

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-32268

CEDAR LANE LAND & DEVELOPMENT
COMPANY, A CORPORATION

Debtor

ALI BASAL

Plaintiff

v.

Adv. Proc. No. 02-3009

ANN MOSTOLLER, TRUSTEE

Defendant

MEMORANDUM

APPEARANCES: DANIEL KIDD, ESQ.
Post Office Box 12123
Knoxville, Tennessee 37912-0123
Attorney for Plaintiff, Ali Basal

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court on the Complaint for Unjust Enrichment (Complaint) filed by the Plaintiff, Ali Basal. By the Complaint, the Plaintiff seeks a judgment against the Defendant, Ann Mostoller, the Chapter 7 Trustee, for \$436,625.00 attributable to the Debtor's failure to record warranty deeds for nine parcels of real property (the Properties) purchased by the Plaintiff from the Debtor.¹ Alternatively, the Plaintiff asks the court to divest any interest of the Debtor in the Properties, allow the Plaintiff to record the warranty deeds, and direct the Trustee to repay the Plaintiff all rent money collected from the Properties during the pendency of the Debtor's case. The Trustee, in turn, seeks a determination from the court that the rights afforded her as a judicial lien creditor under 11 U.S.C.A. § 544(a)(1) (West 1993) give her an interest in the Properties superior to any interest claimed by the Plaintiff.²

All issues were tried before the court on October 1, 2002. The record consists of fifty-three exhibits introduced into evidence, the written Joint Stipulations for Trial filed by the parties on September 24, 2002, and the testimony of two witnesses, the Plaintiff and R. Sinan Mungan, a representative of the Debtor.

¹ The Debtor was originally named as the Defendant. On September 18, 2002, an Agreed Order was entered substituting the Trustee as the Defendant.

² The Trustee asserts her "strong-arm" powers under 11 U.S.C.A. § 544(a)(1) (West 1993) as an affirmative defense to the relief requested by the Plaintiff. This defense was not plead by the Trustee in her Answer to Complaint for Unjust Enrichment filed February 12, 2002, but was first asserted in the Defendant's Motion for Summary Judgment filed on August 1, 2002, and, again, at trial. Both parties briefed the § 544(a)(1) issue and the court considers that issue to have been tried by the express consent of the parties and will treat it as having been raised in the Trustee's Answer. See FED. R. CIV. P. 15(b), incorporated into this adversary proceeding by FED. R. BANKR. P. 7015. ("When issues not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."). See, e.g., *Mullins v. Paul J. Paradise & Assoc., Inc. (In re Paul J. Paradise & Assoc., Inc.)*, 217 B.R. 452 (Bankr. D. Del. 1997) (Court considered trustee's affirmative defense of section 544(a) raised for first time in Motion for Summary Judgment.).

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(K) (West 1993).

I

The Debtor commenced its bankruptcy case by the filing of a Voluntary Petition under Chapter 11 on May 24, 2001. The case was subsequently converted to Chapter 7 on August 28, 2001, and Ann Mostoller was appointed as the Chapter 7 Trustee. The Plaintiff filed the Complaint commencing this adversary proceeding on January 17, 2002. The issues confronting the court center around the Plaintiff's purchase from the Debtor of the Properties in 1998. Specifically, the Properties, the dates purchased, the purchase prices, and the mortgages encumbering each parcel are itemized as follows:

<u>Property</u>	<u>Date Purchased</u>	<u>Purchase Price</u> ³	<u>Mortgage</u> ⁴
1716 Beaumont Avenue	September 3, 1998	\$51,500.00	\$38,625.00
3325 Wimpole Avenue	September 3, 1998	49,000.00	36,750.00
2524 Glenwood Avenue	September 3, 1998	44,000.00	33,000.00
3358 Coffman Drive	October 21, 1998	56,000.00	42,000.00
2902 Greenway Drive	November 5, 1998	50,500.00	40,400.00
2502 Glenwood Avenue	November 12, 1998	40,000.00	30,000.00
7546 Chatham Circle	December 1, 1998	61,000.00	61,000.00
4532 Bruhin Drive	December 2, 1998	89,000.00	71,200.00
2004 Glenwood Avenue	December 5, 1998	2,500.00	none

³ The purchase price for each of the Properties is determined from the testimony of the Plaintiff and corroborated by Settlement Statements signed at closing for all but the 7546 Chatham Circle and 2004 Glenwood Avenue properties. The values of these two properties were testified to by the Plaintiff and are reflected on certifications of value set forth on the respective warranty deeds.

⁴ All mortgages are evidenced by deeds of trust executed by the Plaintiff on the purchase date in favor of the respective lenders except for the 7546 Chatham Circle property. The Plaintiff assumed an existing mortgage encumbering this property. Also, the mortgage on the 3358 Coffman Drive property consists of a \$42,000.00 second mortgage Deed of Trust executed by the Plaintiff and a \$56,000.00 first mortgage Deed of Trust assumed by the Plaintiff at the closing. The stated amounts of the mortgages are the original principal amounts. The record does not reflect the balances owed on the date of trial. All deeds of trust were properly registered except for the Deed of Trust encumbering the Bruhin Drive property, which the parties stipulate has not been recorded.

In his Complaint, the Plaintiff asserts that the warranty deeds were not recorded subsequent to the closing⁵ and that after commencement of the Debtor's bankruptcy case, the mortgages have not been paid from the rental proceeds received either by the Debtor or the Chapter 7 Trustee. Accordingly, he contends that the Debtor was unjustly enriched by the failure to record the warranty deeds and that because the Properties can be claimed by the bankruptcy estate, the Debtor's obligations will be paid while the Plaintiff will remain liable under the various deeds of trust securing the loans made to purchase the Properties even though he has lost his interest in the Properties.

The Trustee argues that under § 544(a)(1) of the Bankruptcy Code, her interest in the Properties as a judicial lien creditor is superior to the interest of the Plaintiff. Furthermore, she contends that the Plaintiff does not have a claim for unjust enrichment that can defeat her position as a judicial lien creditor.

II

Section 544(a) of the Bankruptcy Code, known as the "strong-arm clause," allows the Trustee to avoid certain prepetition transfers made by the Debtor. See 11 U.S.C.A. § 544(a) (West 1993); 5 COLLIER ON BANKRUPTCY ¶ 544.02 (Lawrence P. King ed., 15th ed. rev. 2002). Section 544(a) contemplates the Trustee "stepping into the shoes of"—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists[.]

⁵ The Plaintiff testified that after closing, he took possession of each warranty deed.

11 U.S.C.A. § 544(a)(1).

Even though federal bankruptcy law vests a Chapter 7 trustee with the rights and powers of a judicial lien creditor, applicable state law determines what rights and powers exist. *Waldschmidt v. Dennis (In re Miller)*, 185 B.R. 552, 554 (Bankr. M.D. Tenn. 1995). In the present matter, Tennessee state law determines what rights the Trustee acquired pursuant to § 544(a)(1).

III

The threshold issue to be resolved by the court is whether the Trustee can avoid the transfer of the Properties to the Plaintiff because the warranty deeds were not recorded. Tennessee Code Annotated sections 66-26-101 and -103 (1993) provide the answer to this question.

Section 66-26-101, entitled "Effect of instruments with or without registration," provides:

All of the instruments mentioned in § 66-24-101 [including warranty deeds and deeds of trust] shall have effect between the parties to the same, and their heirs and representatives, without registration; but as to other persons, not having actual notice of them, only from the noting thereof for registration on the books of the register, unless otherwise expressly provided.

TENN. CODE ANN. § 66-26-101. Even though an unrecorded deed is effective between the parties thereto, it is not effective as to third parties without notice. *Newton v. Herskowitz (In re Gatlinburg Motel Enters., Ltd.)*, 199 B.R. 955, 964 (Bankr. E.D. Tenn. 1990).

Section 66-26-103, entitled "Unregistered instruments void as to creditors and bona fide purchasers," provides:

Any of such instruments not so proved, or acknowledged and registered, or noted for registration, shall be null and void as to existing or subsequent creditors of, or bona fide purchasers from, the makers without notice.

TENN. CODE ANN. § 66-26-103 (1993).

Pursuant to these statutes, a judgment creditor's lien defeats the rights of a holder of an unrecorded deed. *See, e.g., Walker v. Elam (In re Fowler)*, 201 B.R. 771, 781 (Bankr. E.D. Tenn. 1996); *Muller*, 185 B.R. at 554. Accordingly, when a warranty deed has not been recorded, a Chapter 7 trustee, as a judicial lien creditor, obtains superior rights in the property.

The Plaintiff argues that the Trustee could not avoid the transfers because she did not take the Properties "without notice" as required by section 66-26-103, based on the fact that the recorded deeds of trust encumbering the various Properties designate him as a grantor under each deed of trust. Therefore, according to the Plaintiff, the Trustee had notice of his interest in the Properties.

Under Tennessee law, "whatever is sufficient to put a person upon inquiry, is notice of all the facts to which that inquiry will lead, when prosecuted with reasonable diligence and in good faith." *Texas Co. v. Aycock*, 227 S.W.2d 41, 46 (Tenn. 1950) (quoting *Covington v. Anderson*, 84 Tenn. 310, 319 (Tenn. 1886)) (emphasis in original). Tennessee courts recognize that notice can be either actual or constructive. Toxey H. Sewell, *The Tennessee Recording System*, 50 TENN. L. REV. 1, 43-44 (1982). "A legally registered deed of trust places subsequent creditors and purchasers on constructive notice." *Limor v. Fleet Mortgage Group (In re Marsh)*, 12 S.W.3d 449, 454 (Tenn. 2000).

According to the Plaintiff, the Trustee may not avoid her interest in the Properties, as there were validly recorded deeds of trust on each of the Properties, thereby giving rise to constructive notice. Assuming, arguendo, that the Plaintiff is correct, Tennessee courts interpret section 66-26-103 to exempt creditors from the notice requirement. See *In re Don Williams Constr. Co., Inc.*, 143 B.R. 865, 869 (Bankr. E.D. Tenn. 1992) (“A debtor’s unrecorded contract to transfer land is not effective against a judgment lien creditor of the debtor, even if the creditor knew of the contract before obtaining its judgment lien.” (citations omitted)); *Lancaster v. Hurst (In re Hurst)*, 27 B.R. 740, 745 (Bankr. E.D. Tenn. 1983) (“Notice of an unregistered instrument eligible for registration does not impair the rights of a creditor of the maker of the instrument in Tennessee.”) (citing, among others, *McCoy v. Hight*, 39 S.W.2d 271, 272 (Tenn. 1931) (“Under our registration laws a deed is not effectual against creditors, even with actual notice of an unregistered instrument, until placed of record.”)).⁶ Therefore, even if a judicial lien creditor has actual or constructive knowledge of a prior unrecorded security interest, the creditor will still have a superior lien.

Regardless of whether the Trustee had actual or constructive notice of the Plaintiff’s interest in the Properties, the Trustee, as a judicial lien creditor under § 544(a)(1), has superior rights to the Plaintiff with regard to the nine Properties. The Plaintiff is reduced to the status of an unsecured creditor as to the Properties, and the Trustee succeeds to the Plaintiff’s unperfected interest in the Properties. See *Fowler*, 201 B.R. at 781.

⁶ *McCoy* was decided under section 3752 of Shannon’s Code, the predecessor statute to section 66-26-103. As material to the issues before the court, the language of the two statutes is identical.

IV

In the alternative, the Plaintiff requests equitable relief to prevent the Debtor's estate from being unjustly enriched as a result of the Trustee's superior interest in the Properties transferred to the Plaintiff. The Plaintiff argues that courts have recognized equitable interests in real property by holding that either a resulting or constructive trust was created that defeated the Trustee's "lien" under § 544(a)(1). In support of this argument, he cites *Lancaster v. Key*, 24 B.R. 897 (E.D. Tenn. 1982) and *McAllester v. Aldridge (In re Anderson)*, 30 B.R. 995 (M.D. Tenn. 1983).

In *Lancaster*, the debtors sold real property to the grantees, who paid fair consideration and occupied the property from the time of the sale. 24 B.R. at 897. However, even though a warranty deed was properly executed, the grantees failed to record the deed until after they learned that the debtors had filed for bankruptcy. *Id.* The bankruptcy court found that the bankruptcy trustee had superior rights over the grantees, pursuant to § 544(a) and Tennessee Code Annotated sections 66-26-101 and -103. *Id.* at 897-98.

The grantees appealed, and the district court reversed. *Id.* at 899. The court held that "[i]n Tennessee, if a grantee pays the purchase price for real property, yet fails to record the instrument of conveyance, a resulting trust arises in his favor." *Id.* Additionally, the court determined that because the grantees had paid all consideration for the property and they were in open possession of the property on the date that the bankruptcy petition was filed, the debtors retained "no more than the power to convey apparent title." *Id.* The court held that the subsequent resulting trust

“defeat[ed] any rights of a . . . judicial lien creditor” but did not expound upon how the resulting trust arose. *Id.*

The next year, in *Anderson*, the district court refused to follow *Lancaster* on the issues of a trustee’s avoidance powers under § 544(a) as related to the Tennessee recording statutes and on the issue of a resulting trust. 30 B.R. at 1004-06. In *Anderson*, the primary issue before the court was whether deeds recorded but not properly notarized rendered them null and void, and thus, avoidable by the bankruptcy trustee. *Id.* at 1000. The court determined that Tennessee’s recording statutes rendered the deeds null and void, rendering them invalid as to creditors and the trustee. *Id.* at 1001, 1004-05. The trustee was allowed to avoid the defective deeds. *Id.* at 1013.

The court also refused to find that payment of the purchase price created a resulting trust superior to the interests of a creditor. *Id.* at 1005. A review of Tennessee law revealed that a resulting trust cannot be established without evidence that the parties intended to create a trust. *Id.* at 1006-07.

Because the grantees of the defective deeds had paid full and fair purchase price for the properties at issue, had been in open possession of the properties, had made substantial improvements to the land, and had attempted to comply with the recording statutes, the court, to avoid what it called “a result that would inflict grievous injury,” created a constructive trust by which the trustee was ordered to return the properties to the grantees. *Id.* at 1013-14. The court stated that it could not “ignore the blatant and manifest injustice which would occur” and that it did not believe that “the courts of Tennessee would tolerate such an inequitable result if a creditor of

the debtor attacked the validity of these conveyances under Tennessee's registration statutes." *Id.* at 1013.

The Trustee in the present matter counters with an argument that the parties did not intend to establish a trust, so no resulting trust could occur. Further, she argues that there is not unjust enrichment because the Debtor continued to manage the Properties, acting as their owner, collecting rents, and paying the mortgages.

Clearly there was no intent between the Plaintiff and the Debtor to create a trust. As evidenced by the Warranty Deeds, the Settlement Statements, and the Deeds of Trust obtained by the Plaintiff, these parties intended a conveyance of the Properties. Accordingly, a resulting trust cannot be said to exist between the parties over the Properties.

Alternatively, the Plaintiff urges this court to impose a constructive trust over the Properties, and thus, in essence, "force" the Trustee to abandon all interest in the Properties and turn over all rents collected from the commencement of the bankruptcy case.

Tennessee law allows for the imposition of a constructive trust in four circumstances:

(1) where a person procures the legal title to property in violation of some express or implied duty owed to the true owner of the property; (2) where title to property is obtained by fraud, duress, concealment or other inequitable means; (3) where a person makes use of some relation, influence or confidence to obtain legal title to property upon more advantageous terms than could otherwise have been obtained; and (4) where a person acquires property with notice that another is entitled to its benefits.

Lawrence v. Jahn (In re Lawrence), 219 B.R. 786, 803 (E.D. Tenn. 1998) (citing *Myers v. Myers*, 891 S.W.2d 216, 219 (Tenn. App. 1994)). Courts generally impose constructive trusts to “satisfy the demands of justice.” *Tanner v. Tanner*, 698 S.W.2d 342, 347 (Tenn. 1985).

As previously discussed, § 544 allows the Trustee to avoid certain transfers while § 550 allows the Trustee to recover such property for the benefit of the estate. See 11 U.S.C.A. § 550 (West 1993). Property of the estate is defined in § 541 to include “[a]ny interest in property that the trustee recovers under section . . . 550 . . . of this title.” 11 U.S.C.A. § 541(a)(3) (West 1993). Additionally, § 541(d) provides that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C.A. § 541(d) (West 1993). Generally, in cases where courts have considered imposing a constructive trust over property, they have done so under § 541(d). See, e.g., *Taylor Assocs. v. Diamant (In re Advent Mgmt. Corp.)*, 104 F.3d 293 (9th Cir. 1997); *Marrs-Winn Co., Inc. v. Giberson Elec., Inc. (In re Marrs-Winn Co., Inc.)*, 103 F.3d 584 (7th Cir. 1996); *Jenkins v. Chase Home Mortgage Corp. (In re Maple Mortgage, Inc.)*, 81 F.3d 592 (5th Cir. 1996); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92 (3d Cir. 1994); *City Nat’l Bank of Miami v. Gen. Coffee Corp. (In re Gen. Coffee Corp.)*, 828 F.2d 699 (11th Cir. 1987).

In matters involving constructive trusts, the Sixth Circuit has spoken clearly in defining the role of bankruptcy courts. In *XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.)*, the Sixth

Circuit addressed a bankruptcy court's imposition of a constructive trust pursuant to the debtor's fraudulent acts. The court held:

Because a constructive trust, unlike an express trust, is a remedy, it does not exist until a plaintiff obtains a judicial decision finding him to be entitled to a judgment "impressing" defendant's property or assets with a constructive trust. Therefore, a creditor's claim of entitlement to a constructive trust is not an "equitable interest" in the debtor's estate existing prepetition, excluded from the estate under § 541(d).

16 F.3d 1443, 1451 (6th Cir. 1994). The court deemed constructive trusts merely as a means by which courts could require a debtor to relinquish property that it holds as a result of unjust enrichment. *Id.* at 1449. The court stated that creditors have other remedies for fraud through dischargeability actions under 11 U.S.C.A. § 523 (West 1993 & Supp. 2002), even though these actions are more difficult to prove and do not provide a creditor with the ownership of the property in question. *Id.* at 1451-52.

Of significance to the *Omegas Group* court was the underlying purpose of the Bankruptcy Code to allow for ratable distribution among creditors. The court determined that this ratable distribution "justifie[d] the Code's placement of the trustee in the position of a first-in-line judgment creditor . . . empowered to avoid certain competing interests . . . so as to maximize the value of the estate." *Id.* at 1452. The court also stated that "[t]he Code endows the trustee with generous powers to bring property of imperfect title or disputed ownership into the debtor's estate for distribution according to each creditor's ability to prove its entitlement and priority in accordance with the dictates of the Code. *Id.* at 1453. The court recognized that each creditor has "suffered disappointed expectations at the hands of the debtor[,] . . . [but] maximization of the estate [is] the primary concern and entitlement to shares of the estate [is] secondary." *Id.* at 1452. The court

further noted that when bankruptcy courts impose a constructive trust over a portion of the debtor's estate, this primary purpose of the Code is subordinated to a single creditor's claim of entitlement. *Id.* at 1452-53. Finally, the court stated that "[t]o permit a creditor, no matter how badly he was 'had' by the debtor, to lop off a piece of the estate under a constructive trust theory is to permit that creditor to circumvent completely the Code's equitable system of distribution." *Id.* at 1453.

The court also addressed the equitable powers of the bankruptcy courts, holding that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id.* at 1453 (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S. Ct. 963, 969, 99 L.Ed.2d 169 (1988)). Accordingly, the court determined that "§ 541(d) cannot properly be invoked as an equitable panacea whenever the bankruptcy court thinks a claimant has been particularly burdened by a debtor's bad faith or bad acts." *Id.*

Subsequent cases have softened the Sixth Circuit's hard and fast rule against constructive trusts, but only in limited situations when the property at issue was not subject to distribution among all creditors, thereby not disturbing ratable distribution. For example, if a court has imposed a constructive trust, prepetition, the bankruptcy court may honor it. *See McCafferty v. McCafferty (In re McCafferty)*, 96 F.3d 192 (6th Cir. 1996) (parties' divorce decree served as court-ordered constructive trust over ex-spouse's interest in pension plan).

Additionally, if a creditor commenced an action prepetition, it may obtain relief from the automatic stay to proceed to and subsequently enforce a judgment. *Kitchen v. Boyd (In re*

Newpower), 233 F.3d 922 (6th Cir. 2000) (debtor who embezzled funds held no legal or equitable title in funds, so creditor entitled to stay relief to proceed to judgment in pending state lawsuit). Additionally, in *Newpower*, the court clarified its ruling in *OmeGas Group* by stating that *OmeGas Group* addressed cases where creditors with claims arising in the ordinary course of business request preferential treatment from the bankruptcy court by asking that the debtor be stripped of equitable title in property where the parties clearly intended to pass legal title. *Id.* at 935-36.

Recently, the Sixth Circuit recognized a constructive trust without a prepetition court proceeding when such a trust actually attached by operation of law at a point prepetition. In that case, the court allowed the imposition of a constructive trust over property that the debtor had conveyed to the creditor pursuant to a settlement agreement in an Ohio state court action. *Poss v. Morris (In re Morris)*, 260 F.3d 654 (6th Cir. 2001). The court first reiterated that “[§] 541(d) only operates to the extent that state law has impressed property with a constructive trust prior to its entry into bankruptcy.” *Id.* at 666.

The court then looked to Ohio state law to determine if a constructive trust attached prior to the bankruptcy filing. First, the court found that, under Ohio law, contracts for the conveyance of property allow courts with equitable jurisdiction to “fashion an appropriate remedy.” *Id.* at 668. Second, the court noted that, under Ohio law, persons had an equitable duty to convey property. *Id.* Acknowledging that “every wrongful acquisition or holding of property will not give rise to a constructive trust[,]” the court stated that “a wrongful acquisition or retention of property cognizable in equity will.” *Id.* Accordingly, the court found that a constructive trust attached to the property to be conveyed prepetition, by operation of law. *Id.* The court noted, however, that

?this case does not involve an ordinary equitable interest in a conveyance that might arise pursuant to a contract concerning real estate under Ohio law [in that] the contract' between the parties here is the order of a court." *Id.* at 668-69.

In the present case, none of the circumstances addressed in *Morris* exist. There has been no prepetition determination by a Tennessee state court that the Properties be held in a constructive trust, nor did this action arise in a Tennessee state court prior to the bankruptcy filing, so as to allow for a determination and subsequent enforcement of a judgment. Finally, unlike Ohio law, under Tennessee law, a constructive trust does not attach by operation of law to the conveyance of property. Here, the court is confronted with an ordinary sale of real property between the Plaintiff and the Debtor. Accordingly, the court is without the authority to impose a constructive trust in favor of the Plaintiff over the Properties.

V

In summary, the court finds that, because the nine Warranty Deeds were not recorded, the Plaintiff's interest in the Properties is subordinate to that of the Chapter 7 Trustee, in her position as judicial lien creditor under 11 U.S.C.A. § 544(a)(1). As such, the Properties are property of the Debtor's estate under § 541.

Furthermore, under Tennessee law, the parties did not intend to establish a trust by the conveyance of the Properties, and there can be, therefore, no resulting trust. Additionally, under Tennessee law, a constructive trust did not attach to the Properties prepetition. Because the Properties are not the res of a constructive trust imposed by a court of equity prepetition, this court

is without the authority, under *Omegas Group* and subsequent Sixth Circuit authority, to impose a constructive trust postpetition. Accordingly, the Properties remain property of the Debtor's estate, subject to sale and distribution among the Debtor's creditors.

The Trustee's interest in the Properties is, of course, subject to the Deeds of Trust encumbering the various Properties. At such time as the Properties are sold by the Trustee, the obligations secured by each deed of trust will be satisfied, thus eliminating or reducing the Plaintiff's liability to the respective lenders. The Plaintiff clearly has claims against the Debtor which he has asserted through filing various proofs of claim.⁷ Once the Properties are liquidated by the Trustee and the mortgages are satisfied, the amount of the Plaintiff's allowed nonpriority unsecured claim can be determined. The Plaintiff will then share ratably in any distribution to unsecured creditors.

A judgment consistent with this Memorandum will be entered.

FILED: October 9, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

⁷ On November 1, 2001, the Plaintiff filed separate claims for each of the Properties. Each claim recites that it is a "claim in equity for unjust enrichment in connection with real estate."

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CEDAR LANE LAND & DEVELOPMENT
COMPANY, A CORPORATION

Debtor

ALI BASAL

Plaintiff

v.

Adv. Proc. No. 02-3009

ANN MOSTOLLER, TRUSTEE

Defendant

J U D G M E N T

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, it is ORDERED, ADJUDGED, and DECREED that the interest of the Defendant, Ann Mostoller, Trustee, is superior to the interest of the Plaintiff, Ali Basal, in the following real property, all of which is situated in Knoxville, Knox County, Tennessee: 1716 Beaumont Avenue, 3325 Wimpole Avenue, 2524 Glenwood Avenue, 3358 Coffman Drive, 2902 Greenway Drive, 2502 Glenwood Avenue, 7546 Chatham Circle, 4532 Bruhin Drive, and 2004 Glenwood Avenue. The Plaintiff's Complaint for Unjust Enrichment filed January 17, 2002, is DISMISSED.

ENTER: October 9, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE