

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA  
 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)  
 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

Case No. F12-00501-HAR
In re MARGARET A. BERTRAN,  Debtor(s)
DONALD A. TANGWALL, Trustee of the Toni 1 Trust,  Plaintiff and Counter-Defendant v. LARRY D. COMPTON, Bankruptcy Trustee,  Defendant and Counter-Claimant,  BARBARA WACKER and WILLIAM WACKER, jointly and severally,  Defendants.

In Chapter 7

Adv Proc No F-12-90037-HAR

**MEMORANDUM DECISION FOR ENTRY  
 OF DEFAULT JUDGMENT UNDER 11 USC  
 § 548(a)(1)(A) ON TRUSTEE'S  
 COUNTERCLAIM [ECF No. 24]**

**CONTENTS**

**Page**

1. <b><u>SUMMARY OF DECISION</u></b> .....	2
2. <b><u>LAW GOVERNING ENTRY OF A DEFAULT AND DEFAULT JUDGMENT</u></b> .....	2
2.1. <b><u>Entry of Default for Failing to Appear Through Counsel</u></b> .....	2
2.2. <b><u>Entry of Default Judgment</u></b> .....	2
3. <b><u>FACTUAL AND PROCEDURAL BACKGROUND</u></b> .....	5
3.1. <b><u>The Cast of Characters</u></b> .....	5
3.2. <b><u>The Properties Transferred</u></b> .....	6
3.3. <b><u>The \$137,000 Montana Lawsuit, Case No. DV-09-073</u></b> .....	7
3.4. <b><u>The Montana Fraudulent Transfer Lawsuit, Case No. DV-11-066</u></b> .....	7
3.5. <b><u>Margaret Bertran Files Chapter 7 in Alaska</u></b> .....	8
3.6. <b><u>Donald A. Tangwall, Trustee of Toni 1 Trust, Files This Adversary in Alaska, F12-90037-HAR</u></b> .....	8
3.7. <b><u>Order to Show Cause Why Plaintiff Should Not Be Required to Appear Through an Attorney</u></b> .....	12

CONTENTS

Page

1

2 4. LEGAL ANALYSIS SUPPORTING FRAUDULENT TRANSFER DEFAULT JUDGMENT . . . 13

3 5. CONCLUSION . . . . . 16

---

4

5 1. SUMMARY OF DECISION- The court entered a default on Larry Compton’s

6 counterclaim against plaintiff.<sup>1</sup> Compton has now moved for entry of a default judgment.<sup>2</sup> There

7 is sufficient information available from the record in this case for the court to enter a judgment

8 without conducting a prove-up hearing. The court concludes that the debtor’s conveyance of two

9 parcels of real estate in Roundup, Montana, are fraudulent transfers under 11 USC § 548(a)(1)(A).

10 2. LAW GOVERNING ENTRY OF A DEFAULT AND DEFAULT JUDGMENT-

11 2.1. Entry of Default for Failing to Appear Through Counsel- The court ruled on August

12 14, 2013 that Tangwall cannot represent the plaintiff under Ninth Circuit case law.<sup>3</sup> Under

13 established Ninth Circuit case law, failing to appear through counsel, where required, can subject

14 a party to default.<sup>4</sup> A default was entered against plaintiff.<sup>5</sup>

15 2.2. Entry of Default Judgment- The court considers the *Eitel* factors in making the

16 decision whether or not to enter a default judgment against the plaintiff. Those factors are:

17 Factors which may be considered by courts in exercising discretion as to the

18 entry of a default judgment include: (1) the possibility of prejudice to the

19 plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of

20 the complaint, (4) the sum of money at stake in the action; (5) the possibility

21 of a dispute concerning material facts; (6) whether the default was due to

---

22 <sup>1</sup>*Entry of Default on Trustee’s Counterclaims [ECF Nos. 24 and 49].* ECF No. 61.

23 <sup>2</sup>*Motion for Entry of Final Judgment.* ECF No. 67.

24 <sup>3</sup>*C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697-98 (9th Cir. 1987).

25 <sup>4</sup>*Employee Painters Trust v. Ethan Enterprises, Inc.*, 480 F.3d 480, 499 (9<sup>th</sup> Cir. 2007); *Lehman Brothers*

26  *Holding, Inc. v. IZT Mortgage, Inc.*, 2011 WL 2313601, \*2-3 (N.D. Cal. 2011).

27 <sup>5</sup>ECF No. 61.

1 excusable neglect, and (7) the strong policy underlying the Federal Rules of  
2 Civil Procedure favoring decisions on the merits.<sup>6</sup>

3 In applying the factors to this adversary, “plaintiff” refers to defendant, counterclaimant  
4 Compton.

5 Most significant is the first factor, prejudice to Compton. Compton is an Alaskan  
6 bankruptcy trustee dealing with two parcels of real estate in a remote area of Montana. One is a  
7 ranch and one is a commercial building. His duty is to take charge of bankruptcy estate property,  
8 protect it, and liquidate it for the benefit of creditors. A delay in resolution will greatly prejudice  
9 his ability to perform his duties and put the properties at risk.

10 Tangwall, the individual (who occupies the same body as Tangwall, the trustee), Barbara  
11 Tangwall and the debtor have been in at least two lawsuits with the Wackers, and never  
12 addressed the merits of any case. The Montana courts have labeled Tangwall a vexatious litigant.<sup>7</sup>  
13 While the court has tried not to be swayed by this allegation, his *modus operandi* in this  
14 adversary suggest there is merit to the claim.

15 Tangwall has been coy about providing information, and to the extent he has been  
16 responsive, has raised inherent questions about the *bona fides* of his assertions ( e.g. that Toni  
17 Trust and Toni 1 Trust are one and the same, governed by one written trust document; under  
18 Montana law, a trust must be established by clear and convincing evidence<sup>8</sup>).

19 The merits of the present adversary, as described in Sections 3 and 4 of this memorandum  
20 decision strongly favor Compton.

21  
22 <sup>6</sup> *Eitel v McCool*, 782 F.2d 1470, 1471-72 (9<sup>th</sup> Cir. 1980).

23 <sup>7</sup> ECF No. 13-7. *Order Declaring Don Tangwall a Vexatious Litigant* in Case No. DV-11-08, *Don*  
24 *Tangwall and Margaret Bertran v. William J. Edwards, et al.* Montana Fourteenth Judicial District Court,  
Musselshell County, dated May 10, 2011.

25 <sup>8</sup> *Boehm v. Cokesdale, LLC*, 261 P.3d 994, 997 (Mont. 2011).

1 There is no excusable neglect claimed by Tangwall, and none exists with respect to entry  
2 of the default. He cannot find an attorney, not because none are available, but none “understand”  
3 his claim to allodial title. A current Westlaw search in the Allcases database brings up 74 cases.  
4 Over half are from Hawaii, which has a statute discussing allodial ownership, but in a different  
5 context than plaintiff apparently intends. All the other cases hold that claims of allodial title are  
6 an archaic concept, akin to claiming absolute ownership that is not subject to the claims of other  
7 entities. In a word, these cases say that claims that real property is held in allodial title are  
8 magical thinking.<sup>9</sup>

9 The *Eitel* factors favor entry of a default judgment as a result of Tangwall’s default.

10 FRBP 7055 incorporates FRCP 55(b) governing the entry of a default judgment by the  
11 court:

12 (b) Entering a Default Judgment.

13 (1) By the Clerk. . . .

14 (2) By the Court. In all other cases, the party must apply to the court  
15 for a default judgment. . . . If the party against whom a default  
16 judgment is sought has appeared personally or by a representative,  
17 that party or its representative must be served with written notice of  
18 the application at least 7 days before the hearing. The court *may*  
19 conduct hearings or make referrals-preserving any federal statutory  
20 right to a jury trial-when, to enter or effectuate judgment, it needs  
21 to:

18 (A) conduct an accounting;

19 (B) determine the amount of damages;

20 (C) establish the truth of any allegation by evidence; or

21 (D) investigate any other matter. [emphasis added]

---

24 <sup>9</sup>*United States v. Manke*, 2012 WL 1898757, \*7 (W.D. Mo. 2011); *Bray v. Bank of America*, 2011 WL  
25 30307, \*12-13 (D. N.D. 2011); *Britt v. Federal Land Bank Assoc. of St. Louis*, 505 N.E.2d 387, 392-93 (Ill. App.  
26 1987).

1 The court is given considerable leeway in what to require as a prerequisite to the entry of a  
2 default judgment and whether or not to enter a default judgment at all.<sup>10</sup>

3 When requested to enter a default judgment, the court may accept all well-plead  
4 allegations in the complaint as true, except those related to the amount of damages.<sup>11</sup> Compton's  
5 counterclaim identified the property involved, the transfers, lack of consideration, the close  
6 juxtaposition of a subsequent judgment against debtor by the Wackers, and alleges an actual  
7 intent to defraud, hinder or delay.

8 In addition, the record is rich with information from which to draw inferences (or,  
9 identify "badges of fraud") due to statements in the numerous motions brought by plaintiff, papers  
10 in the main case, and statements made by Tangwall in at least one extensive hearing. These are  
11 more than sufficient to support entry of a default judgment without a prove-up hearing.

12 Plaintiff's dilatory and obstructionist approach to this litigation also supports entry of a  
13 default judgment, as discuss below.<sup>12</sup>

14 **3. FACTUAL AND PROCEDURAL BACKGROUND-**

15 **3.1. The Cast of Characters**<sup>13</sup> - The cast of characters involved in this adversary is:

---

17  
18 <sup>10</sup> *In re Villegas*, 132 B.R. 742, 746 (9<sup>th</sup> Cir. BAP 1991); *In re McGee*, 359 B.R. 764, 771 (9<sup>th</sup> Cir. BAP  
2006).

19  
20 <sup>11</sup> *Massa v. Jiffy Products Co., Inc.*, 240 F.2d 702, 707 (9<sup>th</sup> Cir. 1957); *International Painters & Allied  
Trades Industry Pension Fund v. Executive Painting, Inc.*, 719 F. Supp.2d 45, 48-49 (DCDC 2010).

21  
22 <sup>12</sup> *International Painters & Allied Trades Industry Pension Fund v. Executive Painting, Inc.*, 719 F.  
Supp.2d , at 48 ("A court has the power to enter a default judgment when a defendant [in the adversary,  
plaintiff] fails to defend its case properly or otherwise engages in dilatory tactics.")

23  
24  
25  
26 <sup>13</sup>This background information about the characters involved is probably not contested by any party as  
to the identities suggested. It is derived from various papers filed in this adversary proceeding and Alaska  
bankruptcy court records in Case Nos. 11-00939-HAR and 12-00501-HAR, and from the Affidavit of Todd  
Gunderson (the Gunderson Affidavit), the Wackers' Montana attorney, found in the Wackers' *Supplemental  
Brief Regarding Service on Toni 1 Trust*. ECF No. 37-1, ¶¶ 1-12.

- 1 ■ Donald A. Tangwall, husband of Barbara and son-in-law of the debtor;  
2 Donald is a debtor in his own chapter 7 case in Alaska, Case No. F11-00939-  
3 HAR;
- 4 ■ Donald A. Tangwall, trustee of Toni 1 Trust;
- 5 ■ Barbara Tangwall, wife of Donald and daughter of the debtor;
- 6 ■ Margaret “Toni” Bertran, the debtor, and the mother-in-law of Donald and  
7 mother of Barbara;
- 8 ■ Larry Compton, chapter 7 trustee in the Alaska Bankruptcy Case Nos. F12-  
9 00501-HAR and F11-00939-HAR; and,
- 10 ■ Barbara and William Wacker are Montana creditors of the debtor and  
11 Barbara; they have a \$137,000 Montana judgment against Barbara, the  
12 debtor and Donald, individually; they also have a subsequent Montana  
13 judgment against Toni 1 Trust, Barbara and the debtor that the transfers of  
14 two Montana parcels by Barbara and debtor to Toni 1 Trust were fraudulent  
15 under Montana’s Uniform Fraudulent Transfer Act.

16 3.2. **The Properties Transferred**- This adversary and the Montana Uniform Fraudulent  
17 Transfer Act (UFTA) litigation described below involve the same two parcels of Montana real  
18 property:

- 19 ■ The “Ranch Property,” is a 13 acre parcel in Roundup, Montana. Title was  
20 held as tenants-in-common by Barbara Tangwall and the debtor. They  
21 transferred title to Toni 1 Trust by warranty deed recorded on February 25,  
22 2011<sup>14</sup>; and,

---

24  
25 <sup>14</sup>The deed is dated December 20, 2010, and recorded in Musselshell County, Montana, on February 25,  
26 2011. ECF No. 13-3 and ECF No. 1, at page 29 (plaintiff’s complaint).

- The “Commercial Property,” is a flower shop and bakery located in Roundup. Title was held by just the debtor alone. She transferred it to Toni 1 Trust by a warranty deed, recorded on in February 25, 2011<sup>15</sup>.

Compton seeks only to avoid the debtor’s transfers, which will become property of the bankruptcy estate pursuant to 11 USC § 541(a)(3) if he prevails. He does not seek to effect the transfer of Barbara Tangwall of any interest she held in the Ranch property.

3.3. **The \$137,000 Montana Lawsuit, Case No. DV-09-073**- The Wackers were awarded a \$137,551.47 judgment against Barbara Tangwall, Margaret “Toni” Bertran, and Donald A. Tangwall on May 17, 2011.<sup>16</sup>

3.4. **The Montana Fraudulent Transfer Lawsuit, Case No. DV-11-066**- The Wackers brought a fraudulent transfer suit under the Montana UFTA against Toni 1 Trust, the debtor and Barbara to establish that the two February 2011 transfers were fraudulent as to the Wackers.<sup>17</sup>

The Wackers obtained a default judgment against Toni 1 Trust, and summary judgment was awarded against the debtor and Barbara that the transfers were fraudulent.<sup>18</sup>

As described below, plaintiff in the present adversary argues that the judgment against Toni 1 Trust is void due to improper service in the Montana UFTA case. The court has tentatively

---

<sup>15</sup>The deed is dated December 20, 2010, and recorded in Musselshell County, Montana, on February 25, 2011. ECF No. 13-4 and ECF No. 1, at page 30 (plaintiff’s complaint).

<sup>16</sup>Case No. DV-07-093, Donald A. Tangwall, Plaintiff, vs. Barbara Wacker, William Wacker, and Bootprint Ranch, individually, jointly and severally, Defendants and Third-Party Plaintiffs, vs. Barbara Tangwall, et al, Third Party Defendants, Montana Fourteenth Judicial District Court, Musselshell County. A copy of the judgment is located at ECF No. 13-5. *See, also*, the Gunderson Affidavit. ECF 32-1, ¶ 2(2).

<sup>17</sup>Case No. DV-11-066, William Wacker and Barbara Wacker, Plaintiffs, vs. Toni 1 Trust, Margaret A. “Toni” Bertran, and Barbara G. Newland-Tangwall a/k/a Barbara Newland-Tangwall, Defendants, Montana Fourteenth Judicial District Court, Musselshell County. *See, also*, Gunderson Affidavit. ECF No. 37-1, ¶¶ 5-7 and Exh. F., at pages 17-23.

<sup>18</sup>Gunderson Affidavit. ECF No. 37-1, ¶¶ 7-11 and Exh. N., at pages 17-23.

1 agreed with the plaintiff's position on this issue, after inviting defendants to provide contrary  
2 authority. Defendants have failed to do so.<sup>19</sup>

3 3.5. **Margaret Bertran Files Chapter 7 in Alaska**- The debtor filed a chapter 7 petition in  
4 Alaska on August 17, 2012. Larry Compton was named as the chapter 7 trustee.

5 In her Schedule A- Real Property, she claims the "Commercial Property" as being held in  
6 fee simple ("residential house converted to flower shop") with a value of \$200,000. She claims the  
7 "Ranch Property" as her residence, owned in joint tenancy ("owned jointly with daughter Barbara  
8 in a revocable trust"). The ranch is valued at \$250,000.<sup>20</sup>

9 Judge MacDonald ruled that the Ranch Property was not debtor's residence and denied her  
10 motion to avoid the Wacker's judgment lien under 11 USC § 522(f)(1)(A).<sup>21</sup> He held that she was  
11 collaterally estopped by the Montana judgment in Case No. DV-11-066 to claim a homestead  
12 exemption, and that events closer to the filing of her chapter 7 confirmed that the property was  
13 not her residence when she filed.<sup>22</sup> The court (Judge Ross) inherited the case and this adversary  
14 after Judge MacDonald retired and Judge Spraker developed a conflict.

15 3.6. **Donald A. Tangwall, Trustee of Toni 1 Trust, Files This Adversary in Alaska,**  
16 **F12-90037-HAR**- Donald Tangwall, as Trustee of Toni 1 Trust filed, a complaint against  
17 bankruptcy trustee Compton and the Wackers on December 20, 2012. Tangwall raised all manner  
18 of claims against the defendants,<sup>23</sup> most of which the court found to be without substance. Of the  
19

---

20  
21 <sup>19</sup>*Tentative Ruling to Deny Defendants' Motions for Summary Judgment [ECF Nos. 13 and 14].* ECF  
No. 51.

22 <sup>20</sup>In the main case, Case No. 12-00501-HAR. Schedule A - Real Property. ECF No. 17, page 3 of 26.

23 <sup>21</sup>In the main case, ECF No. 23.

24 <sup>22</sup>In the main case, ECF Nos. 39 and 40 (memorandum and order).

25 <sup>23</sup>ECF No. 1.

1 five counts, the court has dismissed four in a non-final partial summary judgment on the court's  
2 own motion.<sup>24</sup>

3 The complaint indirectly raised one valid point: whether service on Toni 1 Trust in  
4 Montana Case No. DV-11-066 was so defective as to make the fraudulent transfer judgment  
5 against it void. The defendants filed separate summary judgment motions to establish the  
6 collateral estoppel effect of the Montana judgment against the plaintiff.<sup>25</sup> Plaintiff opposed the  
7 motions alleging improper service among other things.<sup>26</sup>

8 At the summary judgment hearing on June 5, 2013, the court observed that the plaintiff  
9 raised a serious point when claiming the service in the Montana UFTA case was invalid. The  
10 court called for supplemental briefing.

11 In colloquy at the hearing, the court inquired about the confusion arising because plaintiff  
12 used "Toni 1 Trust" and "Toni Trust" interchangeably.<sup>27</sup> The court specifically asked if there was a  
13 formal document establishing "Toni 1 Trust." Mr. Tangwall assured the court that there was, but  
14 only one for both entities.<sup>28</sup> The court was skeptical as noted in the Proceeding Memorandum. It  
15 suspected that "Toni 1 Trust" may not have been in existence on February 25, 2011, the date  
16 when the deeds granted it title to the two parcels.<sup>29</sup>

---

17  
18 <sup>24</sup>*Partial Summary Judgment Dismissing Causes II-V of the Complaint*. EFC No. 33.

19 <sup>25</sup>ECF Nos. 13 and 14.

20 <sup>26</sup>ECF No. 15.

21 <sup>27</sup> Although there is no transcript, the colloquy can be heard on the FTR Gold court recording system at  
22 the following coordinates: FTR Gold Audio of June 5, 2013 hearing at 9:31:17 through 9:32:18 a.m.

23 <sup>28</sup>FTR Gold Audio of June 5, 2013 hearing at 9:32:01 a.m. In his *Response to Compton and Wacker's*  
24 *Joint Motions for Summary Judgment*, plaintiff makes the enigmatic statements: "Toni and Toni 1 Trust 'are not  
entities that are separate from its Trustees' . . .") and similar references throughout). ECF No. 15.

25 <sup>29</sup>*Proceeding Memorandum* for June 5, 2013 hearing, ECF No. 18 ("Mr. Christianson will file a motion  
26 (continued...)

1 The court ordered Mr. Tangwall to produce copies of the trust documents that established  
2 Toni 1 Trust.<sup>30</sup> To date, he has not.

3 At the June 5, 2013 hearing on defendants' motions for summary judgment, the court said  
4 it did not know enough about the facts, nor had it been adequately briefed on the law, to rule that  
5 collateral estoppel applied against Toni 1 Trust. It asked for supplemental briefing by July 22,  
6 2013.<sup>31</sup> The Wackers filed a supplemental brief.<sup>32</sup> The plaintiff, however, blitzed the court with a  
7 number of weak, obfuscating motions, most of which the court has ruled upon or issued tentative  
8 decisions for:

- 9 ■ Tangwall filed an answer to Compton's counterclaim under §§ 544 and 548,  
10 which included a "third party complaint" against the Wackers.<sup>33</sup> The court  
11 *sua sponte* struck the proposed third party complaint, and told Tangwall to  
12  
13  
14

---

15  
16 <sup>29</sup>(...continued)  
17 on 14 days notice to require Mr. Tangwall to produce documents and information regarding the Toni 1 Trust  
18 and Toni Trust.") and the court's attached outline, ECF 18-1 ("TANGWALL'S RESPONSE TO MOTIONS FOR  
SUMMARY JUDGMENT (ECF No. 15) [NOTE: motion talks about Toni Trust and Toni 1 Trust; query: Toni  
Trust?]").

19 <sup>30</sup>*See, Trustee's Motion for Entry of Order Directing Donald A. Tangwall to Produce Documents and*  
20 *Information*, ECF No. 25; *Objection to Trustee's Motion for Entry of Order Directing Tangwall to Produce*  
21 *Documents and Information File 06/12/2013*, ECF No. 27; *Order Overruling Plaintiff's Objection to Motion to*  
22 *Produce Documents and Information*, ECF No. 31; *Order Directing Donald A. Tangwall to Produce Documents*  
23 *and Information*, ECF No. 32 (vacated in part by an order at ECF No. 36). Tangwall asked for clarification as to  
24 whether the order to produce was to him personally or him as trustee. ECF No. 38. The court answered it  
25 applied to him as trustee. ECF No. 41.

26 <sup>31</sup>ECF No. 18, ¶ 5.

27 <sup>32</sup>ECF No. 37.

28 <sup>33</sup>ECF No. 28.

1 file a FRBP 15 motion if he wanted to amend his complaint against the  
2 Wackers.<sup>34</sup>

3 ■ Tangwall filed a motion in the adversary to remove Larry Compton as  
4 trustee, saying “Larry D. Compton, bankruptcy trustee, no longer meets the  
5 criteria for being the bankruptcy trustee in this case.”<sup>35</sup> Compton opposed.<sup>36</sup>  
6 The motion appeared to be frivolous. A hearing was set on the motion on  
7 Wednesday, August 14, 2013, and it was denied.

8 ■ Tangwall filed a *Motion for Summary Judgment* on July 23, 2013, essentially  
9 challenging the trustee’s standing.<sup>37</sup> The court said these issues were already  
10 being addressed in the defendants’ initial motions for summary judgment  
11 filed by Compton and the Wackers, and the determination of this new  
12 motion filed by Tangwall would be subsumed in those prior motions.<sup>38</sup>

13 ■ A joint motion for intervention was filed by Tangwall, in his individual  
14 capacity, and the debtor, so that they could respond to Compton’s  
15 counterclaim against Tangwall as trustee of Toni 1 Trust.<sup>39</sup> The court issued  
16 a tentative ruling that the motion would be denied since the counterclaims  
17 did not seek relief against Tangwall, the individual, or the debtor. The court  
18

---

19 <sup>34</sup>ECF No. 30.

20 <sup>35</sup>ECF No. 39.

21 <sup>36</sup>ECF No. 47.

22 <sup>37</sup>ECF No. 40.

23 <sup>38</sup>ECF No. 44, saying the matters raised in ECF No. 40 are subsumed in the motions already pending in  
24 ECF Nos. 13 and 14.

25 <sup>39</sup>ECF No. 43.

1 said it was a transparent effort to avoid a default if Tangwall, the trustee, did  
2 not get an attorney by July 26, 2013.<sup>40</sup> A hearing was set on the motion on  
3 Wednesday, August 14, 2013, and it was denied.

- 4 ■ Tangwall, the trustee, filed a *Motion for Summary Judgment* on July 29,  
5 2013. It alleged defects in the \$137,000 judgment in the Wackers' Montana  
6 Case No. DV-07-093 and in service of Barbara in the fraudulent transfer  
7 case, Case No. DV-11-066.<sup>41</sup> The court tentatively ruled that the motion  
8 was so procedurally and substantively deficient that it would be denied.<sup>42</sup>

9 **3.7. Order to Show Cause Why Plaintiff Should Not Be Required to Appear Through an**  
10 **Attorney**- During the hearing on defendants' motions for summary judgment on June 5, 2013, the  
11 court said it may be that the trustee Tangwall had to appear through an attorney.<sup>43</sup> The court's  
12 research verified that this was required by the Ninth Circuit case law. An *Order to Show Cause*  
13 *Why Plaintiff Should Not Be Required to Appear Through an Attorney*, giving plaintiff until  
14 Friday, July 26, 2013, to file an objection or have an attorney appear for plaintiff.<sup>44</sup>

15 Tangwall filed an opposition on July 26, 2013, trying to distinguish the case cited by the  
16 court and saying that he was "allodial owner to the Trust's real property" and that it was a  
17  
18  
19  
20

---

21 <sup>40</sup>ECF No. 45.

22 <sup>41</sup>ECF No. 46

23 <sup>42</sup>ECF No. 52.

24 <sup>43</sup>FTR Gold Audio of June 5, 2013 hearing at 9:37:15 a.m.

25 <sup>44</sup>ECF No. 34.

1 spendthrift trust over which the beneficiaries had no control. He also said that he “has exhausted  
2 avenues and cannot find one competent lawyer who understands a common law trust.”<sup>45</sup>

3 At the hearing on August 14, 2013, the court said that the archaic doctrine of allodial title  
4 had no application to this dispute. The court found that Tangwall could not represent the trust  
5 and he, as trustee, would be defaulted with respect to the counterclaims brought by Compton.<sup>46</sup>

6 **4. LEGAL ANALYSIS SUPPORTING DEFAULT JUDGMENT**- One of the four claims for  
7 relief in the counterclaim is that the debtor conveyed the two parcels by separate deeds on  
8 February 25, 2011 to Toni 1 Trust, the plaintiff, to hinder, defraud or delay in anticipation of an  
9 adverse judgment in favor of the Wackers, which is in violation of 11 USC § 548(a)(1)(A).<sup>47</sup> That  
10 judgment, for \$137,161.47, was in fact entered in a Montana state court on May 11, 2011.

11 Plaintiff originally filed this adversary proceeding against trustee Compton and the  
12 Wackers on the allegations that establish, among other things, that a Montana UFTA that the  
13 February 25, 2011 transfers were fraudulent under state law was itself void for lack of proper  
14 service on Toni 1 Trust and/or Donald Tangwall, its purported trustee.

15 The court eventually dismissed most of plaintiff’s complaint, except the implicit issue of  
16 whether the Montana fraudulent transfer judgment was void for lack of proper service. The  
17 defendants never established that the service was valid to the court’s satisfaction, but Compton  
18 decided to finesse the procedural issue by bring his own fraudulent transfer claims in this  
19 bankruptcy case.

---

23 <sup>45</sup>ECF No. 42, criticizing *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697-98 (9th Cir. 1987):

24 <sup>46</sup>ECF Nos. 55 and 61.

25 <sup>47</sup>Counterclaim, ¶¶ 1-5, 13 and 14. ECF 2

1 While Compton's motion asks the court to enter a default judgment on both actual<sup>48</sup> and  
2 constructive fraud<sup>49</sup> grounds, as well as pursuant to Montana state law,<sup>50</sup> I find that default  
3 judgment is only appropriate for the actual fraud claim, and will only address the claim under  
4 § 548(a)(1)(A).

5 Compton has shown, by inference, that the two real property transfers were made to keep  
6 the property out of the hands of the Wackers, who were on the verge of obtaining a \$137,000  
7 judgment against the debtor. I draw these inferences:

- 8 ■ The plaintiff never established the existence of a valid Montana trust although  
9 ordered by the court to provide this basic information; a voluntary trust in  
10 Montana depends for its creation on a clear and direct expression of intent by the  
11 trustor;<sup>51</sup>
- 12 ■ The transfers were from debtor to a trust of which her son-in-law was the  
13 purported trustee; the trust was for the purported benefit of debtor's daughter and  
14 grandchildren<sup>52</sup>;
- 15 ■ The transfers were made less than two months before a judgment was entered  
16 against debtor in Montana, from which the court infers that they were made to  
17 shield the property from the judgment;

---

20 <sup>48</sup>11 USC § 548(a)(1)(A).

21 <sup>49</sup>11 USC § 548(a)(1)(B)(ii)(I).

22 <sup>50</sup>11 USC § 544(b)(1).

23 <sup>51</sup>*Eckart v. Hubbard*, 602 P.2d 988, 991 (Mont. 1979).

24 <sup>52</sup>FTR Gold Audio of June 5, 2013 hearing at 9:22:53 a.m. (Tangwall stated that the beneficiary of trust  
25 is Tangwall's wife and her children, but not the debtor).

- 1 ■ In her bankruptcy, filed about five months after the transfers, debtor claimed the  
2 Ranch was *still* her residence (a claim which Judge MacDonald did not buy); she  
3 claimed the Ranch “is the personal residence of Debtor who came to Alaska less  
4 than two years prior to filing her chapter 7 bankruptcy petition,” implying that the  
5 transfer was a facade in her mind<sup>53</sup>;
- 6 ■ In her amended schedules, debtor listed both properties as *still* both belonging to  
7 her in some fashion<sup>54</sup>; and,
- 8 ■ Debtor, Donald Tangwall (the individual), Barbara Tangwall, and Toni Trust (not  
9 Toni 1 Trust, the plaintiff in this adversary) appear to have a *modus operandi* of  
10 dealing through multiple entities to hide their assets from the Wackers.<sup>55</sup>

11 These inferences are badges of fraud that debtor’s two real property transfers on February  
12 25, 2011 were made with the intent to defraud, hinder or delay the Wackers.<sup>56</sup>

13 The Ninth Circuit said in *In re Acequia, Inc.*<sup>57</sup>:

14 Although novel, Clinton's “white heart, empty head” argument ignores the  
15 use of circumstantial “badges of fraud” in fraudulent transfer cases:

---

16 <sup>53</sup>*Motion to Avoid Judicial Lien*, ECF 23 in the main case.

17  
18 <sup>54</sup>Schedule A - Real Property in the main case, F12-00501-HAR, ECF No. 17, page 3, listing the both  
19 the Commercial Property and the Ranch Property as being in fee simple. The Ranch Property is also described  
as “owned jointly with daughter Barbara in a revocable trust.”

20 <sup>55</sup>*See*, the copy of the *Judgment by Default (Sum Certain)*, in Case No. DV 07-93, State of Montana  
21 District Court, for \$137,161.47, entered on May 9, 2008 in favor of the Wackers against nine different  
22 defendants (BDRT, L.P.: Bert Trust; Bort Limited Partnership; Diesel Don’s; Friend Group, Inc.; 4 Bar B Ranch,  
23 L.P.; Baby Duck Trust; Toni Trust; and, T.W. Trickle Down Trucking, L.P.). ECF No. 37-1, page 7-8, an  
affidavit of debtor. The judgment was extended to Barbara Tangwall, Donald Tangwall, and the debtor in a  
judgment entered on May 23, 2011. ECF No. 37-1, pages 9-10.

24 <sup>56</sup>*Barclay v. MacKenzie (AFI Holding, Inc.)*, 525 F.3d 700, 704 (9<sup>th</sup> Cir. 2008); *In re Roca*, 404 B.R. 531,  
543 (Bankr. D. Ariz. 2009); *In re Beverly*, 374 B.R. 221, 235 (9<sup>th</sup> Cir. BAP 2007).

25 <sup>57</sup>*In re Acequia, Inc.*, 34 F.3d 800, 805-6 (9<sup>th</sup> Cir. 1994).

1 It is often impracticable, on direct evidence, to demonstrate  
2 an actual intent to hinder, delay or defraud creditors.  
3 Therefore, as is the case under the common law of fraudulent  
4 conveyance, courts applying Bankruptcy Code § 548(a)(1)  
5 frequently infer fraudulent intent from the circumstances  
6 surrounding the transfer, taking particular note of certain  
7 recognized indicia or badges of fraud.

8 Among the more common circumstantial indicia of fraudulent  
9 intent at the time of the transfer are: (1) actual or threatened  
10 litigation against the debtor; (2) a purported transfer of all or  
11 substantially all of the debtor's property; (3) insolvency or  
12 other unmanageable indebtedness on the part of the debtor;  
13 (4) a special relationship between the debtor and the transferee; and, after the transfer, (5)  
14 retention by the debtor of the property involved in the putative transfer.

15 The presence of a single badge of fraud may spur mere suspicion; the  
16 confluence of several can constitute conclusive evidence of actual  
17 intent to defraud, absent “significantly clear” evidence of a legitimate  
18 supervening purpose.

19 *Max Sugarman*, 926 F.2d at 1254–55 (emphasis added) (citations and  
20 additional emphasis omitted). *Accord*, e.g., *Hayes v. Palm Seedlings*  
21 *Partners (In re Agricultural Research & Technology Group, Inc.)*, 916  
22 F.2d 528, 534–35 (9th Cir.1990); *Kupetz v. Wolf*, 845 F.2d 842, 846  
23 (9th Cir.1988). Thus, once a trustee establishes indicia of fraud in an  
24 action under section 548(a)(1), the burden shifts to the transferee to  
25 prove some “legitimate supervening purpose” for the transfers at  
26 issue.

27 Compton established the right to a default judgment by making a prima facie case based on  
28 numerous the badges of fraud.<sup>58</sup> Although the court has discretion to deny the granting of a  
default judgment, there is no reason to do so in this case. Compton is entitled to entry of a default  
judgment on his § 548(a)(1)(A) claim.

5. **CONCLUSION**- The court will enter a final judgment in this adversary proceeding: (a)  
holding that the conveyances on February 25, 2011 of the two Montana parcels of real estate was  
a fraudulent transfer pursuant to 11 USC § 548(a)(1)(A), and that debtor’s interest in these parcels  
is property of her bankruptcy estate; (b) dismissing without prejudice the trustee’s counterclaims

---

<sup>58</sup>*In re Bessette*, 226 B.R. 103, 106 (Bankr. D. Ida. 1998).

1 based on § 548(a)(1)(B) and § 544 as being moot in light of the court's ruling under § 548(a)(1)(A);  
2 and, (c) dismissing plaintiff's complaint.

3 DATED: October 15, 2013  
4

5 /s/ Herb Ross  
6 HERB ROSS  
7 U.S. Bankruptcy Judge

8 Serve:

9 Donald A. Tangwall, Trustee of Toni 1 Trust, π, HC10, M311, Fairbanks, AK 99701  
10 Cabot Christianson, Esq., for Δ, Larry Compton  
11 Larry Compton, Trustee  
12 Erik LeRoy, Esq., for Δs Wacker  
13 Margaret Bertran, debtor (courtesy copy)  
14 Jason Crawford, Esq., bankruptcy attorney for debtor (courtesy copy)  
15 Cheryl Rapp, Adv. Proc. Mgr.  
16 Janet Stafford, Chief Deputy Clerk  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 MEMORANDUM DECISION FOR ENTRY OF  
28 DEFAULT JUDGMENT UNDER 11 USC § 548(a)(1)(A)  
ON TRUSTEE'S COUNTERCLAIM [ECF No. 24]