SO ORDERED.
SIGNED this 13th day of October, 2022

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

In re

STEPHEN WALKER KILLIAN
fdba C & S CLASSIC IMPORTS

Debtor

Case No. 3:21-bk-30823-SHB
Chapter 7

ANN MOSTOLLER, TRUSTEE

Plaintiff

v.

COLBY KILLIAN

Defendant

Adv. Proc. No. 3:21-ap-3050-SHB

MEMORANDUM AND ORDER ON
AMENDED MOTION FOR SUMMARY JUDGMENT

Plaintiff initiated this adversary proceeding on November 3, 2021, through the filing of her Complaint seeking, pursuant to 11 U.S.C. § 548, to avoid the transfer to Defendant of a 2014 Ford Mustang ("Mustang") and for turnover of the $5,000.00 fair market value for the benefit of Debtor's bankruptcy estate [Doc. 1 at ¶¶ 4-6.] Defendant filed his Answer on December 15,

2021 [Doc. 5], and trial is scheduled for December 12, 2022. As defined by the Pre-Trial Order entered on February 11, 2022, the issues before the Court are as follows:

> A. Did the Debtor own any property interest in a 2014 Ford Mustang?
>
> B. Whether a transfer within two year prior to the bankruptcy filing of any such property interest in the 2014 Ford Mustang by the Debtor was fraudulent as to the Trustee and may be avoided by her pursuant to the provisions of 11 U.S.C. § 548[.]
>
> C. What was the value of any transfer of the property interest?
>
> D. Did the Debtor receive reasonable equivalent value for the transfer?

[Doc. 10 at p. 2.]

Defendant filed his Motion for Summary Judgment on July 21, 2022, which he amended on July 25, 2022.[1] (collectively "Summary Judgment Motion"), together with his Statement of Undisputed Facts, a collective exhibit, an affidavit, and a brief [Docs. 12-15]. He argues that the Mustang was not owned by Debtor but by C & S Classic Import LLC ("C & S"), so that Plaintiff cannot establish the threshold issue required to proceed under § 548. In support of his Summary Judgment Motion, Defendant relies on the Vehicle Information Request file for the Mustang received from the Tennessee Department of Revenue and the Affidavit of Debtor attesting that he never personally owned the Mustang and that it was purchased and transferred by C & S. [*See* Docs. 14-1, 14-2.]

Plaintiff filed responses to the Summary Judgment Motion and Statement of Undisputed Facts, an affidavit, and a brief (collectively, "Response") on August 11, 2022 [Docs. 16-18]. She does not dispute the documentation or most of the facts stated by Defendant; however, she disputes Defendant's assertions that C & S "is a distinct entity different from the Debtor in bankruptcy" and "[s]ince the Debtor never owned the 2014 Ford Mustang, the Trustee cannot

[1] The amendment simply cured a typographical error concerning the governing Local Rule.

recover and/or avoid a transfer of the vehicle and/or its value from the Defendant under 11 U.S.C. § 548(a)" [Doc. 14 at ¶¶ 4, 10; Doc. 16] because such assertions are legal conclusions and not facts. Plaintiff also avers in her Affidavit that at his 2004 examination, Defendant testified that "he and his father were the sole owners of" C & S, which "was essentially out of business and owed no debts" as of Debtor's May 7, 2021 petition date. [Doc. 16-1 at ¶¶ 1, 3-4.]

I. Summary Judgment Standard

"The 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. P. 56(c). The court does not weigh the evidence to determine the truth of the matter asserted when deciding a motion for summary judgment but simply determines whether a genuine issue for trial exists. *See Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 249 (1986). "As to materiality, the substantive law will identify which facts are material [and o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 248; *see also Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (holding that a dispute is genuine "if a reasonable trier of fact could return judgment for the non-moving party.").

As the moving party, Defendant must prove, based on the record before the Court, that he is entitled to judgment as a matter of law because "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party [and] there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co*., 391 U.S. 253, 289 (1968)).

> The party bringing the summary judgment motion has the initial burden of informing the . . . court of the basis for [the] motion and identifying portions of the record that demonstrate the absence of a genuine dispute over material facts. *Mt. Lebanon Personal Care Home, Inc. v. Hoover Universal, Inc.,* 276 F.3d 845, 848

> (6th Cir. 2002). Once that occurs, the party opposing the motion then may not "rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact" but must make an affirmative showing with proper evidence in order to defeat the motion. *Street v. J.C. Bradford & Co.,* 886 F.2d 1472, 1479 (6th Cir. 1989).

Alexander v. CareSource, 576 F.3d 551, 558 (6th Cir. 2009); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The Court must review the facts and all resulting inferences in a light most favorable to Plaintiff and decide whether "the evidence presents a sufficient disagreement to require submission to a [fact-finder] or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 243.

II. Undisputed Facts

Plaintiff does not dispute the following facts as stated by Defendant. [*See* Docs. 14, 16[2].] Debtor filed a Chapter 7 bankruptcy case on May 7, 2021, and Plaintiff was appointed as Chapter 7 Trustee. [Doc. 14 at ¶ 1.] The Mustang, which was purchased by C & S[3] on April 9. 2016, and transferred to Defendant on March 12, 2021, was never titled in Debtor's name with the State of Tennessee. [*Id*. at ¶¶ 5-6, 8-9.] Plaintiff filed this adversary proceeding on November 3, 2021, to avoid the transfer of the Mustang from C & S to Defendant, and as reflected in the Pre-Trial Order, the first issue defined by the parties is whether Debtor owned any property interest in the Mustang. [*Id*. at ¶¶ 2-3, 7.]

III. Relevant Law

A debtor's bankruptcy estate consists of "all legal and equitable interest of the debtor in

[2] Plaintiff's Response to the Statement of Undisputed Facts consists of the following sentence: "Comes the Plaintiff, Ann Mostoller, Trustee, and would respond to the Statement of Undisputed Facts filed by the Defendant to state that all the facts listed are undisputed, but that the . . . items listed [in paragraphs 4 and 10] as 'facts' are actually conclusions of law with which she does not agree[.]" [Doc. 16.] The Court also takes judicial notice, pursuant to Federal Rule of Evidence 201, of material facts of record in this adversary proceeding and in Debtor's underlying bankruptcy case. References to documents in Debtor's bankruptcy case will be to [Debtor Bk. Doc. ___.].

[3] The Statement of Undisputed Facts erroneously refers to C & S as "CS Classic Import, LLC" [Doc. 14 at ¶ 3]; however, the records from the Tennessee Department of Revenue reflect that the correct name is "C & S Classic Import LLC." [See Doc. 14-1.]

property as of the commencement of the case[.]" 11 U.S.C. § 541(a)(1). What constitutes property of a debtor's bankruptcy estate is not defined by the Bankruptcy Code; thus, state law – here, Tennessee law – determines what qualifies as estate property. *Butner v. United States*, 440 U.S. 48, 55 (1979). In support of his argument that Plaintiff cannot meet the threshold issue under § 548 that the transfer to be avoided was a transfer of a property interest held by Debtor, Defendant relies on Tennessee Code Annotated section 48-215-101(a), which provides that "[a] membership interest in an LLC is personal property. A member has no interest in specific LLC property. All property transferred to or acquired by an LLC is property of the LLC itself."[4] Defendant also cites to *Collier v. Grenbrier Developers, LLC*, 358 S.W.3d 195, 201 (Tenn. Ct. App. 2009), in which the Tennessee Court of Appeals held that it "[could not] conclude, as a matter of law, that a sole member of an LLC is, *ipso facto*, in privity with the LLC[, because t]o so hold would erode the protections afforded by the LLC construct." Finally, Defendant relies on *Whitaker v. Groves Venture, LLC (In re Bolon)*, 538 B.R. 391 (Bankr. S.D. Ohio 2015), for the proposition that property owned by a non-debtor limited liability company is not property of the bankruptcy estate of a member of the limited liability company.

Plaintiff does not dispute that individual members of a limited liability company do not have the authority to act for the company or that company property is held by the member and not the company. [*See* Doc. 18 at pp. 1-2.] Instead, she argues that "the [Mustang] was the sole asset of the almost defunct LLC, that the LLC had no obligations, and that therefore the fifty-percent (50%) membership in the LLC was an asset of the bankruptcy estate which the debtor transferred for no consideration 56 days before filing bankruptcy, and that, therefore, this asset

[4] Defendant also references Tennessee Code Annotated section 48-249-104(c), which lists the general powers of a limited liability company, including the authority to purchase, own, and sell personal property. See Tenn. Code Ann. § 48-249-104(c)(3), (4).

can be recovered for the benefit of creditors." [*Id*. at p. 2.] Plaintiff also cites to *In re Bolon*, quoting the court's interpretation of Sixth Circuit authority: "If a company owns and successfully litigates or settles a claim, any net proceeds of the claim to which an equity holder of the company is entitled (after the company's creditors are paid in full) become property of the equity holder's bankruptcy estate only if the company's claim was tied to events occurring before the equity holder's bankruptcy." 538 B.R. at 401.

As evidenced by Plaintiff's Affidavit, Defendant testified at his 2004 examination that he and Debtor were the sole 50% co-owners of C & S and that C & S was "essentially out of business and owed no debts" when Debtor filed his bankruptcy case on May 7, 2021. [Doc. 16-1 at ¶¶ 1, 3-4.] This testimony by Defendant creates a genuine dispute of material fact that precludes summary judgment concerning (1) when C & S was formed; (2) whether C & S has been dissolved or terminated with the Tennessee Secretary of State and, if so, the date of dissolution that triggers the winding up its affairs under Tennessee law; and (3) whether C & S is governed by the Tennessee Limited Liability Company Act (Tennessee Code Annotated sections 48-201-101 through 48-248-606) or the Tennessee Revised Limited Liability Company Act (Tennessee Code Annotated sections 48-249-101 through -1133).

Under either Act, if a limited liability company is dissolved or terminated other than by merger into a surviving business entity, the company's property is distributed to its members after all debts and obligations are paid. *See* Tenn. Code Ann. § 48-245-501(e); Tenn. Code Ann. § 48-249-610(e). Accordingly, the corporate status of C & S as of Debtor's May 7, 2021 petition date is a material fact that is in dispute.

IV. Order

For the forgoing reasons, the Court directs that the Amended Motion for Summary Judgment filed on July 25, 2022 [Doc. 15], is DENIED.

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