

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

IN RE:

DAVID FISHER and
SUSAN S. FISHER,

CASE NO. 02-35823-BKC-SHF
CHAPTER 7

Debtor(s).

**ORDER OVERRULING TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPT
PROPERTY**

THIS CAUSE came on to be heard on June 15, 2004 upon the Trustee's Objection to the Debtors' Claim of Exempt Property. Patricia Dzikowski, the chapter 7 trustee ("Dzikowski"), asserts that among the items of personal property listed in the debtors' schedules is an asset listed under schedule B that is described as a "Beneficial Interest in Family Trust". The debtors filed an Amended Schedule C to claim the interest in the family trust as exempt (C.P. 41). Dzikowski filed an Objection to the Debtors' Claim of Exempt Property (C.P. 42), asserting that there are no provisions which would allow for the claimed exemption. Dzikowski maintains that the trust does not contain the requisite spendthrift language that would allow the debtors to claim interest in the trust as exempt. This Court, having carefully considered the argument of counsel, the evidence presented, and the record of this bankruptcy proceeding, **overrules** the Objection to the Debtors' Claim of Exempt Property.

The trust, which is the subject of Dzikowski's objection arises from the Joseph Saunders Trust, which is a testamentary trust established by Joseph Saunders on February 5, 1982 in the Commonwealth of Massachusetts. Subsequently, the trust was amended on April 19, 1982 and again on June 1, 1984. Joseph Saunders was the father of co-debtor Susan Fisher ("debtor"). The trustees of the Joseph Saunders Trust are Joseph Saunders's spouse (the debtor's mother), Betty Saunders, and Edward Levitt. At the time of the hearing, Betty Saunders was 78 years old. Mr. Saunders, the settlor under the trust, died pre-petition.

Under the terms of the trust, upon the death of Joseph Saunders, the trust was divided into four separate trusts. Part A consists of two marital trusts relating to Betty Saunders. Part B consists of two trusts

relating to each of Mr. Saunders surviving children, Peter Saunders and Susan Saunders (Susan Fisher). At issue is the status of Part B of the trust designating the debtor as a beneficiary.

Under the terms of the Susan M. Saunders Trust, upon the death of Betty Saunders, the trustee of the Trust is instructed to distribute to Susan M. Saunders the greater of \$50,000 or twenty percent (20%) of the principal of the Part B Trust. In addition, upon the death of Betty Saunders, the net income of the trust is to be paid or applied for the benefit of Susan M. Saunders at least quarterly. If at any time the income of the trust is not sufficient to allow for a distribution of at least \$25,000 per year in favor of the trust beneficiary (the debtor), the trustee is required to distribute from the trust corpus a supplemental amount such that the total distribution to Susan M. Saunders equals at least \$25,000 per year. Pursuant to Article H 4 of the trust, the right or interest of any beneficiary to the income or principal of the trust shall not be transferable or assignable in any manner, nor shall it be liable to attachment or seizure on any claim, debt or liability of or against a beneficiary, nor be assignable to or in connection with any proceeding in bankruptcy or insolvency.

The trust was established and administered in Massachusetts. Accordingly, Massachusetts law is applicable to determine whether the restriction on the transfer of the beneficial interest of the debtor is enforceable under its laws for purposes of 11 U.S.C. § 541 (c)(2). The Massachusetts Supreme Court first recognized the validity of the spendthrift trust in *Broadway Nat'l Bank v. Adams*, 133 Mass. 170, 43 Am. Rep. 504 (1882). In *Broadway*, the court established the right of the settlor of a trust to protect the income generated by the trust property from the creditors of the beneficiary. *Id.* at 171. The court reasoned that the founder of a trust may directly provide that his property shall go to his beneficiary with the restriction that the creditors of the beneficiary shall have no right to attach it. *Id.* at 174. The Court reasoned that the donor of the property, as an absolute owner, has the right to dispose of it as he sees fit and that his intentions should be carried out unless contrary to public policy. *Id.* at 171.

Dzikowski cites *In re May*, 83 B.R. 812, 815 (Bankr.M.D.Fla. 1988), to support her contention that the \$50,000 payment is property of the estate. In *May*, a testamentary trust provided for the payment of

\$8,000 annually to the beneficiary/debtor. The trust further provided that the annual payment was to be made from income of the corpus or, if insufficient, from an invasion of the corpus. *Id.* at 814. Although the corpus of the trust was inaccessible to the beneficiary/debtor beyond the annual payment, there were no restrictions on the transfer of the annual benefits to be paid to the beneficiary/debtor. *Id.* Accordingly, the court held that the corpus of the trust was not property of the estate but the beneficiary/debtor's right to the \$8,000 annual payment did constitute property of the estate.

Unlike in *May*, the terms of the Joseph Saunders Trust are clearly sufficient to establish a spendthrift trust applying to both income and corpus within the meaning of Massachusetts law. The spendthrift clause of the trust specifically refers to both the principal and the income from the trust, thereby protecting the future right to receive income.

The right or interest of any beneficiary in the income or principal of any trust shall not be transferable or assignable in any manner, nor shall it be liable to attachment or seizure on any claim, debt or liability of or against a beneficiary, nor be assignable to or in connection with any proceeding in bankruptcy or insolvency, or any other manner whatsoever.

Trust of Joseph Saunders, Article H 4, Pg. 28

Therefore, the right to receive the \$50,000 or twenty (20%) of the principal payment upon the death of the Betty Saunders is excluded from property of the estate. Accordingly, it is

ORDERED that the Trustees's Objection to the Debtors' Claim of Exempt Property is **overruled.**

ORDERED in the Southern District of Florida this 27th day of April, 2005.

**STEVEN H. FRIEDMAN
U.S. BANKRUPTCY JUDGE**

Service List Attached

Service List
John L. Walsh, Esq.
Julianne Frank, Esq.
United States Trustee