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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S MOTION FOR ORDER
FINDING A BENEFICIAL INTEREST
IN CERTAIN REAL PROPERTY WAS
AN ASSET OF R. GREGORY
SHEPARD AND FOR REMEDIES**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower-3”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”), the assets of Neldon Johnson and R. Gregory Shepard (“Greg Shepard”) (collectively, “Receivership Defendants”), as well as certain affiliated subsidiaries and entities, pursuant to Fed. R. Civ. P. 56 and DUCivR 56-1, hereby submits this Motion for Order Finding a Beneficial Interest in Certain Real Property was an Asset of R. Gregory Shepard.

INTRODUCTION AND RELIEF SOUGHT

The Diana C. Shepard Revocable Trust (the “Trust”) is the title owner of certain real property located at 858 West Clover Meadow Drive, Murray, Utah 84123 (the “Property”).¹ Based upon the Receiver’s investigation, the Receiver has determined that a beneficial interest in the Property was owned by Receivership Defendant Greg Shepard. As such, Greg Shepard’s interest in the Property is a Receivership asset that must be turned over to the Receiver for the benefit of the Receivership Estate. Accordingly, the Receiver seeks an order from the Court: (1) determining that Greg Shepard had at least a half-interest in the Property at the time the Receiver was appointed; (2) that Diana Shepard, on behalf of the Trust, execute a warranty deed transferring ownership of one-half interest in the Property to the Receiver; and (3) that the Property be sold and proceeds of the sale be used to satisfy any outstanding mortgages, with the excess proceeds divided between the Receiver and Diana Shepard in proportion to their interests. The Receiver also requests that the order direct Diana Shepard to make such transfer within 10 days of the entry of such order.

BACKGROUND

On May 3, 2019, the Court entered the following factual findings based on the existing record, including evidence presented at trial and evidentiary hearings on April 26 and May 3, 2019:

“For more than ten years, the Receivership Defendants promoted an abusive tax scheme centered on purported solar energy technology featuring ‘solar lenses’ to customers across the United States. But the solar lenses were only the cover story for what the Receivership Defendants were really selling: unlawful tax deductions and credits. Their conduct, which is subject to penalty under the Internal Revenue Code, caused serious harm to the United States Treasury. As a result, they have

¹ The Property is more fully described in the *Corrected Receivership Order*, [Docket No. 491](#) at ¶ 20(ee).

been enjoined from promoting their abusive solar energy scheme, ordered to disgorge their gross receipts, and required to turn over their assets and business operations to the Receiver.”²

The Court’s October 4, 2018 *Findings of Fact and Conclusions of Law*, which, among other things, enjoined Receivership Defendants from promoting their abusive solar energy scheme and ordered disgorgement of the gross receipts of Receivership Defendants to mitigate the harm their conduct caused to the Treasury, found:

- Greg Shepard was “one of IAS’s initial salespeople in or around September 2005, and began selling solar lenses.”³
- Greg Shepard “gave himself the title ‘Chief Director of Operations’ for RaPower-3”, “organized at least one ‘RaPower[-]3 National Convention’, and “[w]hen other RaPower-3 distributors have issues or questions, they look to Shepard for guidance and advice, and to be the conduit to [Neldon] Johnson.”⁴
- “From 2006-2017, Shepard has received at least \$702,001 either directly or through his entities, from his role in the solar energy scheme.”⁵

Also in the *Findings of Fact and Conclusions of Law*, judgment was entered against Neldon Johnson, IAS, RaPower-3, and Greg Shepard, jointly and severally, in the amount of \$50,025,480.00 including up to \$702,001.00 against Greg Shepard.⁶

On October 31, 2018, the Court issued the *Receivership Order*.⁷ In that order, the Court took “exclusive jurisdiction and possession of all assets, of whatever kind and wherever situated, of . . . R. Gregory Shepard” and appointed the Receiver to take possession and control of all such

² *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership*, [Docket No. 636](#), Factual Basis, ¶ 1.

³ [Docket No. 467](#) at 7.

⁴ *Id.*, at 10-11.

⁵ *Id.*, at 16.

⁶ *Id.*, at 139.

⁷ [Docket No. 490](#), ¶ 2. The next day, November 1, 2018, the Court issued the *Corrected Receivership Order*, which corrected formatting errors. See [Docket No. 491](#).

assets. The *Receivership Order* also authorizes the Receiver to take “immediate possession of real property in which Receivership Defendants have a record interest, and to file a motion to take possession (a ‘Possession Motion’) of real property in which Receivership Defendants have a beneficial interest even if titled in the name of another, such as a spouse”⁸

At the time the Receiver was appointed, Greg Shepard had a beneficial interest in the Property even though it was—and is—titled in the name of his wife’s trust. Under Utah law, the Property is marital property with a presumption that each spouse is entitled to one-half of the Property. Further, the fact that Greg Shepard transferred his interest in the Property to his wife’s revocable trust does not prevent his creditors from reaching his interest in the Property. A revocable trust “cannot be used to shield assets from creditors.”⁹ Finally, the facts show that Greg Shepard’s March 2017 transfer of his interest in the Property to the Trust is voidable. Accordingly, because the Receivership is entitled to possession of all assets, of whatever kind and wherever situated, of Greg Shepard, Shepard’s interest in the Property is a Receivership asset that must be turned over to the Receiver.

UNDISPUTED MATERIAL FACTS

1. Greg Shepard and Diana Shepard were married prior to December 2, 1986.¹⁰
2. The Property was purchased by Greg Shepard and Diana Shepard on December 2, 1986.¹¹
3. On September 15, 1998, Greg Shepard executed a quit-claim deed conveying his

⁸ *Id.*, at ¶ 20.

⁹ [Wilson v. Dunn, No. 2:12-CV-599-TC, 2014 WL 1795164, at *3 \(D. Utah May 6, 2014\)](#).

¹⁰ See Letter from Diana Shepard to Receiver, July 2, 2019, attached hereto as [Exhibit 1](#).

¹¹ Declaration of Diana Shepard, ¶ 3(a), attached hereto as [Exhibit 2](#).

interest in the Property to Diana Shepard.¹² No consideration was provided for this transfer.¹³

This was a “nominal transfer” for estate planning purposes.¹⁴

4. That same day, Diana Shepard executed a quit-claim deed conveying her interest in the Property to the Diana C. Shepard Revocable Trust.¹⁵ No consideration was provided for this transfer.¹⁶ This was a “nominal transfer” for estate planning purposes.¹⁷

5. As the title indicates, the Diana C. Shepard Revocable Trust is a revocable trust.¹⁸

6. On May 23, 2007, a Deed of Trust was recorded on the Property for the benefit of JPMorgan Chase Bank in the amount of \$250,000.00 (“JPMorgan Deed of Trust”).¹⁹ Greg Shepard is named as a Trustor in the JPMorgan Deed of Trust, along with Diana Shepard and the Trust.²⁰ Greg Shepard executed the JPMorgan Deed of Trust in his individual capacity.²¹

7. On March 24, 2017 at 11:03 AM, a warranty deed was recorded on the Property whereby Diana Shepard, as trustee of the Diana C. Shepard Revocable Trust, conveyed the Property to Greg Shepard and Diana Shepard.²² \$10.00 was paid in consideration for the transfer.²³

8. Also on March 24, 2017 at 11:03 AM, a Deed of Trust was recorded on the Property for the benefit of Guaranteed Rate, Inc. in the amount of \$315,000.00 (“Guaranteed

¹² Quit-Claim Deed, September 15, 1998, attached hereto as Exhibit 3.

¹³ Exhibit 2, ¶ 3(b).

¹⁴ *Id.*

¹⁵ Quit-Claim Deed, September 15, 1998, attached hereto as Exhibit 4.

¹⁶ Exhibit 2, ¶ 3(c).

¹⁷ *Id.*

¹⁸ See Trust Agreement for the Diana C. Shepard Revocable Trust, attached hereto as Exhibit 5.

¹⁹ Revolving Credit Deed of Trust, May 23, 2007, attached hereto as Exhibit 6.

²⁰ *Id.*

²¹ *Id.*

²² Warranty Deed, March 21, 2017, attached hereto as Exhibit 7.

²³ Exhibit 2, ¶ 3(e).

Rate Deed of Trust”).²⁴ Greg Shepard and Diana Shepard are listed as the borrowers in the Guaranteed Rate Deed of Trust.²⁵ Both Greg Shepard and Diana Shepard executed the Guaranteed Rate Deed of Trust in their personal capacities.²⁶

9. On March 24, 2017 at 3:51 PM, a warranty deed was recorded on the Property whereby Greg Shepard and Diana Shepard conveyed the Property back to the Diana C. Shepard Revocable Trust.²⁷ \$10.00 was paid in consideration for the transfer.²⁸

10. Regarding the March 2017 transfers and Guaranteed Rate Deed of Trust, Diana Shepard stated:

“The title company explained that we needed to deed the house out of the trust into our personal names for the short time it took to record the mortgage, then the house was deeded back to the trust. The same \$10 consideration was paid and received, for the transfer from each of us to the trust.”²⁹

11. Regarding the Property generally, Diana Shepard stated “Greg Shepard and I are married and have been continuously married while we have resided in the Clover Meadow home [the Property]. It is a marital asset and all payments, upkeep, maintenance and repairs have been done by our family since we purchased the home.”³⁰

12. On October 3, 2019, a leading real estate website valued the Property at \$663,519.00.³¹

²⁴ Deed of Trust, March 17, 2017, attached hereto as Exhibit 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Warranty Deed, March 21, 2017, attached hereto as Exhibit 9.

²⁸ Exhibit 2, ¶ 3(e).

²⁹ See Exhibit 1.

³⁰ *Id.*

³¹ See Zillow, 858 W Clover Meadow Dr., https://www.zillow.com/homedetails/858-W-Clover-Meadow-Dr-Murray-UT-84123/12823021_zpid/ (last visited Oct. 3, 2019).

13. As of May 13, 2019, Greg Shepard owed over \$190,000.00 in credit card debt.³²

14. Between 2010 and 2016 Greg Shepard lost about \$100,000.00 investing in foreign exchange trading and a prime bank fraud scheme. He used credit card funds to fund these failed investments.³³

15. Since 2017, Greg Shepard has used credit card funds to pay for almost everything.³⁴

16. In March 2017, before he transferred his interest in the Property to the Trust, Greg Shepard had ten outstanding credit card balances.³⁵

ARGUMENT

Based on the above facts, the Receiver has concluded—and the facts show—that at least a one-half interest in the Property belonged to Greg Shepard at the time the Receiver was appointed. Because the Court has ordered the Receiver to take possession of all Greg Shepard's assets, of whatever kind and wherever situated, the Receiver is entitled to take possession of Greg Shepard's interest. Specifically, the Receiver seeks an order finding that Greg Shepard had a beneficial interest in the Property, that Greg Shepard's March 2017 transfer of his interest in the Property is voidable, and that the Property be sold for the benefit of the Receivership Estate.

³² See [Docket No. 656](#) at 2, filed May 16, 2019.

³³ Greg Shepard Email to Receiver, May 23, 2019, attached hereto as [Exhibit 10](#).

³⁴ *Id.*

³⁵ *Id.*

I. The Receiver has the Power and the Obligation to Bring Legal Action to Recover Receivership Property and the Court has the Authority to Act in Summary Proceedings.

a. The Receiver has the Authority to Bring this Motion Under the Receivership Order.

The Receivership Order grants the Receiver the following powers and duties:

- “To use reasonable efforts to determine the nature, location and value of all property interests of each of the Receivership Defendants, including Johnson and [Greg] Shepard. These property interests include . . . real property . . . of whatever kind, that the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.”³⁶
- “To take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Property and records relevant thereto.”³⁷
- “To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property.”³⁸
- “To bring legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver.”³⁹
- The Receiver is also “authorized to take immediate possession of all real property of the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures The Receiver is authorized to take immediate possession of real property in which Receivership Defendants have a record interest, and *to file a motion to take possession (a ‘Possession Motion’) of real property in which Receivership Defendants have a beneficial interest even if titled in the name of another, such as a spouse or an affiliated entity, such as a family limited partnership.*”⁴⁰
- “[T]he Receiver is authorized empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted .

³⁶ [Docket No. 491](#), ¶ 13(a).

³⁷ *Id.*, ¶ 13(b).

³⁸ *Id.*, ¶ 13(g).

³⁹ *Id.*, ¶ 13(l).

⁴⁰ *Id.*, ¶ 20 (emphasis added).

. . . The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission, restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.”⁴¹

Accordingly, the Receivership Order grants the necessary authority to the Receiver to investigate, take possession or bring legal action to collect, recover, receive, and/or take possession of all Receivership property, including real property in which Receivership Defendants have a beneficial interest even if titled in the name of another, such as a spouse.

b. The Court has Summary Proceeding Authority in Receiverships.

Federal Rule of Civil Procedure 56 provides that a “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.”⁴² Under Rule 56, facts must be supported by citation to materials in the record and the court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.”⁴³ But “[t]he mere existence of a scintilla of evidence in support of the [summary judgment opponent’s] position will be insufficient; there must be evidence on which the jury could reasonably find for the [them].”⁴⁴

It is well established that Rule 56 gives federal districts courts summary jurisdiction over receivership proceedings.⁴⁵ “Federal district courts have wide discretion in granting relief in an

⁴¹ *Id.*, ¶ 60.

⁴² [Fed.R.Civ.P. 56\(a\)](#).

⁴³ [Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.](#), 912 F.2d 1238, 1241 (10th Cir.1990).

⁴⁴ [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 252 (1986); *see also* [Anderson v. Coors Brewing Co.](#), 181 F.3d 1171, 1175 (10th Cir.1999) (“A mere scintilla of evidence supporting the nonmoving party's theory does not create a genuine issue of material fact.”).

⁴⁵ *See* [SEC v. Elliott](#), 953 F.2d 1560, 1566–67 (11th Cir. 1992); *see also* [FDIC v. Bernstein](#), 786 F.Supp. 170, 177 (S.D.N.Y.1992) (“In keeping with this broad discretion, the use of summary proceedings in equity receiverships, as

equity receivership and may use summary proceedings in fashioning such relief.”⁴⁶ Summary proceedings are available as part of the district court’s “broad powers and wide discretion to determine relief in an equity receivership.”⁴⁷ Indeed, courts are encouraged to use summary proceedings because they decrease litigation costs and prevent further dissipation of receivership assets.⁴⁸

This Court has recognized the appropriateness and expediency of using summary proceedings in the receivership context numerous times.⁴⁹ Specifically, the Court has found that “[i]t is well within the authority of the court to order the use of summary proceedings to resolve disputes concerning a federal equity receivership.”⁵⁰ And that “[a] summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.”⁵¹ Also, and importantly, “[f]or the claims of nonparties to property claimed by receivers, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard.”⁵²

Here, summary proceedings are appropriate. The Motion is based on records acquired as part of the Receiver’s investigation that show—as a matter of law—that at least a one-half interest

opposed to plenary proceedings under the Federal Rules of Civil Procedure, is within the jurisdictional authority of a district court.” (internal quotation and brackets omitted); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657 (6th Cir.2001); *SEC v. Sharp Capital, Inc.*, 315 F.3d 541, 545 (5th Cir. 2003) (citing *Elliott*, 953 F.2d 1560); *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 1999).

⁴⁶ *United States v. Fairway Capital Corp.*, 433 F.Supp.2d 226, 241 (D. R.I. 2006).

⁴⁷ *Broadbent v. Advantage Software, Inc.*, 415 F. App’x 73, 78 (10th Cir. 2011) (quoting *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir.2010)).

⁴⁸ *Elliott*, 953 F.2d at 1566 (quoting *SEC v. Wencke*, 783 F.2d 829, 837 (9th Cir.1986)).

⁴⁹ See *Bermant v. Broadbent*, No. 2:05CV466, 2006 WL 3692661, at *11 (D. Utah Dec. 12, 2006); *SEC v. Merrill Scott & Assocs., Ltd.*, No. 2:02 CV 39, 2006 WL 3813300, at *4 (D. Utah Dec. 26, 2006).

⁵⁰ *Bermant*, 2006 WL 36922661, at 11.

⁵¹ *Merrill Scott & Assocs.*, 2006 WL 3813300, at *4.

⁵² *Topworth Int’l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 1999); see also *F.T.C. v. Assail, Inc.*, 410 F.3d 256, 267 (5th Cir. 2005).

in the Property belonged to Greg Shepard and that his interest is a Receivership asset. Moreover, a summary proceeding is necessary to decrease litigation costs and prevent dissipation of the Property. Accordingly, a summary proceeding is the appropriate way to determine quickly the ownership status of the Property.

II. A Beneficial Interest in the Property Belonged to Greg Shepard.

There are two independent bases for finding that at least a one-half interest in the Property belonged to Greg Shepard. First, the facts show that the Property is marital property of Greg Shepard and Diana Shepard. Second, Greg Shepard is a settlor of the Trust as to his interest in the Property and because he is a settlor, the Trust does not shield the Property from creditors.

a. The Property is Marital Property such that Greg Shepard had at Least a One-Half Interest in the Property at the Time the Receiver was Appointed.

In Utah, “[m]arital property is ordinarily all property acquired during marriage and it encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived.”⁵³ A “court should presume that each party is entitled to . . . one-half of the marital property, regardless of which spouse's name appears on the title to the marital property.”⁵⁴ Instead of the name on the title, the “essential criterion” for determining whether certain property is marital property “is whether a right to the benefit or asset has accrued in whole or in part during the marriage.”⁵⁵

⁵³ *Henshaw v. Henshaw*, 2012 UT App 56, ¶ 16, 271 P.3d 837 (citing *Dunn v. Dunn*, 802 P.2d 1314, 1317–18 (Utah Ct.App.1990)).

⁵⁴ *Allen v. Ciokewicz*, 2012 UT App 162, ¶ 46, 280 P.3d 425 (citing *Stonehocker v. Stonehocker*, 2008 UT App 11, ¶ 15, 176 P.3d 476); see also *In re Charlton*, 389 B.R. 97 (Bankr. N.D. Cal. 2008) (“Under Utah law, which spouse holds title does not determine whether property is marital property.”).

⁵⁵ *Dahl v. Dahl*, 2015 UT 79, ¶ 26 (quoting *Woodward v. Woodward*, 656 P.2d 431, 432–33 (Utah 1982)).

Here, there is no question that the Property was acquired during Greg and Diana Shepard's marriage. The Property was purchased on December 2, 1986 and Greg and Diana Shepard were married prior to that date.⁵⁶ The Property has been Greg Sheppard's primary residence since 1986. At all times since the purchase, Greg Shepard has had possession and control of the Property and has benefited from that possession and control.⁵⁷ He has used the Property to secure several promissory notes as an individual "trustor" or "borrower."⁵⁸ Moreover, Diana Shepard stated that "Greg Shepard and I are married and have been continuously married while we have resided in the Clover Meadow home [the Property]. *It is a marital asset* and all payments, upkeep, maintenance and repairs have been done by our family since we purchased the home."⁵⁹ Additionally, both Greg and Diana Shepard describe the conveyance of the Property into the Diana C. Shepard Trust as "nominal" and "for estate planning purposes."⁶⁰ Accordingly, the facts show that the Property is marital property such that Greg Shepard had a beneficial interest in at least one-half of the Property.⁶¹

b. Greg Shepard is a Settlor of the Trust as to his Interest in the Property and the Trust Does Not Shield the Property from Creditors.

Next, even if (somehow) the Property is not marital property because it was transferred to the Trust, the facts show that Greg Shepard still has a beneficial interest in the Property and that creditors are not shielded from recovering Greg Shepard's interest.

⁵⁶ See Undisputed Material Facts ("Facts") ¶¶ 1-2, *supra*.

⁵⁷ Facts, ¶¶ 6, 8, 11, *supra*.

⁵⁸ Facts ¶¶ 6, 8, *supra*.

⁵⁹ Facts ¶ 11, *supra* (emphasis added).

⁶⁰ Facts ¶¶ 3-4, *supra*.

⁶¹ [Allen, 2012 UT App 162, ¶ 46](#) (a "court should presume that each party is entitled to . . . one-half of the marital property . . .").

Under Utah law, a “settlor”⁶² of a trust is “a person . . . who creates, or contributes property to, a trust. *If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution.*”⁶³ It is clear that “[a] trust may have more than one settlor.”⁶⁴ In the warranty deed, recorded on March 24, 2017, Greg Shepard contributed his interest in the Property directly to Trust.⁶⁵ Moreover, Greg Shepard has retained possession and control of the Property since his interest was transferred to the Trust and has continuously lived in the Property since 1986.⁶⁶ Accordingly, he is a “settlor” of the Trust as to his interest in the Property.

Next, the terms of the Trust (and the name of the Trust) show that it is a revocable. If a settlor has the power to revoke or amend the trust, it is a revocable trust.⁶⁷ Here, Article III of the Trust Agreement provides that “Grantor⁶⁸ retains the right to amend or revoke this Agreement and the Trust, in whole or in part, at any time, by an instrument in writing dated and signed by Grantor or Grantor’s authorized representative and delivered during Grantor’s lifetime to Trustee.”⁶⁹ Moreover, Utah’s Uniform Trust Code states:

If a revocable trust is created or funded by more than one settlor:

(a) to the extent the trust consists of community property, the trust may be revoked

⁶² A “settlor” of a trust is sometimes called a “grantor.” See [Restatement \(Third\) of Trusts § 3 cmt. a \(2003\)](#). In the Diana C. Shepard Trust Agreement, settlors are called grantors.

⁶³ [Dahl, 2015 UT 79, ¶ 35](#) (quoting [Utah Code § 75–7–103\(1\)\(k\)](#)) (emphasis added).

⁶⁴ [Restatement \(Third\) of Trusts § 3 cmt. a \(2003\)](#).

⁶⁵ Facts ¶ 9, *supra*.

⁶⁶ Facts ¶¶ 2, 11, *supra*. Although the March 2017 clearly establishes that Greg Shepard is a settlor of the Trust, the September 1998 transfers to Diana Shepard and then to the Trust do not preclude Greg Shepard from being a settlor of the Trust. Greg Shepard stated that the transfer was “nominal” for “estate planning purposes.” He was retained possession and control of the Property at all times since 1998. See Facts ¶¶ 2, 11, *supra*. He executed trust deeds on the property in his individual capacity. See Facts ¶¶ 6, 8, *supra*.

⁶⁷ [Dahl, 2015 UT 79, ¶ 29](#).

⁶⁸ The term “grantor” can be used as term for “settlor.” See note 61, *supra*. In the Diana C. Shepard Trust Agreement, settlors are called grantors.

⁶⁹ See [Exhibit 5](#) at 2.

by either spouse acting alone but may be amended only by joint action of both spouses; and
 (b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.⁷⁰

Therefore, under the statute, Greg Shepard may revoke or amend the Trust with regard to his interest in the Property because he contributed it to the Trust. “By its plain language, section 75–7–605 allows . . . a settlor of the Trust[] to revoke the Trust as it relates to [his] contributed property—either marital or separate.”⁷¹ “If a revocable trust has more than one settlor . . . each settlor . . . may revoke or amend the trust with regard to that portion of the trust property attributable to the settlor's contribution.”⁷² This section applies to all revocable trusts “[u]nless the terms of a trust expressly provide that the trust is irrevocable”⁷³ Accordingly, based upon the terms of the Trust and the Utah’s Uniform Trust Code, the Trust is revocable.

The upshot of Greg Shepard being a settlor of the Trust is that his interest in the Property is subject to the claims of creditors. Utah Code § 75–7–505(1) provides, “[d]uring the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors.”⁷⁴ Further, “[i]t is well settled under Utah law that self-settled revocable trusts cannot be used to shield assets from creditors.”⁷⁵ Utah courts have long recognized the concept that the law “prevent[s] a person from using a trust as a device by which he can retain for himself and enjoy substantially all of the advantages of ownership and at the same time place it beyond the legitimate

⁷⁰ [Utah Code § 75–7–605\(2\)](#).

⁷¹ [Dahl, 2015 UT 79, ¶ 38](#).

⁷² *Id.* (quoting [Restatement \(Third\) of Trusts § 63 cmt. k \(2003\)](#)).

⁷³ [Utah Code § 75–7–605\(1\)](#).

⁷⁴ [Utah Code § 75–7–505\(1\)](#).

⁷⁵ [Wilson v. Dunn, No. 2:12-CV-599-TC, 2014 WL 1795164, at *3 \(D. Utah May 6, 2014\)](#).

claims of his creditors.”⁷⁶

Accordingly, Greg Shepard’s transfer of his interest in the Property to the Trust does not prevent the Receiver from taking control of Shepard’s interest in the Property. Moreover, a finding by the Court that the Property is either marital property or that Greg Shepard is a settlor of the Trust entitles the Receivership Estate to Greg Shepard’s beneficial interest in the Property.⁷⁷

II. Greg Shepard’s March 2017 Transfer of his Interest in the Property is Voidable.

In addition to the above showing that the Property is marital property and that Greg Shepard is a settlor of the Trust, the March 2017 transfer of the Property from Greg Shepard to the Trust is a voidable transaction under the Utah Uniform Voidable Transactions Act or its predecessor the Uniform Fraudulent Transfer Act.⁷⁸ Utah Code § 25-6-202(1) provides:

- (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
- (a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.⁷⁹

⁷⁶ [Leach v. Anderson](#), 535 P.2d 1241, 1243 (Utah 1975).

⁷⁷ See [Receivership Order](#), [Docket No. 491](#) at ¶ 20.

⁷⁸ The Uniform Fraudulent Transfer Act was amended and renamed the Uniform Voidable Transactions Act. The new law took effect on May 9, 2017. For the purpose of this motion, however, the relevant language under either version of the act is substantially the same. Compare [Utah Code § 25-6-202\(1\)-\(2\)](#) with [Utah Code § 25-6-5\(1\)-\(2\)](#).

Further, the Receivership Order states that the Receiver is appointed to serve without bond “for the estate of the Receivership Defendants and any subsidiaries or affiliated entities, and he has standing to prosecute claims under the Uniform Voidable Transactions Act.” See [Receivership Order](#), [Docket No. 491](#) at ¶ 3.

⁷⁹ [Utah Code § 25-6-202\(1\)](#). Under the statute, the Receiver is the creditor or “person that has a claim” and Greg Shepard is the debtor. See [Utah Code § 25-6-102\(4\), \(6\)](#).

Accordingly, under the statute, the Greg Shepard’s transfer of the Property is voidable if (1) made with actual intent to hinder, delay, or defraud; or (2) if he did not receive reasonably equivalent value from the Trust, and if Greg Shepard’s remaining assets were unreasonably small in relation to his interest in the Property he transferred to the Trust. Section 25-6-202(2) lists certain “badges of fraud” which help determine whether the transfer was made with “actual intent” under 25-6-202(1)(a). These factors include whether the debtor retained possession or control of the property transferred after the transfer, if the transfer or obligation was to an insider, if before the transfer was made or obligation was incurred the debtor had been sued or threatened with suit, if the transfer was of substantially all the debtor’s assets, and if the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.⁸⁰

Here, the factors show that the transfer was made with actual intent hinder, delay, or defraud under section 25-6-202(1)(a). First, the transfer was made during litigation in this case.⁸¹ Second, the transfer was made for only nominal consideration and without reasonably equivalent value.⁸² Third, the transfer was to Greg Shepard’s wife’s trust.⁸³ Fourth, Greg Shepard has retained possession and control of the Property after the transfer and has lived on the Property since 1986.⁸⁴ Finally, Greg Shepard was—and still is—insolvent at the time the transfer was made.⁸⁵ Accordingly, based on the factors set forth in section 25-6-202(1)(a) the transfer was made with

⁸⁰ [Utah Code § 25-6-202\(2\)](#).

⁸¹ See [Docket No. 444](#) at note 86.

⁸² Facts ¶ 9, *supra*.

⁸³ [Adams v. Silver Shield Min. & Mill. Co.](#), 82 Utah 586, 21 P.2d 886, 888-89 (1933) (transfer of property by husband to wife without consideration is fraudulent as to creditors, even though wife does not participate in fraud and no actual fraud on part of husband is shown); see also [Paxton v. Paxton](#), 80 Utah 540, 553, 15 P.2d 1051, 1056 (1932) (holding conveyances between near relatives, calculated to prevent creditor from realizing on claim, are subject to rigid scrutiny); [Bradford v. Bradford](#), 1999 UT App 373, ¶ 19, 993 P.2d 887, 892 (citing [Paxton](#), 80 Utah 540, 553).

⁸⁴ Facts ¶¶ 2, 11, *supra*.

⁸⁵ Facts ¶¶ 13-16, *supra*.

actual intent to hinder, delay, or defraud creditors and is voidable.

The above facts show that the transfer also is voidable under 25-6-202(1)(b). Because the transfer was made for only nominal consideration, Greg Shepard did not receive reasonably equivalent value for the transfer.⁸⁶ There is also no question that Greg Shepard was insolvent in March of 2017.⁸⁷ Therefore, the transfer is also voidable under section 25-6-202(1)(b).

III. A Court-Ordered Sale of the Property is Appropriate.

Utah law allows a creditor who has obtained a levy against a person who owns property as a joint tenant or tenant in common with another individual to have that property partitioned.⁸⁸ If, however, “the court determines that the property cannot be partitioned without great prejudice to the owners, the court may order the property sold.”⁸⁹ In this case, the Property cannot be partitioned without great prejudice to the Receivership Estate and to Diana Shepard because the Property is a single family home in a subdivision such that dividing the Property is not practical. Moreover, the Receiver is obligated to liquidate the assets of the Receivership Estate for the benefit of claimants.⁹⁰ It would greatly prejudice the Receivership Estate for the Property to be partitioned instead of sold with the profits divided between the owners.⁹¹

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court grant the Motion and enter an order: (1) determining that at least a half-interest in the Property belonged to Greg Shepard;

⁸⁶ Facts ¶ 9, *supra*.

⁸⁷ Facts ¶¶ 13-16, *supra*.

⁸⁸ [Utah Code § 78B-5-512](#).

⁸⁹ *Id.*, [§ 78B-6-1212](#).

⁹⁰ *Receivership Order, Docket No. 491* at ¶¶ 88-91.

⁹¹ Utah law provides that recorded liens be satisfied before the remaining proceeds are divided among the owners of the property according to their respective shares. *See* [Utah Code § 78B-6-1220](#).

(2) that Diana Shepard execute a warranty deed transferring ownership of one-half interest in the Property to the Receiver; and (3) that the Property be sold and proceeds of such sale be used to satisfy any outstanding mortgages with the excess proceeds divided between the Receiver and Diana Shepard in proportion to their interests. The Receiver requests that the order direct Diana Shepard to make such transfer within 10 days of the entry of such order.

DATED this 4th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Jeffery A. Balls

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION FOR ORDER FINDING A BENEFICIAL INTEREST IN CERTAIN REAL PROPERTY WAS AN ASSET OF R. GREGORY SHEPARD AND FOR REMEDIES** was filed with the Court on this 4th day of October, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123
Pro se Defendant

Diana Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

The Diana C. Shepard Revocable Trust
c/o Diana C. Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

I also certify that, on the same date, by email, I caused to be served the same documents upon the following persons:

Greg Shepard
greg@rapower3.com

/s/ Natalie McKean