Entered: April 27th, 2021
Signed: April 27th, 2021

MARIA ELLENA CHAVEZ-RUARK
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt

In re: CARLOS E. MONCADA, Debtor.	Case Number: 19-21444-MCR (Chapter 7)
MICHAEL G. WOLFF, Plaintiff, v. WILLIAM MONCADA, Defendant.	Adversary Number: 20-00075-MCR

MEMORANDUM OPINION REGARDING ORDER GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In this adversary proceeding, Michael G. Wolff, the Chapter 7 trustee for the bankruptcy estate of Carlos Moncada (the "Plaintiff" or "Trustee"), seeks to avoid an alleged fraudulent transfer of real property made by Carlos Moncada (the "Debtor") to his brother William Moncada (the "Defendant"), recover the Debtor's interest in the real property and sell the real property free and clear of the Defendant's interests for the benefit of the bankruptcy

estate. The Defendant moved for summary judgment on all counts of the complaint, claiming that the Debtor held bare legal title to the real property in a resulting trust for the benefit of the Defendant. The Plaintiff opposed entry of summary judgment, arguing that the doctrine of unclean hands prevents the Defendant from claiming a resulting trust existed.

For the reasons stated below, the Court finds that there was no transfer of an interest of the Debtor subject to avoidance by the Plaintiff and that the doctrine of unclean hands does not prevent the Defendant from asserting a resulting trust existed. There are no material facts in dispute, and the Defendant is entitled to judgment as a matter of law. Therefore, the Court will grant the Defendant's motion for summary judgment.

I. UNDISPUTED FACTS

The Plaintiff and the Defendant agree on the following undisputed facts.

In a deed dated September 8, 2017, the Debtor and the Defendant acquired legal title, as joint tenants, to the property known as 510 Boysenberry Lane, Frederick, Maryland (the "Property"). Compl. [Dkt. No. 1] at ¶ 9; Resp. to Compl. [Dkt. No. 6] at ¶ 1. The Defendant found the Property, signed the contract to purchase the Property and used his own funds to purchase the Property; the Debtor was not involved in finding or purchasing the Property. Aff. of Carlos Moncada [Dkt. No. 20-3] (cited herein as "Def. Aff.") at ¶¶ 3-4; Aff. of William Moncada [Dkt. No. 20-4] (cited herein as "Debtor Aff.") at ¶¶ 3-4.

At the time of the acquisition of the Property, the Defendant was having marital issues and sought to title the Property in a way that would conceal at least half of the asset's value from his wife and any potential marital property claim. Def. Aff. at ¶ 5; Debtor Aff. at ¶ 5. The Defendant made the decision to put the Property in the names of his brother, the Debtor, and

the Defendant, jointly. Def. Aff. at ¶ 5; Debtor Aff. at ¶ 5. The Debtor was, in his words, "always opposed" to his name being on the deed to the Property. Debtor Aff. at ¶ 7.

In 2018, the Debtor realized that his name appeared on the county's annual property tax bill, became concerned about his potential liability for the Property's taxes and wanted to have his name removed from the title. Def. Aff. at ¶ 8; Debtor Aff. at ¶ 9. As a result, through a deed dated December 6, 2018, the Debtor transferred his interest in the Property to the Defendant for no monetary consideration. Def. Aff. at ¶¶ 8-9; Debtor Aff. at ¶¶ 9-10. At the time of the 2018 transfer, the Debtor was insolvent. Compl. [Dkt. No. 1] at ¶ 25; Mot. for Summ. J. [Dkt. No. 20] at ¶¶ 5-6.

II. PROCEDURAL BACKGROUND

On August 27, 2019 the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.[1] The Plaintiff was appointed to serve as the Chapter 7 Trustee for the Debtor's bankruptcy estate and continues to serve in that capacity.

On February 28, 2020, the Plaintiff commenced this adversary proceeding by filing a Complaint for Avoidance of Transfer, Recovery of Real Property, and for Authority to Sell Property Free and Clear of Interest of Non-Debtor Co-Owner [Dkt. No. 1] (the "Complaint") against the Defendant. The Complaint sets forth three causes of action. In Count I, the Plaintiff seeks to avoid an alleged fraudulent conveyance of the Debtor's interest in the Property to the Defendant under Section 548 of the Bankruptcy Code. In Count II, the Plaintiff seeks recovery of the Debtor's interest in the Property under Section 550 of the Bankruptcy Code. In Count III, the Plaintiff seeks authorization to sell the recovered interest in the Property free and clear of the Defendant's interests under Section 363(h), (i) and (j) of the Bankruptcy Code.

[1] All references to the "Bankruptcy Code" are to Title 11 of the United States Code, and all references to a "Section" are to a section of the Bankruptcy Code unless otherwise stated.

On March 30, 2020, the Defendant filed his Response to Complaint for Avoidance of Transfer, Recovery of Real Property and for Authority to Sell Property Free and Clear of Interest of Non-Debtor Co-Owner [Dkt. No. 6].

On April 29, 2020, while this adversary proceeding was pending, the Defendant executed a Residential Contract of Sale to sell the Property for $180,000. Consent Prelim. Inj. Order [Dkt. No. 19] at p. 2. On May 15, 2020, after the Defendant notified the Plaintiff of the contract, the Plaintiff filed an Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction [Dkt. No. 16], seeking to enjoin the sale of the Property. With the consent of both parties, on May 18, 2020, the Court entered a Consent Preliminary Injunction Order [Dkt. No. 19], which allowed the sale to go forward but placed a lien on the Defendant's business property located at Unit 3A, 101 Chestnut Street, Gaithersburg, Maryland pending the resolution of this adversary proceeding. Consent Prelim. Inj. Order [Dkt. No. 19] at pp. 3-4.

On November 19, 2020, the Defendant filed a Motion for Summary Judgment [Dkt. No. 20] (the "Motion for Summary Judgment"). On December 3, 2020, the Plaintiff filed its Opposition to Motion for Summary Judgment [Dkt. No. 22] (the "Opposition"). On December 17, 2020, Defendant filed its Reply Brief [Dkt. No. 24] (the "Reply").

On March 10, 2021, the Court held a hearing on the Motion for Summary Judgment, the Opposition and the Reply. For the reasons stated herein, the Court will grant the Motion for Summary Judgment and enter judgment in favor of the Defendant on all three counts.

III. STANDARD FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides, in pertinent part, "[t]he court shall grant summary judgment if the movant shows that there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. Proc. 56(a).

The Court must consider all evidence in a light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). The movant must establish that there are no material facts at issue and that he is entitled to judgment as a matter of law. *McLean, Koehler, Sparks & Hammond v. Hildebrand (In re Hildebrand)*, 230 B.R. 72, 74 (Bankr. D. Md. 1999). A material fact is one that might affect the outcome of the suit under the governing law. *Spriggs v. Diamond Auto Glass*, 242 F.3d 179 (4th Cir. 2001) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A disputed fact presents a genuine issue if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* (quoting *Anderson,* 477 U.S. at 248).

The party seeking summary judgment has the initial burden of demonstrating the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once the moving party has met its burden, the nonmoving party must produce sufficient evidence to show that there is a genuine issue for trial. *Matsushita*, 475 U.S. at 587.

IV. ANALYSIS

Before the Court are two issues. First, was there a transfer of the Debtor's interest in property that can be avoided as a fraudulent transfer under Section 548? Second, does the Defendant have unclean hands which preclude him from obtaining relief in this Court? The Court answers both questions in the negative. Because there are no material facts in dispute and the Defendant is entitled to judgment as a matter of law, summary judgment in favor of the Defendant is appropriate.

A. Avoidance and Recovery of Alleged Fraudulent Conveyance

The threshold issue for the Court is whether the Debtor transferred an interest in property that is subject to avoidance. Section 548(a)(1)(B) provides that a trustee may avoid a transfer under Section 548 if (i) there was a transfer, (ii) of an interest of the debtor in property, (iii) that was made within two years before the date of the bankruptcy filing, (iv) if the debtor received less than a reasonably equivalent value in exchange for the transfer, and (v) the debtor was insolvent on the date of the transfer. 11 U.S.C. § 548(a)(1)(B). The parties agree on four of these five elements. They agree there was a transfer in 2018, the transfer was made within two years of the bankruptcy filing, the Debtor received less than a reasonably equivalent value in exchange for the transfer and the Debtor was insolvent on the date of the transfer. They disagree, however, regarding whether the transfer was "of an interest of the debtor in property." As aptly pointed out in the Trustee's Opposition, the question is whether the Debtor held the Property in trust for his brother, the Defendant. If so, the Property was not "an interest of the debtor in property" that can be avoided.

Section 541(a) provides that "[t]he commencement of a case … creates an estate. Such 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). The estate does not include "property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest." 11 U.S.C. § 541(d). A trustee cannot take greater rights than the debtor had. *Mid–Atlantic Supply, Inc. of Va. v. Three Rivers Aluminum Co.,* 790 F.2d 1121, 1124-26 (4th Cir. 1986); *Wolff v. Barahona (In re Barahona)*, No. DKC 2005–2122, 2005 WL 5759546 at *3 (D. Md., Nov. 23, 2005). Thus, the nature of the Defendant's interest in the Property determines whether Section 548 applies.

State law determines the nature of a debtor's interest in property for purposes of the Section 541(d) exclusion. *Old Republic National Title Insurance Company v. Tyler (In re Dameron),* 155 F.3d 718, 722 (4th Cir. 1998); *Mid–Atlantic Supply, Inc.,* 790 F.2d at 1125; *Barahona*, 2005 WL 5759546, at *4. Maryland law recognizes that a "resulting trust" may arise based on the intention of the parties. *Barahona*, 2005 WL 5759546, at *4 (citing *Lacey v. Van Royen,* 267 A.2d 91, 94 (Md. 1970); *Levin v. Sec. Fin. Ins. Corp.,* 230 A.2d 93, 96 (Md. 1967) and *Sines v. Shipes,* 63 A.2d 748, 755 (Md. 1949)). A "resulting trust" arises only when the legal title to property is in one person and the beneficial interest is wholly or partially in another. *Barahona*, 2005 WL 5759546, at *4; *Siemiesz v. Amend,* 206 A.2d 723, 725 (Md. 1965); *Sands v. Church of Ascension & Prince of Peace,* 30 A.2d 771, 775 (Md. 1943). The existence of a resulting trust must be established by evidence showing a "clear intention" to create the trust. *Barahona*, 2005 WL 5759546, at *4; *Lacey,* 267 A.2d at 94. The transaction is judged as of its date rather than based on the facts occurring subsequent to that date. *Barahona*, 2005 WL 5759546, at *4; *Lacey*, 267 A.2d at 96. Even so, "[t]he conduct of the parties with relation to the possession of the realty and the benefits and burdens thereof, after the delivery of the deed, is important as corroborating or contradicting the presumption of a trust." *Taylor v. Mercantile–Safe Deposit & Tr. Co.,* 307 A.2d 670, 675 (Md. 1973).

Wolff v. Barahona (In re Barahona), No. DKC 2005–2122, 2005 WL 5759546 (D. Md., Nov. 23, 2005), is directly on point.[2] In *Barahona*, a married couple decided to purchase a home but did not have enough income to support a mortgage loan. *Id.* at *1. The husband asked his brother, the debtor, to co-sign the loan, and the brothers agreed that the debtor's name would be removed within six months to a year. *Id.* After purchasing the property, the husband

[2] The Court notes that the Plaintiff/Chapter 7 trustee in this proceeding was also the plaintiff/Chapter 7 trustee in *Barahona*.

deducted the expenses, the mortgage and interest on his tax returns. *Id.* The debtor did not make any mortgage payments, pay property taxes or claim the property on his tax returns. *Id.* When the debtor separated from his wife, he moved in with his brother and sister-in-law and began paying rent and utilities. *Id.* Eventually, the two brothers executed a deed removing the debtor's name from the title to the property and adding the debtor's sister-in-law (the brother/co-owner's wife) to the deed for no consideration. *Id.* The debtor then filed for bankruptcy. *Id.* at *2.

The Chapter 7 trustee in *Barahona* filed a complaint to avoid the transfer as a fraudulent conveyance, and the Bankruptcy Court granted summary judgment for the defendants, holding that there was no fraudulent transfer, the debtor "had bare legal title and nothing more" and there was no bad faith on the part of the debtor's brother and sister-in-law. *Id.* The Bankruptcy Court granted certification of the issue to the United States District Court for the District of Maryland (the "District Court"), and the District Court affirmed the Bankruptcy Court's decision with respect to this issue. *Id.* at *5.

The Court is also guided by *Wolff v. United States (In re FirstPay, Inc.)*, No. 03–30102PM, Adv. No. 05–1695PM, 2012 WL 3778952 (Bankr. D. Md., Aug. 30, 2012).[3] In *FirstPay*, the Chapter 7 trustee filed a complaint to avoid an alleged preferential transfer under Section 547. *Id.* at *4. The Court concluded that the funds at issue were held in a resulting trust and that the debtor did not have an equitable interest in the funds. *Id.* at *7. Consequently, the debtor's interest was not "property of the estate" under Section 541 or "property of the debtor" subject to avoidance under Section 547. *Id.*

This Court adopts the legal standard and reasoning set forth in *Barahona* and *FirstPay*.

[3] The Court notes that *FirstPay* is another case in which the Plaintiff/Chapter 7 Trustee in this proceeding served as the plaintiff/Chapter 7 trustee.

The burden is on the Defendant to establish, by plain and unequivocal evidence, that a resulting trust existed. *Fitch v. Double "U" Sales Corp.*, 129 A.2d 93, 96 (Md. 1957). The Court concludes the Defendant has met his burden and has established that the Debtor held only bare legal title to the Property and held the Property in a resulting trust for the benefit of the Defendant. The Defendant found the Property, the Defendant is the only one who signed the contract to purchase the Property and the Defendant is the only one who contributed funds toward the purchase of the Property. According to the Debtor's affidavit, he "was always opposed to his name being on the deed even as a holder or strawman for the property." Debtor Aff. at ¶ 7. When the Debtor realized that he appeared as an owner in the county's tax records, the Debtor had his name removed from the title. The Property was treated at all times as if the Defendant was the sole owner of the Property. The Trustee has introduced no evidence to the contrary and does not dispute the material facts introduced by the Defendant.

For these reasons, and consistent with the holdings in *Barahona* and *FirstPay*, the Debtor's interest in the Property was not "property of the estate" under Section 541 and, therefore, no transfer "of an interest of the debtor in property" occurred as required by Section 548.

B. Application of the Doctrine of Unclean Hands

With this conclusion, the Court next addresses whether the Defendant has unclean hands precluding him from relief in this Court. The Trustee argues that the Defendant has unclean hands because he put the Property in the name of himself and the Debtor to "hide" at least half of the value of the Property from his wife with whom he anticipated a possible divorce. Based on this conduct, the Trustee maintains that the Defendant cannot prevail or obtain relief in this proceeding. The Court disagrees.

The unclean hands doctrine is well-developed in Maryland. The doctrine refuses to give equitable relief to those guilty of unlawful or inequitable conduct related to the specific matter in which relief is sought. *Hicks v. Gilbert*, 762 A.2d 986, 990 (Md. Ct. Spec. App. 2000). To apply, there must be a nexus between the misconduct and the transaction in question. *Id.* The inquiry is whether the proponent acted wrongly in acquiring the right he asserts before the court. *Id.*; *Adams v. Manown*, 615 A.2d 611, 617 (Md. 1992). The "plaintiff's misconduct must be directly related to the subject of the suit." *Mona v. Mona Elec. Group, Inc.*, 934 A.2d 450, 474 (Md. Ct. Spec. App. 2007) (quoting *Smith v. Cessna Aircraft Co.*, 124 F.R.D. 103, 106 (D. Md. 1989)). Courts have broad discretion to apply the doctrine after learning that a party's hands are unclean. *Mona*, 934 A.2d. at 476.

The Court concludes that the doctrine of unclean hands does not preclude relief to the Defendant because there is no nexus between the misconduct – the Defendant's attempt to conceal a valuable asset from his wife from whom he anticipated a possible divorce – and the transaction in question – the transfer of the Debtor's interest in property to the Defendant. Any connection between the two events is too remote to warrant application of the unclean hands doctrine. The Trustee has the right to prosecute an avoidance action under Section 548 regardless of how the Debtor's interest in the Property arose because the relevant event is the Debtor's transfer of the Property, not his acquisition of the Property. The Debtor transferred his interest in the Property for no consideration within two years of his bankruptcy filing. The fact that the Property was initially titled to conceal the asset from the Defendant's wife has no bearing on the merits of the Trustee's fraudulent transfer claim. In other words, there is no nexus between the titling of the Property and the fraudulent transfer claim. Either the elements

of a Section 548 fraudulent transfer claim exist or they do not, and whether they do or not has no connection whatsoever to the reason the Property was initially titled in the way that it was.

For example, even if the Defendant had initially titled the Property in his and the Debtor's name for a perfectly legitimate purpose, such as to help his brother establish credit, the Trustee could still pursue an avoidance claim under Section 548 because the elements for such a claim would exist, namely, the transfer of an interest of the Debtor in property for less than reasonably equivalent value in the two years before the bankruptcy filing and while the Debtor was insolvent. The circumstances of how the Debtor's interest arose is of no import to the Section 548 analysis. Rather, the analysis is based on the Debtor's disposition of his interest in the Property.

Adams v. Manown, 615 A.2d 611 (Md. 1992), is factually similar to this case. In *Manown*, Adams was involved in an extramarital relationship while he was separated from his wife. *Id.* at 612. During the course of that relationship, he transferred a boat and other assets to his girlfriend, Manown, with whom he shared a home and a business. *Id.* at 613. Adams did not disclose these assets to his wife in the divorce proceeding that ensued, and he did not disclose the assets to the bankruptcy court when he filed for bankruptcy shortly after his divorce. *Id.* The relationship between Adams and Manown ended, and Adams sued Manown to recover the assets he had transferred to her. *Id.* at 613-14. Manown moved for summary judgment, arguing that the doctrine of unclean hands precluded Adams from recovery because he had acted to defraud and conceal assets from his wife and the bankruptcy court. *Id.* at 614. The trial court denied Manown's motion for summary judgment, and the Court of Special Appeals of Maryland (the "Court of Special Appeals") reversed. *Id.* at 615. On further appeal, the Court of Appeals of Maryland (the "Court of Appeals") held that the doctrine of unclean

hands did not apply because there was no nexus between the improper conduct, *i.e.*, the concealment of assets from the wife and the bankruptcy court, and the transaction at issue in the litigation, *i.e.*, the transfer of the boat and other assets. *Id.* at 617. The Court of Appeals reversed and remanded but on grounds unrelated to the unclean hands issue. *Id.* at 620-21.

Niner v. Hanson, 142 A.2d 798 (Md. 1958), is also illustrative. In *Niner*, Hanson was a union worker who sought to compel a workers union to recognize his membership in the union and to enjoin the union from interfering with his membership. *Id.*, at 801-02. The union raised the unclean hands defense stating that, before Hanson was a union member, he had stolen a friend's identity to become eligible for membership, used the friend's ID to get union work, defied union obligations even after he had become a member and committed perjury in a prior lawsuit involving the union. *Id.* at 803. Although all of those things were known to the union before the union expelled Hanson from union membership, Hanson was elected president of the local union. *Id.* The Court of Appeals determined that, because Hanson's improprieties were known to the union prior to his expulsion and were not a factor in his expulsion, the union could not rely on Hanson's "unclean hands" as a basis to deny his membership reinstatement. *Id.* at 804.

The Court's determination that the unclean hands doctrine is inapplicable in this case is bolstered by the fact that the Defendant and the Debtor corrected the alleged impropriety by removing the Debtor's name from the title to the Property before the Trustee commenced this action. The Court of Appeals confirmed that the doctrine of unclean hands does not apply when the impropriety has been corrected before the proponent attempts to invoke the doctrine in *Sherwood Co., Inc. v. Sherwood Distilling Co.*, 9 A.2d 842 (Md. 1939). *Sherwood* involved a trademark dispute that arose after Prohibition was repealed. In that case, the defendant

attempted to bar the plaintiff's claim for trademark infringement because, for a period of time, the plaintiff's whiskey products bore a misleading label regarding where the whiskey was made. *Id.* at 844. Following the repeal of Prohibition, the plaintiff modified the label to correct the name of the facility where the whiskey was produced. *Id.* at 846. The Court of Appeals declined to invoke the unclean hands doctrine because the plaintiff had purged the impropriety, saying the unclean hands maxim:

> has nothing to do with the retribution or punishment, or with disapproval of the character or past behavior of the applicant, but only with the effect of his present application. Consequently, when there has been a question of the propriety of conduct of an applicant in the past, but the applicant has corrected any alleged mistake and complied with the suggestions of the Court, his impropriety should be considered as closed and should not debar him from relief.

Id.

Finally, the Court wants to address two additional arguments made by the Defendant. First, the Defendant claims that unclean hands should not apply because it was a "no harm, no foul" situation. He reasons that he did not go through a divorce with his wife so his attempt to conceal an asset from her should not be held against him. The Court disagrees and concludes that the impact of the concealment is not relevant to the analysis.

The same defense was advanced in *Hicks v. Gilbert*, 762 A.2d 986 (Md. Ct. Spec. App. 2000), in which the Court of Special Appeals confirmed that the misconduct's impact, or lack of impact, on interested parties is not relevant. In that case, Hicks, the party seeking to avoid application of the unclean hands doctrine, transferred his property to his girlfriend, Gilbert, and her parents when he had "accumulated significant financial burdens." *Id.* at 987. Hicks was able to eventually pay his debts and avoid bankruptcy. *Id.* at 988. After Hicks and Gilbert parted ways, Gilbert and her parents transferred the property to Gilbert's brother. *Id.* Hicks sued

Gilbert, her parents and her brother seeking to impose a constructive trust on the property, compensatory damages for the improvements Hicks paid for, invalidation of the conveyance to the brother and imposition of a lien on the property in the amount of the judgment. *Id.* In defense, the Gilberts claimed that Hicks should be denied relief because he had attempted to defraud his creditors and therefore had unclean hands. *Id.* Hicks argued that the doctrine of unclean hands did not apply because he purged the alleged fraudulent conveyance of his property, made with the admitted intent to hinder his creditors, by paying all of his creditors. *Id.* at 988-89. The Court of Special Appeals disagreed because the doctrine protects the judicial process, not people, and concluded, "[t]he misconduct's effect on parties or interested persons is therefore irrelevant." *Id.* at 988 n.2. The Court of Special Appeals reasoned:

> [t]he unclean hands doctrine "refuses recognition and relief from the court to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought." … it is "not applied for the protection of the parties nor as a punishment to the wrongdoer." … Rather, it protects the integrity of the court and the judicial process by denying relief to those persons "whose very presence before a court is the result of some fraud or inequity."

Id. at 989-90 (first quoting *Manown v. Adams*, 598 A.2d 821, 824 (Md. Ct. Spec. App. 1991) *vacated on other grounds, Adams v. Manown*, 615 A.2d 611 (Md. 1992); then quoting *Adams v. Manown*, 615 A.2d at 616; and then quoting *Manown v. Adams*, 598 A.2d at 824). Here, the Court agrees with the Court of Special Appeals that the impact on the intended victim – the Defendant's wife – is irrelevant to the Section 548 analysis.

The second argument that the Court wants to address relates to the Defendant's frame of mind. The Defendant argues that his actions should not preclude him from relief in this Court because it was ridiculous for him to think he could conceal the transfer from his wife in any divorce proceeding. The Court agrees with the Defendant that his attempt to conceal the

asset likely would have been uncovered eventually had there been a divorce proceeding, but ultimately, this had little, if any, impact on the Court's analysis. The Court notes, however, that there is at least one reported decision in which the Court of Appeals took the sophistication of the party accused of improper conduct into account in determining whether to apply the doctrine of unclean hands. *See Hlista v. Altevogt*, 210 A.2d 153, 157 (Md. 1965) ("The record as it now stands warrants, we think, no more than a finding that appellant's actions were those of an unsophisticated man in real-property law and the business world attempting to protect his small parcel of land from an unjust and unfounded claim."). Again, this was not a factor in the Court's decision herein.

V. CONCLUSION

For the reasons set forth above, the Court finds that there was not a "transfer of an interest of the debtor" as required by Section 548 and further finds that the doctrine of unclean hands does not preclude the Defendant from asserting a resulting trust with respect to the Property. Therefore, the Defendant is entitled to summary judgment on Count I, which seeks avoidance of a fraudulent conveyance. Because the transfer cannot be avoided, the Property or its value cannot be recovered under Section 550 and the Trustee cannot sell the Property under Section 363(h). Thus, the Defendant is also entitled to summary judgment on Counts II and III. Entry of judgment in favor of the Defendant fully resolves the issues between the parties. Accordingly, the Court will also dissolve the Consent Preliminary Injunction Order [Dkt. No. 19] currently in place. An order consistent with this Memorandum will be issued contemporaneously herewith.

cc: Plaintiff – Michael Wolff
Attorney for Plaintiff – Jeffrey Orenstein
Defendant – William Moncada
Attorney for Defendant – Joseph Trevino

END OF OPINION