

# **SPENDTHRIFT TRUSTS AFTER *CARMACK* AND *BLECH*; WHAT DO WE DO NOW?**

**Adam L. Steltzer, Esq.**

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	<u>page</u>
A. California Spendthrift Laws .....	2
B. <i>Carmack v. Reynolds</i> (2017) .....	4
C. <i>Blech</i> (2019) .....	8
D. After <i>Carmack v. Reynolds</i> and <i>Blech</i> .....	10
E. What Do We Do Now? .....	11
<u>Exhibits:</u>	
Cal. Prob. Code §§15300-15309 .....	17
Cal. Code of Civ. Proc. §§709.010-709.030 .....	21
<i>Frealy v. Reynolds (In re Reynolds)</i> (9th Cir. 2017) .....	22
<i>Carmack v. Reynolds</i> (Cal. 2017) .....	27
<i>Blech v. Blech</i> (Cal.App. 2019) .....	35

### A. California Spendthrift Laws.

The interest(s) of each beneficiary in a spendthrift trust, both as to income and principal, are protected from the claims of creditors taken or to be taken by any legal or equitable process. Because the subject of the creditor's action is money or property belonging to the trustor(s), not the beneficiary, and the trustor(s) wanted their beneficiary protected from that beneficiary's own improvidence, then those trust assets are protected from attack by the beneficiary's creditors.

The validity of a spendthrift clause is predicated upon the idea that a person is free to dispose of their property as they see fit. *Seymour v. McAvoy* (1898) 121 Cal. 438, 442; *Estate of Johnston* (1967) 252 Cal.App.2d 923, 925. It is California's policy to effectuate intentions expressed in a trust or other testamentary instrument. Prob. Code §21102. See *Brown v. Labow* (2007) 157 Cal.App.4th 795, 812.

Although a judgment creditor may generally attempt to enforce a money judgment against most assets of a judgment debtor, such a creditor may **not** reach that judgment debtor's interest in a trust if the trust includes a spendthrift provision enforceable under California's spendthrift law (enacted at Prob. Code §§15300-15309). Instead, the judgment creditor must obtain an order under Code of Civ. Proc. §709.010 applying a judgment debtor beneficiary's interest in a trust towards satisfaction of the judgment creditor's claim. Related laws provide additional protections for trust beneficiaries, and additional creditor remedies, but which is set

forth in the detailed and confusing set of statutes that have codified California's spendthrift law. See Prob. Code §§15300-15309, summarized as follows:

*Prob. Code §15300:* Except as provided elsewhere in the spendthrift statutes, if the trust instrument provides that a beneficiary's interest in income is not subject to voluntary or involuntary transfer, the beneficiary's interest in **income** under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

*Prob. Code §15301(a):* Except as provided elsewhere in the spendthrift statutes, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in **principal** may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

*Prob. Code §15301(b):* **After an amount of principal has become due and payable to the beneficiary** under the trust instrument, **upon petition to the court** under Section 709.010 of the Code of Civil Procedure by a judgment creditor, **the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. (!)**

*Prob. Code §15302:* Concerning "education or support" payments.

*Prob. Code §15303:* Concerning discretionary payments.

*Prob. Code §15304:* Spendthrift restrictions when the settlor is the beneficiary of the spendthrift trust (i.e., **no self-settled trusts**).

*Prob. Code §15305:* Special rules for "support judgment" creditors.

*Prob. Code §15305.5:* Special rules for "restitution judgment" creditors.

*Prob. Code §15306:* Special rules for public child support creditors.

*Prob. Code §15306.5:* All subject to a **25 percent limitation (!)**

*Prob. Code §15307:* **Excess distributions** are available to creditors (!)

*Prob. Code §15308:* Orders can be modified at any time.

*Prob. Code §15309:* Disclaimers are not transfers for these purposes.

The law could be summarized as follows: notwithstanding a valid restraint on the transfer of the beneficiary's interest in a trust, and subject to the limitations of Prob. Code §§15300-15309, a judgment creditor may petition the court pursuant to Code of Civ. Proc. §709.010 for an order directing the trustee to satisfy all or part of the

judgment out of the payments to which a judgment debtor beneficiary is entitled pursuant to the trust instrument. This is the only means available for a judgment creditor to enforce a money judgment against a judgment debtor's interest in a trust. Code of Civ. Proc. §§709.010(b) & (c). However, the judgment creditor's rights are expressly subject to the spendthrift limitations of Prob. Code §§15300 et seq. & 15306.5. See Code of Civ. Proc. §709.010(c).

**B. *Carmack v. Reynolds* (2017)**

Despite the Legislature's efforts to synthesize the prior "patchwork" of laws pertaining to spendthrift clauses, some ambiguity still remained, and certain courts, including the Ninth Circuit Court of Appeals, found that some of the relevant statutory provisions from the Probate Code were still "opaque." Less than 24 months ago, in the *Carmack v. Reynolds* (2017) 2 Cal.5th 844 ("***Carmack v. Reynolds***") opinion, this Court addressed those "opaque" statutory provisions and attempted to clarify certain exceptions and limitations of the statutory spendthrift laws. This was subsequently applied by the federal Ninth Circuit Court of Appeals in the companion proceeding of *Frealy v. Reynolds (In re Reynolds)* (9th Cir. 2017) 867 F.3d 1119 ("***Frealy***").

*Carmack v. Reynolds* arose from a dispute between a judgment debtor beneficiary of his parent's spendthrift trust (the Reynolds Family Trust), and the Chapter 7 trustee of his bankruptcy estate. The subject trust instrument contained this rather benign, customary, and traditional spendthrift provision:

**“...no interest in the income or principal of any trust created under this instrument shall be voluntarily or involuntarily anticipated, assigned, encumbered, or subjected to creditor’s claim or legal process before actual receipt by the beneficiary.”**

Unfortunately, the history of the *Carmack v. Reynolds* proceedings is complex. It started with a ruling made in the federal bankruptcy court which was administering the Chapter 7 bankruptcy case of the judgment debtor beneficiary. The trial court’s rulings were then reviewed at several intermediate levels, eventually landing before the federal appellate court (the Ninth Circuit Court of Appeals). It was that appellate court which was called upon to review the lower court decisions. Eventually, the Ninth Circuit certified a question to the California Supreme Court regarding the apparently-conflicting provisions of California law, namely Probate Code §§15301(b), 15306.5 and 15307, which the Ninth Circuit was unable to reconcile. This was the Ninth Circuit’s certified question:

**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?**

*[presumably “other sections” here means California Probate Code §§15301(b), 15306.5, and 15307 which seem to conflict on their face]*

The Supreme Court subsequently decided to accept the question. And, after a few years (!) of waiting, the Supreme Court finally attempted to provide an answer in its published opinion released in March of 2017.

In its *Carmack v. Reynolds* opinion, the Supreme Court provided a clear interpretation of California's spendthrift law and the statutes at Prob. Code §§15300 et seq. Among other determinations, it held that the spendthrift restraints permitted under California law no longer applied to distributions of trust principal that had already become "due and payable" to a beneficiary, but not yet paid to that beneficiary, and that a general judgment creditor could recover up to 100% directly from the trustee under those circumstances. Based thereon, the Supreme Court ruled that the Chapter 7 trustee of the bankruptcy estate of a judgment debtor trust beneficiary, standing as such a hypothetical judgment creditor, may reach a sum up to the full amount (100 percent) of any distributions that are presently due and payable to the trust beneficiary even though they are still in the trustee's hands, and separately may reach a sum up to 25 percent of any payments that are anticipated ('future') to be made to that beneficiary.

The Supreme Court reasoned that once a distribution has become "due and payable" to the beneficiary, it is now the beneficiary's asset and no longer the trustor's and trustee's asset, stating:

**"In sum, after an amount of principal has become due and payable (but has not yet been distributed), a creditor can petition to have the trustee pay directly to the creditor a sum up to the full amount of that distribution (§ 15301(b)) unless the trust instrument specifies that the distribution is for the beneficiary's support or education and the beneficiary needs the distribution for those purposes (§ 15302). If no such distribution is pending or if the distribution is not adequate to satisfy a judgment, a general creditor can petition to levy up to 25 percent of the payments expected to**

be made to the beneficiary, reduced by the amount other creditors have already obtained and subject to the support needs of the beneficiary and any dependents. (sec. 15306.5.)

*Carmack v. Reynolds*, at pp. 856-857 (emphasis added). This, presumably, sets forth both how and when (i.e., the **timing**) of the creditor's petition and court ruling should occur—after an amount of principal has become “due and payable.”

The Supreme Court noted that Prob. Code §15307 (re excess discretionary distributions) was mere “drafting error”! *Carmack v. Reynolds*, at p. 854.

But, perhaps sensing that the various trial courts throughout California and elsewhere would struggle with this ruling, the Supreme Court went on to suggest:

As an illustration, suppose a trust instrument specified that a beneficiary was to receive distributions of principal of \$10,000 on March 1 of each year for 10 years. Suppose further that a general creditor had a money judgment of \$50,000 against the beneficiary and that the trust distributions are neither specifically intended nor required for the beneficiary's support. **On March 1 of the first year, upon the creditor's petition** a court could order the trustee to remit the full distribution of \$10,000 for that year to the creditor directly if it has not already been paid to the beneficiary, as well as \$2,500 from each of the nine anticipated payments (a total of \$22,500) as they are paid out. If the creditor were not otherwise able to satisfy the remaining \$17,500 balance on the judgment, **then on March 1 of the following years, upon the general creditor's petition the court could order** the trustee to pay directly to the creditor a sum up to the remainder of that year's principal distribution (\$7,500), as the court in its discretion finds appropriate, until the judgment is satisfied."

See *Carmack v. Reynolds*, at p. 857 (emphasis added). Again, the example indicates both how and when (i.e., **timing**) of the creditor's petition and court ruling should occur—after an amount of principal has become “due and payable.”

The ruling of *Carmack v. Reynolds* meant that the bankruptcy trustee could reach 100% of any distributions that were already due and payable to Rick, meaning the \$250,000 trust principal distribution. See *Frealy*, at p. 1120. Second, it meant that the bankruptcy trustee could also reach future payments to be made to the beneficiary, but that it was limited to 25% of those payments and with support payments excluded (in other words, the bankruptcy trustee would be able to reach 25% of expected future trust distributions, reduced by amounts needed by the beneficiary to support and support of any dependents). See *Frealy*, at p. 1120.

**C. *Blech* (2019)**

But a new wrinkle has occurred, in the form of the Second Appellate District's August 15, 2019 ruling in the matter preliminarily assigned for publication as *Blech v. Blech* (2019) 38 Cal.App.5th 941 ("***Blech***").

In *Blech*, the Second Appellate District affirmed the probate court's order and rulings which granted various judgment debtor's petitions to apply the full amount (100 percent) of a judgment debtor mandatory principal distribution from his father's trust towards satisfaction of the judgments even though the distribution was not yet due and payable at the time the petitions were filed and the hearing was held. In so doing, it determined that *Carmack v. Reynolds* was limited to its facts, had no application in a "non-bankruptcy setting," and, instead, such timing rules would apply only in the context of a trust beneficiaries' Chapter 7 bankruptcy. [*Blech* opinion, Part 1.2, at pp. 953-954]

But the Second Appellate District did so on the assumption that, in the *Carmack v. Reynolds* opinion, the California Supreme Court narrowly decided a peculiar bankruptcy issue and did not intend to generally clarify California law on the subject as applicable to all creditors seeking to enforce a judgment against the interests of a judgment debtor beneficiary in a trust. It stated:

In short, the [Supreme Court] in *Carmack* was not asked to address the specific question presented by Richard here: when a judgment creditor may file a petition to enforce a judgment under section 15301(b) in a non-bankruptcy setting. And, of course, “ [i]t is axiomatic that cases are not authority for propositions not considered.’ [Citation.] . . . **We therefore conclude that even if *Carmack* suggests that a creditor must wait until after a trust disbursement is due and payable before filing a request to enforce a money judgment against the disbursement, that procedure is applicable in a Chapter 7 bankruptcy proceeding. *But we presume the [Supreme Court] did not intend to address facts not before it—and which are before us—where creditors are attempting to reach a trust disbursement while it is in the hands of the trust’s trustee, rather than as part of a bankruptcy estate.***”

For the reasons we have already discussed, we conclude a creditor may file a petition under [Prob. Code §15301(b) and Code of Civ. Proc. §709.010] to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable.

[*Blech* opinion, at p. 954 (emphasis added)]<sup>1</sup>

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1. Note that, the Second Appellate District confirms that it is not determining or resolving the “timing” argument from *Carmack v. Reynolds*. See *Blech*, at p. 953 (“But even assuming the quoted portion of *Carmack* supports Richard's timing argument—a point we do not resolve...”).

Under the facts as found by the *Blech* court, the judgment creditors filed their petitions and the court held its hearing before an amount of principal became due and payable (i.e., anticipated or future), which should have left them with no more than 25 percent of the upcoming distribution. Instead, the trial court judge took the matter under submission and, after waiting for the timing to expire, then allowed the judgment creditors the full amount (100 percent) of the distribution since it was then “due and payable.” That was error and failed to apply the teachings of *Carmack v. Reynolds*, that a general creditor of a judgment-debtor beneficiary of a trust petition a trial court for an order for payment from a trustee only after an amount of principal has become “due and payable.” *Carmack v. Reynolds*, at p. 632. **If then due and payable**, the trial court’s order may be up to the full amount (100 percent) thereof. **But, if not** (i.e., an anticipated or future distribution), then the order is limited to no more than 25 percent. *Id.* The aggrieved beneficiary appealed. The Second Appellate District issued its Opinion on August 15, 2019<sup>2</sup> wherein it affirmed the probate court. The California Supreme Court denied review on October 30, 2019.

#### **D. After *Carmack v. Reynolds* and *Blech***

Spendthrift trusts provide that a beneficiary's interest may not be alienated, assigned to creditors, or otherwise anticipated by the beneficiary. But, after *Carmack v. Reynolds*, spendthrift provisions no longer offer the same viability for

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2. This opinion was ‘certified for publication,’ thereby becoming (confusingly) the second published appellate opinion in this case – see the earlier published opinion, dealing with other unrelated issues pertaining to same trust, in the earlier published opinion of *Blech v. Blech* (2018) 25 Cal.App.5th 989. **Maybe *Blech I* and *Blech II*?**

those who wish to exercise the 'dead hand of control' over their presumably improvident donees and beneficiaries to protect them from their own creditors.

Further, because the interpretation of California's spendthrift laws is a subject previously uncertain but clarified by this Court in its *Carmack v. Reynolds* decision, then the result of the *Blech* decision is that law is no longer clear, nor uniform—with a disparity between trusts with bankrupt beneficiaries with bankruptcy estates administered by Chapter 7 liquidation trustees versus those without.

THE HARSH LESSON TO BE LEARNED is that, after *Carmack v. Reynolds* and *Blech*, the customary methods to protect improvident donees and beneficiaries using the traditional spendthrift trust rules can be ineffectual. The 'Dead Hand Of Control' is crippled – at least in the State of California.

#### **E. What Do We Do Now?**

The game-changing rulings in *Carmack v. Reynolds* and *Blech* have left drafters and planners with few viable options.

- **One option is to simply acknowledge that there are fewer and fewer ways to protect improvident donees and beneficiaries when under the administration of a testamentary instrument subject to California law.**
  - *Clients may not appreciate that and look for help and assistance elsewhere (other states, jurisdictions, etc.).*
- **The other option is to rely upon trustee "discretion."**
  - *What does that really mean? How does it work?*

With typical spendthrift trusts, the trustee might have no discretion over when to make payments or how much to pay. Note that a spendthrift trust need not be limited to providing only for a beneficiary's needs, though such a purpose is presumed unless another is stated in the trust. See 60 Cal.Jur.3d, Trusts, §127.

Thus, a related concept is the "**discretionary trust**," which is customarily intended to provide for a beneficiary's support. Presumably some or all of the payments to the beneficiary will be mandated; in other words, not all distributions are left to the trustee's discretion. However, depending upon the terms of the trust, it may also allow a trustee discretion to make payments beyond, or regardless of, what is necessary for the beneficiary's support. Similarly, a "**support trust**" provides the trustee with discretion as to making payments and determining what the beneficiary needs. It differs from a discretionary trust in that the discretion is exercised pursuant to a standard set forth in the instrument or otherwise provided by law, rule, or regulation. Often times the trust instrument (or a statute) will require that certain minimum payments be made periodically regardless of the trustee's discretion. California case law, much like other jurisdictions, sometimes conflates the discretionary and support trusts. And, of course, many if not all such trusts could and would include spendthrift provisions.

So let's focus on "discretion," wherein a trust instrument leaves the payment of distributions to the discretion of the trustee. In its most basic sense, discretion is the quality of having the freedom to decide what should be done in a particular

situation. Hence, a trustee with discretion has the power to decide the “what, when, where, and/or how” a distribution should be made to a beneficiary. That discretion can be guided by applicable standards set forth in the trust instrument, or by applicable law, or not at all (i.e., absolute or uncontrolled).

**IMPORTANT:** A trustee who is given a discretionary power must act reasonably. Prob. Code §16080. The trustee’s exercise of discretion is subject to review by the court. Even if a trustee is provided “sole,” “absolute,” or “uncontrolled” discretion, the trustee must nevertheless act in accordance with fiduciary principles and not in bad faith or in disregard of the purposes of the trust. Prob. Code §16081(a).

Why are we dealing with discretion? In addition to the above quoted statutes, California’s spendthrift law also provides that if a trust instrument provides that the trustee must pay to, or for the benefit of, a beneficiary so much of the income or principal or both as the trustee in the trustee’s discretion sees fit to pay, then a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee’s discretion. See Prob. Code §15303(a). **So, if trust distributions are solely in the trustee's discretion, the beneficiary's creditors cannot compel the trustee to make discretionary distributions to the beneficiary.** The statute text reads as follows:

*Prob. Code §15303:*

(a) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(b) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process in a proceeding under Section 709.010 of the Code of Civil Procedure by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subdivision does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 15300 or 15301.

(c) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(d) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

This statute is consistent with the prior existing case law. See *Canfield v. Security-First Nat. Bank of Los Angeles* (1939) 13 Cal.2d 1.

So, under a trust requiring the trustee to pay a minimum specified amount for the beneficiary's support, and authorizing a limited additional sum in the trustee's discretion, the beneficiary's right to any excess does not arise until the trustee exercises his or her discretion with respect to paying the additional sum. Nor can the creditor compel an allocation to the debtor beneficiary indirectly through control of the trustee's discretion. Hence, under a discretionary trust, the beneficiary has, at most, a mere expectancy. Prob. Code §§15303 and 15303(a).

Further, the Probate Code further provides that, except in cases where a beneficiary's interest is subject to a restraint on transfer that is otherwise valid (i.e., a spendthrift provision), if the trustee has knowledge of the transfer of the beneficiary's interest, or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to, or for the benefit of, the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, then the trustee is liable to the transferee or creditor to the extent that the payment to, or for the benefit of, the beneficiary impairs the right of the transferee or creditor. Prob. Code §15303(b).

These provisions regarding discretionary trusts apply regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion. Prob. Code §15303(c). But it does not limit any right the beneficiary might have to compel the trustee to pay to, or for the benefit of, the beneficiary all or part of the income or principal. Prob. Code §15303(d).

So how does this doctrine of discretion actually work? Two notable cases are worthy of our discussion:

*Alvis v. Bank of America Nat. Trust & Savings Assoc.* (1949) 95 Cal.App.2d 118

and

*Young v. McCoy* (2007) 147 Cal.App.4th 1078

- ***Alvis v. Bank of America Nat. Trust & Savings Assoc. (1949) 95 Cal.App.2d 118.*** This case stands for the proposition that once a distribution is “allocated” to the beneficiary by the trustee of a discretionary trust, the beneficiary acquires an enforceable, equitable right to that sum, which can then be reached by the beneficiary’s creditors.
  - *Trustees are therefore urged to be careful to avoid any accidental or premature “allocation” of funds to a beneficiary of a discretionary trust.*
  
- ***Young v. McCoy (2007) 147 Cal.App.4th 1078.*** This case is a bit more instructive. In *Young v. McCoy*, the Court of Appeal held that a trustee of discretionary support trust did not abuse her discretion in determining that no distributions should be made to beneficiary who was serving life sentence in prison for attempted murder. The facts are salacious, in that the trustee was the mother of the beneficiary, who had been incarcerated for attempting to kill the mother's other child, his brother. However, the Court of Appeal determined that the trustee had permissibly exercised her discretion to make no payments to the beneficiary of the trust, as he was incarcerated, enjoying the taxpayer's support, and not presently in need of monetary benefits. In the absence of a showing of bad faith, the trustee's actions were presumed valid. Thus, there was no abuse of the trustee's discretion. And, consequently, the trust beneficiary's judgment creditor (the victim brother) could not compel trustee (mom) to make discretionary payments to the beneficiary (the criminal brother), which payments would be used to satisfy the judgment.
  - *Of course, it is only creditors whom are barred. Remember that Prob. Code §15303(d) still permits beneficiaries to seek to compel the trustee's discretion!*


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**PROBATE CODE - PROB**
**DIVISION 9. TRUST LAW [15000 - 19530]** (*Division 9 enacted by Stats. 1990, Ch. 79.*)

**PART 2. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS [15200 - 15414]** (*Part 2 enacted by Stats. 1990, Ch. 79.*)

**CHAPTER 2. Restrictions on Voluntary and Involuntary Transfers [15300 - 15309]** (*Chapter 2 enacted by Stats. 1990, Ch. 79.*)

**15300.** Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that a beneficiary's interest in income is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(Enacted by Stats. 1990, Ch. 79.)

**15301.** (a) Except as provided in subdivision (b) and in Sections 15304 to 15307, inclusive, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(b) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court under Section 709.010 of the Code of Civil Procedure by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.

(Enacted by Stats. 1990, Ch. 79.)

**15302.** Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

(Enacted by Stats. 1990, Ch. 79.)

**15303.** (a) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(b) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process in a proceeding under Section 709.010 of the Code of Civil Procedure by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subdivision does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 15300 or 15301.

(c) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(d) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

*(Enacted by Stats. 1990, Ch. 79.)*

**15304.** (a) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

*(Enacted by Stats. 1990, Ch. 79.)*

**15305.** (a) As used in this section, "support judgment" means a money judgment for support of the trust beneficiary's spouse or former spouse or minor child.

(b) If the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the support judgment out of all or part of those payments as they become due and payable, presently or in the future.

(c) Whether or not the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the support judgment out of all or part of future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.

(d) This section applies to a support judgment notwithstanding any provision in the trust instrument.

*(Enacted by Stats. 1990, Ch. 79.)*

**15305.5.** (a) As used in this section, "restitution judgment" means a judgment awarding restitution for the commission of a felony or a money judgment for damages incurred as a result of conduct for which the defendant was convicted of a felony.

(b) If the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the restitution judgment out of all or part of those payments as they become due and payable, presently or in the future.

(c) Whether or not the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the restitution judgment out of all or part of future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.

(d) This section applies to a restitution judgment notwithstanding any provision in the trust instrument.

*(Added by Stats. 1991, Ch. 175, Sec. 1.)*

**15306.** (a) Notwithstanding any provision in the trust instrument, if a statute of this state makes the beneficiary liable for reimbursement of this state or a local public entity in this state for public support furnished to the beneficiary or to the beneficiary's spouse or minor child, upon petition to the court under Section 709.010 of the Code of Civil Procedure by the appropriate state or local public entity or public official, to the extent the court determines it is equitable and reasonable under the circumstances of the particular case, the court may do the following:

(1) If the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the payments as they become due, presently or in the future.

(2) Whether or not the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.

(3) If the beneficiary is a settlor or the spouse or minor child of the settlor and the beneficiary does not have the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, to the extent that the trustee has the right to make payments of income or principal or both to or for the beneficiary pursuant to the exercise of the trustee's discretion, order the trustee to satisfy all or part of the liability without regard to whether the trustee has then exercised or may thereafter exercise the discretion in favor of the beneficiary.

(b) Subdivision (a) does not apply to any trust that is established for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap. If, however, the trust results in the individual being ineligible for needed public social services under Division 9 (commencing With Section 10000) of the Welfare and Institutions Code, this subdivision is not applicable and the provisions of subdivision (a) are to be applied.

*(Enacted by Stats. 1990, Ch. 79.)*

**15306.5.** (a) Notwithstanding a restraint on transfer of the beneficiary's interest in the trust under Section 15300 or 15301, and 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 the payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined or determines in the future to pay to the beneficiary.

(b) An 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.

(c) An order under this section may not require that the trustee pay in satisfaction of the judgment any amount that the court determines is necessary for the support of the beneficiary and all the persons the beneficiary is required to support.

(d) An order for satisfaction of a support judgment, as defined in Section 15305, has priority over an order to satisfy a judgment under this section. Any amount ordered to be applied to the satisfaction of a judgment under this section shall be reduced by the amount of an order for satisfaction of a support judgment under Section 15305, regardless of whether the order for satisfaction of the support judgment was made before or after the order under this section.

(e) If the trust gives the trustee discretion over the payment of either principal or income of a trust, or both, nothing in this section affects or limits that discretion in any manner. The trustee has no duty to oppose a petition to satisfy a judgment under this section or to make any claim for exemption on behalf of the beneficiary. The trustee is not liable for any action taken, or omitted to be taken, in compliance with any court order made under this section.

(f) Subject to subdivision (d), 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.

*(Enacted by Stats. 1990, Ch. 79.)*

**15307.** Notwithstanding a restraint on transfer of a beneficiary's interest in the trust under Section 15300 or 15301, any amount to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined to pay to the beneficiary in excess of the amount that is or will be necessary for the education and support of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary. 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.

*(Enacted by Stats. 1990, Ch. 79.)*

**15308.** Any order entered by a court under Section 15305, 15306, 15306.5, or 15307 is subject to modification upon petition of an interested person filed in the court where the order was made.

*(Enacted by Stats. 1990, Ch. 79.)*

**15309.** A disclaimer or renunciation by a beneficiary of all or part of his or her interest under a trust shall not be considered a transfer under Section 15300 or 15301.

*(Enacted by Stats. 1990, Ch. 79.)*


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**CODE OF CIVIL PROCEDURE - CCP**

**PART 2. OF CIVIL ACTIONS [307 - 1062.20]** ( Part 2 enacted 1872. )

**TITLE 9. ENFORCEMENT OF JUDGMENTS [680.010 - 724.260]** ( Title 9 repealed and added by Stats. 1982, Ch. 1364, Sec. 2. )

**DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS [695.010 - 709.030]** ( Division 2 added by Stats. 1982, Ch. 1364, Sec. 2. )

**CHAPTER 6. Miscellaneous Creditors' Remedies [708.010 - 709.030]** ( Chapter 6 added by Stats. 1982, Ch. 1364, Sec. 2. )

**ARTICLE 10. Other Enforcement Procedures [709.010 - 709.030]** ( Article 10 added by Stats. 1982, Ch. 1364, Sec. 2. )

**709.010.** (a) As used in this section, "trust" has the meaning provided in Section 82 of the Probate Code.

(b) The 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 administration of the trust as prescribed in Part 5 (commencing with Section 17000) of Division 9 of the Probate Code. The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust property by the trustee.

(c) Nothing in this section affects the limitations on 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.

(Amended by Stats. 1986, Ch. 820, Sec. 18. Operative July 1, 1987, by Sec. 43 of Ch. 820.)

**709.020.** The judgment creditor may apply to the court on noticed motion for an order applying to the satisfaction of a money judgment a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor's interest.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

**709.030.** Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment by a procedure provided in this division, but the judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

<p>IN RE RICK H. REYNOLDS, <span style="float:right"><i>Debtor.</i></span></p> <hr style="width:50%; margin-left:0;"/> <p>TODD A. FREALY, Attorney, Chapter 7 Trustee of Estate of Rick Reynolds, <span style="float:right"><i>Appellant,</i></span></p> <p style="text-align:center">v.</p> <p>RICK H. REYNOLDS; JOHN M. CARMACK, Co-Trustee of the Reynolds Family Trust and Co- Trustee of The Reynolds Family Trust - Survivor's Trust, as amended; JOHN MORRIS, Co-Trustee of the Reynolds Family Trust and Co-Trustee of The Reynolds Family Trust - Survivor's Trust, as amended, <span style="float:right"><i>Appellees.</i></span></p>	<p>No. 12-60068</p> <p>BAP No. 11-1433</p> <p>OPINION</p>
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Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Hollowell, Pappas, and Dunn, Bankruptcy Judges,  
Presiding

Argued and Submitted March 7, 2014  
Pasadena, California

Filed August 15, 2017

Before: Alex Kozinski and Susan P. Graber, Circuit  
Judges, and Charles R. Breyer,\* District Judge.

Per Curiam Opinion

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### SUMMARY\*\*

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#### **Bankruptcy**

The panel reversed a decision of the Bankruptcy Appellate Panel following the California Supreme Court's opinion answering a certified question regarding whether the creditors of the beneficiary of a spendthrift trust may reach the trust distributions.

The panel held that a bankruptcy estate is entitled to the full amount of spendthrift trust distributions due to be paid as of the date of the bankruptcy petition. But the estate may not access any portion of that money the beneficiary needs for his support or education, as long as the trust instrument specifies that the funds are for that purpose. The estate may also reach

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\* The Honorable Charles R. Breyer, United States District Judge for the Northern District of California, sitting by designation.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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25 percent of expected future payments from the spendthrift trust, reduced by the amount the beneficiary needs to support himself and his dependents.

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### COUNSEL

Jesse S. Finlayson (argued), Finlayson Williams Toffer Roosevelt & Lilly LLP, Irvine, California, for Appellant.

David W. Meadows (argued), Law Offices of David W. Meadows, Los Angeles, California, for Appellees.

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### OPINION

PER CURIAM:

Debtor is the beneficiary of a spendthrift trust. The trust payments he receives come entirely from trust principal. The California Probate Code is unclear as to whether and to what extent his creditors may reach the trust distributions, so we certified the question to the California Supreme Court. *Frealy v. Reynolds*, 779 F.3d 1028, 1030 (9th Cir. 2015). That court answers us in the attached opinion.

In our order certifying the question, we recounted the facts of this case. *Id.* at 1031–32. Based on the California Supreme Court opinion, we now hold that a bankruptcy estate is entitled to the full amount of spendthrift trust distributions due to be paid as of the petition date. *See Carmack v. Reynolds*, 391 P.3d 625, 628 (Cal. 2017); Cal. Prob. Code § 15301(b). But the estate may not access any portion of that money the beneficiary needs for his support or education, as

long as the trust instrument specifies that the funds are for that purpose. *See Carmack*, 391 P.3d at 629; Cal. Prob. Code § 15302. The estate may also reach 25 percent of expected future payments from the spendthrift trust, reduced by the amount the beneficiary needs to support himself and his dependents. *See Carmack*, 391 P.3d at 632; Cal. Prob. Code § 15306.5.

We remand so that the bankruptcy court can apply the teachings of *Carmack*.

**REVERSED and REMANDED.**

**APPENDIX**

215 Cal.Rptr.3d 749

**John M. CARMACK, as Trustee, etc., et al., Plaintiffs and Respondents,**

v.

**Rick H. REYNOLDS, Defendant;**

**Todd A. Frealy, as Trustee in Bankruptcy, etc., Claimant and Appellant.**

S224985

Supreme Court of California.

Filed 3/23/2017

**Background:** Chapter 7 trustee brought adversary proceeding, seeking to compel turnover of the undistributed principal to which debtor was entitled under spendthrift trust established by his late father. The United States Bankruptcy Court for the Central District of California, Meredith A. Jury, J., granted debtor’s motion for summary judgment, and trustee appealed. The Bankruptcy Appellate Panel (BAP), Hollowell, J., 479 B.R. 67, affirmed, and trustee appealed, and the Court of Appeals, 2017 WL 1131882, certified question to the California Supreme Court as to the extent to which a bankruptcy estate may reach a beneficiary’s interest in spendthrift trust.

**Holding:** The Supreme Court, Liu, J., held that creditor may petition for pending distribution of principal as well as up to 25 percent of future payments.

Question answered.

**1. Trusts ⇌141**

A “spendthrift trust” is a trust that provides that the beneficiary’s interest cannot be alienated before it is distributed to the beneficiary.

See publication Words and Phrases for other judicial constructions and definitions.

**2. Trusts ⇌152**

Creditors of the beneficiary of a spendthrift trust generally cannot reach trust assets while those assets are in the hands of

the trustee, even if they have secured a judgment against the beneficiary; rather, creditors must wait until the trustee makes distributions to the beneficiary.

**3. Trusts ⇌12**

The law permits spendthrift trusts because donors have the right to choose the object of their bounty and to protect their gifts from the donees’ creditors.

**4. Statutes ⇌1076**

Court interpreting a statute seeks to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.

**5. Statutes ⇌1079**

Court interpreting a statute begins by looking to the statutory language.

**6. Statutes ⇌1091, 1151**

Court interpreting a statute must give the language its usual, ordinary import and accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.

**7. Statutes ⇌1156**

A construction of a statute making some words surplusage is to be avoided.

**8. Statutes ⇌1153, 1155, 1216(2)**

The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.

**9. Statutes ⇌1105, 1183, 1242**

If the statutory language is susceptible of more than one reasonable interpretation, court must look to additional canons of statutory construction to determine the Legislature’s purpose; both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

**10. Trusts ⇌152**

The general rule is that principal held in a spendthrift trust may not be touched by creditors until it is paid to the beneficiary. Cal. Prob. Code § 15301(a).

**11. Trusts**  $\approx$ 152

Where trust assets are not protected by a spendthrift provision, the default rule is that creditors may reach those assets. Cal. Civ. Proc. Code § 709.010(b).

**12. Trusts**  $\approx$ 152

After an amount of principal of a spendthrift trust has become due and payable, but has not yet been distributed, a creditor can petition to have the trustee pay directly to the creditor a sum up to the full amount of that distribution unless the trust instrument specifies that the distribution is for the beneficiary's support or education and the beneficiary needs the distribution for those purposes; if no such distribution is pending or if the distribution is not adequate to satisfy a judgment, a general creditor can petition to levy up to 25 percent of the payments expected to be made to the beneficiary, reduced by the amount other creditors have already obtained and subject to the support needs of the beneficiary and any dependents. Cal. Prob. Code §§ 15301(b), 15306.5, 15307.

*See 13 Witkin, Summary of Cal. Law (10th ed. 2005) Trusts, § 151 et seq.*

9th Cir. No. 12-60068, BAP No. CC-11-1433-HPaD, C.D. Cal. Bankr. Nos. 09-14039-MJ, 09-01205-MJ

Finlayson Toffer Roosevelt & Lilly, Jesse S. Finlayson and Matthew E. Lilly, Irvine, for Claimant and Appellant.

Law Offices of David W. Meadows and David W. Meadows, Los Angeles, for Defendant.

The Eroen Law Firm and Robert C. Eroen for Plaintiffs and Respondents.

Liu, J.

Under the terms of a spendthrift trust established by his parents, defendant Rick H. Reynolds is entitled to receive over a million dollars, all to be paid out of trust principal. Reynolds filed for bankruptcy before the trust's first payment, and the bankruptcy trustee seeks to determine what interest the bankruptcy estate has in the trust. The trust is governed by California law, and as the United States Court of Appeals for the Ninth Circuit observed, the relevant statutory pro-

visions are "opaque." (*Frealy v. Reynolds* (9th Cir. 2015) 779 F.3d 1028, 1029 (*Frealy*)). Probate Code section 15306.5 appears to limit the bankruptcy estate to 25 percent of the beneficiary's interest; other provisions of the Probate Code suggest no such limitation. The Ninth Circuit asked us whether the Probate Code limits a bankruptcy estate's access to a spendthrift trust to 25 percent of the beneficiary's interest, where the trust pays the beneficiary entirely out of principal. We hold that the Probate Code does not impose such an absolute limit on a general creditor's access to the trust. With limited exceptions for distributions explicitly intended or actually required for the beneficiary's support, a general creditor may reach a sum up to the full amount of any distributions that are currently due and payable to the beneficiary even though they are still in the trustee's hands, and separately may reach a sum up to 25 percent of any payments that are anticipated to be made to the beneficiary.

**I.**

Reynolds's parents established the Reynolds Family Trust in 2005. The trust contains a spendthrift clause, providing that "no interest in the income or principal of any trust created under this instrument shall be voluntarily or involuntarily anticipated, assigned, encumbered, or subjected to creditor's [*sic*] claim or legal process before actual receipt by the beneficiary." Reynolds's mother Patsy died in 2007. Following her death, Reynolds's father Freddie received all the trust's distributions until Freddie died in 2009.

The trust provides that at Freddie's death, Reynolds is entitled to \$250,000 from the trust if he survives Freddie by 30 days. In addition, Reynolds is entitled to receive \$100,000 a year for 10 years and then one-third of the remainder. All payments are expected to be made from principal; the trust's assets are in undeveloped real estate that do not produce income. Those assets are estimated to be worth several million dollars, although their exact value will not be known until the trust assets are liquidated.

The day after his father died, Reynolds filed for voluntary bankruptcy under chapter

7 of the United States Bankruptcy Code. The trustees of the Reynolds Family Trust sought a declaratory judgment on the extent of the bankruptcy trustee's interest in the trust. The bankruptcy court held that under the California Probate Code, the bankruptcy trustee standing as a hypothetical lien creditor could reach 25 percent of Reynolds's interest in the trust. The bankruptcy appellate panel affirmed. The bankruptcy trustee appealed to the Ninth Circuit, which asked us to clarify if Probate Code section 15306.5 caps a bankruptcy estate's access to a spendthrift trust at 25 percent of the beneficiary's interest where the trust pays entirely from principal. We granted the Ninth Circuit's request.

## II.

[1–3] A spendthrift trust is a trust that provides that the beneficiary's interest cannot be alienated before it is distributed to the beneficiary. Creditors of the beneficiary generally cannot reach trust assets while those assets are in the hands of the trustee, even if they have secured a judgment against the beneficiary. Rather, creditors must wait until the trustee makes distributions to the beneficiary. The law permits such trusts because donors have “the right to choose the object of [their] bounty” and to protect their gifts from the donees' creditors. (*Canfield v. Security-First Nat. Bank* (1939) 13 Cal.2d 1, 11, 87 P.2d 830 (*Canfield*)). Providing donors some measure of control over their gifts encourages donors to make those gifts, to the benefit of the donor, the beneficiary, and ultimately the beneficiary's creditors.

Under the Probate Code, spendthrift provisions are generally valid as to both trust income and trust principal. (Prob. Code, §§ 15300 [trust income], 15301, subd. (a) [trust principal]; all statutory references are to the Probate Code unless otherwise noted.) Yet creditors need not always wait for distributions to reach the debtor's hands. Spendthrift provisions are invalid when grantors name themselves beneficiaries. (§ 15304, subd. (a).) When a trust includes a valid spendthrift provision, certain creditors may reach into the trust. Such creditors include those with claims for spousal or child support

(§ 15305) and those with restitution judgments (§ 15305.5). In addition, a state or local public entity can reach trust assets when the beneficiary owes money for public support (§ 15306, subd. (a)) unless distributions from the trust are required to care for a disabled beneficiary (§ 15306, subd. (b)).

Even general creditors, including a bankruptcy trustee standing as a hypothetical lien creditor, have some recourse under three provisions: section 15301, subdivision (b) (section 15301(b)), section 15306.5, and section 15307. The question here is how much access to trust principal a general creditor has under these provisions.

[4–9] This is a question of statutory construction. We seek to “ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.) “[W]e begin by looking to the statutory language. [Citation.] We must give ‘the language its usual, ordinary import and accord[ ] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.’ [Citation.] If the statutory language is susceptible of more than one reasonable interpretation, we must look to additional canons of statutory construction to determine the Legislature's purpose. [Citation.] ‘Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.’” (*McCarthy v. Pacific Telesis Group* (2010) 48 Cal.4th 104, 110, 105 Cal.Rptr.3d 404, 225 P.3d 538.)

In construing the provisions at issue, we are mindful that the Reynolds Family Trust is distinctive in directing all disbursements to be made from principal. In other trusts, productive assets produce periodic income payments during the life of the trust, and preserving principal is one of the trustee's paramount duties. (See 76 Am.Jur.2d (2016)

Trusts, § 429.) It is common for trusts to specify that the principal may not be distributed for many years, and liquidating principal may signal that the trust's purpose has been fulfilled. We are also mindful that this case arises out of a bankruptcy proceeding. Ordinarily, a judgment creditor who is unable to satisfy all of the judgment out of the beneficiary's trust interest may continue to attempt to collect on the balance of the judgment from whatever other assets the beneficiary may have. Here, however, the amount Reynolds's creditors will receive depends on the reach of the bankruptcy trustee. Any remaining debts after the bankruptcy process will be extinguished, and any further distributions will be unencumbered. (11 U.S.C. § 541(c)(2).) That spendthrift provisions can work to beneficiaries' advantage in bankruptcy in this way has long been recognized as a characteristic of such provisions. (See Rest.3d Trusts, § 58, com. a ["An important byproduct of the limited spendthrift protection, however, is the again limited but nevertheless important insulation that may result from a discharge in bankruptcy."].)

#### A.

We begin with section 15301(b), which provides in pertinent part: "After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court under Section 709.010 of the Code of Civil Procedure by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount." Section 709.010 of the Code of Civil Procedure (section 709.010) sets forth the procedure for a judgment creditor to petition a court to satisfy the judgment out of the debtor's trust interests.

As the Ninth Circuit observed, the statute does not define "due and payable." (*Frealy, supra*, 779 F.3d at p. 1033.) The phrase is used in other provisions such as section 15305, which provides that creditors with judgments for child or spousal support may petition a court to satisfy their judgments out of disbursements of either income or principal "as they become due and payable, presently or in the future." (§ 15305, subd. (b).)

Any disbursement from the trust would appear to be due and payable in the sense the phrase is used in section 15305. But, as the Ninth Circuit recognized, applying such a reading to section 15301(b) could mean that creditors have "immediate access to all of a beneficiary's trust principal," which would eliminate spendthrift protections as to principal entirely. (*Frealy*, at p. 1033.)

We do not think the Legislature intended to remove all protections from trust principal immediately after specifying that spendthrift provisions are generally valid as applied to principal. (§ 15301, subd. (a).) Instead, the Legislature provided the limiting principle in the introductory clause of section 15301(b): "After an amount of principal *has become* due and payable . . ." (Italics added.) This clause indicates that timing is critical: section 15301(b) reaches only those amounts which are presently set to be paid to the beneficiary. The provision thus requires an amount of principal to "ha[ve] become" due to the beneficiary, at which point upon a creditor's petition the court may enter an order "directing the trustee to satisfy the money judgment out of *that principal amount*." (§ 15301(b), italics added.) In other words, under this provision creditors may reach the principal already set to be distributed and only up to the extent of that distribution. Such principal has served its trust purposes, and in many (but not all) cases, the distribution may signal that the trust is ending. Section 15301(b) makes these assets, and these assets only, fair game to creditors.

[10] In this light, section 15301(b) is properly viewed not as an exception to the general spendthrift protections but as a corollary. The general rule is that principal held in a spendthrift trust may not be touched by creditors until it is paid to the beneficiary. (§ 15301, subd. (a).) Section 15301(b) adds that once an amount of principal has become due and payable, the court can order the trustee to pay that amount directly to the beneficiary's creditors instead. A distribution of principal is reasonably understood to signify that the amount distributed has satisfied its trust purposes. Because the beneficiary's interest in those assets has effectively vested, the law no longer has any interest in protect-

ing them (except as provided in section 15302, as explained below).

The legislative history points the same way. The provisions at issue date from the Law Revision Commission's 1986 proposed revisions to the Probate Code. (See Selected 1986 Trust and Probate Legislation (Sep. 1986) 18 Cal. Law Revision Com. Rep. (1986) pp. 1321–1479 (1986 Report); Stats. 1986, ch. 820, § 40, as reenacted by Stats 1990, ch. 79, § 14.) The revisions were designed to remedy the patchwork nature of the prior statutory framework while largely continuing existing law. (1986 Report, *supra*, at pp. 1221–1222, 1302–1306.) Prior California statutes had not made clear that spendthrift provisions were valid as applied to principal, though case law generally suggested they were. (*Id.* at p. 1302; see *Seymour v. McAvoy* (1898) 121 Cal. 438, 444, 53 P. 946; *San Diego Trust etc. Bank v. Heustis* (1932) 121 Cal. App. 675, 683–684, 10 P.2d 158.) The Commission's report, to which we give “substantial weight” (*Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 249, 66 Cal.Rptr. 20, 437 P.2d 508, overruled on other grounds in *Privette v. Superior Court* (1993) 5 Cal.4th 689, 21 Cal. Rptr.2d 72, 854 P.2d 721), notes that the drafters sought to codify the validity of spendthrift provisions as applied to trust principal in section 15301, subdivision (a) (section 15301(a)). (1986 Report, *supra*, at p. 1302.) But the drafters also sought to clarify that once principal was due and payable, creditors could reach it both “in the hands of the trustee and after payment to the beneficiary.” (*Id.* at pp. 1302–1303.) In other words, spendthrift protections do not apply to section 15301(b) assets.

Importantly, creditors' access under section 15301(b) is not unlimited. Section 15302 explains that where the trust instrument specifies that a distribution, whether from income or principal, is for the beneficiary's support or education, the amount the beneficiary actually needs for either purpose may not be reached by creditors until in the hands of the beneficiary. Section 15302 explicitly provides that it does not apply where creditors seek access under sections 15304 through 15307, but section 15302 does not exclude orders under section 15301(b). Sec-

tion 15302 thus provides limited continued protection to former trust assets where the donor specifically intended the distribution to support the beneficiary. This protection encourages donors to provide for beneficiaries' support and helps to prevent beneficiaries' from becoming public charges. (See *Canfield, supra*, 13 Cal.2d at p. 11, 87 P.2d 830.)

## B.

We now turn to sections 15306.5 and 15307. Both provisions are exceptions to the general validity of spendthrift provisions as applied to trust principal established by section 15301(a). Section 15306.5, subdivision (a) (section 15306.5(a)) provides that any judgment creditor can petition a court to order the trustee to satisfy the judgment out of payments to which the beneficiary is entitled. But those orders are limited to “25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary” (§ 15306.5, subd. (b)), and they cannot cut into any amount required to support the beneficiary or the beneficiary's dependents (§ 15306.5, subd. (c)). Section 15307, for its part, provides: “Notwithstanding a restraint on transfer of a beneficiary's interest in the trust under Section 15300 or 15301, any amount to which the beneficiary is entitled under the trust instrument . . . in excess of the amount that is or will be necessary for the education and support of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary. 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.”

Section 15307 thus appears to allow any creditor to access all of a beneficiary's interest in a spendthrift trust besides what is necessary for the beneficiary's education and support, whereas section 15306.5 limits creditors to only 25 percent of the same interest. How are these two provisions to be reconciled?

One possibility is that section 15307 is only meant to apply to income, not principal. It is true that the Law Revision Commission titled this provision “Income in excess of

amount for education and support subject to creditors' claims." (1986 Report, *supra*, 18 Cal. Law Revision Com. Rep. at p. 1340; see also Cal. Law Revision Com. com., 54 West's Ann. Prob. Code (1991 ed.) foll. § 15307, p. 562 (West's Annotated Code) ["Section 15307 permits an ordinary creditor to reach income under limited circumstances."]; 13 Witkin, Summary of Cal. Law (10th ed. 2005) Trusts, § 155 ["Under the Trust Law, surplus income may be reached to satisfy creditors' claims."].) But this title was not part of the official legislative enactments (see Stats. 1986, ch. 820, § 40) and therefore cannot have any bearing on the interpretation of the statute (58 Cal.Jur.3d (2017) Statutes, § 177). Moreover, section 15301(a), which applies only to principal, specifically refers to section 15307, and section 15307 provides that it applies "[n]otwithstanding . . . [section] 15301." Both references would be unnecessary if section 15307 only applied to income. (See also 1986 Report, *supra*, at p. 1305 [§ 15307 applies "notwithstanding a restraint on transfer of income *or principal* in the trust instrument" (italics added)].) In any event, excluding principal from section 15307 would not resolve the tension between sections 15306.5 and 15307 for income. We thus conclude that section 15307 applies to both income and principal, as its text plainly says.

The bankruptcy trustee suggests that section 15307 serves a different purpose from section 15306.5 by setting a higher bar for creditors than section 15306.5. Under this theory, general creditors have "automatic" access to 25 percent of beneficiaries' trust interest under section 15306.5, with the burden on the beneficiaries to prove that this should be reduced in light of their support needs and those of their dependents. But in exceptional circumstances, the argument goes, general creditors can turn to section 15307 to reach beyond the 25 percent cap if they can show that exceeding the cap would be equitable and would not cut into the beneficiaries' support or education needs.

The bankruptcy trustee's theory might reflect sensible policy and may find some support in the Law Revision Commission's unelaborated comment that section 15307 applies "under limited circumstances." (West's Ann.

Prob. Code, *supra*, at p. 562.) However, nothing in the statutes suggests that obtaining an order under section 15307 involves any different burden or standard of proof than obtaining an order under any other section. On the contrary, section 15307 contains the same reference to section 709.010 of the Code of Civil Procedure as does section 15306.5(a). Section 709.010, for its part, does not specify any special burdens or procedures for orders under section 15307. The bankruptcy trustee does not cite any authority in support of its theory.

Instead, the more likely answer is that section 15307 reflects a drafting error. Before the 1986 revisions, spendthrift trusts were governed by three key provisions. The first was former section 867 of the Civil Code, which generally permitted spendthrift provisions as applied to income. (Recommendation Proposing the Trust Law (Dec. 1985) 18 Cal. Law Revision Com. Rep. (1985) p. 596 (1985 Report).) The second provision was former section 859 of the Civil Code, which allowed creditors to reach the "surplus" beyond the beneficiary's education and support in the limited instances where the trust instrument did not specify what to do with accumulating income. (1985 Report, *supra*, at p. 597, fn. 390, quoting Civ. Code, former § 859; see *Estate of Lawrence* (1968) 267 Cal.App.2d 77, 82, 72 Cal.Rptr. 851 [trust provision specifying that "[a]ll unexpended portions of the net income . . . shall be accumulated, added to, and become a part of the principal" is valid direction for the accumulation of income].) Moreover, former section 859 said it applied "as provided in Section 709.010 of the Code of Civil Procedure," the third key provision governing spendthrift trusts. (1985 Report, *supra*, at p. 597, fn. 390.) At the time, former section 709.010 applied by reference the principles of the wage garnishment statute to periodic trust payments, capping payments at 25 percent for general creditors and 50 percent for support creditors. (1985 Report, *supra*, at pp. 597-599, fn. 392, quoting former § 709.010.) So, where former section 859 applied, general creditors were capped at 25 percent of periodic payments to beneficiaries.

The Commission's original proposal reworked those provisions into the current framework. Former section 867 of the Civil Code was the basis for proposed section 15300. (1985 Report, *supra*, 18 Cal. Law Revision Com. Rep. at p. 625.) Former section 859 of the Civil Code formed the basis for proposed section 15307, though section 15307's scope is much broader as it seemingly applies to all trust assets and not just undirected accumulations of income. (See 1985 Report, *supra*, at p. 633.) And although section 15307, like former section 859, retained a reference to section 709.010 of the Code of Civil Procedure, that reference would have been to a much changed provision, for the proposal also contemplated amending former section 709.010 to remove its references to the wage garnishment statute. (1985 Report, *supra*, at p. 766.) Some of the removed provisions were given new homes; for example, the provision giving preferred access to support creditors became proposed section 15305, which also removed the 50 percent cap. (1985 Report, *supra*, at pp. 630–631.) The 25 percent cap that had applied to general creditors was not retained anywhere; if the 1985 proposal had been enacted as written, the new law would have dramatically increased the reach of general creditors.

But the revised draft of the Trust Law in 1986, which was ultimately enacted, included for the first time section 15306.5. (1986 Report, *supra*, 18 Cal. Law Revision Com. Rep. at p. 1339; see Stats. 1986, ch. 820, § 40.) This new section drew on former section 709.010 and the wage garnishment statute to create an explicit 25 percent cap on trust interests comparable to the cap protecting wages. (1986 Report, *supra*, at p. 1339.) In the process, the Commission did not meaningfully revise its proposal for section 15307 (compare 1985 Report, *supra*, 18 Cal. Law Revision Com. Rep. at p. 633, with 1986 Report, *supra*, at p. 1340), nor did the Commission clarify the role of section 15307 in light of section 15306.5. The result is that unlike Civil Code former section 859, which it purportedly replaced, section 15307 refers to a version of section 709.010 that no longer imposes a cap on general creditors, even as it follows a new provision, section 15306.5, that

reestablishes that same cap. In light of this history, we decline to adopt an interpretation of section 15307 that simply undoes the limitations on general creditors that section 15306.5 sets forth in a set of specific and carefully calibrated provisions. We conclude instead that the ultimate enactment of section 15307 without apparent limitations on the reach of general creditors was inadvertent. The Legislature plainly intended general creditors to be limited to 25 percent of distributions from the trust.

### C.

The final issue we must address is whether the 25 percent limitation of section 15306.5 applies to section 15301(b). Section 15306.5, subdivision (f) (section 15306.5(f)) provides: “Subject to subdivision (d), 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.” Unlike section 15306.5(b)’s reference to “[a]n order under this section,” the language of section 15306.5(f)—“all orders for satisfaction of money judgments”—is not limited to orders under section 15306.5. One possibility, therefore, is that section 15306.5(f)’s cap extends to all orders under any provision of the Probate Code.

We need not decide the full reach of the 25 percent cap under 15306.5(f) as this case involves only the scope of sections 15301(b) and 15306.5. Whatever other orders may be subject to section 15306.5(f)’s cap, we conclude that the cap does not apply to orders under section 15301(b). As explained above, section 15306.5 was modeled on the wage garnishment statute then in force (Code Civ. Proc., former § 706.050 et seq., as enacted by Stats. 1982, ch. 1364, § 2) and provides creditors a limited exception to spendthrift protections on the beneficiary’s continuing interest in the trust. As the use of the conditional in section 15306.5(f) suggests, “the payment that otherwise *would be made to*” the beneficiary is best understood as referring to ongoing payments the beneficiary stands to receive. (*Italics added.*) The cap thus operates to limit the sum of orders subject to section

15306.5(f)'s cap to 25 percent of any individual expected distribution.

[11] By contrast, section 15301(b) makes clear that spendthrift protections do not apply to distributions of principal that have become due and payable. Where trust assets are not protected by a spendthrift provision, the default rule is that creditors may reach those assets. (See § 709.010, subd. (b).) By crafting a specific rule for this narrow class of assets, the Legislature indicated its intent that those assets be treated differently. (See *Miller v. Superior Court* (1999) 21 Cal.4th 883, 895, 89 Cal.Rptr.2d 834, 986 P.2d 170 [“ “A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.” [Citation.]”].) Applying section 15306.5(f)'s cap to section 15301(b) assets would defeat the Legislature's specific intent to treat due and payable principal “in the hands of the trustee” on par with such principal “after payment to the beneficiary.” (See 1986 Report, *supra*, 18 Cal. Law Revision Com. Rep. at pp. 1302–1303.)

[12] In sum, after an amount of principal has become due and payable (but has not yet been distributed), a creditor can petition to have the trustee pay directly to the creditor a sum up to the full amount of that distribution (§ 15301(b)) unless the trust instrument specifies that the distribution is for the beneficiary's support or education and the beneficiary needs the distribution for those purposes (§ 15302). If no such distribution is pending or if the distribution is not adequate to satisfy a judgment, a general creditor can petition to levy up to 25 percent of the payments expected to be made to the beneficiary, reduced by the amount other creditors have already obtained and subject to the support needs of the beneficiary and any dependents. (§ 15306.5.)

As an illustration, suppose a trust instrument specified that a beneficiary was to receive distributions of principal of \$10,000 on March 1 of each year for 10 years. Suppose further that a general creditor had a money judgment of \$50,000 against the beneficiary

and that the trust distributions are neither specifically intended nor required for the beneficiary's support. On March 1 of the first year, upon the creditor's petition a court could order the trustee to remit the full distribution of \$10,000 for that year to the creditor directly if it has not already been paid to the beneficiary, as well as \$2,500 from each of the nine anticipated payments (a total of \$22,500) as they are paid out. If the creditor were not otherwise able to satisfy the remaining \$17,500 balance on the judgment, then on March 1 of the following years, upon the general creditor's petition the court could order the trustee to pay directly to the creditor a sum up to the remainder of that year's principal distribution (\$7,500), as the court in its discretion finds appropriate, until the judgment is satisfied.

#### CONCLUSION

We conclude that a bankruptcy trustee, standing as a hypothetical judgment creditor, can reach a beneficiary's interest in a trust that pays entirely out of principal in two ways. It may reach up to the full amount of any distributions of principal that are currently due and payable to the beneficiary, unless the trust instrument specifies that those distributions are for the beneficiary's support or education and the beneficiary needs those distributions for either purpose. Separately, the bankruptcy trustee can reach up to 25 percent of any anticipated payments made to, or for the benefit of, the beneficiary, reduced to the extent necessary by the support needs of the beneficiary and any dependents.

We Concur:

Cantil-Sakauye, C.J.

Werdegar, J.

Chin, J.

Corrigan, J.

Cuellar, J.

Kruger, J.



## [Blech v. Blech](#)

Court of Appeal of California, Second Appellate District, Division Three

August 15, 2019, Opinion Filed

B288074

### Reporter

38 Cal. App. 5th 941 \*; 2019 Cal. App. LEXIS 760 \*\*; 251 Cal. Rptr. 3d 507; 2019 WL 3823776

RAYMOND BLECH et al., Plaintiffs and Respondents  
v. RICHARD BLECH, Defendant and Appellant

**Subsequent History:** Review denied by [Blech v. Blech](#),  
[2019 Cal. LEXIS 8252 \(Cal., Oct. 30, 2019\)](#)

**Prior History:** APPEAL from an order of the Superior  
Court of Los Angeles County, No. BP13575 [\*\*1],  
Lesley C. Green, Judge.

[Blech v. Blech](#), [25 Cal. App. 5th 989](#), [236 Cal. Rptr. 3d 430](#), [2018 Cal. App. LEXIS 687 \(Aug. 6, 2018\)](#)

**Disposition:** Affirmed.

### Core Terms

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disbursement, distributions, money judgment, petitions, judgment creditor, percent, annual, directing, amount of principal, satisfaction, Probate, beneficial interest, file a petition, funds, spendthrift provision, trust instrument, inherent power, court erred, contends, sibling, enforce a judgment, spendthrift trust, trust beneficiary, general creditor, subdivision, judgments, sentence

### Case Summary

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### Overview

HOLDINGS: [1]-Because a creditor may file a petition under [Prob. Code, § 15301, subd. \(b\)](#), to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable, a probate court did not err by considering four judgment creditors' petitions to enforce their money judgments against a judgment debtor, who was the beneficiary of a spendthrift trust, before the principal disbursement was due and payable to the debtor; [2]-The probate court did not err in directing the trustee to withhold the debtor's January 2018 disbursement until after the court issued its final order on the creditors' petitions, as it acted within the broad scope of its equitable authority; [3]-The trust at issue was not a support trust because the distributions of income and principal were mandatory and based on factors other than the beneficiary's education and support.

### Outcome

Order affirmed.

### LexisNexis® Headnotes

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Governments > Legislation > Interpretation

[HNI](#) Legislation, Interpretation

In interpreting statutes, courts seek to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. Courts begin by looking to the statutory language. Courts must give the language its usual, ordinary import and accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. If the statutory language is susceptible of more than one reasonable interpretation, courts must look to additional canons of statutory construction to determine the legislature's purpose. Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

Estate, Gift & Trust Law > Trusts > Spendthrift  
Trusts > Exceptions to Enforceability

### [HN2](#) **Spendthrift Trusts, Exceptions to Enforceability**

Where a trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer (i.e., is a spendthrift trust), the interest is not generally subject to enforcement of a money judgment until payment is made to the beneficiary. *Prob. Code, §§ 15300, 15301*. Under the California Probate Code, only a few categories of creditors may reach a beneficiary's interest in trust principal before it is paid, notwithstanding a spendthrift provision. Such creditors include those with claims for spousal or child support, *Prob. Code, § 15305*, and those with restitution judgments. *Prob. Code, § 15305.5*. In addition, a state or local public entity can reach trust assets when the beneficiary owes money for public support, *Prob. Code, § 15306, subd. (a)*, unless distributions from the trust are required to care for a disabled beneficiary. *§ 15306, subd. (b)*. General creditors have more limited remedies with respect to a debtor's interest in a trust containing a spendthrift provision.

Estate, Gift & Trust Law > Trusts > Spendthrift

Trusts > Exceptions to Enforceability

### [HN3](#) **Spendthrift Trusts, Exceptions to Enforceability**

Under *Prob. Code, § 15306.5*, a general creditor may obtain a court order directing the trustee to pay up to 25 percent of a beneficiary's future trust distributions directly to the creditor until that creditor's money judgment is satisfied. But even that limited reach is further restricted by *§ 15306.5, subd. (c)*, which protects amounts needed for the support of the beneficiary and his or her dependents. And under *§ 15306.5, subd. (f)*, if multiple creditors seek to reach the beneficiary's interest in future distributions, all the creditors combined may only reach 25 percent of those distributions.

Estate, Gift & Trust Law > Trusts > Spendthrift  
Trusts > Exceptions to Enforceability

### [HN4](#) **Spendthrift Trusts, Exceptions to Enforceability**

Under *Prob. Code, § 15301, subd. (b)*, creditors may reach the principal already set to be distributed and only up to the extent of that distribution. Such principal has served its trust purposes. *Section 15301, subd. (b)*, makes these assets, and these assets only, fair game to creditors. The general rule is that principal held in a spendthrift trust may not be touched by creditors until it is paid to the beneficiary. *§ 15301, subd. (a)*. *Section 15301, subd. (b)*, adds that once an amount has become due and payable, the court can order the trustee to pay that amount directly to the beneficiary's creditors instead. A distribution of principal is reasonably understood to signify that the amount distributed has satisfied its trust purposes. Because the beneficiary's interest in those assets has effectively vested, the law no longer has any interest in protecting them (except as provided in § 15302).

Governments > Courts > Judicial Precedent

### [HN5](#) **Courts, Judicial Precedent**

Cases are not authority for propositions not considered.

Civil Procedure > Judgments > Enforcement & Execution > Writs of Execution

Estate, Gift & Trust Law > Trusts > Spendthrift Trusts

### [HN6](#) **Enforcement & Execution, Writs of Execution**

A creditor may file a petition under [Prob. Code, § 15301, subd. \(b\)](#), to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable.

Civil Procedure > Appeals > Appellate Briefs

Evidence > Burdens of Proof > Allocation

Civil Procedure > Appeals > Reviewability of Lower Court Decisions

Civil Procedure > Appeals > Standards of Review

### [HN7](#) **Appeals, Appellate Briefs**

A trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited.

Governments > Courts > Authority to Adjudicate

### [HN8](#) **Courts, Authority to Adjudicate**

California courts have inherent power to control their proceedings. From their creation by [Cal. Const., art. VI, § 1](#), California courts received broad inherent power not confined by or dependent on statute. This inherent power includes fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation. This inherent power of a trial court is to be exercised to achieve justice and prevent misuse of its process.

Business & Corporate Compliance > ... > Estate, Gift & Trust Law > Trusts > Trust Administration

Governments > Courts > Authority to Adjudicate

Estate, Gift & Trust Law > ... > Private Trusts Characteristics > Trustees > Removal & Resignation

### [HN9](#) **Trusts, Trust Administration**

A court sitting in probate has the inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of a trust. This inherent equitable power of the probate court has long been recognized to encompass the authority to take remedial action. Such remedial action may include removing a trustee or suspending a portion of the trustee's power based on a trustee's misconduct.

## Headnotes/Summary

### **Summary**

[\*941] CALIFORNIA OFFICIAL REPORTS SUMMARY

Four judgment creditors filed petitions to enforce their money judgments under [Prob. Code, § 15301, subd. \(b\)](#), against a judgment debtor who was the beneficiary of a spendthrift trust created by his father. The creditors sought an order directing the trustee to pay a portion of the debtor's January 2018 principal disbursement to the creditors in partial satisfaction of their money judgments. The probate court granted the petitions. (Superior Court of Los Angeles County, No. BP13575, Lesley C. Green, Judge.)

The Court of Appeal affirmed the order. The court held that a creditor may file a petition under [Prob. Code, § 15301, subd. \(b\)](#), to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable. Accordingly, the court rejected the debtor's assertion that the probate court erred in entertaining the creditors' petitions because they were premature. The probate court acted within the broad scope of its equitable authority when it directed

the trustee to withhold the debtor's January 2018 disbursement until after it issued its final order on the creditors' petitions. The court found that the trust at issue was not a support trust. Instead, the distributions of income and principal were mandatory and based on factors other than the debtor's education and support. Accordingly, the probate court did not err by not conducting a further hearing to determine what portion of the debtor's annual principal distribution should not be reached by the creditors because it was necessary for his support and the support of his dependents. The court concluded that any error by the probate court in not addressing the personal receipt provision of the trust was not prejudicial because the provision was plainly discretionary and would not, in any event, allow the debtor to avoid his creditors to the extent they had rights provided under *Prob. Code, §§ 15306.5, 15301*. (Opinion by Lavin, J., with Edmon, P. J., and Dhanidina, J., concurring.)

#### Headnotes

#### CALIFORNIA OFFICIAL REPORTS HEADNOTES

#### [CA\(1\)](#) [↓] (1)

##### **Statutes § 21—Construction—Legislative Intent—Language—Context—Harmonization—Ambiguity—Extrinsic Aids.**

In interpreting statutes, courts seek to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. Courts begin by looking to the statutory language. Courts must give the language its usual, ordinary import and accord significance, if possible, to every word, phrase, and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. If the statutory language is susceptible of more than one reasonable interpretation, courts must look to additional canons of statutory construction to determine the Legislature's purpose. Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

#### [CA\(2\)](#) [↓] (2)

##### **Trusts § 35—Spendthrift—Creditors of Beneficiaries—Categories—Reaching of Principal.**

Where a trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer (i.e., is a spendthrift trust), the interest is not generally subject to enforcement of a money judgment until payment is made to the beneficiary (*Prob. Code, §§ 15300, 15301*). Under the Probate Code, only a few categories of creditors may reach a beneficiary's interest in trust principal before it is paid, notwithstanding a spendthrift provision. Such creditors include those with claims for spousal or child support (*Prob. Code, § 15305*) and those with restitution judgments (*Prob. Code, § 15305.5*). In addition, a state or local public entity can reach trust assets when the beneficiary owes money for public support (*Prob. Code, § 15306, subd. (a)*) unless distributions from the trust are required to care for a disabled beneficiary (*§ 15306, subd. (b)*). General creditors have more limited remedies with respect to a debtor's interest in a trust containing a spendthrift provision.

#### [CA\(3\)](#) [↓] (3)

##### **Trusts § 35—Spendthrift—General Creditors of Beneficiaries—Future Distributions—Limitations.**

Under *Prob. Code, § 15306.5*, a general creditor may obtain a court order directing the trustee to pay up to 25 percent of a beneficiary's future trust distributions directly to the creditor until that creditor's money judgment is satisfied. But even that limited reach is further restricted by *§ 15306.5, subd. (c)*, which protects amounts needed for the support of the beneficiary and his or her dependents. And under *§ 15306.5, subd. (f)*, if multiple creditors seek to reach the beneficiary's interest in future distributions, all the creditors combined may only reach 25 percent of those distributions.

#### [\*943] [CA\(4\)](#) [↓] (4)

##### **Trusts § 35—Spendthrift—Judgment Creditors of Beneficiaries—Reaching of Principal.**

Under *Prob. Code, § 15301, subd. (b)*, creditors may reach the principal already set to be distributed and only up to the extent of that distribution. Such principal has served its trust purposes. *Section 15301, subd. (b)*, makes these assets, and these assets only, fair game to creditors. The general rule is that principal held in a spendthrift trust may not be touched by creditors until it is paid to the beneficiary (*§ 15301, subd. (a)*). *Section 15301, subd. (b)*, adds that once an amount of principal has become due and payable, the court can order the trustee to pay that amount directly to the beneficiary's creditors instead. A distribution of principal is reasonably understood to signify that the amount distributed has satisfied its trust purposes. Because the beneficiary's interest in those assets has effectively vested, the law no longer has any interest in protecting them (except as provided in § 15302).

[CA\(5\)](#) [↓] (5)

**Trusts § 35—Spendthrift—Judgment Creditors of Beneficiaries—Petition to Enforce Money Judgment—Timing.**

The probate court did not err by considering the judgment creditors' petitions to enforce their money judgments against the judgment debtor, who was the beneficiary of a spendthrift trust, before the principal disbursement was due and payable to the debtor. Although the debtor contended that *Prob. Code, § 15301, subd. (b)*, barred a creditor from filing a petition to enforce a judgment before a trust distribution was due and payable, the plain language of the statute did not support his interpretation.

[*Cal. Forms of Pleading and Practice (2019) ch. 560I, Trusts: Transactions Involving Third Parties, § 560I.31.*]

[CA\(6\)](#) [↓] (6)

**Courts § 37—Decisions and Orders—Doctrine of Stare Decisis.**

Cases are not authority for propositions not considered.

[CA\(7\)](#) [↓] (7)

**Trusts § 35—Spendthrift—Creditors of Beneficiaries—Petition to Enforce Money Judgment—Timing.**

A creditor may file a petition under *Prob. Code, § 15301, subd. (b)*, to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable.

[CA\(8\)](#) [↓] (8)

**Courts § 5—Powers—Inherent.**

California courts have inherent power to control their proceedings. From their creation by *Cal. Const., art. VI, § 1*, California courts received broad inherent power not confined by or dependent on statute. This inherent power includes fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation. This inherent power of a trial court is to be exercised to achieve justice and prevent misuse of its process.

[\*944] [CA\(9\)](#) [↓] (9)

**Trusts § 1—Powers of Probate Court—Remedial Action.**

A court sitting in probate has the inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of a trust. This inherent equitable power of the probate court has long been recognized to encompass the authority to take remedial action. Such remedial action may include removing a trustee or suspending a portion of the trustee's power based on a trustee's misconduct.

**Counsel:** Law Office of Adam L. Streltzer, Adam L. Streltzer and Darius Anthony Vosylius for Defendant and Appellant.

Keystone Law Group, Shawn S. Kerendian and Lindsey F. Munyer for Plaintiff and Respondent Raymond Blech.

Wolf, Rifkin, Shapiro, Schulman & Rabkin and Christopher J. Heck for Plaintiffs and Respondents Robert Bleck and Linda Sue Gear.

Tantalo & Adler and Michael S. Adler for Plaintiff and Respondent WGC Sports, LLC.

**Judges:** Opinion by Lavin, J., with Edmon, P. J., and Dhanidina, J., concurring.

**Opinion by:** Lavin, J.

## Opinion

LAVIN, J.—

### INTRODUCTION

Although a judgment creditor may generally attempt to enforce a money judgment against most assets of a debtor, such a creditor may not reach a debtor's interest in a trust if the trust includes a spendthrift provision. In that event, the creditor must obtain an order under *Probate Code*<sup>1</sup> [section 15301, subdivision \(b\)](#) ([section 15301\(b\)](#)), instructing the trustee to pay the creditor once a trust disbursement is due and payable to the debtor. Related sections of the Probate Code provide additional creditor remedies and protections for trust beneficiaries.

Richard Blech<sup>2</sup> is the beneficiary of a spendthrift trust created by his father. **[\*\*2]** The trust provides, among other things, for annual distributions of trust **[\*945]** principal over the course of 10 years. Four of Richard's judgment creditors (three of his siblings and an unrelated company) obtained an order from the probate

court under [section 15301\(b\)](#), directing the trustee to pay a portion of Richard's 2018 principal disbursement to the creditors in partial satisfaction of their money judgments. Richard appeals.

Richard asserts four arguments in this appeal. First, he contends the court should not have considered the creditors' petitions because they were filed before his principal disbursement was due and payable. We conclude [section 15301\(b\)](#) permits the procedure used in this case. Second, Richard argues the court improperly directed the trustee to withhold Richard's January 2018 disbursement until after the court issued its final order on the creditors' petitions. We conclude the court acted within the broad scope of its equitable authority. Third, Richard claims the court erred when it declined to rule from the bench (before his disbursement was due and payable) and instead issued a written ruling a few days later (after the disbursement was due and payable). We see no error in the court's approach. **[\*\*3]** And fourth, Richard contends the trust required the trustee to make all payments directly to him, in contravention of [section 15301\(b\)](#). The trust does not so provide. Accordingly, we affirm.

### FACTS AND PROCEDURAL BACKGROUND

#### 1. *Arthur's Estate Plan*

Arthur Blech died in 2011, leaving behind a substantial legacy for his four adult children, Raymond Blech, Robert Blech,<sup>3</sup> Richard Blech, and Linda Sue Gear (also known as Jenifer Rush). Arthur's estate plan consisted of the Arthur Blech Living Trust and a will providing that certain of Arthur's assets would be poured over into the trust upon his death. The trust became irrevocable after Arthur died and, pursuant to its terms, was divided among the children into four unequal shares, to be held in trust for 10 years.<sup>4</sup> The trust provides for quarterly distributions of income and annual distributions of principal.

Two specific provisions of the trust are of interest here.

<sup>1</sup>All undesignated statutory references are to the Probate Code.

<sup>2</sup>We refer to the family members by their first names in the interest of clarity.

<sup>3</sup>Robert was born "Robert Blech" but changed his name to "Robert Bleck."

<sup>4</sup>Raymond received 35 percent, Linda received 15 percent, and Richard and Robert each received 25 percent.

First, the trust requires the trustee to distribute trust principal annually to each of the four children for 10 years. The trustee is given no discretion in this regard, as the trust provides in paragraph 5.7:

[\*946]

“The following fractional shares of principal after retention of reasonable reserves shall [\*\*4] be distributed to each beneficiary out of such beneficiary's share:

“(a) One-tenth (1/10) one (1) year after Grantor's death.

“(b) One-ninth (1/9) two (2) years after Grantor's death.

“(c) One-eighth (1/8) three (3) years after Grantor's death.

“(d) One-seventh (1/7) four (4) years after Grantor's death.

“(e) One-sixth (1/6) five (5) years after Grantor's death.

“(f) One-fifth (1/5) six (6) years after Grantor's death.

“(g) One-fourth (1/4) seven (7) years after Grantor's death.

“(h) One-third (1/3) eight (8) years after Grantor's death.

“(i) One-half (1/2) nine (9) years after Grantor's death.

“(j) The balance ten (10) years after Grantor's death.”

Second, the trust contains a spendthrift provision designed to protect trust assets from the reach of the beneficiaries' creditors. Specifically, paragraph 10.1 of the trust provides: “No interest of any Beneficiary of any Trust created in this Trust Agreement shall be subject to sale, assignment, hypothecation or transfer nor shall the principal of any Trust or the income arising therefrom, be liable for any debt of any Beneficiary or be subject to attachment by or the interference by or control of any creditor of any Beneficiary or be taken or reached [\*\*5] by any legal or equitable process in satisfaction of any debt or liability of any Beneficiary, including, without limitation, the process of any court in aid of execution of judgment so rendered. All of the income and principal under any Trust shall be transferable, payable and deliverable only to the designated Beneficiary at the time the Beneficiary is entitled to take under the terms of this Trust. The

personal receipt of the Beneficiary may be made a condition precedent to the payment or delivery by the Trustee to that Beneficiary. The Trustee may, however, deposit in any bank designated in writing by a Beneficiary, to his or her credit, income or principal payable to that Beneficiary. This Article shall not restrict any authority of the Trustee to use and disburse funds for the support, maintenance, health and education of a Beneficiary, or to disburse funds to a guardian or conservator as herein provided.”

[\*947]

Comerica Bank is the current trustee.

## 2. Money Judgments Against Richard

After their father died, the siblings had several disputes amongst themselves that eventually resulted in litigation. As pertinent here, Raymond, Robert, and Linda entered into a settlement agreement with Richard in 2014, in which [\*\*6] Richard agreed to pay from his share of the trust \$139,950 to Linda, \$93,405 to Robert, and \$617,000 to Raymond. The payments were to be made no later than November 15, 2015.

In 2016, after Richard failed to comply with the settlement agreement, the three sibling creditors moved to enforce the settlement agreement and obtained judgments in their favor for the amounts owed under the settlement agreement as well as interest, attorney's fees, and costs relating to the enforcement proceeding.

In January 2017, an unrelated entity, WGC Sports, LLC, obtained a money judgment against Richard in the amount of \$560,311.

## 3. Petitions To Enforce the Judgments

After entry of their respective judgments against Richard, the sibling creditors filed petitions to enforce their money judgments under [Code of Civil Procedure section 709.010](#). In December 2016, the court ordered the trustee (under [Prob. Code, § 15306.5](#)) to pay 25 percent of Richard's future trust distributions to the sibling creditors until their judgments were satisfied.

In March 2017, the California Supreme Court decided [Carmack v. Reynolds \(2017\) 2 Cal.5th 844 \[215 Cal. Rptr. 3d 749, 391 P.3d 625\]](#) (*Carmack*), a case clarifying a creditor's ability to reach amounts due and payable to a trust beneficiary while those funds are still

in the hands of a trustee. Seeking to take advantage [\*\*7] of that decision, in late 2017, Raymond, Robert, Linda, and WGC Sports, LLC (collectively, creditors), filed petitions to enforce their money judgments under [section 15301\(b\)](#). The creditors sought an order directing the trustee to use the unencumbered portion of Richard's mandatory January 2018 principal distribution (i.e., the 75 percent unaffected by the court's 2016 order) to pay down their money judgments.

The court heard the petitions together on January 10, 2018, shortly before the trustee was required to make the annual distributions of principal from the [\*\*948] trust.<sup>5</sup> At that time, the creditors advised the court that they had stipulated to the relative priority of their money judgments and to the division of any funds the court ordered the trustee to use to pay Richard's debts. Richard opposed the petitions, arguing that because no amount was “due and payable” on January 10, the creditors' petitions were premature and, in any event, the court lacked the authority to make any order regarding a future distribution of principal. Richard also claimed the trust was a “support trust” within the meaning of the Probate Code and that the court would need to conduct a future hearing to determine what percentage [\*\*8] of Richard's future distributions were needed for the support, maintenance, and health of Richard and his dependents.

Although Richard insisted that the court issue a ruling from the bench, the court did not do so. Instead, the court authorized the trustee to disburse, as scheduled, the 25 percent of Richard's annual principal distribution subject to the court's 2016 order but ordered the trustee to retain the remaining 75 percent of the distribution until the court issued its final ruling.

#### 4. *The Court's Order and the Appeal*

The court issued its final written ruling granting the creditors' petitions on January 19, 2018. Richard timely appeals.

## DISCUSSION

<sup>5</sup> Under the terms of the trust, principal distributions are due and payable on the anniversary of Arthur's death: January 13. Because that date fell on a weekend in 2018, the trustee planned to make the distribution the day after the hearing, on January 11.

1. *A judgment creditor may file a petition under [section 15301\(b\)](#) before a debtor/trust beneficiary's trust distribution is “due and payable.”*

Richard's primary assertion is that the court erred in entertaining the petitions brought by the creditors because those petitions were premature. Specifically, Richard claims that a creditor may not *file* a petition to enforce a money judgment under [section 15301\(b\)](#) until after a disbursement is due and payable to a trust beneficiary. We reject this interpretation of the statute.

#### 1.1. *Standard of Review*

Because our analysis turns [\*\*9] on our interpretation of [section 15301\(b\)](#), our review is de novo and governed by well-established principles of statutory construction. [\*\*949]

[HNI](#)[↑] [CAD](#)[↑] (1) “We seek to ‘ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.’ [Citation.] ‘[W]e begin by looking to the statutory language. [Citation.] We must give “the language its usual, ordinary import and accord[] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.” [Citation.] If the statutory language is susceptible of more than one reasonable interpretation, we must look to additional canons of statutory construction to determine the Legislature's purpose. [Citation.] “Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.” [Citation.]” ([Carmack, supra, 2 Cal.5th at pp. 849–850.](#))

#### 1.2. *Analysis*

[CA\(2\)](#)[↑] (2) It has long been recognized that [HN2](#)[↑] where, [\*\*10] as here, a trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer (i.e., is a spendthrift trust), the interest is not generally subject to enforcement of a money judgment until payment is made to the

beneficiary. (§§ 15300 [interest in trust income “not subject to enforcement of a money judgment until paid to the beneficiary”], 15301 [same, as to beneficiary's interest in trust principal]; see *Kelly v. Kelly (1938) 11 Cal.2d 356, 363–364 [79 P.2d 1059]* [although spendthrift trust beneficiary could not assign trust interest to judgment creditor, creditor could obtain judgment against beneficiary and levy upon his property, including property received from the trust].) Under the Probate Code, only a few categories of creditors may reach a beneficiary's interest in trust principal before it is paid, notwithstanding a spendthrift provision. “Such creditors include those with claims for spousal or child support (§ 15305) and those with restitution judgments (§ 15305.5). In addition, a state or local public entity can reach trust assets when the beneficiary owes money for public support (§ 15306, *subd. (a)*) unless distributions from the trust are required to care for a disabled beneficiary (§ 15306, *subd. (b)*).” (*Carmack, supra, 2 Cal.5th at p. 849.*)

General creditors, such as the creditors [\*\*11] here, have more limited remedies with respect to a debtor's interest in a trust containing a spendthrift provision. For example, *section 15306.5* provides, in pertinent part:

“(a) Notwithstanding a restraint on transfer of the beneficiary's interest in the trust under *Section 15300* or *15301*, and subject to the limitations of this section, upon a judgment creditor's petition under *Section 709.010 of the Code [\*950] of Civil Procedure*, the court may make an order directing the trustee to satisfy all or part of the judgment out of the payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined or determines in the future to pay to the beneficiary.

“(b) An 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.

“(c) An order under this section may not require that the trustee pay in satisfaction of the judgment any amount that the court determines is necessary for the support of the beneficiary and all the persons the beneficiary is required to support.

“(d) An order for satisfaction of a support judgment, as

defined in *Section 15305*, has priority [\*\*12] over an order to satisfy a judgment under this section. Any amount ordered to be applied to the satisfaction of a judgment under this section shall be reduced by the amount of an order for satisfaction of a support judgment under *Section 15305*, regardless of whether the order for satisfaction of the support judgment was made before or after the order under this section. [¶] ... [¶]

“(f) Subject to *subdivision (d)*, 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.”

*HN3*[↑] *CA3*[↑] (3) Under this section, then, a general creditor may obtain a court order directing the trustee to pay up to 25 percent of a beneficiary's future trust distributions directly to the creditor until that creditor's money judgment is satisfied. But even that limited reach is further restricted by *subdivision (c)*, which protects amounts needed for the support of the beneficiary and his or her dependents. And under *subdivision (f)*, if multiple creditors seek to reach the beneficiary's interest in future distributions, all the creditors combined may only reach 25 percent of [\*\*13] those distributions. Here, as noted, the three sibling creditors obtained such an order in 2016.

*CA4*[↑] (4) In 2017, the California Supreme Court clarified the point at which a general creditor may reach the remaining portion of a beneficiary's trust disbursements, i.e., the 75 percent of future payments not reachable under *section 15306.5*. (*Carmack, supra, 2 Cal.5th 844.*) As relevant here, the court focused on *section 15301(b)*, which provides in pertinent part: “After an amount of principal has become due and payable to the beneficiary under the [\*\*951] trust instrument, upon petition to the court under *Section 709.010 of the Code of Civil Procedure*<sup>6</sup> by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount.” Construing that provision, the court held that *HN4*[↑] “under this provision, creditors may

<sup>6</sup> *Section 709.010 of the Code of Civil Procedure* sets forth the procedure for a judgment creditor to petition a court to satisfy the judgment out of the debtor's trust interests.

reach the principal already set to be distributed and only up to the extent of that distribution. Such principal has served its trust purposes ... . [Section 15301\(b\)](#) makes these assets, and these assets only, fair game to creditors.” ([Carmack, at p. 851.](#))

The court elaborated: “The general rule is that principal held in a spendthrift trust may not be touched by creditors until it is paid to the beneficiary. ([§ 15301, subd. \(a\).](#)) [Section 15301\(b\)](#) adds that once an amount of principal has become due and payable, the court can order **[\*\*14]** the trustee to pay that amount directly to the beneficiary’s creditors instead. A distribution of principal is reasonably understood to signify that the amount distributed has satisfied its trust purposes. Because the beneficiary’s interest in those assets has effectively vested, the law no longer has any interest in protecting them (except as provided in [§ 15302](#) ...).” ([Carmack, supra, 2 Cal.5th at p. 851.](#))

Here, as already noted, the trustee was required to disburse Richard’s annual principal payment on or about January 13, 2018. And the court, citing both [Carmack](#) and [section 15301\(b\)](#), made its order on January 19, 2018, after the disbursement was due and payable to Richard.

[CA\(5\)](#)<sup>[↑]</sup> **(5)** Richard contends, however, that the court erred by considering the creditors’ petitions on January 10, 2018—before the principal disbursement was due and payable. In his view, [section 15301\(b\)](#) bars a creditor from *filing* a petition to enforce a judgment before a trust distribution is due and payable. The plain language of the statute does not support Richard’s interpretation. [Section 15301\(b\)](#) says: “After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court under [Section 709.010 of the Code of Civil Procedure](#) by a judgment creditor, the court may make an order directing the **[\*\*15]** trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.” The clause “[a]fter an amount of principal has become due and payable” is an adverbial phrase that modifies the verb “make,” i.e., it specifies the time at which the court may act. Similarly, the phrase “upon petition to the court under [Section 709.010 of the Code of Civil Procedure](#) by a judgment creditor” also

modifies “make,” and is an adverbial phrase defining the manner in which the court may act, i.e., in response to a petition by a creditor under the specified code section.

**[\*952]**

Under Richard’s construction, the first phrase (“[a]fter an amount ... has become due and payable”) would modify both the second adverbial phrase (“upon petition to the court” etc.) and the verb “make,” a construction that is both cumbersome and nonsensical in practical terms. The final sentence of [section 15301\(b\)](#) indicates the court may order the trustee to make a payment directly to a creditor. But as the court noted in this case, if a creditor could not even *file* a petition to enforce a judgment until after a trust distribution is due and payable, it would be virtually **[\*\*16]** impossible for the court to take any action before the trustee would be required by the terms of the trust to disburse the payment. In other words, Richard’s strained interpretation would effectively deprive judgment creditors of the relief the Legislature specifically sought to provide. ([Carmack, supra, 2 Cal.5th at p. 852](#) [noting the drafters of [§ 15301\(b\)](#) “sought to clarify that once principal was due and payable, creditors could reach it both ‘in the hands of the trustee and after payment to the beneficiary’”].)

Ignoring the plain meaning of the statute, Richard urges that [Carmack](#) supports his view and cites an example provided by the court which appears, on its face, to support Richard’s position. At the end of its decision, the court summarized its opinion:

“In sum, after an amount of principal has become due and payable (but has not yet been distributed), a creditor can petition to have the trustee pay directly to the creditor a sum up to the full amount of that distribution ([§ 15301\(b\)](#)) unless the trust instrument specifies that the distribution is for the beneficiary’s support or education and the beneficiary needs the distribution for those purposes ([§ 15302](#)). If no such distribution is pending or if the distribution is not adequate to **[\*\*17]** satisfy a judgment, a general creditor can petition to levy up to 25 percent of the payments expected to be made to the beneficiary, reduced by the amount other creditors have already obtained and subject to the support needs of the beneficiary and any dependents. ([§ 15306.5.](#))

“As an illustration, suppose a trust instrument specified that a beneficiary was to receive distributions of principal of \$10,000 on March 1 of each year for 10 years. Suppose further that a general creditor had a money judgment of \$50,000 against the beneficiary and that the trust distributions are neither specifically intended nor required for the beneficiary’s support. On March 1 of the first year, upon the creditor’s petition a court could order the trustee to remit the full distribution of \$10,000 for that year to the creditor directly if it has not already been paid to the beneficiary, as well as \$2,500 from each of the nine anticipated payments (a total of \$22,500) as they are paid out. If the creditor were not otherwise able to satisfy the remaining \$17,500 balance on the judgment, then on March 1 of the following years, upon the general [\*953] creditor’s petition the court could order the trustee to pay directly to the [\*\*18] creditor a sum up to the remainder of that year’s principal distribution (\$7,500), as the court in its discretion finds appropriate, until the judgment is satisfied.” (*Carmack, supra, 2 Cal.5th at pp. 856–857.*)

According to Richard, then, *Carmack* stands for the proposition that his judgment creditors may only file a petition to enforce a judgment against his annual principal distributions, and the court may only make an order on those petitions, on or after January 13 of each year—the date the trustee is required to make those distributions. And here, the four judgment creditors filed their petitions in the fall of 2017, well before the January 13, 2018 distribution date. Richard therefore asserts the court erred by considering the petitions in the first instance.

But even assuming the quoted portion of *Carmack* supports Richard’s timing argument—a point we do not resolve—Richard ignores a critical point and one which the Supreme Court emphasized at the outset of its decision in *Carmack*: the case arose in the context of a chapter 7 bankruptcy. Specifically, the court noted that two significant factual circumstances informed its decision. First, the trust at issue, like the trust in the present case, “is distinctive in directing [\*\*19] all disbursements to be made from principal.” (*Carmack, supra, 2 Cal.5th at p. 850.*) Second, and importantly for our purposes, the court explained: “We are also mindful that this case arises out of a bankruptcy proceeding. Ordinarily, a judgment creditor who is unable to satisfy all of the judgment out of the beneficiary’s trust interest

may continue to attempt to collect on the balance of the judgment from whatever other assets the beneficiary may have. Here, however, the amount Reynolds’s creditors will receive depends on the reach of the bankruptcy trustee. Any remaining debts after the bankruptcy process will be extinguished, and any further distributions will be unencumbered. (*11 U.S.C. § 541(c)(2).*) That spendthrift provisions can work to beneficiaries’ advantage in bankruptcy in this way has long been recognized as a characteristic of such provisions. (See *Rest.3d Trusts, § 58, com. a*, p. 367 [“An important byproduct of the limited spendthrift protection, however, is the again limited but nevertheless important insulation that may result from a discharge in bankruptcy.”].)” (*Ibid.*)

This point is critical for our analysis. After a chapter 7 bankruptcy case is initiated, the debtor relinquishes all rights and interest in property that is properly included in the bankruptcy [\*\*20] estate and the bankruptcy court has exclusive jurisdiction over that property. (See *11 U.S.C. § 541(a)*; *Tennessee Student Assistance Corporation v. Hood (2004) 541 U.S. 440, 447 [158 L. Ed. 2d 764, 124 S. Ct. 1905]* [“Bankruptcy courts have exclusive jurisdiction over a debtor’s property, wherever located, and over the estate”]; and see Fitzgerald et al., Rutter Group Practice Guide: Bankruptcy (The [\*954] Rutter Group 2019) ¶ 6:17, p. 6-3 [“[D]ebtors relinquish their rights and interests in estate property upon commencement of a Chapter 7 case, including title and the right to sell or transfer the property”].) And the automatic stay triggered upon commencement of a bankruptcy case generally prohibits creditors from taking any action against estate property (e.g., to enforce a judgment, obtain possession of estate property, or perfect a lien). (*11 U.S.C. § 362(a)*); Fitzgerald et al., Rutter Group Practice Guide: Bankruptcy, *supra*, ¶ 6:20, p. 6-3.) In other words, after a chapter 7 bankruptcy case is initiated, a creditor need not worry that a trustee would make any disbursement directly to the beneficiary/debtor. The precise timing of the creditor’s enforcement efforts would then be governed not only by [section 15301\(b\)](#) but also—and more importantly—by the rules and procedures applicable in bankruptcy court.

[CA\(6\)\[↑\]](#) (6) In short, the court in *Carmack* was not asked to address the specific question presented by Richard here: when a judgment [\*\*21] creditor may file a petition to enforce a judgment under [section 15301\(b\)](#)

in a nonbankruptcy setting. And, of course, “[i]t is axiomatic that [HN5](#) cases are not authority for propositions not considered.” [Citation.]” (*People v. Avila* (2006) 38 Cal.4th 491, 566 [43 Cal. Rptr. 3d 1, 133 P.3d 1076].) We therefore conclude that even if *Carmack* suggests that a creditor must wait until after a trust disbursement is due and payable before filing a request to enforce a money judgment against the disbursement, that procedure is applicable in a chapter 7 bankruptcy proceeding. But we presume the court did not intend to address facts not before it—and which are before us—where creditors are attempting to reach a trust disbursement while it is in the hands of the trust's trustee, rather than as part of a bankruptcy estate.

[CA\(7\)](#) (7) For the reasons we have already discussed, we conclude [HN6](#) a creditor may file a petition under [section 15301\(b\)](#) to enforce a money judgment against a nondiscretionary principal distribution before the distribution is due and payable.

2. *The court did not abuse its discretion by ordering the trustee to delay the payment of Richard's 2018 principal disbursement until after it issued its final ruling on the creditors' petitions.*

Richard also contends the court erred when it refused to rule on [\\*\\*22](#) the judgment creditors' petitions from the bench on January 10, 2018, and instead directed the trustee to withhold Richard's principal distribution until the court issued its final order on the petitions. We disagree.

Richard first argues that the court committed “reversible error when it deliberately failed to rule on the petitions/motions when heard on January 10, [\\*955](#) 2018 before Richard's distribution became ‘due and payable.’ Instead, the probate court ordered Comerica not to make a distribution to Richard until it issued its final ruling, which was conveniently after Richard's distribution became ‘due and payable’ days later on January 13, 2018.” And throughout that portion of the brief, Richard casts aspersions on the court, suggesting it purposefully delayed its ruling, failed to provide good cause for its decision not to rule from the bench, and sought to “achieve some sort of desired result.” As an initial matter, we see no evidence of favoritism on the part of the court in the record before us.

[CA\(8\)](#) (8) More to the point, Richard provides no

citations to any legal authority supporting his contention that the court was required to rule from the bench at the hearing, simply because he asked [\\*\\*23](#) that the court do so. We could, therefore, consider this argument forfeited. (See, e.g., *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 [117 Cal. Rptr. 3d 207] “[T]he [HN7](#) trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited”.) In any event, [HN8](#) “California courts have inherent power to “... control [their] proceedings.” [Citation.] ‘From their creation by [article VI, section 1 of the California Constitution](#), California courts received broad inherent power “not confined by or dependent on statute.” [Citations.] This inherent power includes “fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation.” [Citation.]’ [Citation.] ... This inherent power of a trial court is to be exercised to “achieve justice and prevent misuse of [its] proces[s] ... .” [Citation.]’ [Citation.]” (*Huang v. Hanks* (2018) 23 Cal.App.5th 179, 181–182 [232 Cal. Rptr. 3d 609].) The court's decision to issue a written ruling a few days after the January 10, 2018 hearing—rather than issuing a ruling from the bench—plainly falls within the court's discretion.

[CA\(9\)](#) (9) As for the court's instruction that the trustee withhold Richard's [\\*\\*24](#) annual principal distribution pending the issuance of its order, that too falls within the bounds of the court's discretion. It is well settled that [HN9](#) a court sitting in probate “has the ‘inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust.’ [Citation.] This inherent equitable power of the probate court has long been recognized to encompass the authority to take remedial action.” (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427 [78 Cal. Rptr. 3d 838].) Such remedial action may include removing a trustee or suspending a portion of the trustee's power based on a trustee's misconduct. (*Id.* at pp. 427–428.) Here, that inherent power included directing the trustee to delay payment to [\\*956](#) Richard in order to preserve its jurisdiction to make an appropriate order on the creditors' petitions to enforce their money judgments.

3. *Richard's other arguments are unavailing.*

### 3.1. *The trust is not a support trust.*

Richard contends the trust at issue is a support trust and that, as a result, the court erred by not conducting a further hearing to determine what portion of his annual principal distribution should not be reached by the creditors because it was necessary for his support and the support of his dependents. **[\*\*25]** Richard relies on [section 15302](#), which states: “Except as provided in [Sections 15304 to 15307](#), inclusive, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.”

[Section 15302](#) relates to what is generally known as a support trust, i.e., a trust “under which the trustee is to pay or apply no more than is necessary to educate or support the beneficiary.” (13 Witkin, Summary of Cal. Law (11th ed. 2017) Trusts, § 172, p. 761.) We reject Richard's argument because the trust at issue here is not a support trust. Instead, the distributions of income and principal are mandatory and based on factors other than Richard's education and support.

As noted *ante*, under paragraph 5.7, the trustee is required to make annual distributions of principal according to a formula set forth therein. The principal disbursements are mandatory and not related in any way to Richard's needs. Paragraph **[\*\*26]** 5.6 also provides that income from trust assets must be distributed on a quarterly basis and according to a formula set forth in the trust documents. Again, these disbursements are mandatory and not calculated with reference to Richard's education or support needs.

Richard cites paragraph 10.1, the spendthrift provision, which is set forth in full *ante*. That paragraph generally restricts each beneficiary's ability to transfer his or her interest in the trust and instructs the trustee to make payments to the beneficiaries, or banks specified by them, when due. And as Richard notes, the final sentence in paragraph 10.1 states: “This Article shall not restrict any authority of the Trustee to use and disburse

funds for the support, maintenance, health and education of a Beneficiary, or to disburse funds to a guardian or conservator as herein provided.”

**[\*957]**

This sentence, which is found at the end of the spendthrift trust provision, cannot reasonably be construed to convert the entire trust into a support trust, as Richard asserts. Rather, the most reasonable construction is that notwithstanding the trust's spendthrift provision, the trustee may in his or her discretion make disbursements to persons or entities **[\*\*27]** other than the trust beneficiary, if and to the extent those disbursements are for the support, maintenance, health, or education of the beneficiary. But the fact remains that the primary purpose of the trust is the nondiscretionary disbursement of income and principal according to the formulas and schedules set forth in the trust documents in paragraphs 5.6 and 5.7.

This is not to say that Richard's financial needs were irrelevant under [section 15301\(b\)](#). As noted, the final sentence in that subdivision provides, “The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.” The court could properly have considered whether Richard had sufficient funds at his disposal—beyond the annual principal distribution—to provide for his basic needs and the needs of his dependents. And if he did not, the court could have exercised its discretion to direct some portion of the principal distribution to Richard. But as Richard submitted no evidence to the court concerning his financial circumstances, the court had no basis upon which to exercise its discretion in that regard.

### 3.2. *The personal receipt clause does not shield Richard from creditor **[\*\*28]** claims.*

Finally, Richard apparently contends the trustee is prohibited from disbursing funds to his creditors because the trust contains a personal receipt clause. Again, in paragraph 10.1, the trust provides: “The personal receipt of the Beneficiary may be made a condition precedent to the payment or delivery by the Trustee to that Beneficiary. The Trustee may, however, deposit in any bank designated in writing by a Beneficiary, to his or her credit, income or principal payment to that Beneficiary.”

Richard's precise argument is that the court erred because it did not address the personal receipt provision, despite the fact that his counsel raised the issue at the January 10, 2018 hearing. We conclude any error in this regard is not prejudicial because the personal receipt provision is plainly discretionary and would not, in any event, allow Richard to avoid his creditors to the extent they have rights provided under the statutes we have discussed. Richard cites no legal authority to the contrary.

**[\*958]**

#### **DISPOSITION**

The order granting the petitions to enforce money judgments under [section 15301\(b\)](#) is affirmed. Respondents shall recover their costs on appeal.

Edmon, P. J., and Dhanidina, J., concurred.

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