IT IS ORDERED as set forth below:

Date: August 15, 2014

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN RE:	)	CHAPTER 7
	)	
ARTICE L. NORTON	)	CASE NO. 11-14191-WHD
NANCY D. NORTON,	)	
	)	
Debtors.	)	
	)	
GRIFFIN E. HOWELL, III,	)	
Chapter 7 Trustee,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY PROCEEDING
	)	No. 13-1006
SUSAN TRAWICK,	)	
	)	
Defendant.	)	

ORDER

Before the Court is the Complaint for Avoidance of Fraudulent Transfer and Recovery of Property, filed by Griffin E. Howell, III (hereinafter the "Plaintiff") against

Susan Trawick (hereinafter the "Defendant"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(H); 1334.

PROCEDURAL HISTORY

On December 22, 2011, Nancy Norton (hereinafter the "Debtor") filed a voluntary petition under chapter 7 of the Bankruptcy Code. The Plaintiff, in his capacity as the trustee of the Debtor's bankruptcy estate, filed a complaint seeking the avoidance and recovery of a transfer by the Debtor to her sister of an interest in their mother's residence, commonly known as 2239 Warwoman Road, Clayton, Georgia (hereinafter the "Property"). The matter came before the Court for trial on August 5, 2014.

FINDINGS OF FACT

The Debtor's father passed away on May 16, 2010. Shortly after that time, the Debtor's mother, Jeanie Lezell Cannon (hereinafter "Cannon"), told the Defendant and the Debtor that she wanted to transfer the Property to them, subject to her life estate, to avoid having the Property pass through probate upon her death. At that time, the Debtor expressly told Cannon that she did not want Cannon to do so because she would not be able to afford to keep up the Property. In truth, the Debtor was having financial problems and wanted to avoid having the Property "drug into" those problems.

On September 14, 2010, Cannon caused to be prepared a warranty deed transferring the Property to the Debtor and the Defendant, subject to her life estate (hereinafter the "Warranty Deed"). She "signed, sealed and delivered" the Warranty Deed in the presence

of a notary public and one other witness and gave the Warranty Deed to a third party to be recorded. Cannon did not give the Warranty Deed or a copy of the Warranty Deed to the Debtor or the Defendant, and she did not inform the Debtor or the Defendant that she had conveyed the Property to them until sometime in May 2011.

On June 17, 2011, Branch Banking & Trust (hereinafter "BB&T") filed suit against the Debtor, which eventually resulted in a judgment against the Debtor in the approximate amount of $20,000. The Debtor learned about the suit on or about June 23, 2011. On July 1, 2011, the Debtor caused to be prepared, signed, and caused to be recorded a quitclaim deed transferring her interest in the Property to the Defendant (hereinafter the "Quitclaim Deed") in exchange for nominal consideration. Again, the Debtor did so to avoid having the Property "drug into" her financial problems. The Debtor's liabilities exceeded the value of her assets at the time she signed and recorded the Quitclaim deed.

The Debtor did not provide the Defendant with the Quitclaim Deed or a copy of the Quitclaim Deed and did not inform the Defendant that she had transferred her interest in the Property to the Defendant. As of the date of the trial, the Defendant retained the interest in the Property transferred to her by the Debtor.

CONCLUSIONS OF LAW

The Court must decide whether Debtor fraudulently transferred her interest in the Property within the meaning of section 548(a) of the Bankruptcy Code. The Plaintiff bears the burden of proving all elements under section 548(a)(1) by a preponderance of the

evidence. *See Anderson v. Patel (In re Diplomat Const., Inc.)*, Adversary No. 11–5611, 2013 WL 5591918, at *4 (Bankr. N.D. Ga. Aug. 6, 2013) (Diehl, J.); *Bakst v. United States* (*In re Kane & Kane)*, 479 B.R. 617, 631 (Bankr. S.D. Fla. 2012) ("The Trustee has the burden of proving all aspects of the alleged fraudulent transfers under §§ 548 and 550(a)(1) . . . .").

Under section 548(a)(1), a trustee may avoid a transfer made within two years prior to the petition date if the debtor:

> A) Made the transfer with the actual intent to hinder, delay, or defraud a creditor; or
> B) Received less than reasonably equivalent value for that transfer and the debtor:
>
> > 1) was insolvent at the time of the transfer or became insolvent as a result of the transfer;
> > 2) was left after the transfer with insufficient capital to operate his or her business; or
> > 3) intended to incur the debt which was beyond the debtor's ability to repay (to obvious detriment of the other prior creditors).

11 U.S.C. § 548(a)(1). Thus, to prevail, a plaintiff must prove that: 1) the debtor transferred a property interest within the two-year period; and 2) the transfer was either actually or constructively fraudulent.

Here, the parties agree that, if the Court finds that the Debtor had an interest in the Property, the transfer of that interest *via* the Quitclaim Deed is avoidable and recoverable from the Defendant under sections 548(a) and 550(a) of the Bankruptcy Code. If not, the parties agree that the Plaintiff's claims fail. Therefore, the Court must determine whether the Warranty Deed transferred an interest in the Property from Cannon to the Debtor. The

Defendant asserts that the Warranty Deed did not do so because it did not satisfy a basic requirement of a valid deed under Georgia law—that it be delivered to the grantee. The Plaintiff argues that Cannon's recording of the Warranty Deed and her reservation of a life estate created a rebuttable presumption that Cannon delivered the Warranty Deed to the Debtor, which the Defendant has failed to rebut.

As noted above, to succeed under section 548(a), the Plaintiff must prove that the Debtor transferred "an interest of the debtor in property." "The existence and extent of a debtor's interest in property is defined by applicable state law; in this case, [Georgia] law." *Lawrence v. Ky. Transp. Cabinet*, Civ. Action No. 3:13CV-971-S, 2014 WL 297868, at *2 (W.D. Ky. Jan. 27, 2014) (citing *Butner v. United States*, 440 U.S. 48 (1979)); *see also In re Clean Burn Fuels, LLC*, 492 B.R. 445, 457 (Bankr. M.D.N.C. 2013) (in the absence of a compelling federal interest dictating otherwise, a bankruptcy court applies state law to determine "'the extent of a debtor's property interest'"); *DeHart v. Kresge (In re Kresge)*, 467 B.R. 776, 778-79 (Bankr. M.D. 2012) (applying state law to determine whether Chapter 13 debtor owned property conveyed to him by his parents, who had recorded a deed transferring property to the debtor without his knowledge).

Under Georgia law, to be effective, a deed to lands must be "delivered to the purchaser or his or her representative." O.C.G.A. § 44-5-30; *Plowden v. Plowden,* 52 Ga. App. 741, 345 (1935). "The delivery of a deed . . . is complete only when the deed is accepted." *Domestic Loans of Wash., Inc. v. Wilder,* 113 Ga. App. 803, 805 (1966);

Plowden, 52 Ga. App. at 345.

Delivery can be "'either actual, i.e. by doing something and saying nothing, or else verbal, i.e. by saying something and doing nothing, or it may be both . . . .'" *Plowden*, 52 Ga. App. at 346 (quoting *Preston v. Ham*, 156 Ga. 223 (1923)); *see also Barrett v. Simmons*, 235 Ga. 600, 601 (1975) (finding constructive delivery where grantor gave the deed to a third party, who had it recorded, even though the grantee had no knowledge of the deed at the time of the recording). "'The question of the completed and effectual delivery of a deed is one of intent of the grantor, and this intent to irretrievably part with control of the deed is to be gathered from the circumstance under which the delivery was made.'" *Morris v. Johnson*, 219 Ga. 81, 89 (1963) (stating that the "'true test of delivery . . . is whether or not the grantor intended to reserve to himself the *locus penitentiae*'"—the opportunity to change one's mind or undo what one has done); *see also Smith v. Lockridge*, 288 Ga. 180, 184 (2010); *Johnson v. Johnson,* Case No. A13A2370, 2014 WL 2746661, at *2 (Ga. App. June 18, 2014). In addition to the grantor's intent to part with control over the deed, a completed delivery requires the grantee's acceptance, which the Court can infer from the grantee's actions. *See McKenzie v. Alston,* 58 Ga. App. 849 (1938); *Widincamp v. Brigman*, 166 Ga. 209 (1928). Such actions include "retention of the deed, assertion of title, subsequent sale or encumbrance of the property, bringing suit on the deed, returning the property for taxes, etc." DANIEL F. HINKEL, PINDAR'S GEORGIA REAL ESTATE LAW AND PROCEDURE § 19:96 (7th ed. 2012).

In this case, a rebuttable presumption of delivery has arisen due to both Cannon's recording of the properly executed Warranty Deed and her reservation of a life estate to herself. *See Dawson v. Keitt*, 232 Ga. 10, 12 (1974); *Keesee v. Collum*, 208 Ga. 382, 385 (1951). The Defendant failed to rebut the presumption of delivery. No facts call into question Cannon's intent to deliver the Warranty Deed to the Defendant and the Debtor. She executed the Warranty Deed and had it recorded. She later told the Debtor and the Defendant that she had done so. Nothing in the record suggests that Cannon did not intend "to irretrievably part with control of the" Warranty Deed. Rather, her actions and her words—recording the Warranty Deed and informing the grantees about its existence—demonstrate that she reserved no right to change her mind regarding the transfer and that she intended the transfer to become effective.

As to the Debtor's acceptance of the Warranty Deed, when the Debtor learned of the execution and the recording of the Warranty Deed, instead of renouncing any interest in the Property and considering the Property to be owned by Cannon, she asserted control over the Property by transferring her interest in it to the Defendant. By recording the Quitclaim Deed, the Debtor announced to the world that she believed she had an ownership interest in the Property and that she was, through the Quitclaim Deed, transferring that interest to the Defendant.[1]

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[1] The Debtor would have the Court believe that she used a quitclaim deed, rather than a warranty deed, because she did not believe she owned the Property and did not intend to assert an ownership interest in the Property. Having considered the Debtor's testimony, however, the Court finds that the Debtor transferred her interest in the

CONCLUSION

The Plaintiff has proven by a preponderance of the evidence that the Debtor transferred an interest in the Property to the Defendant. The parties agree, and the Court concludes, that the Plaintiff has also established all other elements necessary to prevail on his claim. Therefore, the Court shall enter judgment in favor of the Plaintiff. The transfer of the Debtor's interest in the Property is hereby avoided under subsections 548(a)(1)(A) and (B) of the Bankruptcy Code and said interest is recovered for the benefit of the Debtor's bankruptcy estate, pursuant to section 550(a) of the Bankruptcy Code.

The Court, finding no just reason for delay, enters this judgment in accordance with Rule 54(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7054(a) of the Federal Rules of Bankruptcy Procedure. The Plaintiff's remaining claim for attorney's fees shall be resolved at a later time upon the Plaintiff's request.

END OF DOCUMENT

Property to the Defendant because she believed she held such an interest and that she used a quitclaim deed because she believed that a quitclaim deed was the appropriate method to transfer a property interest in exchange for no consideration.