

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**LUCAS DANIEL REIDER
ALBRECHT**

DEBTOR

**KEVIN SINK, TRUSTEE
PLAINTIFF,**

v.

**LUCAS DANIEL RIEDER
ALBRECHT and KIRSTEN PIPER
MOORE
DEFENDANTS**

) **CASE NO. 25-01097-5-PWM**
) **CHAPTER 7**

) **ADV. PROC. NO. 24-135-PWM**

) **ADVERSARY COMPLAINT**

**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT AND IN SUPPORT FOR CROSS-MOTION FOR SUMMARY
JUDGMENT**

Defendants Lucas Albrecht and Kirsten Moore, (Defendants), by and through counsel, respectfully submit this Memorandum of Law in support of Defendants’ Response in Opposition to Plaintiff’s Motion for Summary Judgment and Cross-Motion for Summary Judgment. Defendants’ move for summary judgment on the claims pled in the Plaintiff’s complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable to this matter by Rule 7056 of the Federal Rules of Bankruptcy Procedure. In support of the relief requested in the Motion, Defendants state as follows:

**STATEMENT OF THE CASE, JURISDICTION AND AUTHORITY, STATEMENT OF
STIPULATED FACTS, AND STANDARD OF REVIEW**

The Defendants in this case agree and support the Plaintiff's "Statement of the Case", "Jurisdiction and Authority," "Statement of Stipulated Facts," and "Standard of Review" made in his Memorandum of Law.

ARGUMENT

A. The Absence of a Transfer Defeats All Claims

If no transfer occurred, then there can be no successful avoidance action under either bankruptcy law or North Carolina state law. The Bankruptcy Code defines a transfer as an act "disposing or parting with property or an interest in property." 11 U.S.C. § 101(54). The Plaintiff quotes *In re Paschall* that "[t]he term 'transfer' encompasses every means and manner by which property can pass from ownership and possession of another, and any transaction that reduces or extinguishes valuable legal rights is subject to avoidance." *Terry v. Paschall (In re Paschall)*, 403 B.R. 366, 374 (Bankr. E.D. Va. 2009). Both definitions address two ways in which a transfer of property can occur. One is by the full conveyance of a person's ownership in a thing; the other is by the conveyance of an interest or right pertaining to that ownership. Taking each in turn, the Plaintiff must prove that the retitling of joint tenancy property as tenancy by entirety property is an instance of either (a) disposing of property or (b) a valuable legal right appurtenant to that property.

The Defendants have owned the property at 4704 Arbor Chase Drive, Raleigh NC since May 2020. From May 2020 to February 2025, they owned the property as joint tenants with right of survivorship. Since February 2025, they have owned the property as tenants by the entirety. Both forms of property ownership consisted of the two Defendants, and only the Defendants, jointly sharing a single undivided interest in the exact same property. The property was not changed, and the identity of the owners did not change, only the form of the ownership itself.

The Plaintiff relies on the second half of the *Paschall* definition in identifying another way in which a transfer can occur: "any transaction that reduces or extinguishes valuable legal rights is avoidable." He then cites a bankruptcy court opinion from the Northern District of Illinois, as the basis for asserting that the interest disposed or, or legal right extinguished, when

joint tenancy becomes tenancy by the entirety is the loss of the creditor's right. See *In re Paulsen*, 623 B.R. 747 (Bankr. N.D. Ill. 2020). But it is not the reduction of a valuable legal right of a creditor that 11 U.S.C. § 101(54) or the *Paschel* case has in mind, but the reduction of a valuable legal right of the supposed *transferor*. In the present case, the Debtor did not diminish his fractional interest, he protected it. The Debtor owned a one-half interest in a single undivided interest when it was held as a joint tenancy, and the Debtor owned precisely the same one-half interest in a single undivided interest when it became held as a tenancy by the entirety. The ownership interest remained the same. It is not true, as the Plaintiff states, that “the parties agree that the February Deed diminished the Debtor’s fractional interest.” Plaintiff’s Memorandum, page 6. The Debtor had a joint share in an undivided interest when it was held as a joint tenancy and he held that same joint share in the same undivided interest when it was held in tenancy by the entirety. The only thing that changed was the creditor’s rights, not the Debtors. In that sense, the recordation of the deed in February 2025 is different than non-exempt cash being deposited into an IRA account on the eve of a bankruptcy filing. An asset was, indeed, converted from one form to another for the express purpose of protecting it from the reach of creditors but, crucially, no transfer of that asset occurred.

The Fourth Circuit Court of Appeals opinion in *Ivey v. First Citizens Bank & Trust Co.* (In re Whitley), 848 F.3d 205 is analogous in some important ways. The facts in that case involved funds of the Debtor being deposited into a personal bank account located at First Citizens Bank & Trust. The Plaintiff-Trustee in that case argued that because certain deposits and wire transfers to the Debtor’s account at First Citizens Bank & Trust Co. were made with actual intent to hinder, delay, or defraud creditors, they were therefore avoidable as fraudulent transfers under 11 U.S.C. § 548(a)(1)(A). (848 F.3d at 206.) The Trustee-Plaintiff in that case lost at both the bankruptcy and district courts because those courts found that for a transfer to have occurred the transaction must diminish the bankruptcy estate. The Fourth Circuit agreed with the analysis of the lower courts and further added that “when the debtor is still free to access those funds at will, the requisite ‘disposing of’ or ‘parting with’ property has not occurred; there has not been a ‘transfer’ within the meaning of § 101(54).”

In the case before the court, here, there is no legal difference between Whitley’s funds in the bank and the Debtor’s real property. The fundamental point in the *Ivey* case was whether the transaction diminished the bankruptcy estate. The retitling of the property as tenancy by entirety

did not diminish the bankruptcy estate. The Fourth Circuit ruled in *Ivey* that because the threshold question of whether a transfer had even occurred must be answered in the negative, no further analysis under § 548 was necessary.

Next, the Plaintiff turns to N.C. Gen. Stat. § 41-56(b). That statute outlines the ordinary way in which a tenancy by entirety is created. Undoubtedly, the ordinary, typical, way is through a conveyance or transfer. But while N.C. Gen. Stat. § 41-56(b) describes what is the typical way, it does not describe what is the exclusive way in which tenancy by entireties can be created. It describes how it *can* be created, not how it *must* be created. The language of conveyance used in the statute is descriptive of what ordinarily occurs, not prescriptive concerning what must occur. The focus of the statute is on what language in the grantee section of a deed is sufficient to create a tenancy by the entirety.

B. The Absence of Intent Defeats Actual Fraud

To prevail under 11 U.S.C. § 548(a)(1)(A) or N.C. Gen. Stat. § 39-23.4(a)(1), the Plaintiff must prove actual fraud. Actual fraud requires a finding that the Defendant intended the fraud. Here, unlike constructive fraud, the focus is on the subjective mental state of the Defendant and findings on matters of disclosure, honesty, and basic morality are often determinative. It is no surprise that bankruptcy cases where actual fraud has been found are a rogue's gallery of Ponzi schemes (*Ivey v. First Citizens Bank & Trust Co.*), closely held trusts (*Olsen v. Paulsen*), and convoluted corporate structures (*Tavener v. Smoot*). No such scheming is present here. Rather, we find three significant factors that weigh heavily against a finding that the Debtor committed actual fraud: (1) the Debtor acted on advice of counsel, (2) the actions were not concealed, and (3) the Debtor received equivalent value for the alleged transfer.

The Plaintiff uses *Ford v. Poston*, 773 F.2d 52, 54 (4th Cir. 1985) both to state the axiomatic principle that “mere conversion of property from non-exempt to exempt on the eve of bankruptcy – even though the purpose is to shield the asset from creditors – is not enough to show fraud” and also to assert his own position that “the Fourth Circuit expanded on and clarified this statement in ultimately holding that a transfer that leads to an exemption (such as the present case) is subject to a fraudulent when ‘the transfer of property occurs within one year of the bankruptcy filing, and there is evidence to indicate a fraudulent purpose aside from the

mere conversion of non-exempt property.’” Plaintiff’s brief, page 7, quoting 773 F.2d at 55. What follows in the Plaintiff’s memorandum is an attempt to conflate the facts in *Poston* to those in this case. The *Ford v. Poston* case was one where property held by the Debtor husband in fee simple and was transferred by him to him and his wife, without consideration, to be held as tenancy by entirety. It is also a case where the Trustee action was brought pursuant to 11 U.S.C. § 727(a)(2)(A). Neither the facts of the case nor the statute interpreted by the Fourth Circuit Court in *Poston* are related to the facts or statute at issue here. Despite this, the Plaintiff has spent three paragraphs attempting to tie this case to that one.

C. The Presence of Consideration of Defeats Constructive Fraud

To prevail under 11 U.S.C. § 548(a)(1)(B) or N.C. Gen. Stat § 39-23.4(a)(2), the Plaintiff must show, inter alia, that the Debtor received less than reasonably equivalent value in exchange for such transfer. This memorandum put forward the argument in Section A, above, that no transfer occurred because no property or legal rights related to the property were forfeited by retitling the property as tenancy by the entirety. If the court is persuaded by that argument, then neither an actual or constructively fraudulent transfer occurred because no transfer occurred. If, however, the court is unpersuaded by that argument, it must necessarily be the case that whatever *was* transferred or forfeited by the Debtor to his wife was *also* transferred or forfeited by his wife to the Debtor. What was given was also received. There is no more equivalent value than that.

Conclusion

Based on the undisputed facts of this case, the Plaintiff has not been able to show that any transfer occurred or that, if a transfer did occur, that the Debtor possessed either fraudulent intent or that no equivalent value was given to the Debtor in exchange for the property transferred. Therefore, the Defendants are entitled to a judgment as a matter of law.

Wherefore, the Defendants respectfully request that Court deny the Plaintiff’s Motion for Summary Judgment and enter one in their favor and for such other relief as the Court may rule as just and proper.

Respectfully submitted, this the 31st day of December, 2025.

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CERTIFICATE OF SERVICE

The foregoing Memorandum to be served on the following parties, by mailing a copy by depositing it in the United States Mail, by First Class Mail, in a properly addressed envelope with adequate postage thereon.

Kevin L. Sink
Attorney for
Noticed Electronically

Dated: December 31, 2025

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