

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT**

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**BAP NO. MB 10-024**

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**Bankruptcy Case No. 09-17613-FJB**

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**MARY BETH MASSILLON and  
LEON J. MASSILLON,  
Debtors.**

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**MARY BETH MASSILLON,  
Appellant,**

**v.**

**LYNNE F. RILEY, Chapter 7 Trustee,  
Appellee.**

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**Appeal from the United States Bankruptcy Court  
for the District of Massachusetts  
(Hon. Frank J. Bailey, U.S. Bankruptcy Judge)**

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**Before  
Votolato, Lamoutte, and Tester,  
United States Bankruptcy Appellate Panel Judges.**

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**Paul R. Chomko, Esq., on brief for Appellant.**

**Lynne F. Riley, Esq. and Maria C. Furlong, Esq., on brief for Appellee.**

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**January 11, 2011**

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**Lamoutte, U.S. Bankruptcy Appellate Panel Judge.**

Mary Beth Massillon (the “Debtor”) appeals from the bankruptcy court order (the “Order”) sustaining the Trustee’s objection to her claim of either the exclusion of, or the exemption in, her interest in a testamentary spendthrift trust (the “Trust”). She also appeals from the subsequent order denying reconsideration (the “Order Denying Reconsideration”). Because we conclude that the bankruptcy court erred in determining that the Debtor’s interest in the undisbursed income and corpus of the Trust were property of the estate subject only to her federal exemption, the Panel **REVERSES** the Order and **REMANDS** the matter for an order consistent with this opinion.

**BACKGROUND**

The Debtor and her husband filed their chapter 7 petition on August 10, 2009, and the chapter 7 trustee was appointed (the “Trustee”).<sup>1</sup> On Schedule B, the Debtor listed a beneficial interest in the Trust, which her deceased grandfather created in his will. On Schedule C, the Debtor claimed that either a portion of her interest in the Trust was exempt under § 522(d)(5) or the entire value was “exempt” under § 541(c)(2).<sup>2</sup>

The Trust is governed by New York law. Under the terms of the Trust, the Debtor is entitled to receive distributions of the net income of the Trust at least twice a year and distributions of the remaining principal in two installments of approximately \$31,000.00 each, in

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<sup>1</sup> The Debtor’s husband is not listed on the notice of appeal and has no interest in the Trust. The remainder of the opinion will address the facts as they pertain to the Debtor.

<sup>2</sup> Unless otherwise indicated, the terms “Bankruptcy Code,” “section” and “§” refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37.

June 2010 and June 2015. At oral argument, the parties agreed that the Debtor received two disbursements of less than \$1,000.00 within 180 days of the filing of the petition.<sup>3</sup>

The Trustee objected to the claimed exemption on several grounds. First, she argued that she was entitled to recover a portion of the Trust distribution pursuant to N.Y.C.P.L.R. § 5205(d), a New York statute that allows creditors of a spendthrift trust beneficiary to recover at least 10 percent of all trust disbursements until the recovery sought is satisfied. Second, she argued that she was entitled to reach all of the Trust income because the New York statute allows creditors to reach all income due to a trust beneficiary over and above what is needed for the beneficiary's education and support. Third, she argued that any distribution the Debtor received from the Trust within 180 days after commencement of the case is property of the estate pursuant to § 541(a)(5)(A). Fourth, she argued that the Debtor's claim of exemption pursuant to § 522(d)(5) must be limited to \$11,200.00, because the Debtor's husband does not have an interest in the Trust and therefore cannot claim an exemption in it. The Debtor filed an opposition.

The bankruptcy court held a nonevidentiary hearing<sup>4</sup> and ordered the parties to brief the following questions: (i) whether the determination of the Debtor's need for education and support would be at the time of the distribution or otherwise; and (ii) the applicability of exemptions under § 522 to the proceeds of a trust that are includable in the estate under § 541(c)(2).<sup>5</sup>

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<sup>3</sup> The parties further agreed that if the Panel determine that § 541(a)(5)(A) is applicable, the Debtor would turn those two payments over to the Trustee.

<sup>4</sup> The Debtor did not include a transcript of the hearing in her appendix. This is not fatal to her appeal because the facts are not in dispute and the issues on appeal concern statutory construction. See Hamilton v. Wells Fargo Bank, N.A. (In re Hamilton), 401 B.R. 539, 541 (B.A.P. 1st Cir. 2009).

<sup>5</sup> It appears that the parties resolved some of their disagreements at the hearing. In its memorandum of opinion that accompanied the Order, the bankruptcy court explained that the parties disagreed as to (i) whether New York law, in combination with § 541(c)(2), allowed the Debtor to exempt from the estate Trust distributions; and (ii) to the extent the Trust distributions are assets of the estate, whether the Debtor may claim them as exempt pursuant to § 522(d)(5), or whether such claim would be

Thereafter, the Trustee filed a brief in which she argued that N.Y.C.P.L.R. § 5205(d) is part of New York's comprehensive exemption scheme, and that the Debtor may not stack federal and state exemptions. Additionally, the Trustee argued that the Debtor's entitlement to a percentage of Trust distributions is based on reasonable needs determined over a continuum of time.

In her post-hearing brief, the Trustee argued that she was entitled to reach post-petition spendthrift trust distributions of interest and principal based upon reported decisions interpreting N.Y.C.P.L.R. § 5205(d)(1). She also argued that the Debtor cannot apply federal exemption statutes to any interest in the Trust because it would result in an impermissible stacking of exemptions. In her post-hearing brief, the Debtor acknowledged that N.Y.C.P.L.R. § 5205(d)(1) allows judgment creditors to levy on distributions of spendthrift trusts. However, the Debtor explained that she was not claiming exemptions under New York law, and that under the New York statute an evidentiary hearing was necessary to determine what portion of the distribution from the Trust should be available to the estate.

The bankruptcy court issued the Order sustaining the Trustee's objection and limiting the Debtor's exemption to \$11,200.00 of post-petition distributions, with the remainder of the distributions of the Trust to be turned over to the Trustee. In the memorandum of decision that accompanied the Order, the bankruptcy court found that the Trust was a valid testamentary spendthrift trust governed by the laws of New York. The court explained that under New York law spendthrift trust assets, while in trust, were protected from creditors, but upon distribution could be only partially protected.

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an impermissible stacking of Code exemptions on top of state law exemptions.

The court then addressed whether N.Y.C.P.L.R. § 5205(d)(1) would allow the Debtor to exempt the distributions of the Trust or whether it functioned as a restriction on the transfer of a beneficial interest, thereby permitting the Debtor to exclude any distributions from being considered property of the estate under § 541(c)(2). The court determined that N.Y.C.P.L.R. § 5205(d)(1) was an exemption statute because the statute restricts only creditors but not the debtor's ability to spend or otherwise alienate the asset. As such, it held that "the future distributions are assets of the estate." Lastly, the bankruptcy court concluded that the Debtor could only apply her § 522(d)(5) exemption of \$11,200.00 to post-petition distributions and that the remainder of her distributions were property of the estate.

The Debtor sought reconsideration of the Order on three grounds: (1) the bankruptcy court had failed to explain why distributions beyond 180 days post-petition should be included in the estate; (2) the bankruptcy court had failed to take into account case law regarding N.Y.C.P.L.R. § 5205(d)(1); and (3) the bankruptcy court did not hold an evidentiary hearing to determine whether the Debtor needed any portion of the Trust distribution for support as provided in N.Y.C.P.L.R. § 5205(d)(1). The Trustee opposed the motion.

The bankruptcy court issued the Order Denying Reconsideration, in which it clarified that: (1) it had not addressed § 541(a)(5)(A) because the Debtor had not raised it, even after inquiry by the court, and also because the distributions are only governed by § 541(a)(1) because the Debtor's rights to the distributions became fixed pre-petition despite the fact that those rights were not yet mature; (2) the case law to which the Debtor had cited was not instructive given that it was issued more than a decade before the current bankruptcy exemption scheme was enacted, and was not binding authority; (3) no evidentiary hearing was needed regarding whether the

Debtor needed a portion of the Trust distribution for support, because the Debtor had not elected the state exemption scheme, and application of § 522 requires no evidence. The Debtor appealed.

### **JURISDICTION**

A bankruptcy appellate panel may hear appeals from “final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)].” Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). “A decision is final if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” Id. at 646 (citations omitted). An order granting or denying a debtor’s claimed exemption is a final order. Fifty v. Nickless (In re Fifty), 293 B.R. 550, 553 (B.A.P. 1st Cir. 2003). An order denying reconsideration is final if the underlying order was final and together they end the litigation on the merits. Hamilton v. Appolon (In re Hamilton), 399 B.R. 717, 720 (B.A.P. 1st Cir. 2009). Here, the Order and the Order Denying Reconsideration are final, appealable orders. See id.; In re Fifty, 293 B.R. at 553.

### **STANDARD OF REVIEW**

The Panel reviews the bankruptcy court’s findings of fact for clear error and conclusions of law *de novo*. See Lessard v. Wilton-Lyndeborough Coop. School Dist., 592 F.3d 267, 269 (1st Cir. 2010). The Panel reviews questions of statutory construction *de novo*. Pellegrino v. Boyajian (In re Pellegrino), 423 B.R. 586, 589 (B.A.P. 1st Cir. 2010). The Panel reviews a denial of reconsideration for abuse of discretion. Schwartz v. Schwartz (In re Schwartz), 409 B.R. 240, 245 (B.A.P. 1st Cir. 2008). A bankruptcy court abuses its discretion if it ignores a material factor

deserving of significant weight, relies upon an improper factor, or makes a serious mistake in weighing proper factors. Id.

## **DISCUSSION**

### **I. Position of the Parties**

The Debtor contends that N.Y.C.P.L.R. § 5205(d)(1) is not just an exemption statute, based upon In re Dolard, 275 F. Supp. 1001 (C.D. Cal. 1967). In that case, the court described the statute as more than an exemption statute notwithstanding the statutory captions, in that it prohibits a levy of more than 10 percent of a distribution unless the debtor is not in need of the money. The Debtor explained that as a Massachusetts resident, she could not take advantage of the New York exemption and that the bankruptcy court's analysis renders § 541(c)(2) meaningless. The Debtor argues that even if the Trustee is entitled to distributions beyond 180 days post-petition, the bankruptcy court should have held a hearing to determine what amount beyond 10 percent the Trustee was entitled to receive.

The Trustee argues that although the Debtor claimed in her petition that her interest in the Trust was excluded under § 541(c)(2), the issue was not raised before the bankruptcy court or in this appeal. The Trustee further argued that N.Y.C.P.L.R. § 5205(d)(1) was an exemption statute and the Debtor was restricted to claiming the federal exemption scheme. Therefore, the Debtor cannot exempt her interest under both N.Y.C.P.L.R. § 5205(d)(1) and § 522(d) and a determination would need to be made as to the application of N.Y.C.P.L.R. § 5205(d)(1) to any Trust distributions.

## II. The Spendthrift Trust Exclusion and Post-Petition Distributions Inclusion

The bankruptcy estate is created upon the filing of the petition. See 11 U.S.C. § 541; Gourdin v. Agin (In re Gourdin), 431 B.R. 885, 890 (B.A.P. 1st Cir. 2010).<sup>6</sup> “Section 541 is construed broadly to bring in any and all of the debtor’s property rights within the bankruptcy court’s jurisdiction and the umbrella of protections granted by the Bankruptcy Code . . .” Id. at 891 (citing Abboud v. The Ground Round, Inc. (In re The Ground Round, Inc.), 335 B.R. 253, 259 (B.A.P. 1st Cir. 2005) aff’d, 482 F.3d 15 (1st Cir. 2007)). The “estate is normally comprised only of property and interests therein belonging to the debtor at the time the petition is filed.” Patrick A. Casey, P.A. v. Hochman, 963 F.2d 1347, 1350 (10th Cir. 1992). Property which a debtor subsequently acquires “does not become property of the estate, but becomes the debtor’s, clear of all claims that are discharged by the bankruptcy proceedings.” Id. A limited exception to this general rule is any interest in property which the debtor acquires or becomes entitled to acquire within 180 days from the commencement of the case by bequest, devise, or inheritance. 11 U.S.C. § 541(a)(5)(A).

A debtor may extract assets from the estate by claiming exemptions under § 522. A debtor may also exclude assets from becoming property of the estate such as “[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.” 11 U.S.C. § 541(c)(2). Thus, a debtor can exclude from property of the estate an interest in a valid spendthrift trust. See Patterson v. Shumate, 504 U.S. 753, 758 (1992) (“The natural reading of [§ 541(c)(2)] entitles a

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<sup>6</sup> The pleadings before the bankruptcy court, starting with the Debtor’s petition and ending with the Debtor’s brief, have repeated references to this provision. For example, the Debtor listed as her first issue on appeal “whether or not future distributions from a spendthrift trust not made within the filing of 180 days of the petition, should be included within property of the estate.”

debtor to exclude from property of the estate any interest in a plan or trust that contains a transfer restriction enforceable under any relevant nonbankruptcy law.”); see also Spenlinhauer v. Spencer Press, Inc. (In re Spenlinhauer), 195 B.R. 543, 547 (D. Me. 1996), aff’d, 101 F.3d 106 (1st Cir. 1996).

To determine whether the Debtor’s interest in the Trust is excluded from the estate or included and then subject to a potential exemption, the threshold determination is whether it is a spendthrift trust. The parties agree and the bankruptcy court found that the Trust was a spendthrift trust. Indeed, “under New York law all express trusts are presumed to be spendthrift trusts unless the settlor expressly provides otherwise.” Regan v. Ross, 691 F.2d 81, 86 n.14 (2d Cir. 1982).<sup>7</sup> Therefore, the Debtor’s interest in the Trust is excluded from her estate and the Trustee cannot assert a claim in the corpus. See In re Hilsen, 405 B.R. 49, 56-57 (Bankr. E.D.N.Y. 2009) (holding debtor’s interest in New York spendthrift trust excludable under § 541(c)(2)); Heidkamp v. Galliher (In re Hunger), 272 B.R. 792, 794 (Bankr. M.D. Fla. 2002) (holding debtor’s interest in undisbursed assets of New York testamentary spendthrift trust excluded from estate under § 541(c)(2)); see also Birdsell v. Coumbe (In re Coumbe), 304 B.R. 378, 38 (B.A.P. 9th Cir. 2003) (holding corpus of Arizona spendthrift trust excluded under § 541(c)(2) and income included under § 541(a)(5)(A)).

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<sup>7</sup> See N.Y. Est. Powers and Trust Law § 7-1.5(a)(1) (“The right of a beneficiary of an express trust to receive the income from property and apply it to the use of or pay it to any person may not be transferred by assignment or otherwise unless a power to transfer such right, or any part thereof, is conferred upon such beneficiary by the instrument creating or declaring the trust.”).

The next issue is whether any distributions of income are property of the estate. The bankruptcy court explained that this determination should be made by looking to whether N.Y.C.P.L.R. § 5205(d)(1)<sup>8</sup> created a restriction on transfer thereby excluding the distributions from the estate or acted as an exemption statute.<sup>9</sup>

Section 541(a) provides for what interests of a debtor, as of the commencement of the case, constitute property of the estate. Interests which a debtor acquires post-petition become property of the estate under limited circumstances. United States v. Fuller (In re Fuller), 134 B.R. 945, 948 (B.A.P. 9th Cir. 1992). The bankruptcy court declined to apply § 541(a)(5)(A) because the Debtor had failed to raise the issue. It held instead that the Trust distributions are governed by § 541(a)(1) because the Debtor's right to distribution was fixed pre-petition and that the Debtor was required to turnover all distributions that were not subject to her federal exemption.<sup>10</sup> The record reflects,

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<sup>8</sup> The statute provides:

(c) Trust exemption. 1. Except as provided in paragraphs four and five of this subdivision, all property while held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment. . . .

(d) Income exemptions. The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents:

1. ninety per cent of the income or other payments from a trust the principal of which is exempt under subdivision (c)[.]

<sup>9</sup> It is from this presentation of the issue that the parties and court engaged in a discussion about the restriction against applying both state and federal exemptions. The Debtor did not and could not claim an exemption under N.Y.C.P.L.R. § 5205(d)(1) because she filed for relief in Massachusetts, see § 522(b), and applied the federal exemptions. New York has opted out of the federal exemptions set forth in § 522. N.Y. Debtor & Creditor Law § 284 (McKinney 1990). Because N.Y.C.P.L.R. § 5205(d)(1) is an exemption statute and the Debtor did not claim an exemption under the statute, stacking of state and federal exemptions is not at issue.

<sup>10</sup> The bankruptcy court did not specify if this holding applied to distributions of both the corpus and income of the Trust.

however, that the Trustee raised the issue of § 541(a)(5)(A) in her initial exemption objection and the Debtor did so in her motion for reconsideration.

The Panel finds that by concluding that the Debtor's rights to the distributions were property of the estate because she allegedly acquired an interest in the unmatured distributions pre-petition, the bankruptcy court misapprehended the nature of a beneficiary's interest in the distributions of a spendthrift trust. A beneficiary of a spendthrift trust "[does] not acquire or become entitled to any distribution until the trustees actually [make] a distribution." In re Hunger, 272 B.R. at 796;<sup>11</sup> see also Gordon C. York, Inc. v. Kragness (In re Kragness), 58 B.R. 939, 944 (Bankr. D. Or. 1986); Togut v. Hecht (In re Hecht), 54 B.R. 379, 384 (Bankr. S.D.N.Y. 1985), aff'd, 69 B.R. 290 (S.D.N.Y. 1987). Consequently, a debtor's interest in a testamentary spendthrift trust is excluded from the bankruptcy estate pursuant to § 541(c)(2), but any distribution a debtor receives within 180 days after commencement of the case becomes property of the estate. See In re Coumbe, 304 B.R. at 384; In re Hunger, 272 B.R. at 796.<sup>12</sup>

The Trustee asks that the Panel recognize and apply the holdings of cases wherein the court permitted the creditor or trustee to receive a portion of post-180 day trust distributions based upon the language of N.Y.C.P.L.R. § 5205(d)(1). In In re Hilsen, the debtor held an interest in an inter

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<sup>11</sup> See Lonstein v. Rockman (In re Lonstein), 950 F.2d 77, 78 n.1 (1st Cir. 1991) ("While the undistributed corpus of a spendthrift trust generally may not be reached to satisfy claims of the beneficiary's creditors, either in or outside of bankruptcy, any income actually available or distributed to the beneficiary prior to bankruptcy, or within 180 days of the commencement of the case, may become a part of the bankrupt estate under § 541(a)(1) or (5).")

<sup>12</sup> By contrast, the post-petition distributions a debtor receives from an inter vivos spendthrift trust are not included in the estate as there is no statutory provision for their inclusion. See, e.g., In re Blount, Case No. 09-90510, 2010 WL 4064796 (Bankr. E.D. Tex. Oct. 15, 2010) ("Virtually every court which has addressed the issue has come to the same conclusion - that testamentary trust distributions in the 180-day window are 'bequests' and therefore property of the estate under § 541(a)(5)(A), but that inter vivos trust distributions are neither.").

vivos trust. The trustee asserted that the trust was not a spendthrift trust. 405 B.R. at 57. The bankruptcy court disagreed and ruled that the debtor's interest in the trust was exempt but that the creditors were entitled to 10 percent of the Debtor's future income benefits under the New York statute. Id. at 58. In In re Hunger, a debtor had an interest in a New York testamentary trust. 272 B.R. at 794. The bankruptcy court determined that the debtor's interest in the trust was excluded from the estate and that the payments the debtor received in the 180 days post-petition were property of the estate. Id. at 795-96. The court further ruled that a hearing was necessary to determine what percentage of the post-180 day trust income should be made available to creditors under N.Y.C.P.L.R. § 5205(d)(1). Id. at 796. The court based this decision on Dzikowski v. Edmonds (In re Cameron), 223 B.R. 20, 26 (Bankr. S.D. Fla. 1998).

The Cameron court simply stated that “[a]lthough the Bankruptcy Code specifically includes certain types of property within the estate, state law must be used to determine the status of property which is not specifically addressed by the Bankruptcy Code, such as trust income distributions received by the Debtor beyond 180 days post-petition.” Id. at 25. The court ruled that, under the New York statute, the trustee was entitled to at least 10 percent of “distributions, income and/or principal, made beyond 180 days post-petition . . .” Id. at 26.

The Cameron court relied, in part, on McCracken v. Manufacturers Hanover Trust Co. (In re Vogel), 16 B.R. 670 (Bankr. S.D. Fla. 1981). In Vogel, a New York state court had entered an order explaining the amounts a debtor's spendthrift trust distribution could be levied upon by a creditor under N.Y.C.P.L.R. § 5205(d)(1). Id. at 671-72. The debtor filed for relief before the state court had held a hearing to determine actual amounts. Id. at 672. The bankruptcy court thereafter and, without discussion, held a hearing to apply N.Y.C.P.L.R. § 5205(d)(1) to the pre-

and post-petition payments of principal and interest.<sup>13</sup> The bankruptcy court considered, but rejected, an order for a “continuing levy” of the trust payments and instead appeared to have made a larger lump sum order.

The Panel declines to follow the decisions in these cases because they do not explain how distributions of a testamentary spendthrift trust received beyond six months post-petition can be considered property of the estate given the language of § 541(a)(5)(A). Because the distributions in those cases were not property of the estate, it is unclear how N.Y.C.P.L.R. § 5205(d)(1) as an exemption statute, and not the enabling statute for a New York spendthrift trust, was applicable. Although Congress enacted § 541(a)(5)(A) to temper the exclusion from the estate of spendthrift trusts, it made no further provisions for testamentary spendthrift trust distributions a debtor might receive after 180 days. Magill v. Newman (In re Newman), 903 F.2d 1150, 1154 (7th Cir. 1990) (“The decision of Congress to enumerate specific exclusions creates a presumption that cases not included in that list of exclusions are subject to the statute.”); Smith v. Moody (In re Moody), 837 F.2d 719, 723 (5th Cir. 1988) (“income distributions from a spendthrift trust that occur after the 180 day window of § 541(a)(5)(A) are not to be included in the debtor’s bankruptcy estate and instead are part of the debtor’s fresh start.”); Wetzel v. Regions Bank (In re Reagan), 433 B.R. 263, 268 (W.D. Ark. 2010) (same).<sup>14</sup> To conclude otherwise would render the statutory scheme set

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<sup>13</sup> The Vogel court did not address § 541(a)(5)(A). Id. It first ruled that the trust was governed by New York law. Id. Thereafter it wrote that the state court opinion was persuasive and that the bankruptcy court would continue its work by determining the amount of the trust distributions that would be made available to creditors. Id.

<sup>14</sup> The Panel is cognizant of bankruptcy cases which discuss the impact of state law exceptions to the enforceability of a spendthrift trust for debts arising from, *inter alia*, domestic support obligations, necessities, and taxes. See, e.g., Bucy v. Evans (In re Evans), 88 B.R. 813 (Bankr. M.D. Tenn. 1988). Trustees who have attempted to reach spendthrift trusts on this basis have largely failed. See In re White, No. 09-13663-NVA, 2010 WL 3927485 (Bankr. D. Md. Sept. 30, 2010); Garrett v. Finley (In re Finley), 286 B.R. 163 (Bankr. W.D. Wash. 2002); In re Cypert, 68 B.R. 449 (Bankr. N.D. Tex. 1987). Neither the

forth in § 541 superfluous. Jenkins v. A.T. Massey Coal Co., Inc. (In re Jenkins), 410 B.R. 182 (Bankr. W.D. Va. 2008) (“Within [§ 541] Congress made only one provision for inclusion of a post-petition entitlement in the bankruptcy estate.”); Moser v. Mullican (In re Mullican), 417 B.R. 389, 397 (Bankr. E.D. Tex. 2008) (“A basic canon of statutory construction warns against superfluosity . . .”), aff’d, 417 B.R. 408 (E.D. Tex. 2008).

In summary, the Panel concludes that the corpus of the Trust is excluded from the Debtor’s estate because, as the parties agree, it is a valid testamentary spendthrift trust. Further, the Panel concludes, and the parties at oral argument agreed, that the two distributions that the Debtor received in the 180 days post-petition became property of her estate. Any distributions from the Trust the Debtor received after the 180 days post-petition are not property of the estate.

### CONCLUSION

For the reasons discussed above, the Panel **REVERSES** the Order and **REMANDS** this matter for orders consistent with this opinion.<sup>15</sup>

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Trustee nor the bankruptcy court framed the application of N.Y.C.P.L.R. § 5205(d)(1) in these terms and the Panel need not address the issue.

<sup>15</sup> The Panel need not address the appeal of the Order Denying Reconsideration as it is rendered moot by the disposition of the Order.