

**Dated: December 07, 2015**  
**The following is ORDERED:**



*Jennie D. Latta*

**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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In re  
EARL BENARD BLASINGAME and  
MARGARET GOOCH BLASINGAME,  
Debtors.

Case No. 08-28289-L  
Chapter 7

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Church Joint Venture, L.P., on behalf of  
Edward L. Montedonico, Chapter 7 Trustee,  
Plaintiff,

v.  
Earl Benard Blasingame,  
Margaret Gooch Blasingame,  
The Blasingame Family Development Generation Skipping Trust,  
The Blasingame Family Residence Generation Skipping Trust,  
The Blasingame Family Business Investment Trust,  
Katherine Blasingame Church,  
Earl Benard Blasingame, Jr., and  
Grace Henley,  
Defendants.

Adv. Proc. No. 15-00021

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**ORDER DENYING MOTIONS TO DISMISS**

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BEFORE THE COURT are Motions to Dismiss filed by Defendant Katherine Blasingame Church ("KBC"), represented by Attorney Gene L. Humphreys, and by the remaining Defendants

(the “Non-KBC Defendants”), represented by Attorney Michael P. Coury. The Plaintiff, Church Joint Venture, L.P., on behalf of Edward L. Montedonico, Chapter 7 Trustee (the “Trustee”), filed a timely objection. The court has reviewed the motions and the objection and finds that the motions should be denied.

### **The Complaint States a Claim Upon Which Relief May be Granted**

The Non-KBC Defendants, but not KBC, assert that the complaint should be dismissed because it fails “to plead sufficient facts and legal theories to give rise to a need for declaratory judgment” under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. The assertion is without merit. The court has reviewed the First Amended Original Complaint. It clearly states that personal property in the possession, use, and control of the Debtors located at their residence and elsewhere in or around the residence that the Debtors claim is owned by the Blasingame Development Trust or other persons or entities is and should be treated as property of the bankruptcy estate as the result of Tennessee Code Annotated § 66-3-103. The bankruptcy case underlying this adversary proceeding has had a long and tortuous history before this court. The original petition was filed more than seven years ago. The Debtors have consistently taken the position that virtually all of the personal property in and around their residence is owned by one or more trusts, their children, or Grace Henley. There is no doubt about what property is in question and there is no doubt about the conflicting statements made by the Debtors over the years concerning its ownership. The Non-KBC Defendants’ motion to dismiss on the basis of failure to state a claim is **DENIED**.

### **The Complaint is Not Time-Barred**

All of the Defendants assert that the complaint is time-barred for one reason or another. What each of them fails to acknowledge, however, is that the complaint does not seek to recover

property fraudulently or preferentially transferred. It merely asks that property treated by the Debtors as their own be included in the assets of their bankruptcy estate. A fraudulent conveyance claim is distinct from an alter ego claim, for example. *See Wellness Int’l Network, Ltd. v. Sharif*, 575 U.S. \_\_\_, 135 S. Ct. 1932, 1952 (2015) (Roberts, C.J., dissenting). The “distinction is significant given bankruptcy’s historic domain over property within the actual or constructive ‘possession [of] the bankrupt at the time of the filing of the petition.’” *Id.*, quoting *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 481 (1940). The determination of whether property is property of a bankruptcy estate is one of the most fundamental tasks of a bankruptcy judge. *Wellness*, 135 S. Ct. at 1952. “At its most basic level, bankruptcy is an ‘adjudication of interests claimed in a *res*.’” *Id.*, quoting *Katchen v. Landy*, 382 U.S. 323, 329 (1966). Moreover, “defining what constitutes the estate is the necessary starting point of every bankruptcy; a court cannot divide up the estate without first knowing what’s in it.” *Id.*, citing 11 U.S.C. § 541(a). The Bankruptcy Code provides no limitation upon the time within which the court must do this. *See, e.g., In re Schrieber*, 23 F.2d 428, 429 (2nd Cir. 1928); 11 U.S.C. § 350(b).

The status of the personal property used and controlled by the Debtors has been the subject of dispute since the early days of this case. It was only in the last year, however, that the court learned that there apparently is no document evidencing the transfer of personal property to any of the trusts. In addition, the complaint alleges that there is no evidence that either of the Blasingame children received gifts by bequest from their grandparents. Even if such documents do exist, Tennessee’s ostensible ownership statute raises new concern about the status of those assets which at all times remained in or about the Debtors’ residence or were insured by them. The complaint alleges that the personal property was in the Debtors’ possession at their residence for at least five

years before the filing of their bankruptcy petition and remained in their possession when their petition was filed. Those allegations give rise to a claim under the Tennessee statute. The complaint seeks a declaration that the personal property on or about the Debtors' residence and jewelry insured by them are property of the bankruptcy estate. Because there is no time limitation upon the authority of the bankruptcy court to identify assets of the bankruptcy estate, the Defendants' motions to dismiss based upon passage of time are also **DENIED**.

cc: Debtors/Defendants  
Attorneys for Debtors/Defendants  
Plaintiff  
Attorney for Plaintiff  
Chapter 7 Trustee  
Attorney for Chapter 7 Trustee  
United States Trustee