not a duty to convey an interest in the Real Property to Ms. Browner.

For the reasons previously stated, this Court disagrees. The Separation Agreement provides that “Husband shall give Wife 50% of the marital equity . . . [and] that Husband shall make payment to wife in the amount of \$34,000 as a condition to gaining exclusive use and occupancy of the marital residence.” [Joint Stipulations, attached Separation Agreement, Para. 3.4]. *McCafferty* and *Hines* interpreted similar language in a divorce decree to convey an equitable interest in property to a former spouse. In *McCafferty*, Ms. McCafferty was awarded a judgment in the divorce decree “as a distribution of her interest in [Mr. McCafferty]’s retirement plan,” which was characterized in the divorce decree as a “property distribution.” *McCafferty*, 96 F.3d at 193-94. Mr. McCafferty was ordered to pay the judgment amount to Ms. McCafferty in monthly installments. *Id.* The Sixth Circuit concluded that the language in the divorce decree declared the parties’ respective rights and awarded specific property to Ms. McCafferty. *Id.* at 198. Because Mr. McCafferty was ordered to convey that property to his former spouse, he retained only bare legal title in the designated portion of the property and Ms. McCafferty became the equitable owner of the property to that extent. *Id.* at 198-199.

Similarly, in *Hines*, the divorce decree provided that:

[Debtor] shall, solely and exclusively, retain his retirement/pension plan through his employer, City of Cincinnati, free and clear of any interest of [Hines]. However, [Debtor] shall pay to [Hines] \$12,500

⁸ While state law recording requirements may impact the constructive trust analysis in bankruptcy where there is non-exempt equity available to distribute to creditors, *see In re Hilliard*, 2012 Bankr. LEXIS 1052, 2012 WL 1067691 (Bankr. E.D. Tenn. Mar. 12, 2012), the parties have stipulated that the Real Property in this case is fully exempt.

no later than thirty-six (36) months from the journalization of this Decree of Divorce as and for her netted share of his retirement.

Hines, 2006 Bankr. LEXIS 1160, at *5, 2006 WL 3956493, at *2. The Bankruptcy Appellate Panel of the Sixth Circuit concluded that this language in the divorce decree awarded an interest in property to the former spouse notwithstanding language indicating that the debtor retained the property “solely and exclusively” and “free and clear of any interest” of the former spouse. *Hines*, 2006 Bankr. LEXIS 1160, at *13, 2006 WL 3956493, at *4. The Panel held that such language did not abrogate the intent to award a separate property interest in the debtor’s retirement plan to his former spouse. *Id.*

Likewise, the fact that the conveyance takes the form of payments from Mr. Rachel to Ms. Browner does not alter the fact that the Separation Agreement and Divorce Decree acknowledge that Ms. Browner holds an equitable interest in the designated portion of the martial equity in the Real Property. *McCafferty*, 96 F.3d at 199 (noting that the requirement in the divorce decree for the debtor to make direct payments to his former spouse with respect to her interest in his pension benefits did not change the fact that the former spouse was the equitable owner of her portion of the pension benefits); *Hines*, 2006 Bankr. LEXIS 1160, at *13, 2006 WL 3956493, at *4. (noting that “*McCafferty* makes clear that the method of payment does not alter the ownership interests”). Accordingly, Mr. Rachel’s argument is without merit.

Third, Mr. Rachel argues that any imposition of a constructive trust based on a theory of unjust enrichment must fail because Ms. Browner did not confer a benefit on him that he retained unjustly under the law.⁹ Mr. Rachel argues that the parties agreed to live separately prior to entering

⁹ Under Ohio law, unjust enrichment has three elements: (1) a benefit conferred by a plaintiff upon a defendant, (2) knowledge by the defendant of the benefit, and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Bunta v. Superior VacuPress, L.L.C.*, 171 Ohio St.3d 464, 474, 218 N.E.3d 838, 849 (2022) (citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298, 1302 (1984)).

the Separation Agreement and that Ms. Browner would have vacated the Real Property regardless of whether Mr. Rachel paid Ms. Browner her share of the equity in it. Consequently, he argues that there is no benefit that Ms. Browner conferred on Mr. Rachel by his continued residence at the Real Property after the divorce.

The focus of Mr. Rachel's argument, however, overlooks the true benefit conferred on Mr. Rachel through his failure to adhere to the terms of the Divorce Decree and Separation Agreement. That benefit is not his continued residence at the Real Property but, instead, his retention of Ms. Browner's share of the marital equity in the Real Property, equity valued at \$34,000. While Mr. Rachel describes that benefit as a dischargeable debt created by the Divorce Decree, the Sixth Circuit's *McCafferty* opinion recognizes such language in a Divorce Decree to give Ms. Browner a property interest rather than create a debt. Consequently, this Court finds Mr. Rachel's argument to lack merit.

Fourth, Mr. Rachel argues that the constructive trust analysis in *McCafferty* has never been applied outside the context of retirement benefits. However, the Sixth Circuit's analysis did not hinge on the asset involved being retirement benefits but, instead, on the asset being "marital property" subject to equitable division by a state court upon the divorce of the parties. *McCafferty*, 96 F.3d at 197 (noting that upon termination of a marriage, Ohio law requires Ohio courts to divide the marital property between spouses in an equitable manner and that retirement benefits are included as marital property subject to division). Accordingly, if the other requirements for imposing a constructive trust are met, *McCafferty* may apply to a division of marital property outside the context of retirement benefits. *See Coffey*, 348 B.R. at 781 (noting that upon the entry of the divorce decree, ". . . under *McCafferty*, property awarded to the nondebtor spouse never

becomes property of the debtor's bankruptcy estate and its ultimate receipt by the other spouse is not the result of any 'claim.' It is a matter of ownership and property right.”).

Finally, Mr. Rachel asserts that excepting the “debt” he owes to Ms. Browner from discharge serves to undermine the potency of the “super-discharge” provision of § 1328(a) which provides for a discharge of debts incurred by a debtor in a divorce that are not domestic support obligations.¹⁰ While this Court understands the concerns, the Sixth Circuit's *McCafferty* opinion is of limited reach. Its application is limited to situations where: (1) through the divorce, the non-debtor former spouse is granted a property interest in marital property; (2) a constructive trust is impressed on the marital property by way of a prepetition court order or by operation of law; and (3) imposition of a constructive trust will not diminish the pro rata share to be distributed to the debtor's creditors. In these situations, the Sixth Circuit has concluded that the divorce decree does not create a “debt” but, instead, a property interest that is not part of the bankruptcy estate and is, therefore, not a dischargeable debt in bankruptcy. *See McCafferty*, 96 F.3d at 200.

III. CONCLUSION

For the reasons stated, Plaintiff Shannon Browner's Motion for Summary Judgment [Docket Number 9] is GRANTED and Defendant-Debtor Robert Louis Rachel, Jr.'s Motion for Summary Judgment [Docket Number 13] is DENIED. An order of judgment will be entered consistent with this memorandum opinion.

SO ORDERED.

¹⁰ This Court similarly rejects Mr. Rachel's argument that the addition of § 523(a)(15) by the 1994 amendments to the Bankruptcy Code and the exclusion of this exception to discharge from the “super discharge” provision of § 1328(a) negates the relevance of *McCafferty*. “For *McCafferty* to be abrogated, at least within Ohio, the underlying property or domestic relations law of Ohio would need to change, or Congress would need to make a rule superseding it for the purposes of defining property of the estate and of the debtor. 11 U.S.C. § 523(a)(15) is not such a rule, even by implication; it affects only dischargeability, not the definition of property of the estate.” *In re Jeffers*, 572, B.R. 681, 689 (Bankr. N.D. Ohio 2017).

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