

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: SLOAN AND TERRY DUVALL, Debtors

**No. 5:10-bk-73562
Ch. 7**

**TRUDY GILBERT, Individually and as
Trustee of the Gilbert Family Trust**

PLAINTIFF

vs.

5:10-ap-7188

SLOAN AND TERRY DUVALL

DEFENDANTS

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Before the Court is a motion for partial summary judgment with attachments, brief in support, and statement of undisputed material facts that were filed by the plaintiff, Trudy Gilbert, individually and as trustee of the Gilbert Family Trust, on March 10, 2011. The defendants/debtors, Sloan Duvall and Terry Duvall, did not respond to the plaintiff's motion for partial summary judgment. Trudy Gilbert does not move for summary judgment as to the attorney fees because the allowance and amount of fees relating specifically to the Duvalls was not determined by the state court. For the reasons stated below, the Court finds there are no remaining issues of material fact relating to the plaintiff's 11 U.S.C. § 523(a)(4) cause of action as to Sloan and Terry Duvall as co-executors of the Josephine Gilbert estate and Terry Duvall as co-trustee of the Gilbert Trust and grants the motion for partial summary judgment accordingly. Issues regarding Sloan Duvall as de facto co-trustee of the Gilbert Trust and allocation of attorney fees remain set for trial on July 18, 2011.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

Background

Trudy Gilbert and Terry Duvall are sisters, children of Theodore Gilbert and Josephine Gilbert, and nieces of Morton Gilbert and Doris Gilbert. Trudy and Terry were named successor co-trustees of a written, revocable trust of Morton Gilbert and Doris Gilbert [the Gilbert Trust], and assumed their duties upon Morton's death in September 2004. Terry Duvall resigned as co-trustee of the Gilbert Trust in January 2008.

Terry Duvall and Sloan Duvall were named co-executors of the estate of Josephine Gilbert, who died in December 2004. Disputes arose from the co-executor and co-trustee relationships that led Terry Duvall to file suit against Trudy Gilbert in the Circuit Court of Washington County, Arkansas, on December 31, 2008. Trudy Gilbert filed a counterclaim and included a third-party complaint against Sloan Duvall alleging various breaches of fiduciary duties relating to the Gilbert Trust and Josephine Gilbert's estate. After six days of trial in April and May 2010, the state court found that Terry and Sloan Duvall breached fiduciary duties owed to Trudy Gilbert and the Gilbert Trust, resulting, *inter alia*, in a judgment in favor of Trudy Gilbert, individually and as trustee of the Gilbert Trust. The state court issued its judgment on July 9, 2010, finding Terry Duvall and Sloan Duvall jointly and severally liable to Trudy Gilbert, individually as beneficiary of the estate of Josephine Gilbert, in the amount of \$40,854.50; and to Trudy Gilbert, trustee of the Gilbert Trust, in the amount of \$18,252.00; and for the legal fees of Trudy Gilbert relating to the complaint. Neither party appealed the state court's judgment.

On July 10, 2010, Sloan and Terry Duvall filed a joint chapter 7 voluntary petition. Trudy Gilbert filed this adversary proceeding on November 19, 2010. On March 10, 2011, Trudy Gilbert filed her motion for partial summary judgment, brief in support, statement of undisputed material facts, and supporting exhibits, including the state court judgment. The debtors did not respond to Trudy Gilbert's motion for summary judgment or controvert the statement of undisputed material facts.

Summary Judgment

Federal Rule of Bankruptcy Procedure 7056 provides that Federal Rule of Civil Procedure 56 applies in adversary proceedings. Rule 56 states that summary judgment shall be rendered “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The burden is on the moving party to establish the absence of material fact and identify portions of pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citing to former Fed. R. Civ. P. 56(c)). The burden then shifts to the non-moving party, who must show “that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(B). The non-moving party is not required to present a defense to an insufficient presentation of facts by the moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 161 (1970) (quoting 6 J. Moore, Fed. Prac. 56.22(2), pp. 2824-25 (2d ed. 1966)). However, if the non-moving party fails to address the movant’s assertion of fact, the court may consider the fact undisputed. Fed. R. Civ. P. 56(e)(2).

When ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party and allow that party the benefit of all reasonable inferences to be drawn from the evidence. *Ferguson v. Cape Girardeau Cty.*, 88 F.3d 647, 650 (8th Cir. 1996). In this case, the Court has before it Trudy Gilbert’s statement of undisputed material facts, which the debtors did not controvert. The Court also has before it the judgment from state court, which, if entitled to collateral estoppel effect, may entitle Trudy Gilbert to judgment as a matter of law.

Collateral Estoppel

The plaintiff prays that this Court apply the doctrine of collateral estoppel regarding issues previously litigated in state court. The doctrine of collateral estoppel precludes a court from conducting further proceedings on issues that have been litigated and ruled

upon previously. *Fisher v. Scarborough (In re Scarborough)*, 171 F.3d 638, 641 (8th Cir. 1999). The appropriate standard of proof under 11 U.S.C. § 523 for dischargeability exceptions in the code is the ordinary preponderance of the evidence standard. *Grogan v. Garner*, 498 U.S. 279, 291 (1991). According to the Supreme Court, “if nondischargeability must be proved only by a preponderance of the evidence, all creditors who have secured fraud judgments, the elements of which are the same as those of the fraud discharge exception [in bankruptcy], will be exempt from discharge under collateral estoppel principles.” *Id.* at 285. Therefore, if the elements required under § 523 have been proved in state court, the Court must grant Trudy Gilbert’s motion for summary judgment. In determining whether the state court judgment is entitled to preclusive effect, the Court must apply the law of Arkansas. *Scarborough*, 171 F.3d at 641 (stating that the court must look to the substantive law of the forum state in applying collateral estoppel). In Arkansas, there are four elements required to establish collateral estoppel: “(1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) that issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment.” *Riverdale Dev. Co. v. Ruffin Bldg. Sys., Inc.*, 146 S.W.3d 852, 855 (Ark. 2004). If the four elements are established with regard to the issues discussed below, the Court is precluded from relitigating the issues and the state court findings control. If the findings entitle Trudy Gilbert to judgment as a matter of law under § 523(a)(4), summary judgment must be granted.

(1) Issue Must be the Same

Trudy Gilbert argues that the state court judgment awarded in her favor and against the debtors is exempt from discharge under § 523(a)(4). Under this section, a discharge is not available to a debtor for any debts resulting from “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” 11 U.S.C. § 523(a)(4). To prevail under this section, Trudy Gilbert must prove two prongs: (1) that a fiduciary relationship existed between Trudy Gilbert and the debtors, and (2) that the debtors committed fraud or defalcation in the course of that fiduciary relationship. *Jafarpour v. Shahrokhi (In re*

Shahrokhi), 266 B.R. 702, 707 (B.A.P. 8th Cir. 2001). Therefore, these two prongs are the issues sought to be precluded.

The state court litigation involved breaches of fiduciary duties owed to Trudy Gilbert in two separate capacities. First, the state court found the Duvalls, as co-executors of the estate of Josephine Gilbert, breached a duty to Trudy Gilbert, individually as a beneficiary of that estate. Second, the state court found the Duvalls--Terry as co-trustee and Sloan as de facto trustee of the Gilbert Trust--breached a duty to Trudy Gilbert, as trustee of the Gilbert Trust. The two prongs under § 523(a)(4) must be met for each issue, separately, in order for the doctrine of collateral estoppel to preclude further litigation as to that issue.

(A) Breach of Duty by Terry and Sloan Duvall as Co-Executors of Estate of Josephine Gilbert relating to Trudy Gilbert, Individually

Fiduciary Relationship

Under the first prong of § 523(a)(4), Trudy Gilbert must prove by a preponderance of the evidence that the debtors were in a fiduciary relationship with Trudy Gilbert. According to the Plaintiff's Proposed Findings of Fact and Conclusions of Law, adopted by the state court in its judgment, the debtors were named co-executors of the estate of Josephine Gilbert when she died in 2004. (Pl's. Mot. Summ. J. Ex. C, ¶ 34.) Terry Duvall and Trudy Gilbert are the natural born children of Josephine Gilbert and were each named a 50% beneficiary under her will. (Pl's. Mot. Summ. J. Ex. C, ¶ 7.) The state court found that a fiduciary relationship existed between Terry and Sloan Duvall and Trudy Gilbert, that \$81,709.18 of misplaced insurance and inheritance proceeds should have been part of the estate funds, and that \$40,854.59 should have been distributed to Trudy Gilbert as a 50% beneficiary. (Pl's. Mot. Summ. J. Ex. C, § VI. ¶ 9.) In order for Trudy Gilbert to prevail on her collateral estoppel claim, she must show that a determination of whether Terry and Sloan Duvall were in a fiduciary relationship with Trudy Gilbert, as beneficiary of the estate of Josephine Gilbert, was at issue in the state court case.

The determination of a fiduciary relationship under § 523(a)(4) is a question of federal law, not state law. *Tudor Oaks Ltd. P'ship v. Cochrane (In re Cochrane)*, 124 F.3d 978, 984 (8th Cir. 1997). The federal law regarding § 523(a)(4) requires that “[t]he fiduciary relationship must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt.” *Id.* (quoting *Lewis v. Scott*, 97 F.3d 1182, 1185 (9th Cir. 1996)); see also *Barclays Am./Bus. Credit, Inc. v. Long (In re Long)*, 774 F.2d 875, 878 (8th Cir. 1985) (citing *Davis v. Aetna Acceptance Co.*, 293 U.S. 328 (1934)). A fiduciary duty recognized at the state level does not necessarily rise to the capacity required by § 523(a)(4). However, bankruptcy courts regularly look to state law to determine whether a fiduciary capacity exists. *Long*, 774 F.2d at 878. “The ‘technical’ or ‘express’ trust requirement is not limited to trusts that arise by virtue of a formal trust agreement, but includes relationships in which trust-type obligations are imposed pursuant to statute or common law.” *Brown v. Heister (In re Heister)*, 290 B.R. 665, 673 (Bankr. N.D. Iowa 2003) (quoting *In re Cook*, 263 B.R. 249, 255 (Bankr. N.D. Iowa 2001)). Thus, state law is important in determining whether a fiduciary relationship exists. *Id.*

Under Arkansas law, the executor of an estate occupies a fiduciary relationship toward the beneficiaries of the estate, and it is her duty to act toward them, as the beneficiaries of the trust administered by her, with the utmost good faith. *Price v. Price*, 491 S.W.2d 793, 801 (Ark. 1973) (citing *Crider v. Simmons*, 96 S.W.2d 471, 474 (Ark. 1936); 31 Am. Jur. 2d 28, *Executors & Administrators* § 2; 33 C.J.S. *Executors & Administrators* § 142, p. 1101). The Court finds that Arkansas’s recognition of a fiduciary relationship between an executor and beneficiary of an estate is sufficient to meet the requirement of a fiduciary relationship within the scope of § 523(a)(4). Specifically, (1) Terry and Sloan Duvall, as co-executors of the estate of Josephine Gilbert, acted in a fiduciary capacity toward Trudy Gilbert, as beneficiary of the estate, (2) this capacity was at issue in state court, and (3) the first prong of § 523(a)(4) is satisfied.

Fraud or Defalcation

Under the second prong of § 523(a)(4), Trudy Gilbert must prove by a preponderance of the evidence that the debtors committed fraud or defalcation in the course of the fiduciary relationship. Defalcation is defined as the “misappropriation of trust funds or money held in a fiduciary capacity; [the] failure to properly account for such funds.” *Cochrane*, 124 F.3d at 984 (quoting *Lewis*, 97 F.3d at 1186)). Fraud is defined as “any deceit, artifice, trick or design involving direct and active operation of the mind, used to circumvent and cheat another--something said, done or omitted with the design of perpetuating what is known to be a cheat or deception.” *Merchants Nat’l Bank v. Moen (In re Moen)*, 238 B.R. 785, 790 (B.A.P. 8th Cir. 1999) (quoting *RecoverEdge L.P. v. Pentecost*, 44 F.3d 1284, 1293 (5th Cir. 1995)).

In its order, the state court found that the debtors improperly spent, failed to collect, or failed to properly distribute \$81,709.18 that should have been included in the estate of Josephine Gilbert and half of which (\$40,854.59) should have been distributed to Trudy Gilbert. (Pl’s. Mot. Summ. J. Ex. C, § VI. ¶ 9.) As executors, the debtors held the estate funds in trust and had a fiduciary duty to disburse the funds appropriately. Defalcation need not be limited to intentional wrongs, but can include innocent or negligent misdeeds. *Cochrane*, 124 F.3d at 984. The Duvalls’ failure to collect or distribute the funds or the improper spending of the funds was at issue in state court and is defalcation under § 523(a)(4). The Court finds that the second prong required by § 523(a)(4)--that the debtors committed fraud or defalcation--has been satisfied as to the Duvalls’ breach of fiduciary duty owed to Trudy Gilbert. The Court also finds that the first element of collateral estoppel--that the issue sought to be precluded is the same as that involved in the state court litigation--has been met as to the breach of fiduciary duty by Terry and Sloan Duvall as co-executors of the estate of Josephine Gilbert relating to Trudy Gilbert.

(B) Breach of Duty by Terry Duvall, Co-Trustee, and Sloan Duvall, de facto Trustee, relating to Trudy Gilbert, Co-Trustee of the Gilbert Trust

Fiduciary Relationship

Trudy Gilbert must also prove by a preponderance of the evidence that the debtors were in a fiduciary relationship with Trudy Gilbert, as co-trustee of the Gilbert Trust, to meet the first prong of § 523(a)(4). In paragraph 11 of her statement of undisputed material facts, Trudy Gilbert states that the debtor, Terry Duvall, was named co-trustee of the Gilbert Trust, and the state trial court found that Sloan Duvall acted as de facto trustee to the trust. Again, this Court must look to federal law to determine whether a fiduciary relationship existed under § 523(a)(4).

As previously stated, federal law requires the fiduciary relationship to arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Cochrane*, 124 F.3d at 984. Under Arkansas law, the key rule in construing a trust is that the intention of the settlor be ascertained. *Trott v. Jones*, 157 S.W.3d 592, 594 (Ark. Ct. App. 2004) (citing *Aycock Pontiac, Inc. v. Aycock*, 983 S.W.2d 915, 919 (Ark. 1998)). Terry Duvall and Trudy Gilbert were named co-trustees of the Gilbert Trust specifically, which was the subject of the state court dispute. This nomination fits the “express trust” requirement of a fiduciary relationship. The trust documents are evidence of a clear intention to form the trust and intent of the settlor is ascertained from the four corners of the trust document when possible. *Aycock*, 983 S.W.2d at 919. As a result, this Court finds that Terry Duvall acted in a fiduciary capacity toward the Gilbert Trust and Trudy Gilbert, as trustee, pursuant to the terms of the Gilbert Trust, and this determination was at issue in state court.

However, the Court cannot conclude that the state court’s finding that Sloan was a de facto trustee is sufficient to establish a fiduciary capacity that is cognizable in bankruptcy. The state court determined the judgment in favor of Trudy Gilbert, trustee, to be against Terry and Sloan Duvall, jointly and severally, as co-trustee and de facto

trustee. While a fiduciary obligation arises from an express trust with regard to Terry Duvall because she was expressly named a co-trustee in the trust documents, the Court must determine the relationship of Trudy Gilbert and Sloan Duvall, as de facto trustee, separately. The state court held Sloan Duvall to the same standard as his wife, the co-trustee, because it found he had access to the trust corpus and the ability to act as trustee. However, Sloan Duvall was not identified as a trustee in the trust documents. The term fiduciary under § 523(a)(4) is used in a strict and narrow sense and does not apply to trustees of constructive trusts imposed because of the trustee's malfeasance. *Hunter v. Philpott*, 373 F.3d. 873, 876 (8th Cir. 2004) (citing *Long*, 774 F.2d at 878). It is not enough that by the act of wrongdoing the debtor has become chargeable as a trustee *ex maleficio*, but he must have been trustee without reference to the wrong. *Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 333 (1934). The fiduciary relationship required by § 523(a)(4) must have arisen from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Cochrane*, 124 F.3d at 984. This Court declines to find that Sloan Duvall, as de facto trustee according to the state court, meets the strict and narrow definition of fiduciary required by § 523(a)(4). Accordingly, based on the material presented, the Court cannot find that Sloan Duvall was in a fiduciary relationship with Trudy Gilbert that is cognizable under § 523(a)(4). For the reasons stated above, the Court finds that the first prong of § 523(a)(4) has been met with regard to Trudy Gilbert and Terry Duvall as co-trustees, but not with regard to Trudy Gilbert and Sloan Duvall.

Fraud or Defalcation

In order to establish the second prong of § 523(a)(4), Trudy Gilbert must prove by a preponderance of the evidence that Terry Duvall committed fraud or defalcation in the course of that fiduciary relationship and that that issue was the same issue that was involved in the state court litigation. The Duvalls borrowed \$120,000.00 from the Gilbert Trust on January 15, 2005. Although they eventually paid the money back to the trust, they did not pay any interest on the loan. The state court found that a rate of 6% per annum should be applied from the date of the loan to the date of final payment,

resulting in accrued interest of \$18,252.00 at the time of the state court judgment. The state court found a “clear breach of fiduciary duty” by Terry Duvall to the Gilbert Trust when she borrowed the money for her benefit and with no benefit to the trust. (Pl’s. Mot. Summ. J. Ex. C, § VI. ¶ 6.) The trial judge found that it was a breach of fiduciary duty for a trustee to self-deal to her own advantage and to the detriment of the trust and found in favor of Trudy Gilbert, trustee of the Gilbert Trust, for the amount of interest that would have accrued--\$18,252.00. The Court finds that this breach, which was at issue in state court, amounts to defalcation within the meaning of § 523(a)(4). As stated earlier, defalcation can include innocent or negligent misdeeds, and need not be limited to intentional wrongs. *Cochrane*, 124 F.3d at 984. Here, Terry Duvall’s borrowing of trust funds without a benefit to the trust, while acting as co-trustee, was harmful to the trust and its beneficiaries. Accordingly, this Court finds that the second prong of § 523(a)(4) has been established as to Terry Duvall, and that the first element of collateral estoppel is satisfied relating to Terry Duvall, co-trustee of the Gilbert Trust.

Trudy Gilbert has met the first element of collateral estoppel--that the issue sought to be precluded must be the same as that litigated in state court--with regard to Terry Duvall acting as co-executor of the estate of Josephine Gilbert, Sloan Duvall acting as co-executor of the estate of Josephine Gilbert, and Terry Duvall acting as co-trustee of the Gilbert Trust. The state court’s finding that Sloan Duvall was a de facto trustee of the Gilbert Trust does not satisfy any prong of § 523(a)(4). Accordingly, summary judgment is not appropriate as to that issue, and the issue will remain set for trial on July 18, 2011. The remaining elements of collateral estoppel will be considered only with regard to Terry Duvall acting as co-executor of the estate of Josephine Gilbert, Sloan Duvall acting as co-executor of the estate of Josephine Gilbert, and Terry Duvall acting as co-trustee of the Gilbert Trust.

(2) Actually Litigated

The second element of collateral estoppel is that the issue must have been actually litigated. According to the plaintiff’s statement of undisputed material facts, Terry

Duvall filed a complaint in state court on December 31, 2008, to which Trudy Gilbert filed a counterclaim and a third-party complaint against Sloan Duvall; the issues discussed above--fiduciary capacity and defalcation--were at issue and heard by the court on April 19, 20, 21 and May 4, 5, and 6, 2010; and both parties appeared. Accordingly, the Court finds that the issues related to this adversary proceeding were actually litigated and Trudy Gilbert has met the second element of collateral estoppel.

(3) Valid and Final Judgment

The third element is that the issues discussed above must have been determined by a valid and final judgment. The plaintiff attached a certified copy of the judgment that was entered in the state court action and filed for record on July 9, 2010. (Pl's. Mot. Summ. J. Ex. B.) According to the plaintiff's statement of undisputed material facts, neither party appealed the state court judgment. Thus, the Court finds that the issues were resolved by valid and final judgment and Trudy Gilbert has met the third element of collateral estoppel.

(4) Essential to the Judgment

Finally, the fourth element requires a determination that the debtors' fraud or defalcation in the course of their fiduciary relationship was essential to the judgment in the state court case. The state court order detailed the breaches by Terry and Sloan Duvall in their fiduciary capacities to Trudy Gilbert, individually and as trustee, which resulted in the judgments against Terry and Sloan Duvall. Consequently, the Court finds that Trudy Gilbert has met the fourth element of collateral estoppel, that the debtors' fraud or defalcation in the fiduciary capacity was essential to the state court judgment.

Because the four elements of collateral estoppel have been satisfied, this Court is precluded from relitigating the above issues decided by Washington County Circuit Court. Because the issues were determined in Trudy Gilbert's favor and when taken together show that there is no remaining issues of material fact remaining under § 523(a)(4), Trudy Gilbert is entitled to judgment as a matter of law and the entry of an

order granting her motion for partial summary judgment against Terry and Sloan Duvall, jointly and severally as co-executors of the Josephine Gilbert estate in the amount of \$40,854.50, and against Terry Duvall, as co-trustee of the Gilbert Trust in the amount of \$18,252.00.

Legal Fees for Trudy Gilbert, individually and as Trustee

In finding in favor of Trudy Gilbert, the state court determined that Trudy Gilbert would also be entitled to a judgment for her attorney fees. The attorney fees had not been determined when the debtors filed their bankruptcy petition but were later determined as to the other parties in the case. The total amount of attorney fees is now known; however, this Court must determine which portions of the fees are chargeable to the Duvalls, as co-executors of the Josephine Gilbert estate, and to Terry Duvall, co-trustee of the Gilbert trust, that relate specifically to the findings above, and to Sloan Duvall in the event Trudy Gilbert prevails in her § 523(a)(4) action at trial. The state court's decision with regard to the attorney fees is applicable here because it is ancillary to the judgment based on the fiduciary relationships and defalcation found above. Ancillary obligations, such as attorney fees and interest, may attach to a primary debt. *Jennen v. Hunter (In re Hunter)*, 771 F.2d 1126, 1131 (8th Cir. 1985). However, the amount of attorney fees due by the debtors in their separate capacities must be determined at trial and is not a subject of this summary judgment.

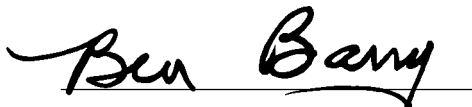
Conclusion

For the reasons stated above, the Court grants Trudy Gilbert's motion for partial summary judgment in part and finds that the debt from Terry Duvall and Sloan Duvall, jointly and severally, to Trudy Gilbert, individually, in the amount of \$40,854.50, plus post-judgment interest, less any amounts previously paid in satisfaction of the judgment, is excepted from discharge in the debtors' bankruptcy case pursuant to § 523(a)(4). The Court also finds that the debt from Terry Duvall to Trudy Gilbert, as Trustee of the Gilbert Trust, in the amount of \$18,252.00 plus \$3.00 per day interest as of June 4, 2010, less any amounts previously paid in satisfaction of the judgment is excepted from

discharge only as to Terry Duvall pursuant to § 523(a)(4).

Allocation of attorney fees and the § 523(a)(4) cause of action relating to Sloan Duvall as de facto trustee of the Gilbert Trust remain for trial on July 18, 2011, in the United States Bankruptcy Court, Fayetteville, Arkansas.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ben Barry". The signature is written in a cursive style and is positioned above a horizontal line.

Ben Barry
United States Bankruptcy Judge
Dated: 07/05/2011

cc: William Jackson Butt, attorney for Trudy Gilbert
William F. Clark, attorney for Trudy Gilbert
Robert Jeffrey Conner, attorney for Terry and Sloan Duvall