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Nos. A10-1366 and A10-1505

State of Minnesota
In Court of Appeals

Fannie Mae,

Respondent,

v.

Andrew C. Grossman,

Appellant,

Heather Apartments Limited Partnership
d/b/a Vantage Lakes Apartments, Andrew C. Grossman,
The Home Depot Supply, Inc., Complete Pest Control, Inc.,
A Touch of Class Painting and Remodeling Company, LLC,
Sotelo Co., LLC, Wilmar Industries, a Division of Interline
Brands, Inc., K & K Quality Roofing & Construction,
and Sonshine Services, L.L.C.,

Defendants.

APPELLANT'S REPLY BRIEF

Lewis A. Remele, Jr. (#90724)
Jessica Schulte Williams (#313993)
BASSFORD REMELE
A Professional Association
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

Attorneys for Appellant

Charles F. Webber (#215247)
Bruce Jones (#179553)
FAEGRE & BENSON LLP
90 South Seventh Street
Suite 2200
Minneapolis, Minnesota 55402
(612) 766-7000

Attorneys for Respondent

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ARGUMENT

A. INTRODUCTION.

The district court entered a temporary injunction prohibiting Appellant Andrew Grossman from transferring or otherwise disposing of any assets he may receive from a trust established by his late father. The district court also ordered that any proceeds from that trust shall be applied to Fannie Mae's judgment at the time they are distributed from the trust. The fundamental problem with the district court's orders is that the trust in question includes a valid spendthrift clause. Such clauses strictly prohibit any attempt by the beneficiary or his or her creditors to in any way anticipate or assign trust property before actual distribution. Minnesota courts routinely uphold and enforce spendthrift clauses. Thus, the district court's orders, which anticipate future distributions of trust property and apply those future distributions to the judgment, should be reversed.

B. THE DISTRICT COURT'S ORDERS WERE NOT PROPER UNDER MINNESOTA STATUTES SECTION 575.05.

As argued in detail in Appellant's opening brief, the district court's orders were not proper under Minnesota Statutes 575.05. Mr. Grossman's interest in the trust – which is not yet due him and is protected by a spendthrift clause – should not have been applied to the judgment. This decision was an error. Because the application of the trust property to the judgment was based on an error of law, the injunction also should not have issued. To obtain an injunction, the party must show a substantial chance of success on the merits. *Mpls. Fed. of Teachers v. Public Schools*, 572 N.W.2d 107 (Minn. App. 1994). Thus, to obtain an injunction over Mr. Grossman's interest in the trust, Fannie Mae

was required to show it would prevail in having Mr. Grossman's interest applied to the judgment. It should not have prevailed, and therefore it did not have a substantial chance of success on the merits. Thus both the June 2, 2010 injunction and the portion of the June 16, 2010 order applying Mr. Grossman's interest in the trust to the judgment should be vacated.

In arguing that it was nearly certain to prevail on the merits and that the district court's granting of the injunction was therefore proper in its brief to this Court, Fannie Mae misstates the issue that was before the district court. The "merits" at issue are not whether Fannie Mae is allowed to collect its judgment; rather the issue is whether Fannie Mae should have been allowed to reach Mr. Grossman's interest in a spendthrift trust prior to distribution. As set out in Appellant's opening brief and below, it should not have. Therefore, both the injunction and the application of trust proceeds were improper.

C. FANNIE MAE'S ARGUMENTS IGNORE THE PRACTICAL IMPACT OF THE DISTRICT COURT'S RULINGS.

In arguing that this Court should uphold the district court's rulings, Fannie Mae has not disputed that the trust in question contains a valid spendthrift clause.¹ Fannie Mae also does not dispute that Minnesota courts strictly enforce spendthrift clauses. Finally, Fannie Mae does not dispute that a valid spendthrift clause protects the property of the trust "in transmission" to the beneficiary and prohibits any attempt of a creditor to

¹ Fannie Mae did complain that it has been provided only the 16th and 17th amendments to the trust, however, a reading of the 16th amendment indicates that it is the applicable trust document. The 16th amendment specifically states that it is a re-statement of the trust agreement in its entirety. (Confid. App. 2).

reach the property of a trust before it is distributed to the beneficiary. Rather, Fannie Mae pretends that the district court orders do not actually reach the property of the trust. Fannie Mae's attempt at illusion fails.

Two separate orders of the district court are at issue in this appeal. First, the district court entered a temporary injunction preventing Mr. Grossman from transferring or in other way disposing of any interest he may have in his father's inheritance, which is contained in the spendthrift trust (the June 2 Order). Second, the district court ordered that any proceeds of the trust shall be paid to the receiver as they come due (the June 16 Order). The practical impact of these two orders is clear: they directly impact and attach to property that is still contained in the trust.

Fannie Mae pretends that simply because the orders are directed at Andrew Grossman rather than at the trustee they somehow skirt the effect of the spendthrift clause. But this is a distinction without a difference. The spendthrift clause provides that neither the principal nor the income of the trust "shall be liable for the debts of any beneficiary" and that "no beneficiary shall have any power to sell, assign, transfer, encumber or in any other manner anticipate or dispose of his or her interest in any such trust . . . prior to the actual distribution in fact by the trustee to said beneficiary." (Confid. App. 18-19). The district court's orders violate this clause in multiple ways. First, the orders render the property of the trust "liable for the debts" of Mr. Grossman. They also "anticipate" Mr. Grossman's interest in the trust prior to actual distribution in fact by the trustee. These actions are forbidden by the spendthrift clause.

A valid spendthrift trust remains “free from the claims of creditors” and its proceeds are “protected in transmission until actually paid over to the beneficiary.” *Erickson v. Erickson*, 197 Minn. 71, 74, 266 N.W. 161, 163 (1936). Here, the property of the trust has not been protected by the district court. Rather, it has been declared subject to Fannie Mae’s judgment. This is contrary to the spendthrift clause and contrary to longstanding Minnesota law.

The Minnesota Supreme Court has addressed a somewhat similar situation. In the case *Hirsch v. Lee (In Re Lee’s Estate)*, 214 Minn. 448, 9 N.W.2d 245 (1943), the Minnesota Supreme Court refused to enforce a contract entered into by beneficiaries of a spendthrift trust to pay over to their attorney one-third of the proceeds of the trust. The court held that the beneficiaries’ attempt to contract a portion of their interest in the trust away before distribution was a violation of the spendthrift clause. *Id.* at 455, 9 N.W.2d at 248. Here, the effect of the district court’s orders is to mandate that Andrew Grossman pay over any proceeds of the trust. The voluntary contract forbidden in *Hirsch* has been replaced with a court order. The effect is the same, and the legal result should be as well. The district court’s orders are a violation of the spendthrift clause.

Similarly, the unpaid proceeds of spendthrift trusts are routinely excluded from a debtor’s bankruptcy estate. *See, e.g., Drewes v. Schonteich*, 31 F.3d 674 (8th Cir. 1994). Indeed, the procedural maneuverings and legal theories attempted by creditors trying to reach the proceeds of spendthrift trusts prior to distribution vary. But in states where such trusts are upheld, the result is always the same. Any attempt to anticipate or inhibit the payment of the proceeds of a spendthrift trust to the beneficiary is invalid. *See*

Spencer v. Spencer, 802 A.2d 215 (Conn. Ct. App. 2002) (beneficiary's interest in spendthrift trust cannot be considered by a court in adjusting alimony payments); *Domo v. McCarthy*, 612 N.E.2d 706 (Ohio 1993) (no attachable interest in trust property while in the hands of the trustee); *Heines v. Sands*, 312 S.W.2d 275 (Tex. Ct. App. 1958) (no garnishment of trustee); *Huestis v. Manley*, 8 A.2d 644 (Vt. 1939) (accrued income in the hands of the trustee is not subject to claims of creditors).

As the Connecticut Court of Appeals explained in the *Spencer* case, a spendthrift trust forbids "anticipatory alienations." The court further explained:

Obviously creditors have no rights or remedies as far as the trust property and the beneficiary's interest in it or the income thereof are concerned. They are limited to collection from sums after payment to the beneficiary, and to the products of such payment and to non-trust property.

Spencer, 802 A.2d at 222 (citing *Bogert, Trusts and Trustees* § 227 (2d ed., 1992)). Yet here the district court's orders anticipate and alienate the potential payments to Mr. Grossman while the property remains in the trust. Specifically, any payment to Mr. Grossman will automatically go to the receiver. Moreover, an injunction has been issued that directly implicates Mr. Grossman's interest in the trust. Both of these orders violate the law regarding spendthrift trusts.

Finally, Fannie Mae compares Mr. Grossman's interest in the trust to a contingent right of action and argues that the district court's order applying proceeds of the trust that have not yet been paid is therefore proper. In support of its argument, Fannie Mae cites the case *Lange v. Fidelity & Casualty Co.*, 290 Minn. 61, 185 N.W.2d 181 (Minn. 1971). The *Lange* case allowed a receiver to pursue an assignable cause of action belonging to

the debtor. *Lange*, 290 Minn. at 69, 185 N.W.2d at 887. Critically, in *Lange*, the Supreme Court's decision pivoted on the fact that the claim was assignable. *Id.* In sharp contrast, Minnesota courts and other states that uphold spendthrift trusts have repeatedly held that a beneficiary's interest in a spendthrift trust is not assignable prior to distribution. *Hirsch*, 214 Minn. 448, 9 N.W.2d 245; *Baker v. Vermont Bank & Trust Co.*, 342 F.2d 12 (2d Cir. 1965); *Johnson v. Morawitz*, 292 F.2d 341 (10th Cir. 1961); *Kelley v. Lincoln National Bank*, 235 F.2d 23 (D.C. Cir. 1956); *Waterbury v. Munn*, 32 So. 2d 603 (Fla. 1947). Mr. Grossman's interest in the trust is not assignable and thus is not subject to the judgment.

CONCLUSION

Fannie Mae's efforts to gloss over the legal effect of the district court's orders fail. The district court's orders violate the spendthrift clause by anticipating the payment of trust property to Mr. Grossman prior to the actual distribution of that property. Whether the orders are directed at the trustee, Mr. Grossman or the receiver is immaterial. The effect is the same: the property of the trust has already been applied to the judgment even though it has not yet been distributed. This violates the spendthrift trust and longstanding Minnesota case law. Thus, the district court's June 16, 2010 order incorrectly applied the undistributed proceeds of the trust to the judgment, and the June 2, 2010 order incorrectly subjected Mr. Grossman's interest in the trust to an injunction where Fannie Mae did not show a substantial chance of success on the merits. Accordingly, Appellant Andrew Grossman respectfully requests that this Court dissolve the June 2, 2010 injunction and

vacate that portion of the June 16, 2010 order that anticipates the proceeds of the trust and orders them applied to the judgment.

BASSFORD REMELE
A Professional Association

Dated: Nov 15, 2010 By 
Lewis A. Remele, Jr. (License #90724)
Jessica Schulte Williams (License #313993)
Attorneys for Defendant Andrew C. Grossman
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
Telephone: (612) 333-3000