

**Dated: August 31, 2004**  
**The following is ORDERED:**



  
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**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  
STEPHEN HENRY WINTERS,  
Debtor.

Case No. 03-40517-L  
Chapter 7

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UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

Adv. Proc. No. 04-00170

MEDSHARES MANAGEMENT  
GROUP, INC., et al.,

Defendants.

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**ORDER OVERRULING OBJECTION OF LESLEY WINTERS TO  
MOTION TO SELL DEBTOR'S PROPERTY**

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ON JULY 29, 2004, the court conducted an evidentiary hearing to consider the objection raised by Lesley Marie Winters in opposition to the motion of the United States to sell the Debtor's

property at an appropriate location. The issue raised is whether an adult child of a judgment debtor can overcome the presumption established by Tennessee Code Annotated section 66-3-103. For the reasons set forth below, the court will overrule the objection. Although this is not a core proceeding, the parties consented to the entry of a final judgment by the bankruptcy court.

### **FACTS**

The United States holds a judgment against Stephen Henry Winters (the “Debtor”) in the amount of \$1,721,749.51, entered in the United States District Court for the Middle District of Tennessee on September 13, 2002. A writ of execution issued on October 2, 2003, resulted in the seizure of all chattels located at the Debtor’s residence on November 13 and 14, 2003. On December 1, 2003, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. On March 31, 2004, the case was converted to Chapter 7 upon the motion of the United States Trustee as the result of the absence of a reasonable likelihood of rehabilitation, the Debtor’s inability to effectuate a plan, and unreasonable delay that was prejudicial to creditors. On May 17, 2004, the court granted the United States’ motion to terminate the automatic stay with respect to the personal property seized from the Debtor’s residence on the basis that the property was either (i) not the property of the estate (a position supported by the Debtor), or (ii) property in which the Debtor has no equity.

In this related adversary proceeding, the Mendocino Ultra Trust, a grantor trust created by the Debtor on November 12, 2001, claimed that all personal property in the Debtor’s residence was transferred to John Parker, trustee, sometime in June 2002. After an evidentiary hearing conducted May 20 and 21, 2004, the court found that the purported transfer to the trustee was illusory because the Debtor continued to treat and refer to the property as his own. Further, the court held that the United States was protected by Tennessee’s ostensible ownership statute, Tennessee Code Annotated

§ 66-3-103, because the Debtor had enjoyed continued possession of the property for a period exceeding five years. The court granted the United States' motion to sell the property at an appropriate location, but specifically excluded from the sale property belonging to the Debtor's former wife which was the subject of a previous order, and the property which was the subject of Lesley Winters' objection.

Lesley Winters is the twenty-four-year-old daughter of the Debtor and his first wife, Katherine Winters. Although Ms. Winters never lived on a permanent basis with her father after her parents' divorce, he has continuously maintained a room for her use. Ms. Winters testified that her paternal grandmother, Connie Winters, told her on numerous occasions that certain bedroom furniture would be hers. Connie Winters died in 1991 when Lesley Winters was eleven years old. The furniture was not the subject of a testamentary gift. The furniture stayed with Henry Winters, Ms. Winters' grandfather, who subsequently moved from Chattanooga to Memphis, Tennessee. Henry Winters lived for a time in an assisted-living facility and used the furniture that was to be given to Lesley. After he was no longer able to live alone, Henry Winters and the disputed furniture were moved into the Debtor's home. Ms. Winters testified that the furniture was put in her room at her father's house. Henry Winters died when Lesley was sixteen years old, approximately eight years ago. The furniture was continuously located in the Debtor's residence until November of 2004 when it was seized by the United States. No one produced a copy of Mr. Winters' will, if any. Mr. Paul Winters, the Debtor's brother, testified that there was no writing memorializing a gift of the furniture to Lesley, but that there was a common understanding among the family that the furniture would be Lesley's. Ms. Katherine Winters, Lesley Winter's mother, also testified that she had a conversation with Henry Winters's near his death in which he said, "This is Lesley's furniture now."

The witnesses called on behalf of Ms. Winters agreed that she has never lived in a place in which it would be appropriate for her to take possession of this furniture.

While the court is left with little doubt that it was the intent of Ms. Winters' grandparents that she receive the disputed furniture, it is difficult for the court to find that a gift of the furniture was actually completed. It is clear that no gift was made during the lifetime of Connie Winters and no will was produced indicating a testamentary gift at the time of her death. Likewise there was no proof of a testamentary gift by Henry Winters. Ms. Darcy LaFountain, the Debtor's second wife, testified that it was her understanding that Henry Winters intended that Lesley receive the furniture, but she recalled that it was the Debtor who was to give the furniture to his daughter, perhaps at his death, and that this had been spelled out in a pre-nuptial agreement between her and the Debtor. This agreement was not produced at trial. The Debtor testified that he believed the gift was made shortly after his mother's death when his father made a new will and gave away a number of items. Mr. Paul Winters seemed to indicate that the gift was complete when the furniture was moved into the Debtor's home after Henry Winters could no longer live alone. There was no agreement among the witnesses as to the time or circumstances under which the furniture ceased to belong to Connie and/or Henry Winters and began to belong to Lesley Winters.

In her post-trial memorandum, Lesley Winters argues that the property was delivered to her father in trust because she was a minor at the time of her grandfather's move into his son's home. There was no support from any of the witnesses for the creation of an express trust. To the contrary, in response to an interrogatory posed by the United States, the Debtor failed to identify any property held by him in trust for another. What Ms. Winters may have intended to claim was that her father acted as guardian of her property during her minority. Even if this were true, Ms. Winters reached her majority more than five years prior to the seizure of the furniture from her father's home.

During the period of her majority, she has maintained a permanent residence with her mother in Chattanooga, Tennessee, while living in a series of dormitories and apartments. At no time did Ms. Winters attempt to take possession or exercise control over the disputed furniture.

### ANALYSIS

Unfortunately, the outcome of this case does not turn upon ownership of the disputed furniture. Even if the court were to find that a gift to Lesley Winters had been completed during the lifetime of Henry Winters, the court was unable to locate any applicable exception that would take this case outside the clear intent of Tennessee's ostensible ownership statute. That statute, Tennessee Code Annotated § 66-3-103, provides:

**Presumption of ownership from possession of personal property.** Possession of goods and chattels continued for five (5) years, without demand made and pursued by due process of law, shall, as to the creditors of the possessor or purchasers from the possessor, be deemed conclusive evidence that the absolute property is in such possessor, unless the contrary appear by bill of sale, deed, will, or other instrument in writing, proved or acknowledged and registered.

As cases interpreting this statute make clear, this is not a statute of adverse possession. Title to goods cannot be established by recourse to this presumption. Rather, the benefits of the presumption flow only to creditors of the possessor. See *O'Brien v. Waggoner*, 20 Tenn. Ct. App. 145, 96 S.W.2d 170 (1936); *McLemore v. First Am. Nat'l Bank (In re Hall)*, 5 B.R. 120 (Bankr., M.D. Tenn. 1980). In order to defeat the claims of creditors of the possessor of goods held more than five years, the owner must produce a writing, proved or acknowledged and registered. The purpose of the writing is clear -- to give notice to the world that property held by one is actually owned by another. Ms. Winters was unable to produce a writing evidencing her ownership of the disputed furniture, and thus the United States must prevail.

The result in this case is most unfortunate. Connie and Henry Winters intended that Ms. Winters become the owner of their furniture. All of Ms. Winters' family members agree that the furniture should be hers. It is no doubt acutely embarrassing to the Debtor that his business activities have occasioned this unforeseen result. It is to be hoped that some provision can be made for the purchase of this furniture by or on behalf of Ms. Winters, and the court strongly encourages the United States to cooperate in this effort if possible.

### **CONCLUSION**

For the foregoing reasons, the objection of Lesley Marie Winters is **OVERRULED**. Pursuant to the court's prior orders, the United States is permitted to sell the remaining furniture at an appropriate location unless provision is made for its purchase by or on behalf of Ms. Winters.

cc: Debtor  
Attorney for Debtor  
Plaintiffs  
Attorneys for Plaintiffs  
Defendants  
Attorneys for Defendants