File Name: 18b0002n.06

BANKRUPTCY APPELLATE PANEL

OF THE SIXTH CIRCUIT

IN RE: EARL BENARD BLASINGAME; MARGARET GOOCH BLASINGAME,

Debtors.

CHURCH JOINT VENTURE, L.P.,

Plaintiff-Appellant/Cross-Appellee,

v.

EARL BENARD BLASINGAME; MARGARET GOOCH BLASINGAME; THE BLASINGAME FAMILY RESIDENCE GENERATION SKIPPING TRUST,

Defendants-Appellees/Cross-Appellants.

Nos. 17-8009/8011

On Appeal from the United States Bankruptcy Court
for the Western District of Tennessee at Memphis.
No. 08-28289—Jennie D. Latta, Judge.

Argued: February 13, 2018

Decided and Filed: May 3, 2018

Before: HUMPHREY, OPPERMAN, and WISE, Bankruptcy Appellate Panel Judges.

COUNSEL

ARGUED: Bruce W. Akerly, MALONE AKERLY MARTIN, PLLC, Dallas, Texas, for Appellant/Cross-Appellee. Michael P. Coury, GLANKLER BROWN, PLLC, Memphis, Tennessee, for Appellees/Cross-Appellants. **ON BRIEF:** Bruce W. Akerly, MALONE AKERLY MARTIN, PLLC, Dallas, Texas, for Appellant/Cross-Appellee. Michael P. Coury, GLANKLER BROWN, PLLC, Memphis, Tennessee, for Appellees/Cross-Appellants.

OPINION

DANIEL S. OPPERMAN, Chief Bankruptcy Appellate Panel Judge. Church Joint Venture ("CJV") filed a complaint against E. Benard Blasingame, Margaret Gooch Blasingame (together the "Debtors"), and the Blasingame Family Residence Generation Skipping Trust (the "BRT")[1] seeking turnover of a property interest relating to the real property at which the Debtors reside. The Debtors assert that their interest in the property is an equitable right to reside in the property for their life that is neither property of the bankruptcy estate nor subject to turnover. CJV asserts that the Debtors' interest is a transferrable legal life estate subject to turnover to the bankruptcy estate. The bankruptcy court held that the Debtors' interest was an equitable life estate and granted summary judgment to the Debtors. For the reasons that follow, the Panel AFFIRMS.

ISSUES ON APPEAL

This opinion addresses two consolidated appeals. CJV's appeal lists the issue as whether the bankruptcy court erred in finding and concluding that the life estate grant in the trust instrument was an equitable life estate rather than a legal life estate. In the cross-appeal, the Debtors and the BRT raise two issues: (1) whether the bankruptcy court erred in failing to find that a warranty deed from the Debtors to the BRT transferred the property to the BRT; and (2) whether the bankruptcy court's failure to find that the warranty deed effectively transferred the property from the Debtors to the BRT resulted in the bankruptcy court giving an advisory opinion and acting without jurisdiction.[2]

[1]Both the acronym "BFRGST" and "BRT" are used in reference to this trust in different filings. The Parties' Joint Pretrial Statement uses "BRT," as will this Panel. (Joint Pretrial Statement, Adv. No. 15-00339 ECF No. 11 at 8–11).

[2]CJV filed a motion to dismiss the cross-appeal, which was referred to this Panel to be considered concurrently with the merits of the consolidated appeals.

JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Appellate Panel of the Sixth Circuit has jurisdiction to decide this appeal. The United States District Court for the Western District of Tennessee has authorized appeals to the Panel, and neither party has timely elected to have this appeal heard by the district court. 28 U.S.C. § 158(b)(6) and (c)(1). A final order of the bankruptcy court may be appealed as of right pursuant to 28 U.S.C. § 158(a)(1). For purposes of appeal, an order is final if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798, 109 S. Ct. 1494, 1497 (1989) (citations omitted). An order granting summary judgment is a final order. *U.S. Bank Nat'l Assoc. v. Barbee* (*In re Barbee*), 461 B.R. 711, 712–13 (B.A.P. 6th Cir. 2011); *Drown v. Nat'l City Bank* (*In re Ingersoll*), 420 B.R. 414, 414–15 (B.A.P. 6th Cir. 2009).

A bankruptcy court's final order granting a motion for summary judgment is reviewed de novo. *See Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 635 (6th Cir. 2010). Likewise, the determination whether property is part of the bankruptcy estate is a question of law reviewed de novo. *Spradlin v. Khouri* (*In re Bruner*), 561 B.R. 397, 400 (B.A.P. 6th Cir. 2017) (citing *Kitchen v. Boyd* (*In re Newpower*), 233 F.3d 922, 927 (6th Cir. 2000)). "'Under a de novo standard of review, the reviewing court decides an issue independently of, and without deference to, the trial court's determination.'" *Ingersoll*, 420 B.R. at 415 (quoting *Buckeye Check Cashing, Inc. v. Meadows* (*In re Meadows*), 396 B.R. 485 (B.A.P. 6th Cir. 2008)). "'Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law.'" *Rogan v. Vanderbilt Mortg. & Fin., Inc*. (*In re Dorsey*), No 13-8036, 2014 WL 888917 (B.A.P. 6th Cir. March 7, 2014) (quoting *Menninger v. Accredited Home Lenders* (*In re Morgeson*), 371 B.R. 798, 800 (B.A.P. 6th Cir. 2007)).

FACTS

Importantly, under their counsel's signatures, the parties filed a Joint Pretrial Statement setting forth certain agreed facts. (Joint Pretrial Statement, Adv. No. 15-00339 ECF No. 11,

February 12, 2016). CJV acknowledged certain stipulations at oral argument.[3] The stipulations relevant to this appeal are:

> a. Defendants Earl Benard Blasingame and Margaret Gooch Blasingame ("Debtors") are the individual debtors in the above style and referenced chapter 7 bankruptcy case ("Case").
>
> b. The Case was filed August 15, 2008.
>
> . . .
>
> d. On the date the Case was filed, Debtors lived in a house located at 337 South Maple, Adamsville, Tennessee (the "Residence").
>
> e. Debtors live in the Residence pursuant to the provisions of The Blasingame Family Residence Generation Skipping Trust ("BRT").
>
> f. The BRT was formed in 1993 by Debtor Earl Benard Blasingame's mother, Mavoureen Blasingame.
>
> . . .
>
> j. The Residence is an asset of the BRT.
>
> . . .
>
> l. The Residence was an asset of the BRT when the Case was filed.

(Joint Pretrial Statement at 8–9).

Some additional background information is useful in understanding this appeal. Prior to December 30, 1993, the Debtors owned 337 South Maple, Adamsville, Tennessee (the "Residence"). As of late 1993, the Debtors were indebted to a variety of lenders including Third National Bank of Nashville ("TNB"). The debt to TNB exceeded $4,000,000, and was secured by the Residence among other assets. TNB intended to foreclose on the Residence. On December 29, 1993, TNB indicated that it would release its lien on the Residence for a payment of $490,000.

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[3] Although arguing that the stipulations of fact contained in the joint pretrial order were not judicial admissions, CJV conceded in briefing that it "did not challenge ownership of the Residence by the [BRT]" and further stated "the Bankruptcy Court necessarily started with the premise that the Residence was in the trust[.]" (Third Br. BAP 17-8009 ECF No. 23 at 14-15).

On December 30, 1993, Mavoureen Blasingame ("Mavoureen"), Earl's mother, wired $490,000 to TNB, which acknowledged receipt on December 31, 1993. On December 30, 1993, Mavoureen also formed "The Blasingame Family Residence Generation Skipping Trust." Mavoureen is listed as the Grantor of the BRT on the trust document. The Debtors signed the document as co-trustees. The BRT's beneficiaries include the Debtors and their children Katherine G. Blasingame and E. Benard Blasingame, Jr. Contingent beneficiaries include Mavoureen Blasingame, Evelyn H. Gooch, Grace G. Henley, Will Henley, Rebecca Henley, Sarah Henley, Robert B. Gooch III, Laurie P. Gooch, Jennifer Gooch, Brian Gooch and Elizabeth Gooch, as well as several charitable organizations.

The record reflects a contract dated December 31, 1993 between the Debtors, as individuals, and the Debtors as co-trustees of the BRT for the sale of the Residence from the Debtors to the BRT. On December 31, 1993, the Debtors executed a warranty deed transferring the Residence to "The Blasingame Family Residence Trust."[4] The warranty deed was recorded in McNairy County, Tennessee that day. The record also contains a promissory note dated December 31, 1993 listing the BRT as the maker and Mavoureen as payee in the principal amount of $460,000. Mavoureen forgave the debt between herself and the BRT over time. The Debtors lived at the Residence at all times since December 31, 1993.

On October 7, 2014, creditor CJV, acting derivatively on behalf of the Chapter 7 trustee, Edward L. Montedonico, commenced an adversary proceeding against the Debtors and the BRT (the "Life Estate Action"). In the Life Estate Action, CJV sought a declaratory judgment that the BRT granted a legal life estate to the Debtors, and that the legal life estate was property of the Debtors' bankruptcy estate, and thus also sought turnover of the legal life estate. The Debtors asserted that they only had an equitable right to reside in the property granted through the BRT. The parties filed cross-motions for summary judgment.

On January 10, 2017, the bankruptcy court entered its Order on Cross-Motions for Partial Summary Judgment (Adv. No. 15-00339 ECF No. 63). On February 21, 2017, the bankruptcy

[4]The Debtors assert that the use of the name "The Blasingame Family Residence Trust" as opposed to "The Blasingame Family Residence Generation Skipping Trust" was a scrivener's error. Because the parties have stipulated that the Residence is an asset of the BRT, this issue is not before the Panel.

court issued its Final Order Granting Defendants' Motion for Cross-Motion for Summary Judgment (Adv. No. 15-00339 ECF No. 68). CJV appealed and the Debtors filed a cross-appeal from these orders.

DISCUSSION

Section 541 of the Bankruptcy Code defines property of the bankruptcy estate as follows:

> (a) The commencement of a case under section 301, 302 or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1). "The determination as to whether a debtor's interest in property is property of the bankruptcy estate is a question of federal law. However, state law generally controls the question of whether the debtor has an interest in property." *Booth v. Vaughan* (*In re Booth*), 260 B.R. 281, 285 (B.A.P. 6th Cir. 2001) (citing *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979)).

The bankruptcy court determined that "[t]he limited question before the court is whether or not the Debtors hold a life estate in their Residence." (Order on Cross Motions for Partial Summary Judgment at 8, Adv. No. 15-00339 ECF No. 63 (Jan. 10, 2017)). The bankruptcy court concluded that "[a] Trust instrument that directs the trustee to permit the use of trust property by a beneficiary for life creates an equitable life estate" and further noted that "[a]n equitable life estate is created when property is transferred to a trustee for the use and benefit of another during the beneficiary's life or the life of another." *Id* at 10. The bankruptcy court held that the Debtors' interest was an equitable life estate. CJV appealed that ruling. During oral argument, the parties agreed that this was the narrow issue before the bankruptcy court and on appeal. The parties agreed that if the Panel were to affirm the bankruptcy court's determination

that the Debtors' interest was an equitable life estate that it would not be subject to turnover.[5] Accordingly, this opinion will limit itself to the narrow issue framed by the parties.

The parties agree that the Residence is an asset of the BRT and that the nature of Debtors' interest in the Residence is determined under the terms of the trust instrument, and thus, the Panel must first analyze the trust instrument. Tennessee courts have defined the interpretation of Tennessee trusts:

> Trust instruments are to be construed in much the same way we interpret contracts or wills. *Marks* [*v. S. Tr. Co*., 203 Tenn. 200, 205, 310 S.W.2d 435, 437–38 (1958).] "[T]he important thing in the construction of the trust instrument is to determine the intention of the settlor as evidenced by all the provisions of the instrument, giving no portion any greater emphasis than any other." *Id.*; see also Tenn. Code Ann. § 35-15-112 (2015) ("The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property."); Tenn. Code Ann. § 35-15-101, 2013 Restated Comments ("It is a primary objective of the Tennessee trust statutes that a settlor's intent be the lodestar by which a trust is interpreted. . . ."). "In determining this intention we cannot follow any hard and fast rule but each case must be considered on its own bottom." *Marks*, 310 S.W.2d at 438. "The peculiar facts and circumstances and so forth, are considered to determine what is this intention. It is not necessarily so much the language that is used by the settlor as it is his or her evident intention which governs." *Id.*

Harvey ex rel. Gladden v. Cumberland Tr. & Inv. Co., 532 S.W.3d 243, 261 (Tenn. 2017). *See also Univ. of Tennessee William F. Bowld Hosp. v. Wal-Mart Stores, Inc*., 951 F. Supp. 724, 728 (W.D. Tenn. 1996).

A. Settlor's Intent

The bankruptcy court examined the trust document, along with extrinsic evidence, and determined that Mavoureen intended to create an equitable life estate for the Debtors.

[5]The parties acknowledged at oral argument that to the extent the Debtors' interest in the real property subject to the BRT was an equitable interest, turnover would not be appropriate. *See* 11 U.S.C. § 542(a) providing that ". . .an entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." If the Debtors' interest in the Residence granted through the BRT was a nontransferable equitable interest, as opposed to a transferrable legal interest, the trustee could not use, sell, or lease that interest and it would have no consequential value to the trustee.

CJV asserts that the bankruptcy court erred by relying on extrinsic evidence regarding Mavoureen's intent to determine that the BRT granted an equitable interest to the Debtors. CJV asserts that:

> [t]he Bankruptcy Court ignored rules of trust construction and unilaterally incorporated extrinsic evidence to gain an understanding of the intent of Mavoureen Blasingame in the Trust Instrument (*see id.* at 13–15). The Bankruptcy Court construed the intent of Mavoureen Blasingame in forming the Trust Instrument analyzing two pieces of evidence outside the agreement itself: (1) the biased testimony of Mavoureen Blasingame's attorneys, James Gooch and William Henry Shackleford, Jr.; and (2) the Bankruptcy Court's sua sponte hypothetical derived from the testimony of Shackleford (*see id.*). Without finding the Trust Instrument ambiguous, the Bankruptcy Court is limited in its search of intent to the four corners of the Trust Instrument. *See D & E Constr. Co.*, 38 S.W.3d at 518–19; *Blue Diamond Coal*, 671 S.W.2d at 833.

(CJV's Br. at 25). For the reasons that follow, the Panel finds that the four corners of the document support the bankruptcy court's determination that the BRT establishes an equitable life estate in the property. To the extent that the decision relied on any extrinsic evidence, it is harmless error if it is error at all.

The entire transaction was designed to place the Residence in a trust to allow Mavoureen's family to retain the right to live there. Several provisions of the trust instrument are designed to insure that Mavoureen's grandchildren did not lose the family home. More specifically, the trust instrument contains "spendthrift provisions" which indicate Mavoureen's intent that the Debtors not have a legal title which they could dispose of to their, or their children's detriment.

> Spendthrift Provision. No part of any trust herein created, nor the income therefrom, is to be subject to execution or other legal process for any obligation of any beneficiary or subject to the claims of creditors of any beneficiaries in any manner, nor shall any beneficiary have the power to sell or mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise.

BRT Section 6.

The bankruptcy court declined to address whether the spendthrift provision was enforceable, and the parties agreed at oral argument that the complaint did not request such a

finding. Whether or not enforceable, the trust document's spendthrift provision states the intent of the settlor that the Debtors not be allowed to alienate or encumber their interest in the property contained in the trust. Indeed, CJV's counsel argued the same during oral argument, insisting that Mavoureen had wanted to "protect" the Residence by placing it beyond the reach of creditors. The spendthrift provision and CJV's argument are consistent with the bankruptcy court's determination that Mavoureen only intended to provide the Debtors with a beneficial interest or equitable life estate.

CJV counters that the plain language of Section 5(b) of the trust instrument conveyed a legal life estate to the Debtors and evidences Mavoureen's intent to do so. The document provides:

> (b) Special Provisions Concerning the Residence. One asset of this trust is the principal personal residence located at 337 South Maple, Adamsville, Tennessee ("Residence"). This asset shall be used as a personal residence for the following persons during their respective lifetimes as stated hereafter:
>
> (1) My son, E. Benard Blasingame and his wife, Margaret G. Blasingame shall be permitted to reside in the Residence for their life.

BRT Section 5(b). The document lists four other persons who shall have the right to live in the Residence following the deaths of the Debtors. Section 5(b) does not grant the Debtors the right to do anything other than reside in the principal personal residence. It does not give them the right to rent the property to someone else or collect income from the property. Further, nothing in the provision devises any sort of legal title to the property.

Next, CJV asserts that "[t]he plain language of the Trust Instrument indicates that Debtors hold a legal life estate in the Residence." But CJV also concedes that "[i]t is axiomatic that there is no statutory or common law in Tennessee that provides the specific elements of a life estate grant in a trust instrument or otherwise." (Br. of CJV BAP Case No. 17-8009 ECF at 29). CJV cites Black's Law Dictionary and various cases for the definition of a life estate, noting that a life estate is "an estate which is specifically described as to duration in terms of the life or lives of one or more human beings, and is not terminable at any fixed or computable period of time." Restatement (First) of Property § 18 (Am. Law Inst. 1936). CJV also cites cases in which a will conveys property for life, and notes that a limitation on the life estate must

be clearly expressed because the law does not favor forfeitures. (Br. of CJV at 30–31 citing *Scruggs v. Murray*, 70 Tenn. 44 (Tenn. 1878)).

CJV's argument that the BRT conveys a "legal" life estate is unpersuasive. While CJV correctly defines the term life estate, it misses the distinction between an interest being "legal" or "equitable" in nature. CJV asserts that under Tennessee common law it is clear that "to accomplish the grant of a legal life estate, the grantor need only state that the grantee/life tenant shall be entitled to remain on the property for his/her lifetime." (Br. of CJV at 35). While CJV's assertion might be accurate in the case of a will, under which the instrument conveys the property interest itself, a trust is different. Trusts are designed for the purpose of one person or entity holding the legal interest on behalf of another, the beneficiary. Accordingly, when interpreting a trust document, it is assumed that the settlor intended to convey an "equitable" interest unless otherwise clearly stated.

Tennessee courts have long held that specific words are not required to form a trust. Rather, the transfer of legal title to one person for the use and benefit of another is sufficient.

> Trusts have been variously defined as "an equitable right, title, or interest in property, real or personal, distinct from the legal ownership thereof" (2 Story, Eq. Jur. § 964); or as a "confidence reposed in some other, not issuing out of the land, but, as a thing collateral to and next in privity to the estate of the land and to the person, touching the land, for which the cestui que trust has no remedy but by subpoena in chancery" (Perry and Lewin on Trusts); or as "an equitable obligation, either expressed or implied, resting upon a person by reason of confidence reposed in him, to apply or deal with property for the benefit of some other person, for the benefit of himself and others, according to such confidence" (see Perry, Trusts, § 2); or, it is said, "a trust exists where the legal interest is in one person, and the equitable interest is in another;" "a trust is where property is conferred upon and accepted by one person, on terms of holding, using, or disposing of it for the benefit of another;" "a confidence reposed in a person that he will act in certain manners for the benefit of another; but, technically, it signifies a holding of property subject to a duty of employing it or applying its proceeds according to directions given by the person from whom it was derived" (see 27 Am. & Eng. Enc. Law, pp. 3, 4). This case fills all these definitions. The property was conferred in confidence on one for the use and benefit of herself and others. It is a holding of property, not absolutely, but according to directions given by the party from whom it was derived.

Muldoon v. Trewhitt, 38 S.W. 109, 112 (Tenn. Ch. App. 1896).

There is no dispute that the BRT is a trust and the parties agreed, at least for purposes of this litigation, that the Residence is an asset of the BRT. The BRT was set up specifically to take legal title to the Residence and provide a home for the Debtors and their minor children. Upon the death of the Debtors, Katherine G. Blasingame, has a right to reside in the Residence. Following her death, E. Benard Blasingame, Jr. has a right to reside in the Residence. Additional provisions provided for other parties to live in the Residence if the Debtors should die while either of their children were still less than twenty-one years of age. While the trust holds legal title to the Residence, these provisions allow the Debtors (and then others) to occupy the Residence for the duration of their lives. Nothing in the document conveys legal title to the Debtors. Therefore, the Debtors' interest in the Residence is equitable or beneficial in nature.

B. Active v. Dry Trust

CJV also argues that the BRT is a "dry" trust, and therefore the Debtors' interest in the Residence is a legal life estate. (Brief of CJVs at 41). Tennessee law provides that "[a] trustee takes the 'quantity of interest which the purposes of the trust require.' Where the trust imposes no duty upon the trustee, it is dry, and legal title passes not to the named trustee, but rather to the beneficial owner." *Atkins v. Marks*, 288 S.W.3d 356, 368 (Tenn. Ct. App. 2008) (citing *Jourolman v. Massengill*, 5 S.W. 719, 722 (Tenn. 1887) (internal citation omitted)). CJV asserts that the BRT does not impose duties on the Trustees, and that it is therefore a "dry" trust. CJV's "dry" or "inactive" trust arguments are not factually persuasive.

The trust instrument does impose duties on the Trustees. The Trustees must "hold, manage and invest the assets" (¶ 1), "distribute and apply the income and principal of the trust property" (¶ 5), "appoint one or more persons or entities to serve as Co-Trustee" (¶ 8), and "divide . . . or distribute . . . assets." (¶ 9). Accordingly, the Trust is active. Nothing in the trust instrument supports the assumption in CJV's argument that the Residence can be partitioned from the rest of the trust property, and that there are no specific duties in the trust instrument with regard to the Residence. The Panel will not stretch the document's construction to read out the duty to hold and manage assets, including the Residence. As noted in a leading case on Tennessee trust law:

> Now, it is laid down in all the cases and in the textbooks, and in this case, among others, that the distinguishing feature of an active and effective trust is "whether there is imposed on the trustee any trust or duty the performance of which requires the estate shall be vested in him or them." Judge Lurton: "If any trust or duty be imposed on the trustee, either expressly or by implication, then the trust will not be a dry one." . . . [A] single sentence of Judge Lurton cannot be taken as indicative of the scope of the whole opinion. It must all be read together. The substance of what he says is that, if only the words quoted, and no more, appeared, expressly or by implication, from the character of the subject-matter, the devisee, etc., then it would be a dry trust; but he goes further to lay down other criteria and tests by which an active trust is to be determined . . . . "The clear purpose of the testator was that the trustee should take such title as would prevent the legal title merging with the equitable life estate, as would preserve the remainder of the estate for the appointees under the law, . . . as would prevent the alienation of any part of the corpus of the estate. These duties, by necessary implication, rested on the trustee." This case exactly. Again, Judge Lurton says: "If any agency, duty, or power is conferred on the trustee, . . . as to preserve a contingent remainder." And again, he says, in italics: "If the purpose of the trust is to protect the estate for a given time, or on the death of some one, or until division, . . . it is good." . . . It is sufficient to say that in this case we think duties are clearly implied. The intention to create an active trust is clear, and the case is clearly within the lines of the authorities. *See Henson v. Wright*, 88 Tenn. 501, 12 S. W. 1035. We therefore think this life estate was an active trust, for the joint use and benefit of all, and was not subject to alienation that would defeat the trust,-at least, not by part of the beneficiaries,-and that there could be no partition that would interfere with the possession and enjoyment of the trust estate by the parties for whose joint use and benefit it was created.

Muldoon, 38 S.W. at 113–14.

While the Debtors are both the trustees and two of the beneficiaries of the BRT, their children and others are also beneficiaries. As trustees, the Debtors have duties and obligations beyond merely holding legal title for themselves. The Residence is not the only asset of the BRT. Consistent with the Joint Pretrial Statement, the trust instrument defines the Residence as "the principal personal residence located at 337 South Maple, Adamsville, Tennessee." The contract between the Debtors and BRT provided for the purchase of "the Property", a tract of land approximately 27.99 acres which included not only the Residence, but additional improvements as well. The warranty deed conveyed the same property. The BRT also owns income producing property. It contains provisions that address the disposition of the income to beneficiaries other than just the Debtors and imposes duties upon the trustees regarding the

management of the assets and income. The trust instrument provides that the trust shall terminate twenty-one years after the last to die of E. Benard Blasingame, Margaret G. Blasingame, Katherine G. Blasingame, and E. Benard Blasingame, Jr., indicating that the trust was intended to last beyond the Debtors' lifetimes. The purpose of the BRT was, similar to *Muldoon*, to protect the Residence for the lifetime of all the beneficiaries including the then minor children; therefore, it is clear that the intention was to create an active trust, and the document did so. Accordingly, CJV's argument fails.

C. Cross-Appeal

Appellees argue that the bankruptcy court failed to make a requisite finding in its decision concerning the transfer by the warranty deed and, therefore, entered an advisory decision. Although the bankruptcy court explicitly stated that "the court expresses no opinion concerning the efficacy of the warranty deed to transfer legal title to the Debtors as trustees of the BFRGST," the bankruptcy court implicitly relied on the parties' agreed facts, including that the Residence was an asset of the BRT. The agreed facts, as jointly submitted in the Joint Pretrial Statement, operate as binding stipulations on the parties, the bankruptcy court and this Panel on appeal. *Trimas Corp. v. Meyers*, 572 F. App'x 347, 352 (6th Cir. 2014) (recognizing "that stipulations and admissions to facts in the pleadings are generally binding on the parties as well as the trial and appellate courts." (citations omitted)).[6] Accordingly, the Panel interprets the bankruptcy court's statement as relying upon the agreed facts, rather than reaching its own conclusion. As a corollary, the opinion was not advisory because it resolved the litigated issue of whether the Debtors' interest in the BRT was a legal or an equitable interest. Therefore, the Panel affirms the bankruptcy court concerning the issues raised in Appellees' cross-appeal. CJV's motion to dismiss the cross appeal is DENIED.

CONCLUSION

The bankruptcy court's order granting summary judgment to the Appellees is AFFIRMED.

[6]That the Residence is an asset of the BRT is a material fact. Any genuine issue as to whether the warranty deed was effective to transfer the Residence to the BRT was resolved by the parties' stipulations.