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Nos. A10-1366 and A10-1505

**STATE OF MINNESOTA
IN SUPREME COURT**

Fannie Mae,

Appellant,

v.

Andrew C. Grossman,

Respondent,

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 FANNIE MAE'S BRIEF, ADDENDUM 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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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES..... 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 7

 I. Standard of Review 8

 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 9

 A. The District Court had Authority to Enjoin Mr. Grossman from Disposing of Assets 9

 1. Section 575.05 permits courts to enjoin judgment debtors from disposing of property 10

 2. Section 575.05 permits the district court to prospectively enjoin Mr. Grossman from disposing of property even if he has not yet received specific monetary assets from the trust 12

 3. Both the Rules of Civil Procedure and the district court’s inherent powers permit it to enter the injunction at issue here 15

 B. The Character of the Grossman Trust as a Spendthrift Trust Does Not Affect the District Court’s Authority to Enjoin Mr. Grossman as the Beneficiary of that Trust..... 17

 1. A spendthrift provision in a trust protects the assets of the trust..... 17

 2. The district court’s injunction does not affect the assets of the trust, only the interests of the beneficiary, and thus is not affected by the spendthrift provision 21

 3. The Court of Appeals decision improperly broadens the protection of a spendthrift trust to include the beneficiary 24

 a. The Court of Appeals’ reliance on Lee is mistaken 25

 b. The Court of Appeals decision mistakenly focuses on the interests of the beneficiary rather than the intent of the donor 26

C. Public Policy Favors Permitting Creditors to Enjoin Debtors with Respect to Future Payments from Spendthrift Trusts 28

IV. The District Court Did Not Abuse Its Discretion in Granting the Injunction..... 30

A. Fannie Mae is likely to prevail on the merits 30

B. The balance of harms favors the injunction to prevent dissipation of assets.... 31

C. The nature and background of the parties’ relationship favors Fannie Mae..... 32

D. Public policy considerations favor Fannie Mae 33

E. The injunction imposes no unusual administrative burdens 33

CONCLUSION 34

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<u>Bradley v. Burk,</u> 81 Minn. 368, 84 N.W. 123 (1900).....	11
<u>Cherne Industrial, Inc. v. Grounds & Associates, Inc.,</u> 278 N.W.2d 81 (Minn. 1979).....	9
<u>Clerk of Court’s Comp. for Lyon County v. Lyon County Comm’rs,</u> 308 Minn. 172, 241 N.W.2d 781 (1976).....	16
<u>Dahlberg Bros., Inc. v. Ford Motor Co.,</u> 272 Minn. 264, 137 N.W.2d 314 (1965).....	2, 30
<u>Employers Liab. Assur. Corp. v. Morse,</u> 261 Minn. 259, 111 N.W.2d 620 (1961).....	13
<u>Erickson v. Erickson,</u> 197 Minn. 71, 266 N.W. 161 (Minn. 1936).....	passim
<u>Fannie Mae v. Heather Apartments Limited P’ship et al.,</u> Case No. 105, 109 (Okla. Civ. App. Aug. 8, 2008)	4
<u>Fannie Mae v. Heather Apartments Limited P’ship, et al.,</u> File No. 27-CV-07-20736	4
<u>Fannie Mae v. Heather Apartments Ltd. P’ship,</u> 799 N.W.2d 638 (Minn. App. 2011)	passim
<u>First Nat’l Bank v. Olufson,</u> 181 Minn. 289, 232 N.W. 337 (Minn. 1930).....	18, 22
<u>Hermeling v. Minnesota Fire & Cas. Co.,</u> 548 N.W.2d 270 (Minn. 1996).....	13
<u>In re Appeal of Lillian Flygare for Med. Assistance,</u> 725 N.W.2d 114 (Minn. App. 2007)	8
<u>In re Application of Olson,</u> 648 N.W.2d 226 (Minn. 2002).....	10
<u>In re Estate of Schroeder,</u> 441 N.W.2d 527 (Minn. App. 1989)	20

<u>In re Lee’s Estate,</u> 214 Minn. 448, 9 N.W.2d 245 (Minn. 1943).....	18, 25, 26
<u>In re Moulton’s Estate,</u> 233 Minn. 286, 46 N.W.2d 667 (1951).....	passim
<u>In re Trust Created Under Agreement with McLaughlin,</u> 361 N.W.2d 43 (Minn.1985).....	passim
<u>Johnson v. Brajkovich,</u> 229 Minn. 529, 40 N.W.2d 273 (1949).....	11
<u>Lamberton v. Lamberton,</u> 229 Minn. 29, 38 N.W.2d 72 (Minn. 1949).....	18
<u>Lange v. Fidelity & Casualty Co.,</u> 290 Minn. 61, 185 N.W.2d 881 (Minn. 1971).....	12
<u>Longueville v. Olson,</u> 369 N.W.2d 537 (Minn. App. 1985).....	13
<u>Martin ex rel. Hoff v. City of Rochester,</u> 642 N.W.2d 1 (Minn. 2002).....	13
<u>Matter of Boright,</u> 377 N.W.2d 9 (Minn. 1985).....	18, 21
<u>Matter of Campbell’s Trusts,</u> 258 N.W.2d 856 (Minn. 1977).....	18
<u>Michael-Curry Cos. v. Knutson Shareholders Liquidating Trust,</u> 423 N.W.2d 407 (Minn. App. 1988).....	2, 31
<u>Morgan’s Estate, 72 A. 498 (Pa. 1909)</u>	27
<u>Morrison v. Doyle,</u> 582 N.W.2d 237 (Minn. 1999).....	passim
<u>Patton v. Newmar Corp.,</u> 538 N.W.2d 116 (Minn. 1995).....	16
<u>Simmons v. Northwestern Trust Co.,</u> 136 Minn. 357, 162 N.W. 450 (1917).....	18
<u>Smith v. Smith,</u> 312 Minn. 541, 253 N.W.2d 143 (Minn. 1977).....	18

<u>Zurich Am. Ins. Co. v. Bjelland,</u> 710 N.W.2d 64 (Minn. 2006).....	13
--	----

FEDERAL CASES

<u>Tri-State Generation & Transmission Ass’n, Inc. v. Shoshone River Power, Inc.,</u> 805 F.2d 351 (10th Cir. 1986).....	31
---	----

STATE STATUTES

Minn. Laws 1989, Chapter 340, Article 1, § 77	19
Minn. Stat. Chapter 16D	28
Minn. Stat. Chapter 501B (2011)	19
Minn. Stat. § 61A.04	19
Minn. Stat. § 501.14 (1986)	18
Minn. Stat. § 501.20 (1986)	18
Minn. Stat. § 501B.03	19
Minn. Stat. § 501B.13	19
Minn. Stat. § 501B.87	19
Minn. Stat. § 501B.154(b).....	19
Minn. Stat. § 524.2-1107.....	19
Minn. Stat. §§ 570-83	28, 33
Minn. Stat. § 575.05	passim
Minn. Stat. § 6718 (1913)	18
Minn. Stat. § 8090 (1927)	18
Minn. Stat. § 8092 (1927)	18
Minn. Stat. § 8098 (1927)	18

RULES

Minn. R. Civ. App. P. 103.04..... 4
Minn. R. Civ. P. 1 16
Minn. R. Civ. P. 65.04 23

CONSTITUTIONAL PROVISIONS

Minn. Const. Article I, § 12..... 28

OTHER AUTHORITIES

3 Austin W. Scott, et al., *Scott and Asher on Trusts*, § 15.2.5 (2007) 14, 22
4 Helene S. Shapo, et al., *The Law of Trusts and Trustees* § 227 (3d ed. 2007)..... 14
Black’s Law Dictionary 1171 (6th ed. 1990) 18
Black’s Law Dictionary 1232 (7th ed. 1999)..... 13
Black’s Law Dictionary 1378 (7th ed. 1990)..... 19
Charles Bunn, *Spendthrift Trusts in Minnesota*, 18 Minn. L. Rev. 493 (1934) 18
Allan Nackan & Jonathan Cooperman , *Follow The Money:
New Directions In Fraud Investigation*, Secured Lender, Nov. 1, 2006 at 42..... 29
Fratcher, IV *Scott on Trusts* § 337.6 (4th ed.1989) 20
George T. Bogert, *Trusts*, § 40 (6th ed. 1987)..... 22
<http://www.startribune.com/obituaries/81614922.html>..... 5
Martin Kenney & Elizabeth O’Brien, *Obstacles on the Path to Recovery*, Mondaq
Bus. Briefing July 6, 2008 (also available at 2008 WLNR 14875609)..... 29
Martin Kenney, *The Language of Hiding*, Mondaq Bus. Briefing, July 12, 2008 (also
at 2008 WLNR 15326954) 29
Note, *Spendthrift Trusts—Destructibility*, 5 Minn. L. Rev. 543 (1920-21) 18, 27
Note, *Trusts—Spendthrift Trusts—Creditor’s Right to Reach Beneficiary’s Interest
Under Minnesota and Similar Statutes*, 15 Minn. L. Rev. 570 (1930-31) 18, 19, 22
Restatement (Third) Trusts § 58 cmt. d(2) (2003) 14

Uniform Trust Code § 506 14

STATEMENT OF ISSUES

1. May a court enjoin the beneficiary of a spendthrift trust from transferring or disposing of any proceeds he receives or may receive from the trust, where the injunction does not affect either the trust itself or the trust's assets?

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

ADD-8-10.¹

The Court of Appeals reversed, holding that the district court lacked the authority to issue such an injunction before the beneficiary actually received proceeds from the trust. Fannie Mae v. Heather Apartments Ltd. P'ship, 799 N.W.2d 638, 642 (Minn. App. 2011) (ADD-1).

Most apposite authorities:

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

In re Trust Created Under Agreement with McLaughlin, 361 N.W.2d 43, 46 (Minn.1985)

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

Minn. Stat. § 575.05

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

The district court granted the injunction. ADD-6.

Because the Court of Appeals held that the district court lacked the authority to issue the injunction, it did not reach this issue.

¹ References to ADD-__ are to the Appellant Fannie Mae's Addendum, bound with this brief.

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 (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-5.² 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.

On July 28, 2010, Mr. Grossman filed a Notice of Appeal from the June 2, 2010 temporary injunction. App-15. That appeal was later consolidated with a second appeal from a related but non-appealable order, which is not at issue before this Court.³ On June

² References to App-__ are to Appellant Fannie Mae's Appendix, bound with this brief.

³ On June 16, 2010, the trial court issued an order appointing a receiver to take custody of and liquidate 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. App-7-14. On August 26, 2010, Mr. Grossman filed a Notice of Appeal from the June 16 Order, App-17, along with a motion to consolidate the two appeals. App-19. On September 2, 2010, a special term panel of the Court of Appeals granted the motion to consolidate the two appeals but asked the parties to file informal jurisdictional

(continued on next page)

6, 2011, the Court of Appeals reversed. See Fannie Mae v. Heather Apartments Ltd. P'ship, 799 N.W.2d 638, 642 (Minn. App. 2011).

Fannie Mae petitioned this Court for further review of the Court of Appeals decision, and this Court granted such review by Order dated August 16, 2011.

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 commercial property mortgage loan. That judgment was affirmed on appeal. Fannie Mae v. Heather Apartments Limited P'ship 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 P'ship, et al., File No. 27-CV-07-20736. The original amount of the judgment

(continued from previous page)

memoranda concerning whether the June 16 Order was independently appealable. App.-21.

After receiving the requested memoranda, on October 19, 2010, the Court of Appeals 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 (App-27). The Court noted, however, that the issues raised by the June 2 and June 16 Orders were “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) (App-27). The Court of Appeals therefore directed the parties to address both appeals in their briefs. *Id.* at 4 (App-28). The merits panel in the Court of Appeals addressed the June 16 order in its decision to the extent that the order was intertwined with the June 2, 2010 Order. See 799 N.W.2d at 640-42. Fannie Mae did not seek this Court’s further review of the Court of Appeals ruling on the still-inchoate June 16, 2010 order, and it is not at issue before this Court.

was \$7,622,153.50. With the accrual of post-judgment interest, the unpaid amount of the judgment is now more than \$8 million.

Since the entry of its judgment in Minnesota, Fannie Mae has tried to collect the judgment from 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 Minnesota, he established a offshore trust in the Cook Islands. App-30-33. 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. *Id.*

Mr. Grossman's father N. Bud Grossman died on January 11, 2010. *See* <http://www.startribune.com/obituaries/81614922.html> (obituary accessed on September 12, 2011). In his October 2008 deposition, Mr. Grossman testified that his father "might have trusts" set up for Mr. Grossman's benefit, but claimed that he did not know that for a fact. App-34. 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. *Id.* 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); Conf. App. 1, 32.⁴ For the purposes of this appeal, the Court may assume that the Grossman trust is a

⁴ References to Conf. App. __ are to the Appellant's Confidential Appendix, filed with this Court in a separate volume.

“spendthrift trust” under Minnesota law. See generally Morrison v. Doyle, 582 N.W.2d 237 (Minn. 1998).

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 stated in relevant part:

Defendant Andrew C. Grossman is hereby enjoined, 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), pending further order of this Court.

App-5. 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, ADD-10.

Mr. Grossman appealed the injunction to the Minnesota Court of Appeals, which reversed, holding that the district court lacked the authority to issue the June 2 Order because the Order preceded Mr. Grossman’s receipt of any proceeds from the trust in question. See Heather Apartments, 799 N.W.2d at 642 (ADD-1). This Court granted further review by Order dated August 16, 2011.

SUMMARY OF ARGUMENT

Fannie Mae urges this Court to reverse the decision of the Minnesota Court of Appeals, which holds that Minnesota courts lack the power to presently enjoin judgment debtors from disposing of assets they may receive from a spendthrift trust. The Court of Appeals' holding expands the law of spendthrift trusts beyond this Court's precedents, pushing the protections afforded by a spendthrift provision beyond the trust itself to directly benefit the trust's beneficiaries, and effectively shielding assets from creditors even after those assets have left the trust. The new rule will make collection of judgments from trust beneficiaries substantially harder, particularly where (as here) the debtor has already shown his willingness to intentionally transfer assets beyond the creditor's reach.

This Court should reinstate the district court's injunction in aid of Fannie Mae's execution on its existing judgment against Andrew Grossman. Minnesota Statute section 575.05 permits the district court to do just what it did in its June 2, 2010 order: enjoin Mr. Grossman from transferring or otherwise disposing of any assets he may receive from the Grossman trust. The status of the Grossman trust as a spendthrift trust does not affect the district court's power to issue that injunction. The injunction did not purport to impose any restrictions or obligations either on the Grossman trust itself or on its trustee. Instead, the district court directed the injunction *solely* at the conduct of the beneficiary Mr. Grossman himself, and the injunction has effect *only if and when* Mr. Grossman receives assets from the Grossman trust. 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, and nothing in public policy suggests any reason to expand spendthrift trust protections to trust beneficiaries. This Court should therefore reverse the Court of Appeals decision on this issue.

The district court not only had the power to issue the injunctions that it issued, it did not abuse its discretion in doing so.⁵ 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 has in fact already obtained a judgment, and merely seeks to recover the award already reflected in that judgment. 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. The court did not abuse its discretion in doing so, and this Court should reinstate the district court's injunction.

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 Med. Assistance, 725 N.W.2d 114, 118 (Minn. App. 2007) (“Issues involving the interpretation of language in a statute or in a testamentary trust are

⁵ The Court of Appeals' conclusion that the district court lacked the authority to issue the injunction at issue meant that the appellate court did not need to consider whether the lower court had abused its discretion in actually granting the injunction. Nevertheless, the parties fully briefed this issue in the Court of Appeals, and Fannie Mae presents its arguments in support of the district court's exercise of discretion here in the event this Court wishes to address the issue.

issues of law that we review de novo.”); see also Morrison v. Doyle, 582 N.W.2d 237, 241 (Minn. 1998) (performing independent evaluation of settlor’s intent in trust document).

The granting of the specific injunction at issue here rested within the sound discretion of the district court, and that grant will not be disturbed on appeal unless, based on the whole record, it appears that the district court abused that discretion. Cherne Industrial, Inc. v. Grounds & Associates, Inc., 278 N.W.2d 81, 91 (Minn. 1979).

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 Court of Appeals erred in holding that the district court lacked the authority to issue a prospective “standstill” injunction forbidding Mr. Grossman from disposing of any assets he may receive from the Grossman trust. Such an injunction is within the scope of the district court’s powers, both under Minnesota Statute section 575.05 and otherwise, and is not barred merely because the Grossman trust is a spendthrift trust. The Court of Appeals offered no analysis or case law supporting the expansion of spendthrift trust protections to trust beneficiaries, and public policy weighs heavily against such an extension.

A. The District Court had Authority to Enjoin Mr. Grossman from Disposing of Assets.

The district court here had the power under Minnesota Statute section 575.05, under the Rules of Civil Procedure, and under its inherent powers 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.

1. Section 575.05 permits courts to enjoin judgment debtors from disposing of property.

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 in relevant part:

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...), until further order of this Court.

ADD-10.⁶ Mr. Grossman does not challenge the propriety of the docketed judgment or Fannie Mae's right to execute on that judgment. Thus, section 575.05 grants the district court the power to forbid Mr. Grossman from transferring or otherwise disposing of any interest in or distributions of the inheritance assets.

⁶ In the Court of Appeals, Mr. Grossman argued for reversal only with respect to the portion of the June 2, 2010 Order concerning the Grossman trust. He has thus 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 means other than the Grossman trust. See, e.g., In re Application of Olson, 648 N.W.2d 226, 228 (Minn. 2002) (“[I]ssues not ‘argued’ in the briefs are deemed waived on appeal.”).

The Court of Appeals decision focused most of its attention on the spendthrift trust issue, addressing section 575.05 in a single paragraph and framing its conclusion entirely in terms of the section's applicability to spendthrift trusts. See 799 N.W.2d at 641 (“section 575.05 does not authorize orders affecting proceeds of a spendthrift trust that may be distributed to a beneficiary in the future”). Fannie Mae respectfully submits that this does not provide a sufficient ground for denying the application of section 575.05.

Moreover, the only case addressing section 575.05 that the Court of Appeals cites, Johnson v. Brajkovich, 229 Minn. 529, 40 N.W.2d 273 (1949), is readily distinguishable from the circumstances here. Brajkovich did not involve a request for a prospective standstill injunction; it addressed instead an order directing a debtor to pay a creditor out of the proceeds of the sale of her home, and the decision turned specifically on the court's conclusion that the money the creditor sought to seize from the debtor was exempt from execution under Minnesota's homestead law. See id. at 532, 40 N.W.2d at 275 (“While it is conceivable from the nature of defendant's testimony that the court might well have considered that she still had some of the proceeds from the sale of her homestead in her possession at the time she testified, it is our opinion that, even so, these proceeds would be exempt from execution.”). Indeed, the Brajkovich decision notes that section 575.05 “was intended to accomplish a proper purpose in assisting judgment creditors to discover secreted property,” id. at 531, 40 N.W.2d at 275 (citing Bradley v. Burk, 81 Minn. 368, 84 N.W. 123 (1900)), supporting the district court's use of section 575.05 here to assist in preventing Mr. Grossman from secreting more assets.

2. Section 575.05 permits the district court to prospectively enjoin Mr. Grossman from disposing of property even if he has not yet received specific monetary assets from the trust.

Although the Court of Appeals did not adopt his position, Mr. Grossman argued in that court that section 575.05 addresses only assets that are currently certain and liquidated. In fact, Minnesota law makes clear that section 575.05 applies to *any* interests or claims that belong to a debtor, whether certain or contingent. For example, in Lange v. Fidelity & Casualty Co., 290 Minn. 61, 185 N.W.2d 881 (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.⁷ The district court's prospective injunction here is consistent both with section 575.05 and with the purpose this Court articulated in Lange.

The district court's use of the "as they become due" language in its injunction is also consistent with the language and purpose of section 575.05, fitting squarely within the

⁷ Although the Lange court noted that the cause of action at issue was assignable (unlike an interest in a spendthrift trust), the court made that observation independent of its discussion of section 575.05. See 290 Minn. at 69-70, 185 N.W.2d at 886-87. With respect to the statute, the court's point was that the statute permits a receiver to pursue a debtor's assets even if the debtor does not. Id. This is consistent with the Court's comments about creditors' possible remedies where a beneficiary unreasonably delays receiving assets from a trust by one means or another. See In re Trust Created Under Agreement with McLaughlin, 361 N.W.2d 43, 46 (Minn.1985) (discussed in text below).

statute's grant of authority to the district court over "property... due to the judgment debtor." Minn. Stat. § 575.05. Should any proceeds of the trust 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"). And a receiver under Chapter 575 may assert the rights the judgment debtor may assert. See generally Minn. Stat. Ch. 575 (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); 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 Liab. 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"))).

Here, if any payment from the Grossman trust becomes legally "due" to Mr. Grossman, he would have the right to compel the trust to make that payment. Such a right to compel payment 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 under section 575.05 a court may enjoin Mr. Grossman from disposing of that "property."

Several trust commentators have noted how just such a situation might arise in the context of a spendthrift trust. For example:

[T]here may be instances in which the trustee delays the distribution of income already in hand unreasonably or at the request of a beneficiary who is deliberately trying to avoid the claims of creditors. In neither instance does there seem to be any reason not to treat the income in question as already having been distributed to the beneficiary and thus subject to the claims of creditors.

3 Austin W. Scott, et al., *Scott and Asher on Trusts*, § 15.2.5 (2007). Professor Shapo makes a similar point in her treatise:

[T]here may be a time when an income beneficiary's creditor can reach trust income that has accumulated but has not been paid and remains in the trustee's hands. The beneficiary may attempt to avoid receipt of an income payment by requesting that the trustee hold the accumulated income on her demand, and there may be other conduct of the beneficiary that prevents the trustee from paying her the accumulated income. For example, the beneficiary may deliberately avoid receipt by going into hiding or by agreement with the trustee to alter the payment dates. In any such case it would seem that the accumulated income has become absolutely due and owing the beneficiary and should be subject to the claims of her creditors.

4 Helene S. Shapo, et al., *The Law of Trusts and Trustees* § 227 (3d ed. 2007).

This Court has made a similar observation. See In re Trust Created Under Agreement with McLaughlin, 361 N.W.2d 43, 46 (Minn.1985) (suggesting that evidence of unreasonable delay on the part of the trustee or evidence of a beneficiary's intent to defraud his creditors "by leaving assets, which he has a right to demand, in a spendthrift trust" might support a finding that proceeds have been distributed in fact); see also Restatement (Third) Trusts § 58 cmt. d(2) (2003) (noting spendthrift provision's protections do not remain effective as to property that has become distributable "beyond a time reasonably necessary to make distribution to the beneficiary"); Unif. Trust Code § 506 ("Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal...if the trustee has

not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.”).

Moreover, although these authorities contemplate the possible invasion of the trust assets themselves based on unreasonable conduct by a trustee or beneficiary, the district court’s injunction did not go nearly that far. As discussed in detail in section II(B) below, the injunction at issue here did not invade the trust assets or affect them in any way. Instead, the district court here employed the much more modest measure of enjoining only the beneficiary’s conduct, and even then only as trust proceeds are received by or become due to him. The district court’s anticipatory standstill injunction was an appropriate means of addressing Mr. Grossman’s present property interest, and its action was both authorized by and consistent with the statute’s grant of authority over “property... due to the judgment debtor.” Minn. Stat. § 575.05.

3. Both the Rules of Civil Procedure and the district court’s inherent powers permit it to enter the injunction at issue here.

Even assuming *arguendo* that section 575.05 did not itself provide the district court with authority to issue an anticipatory injunction in aid of recovery under the statute, the district court nevertheless had the power to employ that procedural tool, both under the Rules of Civil Procedure and through its inherent power.

No statute that grants a right or imposes an obligation includes within its own terms all of the tools or procedures that may be necessary to enforce that right or obligation; that is what rules of procedure are for. Minnesota’s Rules of Civil Procedure “govern the procedure in the district courts...in all suits of a civil nature” and “shall be

construed and administered to secure the just, speedy, and inexpensive determination of every action.” Minn. R. Civ. P. 1. The district court here merely employed one of the tools granted by the Rules—an injunction under Rule 65—as one step toward the goal of applying Mr. Grossman’s non-exempt property to Fannie Mae’s judgment as section 575.05 authorizes. The court used the injunction here as a tool to maintain the status quo, to compel Mr. Grossman to hold onto any asset received from the Grossman trust until the district court can address what if anything should be done with that asset under section 575.05.

Moreover, even if the Rules did not specifically provide for the prospective standstill injunction, the district court’s inherent powers were more than sufficient to permit the issuance of the injunction. As this Court has noted, “courts are vested with considerable inherent judicial authority necessary to their ‘vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws.” Patton v. Newmar Corp., 538 N.W.2d 116, 118 (Minn. 1995) (quoting Clerk of Court’s Comp. for Lyon County v. Lyon County Comm’rs, 308 Minn. 172, 177, 241 N.W.2d 781, 784 (1976)).

In a case like this, where a judgment debtor has already proven himself likely to dispose of any assets he receives the instant he receives them, an anticipatory standstill injunction is crucial to carrying out the purposes of section 575.05, and is entirely within the inherent powers of the district court. The Court of Appeals erred in holding that the district court lacked the power to issue the injunction.

B. The Character of the Grossman Trust as a Spendthrift Trust Does Not Affect the District Court’s Authority to Enjoin Mr. Grossman as the Beneficiary of that Trust.

The presumed character of the Grossman trust as a spendthrift trust does not affect the authority of the district court to issue an injunction affecting its beneficiary Mr. Grossman. This appeal assumes *arguendo* that the Grossman trust is a spendthrift trust, and Fannie Mae does not dispute here that the trust’s assets are not subject to alienation in favor of Fannie Mae as judgment creditor.

The issue before the Court, however, is much different from whether a spendthrift provision protects the assets in the trust: this case asks whether a spendthrift provision in a trust protects the trust’s *beneficiary* from prospective equitable relief with respect to trust assets that may come into the beneficiary’s own hands. This issue is one of first impression in Minnesota; as the Court of Appeals noted, “no Minnesota appellate court has addressed the issue of whether a district court may, before proceeds of a spendthrift trust are distributed, issue an order that will have no effect until appellant receives the proceeds.” 799 N.W.2d at 640.

1. A spendthrift provision in a trust protects the assets of the trust.

“A spendthrift trust is a trust in which the power of alienation has been suspended.” Morrison v. Doyle, 582 N.W.2d 237, 240 (Minn. 1998) (citing In re Moulton’s Estate, 233 Minn. 286, 290, 46 N.W.2d 667, 670 (1951)).⁸ “The power of

⁸ This Court’s entire jurisprudence on the issue of spendthrift appears to be encompassed in just ten cases decided over the past 80 years. Those cases are, from the earliest forward:

(continued on next page)

alienation is the power to sell, transfer, assign or otherwise dispose of property.” *Id.* at 240 n.3 (quoting Black’s Law Dictionary 1171 (6th ed. 1990)). As long as the assets of the spendthrift trust remain in the trust, the income and principal “may not be reached by creditors either at law or by equitable proceeding.” *Erickson v. Erickson*, 197 Minn. 71, 77–79, 266 N.W. 161, 163–64 (1936).

The law governing spendthrift trusts in Minnesota is almost entirely judge-made. Minnesota has at various times had statutes that governed some aspects of some spendthrift trusts, e.g., Gen. Stat. § 6718 (1913); Stat. §§ 8090, 8092, 8098 (1927); Minn. Stat. §§ 501.14, 501.20 (1986), but this Court has not found occasion to apply those statutes in any spendthrift trust case. See *In re Moulton’s Estate*, 233 Minn. 286, 287, 46 N.W.2d 667, 671 (Minn. 1951) (“these statutory provisions are inapplicable to the trust here involved”); *Simmons v. Northwestern Trust Co.*, 136 Minn. 357, 361, 162 N.W. 450, 451 (1917); see also Note, *Trusts—Spendthrift Trusts—Creditor’s Right to Reach*

(continued from previous page)

First Nat’l Bank v. Olufson, 181 Minn. 289, 232 N.W. 337 (Minn. 1930)

Erickson v. Erickson, 197 Minn. 71, 266 N.W. 161 (Minn. 1936)

In re Lee’s Estate, 214 Minn. 448, 9 N.W.2d 245 (Minn. 1943)

Lamberton v. Lamberton, 229 Minn. 29, 38 N.W.2d 72 (Minn. 1949)

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

Smith v. Smith, 312 Minn. 541, 253 N.W.2d 143 (Minn. 1977)

Matter of Campbell’s Trusts, 258 N.W.2d 856 (Minn. 1977)

Matter of Boright, 377 N.W.2d 9 (Minn. 1985)

Matter of Trust Created Under Agreement with McLaughlin, 361 N.W.2d 43 (Minn. 1985)

Morrison v. Doyle, 582 N.W.2d 237 (Minn. 1998)

See also Note, *Spendthrift Trusts—Destructibility*, 5 Minn. L. Rev. 543 (1920-21); Note, *Trusts—Spendthrift Trusts—Creditor’s Right to Reach Beneficiary’s Interest Under Minnesota and Similar Statutes*, 15 Minn. L. Rev. 570 (1930-31); Charles Bunn, *Spendthrift Trusts in Minnesota*, 18 Minn. L. Rev. 493 (1934).

Beneficiary's Interest Under Minnesota and Similar Statutes, 15 Minn. L. Rev. 570, 576 (1930-31) (noting that statutes relating to trusts and uses had not been construed very often). Moreover, the Minnesota legislature repealed these statutory provisions when it recodified the trust section of Minnesota Statutes in 1989, see Minn. Laws 1989, ch. 340, art. 1, § 77 (effective Jan. 1, 1990), and did not include them as part of the new law. See generally Minn. Stat. Ch. 501B (2011).⁹

The Minnesota case law protecting the assets of spendthrift trusts reflects a judicial focus on the intent of the donor of the trust.¹⁰ As this Court has stated, “it is the intent of the donor...which controls the availability and disposition of his gift.”

Erickson, 266 N.W. at 164; see also Morrison, 582 N.W.2d at 241 (noting that past Minnesota cases “direct us to act on the manifest intent of the settlor”); cf. Minn. Stat. § 501B.03 (“If the *purposes for which an active express trust is created* have been

⁹ At present, the only Minnesota statutes that address spendthrift provisions in trusts either integrate spendthrift trust concepts into other areas of the law, see, e.g., Minn. Stat. § 61A.04 (permitting insured to request spendthrift provision in life insurance policy); Minn. Stat. § 501B.87 (providing that trust used as part of self-employed person’s retirement plan may enforce spendthrift provision limiting power of beneficiary to alienate), or make clear that certain general trust principles also apply to spendthrift trusts. See, e.g., Minn. Stat. § 501B.154(b) (providing spendthrift trust is within scope of section permitting agreement to alter or terminate trust under certain conditions); Minn. Stat. § 524.2-1107 (providing that beneficiary may disclaim interest in spendthrift trust, notwithstanding trust provision barring such a disclaimer); see also Morrison v. Doyle, 582 N.W.2d 237, 242 (Minn. 1999) (holding that Minn. Stat. § 501B.13, which provides that trust is not invalid because trustee is also beneficiary, applies to spendthrift trusts).

¹⁰ The “donor” is the person who establishes the trust. Courts also use the terms “creator,” “settlor,” “trustor,” “grantor,” and “founder” to refer to this person. See Black’s Law Dictionary 1378 (7th ed. 1990) (defining “settlor”).

accomplished, or become impossible of accomplishment or illegal, the trust will be terminated.” (emphasis added)).

Because of this focus on the donor’s purpose, Minnesota courts have refused to allow either creditors or trust beneficiaries to alter or avoid the spendthrift provisions of a trust—even if all parties and the trustee agree—if the action would thwart the intention of the donor. For example, in In re Estate of Schroeder, 441 N.W.2d 527, 533 (Minn. App. 1989), the Minnesota Court of Appeals refused to approve elimination of a spendthrift trust provision as part of the settlement of a will dispute. The court concluded that the parties had included the elimination of the spendthrift provision in their “settlement,” not because the elimination was “was necessary to protect the interests of” the beneficiaries, but instead because the parties “did not like the testator’s restrictions.” Id. As the Schroeder court noted, the intention of the donor overrides the desires of the beneficiaries:

Where the will provides for the creation of a spendthrift trust, the beneficiaries cannot insist on receiving the property or a part of it free of trust, or insist on the creation of a trust under which their interests are alienable, or otherwise vary the terms of a trust under the guise of a compromise agreement merely because they wish to do so.

Id. (quoting Fratcher, IV *Scott on Trusts* § 337.6 (4th ed.1989) (citations omitted)).

In contrast, where a proposed modification of a spendthrift trust will *not* impair the donor’s purpose in imposing the spendthrift provision, the modification of the trust may be permitted. For example, where a trust compelled regular set payments to the beneficiary and granted the trustee no discretion to make additional payments, this Court observed that “the purchase of an annuity contract from an insurance company [to make the

payments] cannot be said to defeat the purpose of the trust.” Matter of Boright, 377 N.W.2d 9, 12-13 (Minn. 1985) (permitting modification of trust, either through purchase of annuity or reduction of principal, over objection of income beneficiary).

Consistent with this concentration on protecting the donor’s intent, every published Minnesota case that has upheld the inviolability of a spendthrift trust—including every case cited by the Court of Appeals decision here—has involved an attempt to garnish, attach, lien, or assign the assets of *the trust itself*. See, e.g., Morrison v. Doyle, 582 N.W.2d 237, 238-39 (Minn. 1999) (judgment creditors of beneficiary attempted to attach trust assets); 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 a trust beneficiaries); Erickson v. Erickson, 197 Minn. 71, 72, 266 N.W. 161, 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”); 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*, the subject of the injunction at issue here.

2. **The district court’s injunction does not affect the assets of the trust, only the interests of the beneficiary, and thus is not affected by the spendthrift provision.**

The district court’s injunction here does not offend the spendthrift trust doctrine because it affects only the beneficiary of the trust, not the trust itself or its assets. In contrast to the protection afforded to trust assets *while they are in the trust*, this Court has

consistently held such assets are *not* protected once they are in the hands of the beneficiary, and creditors may reach them at that time. E.g., In re Moulton's Estate, 46 N.W.2d 667, 672 (Minn. 1951) (“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.”) (quoting First Nat’l Bank v. Olufson, 232 N.W. 337, 339 (1930))¹¹; see also George T. Bogert, *Trusts*, § 40 (6th ed. 1987) (“Such a [spendthrift] trust does not involve any restraint on alienability or creditors’ rights with respect to property after it is received by the beneficiary from the trustee, but rather is merely a restraint with regard to his rights to future payments from the trust.”); 3 Austin W. Scott, et al., *Scott and Asher on Trusts*, § 15.2.5 (2007) (“[O]nce the trustee makes an actual distribution, the property distributed is free of the restraint, the beneficiary can transfer it, and creditors can reach it.”). The district court here specifically noted this distinction between monies in the trust and monies in the beneficiary’s hand, citing Moulton, in the memorandum that accompanied its June 2, 2010 injunction. ADD-9.

¹¹ Although the Olufson court stated that the trust before it was “not a spendthrift trust,” 181 Minn. at 291, 232 N.W. at 338, this court’s later cases have noted that the Olufson court had effectively treated the trust as a spendthrift trust. See, e.g., Morrison v. Doyle, 582 N.W.2d 237, 240-241 (Minn. 1998) (noting that court had “provided the asset protections afforded in a spendthrift trust when the trust agreement did not include an express spendthrift provision, citing Moulton and Olufson); see also Note, *Trusts—Spendthrift Trusts—Creditor’s Right to Reach Beneficiary’s Interest Under Minnesota and Similar Statutes*, 15 Minn. L. Rev. 570, 579 (1930-31) (“although the opinion includes a statement to the contrary, this case [Olufson] appears in reality to be the first decision in Minnesota recognizing the validity of spendthrift trusts”).

Applying these principles to the case here, the district court's June 2, 2010 injunction falls outside any protections afforded by any spendthrift provision in the Grossman trust. The injunction affects only the beneficiary and does not affect the trust or the trustee in any way. As the quotation of the district court's order above demonstrates, that court ordered *only* that the beneficiary 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" from the Grossman trust. ADD-6. The injunction does not purport to compel any act by the trustee of the Grossman trust or impose any restriction on the trustee's actions. The injunction neither requires nor prohibits any distribution from the trust's assets. Indeed, neither the Grossman trust nor its trustee is even a party to this action, and so neither could even be bound by the injunction. See Minn. R. Civ. P. 65.04 (providing that an order granting an injunction "is binding only upon 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").

With respect to Mr. Grossman himself, the trust beneficiary, the injunction imposes no duties on him *until and unless* he actually receives assets from the trust. As the Court of Appeals itself acknowledged, the district court's injunction "will have no effect until [Mr. Grossman] receives the proceeds." 799 N.W.2d at 641. If Mr. Grossman never receives any assets from the trust, the injunction will have no effect and impose no restrictions on him. If, however, he does receive assets from the trust, once those assets are *in his hands*, the injunction forbids him from disposing of those assets pending further order of the court.

The injunction thus does exactly what Minnesota law permits: it recognizes the protected status of the assets *while* they are in the trust, but compels the beneficiary to retain those assets for the court's further action *after* they have passed from the trust into the beneficiary's hands. See In re Moulton's Estate, 46 N.W.2d at 672. The district court's decision to issue the injunction *before* the beneficiary actually received the assets does not alter this conclusion; the injunction still undisputedly imposes no restrictions on and has no other effect on Mr. Grossman until and unless assets from the trust come into his hands. At that time, and only at that time, Mr. Grossman has a duty to hold the assets until the Court issues further rulings addressing them. The injunction is thus entirely consistent with existing Minnesota law.

3. The Court of Appeals decision improperly broadens the protection of a spendthrift trust to include the beneficiary.

The Court of Appeals' decision here significantly and improperly broadens the scope of the spendthrift trust doctrine by extending its protections beyond the trust itself to prevent creditors from seeking relief against trust beneficiaries. By holding that the district court lacked the authority to prohibit Mr. Grossman from disposing of assets from the Grossman trust *even after he receives them*, the Court of Appeals decision has departed dramatically from this Court's precedents and has brought a whole new class of parties within the scope of spendthrift trust protection. Fannie Mae urges the court to reverse the Court of Appeals decision.

Despite citing cases that make the distinction between the law's treatment of assets inside and outside of trusts, see 799 N.W.2d at 641 (citing Erickson and Olufson), the

Court of Appeals decision overlooks over the significance of this critical difference in the present context. Instead, the court makes a leap in logic and essentially concludes that protecting the assets of a trust necessarily requires protecting the beneficiary who may receive those assets. This gap is apparent in the critical paragraph of the Court of Appeals decision:

Minnesota caselaw establishes that proceeds of a spendthrift trust are inviolable until actually received by the beneficiary. [citations omitted] Such rulings respect Minnesota's longstanding policy of enforcing donative intent. [citation omitted] We therefore hold that a district court may not, before proceeds of a spendthrift trust are received by the beneficiary, determine what the beneficiary may or may not do with the proceeds. To hold otherwise would be to defeat the spendthrift provision.

799 N.W.2d at 642. The Court of Appeals decision does not further explain how an injunction that addresses assets only after they reach the beneficiary "defeat[s] the spendthrift provision" and offers no analysis or case support for equating an injunction against a trust beneficiary with an injunction against the trust or the trust's assets.

a. The Court of Appeals' reliance on Lee is mistaken.

The Court of Appeals decision analogizes the circumstances here to those presented in In re Estate of Lee, 214 Minn. 448, 9 N.W.2d 245 (1943). See 799 N.W.2d at 641-42. In fact, the two cases are quite dissimilar and Lee presented a number of confounding elements not present here. In Lee, the attorney who eventually asserted the claim against the trust had served successively as (1) attorney for the father in drafting a testamentary spendthrift trust for his two children, (2) attorney for the executor of the father's estate, (3) co-trustee of the trust, (4) attorney for the trust, (5) attorney for the trust's beneficiaries (to investigate whether the trust still owed them money, in exchange

for a one-third contingent interest in any assets recovered), and finally (6) attorney for the administrator of the estate of one of the trust beneficiaries after her death. 214 Minn. at 449-53, 9 N.W.2d at 246-48. At the end of this sequence, the attorney-claimant sued to collect his contingent fee. The trial court rejected his claim.

This Court affirmed that rejection. As one can easily imagine given the factual context in Lee, the spendthrift trust was only one of many grounds on which this Court faulted the attorney's claim, and the majority of the Court's decision is devoted to a lengthy discussion of the numerous conflict issues raised by the attorney's conduct. See id. at 455-61, 9 N.W.2d at 249-51. Even with all the legal and factual cross-currents in Lee, however, the Court's discussion of the spendthrift trust argument makes clear that its decision on that issue rests on the fact that in Lee (as in Moulton, Erickson, and all the other cases cited above), the plaintiff "sought to satisfy his claim...*out of the very trust property* involved in the trust estate under consideration here." Id. at 455, 9 N.W.2d at 249 (emphasis added). The Lee case thus did *not* involve (as the Court of Appeals decision here implies) a claim for payment after the money was already in the beneficiary's hands. On the contrary, the Lee court explicitly rejected the attorney's argument that "the contract was merely one to pay over money after it was received by the beneficiary," concluding that "the language of the agreement does not sustain this contention." Id., 9 N.W.2d at 248.

b. The Court of Appeals decision mistakenly focuses on the interests of the beneficiary rather than the intent of the donor.

Not only is the Court of Appeals decision unsupported by analysis or precedent, its

extension of the spendthrift trust protection to beneficiary Grossman runs afoul of this Court's repeated holdings that the focus of carrying out a spendthrift trust must be solely on the intent of the donor. See Erickson, 266 N.W. at 164 ("it is the intent of the donor...which controls the availability and disposition of his gift."); Morrison, 582 N.W.2d at 241. The Court of Appeals focuses on the injunction's effect on Mr. Grossman, the beneficiary, see 799 N.W.2d at 642, but the interests of a spendthrift trust's *beneficiary* should not enter into the court's determination in any way. As this Court stated:

It is always to be remembered that consideration for the beneficiary does not even in the remotest way enter into the policy of the law; it has regard solely to the rights of the donor. Spendthrift trusts can have no other justification than is to be found in considerations affecting the donor alone.

Moulton, 46 N.W.2d at 670 (quoting Morgan's Estate, 72 A. 498, 499 (Pa. 1909)); see also Note, Spendthrift Trusts—Destructibility, 5 Minn. L. Rev. 543, 546 n.110 (1920-21) ("The only reason for upholding the validity of a spendthrift trust is not consideration for the beneficiary, but respect for the right of the settlor to dispose of his property as he sees fit when not repugnant to the law..."). The Court of Appeals extension of spendthrift trust protection to post-distribution beneficiaries directly defies this admonition.

The purpose of a spendthrift trust is to carry out the settlor's intent with respect to the preservation and distribution of the trust's assets and income. Where, as here, an injunction against a trust's beneficiary will not affect the preservation or distribution of the trust's assets, that injunction will not (as the Court of Appeals suggested) "defeat" the trust, 799 N.W.2d at 642, and the Court should not permit the beneficiary to evade his creditors by invoking the trust's protections.

C. Public Policy Favors Permitting Creditors to Enjoin Debtors with Respect to Future Payments from Spendthrift Trusts.

In addition to improperly focusing its attention on the interests of the beneficiary rather than the intent of the donor, the Court of Appeals decision also runs counter to the strong public policy favoring the payment of debts, and particularly the payment of judgments. See, e.g., Minn. Stat. §§ 570-83 (Compensatory and Collection Remedies); Minn. Stat. Ch. 16D (State Debt Collection); cf. Minn. Const. Art. I, § 12 (implicitly recognizing broad right to recover debts by providing that a “reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability”).

This public policy supports permitting creditors to obtain prospective injunctive relief against debtors who may at some future date receive proceeds from a spendthrift trust. The alternative compelled by the Court of Appeals decision is effectively no alternative at all. In essence, the Court of Appeals holding requires Fannie Mae to wait for the moment that the Grossman trust distributes assets to Mr. Grossman and only then permits Fannie Mae to come into court and seek seizure of that money. This method of executing on a judgment against any debtor predisposed to hiding assets is so obviously impracticable as to require little discussion, but the circumstances here make the inadequacy of the approach particularly glaring. Mr. Grossman provided Fannie Mae with only the 16th and 17th amendments to the Grossman trust, not the entire trust document with all amendments. *See Conf. App. 1, 32.* 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.

Moreover, the current state of technology means that someone like Mr. Grossman can transfer money to virtually any account anywhere in the world—and out of the reach of his creditors—in an instant with a single stroke of a finger. See generally, e.g., Allan Nackan & Jonathan Cooperman, *Follow The Money: New Directions In Fraud Investigation*, Secured Lender, Nov. 1, 2006 at 42; Martin Kenney, *The Language of Hiding*, Mondaq Bus. Briefing, July 12, 2008 (also at 2008 WLNR 15326954); Martin Kenney & Elizabeth O'Brien, *Obstacles on the Path to Recovery*, Mondaq Bus. Briefing July 6, 2008 (also available at 2008 WLNR 14875609). Thus, even if Fannie Mae knew when and how the trust intended to distribute proceeds to Mr. Grossman, Fannie Mae would have to act with virtually split-second timing to get to a court *after* Mr. Grossman has received the money and yet *before* he has a chance to spirit it away beyond the reach of the court, either by moving it offshore and beyond the court's jurisdiction, by placing it nominally "in trust," or both. Given Mr. Grossman's history of preemptive money transfers, such an approach to the pursuit of assets is unworkable and inconsistent with the intent of Minnesota's laws governing supplementary proceedings.

In a nutshell, given the ease with which motivated people can move and hide money in the modern electronic world, the Court of Appeals holding means as a practical matter that a creditor will have no means—ever—of collecting a debt from a spendthrift trust beneficiary who does not want to pay. This result does not serve the judgment creditor, it does not serve the trust donor's intent, it does not serve the public's confidence in the judicial system and the enforcement of judgments, and it does not serve justice.

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

Given that the district court had the authority to issue the injunction against Mr. Grossman, as detailed above, that court did not abuse its discretion in granting that injunction. 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). In the present case, all five of these factors favor the issuance of the injunction, and the district court did not abuse its discretion in granting it.

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 validity of the docketed judgment, does not deny Fannie Mae's right to execute on his non-exempt assets to satisfy that judgment, and does not claim that any of the property in question is exempt. 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 Mr. Grossman’s pre-deposition transfer of other assets to offshore accounts, the district court reasonably found a real threat that Mr. Grossman might dispose of or conceal additional assets that might otherwise be applied to Fannie Mae’s judgment. Accordingly, the denial of injunctive relief would have 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) (citing Tri-State Generation & Transmission Ass’n, Inc. v. Shoshone River Power, Inc., 805 F.2d 351, 355 (10th Cir. 1986)).

In contrast, the Court’s grant of the injunction as to Mr. Grossman’s receipt of any trust assets can cause 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 those assets' existence and location. 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 the payment of judgments. See Minn. Stat. §§ 570-83 (2009). 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 injunction imposes 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.

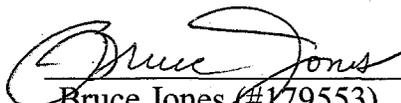
In sum, all of the Dahlberg factors favor the district court's grant of the injunction here. The district court did not abuse its discretion in granting the injunction against Mr. Grossman, and this Court should reinstate it.

CONCLUSION

For the reasons set forth above, Fannie Mae urges the Court to reverse the Court of Appeals and reinstate the district court's injunction.

Dated: September 15, 2011

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STATE OF MINNESOTA
IN COURT OF APPEALS

Fannie Mae,

Appellant,

v.

Andrew C. Grossman,

Respondent

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 this brief is 9,513 words. This brief was prepared using Microsoft Word 2007 software.

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