

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

IN RE

Judy Gail Barnhart

CASE NUMBER 99-12409

Chapter 13

**MEMORANDUM OPINION AND ORDER RE
TRUSTEE'S OBJECTION TO CONFIRMATION**

This matter is currently before the Court on the Objection to Confirmation filed by the Chapter 13 Trustee to the Debtor's proposed chapter 13 plan of reorganization. The Trustee alleges that the plan has not been proposed in good faith and that the schedules are inaccurate or incomplete. This Court confirmed the Debtor's chapter 13 plan on May 11, 2000, without prejudice to the Chapter 13 Trustee's objection so that money held by the trustee could be dispersed to secured creditors in the plan.¹

The Court conducted a hearing on the trustee's objection on September 14, 2000. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

¹The Bank of Huntingdon and Carroll Bank and Trust, creditors of the Debtor, have also filed objections to confirmation; however, pursuant to an agreement between counsel for the debtor and counsel for the Bank of Huntingdon and Carroll Bank and Trust, those objections have been continued until a ruling is made on the Trustee's objection.

I. FINDINGS OF FACT

The following facts were stipulated to by the parties.

1. Judy Gail Barnhart filed a Chapter 13 Bankruptcy, case No. 99-12409, on July 29, 1999.
2. In her Statement of Financial Affairs, question 14, the Debtor listed that she held or controlled property for another person in the form of certain Certificates of Deposit for her mother, Corinne Thomas, at the Bank of Huntingdon and for her sister, Patricia Marchesi, at Carroll Bank and Trust.
3. In further response to question 14, the Debtor stated that the CD accounts had been closed and that the funds had been transferred back to the Debtor's mother and the Debtor's sister before she filed her bankruptcy petition.
4. A detailed history of the transactions is contained in the following four (4) paragraphs.
5. On August 2, 1996, the Debtor's mother, Corinne Thomas, purchased a Certificate of Deposit at the Bank of Huntingdon in the amount of \$20,000, and titled the CD as follows: "Corrine Thomas or Judy Barnhart" with Right of Survivorship. The CD was purchased with a check drawn on Corrine Thomas' checking account. This CD automatically renewed every six months with interest until June 21, 1999, when the Debtor cashed the CD and the funds were used to purchase a Certificate of Deposit in the Debtor's mother's name only (hereinafter

referred to a **CD 1**).

6. On May 8, 1994, the Debtor's mother, Corinne Thomas, purchased a certificate of deposit at the Bank of Huntingdon in the amount of \$30,112.20 and titled the CD as follows: "Corinne Thomas or Nancy Barnhart" with right of survivorship. On May 23, 1994, the Debtor's mother, Corinne Thomas, purchased another Certificate of Deposit at the Bank of Huntingdon in the amount of \$10,000 titled as follows: "Ada Corinne Thomas and/or Nancy Barnhart and/or Noel Thomas" with right of survivorship. Noel Thomas is the brother of the Debtor and son of Corinne Thomas. Nancy Barnhart is the sister of the Debtor and daughter of Corinne Thomas. In November of 1994, when these two CDs matured, the funds were combined and used to purchase another CD in the amount of \$37,635.07 that was titled as follows: "Judy Barnhart or Nancy Barnhart" with right of survivorship. This CD was renewed several times until November 23, 1998, when it matured in the amount of \$42,140.00. At that time, the funds were used to purchase a Certificate of Deposit in the name of Ada Corinne Thomas only in the total amount of \$42,140.00 (hereinafter referred to as **CD 2**).

7. On May 6, 1997, the Debtor purchased a Certificate of Deposit at Carroll Bank and Trust in the amount of \$20,000 and titled the CD as follows: "Judy Barnhart POD Patricia Marchesi." This CD was purchased using a cashier's check payable to and endorsed by Patricia Marchesi from Regions Bank. Patricia Marchesi is the Debtor's sister. The CD was renewed on November 19, 1997, and the CD was

retitled as follows: "Judy Barnhart or Patricia Marchesi" with Right of Survivorship. On June 21, 1999, the Debtor redeemed the CD before it fully matured and the funds were issued by a cashier's check made payable to Patricia Marchesi (hereinafter referred to as **CD 3**).

8. On May 6, 1997, the Debtor opened a joint savings account at Carroll Bank and Trust in the amount of \$9,470.72. This savings account was opened using a cashier's check payable to and endorsed by Patricia Marchesi from Regions Bank. Both the Debtor and her sister, Patricia Marchesi, could withdraw funds from this account. On November 6, 1997, the savings account was closed and a CD was purchased in the amount of \$9,636.41 and titled as follows: "Judy Barnhart or Patricia Marchesi" with right of survivorship. On June 21, 1999, the Debtor redeemed the CD before it fully matured and the funds were issued by a cashier's check made payable to Patricia Marchesi (hereinafter referred to as **CD 4**).
9. Both CDs purchased at the Bank of Huntingdon were purchased with funds that were owned exclusively by the Debtor's mother, Corrine Thomas.
10. The CDs and savings account at Carroll Bank and Trust were purchased with funds that were owned exclusively by the Debtor's sister, Patricia Marchesi.
11. The Debtor never co-mingled her own funds with the funds in the accounts described above at the Bank of Huntingdon or Carroll Bank and Trust.
12. No activity was conducted by the Debtor on the accounts at Bank of Huntingdon except to close the accounts and transfer the funds back to accounts in the sole

name of her mother, Corinne Thomas.

13. No activity was conducted by the Debtor on the accounts at Carroll Bank and Trust except to close the accounts and transfer the funds back to her sister, Patricia Marchesi, by means of a cashier's check made payable directly to Patricia Marchesi.
14. The Debtor's stipulated testimony is that she never considered the funds at the Bank of Huntingdon or Carroll Bank and Trust to be her funds and that at all times she considered these funds to be her mother's and sisters' property only. The Debtor would further testify that her name was on each account for purposes of convenience only.
15. The Debtor's mother, Corinne Thomas is advanced in age and in poor health and the Debtor assists her mother in management of her day to day affairs.
16. The funds in the accounts at the Bank of Huntingdon and Carroll Bank and Trust were returned to the Debtor's mother, Corinne Thomas, and her sister, Patricia Marchesi.
17. Neither Bank of Huntingdon nor Carroll Bank and Trust attempted to offset the transferred funds against monies owed to them by the Debtor at the time that the money was transferred out of the Debtor's name.

II. CONCLUSIONS OF LAW

Section 541 of the Bankruptcy Code describes "property of the estate" as "all legal or equitable interests of the debtor in property . . ." 11 U.S.C. § 541. As it relates to CD 1, CD 3

and CD 4, the debtor had no interest in the CDs which made them property of the estate. As it relates to CD 2, however, the Court finds that the debtor did indeed have an interest in the CD which became property of the estate upon the filing of the bankruptcy. For the reasons set forth below, the Court shall deny the Trustee's objection as to CDs 1, 3, and 4, and sustain the objection as it relates to CD 2.

CD 1, CD 3, CD4

The matters before the Court are similar to the facts on a Southern District of Florida bankruptcy case, *In re Goldstein*, 135 B.R. 703 (Bankr. S.D.Fla. 1992). There the chapter 7 debtor's name was on certain savings and CD accounts along with other individuals named Kirpitznikoff. The accounts were set up as joint accounts by the Debtor as a favor to the Kirpitznikoffs, who had a son in the military. The account was set up for convenience. The Kirpitznikoffs lived in Israel and the Debtor's name was on the account so that the Debtor could transact business on the account pursuant to the express wishes of the Kirpitznikoffs. The Debtor in *Goldstein* never deposited his own funds into the account and never used the funds for his own purposes.

The Chapter 7 Trustee in *Goldstein* filed an adversary proceeding in an attempt to recover the funds for the benefit of the estate. *Id.* at 705. He argued that since the account was a "joint account with right of survivorship," the Court could not look past the form of ownership on the account.

The *Goldstein* court disagreed with the trustee's argument, holding that the money was held by the Debtor as a resulting trust, not as a joint tenant. *Id.* at 705. Since the *Goldstein*

debtor was simply the trustee of a resulting trust, the funds in the account did not belong to Goldstein and, therefore, were not property of his bankruptcy estate. *Id.* In making their decision, the *Goldstein* court relied on an Eastern District of Tennessee bankruptcy case, *In re Nunley*, 19 B.R. 785 (Bankr. E.D.Tenn. 1982) which held that the true nature of ownership of a "joint tenancy" account was overcome when there was evidence of a contrary intent at the time of the execution of the account. *Nunley*, 19 B.R. at 786-87.² Relying on this reasoning, the *Goldstein* court found that there was evidence of a contrary intent at the time the account was established, to wit, that the debtor's name was on the account for purposes of convenience only. *Goldstein*, 135 B.R. at 705.

The facts surrounding CD 1, CD 3 and CD 4 are similar to the facts in *Goldstein* and *Nunley*. In those two cases, the funds in the joint account originated not from the debtors, but from the other names on the accounts. Additionally, the debtors' names in *Goldstein* and *Nunley* were on the accounts for convenience purposes only. Lastly, the debtors in *Goldstein* and *Nunley* never considered the money to be their "own" money and they never used the money for their own purposes. In the case at bar, it is undisputed that the money in the joint accounts at Bank of Huntingdon and Carroll Bank and Trust came from the Debtor's mother and sister. The Debtor never used any of her own funds to purchase CD 1, CD 3 or CD 4. It is also undisputed that the

²*Nunley's* factual situation was similar to the facts in *Goldstein*. The debtor in *Nunley* had a joint account with her name and her son's name. The only funds deposited into that account were those belonging to her son who was in the military. The funds were the son's enlistment bonus and pay he received upon joining the military. Without much ado, the *Nunley* court ruled that the property was the son's property and dismissed the Chapter 7 Trustee's complaint to compel turnover. *Nunley*, 19 B.R. at 785.

debtor's name was on the accounts for purposes of convenience. There was no evidence presented at the trial that the Debtor considered the funds to be her "own" property. The Debtor never co-mingled the funds in the joint account with her own money and the Debtor never conducted any activity on the accounts other than to transfer the funds back to the exclusive control of the Debtor's mother and sister.

CD 2

Although the history of CD 2 is slightly similar to the other three CDs in issue, the Court finds that the Debtor did have an interest in CD 2 which would have become property of the estate when she filed her bankruptcy petition had she not cashed it out and used the proceeds to purchase another CD in her mother's name on November 23, 1998. When Corinne Thomas purchased the two original CDs, the proceeds of which were later used to purchase CD 2, the Debtor's mother used her own funds to purchase both CDs. What distinguishes CD2 from CDs 1, 3 and 4, however, is the November 1994 transaction whereby Corinne Thomas purchased CD 2 and titled it "Judy Barnhart or Nancy Barnhart" with right of survivorship. When the Debtor's mother divested herself of her ownership interests in the CD and titled it in her daughters' names only, she created ownership interests in her daughters. At that point, the Debtor and her sister no longer held the money as a resulting trust. They instead were holding the money as joint tenants through a gift from their mother. Had the Debtor's mother titled the CD "Corinne Thomas or Judy Barnhart or Nancy Barnhart," the Court may feel compelled to reach a different result. But once Corinne Thomas broke her chain of involvement and interest in the CD, she created a separate, non-resulting trust interest in her daughters.

As a result of this conclusion, the Court finds that the Debtor did act in bad faith when she used the proceeds of CD 2 to purchase another CD in her mother's name only. Based on this finding of bad faith, the Court will sustain the Trustee's objection to the debtor's plan.

III. ORDER

It is therefore **ORDERED** that:

1. The Trustee's Objection to Confirmation is **SUSTAINED** as to **CD 2**.
2. The Trustee's Objection to Confirmation is **DENIED** at to **CD 1, CD 3, and CD 4**.
3. The Debtor is given fifteen (15) days from entry of this Order to file an amended plan.

It is so ordered.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: November 2, 2000