Dated: January 11, 2024
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re WILLIAM H. THOMAS, JR., Debtor.	Case No. 16-27850-L Chapter 11
MICHAEL E. COLLINS, In his capacity as Chapter 11 Trustee, Plaintiff, v. LEY-AIK TAN and DEE-LENG CHOO, Defendants.	Adv. Proc. No. 22-00057

MEMORANDUM OPINION

THIS ADVERSARY PROCEEDING came on for trial November 15, 2023, and was continued over for further hearing on December 21, 2023. The complaint filed by the Trustee in Bankruptcy alleges that the Debtor and the Defendants were joint venturers with respect to a condominium in Orange Beach, Alabama, and that the bankruptcy estate is entitled to a constructive trust upon the real property and/or a money judgment against the Defendants in the

amount that the Debtor's advances for the promotion of the joint venture exceeded those of the Defendants. The Defendants admit the formation of a joint venture with the Debtor but aver that the joint venture terminated when the Debtor delivered a warranty deed to the Defendants ostensibly transferring his interest in the condo to them.

The Court heard the testimony of Ms. Choo, Mr. Tan, and Mr. Thomas M. Sullivan, C.P.A., and has considered the exhibits offered by both the Plaintiff and the Defendants. Having carefully considered all of the evidence presented by the parties, the Court makes the following findings of fact and conclusions of law.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination and recovery of property of the bankruptcy estate are core proceedings arising under the Bankruptcy Code. See 28 U.S.C. § 157(b)(2)(A), (E). Accordingly, the bankruptcy court has authority to enter its judgment regarding the complaint subject only to appellate review under section 158 of title 28. 28 U.S.C. § 157(b)(1). Venue of this proceeding is proper to the Western District of Tennessee because it arises in a bankruptcy case pending in this district. See 28 U.S.C. § 1409(a).

FINDINGS OF FACT

1. William H. Thomas, Jr. (the "Debtor") commenced the underlying bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United

States Bankruptcy Court for the Northern District of Florida (the "Bankruptcy Case") on June 2, 2016 (the "Petition Date"). Bankr. ECF No. 1.

2. On August 11, 2016, the Florida Bankruptcy Court granted the motion of creditor Clear Channel Outdoors, Inc. ("Clear Channel") to transfer venue of the bankruptcy case to the Western District of Tennessee. Bankr. ECF No. 86.

3. On January 18, 2019, the Court granted the motion of Clear Channel for appointment of a trustee. Bankr. ECF No. 526.

4. On January 24, 2019, Michael E. Collins, attorney at law, was appointed Trustee in Bankruptcy upon the motion of the United States Trustee. Bankr. ECF No. 538.

5. On February 9, 2021, a Suggestion of Death was filed by counsel for the wife of the Debtor alerting the Court and all parties that the Debtor died on February 7, 2021. Bankr. ECF No. 1450. The Trustee has continued to administer the assets of the bankruptcy estate.

6. The Defendants Ley-Aik Tan and Dee-Leng Choo are citizens of the state of Tennessee. Complaint, ECF No. 1, ¶¶ 13-14; Answer, ECF No. 7, ¶¶ 13-14. Both were born in Malaysia. They met on the tennis court and were married in 1993.

7. Defendant Choo was employed full-time by the Debtor as a bookkeeper in 2004. Her responsibilities increased over time as he established additional businesses.

8. Defendant Tan was employed by the Debtor in 2007, initially as a property manager in his warehouses and later in a number of capacities, including that of paralegal.

9. Sometime in 2007, the Debtor approached the Defendants with a proposal that they purchase a condominium in Orange Beach, Alabama, which they identify as the Romar House. The Debtor was unable to obtain financing for the purchase himself, so he suggested that he would provide the downpayment if the Tans would obtain financing. Ms. Choo was interested because

she had grown up near the ocean and wanted a place to stay near the water. She testified that she later considered renting the property when she and Mr. Tan were not staying there. In fact, as things turned out, Ms. Choo and Mr. Tan spent very little time at the condominium because of their work for the Debtor.

10. Mr. Tan, Ms. Choo, and the Debtor jointly purchased the Romar House on December 14, 2007, for $425,000 plus $13,000 in closing costs. Trustee's Ex. 1; Answer, ¶19. Mr. Tan and Ms. Choo obtained a mortgage loan in the amount of $340,000 to cover the costs of purchase not paid by the Debtor. Trustee's Ex. 2. The Tans were provided a one-half interest in the property and the Debtor was provided the other half.

11. After the purchase, the parties established an account at First Tennessee Bank known by them as the Condo Account that was used for the deposit of income derived from and the payment of expenses related to the Romar House. Trustee's Ex. 3. The parties made payments to the account in alternate months to cover the mortgage note payments, homeowners' association dues, and other expenses. Mr. Tan kept a running account of the deposits and expenses paid through the Condo Account, which was admitted into evidence as Trustee's Exhibit 3.

12. After the purchase, Mr. Thomas engaged Pleasure Island Property Management Company to manage Romar House. Testimony of Ms. Choo. After renovations were completed, the property was offered for rent. The first deposit to the Condo Account from Pleasure Island is dated May 13, 2008. Trustee's Ex. 3, p. 1.

13. The Debtor became a defendant in litigation brought by Tennison Brothers, Inc. and Clear Channel arising out of his billboard business. *Tennison Bros., Inc. v. Thomas*, No. CH-08-1310 (Tenn. Ch. Ct). Two separate orders on motions for sanctions were entered against the Debtor. The first, entered November 20, 2009, struck the answer of the Debtor and granted default

judgment to Tennison Brothers and Clear Channel. Trustee's Ex. 5. The second, dated June 4, 2010, ordered that the Debtor not be permitted to present proof related to damages or in defense to the plaintiffs' assertion of damages.

14. Mr. Tan was acting as a paralegal for Mr. Thomas in 2010. He typed pleadings for him and prepared them for filing. Mr. Tan testified that Mr. Thomas did not seem particularly concerned about the *Tennison* case in 2010.

15. One afternoon the Debtor approached Mr. Tan and Ms. Choo "out of the blue" while they were all in Orange Beach at the request of Mr. Thomas and told them he was going to transfer his one-half interest in Romar House to them as a "retirement benefit." Ms. Choo asked whether the Debtor had discussed the proposed transfer with his wife. The Debtor reassured Ms. Choo that Mrs. Thomas was "ok with it." Ms. Choo told the Debtor that she and her husband could not afford the monthly mortgage payments on their own. The Debtor responded that he intended to continue to make regular contributions to the Condo Account. Ms. Choo interpreted this as Mr. Thomas's generosity towards her and her husband for their years of service to him. In fact, the proposed transfer was intended to hide the Debtor's interest in Romar House from his creditors.

16. On June 11, 2010, the Debtor signed a Warranty Deed transferring his interest in Romar House to Mr. Tan and Mr. Choo. The deed was prepared by an Orange Beach attorney, Lori Meadows, and the Debtor's signature was acknowledged before an Alabama notary. Nothing in the document indicates that it was delivered to Mr. Tan and Ms. Choo. The deed was later recorded on November 22, 2010. Trustee Ex. 4.

17. Notwithstanding his execution of the Warranty Deed, the Debtor continued to make contributions to the Condo Account. He deposited $11,750 to the account between June 11 and December 31, 2010. He deposited $4,800 to the Condo Account on January 7, 2011, but received

a check drawn on the account in the same amount on January 11, 2011. He deposited an additional $10,300 to the account over the remainder of 2011. The Debtor deposited $20,500 to the Condo Account in 2012, and $19,200 in 2013. In 2014, the Debtor deposited $93,900, but withdrew $65,000. An additional $14,000 was withdrawn to open an account at Renasant Bank called the "Mid-America Account." A check for $1,000 for cash was given to Ms. Choo by Mr. Thomas as a memorial donation to a temple. Some of the deposits in 2014 reference "Mr. Light" and a "horse barn." Ms. Choo testified that the Debtor was leasing a barn on another property owned by him and depositing the receipts to the Condo Account. In 2015, the Debtor deposited $13,000 to the Condo Account from January 1 through April 15. He then deposited $30,000 on November 19, which was withdrawn six days later on November 25, 2015.[1] Trustee's Ex. 3.

18. The tax return prepared on behalf of the Debtor for 2010 does not reflect a transfer of Romar House. Mr. Sullivan, who signed the return as preparer, testified that the return was prepared based upon information provided by Ms. Choo, who maintained the books of account for all of the Debtor's entities. Mr. Sullivan testified that the Tax Organizer provided to his firm's clients includes questions concerning the disposition of business property. He also testified that had the firm been told about the transfer of Mr. Thomas's interest in Romar House, the transfer would have been reflected in Form 4797 included with the return. Although Form 4797 was prepared for the 2010 return, it does not reflect a transfer of Romar House. Trustee Ex. 14.

19. Ms. Choo testified that she and Mr. Tan wanted to sell Romar House and buy another property in Orange Beach. She testified that they made a deposit on a newer property down the street, but that they were unable to sell Romar House.

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[1] Debtor's Statement of Financial Affairs lists a gift of $30,000 to the Tans on November 19, 2015, for "house renovations." Trustee's Ex. 13, p. 47. The account records for Romar House, however, show "D[ebit] M[emo] William H. Thomas, Jr." on November 25, 2015." Trustee's Ex. 3, p. 8.

20. In September 2014, the parties obtained an independent appraisal of Romar House in connection with an attempt to refinance the mortgage secured by the property. The appraisal reflected a fair market value for the property as of August 29, 2014, of $425,000. Trustee Ex. 9.

21. Ms. Choo testified that Mr. Thomas was not involved in the attempt to refinance the mortgage loan, but that he did give her advice about it.

22. Mr. Thomas was made aware of the appraisal amount, however, because on or about September 25, 2014, he approached Mr. Sullivan with a question about how a disposition of Romar House should be reflected in his books of account. Mr. Sullivan did not have a specific recollection of the question being asked but was shown an email sent by him to Mr. Thomas and copied to Ms. Choo concerning the proposed disposition.

23. Mr. Sullivan's email reflects that he was asked about treating some $75,513.84 as "compensation expense" to Mr. Tan and Ms. Choo. Mr. Sullivan constructed the possible transaction as follows:

Value of property		$425,000.00
Discount for private sale		-$25,500.00
Net value		$399,500.00
50% interest		$199,750.00
Net book value of property		$29,400.69
Net gain		$170,349.31
	DR	**(CR)**
Escrow	$262.64	
Cash		-$191.27
Building		-$36,000.26
A/D	$6,599.57	
N/R		-$4,625.38
Mortgage	$128,790.17	
Gain on Disposition		-$170,349.31
Compensation Expense	$75,513.84	
	$211,166.22	-$211,166.22

Trustee Ex. 8.

24. Mr. Choo testified that she did not know why she was copied on this email. She said she had no idea what was going on. When the Court asked whether she was concerned or

upset that the email seemed to reflect that Mr. Thomas still owned a 50% interest in Romar House, she said that she was not, and that she did not attempt to contact Mr. Sullivan to ask about it.

25. The transaction contemplated in Mr. Sullivan's email of September 25, 2014, never occurred. Mr. Thomas's 2014 Tax Return reflects no disposition of his interest in Romar House. In fact, it shows that he continued to have an interest in Romar House throughout that year. Trustee's Ex. 15, pp. 69, 155.

26. Mr. Tan and Ms. Choo successfully refinanced the mortgage loan on May 5, 2016, less than a month before the Petition Date.

27. No mention is made of Romar House or the joint venture with the Tans in the Debtor's bankruptcy Schedules and Statements. The Condo Account was still open on the Petition Date, June 2, 2016, but it is not listed among the accounts that the Debtor had an interest in on Schedule A/B. The Statement of Financial Affairs, question 18, reflects no transfer of Romar House or the Debtor's interest in it in the two years preceding the Petition Date. Trustee's Ex. 13.

28. The Debtor's Tax Return for 2015, however, tells a different story. The return for 2015 was not filed until October 17, 2016, several months after the Petition Date. Trustee's Ex. 16, p. 41. Form 4797 shows disposition of Mr. Thomas's interest in Romar House on January 1, 2015, for a sales price of $27,760, accumulated depreciation of $7,909, a basis of $36,000, resulting in loss of $202. Trustee's Ex. 16, p. 129. Although Mr. Sullivan did not prepare the 2015 return, he was able to testify that the 2015 return did not account for the transaction as it was proposed to him in September 2014. He testified that he had made a cursory search of the work papers retained by his firm concerning the preparation of the 2015 return but was unable to find any source documents concerning this disposition reflected in Form 4797. Consistent with Form 4797, no income or expenses for Romar House were recorded on Schedule E of the 2015 return.

Trustee's Ex. 16, p. 68. The records for the Condo Account, however, show that Mr. Thomas deposited a net amount of $13,000 to that account in 2015. Trustee's Ex. 3, p. 8.

CONCLUSIONS OF LAW

Count I – Existence of Joint Venture

In Count I of his Complaint, the Trustee asks that the Court declare that a joint venture was created among the parties when Romar House was purchased in 2007 and that the joint venture continued through the filing of the Complaint. A joint venture is a creature of state law. It is "an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill, and knowledge, but without creating a partnership in the legal or technical sense of the term...." *Via v. Oehlert*, 347 S.W.3d 224, 230 (Tenn. Ct. App. 2010) (quoting *Robertson v. Lyons*, 553 S.W.2d 754, 757 (Tenn.Ct.App.1977) (quoting *Spencer Kellogg & Sons, Inc. v. Lobban*, 204 Tenn. 79, 315 S.W.2d 514, 520 (1958)).

The question of whether a joint venture exists is a question of state law. Bankruptcy courts, being federal courts, apply state law to substantive state law questions. *In re Pearl*, 577 B.R. 513, 525 (Bankr. E.D. Ky. 2017) citing *Compliance Marine, Inc. v. Campbell (In re Merritt Dredging Co.)*, 839 F.2d 203, 205 (4th Cir. 1988). The federal courts look to the laws of the forum state, including choice-of-law rules, to determine what substantive law to apply. *State Farm Mut. Auto. Ins. Co. v. Norcold, Inc.*, 849 F.3d 328, 331 (6th Cir. 2017) The first step in a choice of law analysis is to determine whether an actual conflict exists between the relevant laws of the different jurisdictions. *Boswell v. RFD-TV the Theater, LLC*, 498 S.W.3d 550, 555 (Tenn. Ct. App. 2016); *Shelby Cnty. Health Care Corp. v. Baumgartner*, No. W2008–01771–COA–R3–CV, 2011 WL 303249, at *13 (Tenn. Ct. App. Jan. 26, 2011).

The Trustee suggests that there is no material difference between the laws of Tennessee and those of Alabama on the question of whether a joint venture exists. *Trustee's Trial Brief*, ECF No. 23, p. 7. The Tans dispute the applicability of Alabama law. Answer, ECF No. 7, ¶ 27.

The Trustee is correct that there is no material difference between the laws of Alabama and those of Tennessee concerning the existence of a joint venture. The existence of a joint venture, which is similar but not identical to a partnership, is a question of fact. *Envtl. WasteControl, Inc. v. Browning-Ferris Indus., Inc.*, 657 So.2d 885, 887–88 (Ala. 1995); *Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc.*, 45 S.W.3d 588, 605 (Tenn. Ct. App. 2001). The burden of establishing the existence of a joint venture rests on the party asserting its existence. *Moore v. Merchants & Planters Bank*, 434 So.2d 751, 753 (Ala.1983); *Messer Griesheim Indus.,* 45 S.W.3d at 605, citing *Mullins v. Evans*, 43 Tenn. App. 330, 338, 308 S.W.2d 494, 498(1957). The existence of a joint venture (or partnership) depends upon the intent of the parties expressed in their words, writings, and actions. *Envtl. WasteControl,* 657 So.2d at 887; *Bass v. Bass*, 814 S.W.2d 38, 41 (Tenn.1991). Under Alabama law, at a minimum, in order to constitute a joint venture, there *must* be a community of interest and a right to joint control. *Envtl. WasteControl*, 657 So.2d at 887 (emphasis in original). Under Tennessee law, "[t]he elements required to establish a joint venture are: (1) a common purpose; (2) some manner of agreement among the parties; and (3) the equal right of each 'to control the venture as a whole and any relevant instrumentality.'" *Quality Mfg. Sys., Inc. v. R/X Automation Solutions, Inc.*, 2016 WL 2770634, *3 (M.D. Tenn. 2016), citing *Webster v. Estate of Dorris*, No. M201402230COAR3CV, 2016 WL 502009, at *7 (Tenn. Ct. App. Feb. 4, 2016) (quoting *King v. Flowmaster, Inc.*, No. W2010–00526–COA–R3CV, 2011 WL 4446992, at *2 (Tenn. Ct. App. Sept. 27, 2011)).

The Court finds no material differences in the laws of Alabama and Tennessee concerning the existence of a joint venture. A joint venture is governed by the same rules applicable to a partnership. *Garland v. Seaboard Coastline R. Co.*, 658 S.W.2dd 528, 534 (Tenn. 1983), citing *Garner v. Maxwell*, 50 Tenn. App. 157, 360 S.W.2d 64 (1962). Tennessee law concerning the formation, governance, and winding up of partnerships is codified at 61-1-101 et seq., the Tennessee Revised Uniform Partnership Act ("TRUPA"). Under the TRUPA, "the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership." Tenn. Code Ann. § 61-1-106(a). Although the property owned by the joint venture is in Alabama, Mr. Tan testified that he maintained the books and records of the venture. He is a resident of Tennessee. Moreover, the Condo Account was opened at First Tennessee Bank, presumably because it was convenient to the parties. The Court finds that the chief executive office of the partnership is in Tennessee, and thus that Tennessee law should apply to the question of the existence and continuation of the partnership between Mr. Thomas and the Tans.

Under Tennessee law, a partnership is "an association of two (2) or more persons to carry on as co-owners of a business or other undertaking for profit formed under [Tenn. Code Ann.] § 61-1-202, predecessor law, or comparable law of another jurisdiction." Tenn. Code Ann. § 61-1-101(7). "[T]he association of two or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to form a partnership." Tenn. Code Ann. §61-1-202(a). A partnership was formed, and Mr. Thomas and the Tans became partners in 2007 when they agreed to become co-owners of Romar House and to rent it to third parties.

The Defendants do not contest that a joint venture or partnership with Mr. Thomas was created when they agreed to purchase Romar House together with the intent to share profits and

losses. Although not the subject of a written joint venture agreement, the agreed terms of the partnership venture are clearly established. The parties agreed to purchase the Romar House. They agreed that Mr. Thomas would hold a 50% interest in the partnership and that the Tans would share the other 50%. They agreed that Mr. Thomas would supply the downpayment for the purchase of the Romar House but that the Tans would reimburse him for half of that amount. The Tans assert that they did in fact reimburse Mr. Thomas for half of the downpayment. Immediately after the purchase, the parties established a joint bank account into which both Mr. Thomas and the Tans made deposits together with rental income generated by Romar House. This account was used to pay the expenses of the partnership.

The Tans assert that although a partnership was created in 2007, the partnership was terminated either when Mr. Thomas signed the Warranty Deed conveying his interest in Romar House to the Tans or when the Warranty Deed was recorded. The Trustee counters that the signing or recording of the Warranty Deed was not accompanied by any words or acts indicating an intent by the parties to terminate their relationship.

In order for a partnership, and thus a joint venture, to be terminated, there must first be a dissolution of the joint venture, then a winding up of its affairs. Only when the winding up is complete is the partnership terminated. *See* Tenn. Code Ann. § 61-1-802(a), which provides,

> Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

The Tans point to the transfer of Mr. Thomas's interest in Romar House as termination of their joint venture, but the acts of the parties are inconsistent with that result. Rather than dissolve the partnership and wind up its affairs, Mr. Thomas reassured Ms. Choo that he would continue to make deposits to the Condo Account to cover the mortgage payment expense. Mr. Thomas did in

fact continue to make deposits to the Condo Account. Mr. Thomas continued to include Romar House among his assets in his tax returns for 2010-2014. Ms. Choo provided information to Mr. Sullivan and his firm concerning the preparation of those returns, and apparently never reported to Mr. Thomas's accountants any facts concerning the transfer of Mr. Thomas's interest in Romar House. Mr. Thomas was consulted concerning a possible refinance of the mortgage on Romar House. Mr. Thomas was provided with information from the appraisal of Romar House obtained in connection with an attempt to refinance the mortgage. Mr. Thomas communicated with his accountant concerning the possible disposition of his interest in the real property in September 2014, more than four years *after* the Tans assert that the joint venture was terminated. Ms. Choo testified that she had no knowledge of this conversation but did not protest when she received a copy of Mr. Sullivan's email. Ms. Choo assisted in the preparation of Mr. Thomas's bankruptcy schedules and statements but did not disclose the existence of the Condo Account or Mr. Thomas's interest in Romar House, even though she was aware that he continued to have signatory authority over the account. The Condo Account was not closed until July 19, 2016, more than a month after the bankruptcy petition was filed. The 2014 tax return, the last to be filed by Mr. Thomas before the filing of his bankruptcy petition includes the Romar House among his assets. The 2015 tax return, which was not filed until October 17, 2016, many months after the bankruptcy petition was filed, references the transfer of the Debtor's interest in Romar House on January 1, 2015, a legal holiday.

All facts point to the continued interest and control of the Debtor in the parties' joint venture up to the filing of the bankruptcy petition. The only contrary fact offered by the Tans is the execution and later recording of the Warranty Deed, events separated by several months, and events about which the Tans seemed unaware in their subsequent dealings with third parties such

as Mr. Sullivan. The Tans assert that Mr. Thomas transferred his interest in Romar House to them as some form of retirement benefit "as partial compensation to the Tans for their many years working for Mr. Thomas, during which time Mr. Thomas had underpaid them and provided them no retirement benefits." Answer, ECF No. 7, ¶ 7. While the Court agrees that Mr. Thomas underpaid the Tans during their employment by him and avoided his responsibility to pay the employer's portion of their Social Security and Medicare taxes by treating them as independent contractors, there is no evidence that either Mr. Thomas or the Tans treated the transfer of Mr. Thomas's interest in Romar House as compensation to or a retirement benefit for the Tans.

The elements necessary to establish the formation and continuation of a joint venture between Mr. Thomas and the Tans have been shown: (1) they had a common purpose to benefit from any appreciation and/or income generated by purchasing and holding Romar House; (2) they exhibited their agreement by their acts of purchasing the real property together, providing for its maintenance, providing for payment of the debts and other liabilities associated with it, maintaining a joint bank account for that purpose, and reporting only their proportionate share of income and expenses related to the venture on their tax returns; and (3) they had a relatively equal right to control the venture, although it is clear that Mr. Thomas had the "more equal" right. Although the Tans had the legal right to take action with respect to Romar House after the delivery of the Warranty Deed, in fact their right to control the enterprise was constrained by their employment by Mr. Thomas. Mr. Tan testified that even though Mr. Thomas last made a deposit for the benefit of the venture on April 30, 2015, he felt awkward taking Mr. Thomas off the account because he was the Tans' employer. There is no evidence in the record of the dissolution, winding up, or termination of the joint venture prior to the filing of Mr. Thomas's bankruptcy petition.

The filing of a bankruptcy petition does, however, work a dissociation of a partner under Tennessee law as does the death of an individual partner. Tenn. Code Ann. §§ 61-1-601(6)(A) and (7)(A). The dissociation of a partner does not result in the automatic dissolution and winding up of a partnership, however. Under the TRUPA, in a partnership at will, "[a] partnership is dissolved, and its business must be wound up, only upon … the partnership's having notice from a partner, other than a partner who is dissociated … [by reason of bankruptcy or death], of that partner's express will to withdraw as a partner …." Tenn. Code Ann. § 61-1-801(1). There is no indication that either Mr. Tan or Ms. Choo gave notice of their intent to withdraw from the partnership after the filing of Mr. Thomas's bankruptcy petition.

Upon the filing of the bankruptcy petition, Mr. Thomas's interest in the partnership became property of his bankruptcy estate. See 11 U.S.C. § 541(a)(the bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the commencement of the case). Under the TRUPA: "The only transferable interest of a partner in a partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. This interest is personal property." Tenn. Code Ann. § 61-1-502. This is the interest that became property of the bankruptcy estate on the Petition Date. A trustee in bankruptcy also succeeds to certain other rights given to a partner by law or contract, including the right to seek an accounting and the right to receive the buyout of a dissociated partner's interest. *See Nickless v. Aaronson (In re Katz)*, 341 B.R. 123, 128, 130 (Bankr. D. Mass. 2006), citing *In re Smith*, 185 B.R. 285, 290-91 (Bankr. S.D. Il. 1995) (when a partner is a debtor in bankruptcy, rights given by law or contract are legal or equitable interests that become property of the bankruptcy estate).

The TRUPA provides that a partner who is dissociated from a partnership without resulting in dissolution and winding up of the partnership is entitled to have his or her interest purchased for

a buyout price determined pursuant to law. Tenn. Code Ann. §61-1-701(a). The buyout price is determined pursuant to subsections (b) and(c) as follows:

> (b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under § 61-1-807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
>
> (c) Damages for wrongful dissociation under § 61-1-602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

Tenn. Code Ann. § 61-1-701(b). Under the statute, determination of the buyout price of a dissociated partner's interest is made after a written demand from the dissociated partner and "[i]f no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by [any damages and accrued interest for wrongful dissociation]." Tenn. Code. Ann. § 61-1-701(e). While a partner may dissociate at any time, some dissociations are deemed wrongful under the TRUPA. A dissociation is wrongful, for example, if it is in breach of a provision of the partnership agreement or, in the case of a partnership for a definite term or particular purpose, a partner dissociates by reason of bankruptcy before the expiration of the term or completion of the undertaking. Tenn. Code Ann. § 61-1-602(b). The parties have not addressed these provisions of Tennessee law.

The Trustee is correct that a joint venture or partnership was formed by Mr. Thomas and the Tans, and he is also correct that the partnership was not terminated when Mr. Thomas's bankruptcy petition was filed. As the result of the bankruptcy filing, which resulted in the

dissociation of Mr. Thomas from the partnership under Tennessee law, the bankruptcy estate is entitled to the value of Mr. Thomas's partnership interest on the date of filing, together with interest, offset by any damages caused by his wrongful dissociation from the partnership, if any. The Court is unable to calculate that amount based upon the record provided by the parties.

Count II – Constructive Trust

The Trustee asserts that to the extent that Mr. Thomas made advances for the promotion of the joint venture in excess of the other venturers, the bankruptcy estate is entitled to a lien on the property of the joint venture to secure recovery of these excess advances. The Trustee asserts that a constructive trust should be impressed upon Romar House (i) in the amount of 50% of the value of the condo plus (ii) the amount that the Debtor's advances (including the down payment, the condo transfer, and all other advances) exceed the Tan's advances. Complaint, ECF No. 1, ¶¶ 33-34.

The Court has found that the partnership between Mr. Thomas and the Tans was not terminated prior to the petition date, and that Mr. Thomas's partnership interest became property of the bankruptcy estate. On the petition date, however, the Debtor did not hold a lien upon the real property held by the partnership.

The imposition of a constructive trust is a remedy that may be imposed when property is transferred in fraud of third persons, such as creditors of the transferor. *Gurley v. Mills (In re Gurley)*, 124 B.R. 124, 134 (Bankr. W.D. Tenn. 1998) citing 5 AUSTIN WAKEMAN SCOTT & WILLIAM FRANKLIN FRATCHER, THE LAW OF TRUSTS § 470 (4th ed. 1989). Scott notes that "[w]here a person holding property transfers it to another in violation of his duty to a third person, the third person can reach the property in the hands of the transferee, unless the transferee is a bona fide purchaser." *Id.* A bona fide purchaser is "one who buys for valuable consideration without

knowledge or notice of facts material to the title." *Henderson v. Lawrence*, 212 Tenn. 247, 369 S.W.2d 553, 556 (Tenn. 1963). Specifically, a bona fide purchaser is "[o]ne who buys something for value without notice of another's claim to the item or of any defects in the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims." *Rogers v. The First Nat. Bank,* No. M200402414COAR3CV, 2006 WL 344759, at *12 (Tenn. Ct. App. Feb. 14, 2006), citing BLACK'S LAW DICTIONARY, 1249 (7th ed.1999).

The Tans are not bona fide purchasers of Mr. Thomas's interest in Romar House. They gave no value for the purported transfer of his interest to them, and Mr. Tan, at least, who acted as Mr. Thomas's paralegal, had knowledge of the litigation pending against Mr. Thomas at the time of the transfer. Notwithstanding the transfer of legal title, the parties continued to treat Romar House as partnership property. The Court is unable to determine the value of Mr. Thomas's partnership interest upon the filing of his bankruptcy petition. Upon an appropriate accounting, it may be appropriate to impose a constructive trust upon the most valuable asset of the partnership, Romar House, to ensure that any amount owed to the estate is paid by the partnership. It would be premature to determine that now, however, because the Court does not know the amount that is owed, if any, nor does it have information about the current ability of the partnership to pay it.

Count III – Money Judgment for Debtor's Contribution to Joint Venture

The Trustee asserts that he is entitled to a money judgment against the Tans "(i) in the amount of 50% of the value of the Condo plus (ii) the amount [of] the Debtor's advances (the Down Payment, the Condo Transfer, the Known Advances, and the Unknown Advances) that exceeds the Defendants' advances." Complaint, ECF No. 1, ¶ 37. In fact, the bankruptcy estate is entitled to the buyout price of Mr. Thomas's partnership interest upon the filing of his bankruptcy petition as determined pursuant to Tennessee Code Annotated section 61-1-701. The Court is

unable to determine that amount based upon the records provided at trial and any claims that the Tans may make concerning additional amounts owed to the partnership by Mr. Thomas on the petition date. Part 7 of the TRUPA provides clear guidance on the process for determining the buyout price. It is premature to enter judgment in favor of the estate until that process is completed.

Count IV – Unjust Enrichment

The Complaint seeks judgment against the Tans on the basis of unjust enrichment. Unjust enrichment is an equitable remedy which may be pled in the alternative when there is concern that an express contract is invalid or unenforceable. Because the Court has found that the bankruptcy estate includes the partnership interest of Mr. Thomas in the parties' joint venture, the Trustee has an adequate remedy at law. *See, e.g., Joseph Sternberg, Inc. v. Walber 36th St. Assocs.*, 187 A.D.2d 225, 228, 594 N.Y.S.2d 144 (N.Y. App. Div. 1st Dep't 1993), cited at *Baumgardner v. Bimbo Food Bakeries Distribution, Inc.*, 697 F.Supp.2d 801, 816 (N.D. Ohio 2010). Here, however, the Tans have admitted the existence of their agreement with Mr. Thomas to create a joint venture, and the Court has found that the bankruptcy estate succeeded to the interest of Mr. Thomas in that venture. The Trustee's interests are fully protected by applicable partnership law. The Court need not consider the alternative, equitable remedy.

Count V – Judgment for Money Loaned

The Complaint alleges that unexplained transfers made by the Debtor to the Tans are presumed to be loans rather than gifts, and that he is entitled to judgment against the Tans in the amount of the various advances made by Mr. Thomas to the Tans. The Court has found that any advances made by Mr. Thomas were made pursuant to the joint venture undertaken by the parties, and that the Trustee's interests are fully protected by applicable partnership law. The Court need not consider the alternative theory of relief based upon moneys loaned.

SUMMARY OF FINDINGS AND CONCLUSIONS

Based upon the foregoing, the Court finds and concludes as follows:

A. Mr. Thomas and the Tans formed a joint venture, which is treated as a partnership under Tennessee law, in 2007 when they agreed to purchase Romar House together for profit.

B. The chief executive office of the parties' partnership is in Tennessee, and Tennessee law governs the relations among them, and between them and the partnership.

C. Mr. Thomas's transfer of his legal interest in Romar House to the Tans did not terminate the partnership.

D. The filing of a bankruptcy petition by Mr. Thomas on June 2, 2016, was an act of dissociation from the partnership under Tennessee law.

E. The dissociation of Mr. Thomas from the partnership did not terminate the partnership.

F. The Tans did not initiate the dissolution, winding up, and termination of the partnership prior to the filing of the bankruptcy petition, but they have the right to do so as the result of the filing of the petition.

G. The Trustee succeeded to Mr. Thomas's rights as a dissociated partner, including the right to obtain the purchase of Mr. Thomas's share at a buyout price determined by Tennessee law.

H. The Trustee is not entitled to a constructive trust upon Romar House at this time.

I. The Trustee is entitled to a money judgment in an amount to be determined pursuant to Tennessee Code Annotated section 61-1-701.

J. The Trustee is not entitled to any additional award based upon unjust enrichment or moneys loaned.

K. The Court will treat the Conclusions of Law contained in this Memorandum Opinion as the demand for purchase of the estate's interest in the partnership contemplated in Tennessee Code Annotated section 61-1-701(e). This will trigger the 120-day period for the parties to reach agreement concerning the purchase of the estate's interest in the partnership provided in that section. Should the parties fail to reach agreement, the Court will conduct an additional hearing and receive proof concerning the calculation of the buyout price.

The Court will enter a separate, interim order consistent with this memorandum opinion.

cc: Chapter 11 Trustee/Plaintiff
Attorney for Plaintiff
Defendants
Attorney for Defendants
United States Trustee