

A10-1336 & A10-1505

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.

RESPONDENT FANNIE MAE'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES

1. Did the district court have the authority to enjoin judgment debtor Andrew Grossman from transferring or disposing of any interest in money or property that he has received or may receive from the estate of his recently deceased father?

The trial court held that it had such authority under Minn. Stat. § 575.05.

Most apposite authorities:

In re Moulton's Estate, 233 Minn. 286, 46 N.W.2d 667 (1951)

Morrison v. Doyle, 582 N.W.2d 237 (Minn. 1999)

Minn. Stat. § 575.05

2. Did the district court have the authority to appoint a receiver to “take custody of and liquidate all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due”?

The trial court held that it had such authority under Minn. Stat. § 575.05.

Most apposite authorities:

Lange v. Fidelity & Casualty Co., 290 Minn. 61, 185 N.W.2d 181 (Minn. 1971)

Hermeling v. Minnesota Fire & Cas. Co., 548 N.W.2d 270 (Minn. 1996)

Minn. Stat. § 575.05

3. Did the district court abuse its discretion in finding that Fannie Mae had met the standard for the grant of the injunctions described above?

The district court granted the two injunctions.

Most apposite authorities:

Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 137 N.W.2d 314 (1965)

Michael-Curry Cos. v. Knutson Shareholders Liquidating Trust, 423 N.W.2d 407 (Minn. App. 1988)

In re Moulton's Estate, 233 Minn. 286, 46 N.W.2d 667, 669 (1951)

STATEMENT OF THE CASE

In this action, Fannie Mae seeks to recover more than \$8,000,000 that Defendant Andrew C. Grossman owes Fannie Mae in the form of a judgment docketed in Hennepin County District Court. On February 12, 2010, the district court, the Honorable Cara Lee Neville presiding, issued a temporary restraining order prohibiting Mr. Grossman from transferring or disposing of any interest in money, property, or other assets that he has received, or is due to receive, as a result of the death of his father N. Bud Grossman. App.1.¹ On June 2, 2010, following briefing and argument by the parties, the district court converted the temporary restraining order to a temporary injunction, again prohibiting Mr. Grossman from transferring or disposing of any interest in money, property, or other assets that he has received, or is due to receive, as a result of the death of his father. ADD-1.²

On June 16, the district court entered an Order directing that a receiver take custody of and liquidate Mr. Grossman's interest in non-exempt assets, with the proceeds to be applied to satisfy Fannie Mae's judgment. ADD-6-7. This included a direction to the receiver to "take custody of and liquidate all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due." ADD-7.

¹ References to App-__ are to the parties' Appendices. Pages App-1 through App-23 appear in Appellant's Appendix, bound with his brief. Pages App-24 onward appear in respondent Fannie Mae's Appendix, bound with this brief. References to "Confid. App-__" are to Appellant's Confidential Appendix.

² References to ADD-__ are to the Appellant's Addendum, bound with his brief.

On July 28, 2010, Mr. Grossman filed a Notice of Appeal from the June 2, 2010 temporary injunction. On August 26, 2010, Mr. Grossman filed a Notice of Appeal from the June 16 Order, along with a motion to consolidate the two appeals. On September 2, 2010, this Court granted the motion to consolidate the two appeals but asked the parties to file informal jurisdictional memoranda concerning whether the June 16 Order was independently appealable. The parties submitted the requested memoranda.

On October 19, 2010, this Court issued an order concluding that, “[b]ecause the district court has not issued a final ruling on [Fannie Mae’s] motion to apply assets to [Fannie Mae’s] judgment, the June 16 Order is not independently appealable.” 10/19/10 Order at 3. The Court noted, however, that the issues addressed by the June 2 and June 16 Orders are “interrelated,” and commented that “[t]he panel to be assigned to consider the appeal on the merits will have discretion to extend review to the June 16 order pertaining to [Mr. Grossman’s] interest in the N. Bud Grossman Trust. *Id.* (citing Minn. R. Civ. App. P. 103.04). The Order directed Fannie Mae to address both appeals in its brief, *id.* at 4, and Fannie Mae has done so below.

Facts

In 2007, the Oklahoma County District Court entered a judgment of more than \$7 million in favor of Fannie Mae and against Andrew C. Grossman in a lawsuit that Fannie Mae had filed to collect on a deficiency on a mortgage loan. That judgment was affirmed on appeal. *Fannie Mae v. Heather Apartments Limited Partnership, et al.*, Case No. 105,109 (Okla. Civ. App. Aug. 8, 2008). On November 6, 2007, Fannie Mae docketed the Oklahoma judgment in this Court. *Fannie Mae v. Heather Apartments Limited*

Partnership, et al., File No. 27-CV-07-20736. The original amount of the judgment was \$7,622,153.50. With the accrual of post-judgment interest, the unpaid amount of the judgment is now more than \$8 million.

Fannie Mae has since tried to collect on its judgment against Mr. Grossman, an effort that Mr. Grossman has repeatedly sought to thwart. For example, in his October 2008 deposition, Mr. Grossman revealed that just months after Fannie Mae's judgment was docketed in the district court, he established a trust in the Cook Islands. App-28, App-31. Mr. Grossman transferred to this trust his membership interest in three companies, along with "three, four hundred thousand dollars" in cash that Grossman obtained by liquidating his individual retirement account. App-25, -28.

Mr. Grossman's father N. Bud Grossman died on January 11, 2010. *See* <http://www.startribune.com/obituaries/81614922.html> (obituary accessed on October 25, 2010). In his October 2008 deposition, Mr. Grossman testified that his father "might have trusts" set up for Mr. Grossman's benefit, but that he did not know that for a fact. He also denied knowing any other details about assets that he might be receiving from his father's estate or from trusts set up for his benefit. App-29 (Webber Aff. Ex. A at 127-28.) Discovery has since revealed that Mr. Grossman's father did in fact establish at least one trust of which Mr. Grossman is the beneficiary ("the Grossman trust"). *See* Exhibit 1 to Affidavit of Jessica S. Williams, dated February 26, 2010 (filed under seal in district court).

Because Mr. Grossman's earlier conduct in transferring his personal assets to the Cook Island trusts made it likely that he would also try to transfer any interest that he had in his father's estate beyond Fannie Mae's reach, the district court granted Fannie Mae's *ex*

parte motion for a temporary restraining order on February 12, 2010. The order prohibited Mr. Grossman from transferring or disposing of any interest in money, property, or other assets that he has received, or is due to receive, as a result of the death of his father N. Bud Grossman. App-1-6. On June 2, 2010, after full briefing and argument by the parties, the court converted that order to a temporary injunction imposing the same restrictions on Mr. Grossman. ADD-6-7. On June 16, 2010, the trial court granted Fannie Mae's alternative motion to appoint a receiver to take custody of and liquidate Mr. Grossman's interest in non-exempt assets, including "all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due," with the proceeds to be applied to satisfy Fannie Mae's judgment. ADD-6-7.

These appeals followed.

ARGUMENT

This Court should affirm the district court's orders in aid of Fannie Mae's execution on its existing judgment against Andrew Grossman. The plain language of Minnesota Statute section 575.05 permits the court to enjoin Mr. Grossman from transferring or otherwise disposing of any assets he may receive from the Grossman trust, as the court did in its June 2, 2010 order. The same statute also expressly authorizes the court to appoint a receiver to liquidate Mr. Grossman's inheritance proceeds from the Grossman trust as they become due to him, as it did in its June 16, 2010 order.

Mr. Grossman's claim that the Grossman trust is a spendthrift trust does not affect the court's power to issue either of these injunctions. The June 2 order was directed solely at the conduct of Mr. Grossman himself, and did not purport to impose any

restrictions or obligations either on the Grossman trust itself or on the trust's assets. The June 16 Order merely granted the receiver the same power that Mr. Grossman has to receive inheritance proceeds from the trust "as they become due" to him. Nothing in Minnesota's law governing spendthrift trusts deprives the court of its power to issue these injunctions in aid of execution on Fannie Mae's judgment.

The district court not only had the power to issue the injunctions that it issued, it did not abuse its discretion in doing so. Each of the five factors courts consider in issuing injunctions favored Fannie Mae, most prominently the likelihood of success on the merits. Fannie Mae is not merely *likely* to succeed on the merits, it had in fact already done obtained a judgment, and merely seeks to recover the award already reflected in the judgment on the merits in its favor. The district court employed section 575.05 to accomplish one of the statute's central goals: to prevent Mr. Grossman from evading his legally established monetary obligation by transferring even more of his personal assets out the reach of creditor Fannie Mae.

I. Standard of Review

This Court conducts *de novo* review of legal questions, including the interpretation of statutory powers and the applicability of the spendthrift trust doctrine. *See, e.g., In re Appeal of Lillian Flygare for Medical Assistance*, 725 N.W.2d 114, 115 (Minn. App. 2007) ("Issues involving the interpretation of language in a statute or in a testamentary trust are issues of law that we review *de novo*."). The district court's grant of the two injunctions at issue here is reviewed for abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993) (citation omitted). This Court

should not reverse the district court's grant of an injunction unless the district court abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law. *See Almor Corp. v. County of Hennepin*, 566 N.W.2d 696, 701 (Minn. 1997).

II. The District Court Had the Authority to Enjoin Mr. Grossman From Attempting to Transfer His Interest in His Father's Trust or Any Distribution From His Father's Trust

The district court here had the power to enjoin Mr. Grossman from attempting to transfer or otherwise dispose of his interest in or distribution from his father's estate or any trust established by his father. Chapter 575 of the Minnesota Statutes governs proceedings supplementary to execution—*i.e.*, procedures that judgment creditors can use to collect on their judgments. As relevant to this issue, section 575.05 provides:

The judge may order any of the judgment debtor's property in the hands of the judgment debtor or of any other person, or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment. . . . *The judge may [also] forbid a transfer or other disposition thereof, or any interference therewith, until further order therein.* (emphasis added)

Applying this section, the district court here issued an order providing:

Pursuant to Minn. Stat. §575.05, the Court hereby enjoins Andrew C. Grossman, individually and through any legal entity that he controls, from in any way transferring or disposing of any interest in money, property, or other assets that he has received, is due to receive, or will receive as a result of the death of his father, N. Bud Grossman (including, but not limited to, any interest in any trust established by N. Bud Grossman or any money or property distributed or to be distributed from the estate of N. Bud Grossman or under any will or last testament of N. Bud Grossman), until further order of this Court.

ADD-5.³ Mr. Grossman does not challenge the appropriateness of the docketed judgment or Fannie Mae's right to execute on that judgment. Thus, under the plain language of section 575.05, the district court had the power to forbid Mr. Grossman from transferring or otherwise disposing of any interest in or distributions of the inheritance assets.

Mr. Grossman argues that the district court lacked the power to issue the June 2, 2010 injunction because the Grossman trust is a spendthrift trust and thus is not subject to the claims by a beneficiary's creditors. Grossman Br. at 7. The June 2, 2010 Order, however, does not impose or purport to enjoin the Grossman trust; the Order restricts *only* the conduct of Mr. Grossman himself. Therefore, even assuming for the sake of argument that the Grossman trust is a spendthrift trust as Mr. Grossman urges, that fact would have no bearing on the present injunction or on the court's power to issue it.

A spendthrift trust is a trust in which the power of alienation has been suspended. *Morrison v. Doyle*, 582 N.W.2d 237 (Minn. 1998) (citing *In re Moulton's Estate*, 233 Minn. 286, 290, 46 N.W.2d 667, 670 (1951)). The power of alienation is the "power to sell, transfer, assign or otherwise dispose of property." *Id.* (quoting Black's Law Dictionary 1171 (6th ed. 1990)). Because the Grossman trust is a spendthrift trust, Mr. Grossman argues, its assets are not subject to alienation in favor of judgment creditor Fannie Mae.

³ Because Mr. Grossman's brief addresses only the portion of the June 2, 2010 Order concerning the Grossman trust, he has waived any objection to the portion of the Order restricting his disposition of money, property, or other assets obtained as a result of his father's death through other means. *See, e.g., In re Application of Olson*, 648 N.W.2d 226, 228 (Minn. 2002) ("failure to argue an issue in a party's brief constitutes waiver of that issue").

Grossman Br. at 7-9.

But the June 2, 2010 injunction does not restrict or compel any conduct by the trust and does not affect the trust's assets. Although Mr. Grossman's brief spends two and a half pages discussing the inviolability of spendthrift trusts and the language of the Grossman trust, it never directly addresses the critical injunctive language in the district court's order. As quoted above, the district court ordered only that Mr. Grossman himself refrain from "in any way transferring or disposing of any interest in money, property, or other assets that he has received, is due to receive, or will receive as a result of the death of his father, N. Bud Grossman." ADD-5. The order does not purport to compel any performance by or impose any restriction on the Grossman trust. Indeed, the Grossman trust is not even a party to this action, and so could not be directly affected by the injunction. See Minn. R. Civ. P. 65.04 (providing that order granting injunction "is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert with them who receive actual notice of the order").

The cases that Mr. Grossman cites in his argument bear out this distinction between actions against a trust and actions against a beneficiary. In each of the cases Mr. Grossman cites, the issue involved an attempt to garnish, attach, lien, or assign the assets of *the trust itself*. *See, e.g., In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 45-46 (1985) (creditor "served a garnishment summons upon trustees of the ... trust" seeking recovery of a judgment against one of the trust beneficiaries); *Erickson v. Erickson*, 197 Minn. 71, 266 N.W. 161 (1936) (wife attempted to have husband's alimony obligations "impressed as a lien on and paid out of the interest of [husband] in a

trust created by the last will of his father”); *Morrison v. Doyle*, 582 N.W.2d 237 (Minn. 1999) (judgment creditors of beneficiary attempted to attach trust assets); *In re Moulton’s Estate*, 233 Minn. 286, 46 N.W.2d 667, 669 (1951) (trustee rejected attempted assignments of interests in trust by beneficiaries). None of these cases involved an injunction governing the conduct of a trust’s *beneficiary*, which is the subject of the June 2, 2010 Order at issue here.

Mr. Grossman’s brief tries to gloss over this critical difference in the final paragraph of its argument on this point, asserting:

Fannie Mae attempts to skirt the spendthrift clause by moving against Mr. Grossman and not directly against the trustee. But regardless of to whom the court directs its order, the effect is the same: the property of the trust is now subject to the claim of Mr. Grossman’s creditor.

Grossman Br. at 9. Mr. Grossman offers no authority or analysis for equating an injunction against a trust beneficiary with an injunction against the trust or the trust’s assets, and in fact the law treats the two quite differently. As one of the cases on which Mr. Grossman relies states, ““After [a spendthrift trust’s] income comes into the hands of [a beneficiary], it then, of course, becomes part of her general estate and subject in like manner as her other property to claims of creditors.”” *In re Moulton’s Estate*, 46 N.W.2d 667, 672 (Minn. 1951) (citation omitted). The memorandum accompanying the district court’s June 2, 2010 Order expressly noted this legal distinction and cited the *Moulton* case, yet Mr. Grossman’s brief fails to address the issue other than in a conclusory manner.

In sum, the district court's June 2, 2010 injunction against Mr. Grossman is fully authorized by Minnesota Statute section 575.05 and is not barred or otherwise affected by the claimed spendthrift nature of the Grossman trust. This Court should affirm.

III. The District Court Had the Authority to Appoint a Receiver to Apply to the Judgment Any Proceeds Obtained from the Liquidation of "all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due."

Mr. Grossman also argues that the district court lacked the authority in its June 16, 2010 order to appoint a receiver to liquidate and to apply to Fannie Mae's judgment various non-exempt assets of Mr. Grossman, including "all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due." ADD-7.⁴ Mr. Grossman argues both that the court lacked the authority to order liquidation and application of estate or trust assets not proven to "belong to" him and that the order violates the spendthrift trust. Neither argument bears scrutiny.

Again, the district court issued its order under the authority of Minn. Stat. § 575.05, which provides as relevant to this issue:

The judge may order any of the judgment debtor's property in the hands of the judgment debtor or of any other person, or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment. ... *The judge may appoint a receiver of the debtor's unexempt property* (emphasis added)

⁴ Again, because Mr. Grossman's brief addresses *only* the portion of this Order concerning the Grossman trust, he has waived any objection to the portion of the Order directing the receiver to liquidate his interest in other, non-trust-related non-exempt assets, as required by paragraph 2 of the June 16, 2010 order. *See In re Application of Olson*, 648 N.W.2d at 228 (Minn.2002).

Pursuant to this authority, the court's order appointed a receiver and made the following direction with respect to the Grossman trust:

3. The appointed receiver shall take custody of and liquidate all inheritance proceeds of the N. Bud Grossman Trust which are eligible for distribution to Grossman, as they come due, and shall apply the proceeds thereof to satisfy Fannie Mae's judgment.

ADD-7.

The key language in the court's order is the phrase "as they become due." Contrary to Mr. Grossman's argument, the district court's order does not purport to address any property in which his ownership interest is "inchoate." Grossman Br. at 10. The statute authorizes the court to act on assets "due to the judgment debtor"; the order directs the receiver to act with respect to the inheritance proceeds only "as they become due." If a particular inheritance asset is not "due" to Mr. Grossman from the trust, that asset is not within the scope of the order or the power of the receiver, and Mr. Grossman need not be concerned about it.

Mr. Grossman's brief suggests that a receiver may pursue and recover only assets that are currently certain and liquidated. Grossman Br. 10-11. In fact, Minnesota law makes clear that a receiver may pursue contingent interests or claims that belong to a debtor. For example, in *Lange v. Fidelity & Casualty Co.*, 290 Minn. 61, 185 N.W.2d 181 (Minn. 1971), the Minnesota Supreme Court affirmed the right of a statutory receiver appointed under section 575.05 to pursue and prosecute an action against an insurer for bad-faith failure to settle where the debtor refused to do so. *Id.* at 887. The court noted:

[T]o permit the receiver to bring this action is consistent with the policy objective underlying proceedings supplementary to execution, which is to provide a remedy

for a creditor of an insolvent debtor in order that the creditor may pursue the collection of the debtor's nonexempt assets despite the latter's indifference or arbitrary refusal to act.

Id. The trial court's appointment of the receiver to pursue any inheritance proceeds from the trust "as they become due" to Mr. Grossman is consistent both with section 575.05 and with the purpose the supreme court articulated in *Lange*.

The court's use of the "as they become due" language also forecloses any issue concerning the claimed spendthrift character of the Grossman trust. Once the proceeds of the inheritance become "due" to Mr. Grossman and he has a right to demand them, they are his "property." *See, e.g.,* Black's Law Dictionary 1232 (7th ed. 1999) (defining "property" as "[t]he right to own, possess, and enjoy a determinate thing...; the right of ownership"). The receiver asserts the rights of the judgment debtor. *See generally* Minn. Stat. Ch. 576 (setting forth powers of receivers to pursue debts owed to judgment debtor); *cf. Longueville v. Olson*, 369 N.W.2d 537, 539 (Minn. App. 1985) (holding receiver may pursue in its own name judgment debtor's fraudulently transferred property). Thus, like a subrogee, the receiver asserts the rights that the judgment debtor might assert. *Cf., e.g., Hermeling v. Minnesota Fire & Cas. Co.*, 548 N.W.2d 270 (Minn. 1996) ("The subrogee merely steps into the shoes of the subrogor." (citing *Employers Liability Assur. Corp. v. Morse*, 261 Minn. 259, 263, 111 N.W.2d 620, 624 (1961)); *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 67 (Minn. 2006) ("the employer stands in the shoes of the employee to pursue a claim").

If any payment from the trust were legally "due" to Mr. Grossman, he would have the right to compel the trust to make that payment. Such a right is the property of Mr.

Grossman, *see Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 9 (Minn. 2002) (“Under Minnesota law, a cause of action is personal property.”), and the court may execute on that “property” through the receiver. Nothing in the assertion of the right to compel the trust to make a payment that it owes Mr. Grossman—either by Mr. Grossman himself or by the receiver—runs afoul of the protection of the spendthrift trust against alienation of its assets. Thus, even if the Grossman trust were a spendthrift trust, the district court nonetheless has the authority to direct the receiver to exercise whatever claims against the trust Mr. Grossman himself might have. This Court should affirm.

IV. The District Court Did Not Abuse Its Discretion in Granting the Injunctions.

The two injunctions were well within the district court’s discretion. Under Minnesota’s well-established *Dahlberg* test, courts consider five factors in addressing a request for injunctive relief:

1. The probability of success on the merits;
2. The balance of harms to the parties;
3. The nature and background of the parties’ relationship;
4. Public policy considerations; and
5. Administrative burdens in enforcing an injunction.

Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-5, 137 N.W.2d 314, 321-22 (1965). Mr. Grossman’s brief baldly asserts that none of these five factors “decisively favors” Fannie Mae, Grossman Br. at 14, but he discusses only the first factor. See

Grossman Br. at 12-14. In fact, all five of these factors favor the issuance of the injunctions, and the district court did not abuse its discretion in granting them.

A. Fannie Mae is likely to prevail on the merits.

Fannie Mae is not only likely but nearly certain to prevail on the merits of its request to recover the existing judgment from Mr. Grossman. Mr. Grossman does not challenge the appropriateness of the docketed judgment or deny Fannie Mae's right to execute on that on his non-exempt assets to satisfy that judgment under Chapter 575. This factor of the *Dahlberg* test therefore strongly favors Fannie Mae.

B. The balance of harms favors the injunction to prevent dissipation of assets.

The balance-of-harms factor also favors Fannie Mae. This factor asks whether the harm that the moving party would suffer from denial of injunctive relief would outweigh the harm that the non-moving party would suffer from the grant of temporary injunctive relief. As the district court noted in granting the temporary restraining order, “[i]f the Court were to deny temporary injunctive relief, Fannie Mae may be deprived of one of the most effective ways to satisfy a portion of its judgment against Mr. Grossman.” App-3. Based on Grossman's pre-deposition transfer of other assets to offshore accounts, the district court reasonably found a real threat that Grossman might dispose of or conceal additional assets that might otherwise be applied to Fannie Mae's judgment. Accordingly, the denial of injunctive relief threatened to deprive Fannie Mae of the most effective way—and possibly the only way—to satisfy a portion of its judgment through inheritance

assets. This is sufficient to demonstrate irreparable injury. *See Michael-Curry Cos. v. Knutson Shareholders Liquidating Trust*, 423 N.W.2d 407, 410 (Minn. App. 1988) (holding that inability to collect or difficulty in collecting judgment is sufficient to establish irreparable injury).

In contrast, the Court's grant of the injunction as to the inheritance assets causes no substantial harm to Mr. Grossman. The injunction merely prohibits Mr. Grossman from transferring or disposing of assets that could be used to satisfy a judgment that Mr. Grossman does not deny he owes. If Mr. Grossman is *not* entitled to receive assets from the Grossman trust, the injunction causes him no harm because it does not affect any assets to which he has a claim. On the other hand, if Mr. Grossman *is* entitled to receive assets from the Grossman trust, Fannie Mae's existing judgment against him undisputedly requires him to pay such non-exempt assets toward the judgment, meaning that he cannot lose any money that he was entitled to retain. Either way, he has not suffered any prejudice, much less sufficient prejudice to outweigh the irreparable injury to Fannie Mae described above. The balance-of-harms factor strongly favors Fannie Mae.

C. The nature and background of the parties' relationship favors Fannie Mae.

The prior relationship between Fannie Mae and Mr. Grossman favors the entry of the injunction here. Mr. Grossman owes Fannie Mae over \$8 million dollars on a 2007 judgment, and Fannie Mae has to date collected less than \$12,000 on that judgment. Instead of paying all or part of that judgment, Mr. Grossman

chose to transfer assets into an offshore trust just as Fannie Mae was about to learn of that the assets existed. Mr. Grossman has also been wholly evasive about his other non-exempt property, refusing in interrogatory answers and at his deposition to provide Fannie Mae the information it needs to identify assets and use them to satisfy its judgment. The parties' prior relationship clearly favors entry of injunctive relief.

D. Public policy considerations favor Fannie Mae.

Public policy favors payment of judgments. *See* Minn. Stat. §§ 570-83 (2009) (Compensatory and Collection Remedies). Fannie Mae has a judgment against Grossman, which is docketed with this Court. Public policy considerations thus favor entry of the temporary restraining order that Fannie Mae requests.

E. The injunction imposes no unusual administrative burdens.

Finally, the district court's injunctions imposed no unusual administrative burdens on that court. The only potential administrative burden that the court faces in enforcing the injunction is the invocation of its contempt powers if Mr. Grossman were to violate the injunction, but that "administrative burden" arises with *any* injunction. The district court is not involved in monitoring or overseeing anything, so it will not have to devote resources to such an effort. The administrative-burdens factor favors the injunction.

In essence, Mr. Grossman asks the Court to read section 575.05 to require Fannie Mae to wait for the moment that the Grossman trust distributes assets to Mr. Grossman and only then come into court seeking seizure of that money and application to the judgment. This method of executing on a judgment against a debtor predisposed to evasive transfers of

assets is so obviously impracticable that it requires little rebuttal, but the circumstances here make the inadequacy of the approach particularly glaring. Mr. Grossman provided Fannie Mae only the 16th and 17th amendments to the trust, not the entire trust document with all amendments. As a result, Fannie Mae has no way to find out even the identities of the trustee(s) of the Grossman's trust, much less when payments are to be or have been made. And even if Fannie Mae knew when and by whom the trust assets were to be distributed, it would have to act with split-second timing to seize the money before Grossman had a chance to spirit it away beyond the reach of the court, either by moving it offshore and beyond the court's legal jurisdiction, by placing it nominally "in trust," or both. Given Mr. Grossman's history of preemptive money transfers, Mr. Grossman's proposed approach to the pursuit of assets under section 575.05 is unworkable and inconsistent with the purpose of the statute.

One final point in Mr. Grossman's brief deserves comment. Mr. Grossman argues that his interest in the Grossman estate is presently unknown because, among other things, he "may choose to disclaim his interest in his father's estate." Grossman Br. at 13-14. This statement is troubling for at least two reasons. First, if in fact Mr. Grossman is able to disclaim his interest in the Grossman trust that results from his father's death, then that trust obviously is not a spendthrift trust as he has been asserting. After all, the central feature of a spendthrift trust is that its assets are not subject to alienation, *even with the consent of the beneficiary*. See *In re Moulton's Estate*, 233 Minn. 286, 46 N.W.2d 667, 669 (1951) (holding invalid attempted assignment of interest in trust by beneficiary). If Mr.

Grossman can disclaim and thus alienate his interest in the Grossman trust, it is not a spendthrift trust and its assets may be directly applied to the judgment by the receiver.

Second, even if the terms of N. Bud Grossman's will and the Grossman trust permitted Mr. Grossman to disclaim his interest in the estate or the trust, the existing injunction bars Mr. Grossman from doing so.. The June 2, 2010 Order forbids Mr.

Grossman from

in any way transferring or disposing of any interest in money, property, or other assets that he has received, is due to receive, or will receive as a result of the death of his father, N. Bud Grossman (including, but not limited to, any interest in any trust established by N. Bud Grossman or any money or property distributed or to be distributed from the estate of N. Bud Grossman or under any will or last testament of N. Bud Grossman)....

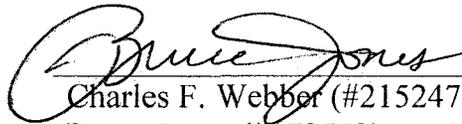
ADD-5. Disclaiming an interest in his father's estate would undeniably constitute "disposing of an interest in" that estate, and the present injunction therefore bars Mr. Grossman from doing so.

CONCLUSION

Minnesota Statute 575.05 provides a judgment creditor and the courts with a means to prevent judgment debtors from dissipating or transferring assets so as to defeat the execution of a judgment. The statute gives the district court several injunctive tools in aid of that purpose, and the district court here properly used those tools for that purpose. Even if the Court were to assume that the Grossman trust is a spendthrift trust, the district court's injunctions were entirely within the scope of its powers under Minnesota law. The district court properly applied the law and did not abuse its discretion, and this Court should affirm the district court's orders.

Dated: November 1, 2010

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STATE OF MINNESOTA
IN COURT OF APPEALS

Fannie Mae,

Respondent,

v.

Andrew C. Grossman,

Appellant

CERTIFICATION OF
BRIEF LENGTH

Appellate Court
Case Number: A10-1366 and A10-1505

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.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App.
P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of
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