

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions for Publishing and Posting on Website**

**Will This Opinion be Published** Yes

**Bankruptcy Caption:** In re Sohail A. Shakir

**Bankruptcy No.** 20 B 01252

**Adversary Caption:** Philip V. Martino, not individually, but solely in his capacity as the duly appointed Trustee for the estate of Sohail A. Shakir, v. Sohail A. Shakir et al.

**Adversary No.** 21 A 00008

**Date of Issuance:** October 5, 2021

**Judge:** Donald R. Cassling

**Appearance of Counsel:**

*Attorney for Plaintiff:*

Kevin A. Sterling  
The Sterling Law Office LLC  
411 North LaSalle Street, Suite 200  
Chicago, Illinois 60654

*Attorney for Defendant:*

Konstantine Sparagis  
Law Offices of Konstantine Sparagis, P.C.  
900 W. Jackson Blvd., Ste. 4E  
Chicago, IL 60607

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Bankruptcy No. 20 B 01252
	)	
SOHAIL A. SHAKIR,	)	Chapter 7
	)	
Debtor.	)	Honorable Donald R. Cassling
	)	
	)	
PHILIP V. MARTINO, not individually,	)	
but solely in his capacity as the duly	)	
appointed Trustee for the estate of	)	
Sohail A. Shakir,	)	
	)	
Plaintiff,	)	Adversary No. 21 A 00008
	)	
v.	)	
	)	
SOHAIL A. SHAKIR; RUBINA	)	
SHAKIR; OSAMA SHAKIR;	)	
HAMZA SHAKIR; SURROSH	)	
SHAKIR; GREEN DOT	)	
BUILDERS, LLC; RSS HOMES,	)	
LLC; THE RUBINA SHAKIR 2002	)	
LIVING TRUST; and 550 22ND LLC,	)	
	)	
Defendants.	)	

**ORDER DENYING DEFENDANT’S MOTION TO QUASH LIS PENDENS**

This matter came before the Court on the motion of Defendant RSS Homes, LLC to quash the lis pendens filed by Plaintiff Philip V. Martino, the Trustee in the underlying bankruptcy case of Sohail A. Shakir. Defendant argues that the Trustee’s lis pendens should be quashed for three reasons:

- A favorable judgment on the Complaint as currently worded would not affect title to the properties against which the lis pendens was recorded;
- The Complaint does not seek the type of remedy that must be sought to support the filing of a lis pendens; and
- No final judgment has been entered on the Complaint, which is a prerequisite for filing a lis pendens from a bankruptcy case.

Having considered the Motion to Quash, the parties' briefs and arguments, and the history of this bankruptcy case and adversary proceeding, the Court denies Defendant's motion.

## ANALYSIS

### Title to the Properties Would be Affected by the Lis Pendens

The Court rejects Defendant's first argument because a judgment in Trustee's favor on the Complaint as worded would indeed affect title to the properties owned by Defendant. In the Complaint, the Trustee alleges that Debtor Sohail Shakir is the true owner of the defendant LLCs and related entities as well as the true developer of the properties that are the subject of the lis pendens. The Trustee further alleges that, through a series of fraudulent transactions, Debtor named his immediate family as the nominal members of the defendant LLCs in order to hide the assets of those companies from his creditors.<sup>1</sup> The Trustee seeks to unwind those transactions through a combination of:

- **Declaratory relief** that the entities through which the fraudulent scheme was perpetuated, plus their assets and income, belong to the bankruptcy estate. This is a remedy which is "neither legal nor equitable." *Marseilles Hydro Power, LLC v. Marseilles Land & Water Co.*, 299 F.3d 643, 649 (7th Cir. 2002) (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988));
- **Turnover** of those property interests under Section 542 of the Bankruptcy Code, which is a form of equitable relief. *Geltzer v. Soshkin (In re Brizinova)*, 588 B.R. 311, 330-31 (Bankr. E.D.N.Y. 2018) (citing cases); 5 COLLIER ON BANKRUPTCY ¶ 542.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2021); and
- The imposition of **constructive trusts**, which also constitutes equitable relief. *Charles Hester Enters., Inc. v. Ill. Founders Ins. Co.*, 114 Ill. 2d 278, 293 (1986).

A judgment granting any of these forms of relief would affect title to the real estate in question because it would establish Debtor's equitable ownership apart from the nominal holders of legal title. Whether the Trustee will ultimately prevail on the merits of his claims is not relevant to the filing of a lis pendens, because the function of a lis pendens is to give third parties notice of a *pending* lawsuit, not to resolve the lawsuit itself.

### The Illinois Lis Pendens Statute is Applicable

Defendant next argues that neither the turnover action nor the constructive-trust action support the filing of a lis pendens notice because the turnover action is remedial in nature rather than a direct claim against the real estate and the constructive-trust action cannot create an ownership interest in the lis pendens properties. But this argument ignores the plain language of the statute, which applies to any complaint "seeking equitable relief,

---

<sup>1</sup> For a more complete discussion of the underlying transactions, the parties may refer to the Court's decision that was entered in a related adversary proceeding, *see Villa Oaks, LLC v. Shakir (In re Shakir)*, 623 B.R. 532 (Bankr. N.D. Ill. 2021), and overlaps with some of the issues in this Complaint. That decision discusses in some detail the alleged scheme and sequence of transactions undertaken by the Shakir family, primarily to defraud Debtor's creditors.

affecting or involving real property[.]” See 735 ILL. COMP. STAT. 5/2-1901; *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 177 (2004) (“The inquiry begins with the statutory text, and ends there as the text is unambiguous.”); see also *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (stating that when the words of a statute are unambiguous, “judicial inquiry is complete”). The Complaint meets those statutory predicates. The Trustee seeks declaratory judgment, constructive trust, and turnover in relation to real properties and the defendant LLCs that hold the titles to them. That is, the Complaint asserts entitlement to two forms of “equitable relief,” each of which “involves” and, in some cases, “affects” these real properties. Nothing more than that is required by the statute.

In arguing that the Trustee’s constructive-trust claim does not support the filing of a *lis pendens*, Defendant relies on *Berger, Shapiro & Davis, P.A. v. Haeling (In re Foos)*, 183 B.R. 149 (Bankr. N.D. Ill. 1995). But that case has no relevance to *lis pendens* issues.

The debtor in *Foos* had admitted to engaging in a Ponzi scheme. In perpetuating his scheme, the debtor commingled the funds of his various victims. The debtor’s fraud resulted in the filing of a state-court interpleader action in Florida, which was then removed as an adversary proceeding to the bankruptcy court there, and ultimately transferred to the bankruptcy court for the Northern District of Illinois. A victim of the fraud sought to intervene in the adversary proceeding, seeking to assert a constructive trust claim *against the debtor*, believing that some of the commingled funds could be traced to that particular victim’s claim. The victim argued that its constructive-trust claim together with the funds’ alleged traceability placed the disputed funds outside the bankruptcy estate.

The *Foos* court disagreed that the exclusion from estate property in Section 541(d) applied to constructive trusts arising under Illinois law—at least where the constructive trust had not been imposed pre-petition by a court of competent jurisdiction. The *Foos* court further determined that imposing a constructive trust under the facts of that case would have impermissibly violated the Bankruptcy Code’s priority scheme by elevating the claims of one unsecured creditor over others and would have also violated similar restrictions under Illinois state laws. For these reasons, it denied the victim’s motion to intervene in the adversary proceeding. Significantly, the *Foos* court did not address the issue of whether a *trustee* for a bankruptcy estate may seek a constructive trust *on behalf of a debtor’s estate* and file a *lis pendens* on account of such assertions. Because the *Foos* decision did not involve a *lis pendens* filing, it has no bearing upon the Court’s adjudication of this motion.<sup>2</sup>

Defendant has acknowledged in its brief that a constructive trust is a form of equitable relief. Once that concession has been made, the *lis pendens* statute applies. The Trustee’s constructive-trust claim is both admittedly equitable in nature and undisputedly being sought in relation to real property interests. Defendant failed to cite any relevant

---

<sup>2</sup> In addition, of course, no bankruptcy-court decision is binding upon this Court. See *In re Morales*, 359 B.R. 211, 216 (Bankr. N.D. Ill. 2007).

authority holding that a constructive trust does not constitute such relief. That failure is unsurprising, as many authoritative cases have reached the opposite conclusion.<sup>3</sup>

Similarly, application of the lis pendens statute is also triggered by the Trustee's turnover action, because it "invokes the court's most basic equitable powers to gather and manage property of the estate." 5 COLLIER ¶ 542.01 (citation omitted). Defendant correctly notes that a turnover action is remedial and therefore dependent upon achieving success on other counts of the Complaint. But the Trustee here is litigating the underlying property rights by seeking declaratory relief under Section 541 and *then* seeking enforcement of those determinations through a turnover order under Section 542. *Cf. Bank of Am., N.A. v. Veluchamy (In re Veluchamy)*, 879 F.3d 808, 816-18 (7th Cir. 2018) (affirming the lower courts' determinations that property nominally placed in another's name but subject to the debtors' control belonged to the estate and was therefore subject to turnover). This is sufficient to trigger application of the lis pendens statute, which encompasses both matters merely "involving" real properties as well as claims directly "affecting" them. The Court therefore rejects Defendant's argument that a turnover action is not "direct" enough to trigger the Illinois statute.<sup>4</sup>

#### Entry of a Final Judgment or Decree is Not a Prerequisite to Filing a Lis Pendens

Defendant makes only two arguments relating to the actual wording of the lis pendens statute. The first is that Section 5/2-1901 of the Illinois lis pendens statute permits the filing of notice only for pending district-court lawsuits, not for bankruptcy-court lawsuits. Defendant argues that, therefore, a lis pendens may be filed in relation to bankruptcy litigation only after that litigation has resulted in a final judgment or decree. Defendant's entire support for that argument lies in the fact that that section of the lis pendens statute only mentions district courts and is silent with respect to bankruptcy courts. This argument fails for two reasons.

First, under Illinois law, "a lis pendens terminates upon a final judgment or decree." *Duncan v. Farm Credit Bank of St. Louis*, 940 F.2d 1099, 1101-02 (7th Cir. 1991) (citing cases). As a result, it makes no sense to argue that a lis pendens can only be filed after a court has entered a final judgment or decree.

---

<sup>3</sup> *E.g., Primax Recoveries, Inc. v. Sevilla*, 324 F.3d 544, 547 (7th Cir. 2003) (providing that "equitable relief" includes "not just an injunction but also the imposition of a constructive trust . . ."); *Amendola v. Bayer*, 907 F.2d 760, 762 (7th Cir. 1990) ("Count Two requested equitable relief in the form of a constructive trust on the interest held by Bayer in Backer & Spielvogel-Chicago."); *Smithberg v. Ill. Mun. Ret. Fund*, 192 Ill. 2d 291, 300 (2000) ("Equitable relief, be it by constructive trust or some other form, has been frequently employed in situations very similar to the one now confronting us."); *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 288 (1992) ("Among other equitable relief, the lawsuit sought to impose a constructive trust on the assets held by Progressive.").

<sup>4</sup> This argument is also without any substantive merit, because the Seventh Circuit has concluded that the lis pendens statute encompasses equitable relief that only obliquely affects a piece of real estate. *See Suess v. Stapp*, 407 F.2d 662, 665 (7th Cir. 1969) (suit seeking constructive trust upon the proceeds of oil purchased under leases indirectly affected the underlying real estate and therefore supported notice of a lis pendens under Illinois law); *see also E & E Hauling, Inc. v. DuPage Cty.*, 396 N.E.2d 1260, 1266 (Ill. App. Ct. 1979).

Second, the factual premise for Defendant’s argument is wrong:

[T]here is no “bankruptcy court” in the sense of an independent legal entity. *Andros v. Soddy (In re Andros)*, Nos. 99–34989–7, 2000 WL 33950023, at \*2 (Bankr.W.D.Wis. Dec. 14, 2000). The bankruptcy court is a “unit of the district court,” 28 U.S.C. § 151, and in referred matters [the bankruptcy court] exercises the district court’s jurisdiction. *See generally Executive Benefits Ins. Agency v. Arkison*, — U.S. —, 134 S.Ct. 2165, 2171, 189 L.Ed.2d 83 (2014). Section 157 simply “allocates the authority to enter final judgment between the bankruptcy court and the district court,” and section 157(b)(5) “specifies where a particular category of cases should be tried.” *Stern*, 564 U.S. at 480, 131 S.Ct. 2594; *see also Adelson v. Smith (In re Smith)*, 389 B.R. 902, 912–13 (D.Nev.2008) (observing that section 157(b)(5) merely “allocate[s] the jurisdiction already conferred upon federal courts”); 1 *Collier on Bankruptcy* ¶ 3.06[3] at 3–80 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.2016) (describing section 157(b)(5) as a “venue” provision).

*Pausch v. DiPiero (In re DiPiero)*, 553 B.R. 122, 129 (Bankr. N.D. Ill. 2016).

For these reasons, the Court concludes that the Illinois lis pendens statute authorizes the filing of a lis pendens for any lawsuit that otherwise supports such filing, whether filed as an adversary proceeding in a bankruptcy court or as a complaint in a district court.

Defendant’s second argument relating to the wording of the Illinois lis pendens statute is that the use of the phrase “order of adjudication” in Section 5/2-1902 must be interpreted to prohibit the filing of a lis pendens notice in relation to an adversary proceeding before that litigation has resulted in a final judgment. In other words, Defendant argues that “order of adjudication” in this context means the same thing as “final judgment or decree” in a bankruptcy adversary proceeding. This argument is unpersuasive.

First, as previously stated, “a lis pendens terminates upon a final judgment or decree.” *Duncan*, 940 F.2d at 1101-02. This principle strongly suggests that Defendant’s interpretation of the phrase “order of adjudication” cannot be correct.

What the phrase “order of adjudication” does refer to, instead, is the prior practice under the old Bankruptcy Act, in which a bankruptcy referee would ordinarily enter a decree finding that a person who was a debtor in a bankruptcy case was to be adjudged a bankrupt. *See generally In re Webcor, Inc.*, 392 F.2d 893 (7th Cir. 1968). That practice was changed by the adoption of the Bankruptcy Code, under which an order of adjudication no longer exists.<sup>5</sup> *See* 11 U.S.C. § 301(b). There is no legitimate reason to conclude that this procedural change under bankruptcy law means that a lis pendens could only be filed with respect to a final judgment in an adversary proceeding filed in bankruptcy court.

---

<sup>5</sup> The only type of proceeding under the Code to which the phrase *might* have continuing application would be an involuntary case commenced pursuant to Section 303. In such cases, no order for relief is entered until the Court so orders. *See* 11 U.S.C. § 303(h).

Finally, Section 5/2-1902 clearly enlarges rather than restricts the filing of a lis pendens in connection with an insolvency proceeding. The statute lists three independent bankruptcy-related events, any one of which will justify the filing of a lis pendens notice: the filing of a petition, the entry of an order of adjudication, *or* the entry of an order approving a trustee's bond. *See* 735 ILL. COMP. STAT. 5/2-1902. Debtor's mere filing of his bankruptcy case, which may ultimately affect title to real property and which gave rise to the Trustee's Complaint, satisfies the first criterion, and triggers application of this subsection of the Illinois statute.

In short, the Trustee's lis pendens would be authorized under the laws of Illinois whether analyzed under Section 5/2-1901 or Section 5/2-1902, as each would independently support the Trustee's notices in these circumstances.

### CONCLUSION

For all of these reasons, Defendant's motion is denied.

**ENTERED:**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Donald R. Cassling**  
**United States Bankruptcy Judge**