

***AFTER CARMACK V. REYNOLDS,
WHAT THE BLECH TO DO NOW?***

Adam L. Steltzer, Esq.

ESTATE COUNSELORS FORUM

September 19, 2019

A. California Spendthrift Laws.

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 Probate Code (i.e., California's spendthrift law enacted at Prob. Code §§15300 et seq.). In that event, 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 §§15300-15307.

The primary statutory expression of modern California spendthrift rule is set forth in Prob. Code §§15300 and 15301. In relevant part:

Prob. Code §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.

Prob. Code §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.

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.** 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. [emphasis added]

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. The procedures set forth in Code of Civ. Proc. §709.010 are 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, and the Chapter 7 trustee of his bankruptcy estate. It concerned certified a question to the California Supreme Court to decide how to interpret and apply the apparently-conflicting provisions of Probate Code §§15301(b), 15306.5 and 15307, which the Ninth Circuit Court of Appeals was unable to reconcile. The Ninth Circuit’s question was as follows:

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 632 (emphasis added). This sets forth both how and when (timing) of the creditor's petition and court ruling should occur—after an amount of principal has become “due and payable.”

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

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 632 (emphasis added). Again, the example indicates both how and when (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 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 1120.

C. *Blech*

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, it applies only in the context of a trust beneficiaries’ Chapter 7 bankruptcy. [*Blech* opinion, Part 1.2, pp. 16-17] But the Second Appellate District did so on the assumption that, in the *Carmack v. Reynolds* opinion, the 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, stating:

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 pp. 16-17 (emphasis added) [See also *Blech* opinion, at p. 15 (noting that the Second Appellate District does not resolve the timing argument from *Carmack v. Reynolds*)] In other words, the Second Appellate District assumed

that the Supreme Court's recent *Carmack v. Reynolds* opinion did not apply to resolve this case and decided the appeal without applying it precedent.

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, and, 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, 2019¹ affirming the probate court.

1. This was 'certified for publication,' thereby becoming 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*?**

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 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.

This leaves the general administration of trusts and the proper interpretation of California law in a state of flux and uncertainty.

E. What To Do Now?

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. The other option is to rely upon trustee discretion.

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.

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 reads:

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).

IMPORTANT: Once a distribution is "allocated" to the beneficiary by the trustee of a discretionary trust, the beneficiary acquires an enforceable, equitable right to that amount, which can then be reached by the beneficiary's creditors. *Alvis v. Bank of America Nat. Trust & Savings Assoc.* (1949) 95 Cal.App.2d 118.

So how does this work? *Young v. McCoy* (2007) 147 Cal.App.4th 1078 is 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. Consequently, there was no abuse of the trustee's discretion. Therefore, 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.

THE HARSH LESSON TO BE LEARNED IS: After *Carmack v. Reynolds* and *Blech*, the only viable option to protect improvident donees and beneficiaries is to rely upon trustee discretion. THE 'DEAD HAND OF CONTROL' IS CRIPPLED - AT LEAST IN CALIFORNIA.

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 **; 2019 WL 3823776

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

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

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

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

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 Code¹ 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 Blech² 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

¹ All undesignated statutory references are to the Probate Code.

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

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 Bleck,³ 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.⁴ The trust provides for quarterly distributions of income and annual distributions of principal.

Two specific provisions of the trust are of interest here. 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

³Robert was born “Robert Blech” but changed his name to “Robert Bleck.”

⁴Raymond received 35 percent, Linda received 15 percent, and Richard and Robert each received 25 percent.

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.⁵ 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.

⁵ 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.

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

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](#) [CA\(1\)](#) (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\(2\)](#) [HN2](#) (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\[↑\]](#) [CA\(3\)\[↑\]](#) (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.

[CA\(4\)\[↑\]](#) (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](#)⁶ 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 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

⁶ [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.

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\(5\)](#)[↑] (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.

End of Document