

§ 541 (a) (5)
§ 541 (c) (2)

In re Christopher J. Jones, Case No. 387-03171-ELP7

2/16/90

CEL

Unpublished

The trustee sought turnover of the beneficial interest of the debtor in a testamentary trust established by the debtor's mother. The debtor argued that his share of the trust was excluded from the property of the estate pursuant to § 541(c)(2) because the trust was a valid spendthrift trust which restricted transfers of his beneficial interest.

After examining the language of the trust, the court concluded that the trust gave the debtor managerial and lending powers which precluded treating the trust as a spendthrift trust under Oregon law. The debtor's interest in the trust became property of the estate on the date of filing of the petition.

P90-10(5)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Case No. 387-03171-P7
)
CHRISTOPHER J. JONES,) MEMORANDUM OPINION
)
Debtor.)

The trustee in the debtor's Chapter 11 case filed a motion for an order requiring debtor to turn over property. The property involved was the proceeds of a testamentary trust of which the debtor's mother was the settlor, the debtor the trustee and the debtor and his siblings were the beneficiaries. The youngest named beneficiary was born January 23, 1968. It was provided that the trust should terminate when the youngest of the settlor's living children attained the age of twenty-one years. The settlor died preceding the debtor's voluntary filing of his Chapter 7 bankruptcy petition on June 15, 1987. The trust therefore terminated January 23, 1989. At that time the debtor as trustee of the trust distributed the corpus of the trust to the other beneficiaries and his distributive share of \$3,837 to

himself. This was, of course, more than 180 days after his bankruptcy.

Hearing was held on December 15, 1989 on the trustee's motion and the debtor's objection thereto. The facts are not contested and the parties submitted the matter to the court for ruling on the record, with opportunity to submit memoranda by January 11, 1990.

The debtor's attorney filed a memorandum in support of his objection. The file contains no memorandum by the trustee in support of his motion.

The debtor's objection is that the distributive share is excluded from the estate as a restriction on a transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law pursuant to the provisions of 11 U.S.C. § 541(c)(2).

The trustee argued that the language of the trust, which gave somewhat broad managerial and some lending powers to the debtor as trustee preclude its treatment as a spendthrift trust under Oregon law.

Oregon recognizes spendthrift trust restrictions on property alienation. See Kirpatrick et ux v. United States National Bank, 264 Or. 1, 502 P.2d 579 (1972); Kirk v. Kirk, 254 Or. 44, 456 P.2d 1009 (1969); Shelley v. Shelley, 223 Or. 328, 354 P.2d 282 (1960); Stein v. United States National Bank, 165

Or. 518, 108 P.2d 1016 (1941).

In a testamentary spendthrift trust, the court is required to enforce the testator's intention as expressed in the will. Stein, 165 Or. at 578, 108 P.2d at 1016.

A testator's right to withhold property from creditors other than his or her own by means of a spendthrift trust creating conditions for its transfer is validated by Oregon law.

The testamentary trust in the proceeding gave the trustee discretionary power to provide necessities from the net income of the estate to the beneficiaries and discretionary power to disburse to beneficiaries for their reasonable maintenance, illness or other misfortune, and educational purposes up to the value of the whole corpus of the estate without such expenditure being a charge against any distributive share.

The trustee also had discretion to loan property of the trust to any beneficiary, but not more than such beneficiary's share upon termination of the trust, subject to the loan being treated as a first lien on the distributive share.

The court would consider the language of paragraph IV, 3 of the will sufficient to create a spendthrift trust, and but for the debtor's untrammelled right under paragraph 9 of the section of the will entitled "Powers, Duties, Discretions" to invade the trust on such conditions as he as trustee might deem prudent at any time after the trust became established by his

mother's death to take his distributive share by the simple technique of a loan to himself upon such terms and conditions he chose, would find the property subject to the exclusion of 11 U.S.C. § 541(c)(2).

Because the provisions of the instrument give the discretionary power to the debtor as trustee at any time after its creation to invade the testamentary trust as to his distributive share, the interest of the debtor became property of the estate as an interest of the debtor on the date of filing of the petition that the debtor acquired or became entitled to acquire within 180 days after such date by bequest, devise or inheritance, as provided in 11 U.S.C. § 541(a)(5).

As to this debtor, the restrictions on distribution did not apply rendering his distributive share unprotected by the policy protecting spendthrift trusts.

A full reading of the will evidences intent of the testator to divide her estate equally among her children when all had reached majority, and to accomplish this put the property in the hands of her eldest son as trustee with protection under the spendthrift trust as to the remaining distributive shares of the other children until then. She protected her estate from general creditors of her devisees until they could receive their shares from the trustee, in his discretion, who all along had power over his share.

The court therefore finds and concludes that the trustee is entitled to an order directing the debtor to turn over to the trustee in his bankruptcy case the sum of \$3,837. There has been no showing that the distributive share would have been less on June 15, 1987, and IT IS SO ORDERED.

This Memorandum Opinion contains the court's Findings of Fact and Conclusions of Law and pursuant to Bankruptcy Rule 7052 they will not be separately stated.

DATED this _____ day of February, 1990.

C. E. LUCKEY
Bankruptcy Judge