Dated: December 17, 2013
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: ROBERT D. LINEBACK,	)	**Case No. 12-11369**
Debtor	)	**Chapter 7**
MICHAEL T. TABOR, AS STANDING 7 TRUSTEE,	)	
Plaintiff,	)	
v.	)	**Adv. Pro. No. 12-5154**
ROBERT D. LINEBACK and CAROLYN BLACKWELL,	)	
Defendants.	)	

MEMORANDUM OPINION RE: TRUSTEE'S AMENDED COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFER AND DEFENDANTS' DEFENSES AND COUNTERCLAIMS THERETO

At issue in this adversary proceeding is whether a July 2010 transfer of real property from the debtor to his mother is avoidable as a preferential transfer pursuant to 11 U.S.C. § 548(a)(1). The Chapter 7 Trustee alleges that the transfer was actually and constructively fraudulent and, as such, may be avoided under § 548(a)(1)(A) and (B). The defendants, on the other hand, assert a number of defenses to the trustee's action including the argument that

the debtor only held the property in trust for his mother and therefore did not have an equitable interest in the property at the time he transferred it. The defendants also assert several counterclaims against the trustee.

For the reasons that follow, the Court concludes that the 2010 transfer from Lineback to Blackwell is avoidable as a fraudulent conveyance pursuant to 11 U.S.C. § 548(a)(1)(A) and (B). The Court also concludes that the defenses and counterclaims asserted by Lineback and Blackwell in response to the trustee's avoidance action are without merit.

1. Jurisdiction

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and thus may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

2. Facts

On October 7, 2002, Carolyn Blackwell ("Blackwell") withdrew $25,000.00 from a home equity line of credit ("Line of Credit") with Union Planters Bank, which subsequently became Regions Bank ("Bank"). Blackwell gave her son, Robert Lineback ("Lineback"), $22,000.00 of the funds for the purpose of purchasing real property. Lineback purchased a mobile home and lot at 1590 Winston Road in McKenzie, Tennessee ("Property"), from Kenneth M. and Gertrude Baskin ("Baskins"). On October 8, 2002, the Baskins executed a warranty deed conveying their fee simple interest in the Property to Lineback and his then-wife Valerie Lineback.

On November 5, 2002, Lineback executed a deed of trust for the Property in favor of the Bank. The deed of trust indicated that the Property secured Blackwell's Line of Credit with the Bank.

Lineback and Blackwell (collectively "Defendants") contend that Lineback made monthly

payments to the Bank under the Line of Credit from 2002 until he became disabled in 2007. The Defendants also contend that (1) Blackwell took over responsibility for making the monthly payments to the Bank after Lineback became disabled; and (2) Blackwell continued to make the monthly payments until September 29, 2008, when she paid the Line of Credit in full by remitting a lump sum payment of $15,750.21 to the Bank. Although the Trustee agrees that the trial exhibits clearly demonstrate that these payments were made, he disputes the Defendants' contention that the evidence proves Blackwell made the payments. The payment print-out from the Bank does not indicate who made the payments. It only shows that the payments were in fact made.

Lineback and his wife divorced in 2009. As part of the divorce settlement, Valerie Lineback signed a quitclaim deed conveying her fee simple interest in the Property to Lineback on June 29, 2010. Approximately one month later, on July 27, 2010, Lineback conveyed his fee simple interest in the Property to Blackwell by quitclaim deed. The deed indicated that the consideration paid for the Property was "$0-Love and Affection Mother." Both parties signed the deed under oath.

On May 15, 2012, Lineback filed a Chapter 7 petition for bankruptcy relief. Michael Tabor ("Trustee") was appointed as the Chapter 7 Trustee in the case. Lineback's bankruptcy petition indicated he had $66,877.23 of unsecured, non-priority debt and $1,119.00 of monthly income. This income consisted solely of social security disability benefits. Lineback also disclosed the July 27, 2010 transfer of Property to Blackwell in his Statement of Financial Affairs.

On October 2, 2012, the Trustee filed a complaint to avoid and recover a fraudulent transfer ("Complaint") against Lineback and Blackwell.[1] Lineback and Blackwell filed identical answers to the Complaint on November 26, 2012, in which they asserted several "affirmative defenses" to the Complaint. Specifically, Lineback and Blackwell asserted that: (1)Blackwell

[1] The Trustee originally filed the Complaint on October 1, 2012. However, the Bankruptcy Court Clerk's Office issued a deficiency notice for the Complaint that same day. The Trustee filed an amended complaint on October 2, 2012, to correct the deficiencies. For purposes of this opinion, the Court will refer to the amended complaint simply as the Complaint.

received the Property for value and in good faith and therefore under 11 U.S.C. § 548(c), the Court should permit Blackwell to retain the Property; (2) the Trustee's claim against Lineback would create unjust enrichment at the expense of Blackwell because the home would have been acquired for no value except what value Blackwell provided; (3) Blackwell has always held beneficial and equitable title to the Property, while Lineback held only legal title, and thus the Trustee did not have standing to challenge the transfer; (4) there was actual consideration paid to Lineback, or for his benefit, and the consideration was a reasonably equivalent value for the transfer as it was traceable to the original purchase proceeds; and (5) the transfer involved a reasonably equivalent value of property and debt, such that the transfer did not change Lineback's solvency.

Lineback and Blackwell's answers also included several counterclaims against the Trustee ("Counterclaims"). In their Counterclaims, Lineback and Blackwell asked the Court to: (1) enter judgment in favor of Blackwell for the purchase price of the Property; (2) impose a constructive trust in favor of Blackwell for the Property; (3) grant an equitable lien on the property in favor of Blackwell in the amount of the purchase price of $20,000.00; and (4) enter judgment in favor of Blackwell for improvements she made to the property in the amount of $10,000.00. In paragraph 7 of their Counterclaims, the Defendants stated that "Blackwell purchased and/or funded the purchase of the home for Lineback and his wife with the agreement that they would pay for the home, either directly to Blackwell or to the finance company." (Answers at 4, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF Nos. 19 & 20.)

On April 24, 2013, the Trustee filed an answer to the Counterclaims in which he asserted several defenses to the Defendants' claims: (1) the Counterclaims fail to state a claim upon which relief can be granted; (2) the statute of frauds and the equitable doctrine of estoppel bar Blackwell and Lineback's requested relief; and (3) the lack of consideration for the transfer of the Property bars Blackwell and Lineback from recovering under any of their Counterclaims.

The Court conducted a trial in this matter on August 21, 2013. During the trial, the parties stipulated to several facts: (1) Lineback was disabled from 2007 until approximately

May 15, 2012, the date on which Lineback filed for bankruptcy relief; (2) Lineback accrued significant debts during the period in which he was disabled and was not able to pay his debts as they became due; and (3) Lineback's debts exceeded his assets at the time he transferred the Property to Blackwell.

None of the parties to this adversary proceeding testified at the trial in this matter. The trial consisted solely of statements and legal arguments made by the parties' attorneys. The parties filed post-trial briefs on September 20, 2013. In their post-trial brief, the Defendants also asked the Court to award Blackwell a resulting trust in the Property. They also increased the amount of money they were seeking for the improvements Blackwell allegedly made to the property from $10,000 to "$17,500 mortgage and other improvements, property taxes, and otherwise." (Defs.' Post Trial Br. At 9, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF No. 46.)

3. Analysis

The Trustee in this adversary proceeding is seeking to avoid Lineback's July 27, 2010 transfer of the Property to Blackwell pursuant to 11 U.S.C. § 548(a)(1)(A) and (B). These Bankruptcy Code subsections provide that:

> (a)(1)The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily-
>
> > (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
> >
> > (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> >
> > (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
>
> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1).

Section 548(a)(1) provides for the avoidance of two types of fraud: (1) actual fraud pursuant to § 548(a)(1)(A); and (2) constructive fraud pursuant to §548(a)(1)(B). The Trustee seeking to avoid a fraudulent transfer under either subsection of § 548(a)(1) bears the burden of proof as to each element by a preponderance of the evidence. *Baumgart v. Bedlyn, Inc.* (*In re Empire Interiors, Inc.*), 248 B.R. 305, 307 (Bankr. N.D. Ohio 2000). A trustee who satisfies this burden of proof may, subject to certain exceptions, "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from - (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made[.]" 11 U.S.C. § 550(a)(1).

"To prevail on a claim for fraudulent transfer under § 548(a)(1)(A), the Trustee must prove the following elements . . . : (1) a transfer was made of the Debtor's property; (2) the transfer was made within two years of the Petition Date; and (3) the transfer was made with actual intent to hinder, delay, or defraud the Debtor's creditors." *West v. Hsu (In re Advanced Modular Power Sys., Inc.),* 413 B.R. 643, 673 (Bankr. S.D. Tex. 2009) (citation omitted). In order to avoid a transfer as constructively fraudulent under § 548(a)(1)(B), a trustee must prove that: (1) the debtor transferred an interest in property; (2) the transfer took place within two years before the bankruptcy case was filed; (3) the debtor received less than reasonably equivalent value, either voluntarily or involuntarily; and (4) the debtor was insolvent on the date the transfer was made or became insolvent as a result of the transfer. *Id*.

A. Standing

Before analyzing the merits of the Trustee's complaint, the Court must address one of the defenses asserted by the Defendants: that the Trustee lacked standing to bring the avoidance action. Although the Defendants labeled their standing argument as an "affirmative defense" the Sixth Circuit has held that "[s]tanding is not an affirmative defense . . . Instead, it is a qualifying hurdle that the plaintiffs must satisfy" before they can proceed with an action. *Cmty. First Bank v. Nat'l Credit Union Admin.*, 41 F.3d 1050, 1053 (6th Cir. 1995).

In the case at bar, the Defendants base their "standing" argument on the assertion that Lineback did not have an interest in the Property at the time he transferred it to Blackwell that would qualify as "property of the estate" under 11 U.S.C. § 541. Rather, the Defendants allege that Lineback merely held bare legal title to the Property, while Blackwell retained the beneficial and equitable title to the Property.

As stated *supra*, § 548(a) allows a trustee to "avoid any transfer . . . of an interest of the debtor in property . . . ." 11 U.S.C. § 548(a)(1). In this adversary proceding, the Trustee is the party seeking to avoid the transfer. Therefore, the only other necessary determination with respect to the Trustee's standing in this proceeding is whether the Trustee is seeking to avoid a transfer of "property of the debtor." *Stevenson v. J.C. Bradford & Co.* (*In re Cannon*), 277 F.3d 838, 849 (6th Cir. 2002). If, at the time of the transfer, Lineback did not have an interest in the property that would qualify as "property of the debtor" within the meaning of §§ 541 and 548, then the Trustee cannot seek to avoid the transfer and recover the property for the benefit of the bankruptcy estate.

As the Supreme Court recognized in *Begier v. I.R.S.*, 496 U.S. 53, 110 S. Ct. 2258 (1990), the Bankruptcy Code does not define "property of the debtor."[2] However,

> [b]ecause the purpose of the avoidance provision[s] is to preserve the property includable within the bankruptcy estate--the property available for distribution to

[2]Although the issue in *Begier v. I.R.S.* was whether the trustee was entitled to avoid a preferential transfer pursuant to 11 U.S.C. § 547(b), the Supreme Court's analysis of the breadth of "property of the debtor" is equally applicable to fraudulent conveyance proceedings. *See Cannon*, 277 F.3d at 849.

> creditors--"property of the debtor" subject to the [avoidance] provision[s] is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings.

Id. at 58. In order to determine whether property would have become "property of the estate" had it not been transferred, the Supreme Court concluded that "guidance" could be found in 11 U.S.C. § 541. *Id.* at 59. This section defines "property of the estate" as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). However,

> [p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, . . ., becomes property of the estate under subsection (a)(1) or (2) of this section 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). Accordingly, the Supreme Court held that "[b]ecause the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.' Nor is such an equitable interest 'property of the debtor' for purposes of" the trustee's avoidance powers. *Begier*, 496 U.S. at 59.

The Sixth Circuit has determined that § 541(d) excludes two types of "equitable interests" from "property of the estate:" (1) property the debtor holds in an express trust for another; and (2) property the debtor holds subject to a constructive trust in favor of another. *XL/Datacomp, Inc. v. Wilson* (*In re Omegas Grp., Inc.*), 16 F.3d 1443, 1449 (6th Cir. 1994); *Poss v. Morris* (*In re Morris*), 260 F.3d 654, 666 (6th Cir. 2001). A constructive trust under state law may arise pursuant to a statute or court order. *Omegas Grp.*, 16 F.3d at 1449. Section 541(d) excludes property subject to a constructive trust "*only* . . . to the extent that state law has impressed the property with a constructive trust *prior to* its entry into bankruptcy." *Morris*, 260 F.3d at 666 (emphasis added). Although federal law provides trustees with the ability to recapture property for the benefit of the bankruptcy estate, it is state law which determines the nature and extent of property interests at issue in a given case. *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979).

A party seeking to establish the existence of an express trust under Tennessee law must prove four elements:

> (1) a trustee who holds trust property and who is subject to the equitable duties to deal with it for the benefit of another, (2) a beneficiary to whom the trustee owes the equitable duties to deal with the trust property for his benefit, and (3) identifiable trust property.

Cannon, 277 F.3d at 850 (citing *Kopsombut-Myint Buddhist Ctr.*, 728 S.W.2d at 327; *see also* Tenn. Code Ann. § 35-15-402. Additionally,

> at a minimum, there must be a grantor or settlor who *intends* to create a trust; a corpus (the subject property); a trustee; and a beneficiary. The trustee holds legal title and in that sense, owns the property, holding it for the benefit of the beneficiary who owns the equitable title. While the grantor may retain either of these interests, no one may solely hold both as the purpose of separating the two would be defeated.

Myers v. Myers, 891 S.W.2d 216, 218 (Tenn. Ct. App. 1994) (citing *Kopsombut-Myint Buddhist Ctr.*, 728 S.W.2d at 327).

The element of intent for "an express trust is created 'by the direct and positive acts of the parties, by some writing, deed, or will; . . . or by the action of a court in the exercise of its authority . . . .' " *Houghton v. Lusk* (*In re Lusk*), 308 B.R. 304, 310 (Bankr. E.D. Tenn. 2004) (quoting *Jackson v. Dobbs*, 290 S.W. 402, 404 (Tenn. 1926)) (other citations omitted). An express trust in real or personal property may be written or oral. *Hunt v. Hunt*, 80 S.W.2d 666, 669 (Tenn. 1935). Parties seeking to establish the existence of an express trust may do so by presenting parol evidence to the court; however, "[a]n express trust, . . . , without written support, must be established by evidence that is clear and convincing." *Gray v. Todd*, 819 S.W.2d 104, 109 (Tenn. Ct. App. 1991) (citing *Alexander v. C.C. Powell Realty Co., Inc.*, 535 S.W.2d 154 (Tenn. Ct. App. 1975)); *Hunt ,* 80 S.W.2d at 669; *see also Linder v. Little*, 490 S.W.2d 717, 723 (Tenn. Ct. App. 1972). The party seeking to establish the existence of an express trust carries the burden of proof as to its existence. *Peters v. McLaren*, 218 F. 410, 415 (6th Cir. 1914).

In Tennessee, "[a] constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it." *Giles Cnty. v. First U.S. Corp.*, 445 S.W.2d 157, 165 (Tenn. 1969) (citation omitted). Further,

> [a] constructive trust is a trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy.

Rutherford Cnty. v. Murfreesboro, 304 S.W.2d 635, 638 (Tenn. 1957) (citing 54 Am.Jur. *Trusts* § 218).

In the case at bar, neither Lineback nor Blackwell presented any evidence that the parties had an oral or written express trust agreement with respect to the Property. They also failed to make any allegations that Lineback obtained or held the Property through any fraudulent intent or unconscionable conduct. Therefore, the Court concludes that the Defendants did not meet their burden of proof in demonstrating that Lineback held the Property in a constructive trust for the benefit of Blackwell. The Defendants' assertion that the Trustee did not have standing to bring the avoidance action based on their constructive trust theory must fail based on the lack of evidence.

Lineback and Blackwell also argued that the Property was held in a resulting trust in favor of Blackwell. In Tennessee, a resulting trust is similar to a constructive trust.

> The imposition of a resulting trust is an equitable remedy; the doctrine of resulting trust is invoked to prevent unjust enrichment. Such a trust is implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises. Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has

> been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved.

In re Estate of Nichols, 856 S.W.2d 397, 401 (Tenn. 1993) (citing 76 Am.Jur.2d § 166 (1992)). As with express and constructive trusts, "[a] resulting trust may be proven . . . by parol evidence." *Saddler v. Saddler*, 59 S.W.3d 96, 99 (Tenn. Ct. App. 2000) (citations omitted). When seeking to prove a resulting trust with this type of evidence, the burden of proof "must be of the clearest, most convincing, and irrefragable character. The testimony of a single, interested witness typically is insufficient to establish a resulting trust by clear, convincing, and irrefragable evidence" *Id.*(citations omitted).

No reported decision in the Sixth Circuit has addressed the issue of whether § 541(d) excludes property subject to a resulting trust from "property of the estate." Although district and bankruptcy courts from outside the Sixth Circuit have so concluded, *see Sanchez-Villalba v. Herkert*, No. 12-23199-CIV, 2013 WL 537496 (S.D. Fla. Feb. 12, 2013)*; Cage v. Kang* (*In re Kang*), Bankr. No. 11-36325, Adv. No. 12-3233, 2013 WL 870223 (Bankr. S.D. Tex. March 6, 2013), only one Circuit Court of Appeals has addressed the issue. In the unpublished decision in *Goddard v. Heldt* (*In re Heldt*), 528 Fed. App'x 779 (10th Cir. 2013), the Tenth Circuit affirmed a bankruptcy court's conclusion that property a debtor held in a resulting trust would not have been property of the debtor's bankruptcy estate under 11 U.S.C. § 541.

In the case at bar, the Defendants entered several documents into evidence. These exhibits included the relevant deeds for the Property. All of the deeds indicate that the grantor was conveying his or her fee simple interest in the property to the grantee. None of the deeds indicate that Lineback was going to hold the Property in an express trust for Blackwell. Further, the Defendants did not submit any other recorded documents into evidence which demonstrate that the Property was being held in a constructive or resulting trust for Blackwell's benefit. Additionally, neither of the Defendants testified at the hearing. This failure of evidence leads the Court to conclude that Lineback and Blackwell did not meet their heightened burden of proof in establishing that Lineback held the Property in any type of trust for Blackwell's benefit. As a result, the Court concludes that at the time Lineback transferred the Property to Blackwell in 2010, the Property was not being held in trust for Blackwell. The

Property is not excluded from "property of the Debtor" within the meaning of 11 U.S.C. § 548(a) and the Trustee therefore has standing to pursue the avoidance action.

B. Actual Fraud

As stated *supra*, a trustee seeking to avoid a fraudulent transfer under § 548(a)(1)(A) must prove that "(1) a transfer was made of the Debtor's property; (2) the transfer was made within two years of the Petition Date; and (3) the transfer was made with actual intent to hinder, delay, or defraud the Debtor's creditors.'' *Advanced Modular Power Sys.,* 413 B.R. at 673. The trustee must carry this burden of proof by a preponderance of the evidence. *Slone v. Lassiter* (*In re Grove-Merritt*), 406 B.R. 778, 793 (Bankr. S.D. Ohio 2009).

In the case at bar, the Trustee can easily meet his burden of proof as to the first and second elements of his § 548(a)(1)(A) claim. Lineback conveyed the Property to Blackwell by a quitclaim deed dated July 27, 2010. Lineback filed for bankruptcy relief on May 15, 2012, which is within two years of the transfer. Thus, the only remaining issue for the Court to determine under § 548(a)(1)(A) is whether Lineback transferred the Property with "actual intent to hinder, delay or defraud" his creditors.

"A determination of whether a conveyance is fraudulent [under § 548(a)(1)(A)] is dependent upon the facts and circumstances of each case; such fraud is typically proven by circumstantial evidence." *Holcomb Health Care Servs., LLC v. Quart Ltd., LLC* (*In re Holcomb Health Care Servs., LLC*), 329 B.R. 622, 670 (Bankr. M.D. Tenn. 2004) (citing *Macon Bank & Trust Co. v. Holland*, 715 S.W.2d 347, 349 (Tenn. Ct. App. 1986)). Because "a court can hardly expect one who fraudulently transfers property to step up and admit it under oath," *5 Collier on Bankruptcy* ¶ 548.04 (16th ed. 2012), "[t]he issue of fraud is commonly determined by certain recognized indicia, denominated 'badges of fraud,' which are circumstances so frequently attending fraudulent transfers that an inference of fraud arises from them." *United States v. Leggett*, 292 F.2d 423, 426-27 (6th Cir. 1961) (citations omitted). Simply put, "courts routinely look to badges of fraud as circumstantial evidence of a debtor's subjective state of mind" in order to prove the debtor's actual intent to hinder, delay or defraud creditors. *5 Collier on Bankruptcy* ¶ 548.04 (16th ed. 2012).

Under Tennessee law, "badges of fraud" include:

(1) The transferor is in a precarious financial condition.

(2) The transferor knew there was or soon would be a large money judgment rendered against the transferor.

(3) Inadequate consideration was given for the transfer.

(4) Secrecy or haste existed in carrying out the transfer.

(5) A family or friendship relationship existed between the transferor and the transferee(s).

(6) The transfer included all or substantially all of the transferor's nonexempt property.

(7) The transferor retained a life estate or other interest in the property transferred.

(8) The transferor failed to produce available evidence explaining or rebutting a suspicious transaction.

(9) There is a lack of innocent purpose or use for the transfer.

Arvest Bank v. Byrd, 814 F.Supp.2d 775, 800-01 (W.D. Tenn. 2011) (citations omitted). "The presence of one or more of the badges of fraud gives rise to a presumption of fraud and [consequently] shifts the burden of disproving fraud to the defendant." *Id. at* 801 (citations omitted) "Although the presence of a single badge may only raise the suspicion of [a] debtor's fraudulent intent, the confluence of several badges can be conclusive evidence of fraudulent intent, absent significantly clear evidence of the debtor's legitimate supervening purpose." *Holcomb Health Care*, 329 B.R. at 671 (citations omitted)**.**

In the case at bar, the Trustee alleges that there are several badges of fraud which provide evidence of Lineback's actual intent to hinder, delay or defraud his creditors. These alleged badges include (1) that the Property was transferred to Lineback's mother and (2) that the Property was transferred for no consideration. A review of the facts and evidence reveals that numerous badges of fraud exist in this case, including those alleged by the Trustee.

First, the debtor was in a precarious financial condition at the time of the transfer. In fact, the parties stipulated that Lineback's debts far exceeded his assets at the time of the transfer. Lineback's Counterclaims also state that Lineback "could not pay Blackwell or the finance company, such that the home would be foreclosed or otherwise lost without Blackwell's payments." (Answer at 4, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF Nos. 19 & 20.) These facts verify Lineback's precarious financial condition.

Second, inadequate consideration was given for the transfer. The inadequacy of consideration is established by the July 27, 2010 quitclaim deed which states that the consideration for the Property was "$0 - love and affection mother." Although both Lineback and Blackwell argued that the funds Blackwell used to purchase the Property on October 2, 2002, represent consideration for the Property, the July 27, 2010 quitclaim deed states that no consideration was paid for the Property. Lineback signed the quitclaim deed under oath. The quitclaim deed firmly establishes that Blackwell did not pay consideration for the Property.

Third, a family relationship existed between the transferor and the transferee in this case. Several of the documents admitted into evidence establish that Lineback transferred the property to his mother

Fourth, Lineback transferred all or substantially of his nonexempt property when he transferred the Property to Blackwell on July 27, 2010. Pursuant to 11 U.S.C. § 541(a)(1), a bankruptcy "estate is comprised of all . . . legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Lineback's bankruptcy petition indicates that Lineback did not have any non-exempt property when he filed for bankruptcy relief. However, prior to the July 27, 2010 transfer, Lineback owned non-exempt real estate. The deed of trust for the Property was in Lineback's name only. Valerie Lineback conveyed her interest in the Property to Lineback on June 29, 2010. Additionally, the Property was paid for in full on September 28, 2008. Thus, as of June 29, 2010, Lineback owned a fee simple interest in the Property worth in excess of $20,000.00 which was free and clear of all liens. Except for Lineback's transfer of the Property on July 27, 2010, Lineback's interest in the Property would have become property of Lineback's estate when he filed for bankruptcy relief.

Therefore, Lineback transferred all of his non-exempt property out of his bankruptcy estate when he executed the July 27, 2010 quitclaim deed conveying the Property to Blackwell.

Finally, there does not appear to be an innocent purpose or use for the transfer. Rather, the transfer appears to have been an effort to keep the property out of reach from Lineback's numerous creditors. Several facts in this case suggest that the Lineback's intent for the transfer was not innocent. First, Lineback's Statement of Financial Affairs and answer in this adversary proceeding suggest that Blackwell provided the purchase funds for the Property with the expectation that Lineback would pay for the Property. As such, Blackwell could not have expected to retain an interest in the Property. Assuming, arguendo, that Blackwell did in fact desire to retain an interest in the Property, she did not express that intent when she provided the purchase funds in 2002 or when she allegedly paid for the Property in full in 2008. Nor is there any evidence that Blackwell demanded that Lineback convey the Property back to her in July 27, 2010. It was not until the Trustee initiated this avoidance action that Blackwell asserted she had an interest in the Property. In light of the fact that Blackwell received the Property from Lineback in 2010 when Lineback was insolvent, but did not express a demand or desire to claim an interest in the Property until this avoidance action, Lineback and Blackwell have not provided the Court with an innocent purpose for the July 27, 2010 transfer. Without such a purpose, the Court is left to infer that the transfer was intended to shield the Property from Lineback's creditors.

Due to the presence of numerous badges of fraud and the lack of a legitimate explanation for the transfer of the Property, the Court concludes that Lineback and Blackwell have not rebutted the presumption of "actual intent to hinder, delay or defraud" creditors created by the presence of the badges of fraud. The Court therefore holds that the Trustee may avoid the July 27, 2010 transfer of the Property from Lineback to Blackwell as an actually fraudulent conveyance pursuant to 11 U.S.C. § 548(a)(1)(A).

C. Constructive Fraud

The Trustee also alleged that the July 7, 2010, transfer was constructively fraudulent pursuant to § 548(a)(1)(B). In order to avoid a transfer as constructively fraudulent under

§ 548(a)(1)(B), a trustee must prove that: (1) the debtor transferred an interest in property; (2) the transfer took place within two years before the bankruptcy case was filed; (3) the debtor received less than reasonably equivalent value, either voluntarily or involuntarily; and (4) the debtor was insolvent on the date the transfer was made or became insolvent as a result of the transfer. *Advanced Modular Power Sys.,* 413 B.R. at 673.

In the case at bar, it is undisputed that Lineback transferred the Property within two years of filing for bankruptcy relief. Thus, the Trustee has satisfied his burden as to the first element of § 548(a)(1)(B). It is also undisputed that Lineback was insolvent at the time of the transfer. The only remaining issue then is whether the Trustee has demonstrated that Lineback received less than reasonably equivalent value for the transfer.

The Bankruptcy Code does not expressly define reasonably equivalent value. While value given on account of an antecedent debt is usually considered reasonably equivalent value, whether reasonably equivalent value has been given for a transfer of property is a question of fact. *Suhar v. Bruno* (*In re Neal*), – Fed. App'x –, 2013 WL 5734120, *2 (6th Cir. 2013). Determining whether the debtor received reasonably equivalent value is a two step inquiry. *Gold v. Marquette Univ.* (*In re Leonard*), 454 B.R. 444, 457 (Bankr. E.D. Mich. 2011) (citing *Lisle v. John Wiley & Sons, Inc.* (*In re Wilkinson*), 196 Fed. App'x 337, 342 (6th Cir. 2006) (unpub.)). The first step of the inquiry requires a court to determine whether the debtor received any value for the exchange. *Id.* In analyzing this issue, "a court must consider whether, 'based on the circumstances that existed at the time' of the transfer, it was 'legitimate and reasonable' to expect some value accruing to the debtor." *Pension Transfer Corp. v. Beneficiaries Under the Third Amendment to Fruehauf Trailer Corp. Retirement Plan No. 003* (*In re Freuhauf Trailer Corp.*), 444 F.3d 203, 212 (3rd Cir. 2006) (citing *Mellon Bank, N.A. v. Official Committee of Unsecured Creditors* (*In re R.M.L., Inc.*), 92 F.3d 139, 152 (3rd Cir. 1996)). Although "value can be in the form of either a direct economic benefit or an indirect economic benefit," the benefit received must be "economic." *Wilkinson*, 196 Fed. App'x at 342. Such an indirect benefit must be (1) economic, "(2) concrete and (3) quantifiable." *Id.* For purposes of fraudulent transfers, the Bankruptcy Code defines "value" as "property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an

unperformed promise to furnish support to the debtor or to a relative of the debtor." 11 U.S.C. § 548(d)(2)(A).

Once the court determines that value was received, it must determine if the value was reasonably equivalent to the value surrendered. *Corzin v. Fordu* (*In re Fordu*), 201 F.3d 693, 707 (6th Cir. 1999). "The determination of whether reasonably equivalent value was received requires the court to compare what was given with what was received." *Coan v. Fleet Credit Card Servs., Inc.* (*In re Guerrera*), 225 B.R. 32, 36 (Bankr. D. Conn. 1998). In making this inquiry the "proper focus is on the net effect of the transfers on the debtor's estate, the funds available to the unsecured creditors." *Fordu*, 201 F.3d at 707 (quoting *Harman v. First Am. Bank* (*In re Jeffrey Bigelow Design Grp., Inc.*), 956 F.2d 479, 484 (4th Cir.1992)). "As long as the unsecured creditors are no worse off because the debtor, and consequently the estate, has received an amount reasonably equivalent to what it paid, no fraudulent transfer has occurred." *Harman*, 956 F.2d at 484. A debtor need not receive a dollar-for-dollar equivalent in order for a court to find he received reasonably equivalent value. *Congrove v. McDonald's Corp.* (*In re Congrove*), 222 Fed. App'x 450 (6th Cir. 2007). For purposes of this inquiry, the relevant date is the date of the transfer. *Southeast Waffles, LLC v. United States Dep't of Treasury* (*In re Southeast Waffles, LLC*), 460 B.R. 132, 139 (B.A.P. 6th Cir. 2011).

In the case at bar, Lineback undoubtedly transferred his entire interest in the Property valued at approximately $22,000.00 to Blackwell. Blackwell received approximately $22,000.00 as a result of the transfer and was therefore required to provide Lineback with property or a reduction in debt of a similar value at the time of the transfer. However, the quitclaim deed used to convey the Property states that Lineback transferred the $22,000.00 Property in exchange for "$0 love and affection mother." While debtors need not receive the exact amount of property transferred, intangible expressions of love and affection clearly do not fall within the definition of "value" under § 548 nor do they constitute reasonably equivalent value for real property. Thus, Lineback did not receive reasonably equivalent value in exchange for the Property.

Because the undisputed facts of this case show that Lineback transferred the Property within two years of filing for bankruptcy when he was insolvent and because Lineback did not receive anything of reasonably equivalent value, the Court concludes that the July 27, 2010 transfer was constructively fraudulent and therefore may be avoided pursuant to 11 U.S.C. § 548(a)(1)(B).

D. Defenses

Lineback and Blackwell have proffered a number of defenses to the Trustee's avoidance claims: (1) Blackwell received the Property for value and in good faith and should therefore be permitted to retain the Property pursuant to § 548(c); (2) the Trustee's claim against Lineback would create unjust enrichment at the expense of Blackwell;(3) there was actual consideration paid to Lineback, or for his benefit, and that consideration was a reasonably equivalent value for the transfer as it was traceable to the original purchase proceeds; and (4) the transfer involved a reasonably equivalent value of property and debt, such that the transfer did not change the solvency of Lineback. Based on the Defendants' failure to carry their burdens of proof with respect to each of the asserted defenses, the Court holds that all of the defenses must fail.

1. 11 U.S.C. § 548(c)

Section 548(c) provides:

> Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

11 U.S.C. § 548(c). In order to establish a defense to avoidability under § 548(c), a transferee must show *both* that the value provided to the Debtor was reasonably equivalent to the value transferred by the Debtor *and* that the transfer received from the debtor was received in good faith." *Grove-Merritt*, 406 B.R. at 809-10 (emphasis added). The "good faith" and "reasonably

equivalent value" elements required for the § 548(c) defense are conjunctive--meaning that a transferee must prove both elements in order to prevail under the statute. The burden of proof on the issue of entitlement to § 548(c)'s affirmative defense rests on the defendant. *Id.* at 810. Because this Court has already determined that Blackwell did not provide reasonably equivalent value in exchange for the July 27, 2010 transfer, the Court concludes that the § 548(c) defense is inapplicable to this case.

Even if Blackwell had provided reasonably equivalent value for the Property, however, she would not qualify as a good faith transferee. " 'Good faith' is not defined by the Code and is a determination made on a case-by-case basis." *Id.* at 810 (citations omitted).

> It is well settled that a transferee may not remain willfully ignorant of facts that would cause it to be on notice of a debtor's fraudulent purpose and then put on blinders prior to entering into a transaction with the debtor and claim the benefit of Section 548(c)'s good faith defense.

Meoli v. Huntington Nat'l Bank (*In re Teleservices Grp., Inc.*), 444 B.R. 767, 814 (Bankr. W.D. Mich. 2011) (citations omitted). Additionally, "the clear trend since the Code's adoption has been towards an objective interpretation of good faith." *Id*. at 795. Specifically,

> [g]ood faith under § 548(c) should be measured objectively and that "if the circumstances would place a reasonable person on inquiry of a debtor's fraudulent purpose, and a *diligent* inquiry would have discovered the fraudulent purpose, then the transfer is fraudulent."

Id. at 796 (citing *Jobin v. Ripley* (*In re M & L Bus. Mach. Co., Inc.*), 84 F.3d 1330, 1338 (10th Cir. 1996)).

In the case at bar, the Property was paid off in 2008. Lineback, however, did not transfer the Property until two years after satisfaction of the Line of Credit. During the trial on this matter, the attorneys stipulated that Lineback accrued a significant amount of debt while he was disabled and that his debts exceeded his assets. Using the objective person standard, the Court concludes that Lineback's willingness to transfer his only asset at a time of financial crisis would have placed a reasonable person on notice that the transfer was suspicious. Thus, Blackwell had a duty to perform a "diligent inquiry" into Lineback's reasons for transferring a valuable asset before accepting the transfer. The Court concludes that

Blackwell's willingness to accept a transfer from an individual with significant debts and no assets without inquiring about the financial circumstances surrounding the transfer was not in good faith.

2. Unjust Enrichment

As for their second defense, Blackwell and Lineback allege that the Trustee's claim against Lineback would create unjust enrichment at the expense of Blackwell "because the home would have been acquired for no value except what value Blackwell provided." (Answers at 3, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF Nos. 19 & 20.) In addition, the Defendants state "The Trustee has standing and position only as that of Lineback, and as such the Trustee would be unjustly enriched by this complaint." (Answers at 4, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF Nos. 19 & 20.)

The Defendants are incorrect that the Trustee "has standing and position only as that of Lineback." When a trustee pursues an avoidance or preference action, he "stands in the place of a *creditor* who would have standing to pursue" the claim, not in the shoes of the debtor. *Terlecky v. Abels*, 260 B.R. 446, 453 (S.D. Ohio 2001) (emphasis added) (citing *Sender v. Simon*, 84 F.3d 1299, 1304 (10th Cir. 1996)). Therefore, the Defendants' attempt to use the defense of unjust enrichment against the Trustee in this adversary proceeding is misplaced.

3. Consideration and Reasonably Equivalent Value

Turning to the Defendants' third and fourth defenses to the Trustee's Complaint, the Court has already determined that the consideration Lineback received for the Property was "$0 love and affection mother" and that such consideration was not a reasonably equivalent value for the Property. Therefore, the Court has already addressed and ruled against Lineback and Blackwell with respect to the third and fourth defenses.

E. Counterclaims

In addition to their defenses, the Defendants also advance numerous Counterclaims against the Trustee. These claims include: (1) Blackwell is entitled to judgment for the

consideration paid for the Property; (2) Blackwell is entitled to judgment for a constructive trust on the property; (3) Blackwell is entitled to judgment for a resulting trust for the Property; and (4) Blackwell is entitled to judgment as transferee for improvements and property taxes paid for the Property in the amount of $10,000.00. In their post-trial brief, the Defendants altered this claim slightly to request a constructive trust or equitable lien in the amount of $17,500 for "mortgage and other improvements, property taxes, and otherwise." (Defs.' Post-Trial Br. at 9, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF No. 46.) As with their defenses, the Defendants have failed to carry their burden of proof as to each of their Counterclaims.

1. Consideration

The Defendants allege that the funds Blackwell paid to the Baskins on October 7, 2002, constituted consideration for the July 27, 2010 transfer of the Property from Lineback to Blackwell. A review of the record in this proceeding leads the Court to conclude that Blackwell did not provide consideration for the July 2010 transfer. The quitclaim deed itself states the consideration is "$0-Love & Affection Mother." At the time of withdrawing the money from the Line of Credit in 2002, Blackwell gave the proceeds to her son for the express purpose of purchasing the Property. In their Counterclaims, the Defendants state that Blackwell gave these funds to Lineback "with the agreement that [Lineback and his wife] would pay for the home, either directly to Blackwell or to the finance company." (Answers at 4, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF No. 19 & 20). Lineback also indicated on his Statement of Financial Affairs that the Property was purchased by Blackwell in 2002 and then "given to debtor and then current wife." Clearly, at the time of giving the money to Lineback, Blackwell intended for Lineback to make the payments on the Property and to retain a fee simple interest therein. Had she intended to retain or receive ownership of the Property, she could have simply purchased the Property from the Baskins herself and held title until such time as Lineback paid for the Property in full.

This conclusion is bolstered by case law regarding the sufficiency of consideration.

> Consideration is the price bargained and paid for a promise or something given in exchange for the promise. 17A Am.Jur.2d Contracts § 102 (2004). Consideration may consist of "some right, interest, profit, or benefit accruing to

> one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other." *Danheiser v. Germania Sav. Bank & Trust Co.*, 137 Tenn. 650, 194 S.W. 1094, 1095 (Tenn. 1917). To constitute consideration, the benefit or detriment must be bargained for. *See* Restatement (Second) of Contracts § 71 (1981). The benefit or detriment is said to be bargained for if it is sought by one party in exchange for his or her promise and is given by the other party in exchange for that promise. *See id.*

Bratton v. Bratton, 136 S.W.3d 595, 606 (Tenn. 2004). Clearly in the case at bar, Blackwell did not give the money to Lineback in 2002 in exchange for the 2010 transfer. At the time of giving the money to Lineback, Blackwell intended for Lineback and his then-wife to make the payments under the Line of Credit until the Line of Credit was paid in full. After giving Lineback the money to purchase the Property, things did not work out as the Defendants had planned. Lineback got divorced and then became disabled. He was unable to continue paying for the Property. Blackwell asserts that she then began making the payments after that time and paid off the debt with a lump sum payment in 2008. Despite this assertion, Lineback retained his fee simple interest in the Property and did not convey it to Blackwell for another two years. If Lineback's inability to pay for the Property meant that Blackwell was entitled to ownership of the Property in exchange for the money given in 2002, surely Lineback would have deeded the Property to her in 2008 or, at the very least, indicated on the 2010 quitclaim deed that the funds provided in 2002 to purchase the Property were consideration for the transfer. The intervening circumstances and realties of the Defendants' situation altered what the parties envisioned when the Property was initially purchased in 2002. Consequently, there is no way this Court can conclude that the 2010 transfer of the Property from Lineback to Blackwell was in exchange for the money given to Lineback in 2002. Blackwell's initial intention to provide purchase money as a gift to Lineback cannot be deemed consideration for the Property merely because Lineback could no longer afford to make the payments.

2. Constructive Trust

Turning to Lineback and Blackwell's claim that Blackwell is entitled to a constructive trust for the Property, the Court determines that a constructive trust is not appropriate in this case. The Court understands that constructive trusts are meant to "satisfy the demands of justice and prevent unjust enrichment." *Emerson v. Maples* (*In re Mark Benskin & Co., Inc.*),

161 B.R. 644, 654 (Bankr. W.D. Tenn. 1993) (citation omitted) (internal quotation marks omitted). Because Blackwell paid for the Property, the Defendants allege that Lineback would be unjustly enriched if the Property were to become part of Lineback's bankruptcy estate. The requirements for imposing a constructive trust do not exist in this case. Under Tennessee law,

> a constructive trust requires proof of: (1) a wrongful act; (2) specific property acquired by the wrongdoer which is traceable to the wrongful behavior; and (3) an equitable reason why the party holding the property should not be allowed to keep it.

Mark Benskin & Co., 161 B.R. at 652 (citation omitted) (internal quotation marks omitted). The party seeking imposition of a constructive trust carries the burden of demonstrating that such imposition is warranted. *Id.; Summers v. Estate of Ford*, 146 S.W.3d 541, 568 (Tenn. Ct. App. 2004).

In the case at bar, neither Lineback nor Blackwell alleged that Lineback committed a wrongful act to acquire the Property. Therefore, the Court concludes that the Defendants have not carried their burden of proof in demonstrating that imposition of a constructive trust is warranted in this case.

3. Resulting Trust

Blackwell and Lineback also claim that Blackwell is entitled to a resulting trust for the Property. "[R]esulting trusts are judge-created trusts or doctrines which enable a court, without violating all rules of logic, to reach an interest in property belonging to one person yet titled in and held by another." *Wells v. Wells*, 556 S.W.2d 769, 771 (Tenn. Ct. App. 1977). Additionally, courts have held that the

> underlying principle of all resulting trusts is the equitable theory of consideration. That theory is that the payment of a valuable consideration draws to it the beneficial ownership; that a trust follows or goes with the real consideration, or results to him from whom the consideration actually comes; that the owner of the money that pays for the property should be the owner of the property.

Livesay v. Keaton, 611 S.W.2d 581, 584 (Tenn. Ct. App. 1980) (citation omitted). "To establish a resulting trust upon land, it is a general principle that the trust must arise at the time

of the purchase, attach to the title at that time and not arise out of any subsequent contract or transaction." *Id*. (citation omitted). "A resulting trust may be proven . . . by parol evidence." *Saddler*, 59 S.W.3d at 99 (citations omitted). When seeking to prove a resulting trust with this type of evidence, the burden of proof "must be of the clearest, most convincing, and irrefragable character. The testimony of a single, interested witness typically is insufficient to establish a resulting trust by clear, convincing, and irrefragable evidence" *Id.*(citations omitted).

In the case of *Savage v. Savage*, 1927 WL 2069 (Tenn. Ct. App. March 5, 1927), the Tennessee Court of Appeals discussed the concept of resulting trusts as it related to property purchased by one person for the benefit of another.

> Where one furnishes money with which to purchase property, and the title is taken in the name of another, there is a presumption of a resulting trust, as a purchaser is more likely to intend the stranger to hold in trust for him, than he is to make the stranger a gift. This is where the property is paid for by one and the title is taken in another; *but such presumption of a resulting trust in his favor does not arise where the party conveys the property to another for a recited consideration, as it is presumed that the intention is stated in the conveyance*.

Id. at *5 (emphasis added). Further,

> Therefore, while a parol trust may be set up by oral evidence, yet such evidence should be clear, full and convincing. While an implied or resulting trust may be established by parol evidence, yet both upon reason and authority the courts will not enforce it, unless it be established by the most convincing and irrefragable evidence. In other words, it must be sustained by proof of the clearest and most convincing character. To sustain a resulting trust upon parol evidence in the teeth of the terms of the written instrument, it is not essential that the evidence be of a character to remove all reasonable doubt, but only that it be so clear, cogent, and convincing as to overcome the opposing evidence, coupled with the presumption that obtains in favor of the written instrument.

Id.

After reviewing the record, the Court concludes that imposition of a resulting trust in favor of Blackwell is not warranted in this case. There is simply no evidence that the Defendants intended to create a trust in favor of Blackwell at the time the Property was purchased from the Baskins in October 2002. Additionally, the 2010 quitclaim deed indicated

that the consideration for the transfer was "$0-Love and Affection Mother." The Defendants could have easily indicated that the consideration for the transfer was the $22,000 given to Lineback in 2002. The Defendants did not present any evidence that overcomes the presumption in favor of the written instrument or that satisfies their heightened burden of proof.

3. 11 U.S.C. § 550(e)(1)(A) & (B)

In their Counterclaims, Lineback and Blackwell claim that Blackwell is entitled to a constructive judgment or equitable lien in the amount of $10,000.00 for improvements she made to the Property. The Defendants relied upon 11 U.S.C. § 550(e)(1)(A) and (B) in support of this claim. [3]

Section 550(e)(1) of the Bankruptcy Code provides:

> (e)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of -
>
> > (A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
>
> (B) any increase in the value of such property as a result of such improvement, of the property transferred.

11 U.S.C. § 550(e)(1)(A) & (B). Subsection 550(e)(2) defines "improvement" as:

> (A) physical additions or changes to the property transferred,
>
> (B) repairs to such property,
>
> (C) payment of any tax on such property,
>
> (D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and
>
> (E) preservation of the property.

[3] As stated *supra*, the Defendants increased the amount they were seeking under § 550(e) in their post-trial brief. In that brief, the Defendants requested the Court impose a constructive trust or equitable lien in the amount of $17,500 for "mortgage and other improvements, property taxes, and otherwise." (Defs.' Post-Trial Br. at 9, Bankr. Case No. 12-11369, Adv. Proc. No. 12-5154, ECF No. 46.)

11 U.S.C. § 550(e)(2). In order to sustain a recovery under this section, a movant must "establish that . . . value was provided in good faith." *Grove-Merritt*, 406 B.R. at 808. In addition, "the moving party must demonstrate that [the improvement] increased the value of the property transferred." *Bash v. Lepelley* (*In re Lepelley*), 233 B.R. 802,808 (Bankr. N.D. Ohio 1999).

As the Court has already concluded *supra*, Blackwell was not a "good faith" transferee. Under an "objective person" standard, Lineback's transfer of the Property to Blackwell when he was in a financial crisis would have placed a reasonable person on notice that a "diligent inquiry" into Lineback's reasons for transferring the Property was necessary.

Additionally, the Court concludes that the Defendants did not meet their burden of proof in seeking a judgment under § 550(e). First and foremost, the Defendants did not make any allegation that the improvements Blackwell allegedly made increased the value of the Property. Second, the record in this case is completely devoid of any details, evidentiary or otherwise, about the alleged improvements. The Defendants did not present photographs, receipts or testimony regarding any of the alleged improvements made to the mobile home or lot. Although the Defendants introduced a list of property tax payments for the Property as an exhibit at the trial, this document merely lists tax payments that were made for the Property between 1997 and 2012.[4] The record does not indicate who made the payments. The Court cannot credit Blackwell for property tax payments in the absence of definitive proof that Blackwell in fact made the tax payments. This lack of evidence coupled with the Court's conclusion that Blackwell was not a good faith transferee requires the Court to deny the Defendants any recovery under § 550(e).

In his complaint, the Trustee also asked for damages and costs to be taxed to the Defendants. The Trustee did not present any proof or stipulations as to either of these requests. As a result, the Court will deny the Trustee's requested relief for damages and costs without prejudice to the Trustee renewing his request.

[4]Assuming that the Defendants had demonstrated that Blackwell was a good faith transferee and that she had in fact made the tax payments on the Property, any possible recovery under § 550(e) would be limited to tax payments made after the 2010 transfer.

4.Conclusion

The Court concludes that the transfer of the Property from Lineback to Blackwell was actually and constructively fraudulent and may be avoided by the Trustee pursuant to 11 U.S.C. § 548(a)(1)(A) and (B). The Court determines that Blackwell and Lineback did not meet their burden of proof as to their affirmative defenses to the Trustee's avoidance action. The Court also concludes that Lineback and Blackwell's Counterclaims were not supported by any evidence and are therefore meritless.

The Court will enter an order in accordance herewith.

Mailing list

Michael T. Tabor, Plaintiff/Chapter 7 Trustee
Benjamin Dempsey, attorney for Debtor and Carolyn Blackwell
Stephen L. Hughes, attorney for Chapter 7 Trustee
Nicholas B. Latimer, attorney for Chapter 7 Trustee
United States Trustee

Dated: December 17, 2013
The following is SO ORDERED:

Jimmy L. Croom
Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: ROBERT D. LINEBACK,	)	**Case No. 12-11369**
Debtor	)	**Chapter 7**
MICHAEL T. TABOR, AS STANDING 7 TRUSTEE,	)	
Plaintiff,	)	
v.	)	**Adv. Pro. No. 12-5154**
ROBERT D. LINEBACK and CAROLYN BLACKWELL,	)	
Defendants.	)	

ORDER GRANTING TRUSTEE'S AMENDED COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFER AND DENYING DEFENDANTS' DEFENSES AND COUNTERCLAIMS THERETO

For the reasons set forth in the Court's memorandum opinion and order entered contemporaneously herewith, it is hereby **ORDERED:**

That the Chapter 7 Trustee's Amended Complaint to Avoid and Recover Fraudulent Transfer is **GRANTED**. The July 27, 2010 transfer of the real property at 1590 Winston Road

in McKenzie, Tennessee, from Robert D. Lineback to Carolyn Blackwell is **HEREBY AVOIDED** as a fraudulent conveyance pursuant to 11 U.S.C. § 548(a)(1)(A) and (B);

That Carolyn Blackwell is **ORDERED** to turn over over the subject property to the Chapter 7 Trustee pursuant to 11 U.S.C. § 550(a)(1);

The property at 1590 Winston Road in McKenzie, Tennessee, is **DECLARED** property of the estate pursuant to 11 U.S.C. § 541(a);

The Trustee's request for damages and costs is **DENIED WITHOUT PREJUDICE;**

That the Trustee is entitled to **FIX A LIEN LIS PENDENS** on the property located at 1590 Winston Road in McKenzie, Tennessee, in accordance with Tenn. Code Ann. § 20-3-101; and

The Defendants' Counterclaims are **HEREBY DENIED.**

IT IS SO ORDERED.

Mailing list

Michael T. Tabor, Plaintiff/Chapter 7 Trustee
Benjamin Dempsey, attorney for Debtor and Carolyn Blackwell
Stephen L. Hughes, attorney for Chapter 7 Trustee
Nicholas B. Latimer, attorney for Chapter 7 Trustee
United States Trustee

Dated: February 06, 2014
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: ROBERT D. LINEBACK,	)	**Case No. 12-11369**
	)	
Debtor	)	**Chapter 7**
	)	
MICHAEL T. TABOR, AS STANDING 7 TRUSTEE,	)	
	)	
Plaintiff,	)	
v.	)	**Adv. Pro. No. 12-5154**
	)	
ROBERT D. LINEBACK and CAROLYN BLACKWELL,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION RE: DEFENDANTS' MOTION FOR REHEARING/RECONSIDERATION OR NEW TRIAL

In this case, the Defendants have filed a "Motion for Rehearing/Reconsideration or New Trial Supported by Affidavit" ("Motion") in which they ask the Court to reconsider its December 18, 2013 order granting the Chapter 7 Trustee's preferential transfer complaint against the debtor Robert Lineback and his mother Carolyn Blackwell. In the

memorandum opinion which accompanied the December 18, 2013 order, the Court concluded that a pre-petition transfer of real property from Lineback to Blackwell was actually and constructively fraudulent and, therefore, avoidable by the trustee pursuant to U.S.C. § 548(a)(1)(A) and (B). The Court also concluded that the Defendants did not meet their burden of proof as to their affirmative defenses or their counterclaims.

Aside from asserting that the Court reached the wrong conclusion in this adversary proceeding, the Defendants did not offer any legal support for their argument that reconsideration is appropriate in this case. Instead, the Defendants allege first that the Court did not consider any of the exhibits submitted into evidence at the trial and second that if the Court had reviewed them, the Court would have had no choice but to rule for the Defendants. As will be set forth *infra*, the Defendants' arguments regarding the Court's analysis of the evidence is incorrect. As for the Defendants' second argument, they attached an affidavit to their Motion which they assert "more clearly identifies and recites what is found within and on the face of these documents and exhibits." (Mot. at 1-2, ECF 55.) The Defendants conclude their "Motion" by stating "The new evidence shows that the judgment is contrary to the weight of the evidence." (*Id.* at 2.) Although the Defendants label this additional evidence as "new," both exhibits consist solely of information that was available to the Defendants at the time of the trial in this proceeding. As will be discussed, the Defendants are not entitled to seek their requested relief on the basis of this evidence.

Although the Defendants did not offer any procedural basis for their Motion, motions for a new trial are governed by Federal Rule of Bankruptcy Procedure 9023. Motions to reconsider are treated as motions to alter or amend a judgment which are also governed by Federal Rule of Bankruptcy Procedure 9023. *Markowitz v. Campbell* (*In re Markowitz*), 190 F.3d 455, 460 (6th Cir. 1999). Bankruptcy Rule 9023 makes Federal Rule of Civil Procedure 59 applicable to adversary proceedings. Rule 59 allows a court to grant a new trial or to alter or amend a previously-issued judgment under certain circumstances. Fed. R. Civ. P. 59(a), (e). The burden of demonstrating entitlement to relief under either

subsection of Rule 59 rests on the party seeking relief thereunder. *In re Nosker*, 267 B.R. 555, 564-65 (Bankr. S.D. Ohio 2001).

> Pursuant to Rule 59(a)(1)(B) and (2):
>
> (a)(1) The court *may*, on motion, grant a new trial on all or some of the issues–and to any party – as follows:
>
> . . . .
>
> (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.
>
> (2) After a nonjury trial, a court *may*, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

Fed. R. Civ. P. 59(a)(2) (emphasis added). "[N]ew trials are typically ordered under Rule 59(a) only when there has been a manifest error of law or a mistake of fact." *In re Ying Ly*, 350 B.R. 757, 759 (Bankr. W.D. Mich. 2006) (citations omitted). "A showing of manifest injustice requires that there exist a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy." *In re Marlow*, 2012 WL 7749284, *2 (Bankr. E.D. Tenn. 2012) (citations omitted). A motion for a new trial pursuant to Rule 59(b) should not "be employed to introduce evidence that was available at trial but was not proffered, to relitigate old issues, to advance new theories, or to secure a rehearing on the merits." *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986) (citations omitted). "The decision to grant a new trial under Rule 59(a) rests within the sound discretion of the trial court." *In re Quality Stores, Inc.*, 272 B.R. 643, 649 (Bankr. W.D. Mich. 2002). "A trial court should not grant a new trial merely because the losing party can probably present a better case on another trial." *In re Johnson*, 2012 WL 3644786, *1 (Bankr. N.D. Ohio 2012) (internal quotation marks and citations omitted).

Rule 59(e) allows a court to alter or amend a judgment "if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Integra Corp. v. Henderson*, 428 F.3d 605, 620 (6th

Cir. 2005). "The purpose of Rule 59(e) is to allow the . . . court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings." *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008). Rule 59(e) motions cannot be used to present new arguments that could have been raised prior to judgment." *Id.* Nor is the rule "intended to provide the parties an opportunity to relitigate previously-decided matters[,] . . . present the case under new theories . . . , re-hash old arguments, or . . . proffer new arguments or evidence that the movant could have brought up earlier." *In re Miller*, 489 B.R. 74, 80 (Bankr. E.D. Tenn. 2013) (internal citations omitted); *see also Carter v. Porter*, 2012 WL 298479, *1 (E.D. Ky. 2012) (citation omitted) ("Motions for reconsideration likewise do not allow the losing party to attempt to supplement the record with previously available evidence."). "The granting of a Rule 59(e) motion is an extraordinary remedy and should be used sparingly because of the interests in finality and conservation of scarce judicial resources." *Hamerly v. Fifth Third Mortgage Co.* (*In re J & M Salupo Development Co.*), 388 B.R. 795, 800 (B.A.P. 6th Cir. 2008) (internal quotation marks omitted) (citations omitted). The decision to grant or deny a Rule 59(e) motion rests soundly within the trial court's discretion. *In re McKenzie*, 716 F.3d 404, 425 (6th Cir. 2013).

In the case at bar, the Defendants offer two main arguments in their motion for a new trial/motion to reconsider. First, the Defendants allege that although several exhibits were entered into evidence at the trial, the Court did not consider them. The Defendants base this assertion on a sentence from page 5 of the opinion which states "The trial consisted solely of statements and legal arguments made by the parties' attorneys." (Mem. Op. at 5, ECF No. 48.) The Defendants further state that in the opinion "the Court often noted Defendants [sic] lack of evidence." (Mot. at 1, ECF No. 55.) This allegation is wholly without merit. The Court's statement that "the trial consisted solely of statements and legal arguments" was meant to underscore the fact that none of the parties to the adversary proceeding testified at the trial----a fact that the Court noted in the preceding sentence. The statement did mean that the Court was not considering the exhibits.

It is clear from a review of the opinion that the Court examined each and every exhibit entered into the record. On page 11 of the opinion, the Court specifically acknowledged that "the Defendants entered several documents into evidence." The Court obviously relied on the various deeds of trust and quit claim deeds when determining the dates of the various transfers of the property. On page 3 of the opinion, the Court quoted from the July 27, 2010 deed when noting the consideration, or the lack thereof, that was paid for the transfer. Also, on page 3 of the opinion, the Court referenced trial exhibit 4, the history of payments made on the line of credit, in stating:

> Although the Trustee agrees that the trial exhibits clearly demonstrate that these payments were made, he disputes the Defendants' contention that the evidence proves Blackwell made the payments.

On page 26 of the opinion, the Court referenced trial exhibit 5, in stating

> Although the Defendants introduced a list of property tax payments for the Property as an exhibit at the trial, this document merely lists tax payments that were made for the Property between 1997 and 2012.

Clearly, the Court reviewed every exhibit that was entered into evidence and then determined whether or not the relevant exhibit supported the Defendants' position. In so doing, the Court did exactly what it is tasked with as a trial court: determining whether the exhibits support the Defendants' arguments. Although the Defendants do not agree with the Court's conclusion in this adversary proceeding, their argument that the Court "ignored" the exhibits is wholly without merit and does not entitle them to relief under either Rule 59(a) or (e).

After asserting that the Court failed to consider the trial exhibits, the Defendants then argued that the exhibits firmly established that the Defendants were entitled to judgment on their affirmative defenses and counter-claims. In support of this claim, the Defendants attached Carolyn Blackwell's affidavit to the Motion and asserted that the affidavit "more clearly identifies and recites what is found within and on the face of these documents and exhibits." (Mot. At 1-2, ECF No. 55.) The Defendants also attached an exhibit to their motion which is a one page copy of 2 receipts from Carroll County Lumber

for building supplies and part of an adding machine tape with various figures and a total of $3,552.54. There is a handwritten notation on the tape that says "receipts from repairs–totaled 29 pgs." The Carroll County Lumber receipt indicates that Carolyn Blackwell purchased $37.59 and $827.55 in supplies on April 18, 2011, and April 19, 2011, respectively. As stated *supra*, the Defendants argue in their Motion that "This new evidence shows that the judgment is contrary to the weight of the evidence."

Within her affidavit, Carolyn Blackwell makes several averments. First, in paragraph 3 of the affidavit, Blackwell states that the copy of the Carroll County Lumber receipt and the adding machine tape represent money she spent "for materials for improvements to the property by remodeling the interior. This total is $3,552.54 for materials . . . ." (Affidavit at ¶ 3, ECF No. 55-2.) Blackwell further attests that she spent "an equal amount or greater" on labor for the renovations. The Defendants did not include a copy of any receipt for labor. Second, Blackwell states that she made all of the payments listed on trial exhibit 4, the history of payments made to the bank for the property, that the money she paid to the original owners in 2002 was consideration for the 2010 transfer of the property from Lineback to Blackwell, and that she never intended for the purchase of the mobile home and lot to be a gift to her son. (*Id.* at ¶¶ 7, 14, and 15.) Last, Blackwell stated that when she paid off the debt on the property in September 2008, the trust deed should have been transferred to her "to create a trust for this debt," and that equitable title transferred to her at that time such that Lineback never held equitable title and never had an interest in the property that became property of the estate. (*Id.* at ¶¶ 12 and 13.)

Presumably, both of these exhibits are meant to illustrate several "errors" in the Court's opinion, namely (1) the determination that the Defendants failed to introduce any evidence of improvements Blackwell made to the property; (2) the determination that no consideration was paid for the July 2010 transfer of the property from Lineback to Blackwell; and (3) the determination that Lineback did not hold the property in trust for Blackwell. Although the Defendants' copy of the Carroll County Lumber receipts and Blackwell's affidavit might have been useful at the trial and might have impacted the Court's decision, the Defendants are prohibited from seeking reconsideration or a new trial

based on either of these documents. As stated previously, parties cannot use Rule 59(a) or (e) motions to introduce evidence that was available at the time of the trial. *Miller*, 489 at 80; *Fontenot*, 791 F.2d at 1219. Both documents the Defendants attached to their Motion contain information that was available to the Defendants *prior to* the August 2013 trial. Insofar as Blackwell's affidavit is concerned, Blackwell was present at the trial, but was not called to testify. Every averment in her affidavit could have easily been testified to during the trial.

In addition, the Defendants have not offered any argument that the Court's conclusions were a clear error of law or that they work a manifest injustice on the Defendants. Although they do not agree with the conclusions the Court drew from the exhibits, they have not demonstrated that the Court erred in any way that would entitled them to either reconsideration or a new trial. Wishing that a court had made different decision, without demonstrating why that decision was manifestly unjust or that the Court made a mistake of fact *based on the evidence that was before it at the time of a trial*, does not justify relief under Federal Rule of Civil Procedure 59(a) or (e).

Because the Defendants are not entitled to seek relief under Rule 59 based on the introduction of evidence that was available to them at the time of the trial and because they have not carried their burden of proof under Federal Rule of Civil Procedure 59(a) or (e), the Court concludes that the Defendants are not entitled to relief from the December 18, 2013 order granting the Chapter 7 Trustee's preference complaint for any of the reasons asserted in their Motion. As a result, the Court will enter an order denying the Motion.

Dated: February 06, 2014
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re: ROBERT D. LINEBACK,	)	**Case No. 12-11369**
Debtor	)	**Chapter 7**
MICHAEL T. TABOR, AS STANDING 7 TRUSTEE,	)	
Plaintiff,	)	
v.	)	**Adv. Pro. No. 12-5154**
ROBERT D. LINEBACK and CAROLYN BLACKWELL,	)	
Defendants.	)	

ORDER DENYING DEFENDANTS' MOTION FOR REHEARING/RECONSIDERATION OR NEW TRIAL

For the reasons set forth in the Court's memorandum opinion and order entered contemporaneously herewith, the Defendants' motion for a rehearing/reconsideration or new trial is **DENIED.**

IT IS SO ORDERED.

Mailing List:

Michael T. Tabor, Plaintiff/Chapter 7 Trustee
Benjamin Dempsey, attorney for Debtor and Carolyn Blackwell
Stephen L. Hughes, attorney for Chapter 7 Trustee
Nicholas B. Latimer, attorney for Chapter 7 Trustee
United States Trustee