

[TAGGED for publication]



**ORDERED** in the Southern District of Florida on March 6, 2012.

  
Raymond B. Ray, Judge  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)  
Broward Division

In re:

CLAIRE ELIZABETH FLETCHER,  
Debtor(s).

Case No. 11-35386-BKC-RBR  
Chapter 7

**ORDER GRANTING TRUSTEE'S MOTION TO COMPEL TURNOVER**

**THIS MATTER** came before the Court for an evidentiary hearing on February 13, 2012, on Kenneth A. Welt's ("Trustee") Motion to Compel Turnover of Vehicle ("Motion") [DE 16] and Claire Elizabeth Fletcher's ("Debtor") Objection [DE 20] thereto. The Trustee seeks turnover of the Debtor's alleged interest in a 2007 Honda Accord ("Vehicle"). The Debtor's Objection contends that the Debtor holds only bare legal title without any equitable interest and alternatively, the Debtor holds the Vehicle in a resulting trust for the benefit of her mother, Janice Ballard. The Court held an evidentiary hearing on February 13, 2012 at which the

Debtor and the Debtor's mother testified. The Court took the matter under advisement and, after review of the Motion, Objection, testimony presented, and relevant case law, finds as follows.

### **Facts**

The Debtor filed a voluntary chapter 7 petition on September 13, 2011. The Debtor listed two vehicles on Schedule B. The first vehicle listed is the Vehicle at issue, valued at \$13,000 with no encumbrances. The Debtor fully disclosed that the Vehicle was titled in the names of the Debtor or the Debtor's mother. Schedule B further explained that the Vehicle was purchased solely by the Debtor's mother and the purpose of the joint ownership was to obtain less expensive automobile insurance. Question fourteen of the Debtor's Statement of Financial Affairs provides that the Debtor's mother traded in a former vehicle on October 6, 2010 and purchased the current Vehicle solely with the mother's own funds. This is consistent with the testimony of the Debtor and her mother at the evidentiary hearing.

The Vehicle is used exclusively by the Debtor's mother and sister.

The Debtor testified that she financially supports herself and volunteered that she also supports her 64 year old mother and 41 year old disabled sister. She classified her mother and sister as "her dependents." The Debtor, her mother, and sister all live together in an apartment in Coconut Creek, Florida. The Debtor pays for all household expenses including rent,<sup>1</sup> utilities, and groceries. The majority of the Debtor's debts she is seeking to discharge are debts for unsecured consumer credit cards totaling \$39,820. These debts were incurred as part of the Debtor and her family's living expenses.

It is without dispute that the Debtor pays for her mother's automobile insurance on the Vehicle. The insurance cost for the Vehicle is around \$60 per month. However, the Debtor testified that she does not pay to maintain or operate the Vehicle. When asked by the Court,

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<sup>1</sup> The Debtor receives \$400 per month from her sister for rent.

how the mother pays for the car's maintenance and gasoline if the mother does not have a regular source of income, the Debtor answered that the mother cleans houses part-time and also receives "SSI" money from the sister. The Debtor's mother started cleaning houses during the end of the summer in 2011. The mother's income is slow, irregular, and sporadic. The Debtor supplements the mother's living expenses by providing \$100 per month of support to her mother. The Debtor presented no evidence that the mother receives financial support from the sister.

On the Debtor's current monthly expenditures, the Debtor lists \$200 for transportation costs, \$127 for automobile insurance, and \$359.91 for automobile installment payments.<sup>2</sup> The Debtor then lists an additional \$50 under "Other" for automobile maintenance and \$40 for tolls.

### **Analysis**

The commencement of a voluntary bankruptcy case creates an estate consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). "Property in which the debtor holds . . . 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. § 541(d). Federal law determines whether an interest is property of the bankruptcy estate while state law creates and defines those interests. *Butner v. U.S.*, 440 U.S. 48, 55 (1979); *Witko v. Menotte (In re Witko)*, 374 F.3d 1040, 1043 (11th Cir. 2004). Under Florida law, when a person's name appears on title to property, a rebuttable presumption arises that the person has a beneficial interest in the property. *GEICO Indem. Ins. Co. v. Reed*, 13 So. 3d 99, 100 (Fla. 4th DCA 2009); see *In re Kirk*, 381 B.R. 800 (Bankr. M.D. Fla. 2007). That interest, however, may be an equal interest or factional share. See *Wachter v. Lezdey (In re Lezdey)*, 373 B.R. 164, 167–68 (Bankr. M.D. Fla. 2007).

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<sup>2</sup> On question three of the Debtor's Statement of Financial Affairs, the Debtor has paid \$1,080 over the past 90 days in monthly installment payments for her vehicle, a 2005 Toyota Corolla.

The Trustee has satisfied his initial burden of establishing the presumption that the Debtor has a beneficial interest in the Vehicle because the Vehicle is titled in the names of the Debtor or the Debtor's mother. The burden then shifts to the Debtor to prove by "competent, clear, and compelling evidence she does not hold a beneficial interest in the Vehicle." *In re Kirk*, 381 B.R. at 803. The legal issue for determination is whether the Debtor, who is named as a joint owner on the Vehicle's title, pays the Vehicle's insurance and contributes support to the Vehicle's primary user, but allegedly pays nothing toward the Vehicle's operation and maintenance, holds an interest in the vehicle that is subject to turnover and administration by the Trustee. The Court finds that in paying the Vehicle's insurance and contributing support to the mother, the Debtor holds a beneficial interest in the Vehicle such that the Debtor's interest constitutes property of the estate pursuant to 11 U.S.C. § 541(a) and is subject to turnover.

It is undisputed that the Debtor pays for the Vehicle's insurance coverage. Although the Debtor and mother testified that the Debtor does not contribute financially to maintain or operate the Vehicle, the Debtor's schedules and the parties' own testimony indicates otherwise. The Debtor's mother does not have a regular source of income. Although the mother earns a little more than \$60 per week, her income is self-admittedly "slow" and "sporadic." The Debtor contributes \$100 per month for her "[m]others [sic] monthly needs." The Debtor also pays for all household expenses including rent, utilities, and groceries. The majority of the Debtor's debts that she is seeking to discharge were incurred as part of the Debtor and her family's living expenses. It is unclear how much money the sister contributes to the mother for operation of the Vehicle, although the sister "tends to use [the Vehicle] quite a bit." Nonetheless, it is undisputed that the Debtor financially supports her mother. The Court finds that the Debtor's mother then uses this financial support, perhaps in conjunction with the sister's financial support, if any, to maintain and operate the Vehicle.

The Court is not alone in reaching such a conclusion. This case is similar to *In re Kirk* where the court granted the trustee's motion for turnover after finding the debtor failed to present

sufficient evidence to rebut the presumption of beneficial ownership. 381 B.R. 800. There, the debtor filed a voluntary chapter 7 petition and listed a vehicle as property held for another. The vehicle was purchased by the Debtor's father and used exclusively by the Debtor's daughter. The vehicle was jointly titled because the daughter, a minor in high school, could not legally contract for the vehicle's purchase. The joint title was also necessary because the debtor explained that obtaining insurance for the daughter as a sole owner would have been "prohibitively expensive." *Id.* at 802. Thus, the debtor obtained insurance coverage for the vehicle and paid the insurance premiums. The debtor also paid for the vehicle's maintenance costs because the daughter had no source of income. After analyzing Florida statutory law, the court found that the debtor failed to present sufficient evidence to rebut the presumption of beneficial ownership. In so holding, the court noted that "[t]he Debtor's obtaining insurance coverage for the Vehicle, payment of the premiums, and payment of the maintenance costs is inconsistent with her assertion she has no beneficial or equitable interest in the Vehicle. Payment of such costs evidences beneficial ownership." *Id.* at 803.

Like the debtor in *In re Kirk*, the Vehicle here was purchased by someone other than the Debtor; the Vehicle was titled in joint names for insurance purposes; the Debtor does not use the Vehicle; the Debtor's mother has no steady income; the Debtor pays for all household expenses including those of the mother; and there is no other evidence, such as a notation on the title or agreement, establishing the vehicle is being held in trust for the benefit of the mother. The only difference between this case and *In re Kirk* is the Debtor and Debtor's mother testified that the Debtor does not contribute financially to maintain and operate the Vehicle. However, the Court has already found that the Debtor's mother uses the Debtor's financial support to maintain and operate the Vehicle. Therefore, the Debtor has failed to present competent, clear, and compelling evidence she does not hold a beneficial interest in the Vehicle.

Had the Debtor's mother paid for her own automobile insurance and automobile maintenance in addition to paying the purchase price for the vehicle, the result may be different.

See *Kapila v. Moodie (In re Moodie)*, 362 B.R. 554, 557–58 (Bankr. S.D. Fla. 2007) (finding a purchase money resulting trust where although the title provided ownership in joint names, the debtor had no involvement with the property and “in no way contributed to the upkeep or maintenance” or monthly payments); *In re Mullennix*, No. 05-28199-JKO, 2006 WL 1548643, at \*1 (Bankr. S.D. Fla. Apr. 27, 2006) (denying turnover where the non-debtor mother paid “[a]ll insurance payments, maintenance, care costs and gasoline expenses” despite the title being in the debtor’s name alone).

### **Conclusion**

Therefore, in paying the Vehicle’s insurance and contributing support to the mother, the Debtor holds a beneficial interest in the Vehicle such that the Debtor’s interest constitutes property of the estate pursuant to 11 U.S.C. § 541(a) and is subject to turnover and administration by the Trustee. Accordingly, it is

**ORDERED** as follows:

1. The Trustee’s Motion to Compel Turnover is **GRANTED**.
2. The Debtor shall turnover the Vehicle to the Trustee within **fourteen (14) days** of this order.
3. Janice Ballard, the joint owner of the Vehicle, is entitled to a distribution, after deducting all ordinary and necessary costs and expenses of sale, of one half (1/2) of the proceeds of sale or otherwise established fractional interest.
4. The Court will entertain a Motion to Convert to a case under chapter 13 and may temporarily stay turnover of the Vehicle pending resolution of the Motion to Convert provided the Debtor places the Trustee’s name as a joint loss payee on the Vehicle’s automobile insurance.

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Copies to:  
Trustee  
Debtor