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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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|--------------------------------|---|-------------------------------|-------------------|
| In re: |) | BAP Nos. | CC-14-1222-KiTaPa |
| |) | | CC-14-1223-KiTaPa |
| ROBERT FERRANTE, |) | | (Related Appeals) |
| |) | | |
| Debtor. |) | Bk. No. | 8:10-10310-TA |
| _____ |) | | |
| |) | Adv. No. | 8:12-01330-TA |
| ROBERT A. FERRANTE; RICHARD C. |) | | |
| SHINN, Trustee of the 518 |) | | |
| Harbor Island Drive Trust; |) | | |
| ARMANI FERRANTE; GIANNI |) | | |
| FERRANTE; CHANEL FERRANTE, |) | | |
| |) | | |
| Appellants, |) | | |
| |) | | |
| v. |) | MEMORANDUM¹ | |
| |) | | |
| THOMAS H. CASEY, Chapter 7 |) | | |
| Trustee; STEVEN FENZL; MARIA |) | | |
| FERRANTE aka MIA FERRANTE, |) | | |
| |) | | |
| Appellees. |) | | |
| _____ |) | | |

Argued and Submitted on March 19, 2015
at Pasadena, California

Filed - August 26, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Theodor C. Albert, Bankruptcy Judge, Presiding

Appearances: Arash Shirdel of Pacific Premier Law Group argued
for appellants Robert A. Ferrante and Richard C.
Shinn, Trustee of the 518 Harbor Island Trust;
Owen Kaye of Law Office of Givner & Kaye argued for

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may have
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th
Cir. BAP Rule 8024-1.

1 appellants Armani Ferrante, Chanel Ferrante and
2 Gianni Ferrante; and Thomas A. Vogeles of Thomas
3 Vogeles & Associates, APC argued for appellee Thomas
H. Casey, Chapter 7 Trustee.

4 Before: KIRSCHER, TAYLOR and PAPPAS, Bankruptcy Judges.
5

6 Appellants, chapter 7² debtor Robert Ferrante ("Debtor"), his
7 three children Chanel Ferrante, Gianni Ferrante and Armani
8 Ferrante ("Ferrante Children") and Richard C. Shinn ("Shinn"), as
9 trustee of the 518 Harbor Island Drive Trust agreement
10 ("518 Trust") (collectively "Appellants") appeal an order granting
11 partial summary adjudication to the chapter 7 trustee, Thomas H.
12 Casey ("Trustee"), determining the revocability of a qualified
13 personal residence trust as a matter of law by a trustee in
14 bankruptcy or, alternatively, the revocability of the 518 Trust
15 for its failure to comply with IRS regulations. Appellants also
16 appeal the order denying reconsideration of partial summary
17 adjudication in favor of Trustee on these issues. We conclude
18 that the 518 Trust terminated pursuant to provisions in the law
19 and express terms in the 518 Trust. We AFFIRM.

20 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

21 **A. Prepetition events**

22 **1. Qualified Personal Residence Trust**

23 A brief explanation of a qualified personal residence trust
24 or "QPRT" assists us in gaining a better understanding of the
25 issues in these related appeals.

26
27 ² Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 A QPRT, as a creation of statute and IRS regulation, provides
2 a tax savings mechanism through which, for example, a parent may
3 transfer a residence to a child at a dramatically reduced estate
4 and gift tax cost. A QPRT is an effective estate planning
5 technique to transfer a personal residence at a reduced gift and
6 estate tax cost from one generation to another. Jon D. Lallo,
7 Qualified Personal Residence Trusts: An Estate Planning Fad Gone
8 Bad?, 46 R.I.B.J. 17 (Jan. 1998). With a QPRT, the grantor or
9 "term holder" transfers (gifts) a residence to the QPRT and
10 retains the right to live in and use the residence for a specified
11 term of years ("QPRT Term"), usually five to twenty years. During
12 the QPRT Term, the property is held for the sole benefit of the
13 grantor; the grantor has full use of the property and is
14 responsible for all expenses associated with it. With minor
15 exceptions, including working capital to maintain the residence
16 and pay trust expenses, no other property can be contributed to a
17 QPRT. Treas. Reg. § 25.2702-5(c)(5)(ii) (as amended in 1997).

18 At the end of the QPRT Term, the trust terminates and the
19 assets are distributed to the grantor's beneficiaries without any
20 further gift or estate tax consequences. Thus, any appreciation
21 in the residence's value after it is transferred to the QPRT
22 avoids estate or gift tax and inures to the benefit of the
23 remainder beneficiaries. If the grantor dies before the end of
24 the QPRT Term, the assets revert to the grantor's estate and are
25 subject to estate tax. Treas. Reg. § 20.2036-1(a).

26 A compliant QPRT has very specific features and requirements.
27 For example, a QPRT must be irrevocable, a transfer of real
28 property to a QPRT must be a completed gift, and a QPRT grantor

1 must retain certain rights therein, including the right to live in
2 the QPRT property rent free for the QPRT Term and the right to
3 income from the property. The governing instrument of the QPRT
4 must also provide that:

- 5 • any income of the trust be distributed to the term holder at
6 least annually (Treas. Reg. § 25.2702-5(c)(3) (1992));
- 7 • the trustee may not distribute trust principal to any
8 beneficiary other than the term holder until the expiration
9 of the QPRT Term (Treas. Reg. § 25.2702-5(c)(4) (1992));
- 10 • the trust may not hold any assets other than one personal
11 residence (Treas. Reg. § 25.2702-5(c)(5) (1992));
- 12 • the term holder's interest in the QPRT cannot be prepaid
13 (also known as "commutation") (Treas. Reg. § 25.2702-5(c)(6)
14 (1992));
- 15 • the trust ceases to be a QPRT if the residence ceases to be
16 used or held as a personal residence of the term holder
17 (Treas. Reg. § 25.2702-5(c)(7) (1992));
- 18 • within 30 days after the date on which the trust has ceased
19 to be a QPRT, either:
 - 20 • the assets are distributed outright to the term holder;
 - 21 • the assets are converted to and held for the balance of
22 the QPRT Term in a separate share trust meeting the
23 requirements of a qualified annuity interest, such as a
24 grantor retained annuity trust or "GRAT"; or
 - 25 • the trustee may elect to comply with either of these
26 alternatives (Treas. Reg. § 25.2702-5(c)(8) (1992)); and
- 27 • the term holder may not re-acquire the personal residence
28 (i.e., the trust is prohibited from selling or transferring

1 the residence, directly or indirectly, to the grantor (and
2 certain others) during the QPRT Term or at any time after the
3 QPRT Term (Treas. Reg. § 25.2702-5(c) (9) (as amended in
4 1997)).³

5 For purposes of a QPRT, a "personal residence" is: (a) the
6 "principal residence" of the term holder; (b) one "other"
7 residence of the term holder; or (c) an undivided fractional
8 interest in either. Treas. Reg. § 25.2702-5(b) (2) and (c) (2)
9 (1992). The definition of "principal residence" is self-
10 explanatory; the grantor can have only one principal residence.
11 For a property to qualify as an "other" residence, often a
12 vacation property, the grantor must either use the property as a
13 residence for 14 days during the calendar year or, if rented out
14 for a portion of the year exceeding 140 days, the grantor must use
15 the property as a residence for a number of days at least equal to
16 10% of the number of days it is rented out. Treas. Reg.
17 § 25.2702-5(c) (2) (i) (B) (1992) (referencing I.R.C. § 280A(d) (1)
18 for definition of "other" residence).

19 Another IRS regulation, Treas. Reg. § 25.2702-5(c) (7) (i)
20 (1992), specifically discusses "cessation of use as a personal
21 residence." Under that provision, a "residence is held for use as
22 a personal residence of the term holder so long as the residence
23

24 ³ On December 23, 1997, the IRS adopted this regulation,
25 26 C.F.R. § 25.2702-5(c) (9), and it applies to trusts created
26 after May 16, 1996. The preamble to the regulations, however,
27 states: "Treasury and the IRS wish to clarify that the IRS will
28 apply these regulations only to post-effective date trusts.
Nevertheless, Treasury and the IRS have the authority to apply
established legal doctrines to disqualify a pre-effective date
trust in cases where the statutory purpose has clearly been
violated."

1 is not occupied by any other person and is available at all times
2 for use by the term holder as a personal residence."

3 The above noted amendatory regulation prohibited any grantor
4 buy-back provision and required proper modification of the QPRT to
5 preserve its QPRT qualification. Even if the IRS delayed
6 implementation of this amendatory regulation to QPRTs created
7 after May 16, 1996, Treas. Reg. § 25.2702-5(b)(1) (third sentence)
8 (1992), as noted by the bankruptcy court and in effect prior to
9 the 1997 amendment, provides "[a] trust does not meet the
10 requirement of this section if, during the original duration of
11 the term interest, the residence may be sold or otherwise
12 transferred by the trust or may be used for a purpose other than a
13 personal residence of the term holder."

14 **2. The QPRT at issue**

15 In 1994, Debtor, who holds a law degree and has previously
16 practiced law, created the 518 Trust as a QPRT pursuant to Treas.
17 Reg. §§ 2702 and 25.2702-5 for a residence located in Newport
18 Beach, California (the "518 Property") for the benefit of the
19 Ferrante Children. It provided for a twenty-year QPRT Term, to
20 end in 2014. Debtor served as the initial trustee. At one time
21 his former father-in-law served as trustee. His long-time friend,
22 Shinn, serves as the current trustee. The 518 Property is a
23 5,500 square foot luxury waterfront home with fifty feet of bay
24 frontage. It features high coffered ceilings, a pool and spa, a
25 wine cellar, a gaming parlor, a custom kitchen, a rooftop deck
26 with panoramic views and Winston Churchill's personal fireplace
27 mantel. The 518 Property is currently listed for sale at
28 \$7.495 million.

1 The issue before us requires a careful analysis of the IRS
2 regulations for a QPRT and the 518 Trust provisions. The
3 following trust provisions are pertinent:

4 Paragraph II: Irrevocability. This trust and all
5 interests in it are irrevocable, and the grantor has no
6 power to alter, amend, revoke, or terminate any trust
provision or interest whether under this instrument or
any statute or rule of law.

7 Paragraph III A.4.: Option to Purchase Residence. The
8 Grantor shall have the option to acquire all or part of
9 the Residence from the trust immediately prior to the
expiration of the trust. The option price will be the
then fair market value of the Residence then held by
this Trust.

10 Paragraph III B. When the Trust Terminates. The Trust
11 terminates only as provided in this paragraph:

12 3. Cessation of Personal Residence Trust Status.
13 Unless the Trustee makes a timely election under
14 subparagraph III [C.], this trust shall terminate
15 when it ceases to be a Qualified Personal
Residence Trust ("QPRT"), and on such termination
the Trustee shall distribute all of the trust
assets to the Grantor

16 4. The date on which the Residence . . . ceases to be
17 used or held for use as a personal residence shall
be known as the "Cessation Date."

18 Paragraph III C. Conversion to a Grantor Retained
19 Annuity Trust. Within thirty (30) days from the date
20 on which this trust would otherwise terminate under
21 subparagraph III [B.3.], the Trustee may elect to
convert the trust to a Grantor Retained Annuity Trust
("GRAT")

22 Paragraph III A.4. is referred to by the parties as the "buy-back"
23 provision.

24 **3. Prior state court litigation against Debtor and the**
25 **518 Trust**

26 In 2004, William Seay ("Seay"), a former trustee of the
27 518 Trust who loaned Debtor money, obtained a default judgment
28 against Debtor for approximately \$2.4 million and recorded an

1 abstract of judgment in Orange County. In 2008, Seay filed an
2 action in the probate court against the 518 Trust to revoke it, to
3 obtain the 518 Property and to satisfy his money judgment. Seay
4 contended that Debtor created the 518 Trust as a sham to avoid
5 creditors' claims and that Debtor had reserved the power to revoke
6 the trust. The probate court dismissed Seay's action on the
7 motion of Debtor's former wife, Maria a/k/a Mia Ferrante ("Mia"),
8 as guardian for the 518 Trust remainder beneficiaries, the
9 Ferrante Children.

10 In an unpublished opinion, the California Court of Appeal
11 affirmed the probate court and held the 518 Trust was irrevocable
12 and protected from judgment execution. Importantly, the appellate
13 court noted that Seay did not seek to reach Debtor's beneficiary,
14 life estate or reversionary interest. The appellate court
15 dismissed any argument of trust revocability on the basis that a
16 judgment creditor cannot establish that an irrevocable trust is
17 revocable based on subsequent conduct of the settlor (citing
18 Laycock v. Hammer, 141 Cal. App. 4th 25, 30-31 (2006)).

19 **B. Postpetition events**

20 Debtor filed a chapter 7 bankruptcy case on January 11, 2010.
21 He received a discharge in January 2012.

22 Subsequently, Trustee filed an adversary complaint against
23 Debtor, the 518 Trust and others for turnover of estate property,
24 declaratory relief and for revocation of Debtor's discharge.
25 Trustee later filed a first amended complaint and then a second
26 amended complaint, the operative complaint at issue. While the
27 first amended complaint was pending, Trustee filed two motions
28 seeking to declare the 518 Trust revocable and to sell the

1 518 Property for the benefit of creditors. Appellants opposed
2 both motions, but the bankruptcy court never ruled on them.

3 **1. Trustee's motion for summary judgment or, alternatively,**
4 **for partial summary adjudication**

5 Trustee then filed a motion for summary judgment or,
6 alternatively, for partial summary adjudication, seeking an order
7 revoking the 518 Trust and turning the property over to Debtor's
8 bankruptcy estate ("MSJ"). Specifically, Trustee contended the
9 518 Trust was revocable, despite the irrevocability language
10 contained in Paragraph II. Under Paragraph III B.3., the
11 518 Trust would lose its QPRT status once the 518 Property ceased
12 to be Debtor's personal residence or ceased to be held by the
13 trustee for Debtor's use as a personal residence. And, once the
14 518 Trust lost its QPRT status, the trust terminated and all trust
15 assets reverted to Debtor.

16 Trustee argued that Ferrante could revoke the 518 Trust
17 simply by not using the 518 Property as his personal residence,
18 which was solely within his control. This "back door" provision
19 gave Debtor the power to revoke the 518 Trust at will, thereby
20 rendering it a revocable trust under California law and property
21 of the estate. Trustee disputed Appellants' argument that
22 compliance with QPRT regulations absolved Debtor and the trust
23 from liability.

24 Alternatively, Trustee argued that the 518 Trust terminated
25 in March 2009, when Debtor actually ceased using the 518 Property
26 as his personal residence. Under Paragraph III B.4., the
27 518 Trust terminated on the date on which the 518 Property ceased
28 to be held for use as Debtor's personal residence. On March 1,

1 2009, a former trustee of the 518 Trust executed a lease for the
2 518 Property with Shinn, making it Shinn's "exclusive" residence
3 for two years. This lease directly contradicted Treas. Reg.
4 § 25.2602-5(c)(7)(i) (1992) that the residence not be "occupied by
5 any other person" and be "available at all times for use by the
6 term holder." Thus, argued Trustee, because the 518 Property was
7 not "held for use" as Debtor's personal residence, the 518 Trust
8 ceased to be a QPRT. As a result, the 518 Property revested in
9 Debtor and became property of Debtor's estate.

10 Additionally, the Trustee argued that noncompliance with the
11 amended regulations prohibiting a buy-back provision terminated
12 the QPRT qualification of the 518 Trust, requiring the QPRT
13 trustee to elect a timely conversion to a GRAT, which did not
14 happen. Consequently, the termination required the trustee to
15 distribute the 518 Property to the Debtor.

16 Appellants opposed the MSJ. They contended that termination
17 of the 518 Trust could occur **only** upon (1) Debtor's death,
18 (2) expiration of the twenty-year QPRT Term or (3) cessation of
19 its QPRT status, and none of these "terminating events" had
20 occurred. Appellants disputed Trustee's contention that the
21 518 Trust terminated if Debtor ceased to live in the 518 Property.
22 They argued that QPRT regulations did not require Debtor to
23 actually live in the 518 Property for it to be deemed his personal
24 residence; he simply had to have the "right" to occupy the
25 property or live there for a minimum of fourteen days a year.
26 Thus, so long as Debtor could reside at the 518 Property for
27 fourteen days annually, it qualified as his "personal residence,"
28 and the 518 Trust retained its QPRT status. As for the 2009 Shinn

1 lease, Debtor contended it was never effectuated and did not
2 terminate the 518 Trust.

3 Appellants further argued that because the 518 Trust complied
4 with all QPRT regulations, and because QPRTs are irrevocable as a
5 matter of law, the irrevocability of the 518 Trust survived and
6 the 518 Property did not constitute property of Debtor's
7 bankruptcy estate. As for the requirement under 26 C.F.R.
8 § 25.2702-5(c) (9) – that the trust may not sell or transfer the
9 residence to the grantor during or after the QPRT Term – Debtor
10 contended that even though the 518 Trust contained the now-
11 prohibited "buy-back" language, this regulation, promulgated in
12 1997, occurred after creation of the 518 Trust and did not apply.
13 Appellants additionally contended that under California law Debtor
14 could not turn an irrevocable trust into a revocable one with his
15 post-creation conduct; it could only be set aside by petition of
16 all beneficiaries.

17 **2. The bankruptcy court's ruling on the MSJ**

18 Prior to the MSJ hearing, the bankruptcy court issued a
19 lengthy tentative ruling, which it adopted as its final ruling and
20 incorporated into its order. The bankruptcy court found in favor
21 of Trustee on two independent grounds. First, after carefully
22 analyzing the requirements for and nature of QPRTs, the court
23 reasoned that QPRTs are not irrevocable trusts, unlike spendthrift
24 trusts, because a grantor can terminate QPRT status by ceasing to
25 reside in the trust property.⁴ Further, according to the

26 _____
27 ⁴ The bankruptcy court acknowledged the IRS's letter at
28 26 C.F.R. § 601.201 Rev. Proc. 2003-42, which sets forth an
(continued...)

1 518 Trust, once QPRT status was lost the trust terminated and all
2 assets were to be distributed to Debtor. Therefore, if Debtor
3 could terminate the 518 Trust at his discretion, so could Trustee,
4 as that power belonged to the estate. Ultimately, in the court's
5 opinion, QPRTs are gift and estate tax delay devices, not estate
6 planning or creditor protection devices.

7 Alternatively, the bankruptcy court found that the now-
8 prohibited "buy-back" provision allowing Debtor to purchase the
9 518 Property from the trust immediately prior to the end of the
10 QPRT Term violated QPRT requirements and established revocability
11 or terminability. Accordingly, because the court considered the
12 518 Trust to be a revocable or terminable trust, Trustee could
13 revoke or terminate it for the benefit of creditors.

14 During oral argument at the MSJ hearing, counsel for Debtor
15 and the 518 Trust asked the bankruptcy court what effect, if any,
16 the California appellate court decision in Seay v. Ferrante had in
17 this case. The bankruptcy court opined that it had no preclusive
18 effect on the estate, because no one represented the estate in
19 that action. The court also distinguished the two non-controlling
20 cases cited by Appellants that reviewed QPRTs in bankruptcy and
21 determined them to be irrevocable and not property of the estate.
22 In the court's opinion, those cases focused on different issues,
23 such as fraudulent conveyance, and did not engage in any real

25 ⁴(...continued)
26 example of a sample QPRT document containing irrevocability
27 language not unlike the 518 Trust. The court reasoned that even
28 though the IRS indicates it will not contest an instrument
containing those provisions, this IRS decision was not the same as
a statutory requirement.

1 analysis of "what exactly does it mean to be 'irrevocable' in this
2 context with the teaching that anything the Debtor . . . could do
3 so can his trustee." Hr'g Tr. (Jan. 23, 2014) 25:12-26:17.

4 The bankruptcy court entered an amended order granting
5 partial summary adjudication to Trustee on the issue of
6 revocability of the 518 Trust on March 5, 2014 ("MSJ Order").⁵

7 **3. The motion to reconsider the MSJ Order**

8 Appellants timely moved for reconsideration of the MSJ Order
9 ("Motion to Reconsider"). Appellants first contended the
10 bankruptcy court erred in determining that QPRTs are not
11 irrevocable trusts, when IRS regulations mandate that all QPRTs
12 are irrevocable despite the word "irrevocable" not appearing in
13 the statutes. In sum, argued Appellants, QPRT statutes apply only
14 to completed gifts. Therefore, a QPRT must be an irrevocable
15 trust or a completed gift to it could not be made.

16 Appellants contended the bankruptcy court further erred in
17 determining that since QPRTs terminate upon cessation of QPRT
18 status, QPRTs are not irrevocable trusts. Debtor argued that when
19 a trust ceases to qualify as a QPRT, the trustee (not the grantor)
20 may elect to convert it to a GRAT – another type of irrevocable
21 retained interest trust – as opposed to distributing the trust
22 assets outright. The GRAT then makes annuity payments to the
23 grantor as specified in the trust document, with the balance of
24 the corpus to be paid to the beneficiaries at the end of the
25 stated term. Finally, Debtor argued that his ability to buy back

26
27 ⁵ The bankruptcy court entered an initial order granting
28 partial summary adjudication to Trustee on January 29, 2014. The
court later entered the amended order because the tentative ruling
from January 23 was not attached to the January 29 order.

1 the 518 Property prior to the expiration of the QPRT Term did not
2 terminate its QPRT status, as such regulations did not exist when
3 Debtor created the 518 Trust in 1994. In conclusion, Debtor
4 contended that, because he had no dominion or control over the
5 518 Trust, neither did Trustee.

6 In opposition, Trustee argued that the 518 Trust, although
7 created in 1994, still had to comply with the IRS's prohibition
8 against any buy-back provisions in accordance with 26 C.F.R.
9 § 25.2702-5(c)(9). On December 23, 1997, the Department of
10 Treasury issued 62 Fed. Reg. 66988 adding 26 C.F.R.
11 § 25.2702-5(a)(2), which provides that a trust created before
12 January 1, 1997, that does not comply with the requirements under
13 paragraph (b) or (c), would still be treated as a QPRT if
14 modified, but the reformation had to be commenced within ninety
15 days after December 23, 1997, and had to be completed within a
16 reasonable time after commencement. No evidence existed showing
17 that Debtor modified the 518 Trust or began any compliance
18 modification. As a result, argued Trustee, the buy-back provision
19 alone invalidated the 518 Trust's QPRT status. Trustee further
20 argued that the 518 Trust could not be converted to a GRAT when it
21 ceased to be a QPRT because its terms did not comply with
22 26 C.F.R. § 25.2702-5(c)(8)(C)(ii), which prohibits additional
23 contributions to the trust; the 518 Trust contained no such
24 prohibition.

25 In response to Appellants' newly-raised argument that a QPRT
26 must be an irrevocable trust or a completed gift to it could not
27 be made, Trustee contended that in looking at the substance of the
28 518 Trust, Debtor did **not** part with dominion and control and

1 retained power to change the disposition of the trust. QPRT
2 regulation 26 C.F.R. § 25.2511-2(c) specifies that "a gift is
3 incomplete in every instance in which a donor reserves the power
4 to revest the beneficial title to the property in himself."
5 Trustee argued that this reservation of power by Debtor, to either
6 purchase the 518 Property prior to the expiration of the QPRT Term
7 or by ceasing to use it as his personal residence, rendered the
8 gift incomplete and the 518 Trust revocable or terminable.

9 In reply, Appellants argued that Debtor's right to purchase
10 the 518 Property just prior to the end of the QPRT Term did not
11 make the 518 Trust revocable or, even if it did, the 518 Trust
12 would have converted to a GRAT on the trustee's timely election to
13 do so. Moreover, argued Appellants, the 518 Trust's failure to
14 comply with 26 C.F.R. § 25.2702-5(a)(2) to modify the trust did
15 not cause it to lose its QPRT status and terminate. Submitted
16 with Appellants' reply was a declaration from Mortimer Laski, the
17 attorney who drafted the 518 Trust. He stated that it constituted
18 an irrevocable trust and did not terminate if it deviated from
19 QPRT laws.

20 In its tentative ruling, the bankruptcy court expressed its
21 intent to deny the Motion to Reconsider on the basis that
22 Appellants had failed to show manifest error. The court analyzed
23 and rejected each of Appellants' arguments, including those raised
24 for the first time in the motion. After hearing oral argument
25 from the parties, the court adopted its tentative ruling as its
26 final ruling. The court agreed to certify the MSJ order under
27 Civil Rule 54(b) so it could be appealed, but denied Debtor's oral
28 request for a stay pending appeal.

1 The bankruptcy court entered an order denying the Motion to
2 Reconsider and certifying the MSJ Order for appeal under Civil
3 Rule 54(b) on April 16, 2014 ("Reconsideration Order"). These
4 timely related appeals followed.⁶

5 **II. JURISDICTION**

6 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
7 and 157(b)(2)(E) and (O). It entered the MSJ Order on fewer than
8 all claims asserted by Trustee. Ordinarily, an appeal from such a
9 judgment would be interlocutory, but the bankruptcy court ruled
10 that the partial summary adjudication was final under Civil
11 Rule 54(b), as incorporated by Rule 7054. In actions involving
12 multiple claims, Civil Rule 54(b) permits a court to direct entry
13 of a final judgment as to one or more (but fewer than all) of the
14 claims, but "only if the court expressly determines there is no
15 just reason for delay." No party appealed the Civil Rule 54(b)
16 certification. We have jurisdiction under 28 U.S.C. § 158.

17 **III. ISSUES**

- 18 1. Did the bankruptcy court err in ruling that the 518 Trust was
19 a revocable or terminable trust because it contained the
20 "buy-back" provision?
- 21 2. Did the bankruptcy court err in ruling that QPRTs are
22 revocable trusts as a matter of law?
- 23 3. Did the bankruptcy court abuse its discretion in denying the
24 Motion to Reconsider?

25
26
27 ⁶ On May 7, 2014, we issued an order granting a temporary
28 stay pending appeal. On Trustee's request to reconsider that
order, we dissolved the temporary stay on June 3, 2014.

1 **IV. STANDARDS OF REVIEW**

2 The bankruptcy court's order granting partial summary
3 adjudication is reviewed de novo. Shahrestani v. Alazzeh
4 (In re Alazzeh), 509 B.R. 689, 692-93 (9th Cir. BAP 2014).
5 "Viewing the evidence in the light most favorable to the
6 non-moving party, we must determine 'whether there are any genuine
7 issues of material fact and whether the trial court correctly
8 applied relevant substantive law.'" New Falls Corp. v. Boyajian
9 (In re Boyajian), 367 B.R. 138, 141 (9th Cir. BAP 2007) (citation
10 omitted).

11 We review denial of a motion for reconsideration for abuse of
12 discretion. Ta Chong Bank Ltd. v. Hitachi High Techs. Am., Inc.,
13 610 F.3d 1063, 1066 (9th Cir. 2010); Collect Access LLC v.
14 Hernandez (In re Hernandez), 483 B.R. 713, 719 (9th Cir. BAP
15 2012). Accordingly, we reverse where the bankruptcy court applied
16 the incorrect legal rule or where its application of the law to
17 the facts was illogical, implausible or without support in
18 inferences that may be drawn from the record. Ahanchian v. Xenon
19 Pictures, Inc., 624 F.3d 1253, 1258 (9th Cir. 2010) (citing United
20 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc)).

21 **V. DISCUSSION**

22 **A. Summary judgment standards**

23 A party is entitled to judgment as a matter of law when no
24 genuine dispute exists as to any material fact. Civil Rule 56(a),
25 as incorporated by Rule 7056. When a properly supported motion
26 for summary judgment is made, the adverse party "must set forth
27 specific facts showing that there is a genuine issue for trial."
28 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The

1 court "shall then grant summary judgment if there is no genuine
2 issue as to any material fact and if the moving party is entitled
3 to judgment as a matter of law." Id. A "genuine" issue exists if
4 the evidence is such that a reasonable jury could return a verdict
5 for the nonmoving party. Id. at 248.

6 Ninth Circuit law permits a court to interpret unambiguous
7 contracts in the context of a motion for summary judgment. Miller
8 v. Glenn Miller Prods., Inc., 454 F.3d 975, 990 (9th Cir. 2006)
9 (citing S. Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888-89
10 (9th Cir. 2003)). No party has contended that the 518 Trust is an
11 ambiguous document; we do not perceive it to be.

12 **B. Analysis**

13 **1. The bankruptcy court did not err in ruling the 518 Trust** 14 **was revocable or terminable.**

15 Appellants spend a great deal of time arguing that the
16 bankruptcy court erred in ruling that QPRTs are revocable trusts.
17 As for the bankruptcy court's alternative ruling – that the
18 518 Trust failed to comply with QPRT regulations – Appellants
19 relegate their argument to a mere footnote. Appellants contend
20 that even if the 518 Trust failed to comply with subparagraph
21 (c) (9) after its enactment in December 1997, that noncompliance
22 does not negate the completed gift of the 518 Property to the
23 518 Trust in 1994 or compel its irrevocability in 1994. They
24 further argue that neither 26 C.F.R. § 25.2702-5(c) (7) nor any
25 other regulation, nor any paragraph of the 518 Trust, indicates
26 that a trust compliant with QPRT regulations subsequently
27 terminates if the laws are later changed or modified. Appellants
28 raised these arguments during the hearing on the MSJ motion. Hr'g

1 Tr. at 6:1-22.

2 Appellants concede the 518 Trust contains the "buy-back"
3 language, which is prohibited under 26 C.F.R. § 25.2702-5(c)(9).
4 They continue to argue that this regulation does not apply because
5 it was added in 1997, after creation of the 518 Trust in 1994.
6 We, as did the bankruptcy court, recognize this argument, given
7 the imposed effective dates specified in Treas. Reg. § 25.2702-7.
8 The analysis, however, does not end with the imposed effective
9 date. QPRT paragraph III A.4. provides "[t]he grantor shall have
10 the option to acquire all or part of the Residence from the trust
11 immediately prior to the expiration of the trust. The option
12 price will be the then fair market value of the Residence then
13 held by this Trust." The third sentence of Treas. Reg.
14 § 25.2702-5(b)(1) provides "[a] trust does not meet the
15 requirement of this section if, during the original duration of
16 the term interest, the residence may be sold or otherwise
17 transferred by the trust or may be used for a purpose other than
18 as a personal residence of the term holder." The 1997 amendments
19 added the fourth through eighth sentences of this regulation and
20 Treas. Reg. § 25.2702-5(c)(9), which specifically prohibited any
21 sale or transfer to the grantor. We conclude that the QPRT
22 provision at paragraph III A.4. is contrary to the requirement
23 contained in the third sentence of Treas. Reg. § 25.2702-5(b)(1)
24 as it allows the grantor to exercise an option to acquire the
25 Residence **immediately prior to the expiration of the trust** in
26 violation of the regulation defining "personal residence trust" as
27 such regulation specifies that the trust does not meet the
28 requirements of the section if **during the original duration of the**

1 **term interest** the Residence may be sold or transferred.

2 On December 23, 1997, the Department of Treasury promulgated
3 regulations prohibiting QPRT documents from allowing the sale of
4 the residence to the grantor during the QPRT Term or at any time
5 after the QPRT Term that the trust is a grantor trust. See
6 62 Fed. Reg. 66988 (Dec. 23, 1997), adding 26 C.F.R.
7 § 25.2702-5(c)(9). This regulation also added 26 C.F.R.
8 § 25.2702-5(a)(2), which provides in relevant part:

9 Modification of trust. A trust that does not comply with
10 one or more of the regulatory requirements under
11 paragraph (b) or (c) of this section will, nonetheless,
12 be treated as satisfying these requirements if the trust
13 is modified, by judicial reformation (or nonjudicial
14 reformation if effective under state law), to comply with
the requirements. . . . In the case of a trust created
before January 1, 1997, the reformation must be commenced
within 90 days after December 23, 1997 and must be
completed within a reasonable time after commencement.

15 Thus, in order to comply with QPRT regulations, modification
16 of the 518 Trust needed to "commence" within 90 days after
17 December 23, 1997, and had to be completed "within a reasonable
18 time from commencement." The Trustee never modified the 518 Trust
19 to comply with the third sentence of Treas. Reg. 25.2702-5(b)(1),
20 which disqualified the 518 Trust as a QPRT if the Residence could
21 be sold or transferred during the original term of the 518 Trust.
22 The parties do not dispute that the Trustee never modified the
23 518 Trust. Because of this failure to modify the 518 Trust to
24 eliminate the disqualifying language in paragraph III B.4. that is
25 contrary to the third sentence of Treas. Reg. § 25.2702-5(b)(1),
26 the 518 Trust does not comply with QPRT regulations and ceased to
27 be a QPRT.

28 Paragraph III B.3. in the 518 Trust provides that the "trust

1 shall terminate when it ceases to be a [QPRT], and on such
2 termination the Trustee shall distribute all of the trust assets
3 to the Grantor." Although Paragraph III.C. of the 518 Trust
4 provides that within thirty days of the trust's termination the
5 trustee may elect to convert it to a GRAT, this was not done.
6 Thus, the 518 Trust terminated in 1998 and its terms required
7 distribution of the trust assets, including the 518 Property, to
8 Debtor at that time. As a result, these assets are property of
9 Debtor's bankruptcy estate. § 541(a)(7). We reject Debtor's
10 argument that failing to comply with QPRT regulations did nothing
11 to change the fact that Debtor transferred a completed and
12 irrevocable gift of property to the 518 Trust in 1994.

13 Thus, we conclude the bankruptcy court did not err in
14 granting partial summary adjudication to Trustee on the basis that
15 the 518 Trust failed to comply with QPRT regulations. Because we
16 are able to affirm the MSJ Order on that basis, we need not
17 address Appellants' other argument that the bankruptcy court erred
18 in ruling that the 518 Trust is, and QPRTs in general are,
19 revocable trusts as a matter of law.

20 **2. Appellants assert no argument with respect to the**
21 **Reconsideration Order.**

22 Although Appellants appealed the Reconsideration Order, they
23 do not assert any argument that the bankruptcy court abused its
24 discretion in denying the Motion to Reconsider. Therefore, any
25 such argument has been abandoned. City of Emeryville v. Robinson,
26 621 F.3d 1251, 1262 n.10 (9th Cir. 2010) (appellate court in this
27 circuit will not review issues which are not argued specifically
28 and distinctly in a party's opening brief).

1 In any event, we fail to see any proper grounds on which it
2 could have been granted. Appellants essentially rehashed old
3 arguments or raised new ones that could have been raised in
4 opposition to the MSJ. Exxon Shipping Co. v. Baker, 554 U.S. 471,
5 486 (2008) (motions under Civil Rule 59(e) may not be used to
6 relitigate old matters or to raise arguments that could have been
7 raised prior to the entry of judgment); McDowell v. Calderon,
8 197 F.3d 1253, 1255 (9th Cir. 1999) (same). Our review of the
9 record shows Debtor did not meet the burden of showing any
10 manifest error by the bankruptcy court in its ruling on the MSJ.

11 **VI. CONCLUSION**

12 Based on the foregoing reasons, we AFFIRM.

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