**Dated: March 24, 2025**
**The following is ORDERED:**

**M. Ruthie Hagan**
**UNITED STATES BANKRUPTCY JUDGE**

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

In re
**Olga R. Ingram**
Debtor

Case No. 23-24161
Chapter 7

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**OPINION AND ORDER GRANTING DEBTOR'S MOTION TO COMPEL TRUSTEE TO ABANDON 3431 FOOTBRIDGE COVE, LAKELAND, TN 38002**

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This matter is before the Court on the Motion of the Debtor to compel the Chapter 7 trustee to abandon the bankruptcy estate's interest in the Debtor's residence located at 3431 Footbridge Cove, Lakeland, Tennessee [DE 74] and the Chapter 7 trustee's Response in opposition to the Motion [DE 89]. Both parties filed supplemental memoranda in support of their respective positions. [DE 105, 112, and 113] The Court held an evidentiary hearing on December 9, 2024,

and heard the post-trial arguments of Counsel on January 16, 2025 and again on February 5, 2025, at which time the Court took this matter under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII ("Bankruptcy Appeals") of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 7052. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that the Debtor's Motion to compel the Chapter 7 trustee to abandon the estate's interest in the Debtor's residence is hereby granted.

## DISCUSSION OF BACKGROUND FACTS AND PROCEDUAL HISTORY OF THE CASE

This Chapter 7 case was commenced on August 22, 2023, and proceeded along the usual Chapter 7 course with the necessary filings and the appointment of a case trustee, until February 28, 2024, when the Debtor moved to voluntarily dismiss the case [DE 36]. The trustee opposed the Motion [DE 41], and the Debtor soon amended her Motion seeking either a dismissal or a conversion to Chapter 13. [DE 45][1] The trustee opposes a dismissal or conversion based on his assertion that there is unexempt equity in the Debtor's residence for the benefit of unsecured creditors, and alleges that the "sole reason for the requested dismissal is to hinder the Trustee's

[1] The Debtor's Amended Motion [DE 45] and the trustee's Response in opposition [DE 51] are still pending before this Court, along with several other motions and objections somewhat dependent on the Court's determination of the issues at bar.

ability to administer this estate." [DE 51 at ¶13] The trustee accordingly filed an Application to employ a realtor [DE 46] to market and sell the Debtor's residence. The Debtor opposed the trustee's Motion [DE 54], contending that the trustee's Application is premature, and that "[t]he estate has no cash assets on hand and there exists a substantial dispute as to the propriety of the Trustee's efforts to sell the Debtor's home." The Debtor then filed a Motion pursuant to 11 U.S.C. § 554(b) to compel the Chapter 7 trustee to abandon the estate's interest in the residence located at 3431 Footbridge Cove, Lakeland, Tennessee [DE 74] alleging that even though the Debtor is the sole title owner of the residence [Tr. Exh. 1], the Debtor's husband of 10 years is entitled under Tennessee law to claim a homestead exemption in the residence, thereby reducing the amount potentially available for distribution to unsecured creditors, and that pursuant to 28 U.S.C. § 1334 (c)(1) the Court should exercise permissive abstention under the facts of this case. [DE 105]

The trustee objected to the Debtor's Motion [DE 89], contending that Tennessee domestic relations law is irrelevant to this bankruptcy case, and that there is sufficient non-exempt equity in the Debtor's residence to make a meaningful distribution to unsecured creditors. [DE 113] The trustee also disputes the Court's obligation to consider permissive abstention in this case as urged by the Debtor. *Id.*

The Court held an evidentiary hearing on December 9, 2024, and heard testimony from the Debtor, summarized as follows. The Debtor testified that she purchased her home in July 2014 for approximately $180,000 - $185,000, paying $20,000 as a down payment, and has resided there continuously since that time. She got married less than a year after the purchase, in February 2015, and her husband — who is not a debtor in this case — has resided in the home with Debtor and her children since that time. When asked about the fact that she listed her home on Schedule A as jointly owned with rights of survivorship, Debtor stated that it was her belief that the property

became jointly owned upon her marriage and reported this on her Chapter 7 Petition. [DE 1] On Schedule A, the Debtor estimated the value of her home at $250,000, but evidence was introduced during the hearing that the property is appraised by the Shelby County Assessor of Property at $227,600. [2] [Tr. Exh. 3] Debtor's Schedule D indicates an outstanding mortgage debt of $137,569. The trustee presented no contrary evidence as to the value of the property, instead relying on the value listed in the Debtor's Schedule A/B. [DE 113].

The Debtor went on to state that she and her husband split the monthly mortgage payments with each spouse contributing 50%, and they both contribute to other household expenses such as groceries. Her husband performs all of the necessary maintenance on the home and property, and performs necessary repairs. The property is in need of repairs at this time, including replacement of 30-year old siding. Further, the chimney is in need of replacement or repair, the chimney is leaking, approximately half of a fence is destroyed from storm damage and needs to be replaced, and there is a fence that encroaches on an adjoining neighbor's property that will need to be moved if the property is sold.

Debtor also testified as to details regarding an asset listed on her Amended Schedule A/B [DE 65] consisting of a potential claim against the Slate Legal Group — a debt relief agency employed by the Debtor during the three years prior to bankruptcy — valued at $21,000. [See Tr. Exh. 4]

The Debtor stated that she listed all debts as she knows them on her schedules, she has not lied to the Court or to her attorney, and any mistakes that she may have made on her original

[2] Debtor testified that she estimated the value of the home by reference to the Assessor's website and increased the $227,600 appraisal amount to account for some upgrades that she and her husband made to the home.

schedules were innocent mistakes.[3] If Debtor loses her house, she will have no place to live with her husband, two children and her elderly dog.

On cross-examination, the Chapter 7 trustee primarily focused on the Debtor's failure to disclose some information on her original schedules, but Debtor's attorney pointed out that the information had been in fact disclosed on Debtor's Amended Schedules and Statements, most of which were filed just over two months after this case was commenced. [DE 23, 24, 25 and 65] The trustee asked Debtor if she will be able to fund a Chapter 13 plan in the event the case is converted, and she replied that her husband will take a second job to assist her with funding a plan. Although the trustee intimated his belief that Debtor is attempting to play fast and loose with the Court, the Court finds the Debtor's testimony to be credible and candid.

After the evidentiary hearing and an opportunity for post-trial briefing, the Court held hearings on January 16, 2025 and February 5, 2025 to hear the arguments of counsel. Debtor's counsel urges the Court to take into account the equitable interest in the property afforded to Debtor's spouse under Tennessee law when considering the amount of unexempt equity available to be disbursed to Debtor's unsecured creditors upon sale of the property, and also implores the Court to exercise permissive abstention pursuant to 28 U.S.C. § 1334 (c)(1) if the Court determines that a division of the property between the bankruptcy estate and the interests of Debtor's non-filing spouse is necessary.

The trustee, citing to *In re Hohenberg,* 174 B.R. 487, 493 (Bankr. W.D. Tenn. 1994), argues that Tennessee law has no relevance to this case until a state court has made a determination as to whether the property is "marital property," and that the Debtor has failed to show that her non-filing spouse has any "real legal interest" in the property. [DE 113 at ¶¶12-13] The trustee

[3] The Court acknowledges that English is a second language for the Debtor.

opposes the Court's exercise of permissive abstention, and focuses his argument on the Debtor's schedules which the trustee contends indicate unexempt equity of $77,431 and, less a six percent realtor commission of $15,000, "leav[es] over $50,000 to be disbursed to creditors." [DE 113 at ¶14] It is against this factual and procedural history that the Court determines the issues raised by the parties.

## LAW AND ANALYSIS

The primary issue to be determined is whether a trustee's sale of the Debtor's residence would realize sufficient value and benefit for Debtor's unsecured creditors to justify the trustee's liquidation of this asset. The Court first turns to Bankruptcy Code § 554(b) regarding the trustee's abandonment of property of the bankruptcy estate,[4] which instructs that "[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). In order to judge the extent of "value and benefit" to the bankruptcy estate, the Court must examine any interest in the property held by Debtor's non-filing spouse and any benefit to be received by Debtor's unsecured creditors resulting from a trustee's sale.

### Property Interest of the Non-Filing Spouse

It is well established that when "only one spouse is a debtor in bankruptcy, the bankruptcy court will look to applicable state law to determine if there is an interest of another party, including a spouse or former spouse, in the debtor's property." HON. WILLIAM HOUSTON BROWN, BANKRUPTCY AND DOMESTIC RELATIONS MANUAL § 10.8 (2007 ed.), citing *Barnhill v. Johnson,* 503 U.S. 393 (1992) ("In the absence of any controlling federal law, 'property' and 'interest[s] in

[4] There is no dispute that any nonexempt equity in the residence is a part of the bankruptcy estate. *See* 11 U.S.C § 541.

property' are creatures of state law."); *see also Butner v. United States,* 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law.").

Tennessee is a "dual property" state which recognizes both separate property and marital property. *See* TENN. CODE ANN. § 36-4-121; *Snodgrass v. Snodgrass,* 295 S.W.3d 240, 246 (Tenn. 2009). Debtor's counsel directs the Court to TENN. CODE ANN. § 36-4-121(b)(2)(B)(i), which includes in the definition of "marital property" any increase in the value during the marriage of property deemed to be separate property. Application of this statute would potentially bring within the definition of marital property the equity accrued in the Debtor's residence over the last ten years of her marriage. However, TENN. CODE ANN. § 36-4-121(b)(2)(E) provides that "[p]roperty shall be considered marital property as defined by this subsection (b) *for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose*. . . ." (emphasis added). The Legislature goes on to specify that a distribution of marital property shall not be considered as income for child support or alimony determinations, except to the extent the marital asset will create addition income. *Id.* Pursuant to the dictates of (b)(2)(E), application of the Tennessee statute is, by its terms, inapplicable to the matter before this Court.[5]

It is well settled, however, that separate property may effectively be converted to marital property under the Tennessee common law doctrine of transmutation. *Snodgrass*, 295 S.W.3d at 247, citing *Langschmidt v. Langschmidt,* 81 S.W.3d 741, 747 (Tenn. 2002). "The classification of property does not depend on the state of its record title but on the conduct of the parties." *Robeson*

[5] The trustee cited in his argument to *In re Hohenberg*, 174 B.R. 487, 493 (Bankr. W.D. Tenn. 1994), which provides, accordingly, that "the classification of property as 'marital property' *within the meaning of the Tennessee divorce statute* serves no purpose until after parties have filed a state court action for divorce and the state court exercises its jurisdiction to classify the property of the parties in connection with the granting of a divorce. This is clear from the Tennessee statute itself." (emphasis added)

*v. Robeson,* No. M2023-01449-COA-R3-CV, 2025 WL 368233 (Tenn. Ct. App. Feb. 3, 2025) (quoting *Altman v. Altman,* 181 S.W.3d 676, 680-81 (Tenn. Ct. App. 2005)).

The Tennessee Supreme Court explained:

> [Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property. . . . The rationale underlying [the doctrine] is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed to be marital. The presumption can be rebutted by evidence of circumstance or communications clearly indicating an intent that the property remain separate.

*Snodgrass*, 295 S.W.3d at 256, quoting *Langschmidt*, 81 S.W.3d at 747 and 2 Homer H. Clark, *The Law of Domestic Relations in the United States* § 16.2 at 185 (2d ed. 1987).

Factors to be considered to determine whether real property has been transmuted from separate property to marital property include: (1) use as the marital residence; (2) ongoing maintenance and management of the property by both parties; (3) titling the property jointly; and (4) using the credit of the non-owner spouse to improve the property. *Hill v. Hill*, 682 S.W.3d 184, 198 (Tenn. Ct. App. 2023) (citations omitted). Courts have also classified separate property as marital property when the parties agreed that it should be owned jointly even though the title was never changed or when the title-owner spouse conceded that he or she intended that it would be converted to martial property. *Hayes v. Hayes,* No. W2010-020150COA-R3-CV, 2012 WL 4936282 at *12 (Tenn. Ct,. App. Oct. 18, 2012) (quoting *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407 at *5 (Tenn. Ct. App. Sept. 1, 2006) (citing cases).

It is clear to the Court that, based on the facts of this case, the Debtor's non-filing spouse has an ownership interest in the Debtor's family home pursuant to Tennessee law. The Debtor and her spouse have utilized the property as their marital residence and the family home since the date

of the marriage in February 2015. Debtor testified that her husband pays 50% of the ongoing monthly mortgage payments and performs all maintenance and repairs to the property, thereby substantially contributing to its preservation and appreciation in value. Although the title to the property has not been placed into joint ownership, the Debtor testified that she was under the impression that upon her marriage the property automatically became jointly owned and, as the trustee has pointed out numerous times, Debtor accordingly indicated "joint ownership with rights of survivorship" on Schedule A/B of her bankruptcy petition. [DE 1 and as amended at DE 65]. Debtor obviously expected that upon her marriage her husband would share in expenses, maintenance and benefits of joint ownership of their marital home and in no way indicated an intent that the property remain separate. Based on the facts presented, the Court finds that for purposes of the issues to be determined in this case, the Debtor's residence is deemed to be marital property under Tennessee common law of transmutation. As such, Debtor's spouse has an interest in the home's equity that cannot be overlooked by the trustee.

**Abandonment of the Property Pursuant to 11 U.S.C. § 554(b)**

Bankruptcy Code § 554(b) governs the Debtor's Motion at hand, and provides that "[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). In order to determine the value and benefit to the bankruptcy estate, the Court considers what unsecured creditors will realize upon the trustee's liquidation of the marital property.

Conditions for the trustee's sale of the property are set forth in 11 U.S.C. § 363(h), which provides:

> [T]he trustee may sell both the estate's interest . . . and the interest of any co-owner in property in which the debtor had, at the time of

> the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if —
>
> (1) partition in kind of such property among the estate and such co-owners is impracticable;
>
> (2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
>
> (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
>
> (4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.

11 U.S.C. § 363(h). However, "[t]he most common barrier to allowing a sale of entireties property is the absence of joint debt." *Lewis v. Harlan (In re Harlin)*, 325 B.R. 184, 189 (Bankr. E.D. Mich. 2005).[6] "[T]he existence of joint creditors is a prerequisite to the exercise of the trustee's right." *Id.*, citing *Grant v. Himmelstein (In re Himmelstein)*, 203 B.R. 1009, 1015-16 (Bankr. M.D. Fla. 1996) ("only joint creditors can seek distribution under 11 U.S.C. § 363(h)"); *Price v. Harris,* 155 B.R. 948, 949-50 (Bankr. E.D. Va. 1993); *In re Wickham,* 127 B.R. 9, 11 (Bankr. E.D. Va. 1990); *see also Teems v. Thomas (In re Thomas),* No. 17-25100-L, Adv. Proc. No. 18-00015, 2018 WL 10731606 (Bankr. W.D. Tenn. Sept. 27, 2018) (finding no impediment under Tennessee law to prevent the trustee from selling entireties property *for the benefit of joint creditors*) (emphasis added).

The Court has reviewed the Debtor's Schedules and the Proofs of Claims filed in this case, and it appears that, of the 14 claims filed, only two claims evidence joint debts — Claim number 1 filed as a secured claim by Santander Consumer U.S.A., Inc. and Claim number 13 filed by the Internal Revenue Service declaring an unsecured priority debt of $4,834.11 plus additional costs

[6] Although the Court makes no determination as to the nature of the ownership interest of Debtor's non-filing spouse, the Court has established that, by transmutation, the residence is marital property and bankruptcy caselaw pertaining to entireties property is analogous and applicable to this case.

of $118.62. Based on these facts and in light of the caselaw cited above, the Court finds that any benefit for Debtor's joint unsecured I.R.S. creditor gained from the sale of the Debtor's residence is *de minimis* when weighed against the detriment of such a sale to Debtor's non-filing, co-owner spouse. The trustee is essentially planning to evict the Debtor and her family upon tender of the Debtor's $35,000 homestead exemption — and any amounts due to Debtor's non-filing spouse — in order to pay the joint $4,952.73 unsecured debt to the I.R.S. *See Jahn v. Burke (In re Burke)*, 863 F.3d 521 (6th Cir. 2017). "[T]he bankruptcy discharge neither relieves the debtor of personal liability for these debts nor affects tax liens securing the debts, which continue to attach to property interests acquired by the debtor pursuant to I.R.C. § 6321.7." *Leavell v. United States (In re Leavell)*, 124 B.R. 535, 540 (Bankr. S.D. Ill. 1991). *See* 26 U.S.C. § 6321. In a nutshell, if no distribution is made to the I.R.S., the Debtor's joint tax debt survives the bankruptcy and Debtor and her non-filing spouse remain liable for the debt after discharge. The Court therefore struggles to recognize how any distribution to the I.R.S. would benefit the estate.

Furthermore, the trustee has presented no evidence that Santander's secured lien is not, in fact, secured, or that it can be subordinated to the interest of the trustee.[7] Nor has he established that some other form of value or benefit would accrue to the estate if the property is liquidated. *In re Hodges,* No. 06-33078, 2013 WL 1755483 at *2 (Bankr. E.D. Tenn. April 24, 2013). In fact, the trustee objected to Claim number 1 asserting that "Santander's claim should not receive any funds [] because it is fully secured." [DE 31 at ¶3] The Court sustained the trustee's objection on February 21, 2024.[8] In other words, it is anticipated that Santander will not participate in any

[7] Claim number 1 filed by Santander Consumer U.S.A., Inc. was filed as a secured claim in the amount of $7,268.58. Supporting documentation lists Debtor and her spouse as co-debtors on this debt.

[8] To date, the trustee has not uploaded an order sustaining the trustee's objection to Claim number 1.

estate distribution. This Court finds the Debtor's residence is therefore "of inconsequential value and benefit" to the estate as contemplated in Bankruptcy Code § 554(b).

As Debtor's counsel has pointed out, Debtor listed as an asset on her Amended Schedule A/B [DE 65] a potential prepetition claim valued at $21,000 against the Slate Legal Group debt relief agency related to her employment of the agency for execution of her pre-bankruptcy debt repayment plan. Based on Debtor's testimony about the claim, it appears to be an asset owned solely by the Debtor. Should the trustee find it advisable, it is within the trustee's power to pursue that asset of the estate for the benefit of Debtor's unsecured creditors. 11 U.S.C. § 323 and FED. R. BANKR. P. 6009.

## CONCLUSION

When considering whether to order an abandonment of an estate asset, "the court should focus on 'whether there is a reason that the estate's interest in the property should be preserved or, instead, whether the property is so worthless or burdensome to the estate that it should be removed therefrom.'" *In re Hodges,* 2013 WL 1755483 at *2*,* quoting *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 246 (6th Cir. 1987). As set forth above, the facts of this case tip the scales in favor of abandonment. Because a condition for a trustee's sale of the property is not met, *see* 11 U.S.C. § 363(h)(3), the Court finds no reason that the estate's interest in the property should be preserved. For the reasons set forth herein, the Debtor's Motion to compel the Chapter 7 trustee to abandon the estate's interest in the Debtor's residence is hereby granted.[9]

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

[9] The Court finds no need to address the Debtor's request for permissive abstention pursuant to 28 U.S.C. § 1334(c)(1), as the Court is not determining a division of the marital property.

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