U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
MARK MICHAEL REVELLE AND	§	CASE NO. 03-42768-DML-7
BECKY LYNN REVELLE,	§	
DEBTORS	§	
JACK CORMAN,	§	
PLAINTIFF	§	
	§	
VS.	§	ADVERSARY NO. 03-04328
	§	
MARK MICHAEL REVELLE AND	§	
BECKY LYNN REVELLE,	§	
DEFENDANTS	§	

MEMORANDUM OPINION

Before the court is Plaintiff Jack Corman's Motion for Summary Judgment – Objecting to Discharge of Defendants, Determine that Plaintiff's Claim Is Not Dischargeable and Order the Bankruptcy Trustee to Secure a Turnover Order (the "Motion") filed by Plaintiff in the above-captioned adversary proceeding (the "Adversary"). The court also has before it a response filed by the Defendants (hereinafter sometimes referred to as the "Debtors"). The parties have filed briefs in support of their positions. Though neither party has provided the court with any sworn testimony, the parties have agreed that the court may consider a document entitled The Florence T. Revelle Trust (the "Revelle Trust") in deciding the Motion, and there does not appear to be disagreement regarding certain facts recited in the Motion and hereafter mentioned. On January 6, 2003, the court held a hearing on the Motion in which Plaintiff, Defendants and Debtors' Chapter 7 Trustee (the "Trustee") participated.

This matter is subject to the court's core jurisdiction pursuant to 28 U.S.C. § 1334(a) and 11 U.S.C. § 157(b)(2)(J). This memorandum opinion constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

I. Background

Though the complaint filed in the Adversary objects to Debtors' discharge, in fact, what the court must decide is whether certain property subject to the Revelle Trust constitutes property of the estate. The court will therefore limit itself to addressing that issue.

Florence T. Revelle ("Trustor") established the Revelle Trust as an *inter vivos* trust in 1996. Trustor transferred all her real and personal property to Dana R. Wilson ("Wilson") as Trustee of the Revelle Trust. Wilson was to hold the property for the benefit of Trustor for the remainder of Trustor's life. Revelle Trust, Art. III. The Revelle Trust provides that upon Trustor's death, after payment of taxes and other expenses, and distribution of certain property as mementos, the balance of the estate shall be divided among Trustor's descendants, including Debtor Mark Michael Revelle ("Revelle"). Revelle Trust, Arts. IV and V. Article V of the Revelle Trust further provides that, in the event any beneficiary is a minor, Wilson will continue to administer that beneficiary's share of the property during such person's minority. The Revelle Trust also includes the following provision:

> The interest of any beneficiary other than Grantor, in the Corpus or income of the Trust, shall not be subject to assignment, alienation, pledge, attachment, or claims of creditors, and shall not otherwise be voluntarily or involuntarily alientated or encumbered by such beneficiary, other than [sic] specifically authorized herein.

Revelle Trust, Art. VIII.

Trustor died in 1997. Revelle is not, and has not been since the filing of the petition,[1] a minor. Wilson, however, continues to hold the property and administer it for the benefit of Revelle and his relatives.

II. Positions of the Parties

The Defendants' position is that because Wilson still holds and administers the property, that to which Revelle is entitled is still subject to the Revelle Trust. Because the property continues in the Revelle Trust, Article VIII still applies. Defendants therefore contend that Revelle's share of the property held by Wilson is not property of the estate pursuant to section 541(c)(1)(A) of the Bankruptcy Code.[2]

Plaintiff, on the other hand, argues that all events necessary for the distribution of the property subject to the Revelle Trust have occurred and that Revelle's interest in the property has vested. Plaintiff asserts Wilson's mere failure to distribute the property does not allow invocation of Article VIII of the Revelle Trust to protect Revelle's share from his creditors and the Trustee.

III. Discussion

A. Standard for Summary Judgment

Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Jenkins v. Chase Home Mortgage Corp.*, 81 F.3d 592, 595 (5th Cir. 1996). In making its determination, the court must draw all justifiable inferences in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). To defeat a properly

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[1] Debtors filed their petition on March 25, 2003.

[2] 11 U.S.C. § 101, *et seq.* (referred to hereinafter as the "Code").

supported motion for summary judgment, the non-movant must present more than a mere scintilla of evidence. *Id.* at 251. Rather, the non-movant must present sufficient evidence upon which a jury could reasonably find in the non-movant's favor. *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993).

B. Intent of Trustor

The Revelle Trust was created and has been administrated in the State of Oklahoma. Under Oklahoma law, the analysis of a trust begins with determining the intent of the trustor from the language of the trust itself. *Griffin v. Griffin*, 832 P.2d 810, 812-13 (Okla. 1992) (determining that court may make rulings concerning trustor's intent); *In re Dimick*, 531 P.2d 1027, 1030 (Okla. 1975) (finding that when construing terms of a trust the intention of the trustor controls when not in conflict with established principles of law). While it is clear in this case that Trustor intended to include a spendthrift provision in the Revelle Trust, the parties disagree as to its applicability to Revelle.

In order for the spendthrift provision to apply to Revelle, the Revelle Trust must be administered for the benefit of Revelle. The purpose of the Revelle Trust was for the use and benefit of Trustor during her lifetime. Revelle Trust, Art. III. Upon the death of Trustor, Wilson was directed to take possession of all property of the trust estate, (Revelle Trust, Art. V) pay certain taxes and expenses, (Revelle Trust, Arts. IV and V) make certain distributions to specific individuals (Revelle Trust, Art. V) and then, subject only to retention in trust of property to be distributed to minors,[3] distribute the rest and

[3] The Revelle Trust provides that, should a beneficiary to whom distribution is to be made be a minor, Wilson should hold such beneficiary's share until such time as the beneficiary attains his majority. Revelle Trust, Art. V. Because the parties agree that no beneficiary was a minor at the time of Trustor's death, that provision never became applicable. Had any beneficiary been a

remainder in equal shares to Harry Revelle, Jr., and to each of Trustor's four grandchildren, one of whom is Revelle (Revelle Trust, Art. V). Thus, for purposes of establishing Revelle's right to possession of the property, upon the death of Trustor, the Revelle Trust terminated and Revelle was to receive a distribution of his allotted share of the Revelle Trust.[4] It is clear that Trustor never intended that upon her death the property to be distributed to Revelle should continue to be subject to the trust. On the contrary, Trustor intended the property to be promptly distributed to Revelle. Therefore, upon Trustor's death, no property to be distributed, including that to be distributed to Revelle, was protected by the spendthrift provision.

C. No Applicable Law Extends Application of the Spendthrift Provision

The court has not been pointed to, nor has it discovered, any other law that would make the spendthrift provision of the Revelle Trust applicable to Revelle notwithstanding the occurrence of the events prerequisite to the Revelle Trust's termination. On the contrary, Oklahoma law does not support Defendants and law in other jurisdictions and the Restatement of Trusts suggest Plaintiff's position is correct.

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minor, that beneficiary's share would have been protected by the spendthrift clause. Revelle Trust, Art. V.

4 Under Oklahoma law, trust property does not automatically vest in the beneficiary upon termination of the trust if a trustee holds property in fee simple. Farm Credit Bank of Wichita v. Woodring, 851 P.2d 532, 536 (Okla. 1993). Wilson may hold title in fee simple to property subject to the Revelle Trust, but this court does not so hold because it has not been presented evidence on the issue. Even if Wilson holds Revelle's share of the property in fee simple, however, Revelle could have taken action to compel distribution. Revelle's cause of action against Wilson would have become property of the estate upon filing of the bankruptcy petition. *See, e.g.*, *In re* S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (*In re* S.I. Acquisition, Inc.), 817 F.2d 1142, 1149 (5th Cir. 1987) (citing section 541(a)(1) of the Code and stating that property of the estate is broadly defined and that "'all legal and equitable interests of the debtor in property' is all-encompassing and includes rights of action as bestowed by either federal or state law"); Cottrell v. Schilling (*In re* Cottrell), 876 F.2d 540, 542-43 (6th Cir. 1989) (stating that a personal injury action is property of the estate); Stackhouse v. Plumlee (*In re* Plumlee), 236 B.R. 606, 611 (E.D. Va. 1999) ("Congress intended that courts broadly construe the scope of [11 U.S.C.] § 541(a)(1), and that bankruptcy estate property encompass both tangible and intangible property, including causes of action existing at the time the debtor files his bankruptcy petition.").

For example, under Texas law, upon termination of a trust, a trustee may take a reasonable amount of time to distribute the trust's assets. Tex. Prop. Code § 112.052.[5] However, that it may take time for a trustee to distribute trust property does not affect the vested rights of a beneficiary. *Id.* Thus, were this case to be decided according to Texas law, the Revelle Trust for purposes of deciding this Adversary would have terminated immediately upon the death of Trustor and Revelle's rights to the property held in the Revelle Trust that was to be distributed to him would have vested and would not have been protected by the spendthrift provision.

Section 61 of the Restatement (Third) of Trusts (the "Restatement") is similar in thrust to the Texas statute. It states, "A trust will terminate . . . upon . . . the happening of an event as provided by the terms of the trust . . . ." In clarification, the comment to section 61 states that the "[p]eriod may be stated or implied by terms of [the] trust," such as the duration of a life. RESTATEMENT (THIRD) OF TRUSTS § 61 cmt. b (2003). "Thus, a fairly typical trust may provide for the support of a designated beneficiary for life, with the trust instrument specifically stating that upon the life beneficiary's death the trust is to terminate and that the trust property is then to be distributed to one or more designated remainder beneficiaries." *Id.*; *see, e.g.*, *In re Damon*, 869 P.2d 1339 (Haw. 1994) (holding that the trust is to terminate upon the death of the last of the life beneficiaries, with distribution to the issue at that time despite a direction that the property was then to

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[5] Tex. Prop. Code § 112.052 states:

> A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

be held "IN TRUST" (capitals in original) for the issue, when no further trust purpose for them was indicated by the document).[6]

The result of applying section 61 of the Restatement to the Revelle Trust would be that the Revelle Trust terminated upon the death of Trustor as provided in Articles IV and V of the Revelle Trust. Because the Revelle Trust was then terminated, the spendthrift clause was no longer effective.

Section 61 of the Restatement goes on to state that "termination will occur ... when the purpose(s) of the trust ... are accomplished." The purpose for which the Revelle Trust was created was completely accomplished upon Trustor's death. That is, the Revelle Trust was created "for the use and benefit of [Trustor]; and as along [sic] as [Trustor] shall live, and is not suffering under a disability as herein determined . . . ." Revelle Trust, Art. III. Once Trustor was no longer living, the purpose of the Revelle Trust was fulfilled and, there being no minors among the remaindermen, the Revelle Trust then terminated and the spendthrift provision was no longer effective.

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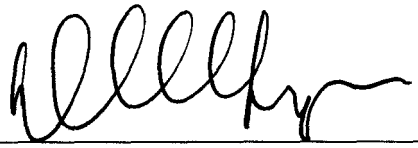
[6] In *In re Damon*, the court stated, "[W]hen a trust terminates, 'the trust nevertheless continues for a reasonable time during which the trustee has power to perform such acts as are necessary to the winding up of the trust and the distribution of the trust property.'" *In re Damon*, 869 P.2d at 1345 *citing* 18 GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 1010, at 449-50 (rev. 2d ed. 1984). This court has been presented no evidence to persuade it that six years, the period from Trustor's death until Debtors filed their petition, does not far exceed "a reasonable time" within which Wilson could have wound up the Revelle Trust and made distribution.

IV. Conclusion

For the above stated reasons, the court finds that the property to which Revelle is entitled under the Revelle Trust is not subject to the protections of the spendthrift provision of the Revelle Trust and holds that such property is therefore property of the estate in the above-captioned bankruptcy case. Counsel for Plaintiff is directed to prepare a judgment granting partial summary judgment consistent with this memorandum opinion.

Signed this 2nd day of February 2004.



DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE