

S224985

IN THE SUPREME COURT OF CALIFORNIA

TODD A. FREALLY, Petitioner,

v.

RICK H. REYNOLDS et al., Respondents.

Question Certified from the United States Court of Appeals for the Ninth Circuit; 9th Cir. No. 12-60068

After Opinion by the United States Bankruptcy Appellate Panel of the Nine Circuit, BAP No. CC-11-1433-HPaD

On Appeal from the United States Bankruptcy Court, C.D. Cal. Bankr. Case No. 09-14039-MJ; C.D. Cal. Ban Ia. Adversary Case No. 09-01205-MJ; Hon. Meredith A. Jury

RESPONDENT JOHN M. CARMACK'S ANSWERING BRIEF
ON THE MERITS

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**RESPONDENT JOHN M. CARMACK'S ANSWERING BRIEF
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QUESTION CERTIFIED

The following question was certified by the United States Court of Appeals for the Ninth Circuit:

Does section 15306.5 of the California Probate Code impose an absolute cap of 25 percent on a bankruptcy estate's access to a beneficiary's interest in a spendthrift trust that consists entirely of payments from principal, or may the bankruptcy estate reach more than 25 percent under other sections of the Probate Code?

INTRODUCTION

The question posed by the Ninth Circuit is whether Probate Code Sections 15301(b) and 15307 provide judgment creditors with separate avenues for recovery against a judgment debtor beneficiary's interest in payments coming from a spendthrift trust which are not subject to the 25 percent absolute limitations of Probate Code Section 15306.5.

In trying to untangle some of the less-than-artful drafting in Probate Code Sections 15300 through 15309, none of the seven judges who have thus far considered this matter has focused on the critical role of Code of Civil Procedures Section 709.010 in understanding and reconciling the workings of Probate Code Sections 15301(b) and 15307 and the limitations of Probate Code Section 15306.5.

SUMMARY OF ARGUMENT

1. Code of Civil Procedure Section 709.010 is the exclusive procedure for any judgment creditor to enforce any rights against a trust beneficiary's interests.

2. Probate Code Section 15301(b) specifically directs a judgment creditor to enforce potential rights against trust principal to which a beneficiary is entitled through a Code of Civil Procedure Section 709.010 petition.

3. Probate Code Section 15307 specifically directs a judgment creditor to enforce potential rights against income in excess of support needs to which the beneficiary is entitled through a Code of Civil Procedure Section 709.010 petition.

4. Probate Code Section 15306.5 establishes certain priorities and places monetary limits on the amounts a court is authorized to order to be paid to a judgment creditor pursuant to a Code of Civil Procedures Section 709.010 petition, capping that amount at 25 percent for all purposes, except a support judgment.

ARGUMENT

I

THE RELEVANT STATUTES

A. Probate Code Section 15301

Probate Code Section 15301(a) sets forth the basic rule that a beneficiary's interest in the principal of a spendthrift trust is not subject to enforcement of a money judgment until such principal is paid to the beneficiary. As this section plainly states, there are specific narrowly defined exceptions to this basic rule in Probate Code Sections 15304 through 15307 and subdivision (b) of Section 15301. The exception stated in the subdivision (b) permits a judgment creditor, after an amount of principal has become due and payable, to satisfy all or part of a judgment out of such principal, in the discretion of the judge, "upon petition to the court under Section 709.010 of the Code of Civil Procedure" (emphasis added).

B. Code of Civil Procedure Section 709.010

Code of Civil Procedure Section 709.010(b) provides that a "judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a

judgment creditor to a court having jurisdiction over the administration of the trust . . .” (emphasis added).

Subdivision (c) of Section 709.010 states in full as follows:

(c) Nothing in this section affects the limitations of the enforcement of a money judgment against the judgment debtor’s interest in a trust under Chapter 2 (commencing with Section 15300) of Part 2 of Division 9 of the Probate Code, and the provisions of this section are subject to the limitations of that chapter (emphasis added).

One of the limitations referenced in Chapter 2 (commencing with Section 15300) of Part 2 of Division 9 of the Probate Code is Probate Code Section 15306.5

By its terms, Section 709.010(b) plainly states that proceeding under Section 709.010 petition is the exclusive procedure for enforcing a money judgment against a beneficiary’s interest in a trust. Thus, the legislature has mandated that Section 709.010 is the only way for a judgment creditor to reach a beneficiary’s interest in the principal or income of a spendthrift trust.

At this point, four things are clear: (1) Probate Code Section 15301(b) establishes the right of a judgment creditor to seek to collect from a judgment debtor’s interest in a principal distribution to be made from a spendthrift trust; (2) Probate Code Section 15301(b) prescribes that Code of Civil Procedure Section 709.010 is the procedure for doing so; (3) a Code of Civil Procedure Section 709.010 petition is the only procedure available for a creditor to seek to enforce a money judgment against a beneficiary’s interest in a trust; and (4) a Code of Civil Procedure Section 709.010 petition is expressly made subject to the limitations of Probate Code Section 15306.5.

C. Probate Code Section 15306.5

A petition under Code of Civil Procedure Section 709.010 to enforce a money judgment against a beneficiary's interest in a spendthrift trust is explicitly made subject to the limitations stated in Section 15306.5 of the Probate Code. Specifically, subdivision (a) of Section 15306.5 provides a pertinent part that:

Notwithstanding a restraint on a transfer of the beneficiary's interest in the trust under Section 15300 or 15301, subject to the limitations of this section, upon a judgment creditor's petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the trustee to satisfy all or part of the judgment out of payments to which the beneficiary is entitled under the trust instrument . . .

However, subdivision (b) of Section 15306.5 states in full that “[A]n order under this section may not require that the trustee pay in satisfaction of the judgment an amount exceeding 25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary.” (emphasis added). Thus, any award to a judgment creditor from a spendthrift trust cannot exceed 25 percent of the amount to be distributed to the beneficiary.

In addition, the 25 percent limitation stated in subdivision (b) is subject to a further reduction by the requirement of Probate Code Section 15306(c) that an order under this section may not require the payment to a judgment creditor of any amount found by the court to be necessary for the support of a beneficiary and his dependents.

Also, Probate Code Section 15306.5 Subdivision (d) further subordinates an ordinary judgment creditor's rights to those of a “preferred” creditor holding a support judgment (Probate Code Section 15305), the

amount of which would be deducted from any amount otherwise payable to the ordinary judgment creditor.

If there is any question that Section 15306.5 imposes an absolute cap of 25 percent on the right of a judgment creditor (other than one having a judgment for support), subdivision (f) of Section 15306.5 provides the answer by explicitly directing that “. . . the aggregate of all orders for satisfaction of money judgments against the beneficiary’s interest in the trust may not exceed 25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary” (emphasis added). It should be noted that the 25 percent limitation makes no distinction between principal and income.

The first reported decision in California dealing with the 1986 Probate Code revisions to the spendthrift trust law is DeMille v. Ramsey 207 Cal.App. 3d 117 (1989). In explaining how a creditor could reach trust income or principal which has become due and payable to a beneficiary, the court stated that:

The creditor must first petition the court under Code of Civil Procedures section 709.010. She may then obtain an order directing the trustee to satisfy the judgment in whole or in part from the payment to which the beneficiary is entitled. Such an order, however, may not exceed 25 percent of the payment, and may not include any amount which the court deems necessary for the support of the beneficiary. (Prob. Code, §15306.5). These provisions restate the substance of former law. (See legis. com., West’s Ann Prob. Code § 15306.5 (1988 supp. pamp.) Page 504). (207 Cal.App 3d at 126-127)

Petitioner’s position is that Probate Code Section 15301(b) somehow provides an alternate remedy or method for a judgment creditor to reach more than 25 percent of a spendthrift trust beneficiary’s interest in a pending principal distribution. However, that argument ignores the plain

language of Code of Civil Procedure Section 709.010(b) that a judgment creditor's sole remedy or procedure for reaching a spendthrift trust beneficiary's interest in any and all distributions from the trust is through a Code of Civil Procedure Section 709.010 petition. Code of Civil Procedure Section 709.010 answers the question of whether a judgment creditor can execute on more than 25 percent of the distribution and the answer is "No."

The inescapable conclusion from the plain language of the relevant statutes is that (1) a judgment creditor is given the right by Probate Code Section 15301(b) to enforce a judgment against a judgment debtor beneficiary's distribution from a spendthrift trust; (2) the one and only procedure for doing so is through a Code of Civil Procedure Section 709.010 petition; (3) the amount a court has the power to order to be paid to a judgment creditor pursuant to a Code of Civil Procedure Section 709.010 petition is governed by the limitations of Probate Code Section 15306.5; (4) Probate Code Section 15306.5, subdivisions (b) and (f), place an absolute 25 percent cap on all orders for satisfaction of a money judgment pursuant to a Code of Civil Procedure Section 709.010 petition, except in the case of a judgment for spousal or child support where, in the discretion of the judge, the order may exceed the 25 percent limit.

D. Probate Code Section 15307

Probate Code Section 15307 is in part ambiguous. The title of the statute is "Income in excess of amount for education and support; application to creditors' claim" (emphasis added). However, after making reference to Probate Code Section 15301, there is no statement in the text of the section which limits the section only to income or which excludes the possibility that trust principal could also be reached. In the context of the

1986 Probate Code revisions, which were designed to clarify the law concerning spendthrift trusts, the legislative history and the Law Revision Commission comments strongly indicate that Section 15307 was intended to permit an ordinary creditor to reach income under limited circumstances. It is also brought out in the Law Revision Commission comments that Section 15307 replaced former Civil Code Section 859 which had permitted a creditor to reach surplus income over the amount necessary for a spendthrift trust's beneficiary's education and support.

Respondent is in accord with the analysis of Probate Code Section 15307's "lack of clarity" by the majority of the Bankruptcy Appellate Panel In Re Reynolds, 479 B.R. 67, at pages 75 - 77 (2012). The only logical reading of this statute in the context of the 1986 Statutory Amendment Scheme, its legislative history and the predecessor Civil Code Section 859, is that Section 15307 applies only to income in excess of a beneficiary's education and support needs.

However, Section 15307 is not ambiguous in one respect. This section is concludes with the following direction:

Upon the judgment creditor's petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the Trustee to satisfy all or part of the judgment out of the beneficiary's interest in the trust.

As in the case of an ordinary judgment creditor trying to collect from a distribution of principal due to a judgment debtor beneficiary pursuant to the right afforded by Probate Code Section 15301(b), an ordinary judgment creditor relying on Probate Code Section 15307 to try to enforce a judgment is also required to proceed under a Code of Civil Procedure Section 709.010 petition as the sole enforcement vehicle. As we have seen, a Code of Civil Procedure Section 709.010 petition is the only avenue available for a

judgment creditor to seek to enforce the judgment against a trust beneficiary, which automatically brings into play the 25 percent cap of Probate Code Section 15306.5.

II

PROBATE CODE SECTIONS 15301 AND 15306.5 ARE NOT AMBIGUOUS

There is no ambiguity associated with Probate Code Section 15301. It was the legislature's objective in enacting the 1986 amendments to the Probate Code, which brought Sections 15300 through 153009 into being, to improve and coordinate the law relating to spendthrift trusts. In Re Reynolds, 479 B.R. 67, 73 (2012). Quoting from Ventura County Department of Child Support Services v. Brown, 117 Cal.App. 4th 144 (2004), the Reynolds majority noted that with reference to the 1986 Probate Code amendments "there were two objectives: (1) to reduce the ability of a general creditor to reach a beneficiary's interest in a trust; and (2) to give greater rights to support creditors." (479 B.R. 73-74).

Probate Code Section 15301(b) was designed to give a judgment creditor of a spendthrift trust beneficiary certain rights to satisfy the judgment from principal distributions otherwise payable to the beneficiary, limited, however, by certain other new provisions to the Probate Code contained in Sections 15304 through 15307, inclusive. Section 15301(b) specifically states that a judgment creditor's means for attempting to enforce a rights under Section 15301(b) is through a Code of Civil Procedure Section 709.010 petition. There is nothing unclear about Section 15301(b)'s direction to use a Code of Civil Procedure Section 709.010 petition for this purpose.

There is also no ambiguity concerning the purpose and meaning of Probate Code Section 15306.5. As clearly stated in subdivision (a), this section was designed to place certain monetary limitations upon and priorities for orders to be made by a court in response to a Code of Civil Procedure Section 709.010 petition. There is certainly nothing unclear about the meaning and application of subdivision (b) of Probate Code Section 15306.5 which plainly states that an order issued on a judgment creditor's Code of Civil Procedure Section 709.010 petition may not require payment of more than 25 percent of the amount otherwise payable to the beneficiary. Further, there is no wiggle room or ambiguity to the language of subdivision (f) of Section 15306.5 which places an absolute cap of 25 percent on all orders for satisfaction of a money judgment against the beneficiary's interest in the spendthrift trust, with the exception of a "preferred" support judgment creditor (emphasis added).

CONCLUSION

If Petitioner's arguments are accepted, the practical impact would be to gut a significant portion of the 1986 Probate Code revision which was intended to improve and coordinate the law of spendthrift trusts, the two principle objectives being 1) to reduce the ability of a general creditor to reach a beneficiary's interest; and 2) to give greater rights to support creditors. Under Petitioner's reasoning, any ordinary creditor would have the unlimited right to enforce a judgment against any income or principal payments upon becoming due and payable to a judgment debtor beneficiary. This would effectively eliminate the concept of spendthrift trust protection California has recognized since 1872. Further, the interpretation urged by

Petitioner would place an ordinary judgment creditor on even footing with a Probate Code Section 15305 support judgment holder who, pursuant to Probate Code Sections 15305 and 15306.5(d) and (f), has been afforded “preferred” creditor’s status.

It is submitted that the anomalous outcome sought by Petitioner was clearly not what the legislature had in mind when it established a Code of Civil Procedure Section 709.010 as the exclusive enforcement vehicle, and when it established the priorities and limitations of Probate Code Section 15306.5. There is no authority or legislative history to the contrary.

Dated: July 1, 2015

Respectfully submitted.

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CERTIFICATE OF WORD COUNT

(Cal. R. Ct. 8.204)

Pursuant to California Rules of Court, rule 8.204, I certify that this brief on the merits was prepared on a computer using WordPerfect X5, and that, according to the program, contains 2,782 words.

Dated: July 1, 2015

Respectfully submitted,

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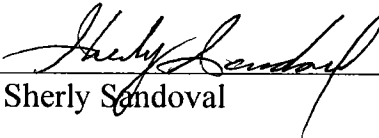
PROOF OF SERVICE

I am over the age of eighteen years and am not a party to the within action. I am employed at the Law Offices of Robert E. Eroen, a member of the bar of this Court. My business address is 10100 Santa Monica Boulevard, Suite 1700, Los Angeles, California 90077. On July 1, 2015, I served a true copy of the document described as:

RESPONDENT JOHN M. CARMACK'S ANSWERING BRIEF ON THE MERITS

X **BY UNITED STATES MAIL:** I placed the document in a sealed envelope and deposited it for collection and mailing to the parties on the attached Service List, following our ordinary business practices. I am familiar with the firm's practice for collecting and processing correspondence for mailing. On the same date that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

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Sherly Sandoval

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California Supreme Court Case No. S224985

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Requesting Answer to
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