

AUG 24 2012

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re: ) BAP No. CC-11-1433-HPaD  
)  
RICK H. REYNOLDS, ) Bk. No. 09-14039  
)  
) Adv. No. 09-01205  
) Debtor. )

\_\_\_\_\_)  
)  
SANDRA BENDON, Chapter 7 )  
Trustee, )  
)  
) Appellant, )

v. )

**O P I N I O N**

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- )  
SURVIVORS TRUST, as amended, )  
)  
) Appellees. )  
\_\_\_\_\_)

Argued and Submitted on May 17, 2011  
at Pasadena, California

Filed - August 24, 2012

\_\_\_\_\_  
Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Meredith A. Jury, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Appearances: Jesse S. Finlayson, of Finlayson Williams  
Toffer Roosevelt & Lilly LLP, argued for the Appellant.

\_\_\_\_\_  
Before: HOLLOWELL, PAPPAS and DUNN, Bankruptcy Judges.

1 HOLLOWELL, Bankruptcy Judge:  
2

3 The bankruptcy court granted the debtor's summary judgment  
4 motion, concluding that the bankruptcy estate was entitled to no  
5 more than 25% of the debtor's beneficiary interest in a  
6 spendthrift trust. The chapter 7 trustee appealed. For the  
7 reasons explained below, we AFFIRM.

8 **I. FACTS**

9 In 2005, Rick Reynold's (the Debtor's) parents, Freddie Hugo  
10 Reynolds (Freddie) and Patsy R. Reynolds (Patsy), established the  
11 Reynolds Family Trust. Patsy died in November 2007. Upon her  
12 death, the Reynolds Family Trust was split into three sub-trusts:  
13 (a) the Bypass Trust; (b) the Marital Trust; and, (c) the  
14 Survivor's Trust. Freddie retained the right during his lifetime  
15 to receive all the income from each of the trusts. While the  
16 Bypass Trust and the Marital Trust (together, the Family Trust)  
17 were vested and not subject to further amendment, the Survivor's  
18 Trust (Survivor's Trust) was amended from time to time by  
19 Freddie. He died on March 3, 2009.

20 Once the Debtor survived Freddie by thirty days, he was  
21 entitled to receive distributions from the Family Trust and the  
22 Survivor's Trust. From the Family Trust, he was entitled to  
23 \$250,000. Additionally, the Debtor was a one-third beneficiary  
24 of the Survivor's Trust, along with his sisters, entitled to  
25 receive \$100,000 per year for ten years. The assets in the  
26 Survivor's Trust are interests of undeveloped real property,  
27 which do not generate income. Thus, the distributions to the  
28 Debtor are expected to be paid from trust principal. The terms

1 of the last amended Survivor's Trust provided that after the  
2 Debtor survived Freddy for ten years, he would receive a final  
3 distribution of one-third of the remaining principal. Although  
4 the exact amount of the Debtor's interest in the Survivor's Trust  
5 is unknown, the bankruptcy trustee believes it could be as much  
6 as several million dollars.

7 The Family Trust and the Survivor's Trust are "spendthrift"  
8 trusts, containing provisions that "[n]o interest in the income  
9 or principal of any trust created under this instrument shall be  
10 voluntarily or involuntarily anticipated, assigned, encumbered,  
11 or subjected to creditor's [sic] claim or legal process before  
12 actual receipt by the beneficiary."

13 The Debtor filed a voluntary chapter 7 petition on March 4,  
14 2009.<sup>1</sup> Sandra L. Bendon was appointed the chapter 7 bankruptcy  
15 trustee (the Trustee). On April 28, 2009, John Carmack, sole  
16 trustee of the Family Trust and co-trustee, with John Morris, of  
17 the Survivor's Trust, filed an adversary proceeding seeking a  
18 declaratory judgment determining whether and to what extent the  
19 bankruptcy estate held an interest in the Family Trust and the  
20 Survivor's Trust.

21 On January 14, 2010, the Debtor filed a motion for partial  
22 summary judgment (MSJ). The Debtor sought a partial summary  
23 adjudication and judicial declaration that pursuant to California  
24 Probate Code §§ 15300 et seq. (referred to herein as the Probate

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25  
26 <sup>1</sup> The Debtor was unaware of the trusts or that he was a  
27 beneficiary of the Trust. Thus, the Debtor did not list his  
28 interest in the Trust on his bankruptcy schedules. On August 6,  
2009, the Debtor amended the bankruptcy schedules to list his  
vested interest in the Survivor's Trust.

1 Code or by the sections 15300-15307), particularly 15306.5, a  
2 maximum 25% of a beneficiary's interest in a spendthrift trust is  
3 property of a bankruptcy estate. Therefore, the Debtor argued  
4 that the estate was entitled to reach no more than 25% of the  
5 Debtor's interest in the Family Trust and the Survivor's Trust.

6 The Trustee opposed the MSJ. The Trustee acknowledged that  
7 Probate Code 15306.5 capped a judgment creditor's<sup>2</sup> recovery at  
8 25% of a beneficiary's interest in a spendthrift trust. However,  
9 she argued that distributions of principal amounts payable to a  
10 beneficiary under a trust, even if the trust contains a  
11 spendthrift provision, are not protected under Probate Code  
12 15301(b). Thus, the Trustee asserted that because the  
13 distributions from the Family Trust and the Survivor's Trust were  
14 expected to be made from principal, the estate could potentially  
15 reach all of the Debtor's interests. Alternatively, the Trustee  
16 asserted that, under Probate Code 15307, the estate could reach  
17 the Debtor's interest in all amounts from the Family Trust and  
18 the Survivor's Trust over and above what he required for his  
19 education and support.

20 At the hearing on the MSJ, the bankruptcy court disagreed  
21 with the Trustee's interpretation of the Probate Code. It  
22

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23 <sup>2</sup> A bankruptcy trustee may not "step into the shoes" of  
24 individual creditors to seize a spendthrift trust's assets.  
25 Garrett v. Finley (In re Finley), 286 B.R. 163, 166 (Bankr. W.D.  
26 Wash. 2002). However, a bankruptcy trustee is considered a  
27 hypothetical lien creditor and can recover assets of the estate  
28 for the benefit of general creditors under 11 U.S.C. § 544(a)(1).  
Cutter v. Seror (In re Cutter), 398 B.R. 6, 21 (9th Cir. BAP  
2008); Neuton v. Danning (In re Neuton), 922 F.2d 1379, 1383 (9th  
Cir. 1990).

1 interpreted the Probate Code as allowing the estate a maximum of  
2 25% of a debtor's interest in a spendthrift trust, less any  
3 amount the debtor needed for his support or support of his  
4 dependents. The bankruptcy court entered its order granting the  
5 MSJ on June 6, 2011. A final judgment was entered on July 29,  
6 2011. The Trustee timely appealed.

## 7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction over this proceeding  
9 under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction  
10 under 28 U.S.C. § 158.<sup>3</sup>

## 11 **III. ISSUE**

12 Did the bankruptcy court err in determining that the estate  
13 was entitled to a maximum of 25% of the Debtor's interests in the  
14 Family Trust and the Survivor's Trust?

## 15 **IV. STANDARD OF REVIEW**

16 We review orders granting summary judgment de novo. Bamonte  
17 v. City of Mesa, 598 F.3d 1217, 1220 (9th Cir. 2010). We review  
18 questions of California statutory construction de novo.  
19 Ehrenberg v. S. Cal. Permanente Med. Group (In re Moses), 167

20  
21 <sup>3</sup> On April 11, 2012, the Panel issued an order requesting  
22 the Trustee to address whether the appeal was moot since it was  
23 unclear whether the proceeds from 25% of the Debtor's interest in  
24 the Family Trust and Survivor's Trust were adequate to satisfy  
25 all allowed claims. The Trustee filed a response on April 18,  
26 2012, stating that she estimates she needs \$600,000 to pay  
27 allowed claims in full. The 25% limitation on the Debtor's  
28 interests would give the Trustee \$62,500 and \$25,000/year for 10  
years, or \$312,500 plus whatever unknown amount would be paid out  
after 10 years. If we were to reverse the bankruptcy court, the  
Trustee could potentially satisfy creditor claims in full.  
Because we could provide the Trustee effective relief, the appeal  
is not moot and we have jurisdiction to reach its merits.

1 F.3d 470, 473 (9th Cir. 1999). Whether property is included in a  
2 bankruptcy estate is a question of law reviewed de novo.  
3 Birdsell v. Coumbe (In re Coumbe), 304 B.R. 378, 381 (9th Cir.  
4 BAP 2003); Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th  
5 Cir. BAP 2000), aff'd, 35 Fed. Appx. 592 (9th Cir. 2002); see  
6 also Butner v. United States, 440 U.S. 48, 55 (1979) ("Property  
7 interests are created and defined by state law.").

## 8 V. DISCUSSION

9 Summary judgment may be granted when the record shows that  
10 "there is no genuine issue as to any material fact and the movant  
11 is entitled to judgment as a matter of law." Fed. R. Civ.  
12 P. 56(a) (made applicable by Rule 7056). There is no issue as to  
13 any material facts in this case, therefore, we address the legal  
14 question of what portion of the Debtor's beneficial interests in  
15 the Family Trust and the Survivor's Trust may be reached by the  
16 Trustee.

### 17 A. The Bankruptcy Estate

18 The bankruptcy estate includes "all legal or equitable  
19 interests of the debtor in property as of the commencement of the  
20 case." 11 U.S.C. § 541(a)(1). However, property containing "[a]  
21 restriction on the transfer of a beneficial interest of the  
22 debtor in a trust that is enforceable under applicable  
23 nonbankruptcy law" is excluded from the estate. 11 U.S.C.  
24 § 541(c)(2); In re Cutter, 398 B.R. at 19; In re Kim, 257 B.R. at  
25 688. There is no dispute in this case that the Family Trust and  
26 the Survivor's Trust were spendthrift trusts, which restricted  
27 the transfer of the Debtor's interests.

28 California law recognizes the validity of spendthrift

1 trusts. In re Moses, 167 F.3d at 473; In re Neuton, 922 F.2d at  
2 1383. The validity of a spendthrift provision is predicated on  
3 the consideration that a person is free to make any desired  
4 disposition of his property. Crocker-Citizens Nat'l Bank v.  
5 Johnston (In re Estate of Johnston), 252 Cal. App. 2d 923, 925-26  
6 (Cal. Ct. App. 1967). Nevertheless, California has imposed  
7 qualifications and restrictions on spendthrift trusts, which are  
8 set forth in the Probate Code.

9 The Trustee asserts that the Probate Code allows her to  
10 reach the Debtor's full interest in the Family Trust and the  
11 Survivor's Trust in order to satisfy the claims of the estate's  
12 creditors. Therefore, she argues that the bankruptcy court erred  
13 in its conclusion that the Probate Code limited the estate to 25%  
14 of the Debtor's interests. Our decision therefore depends on the  
15 construction and interpretation of the Probate Code.

## 16 **B. Principles Of Statutory Construction**

17 "When presented with a question of statutory construction,  
18 our primary task is to ascertain legislative intent to effect the  
19 purpose of the statute." Ventura Cnty. Dep't Of Child Support  
20 Servs. v. Brown, 117 Cal. App. 4th 144, 149-50 (Cal. Ct. App.  
21 2004). We must ascertain the legislative intent starting with the  
22 language of the statute itself. Young v. McCoy, 147 Cal. App.  
23 4th 1078, 1083 (Cal. Ct. App. 2007). If the terms of the statute  
24 are unambiguous, we presume the lawmakers meant what they said,  
25 and the plain meaning of the language governs. Doner-Griswold v.  
26 See (Estate of Griswold), 25 Cal. 4th 904, 911 (2001). Only if  
27 the statute is ambiguous do we consult extrinsic sources such as  
28 legislative history. Id.

1 In reading a statute, we keep in mind that interpretations  
2 that render any part of a statute superfluous are to be avoided.  
3 Sonoma Cnty. Human Servs. Dep't v. J.H. (In re S.H.), 197 Cal.  
4 App. 4th 1542, 1552 (Cal. Ct. App. 2011); Young, 147 Cal. App.  
5 4th at 1084. Moreover, the various parts of a statute must be  
6 harmonized by considering the particular clause or section in the  
7 context of the statutory framework as a whole in order to  
8 determine the scope and purpose of the provision. People v.  
9 Mendoza, 23 Cal. 4th 896, 907-08 (2000). "We must promote,  
10 rather than defeat, the general purpose of the statute." Ventura  
11 Cnty., 117 Cal. App. 4th at 150. Furthermore, we "must avoid a  
12 construction that would produce absurd consequences, which we  
13 presume the Legislature did not intend." Mendoza, 23 Cal. 4th at  
14 908.

### 15 **C. The Probate Code**

16 The Probate Code sets forth the rules regarding restrictions  
17 on voluntary and involuntary transfers. It was substantially  
18 revised by the California Legislature in 1986 to improve and  
19 coordinate the law relating to spendthrift trusts. Ventura  
20 Cnty., 117 Cal. App. 4th at 150-51. "There were two objectives:  
21 1) to reduce the ability of a general creditor to reach a  
22 beneficiary's interest in a trust; and 2) to give greater rights  
23 to support creditors." Id. at 151.

24 The Probate Code first sets out California's recognition  
25 that a restraint on the transfer of trust income is valid. Cal.  
26 Prob. Code § 15300. If so restrained, the beneficiary's interest  
27 in trust income "may not be transferred and is not subject to  
28 enforcement of a money judgment until paid to the beneficiary."



1 Id. Probate Code 15301 provides identical protections to the  
2 principal of spendthrift trusts. Cal. Prob. Code § 15301(a).  
3 Thus, in California, a beneficiary's interest in the income and  
4 principal of a spendthrift trust is protected from the claims of  
5 creditors as long as the income and/or principal remains in the  
6 trust. Once the income or principal of a spendthrift trust is  
7 distributed to a beneficiary, however, it can be reached by  
8 creditors. Cal. Prob. Code §§ 15300, 15301.

9 That said, there are stated exceptions that allow certain  
10 creditors to reach trust income or principal that is payable, but  
11 not yet paid, to a beneficiary. The exceptions are listed in  
12 15304-15307. Cal. Prob. Code § 15300, 15301.

13 The Trustee asserts that each exception is independent and  
14 provides alternate means for a creditor to seek the maximum  
15 amount of a beneficiary's interest in order to satisfy its claim.  
16 She contends the first exception is actually contained in  
17 15301(b) and allows a creditor to reach all principal amounts  
18 that are due and payable to the beneficiary in order to satisfy a  
19 money judgment. The Trustee argues that "[t]here are no  
20 limitations on creditors' rights under section 15301(b)." We  
21 disagree.

22 **1. Probate Code 15301(b)**

23 Probate Code 15301 states:

24 (a) Except as provided in subdivision (b) and in  
25 Sections 15304 to 15307, inclusive, if the trust  
26 instrument provides that a beneficiary's interest in  
27 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.

28 (b) After an amount of principal has become due and

1 payable to the beneficiary under the trust instrument,  
2 upon petition to the court under Section 709.010 of the  
3 Code of Civil Procedure by a judgment creditor, the  
4 court may make an order directing the trustee to  
5 satisfy the money judgment out of that principal  
6 amount. The court in its discretion may issue an order  
7 directing the trustee to satisfy all or part of the  
8 judgment out of that principal amount.

9 Cal. Prob. Code § 15301 (emphasis added).

10 Probate Code 15301(a) references exceptions – those listed  
11 in 15301(b) and in 15304-15307 – to the general rule that trust  
12 principal enjoys spendthrift protection. If, as the Trustee  
13 contends, 15301(b) allows a creditor the ability to satisfy its  
14 judgment in full from the principal amount that has become due  
15 and payable to the beneficiary, then there is little reason for  
16 15301 to reference any of the other exceptions in 15304-15307,  
17 particularly because the other exceptions also provide that a  
18 creditor can reach trust principal that is “due and payable.”  
19 Any of the other exceptions would be inapplicable and superfluous  
20 if 15301(b), by itself, provided a creditor the means to satisfy  
21 her judgment in full. Moreover, reading 15301(b) to mean that a  
22 creditor can reach the entire principal amount of a trust  
23 effectively eviscerates the spendthrift protection recognized by  
24 15301(a).

25 Accordingly, a fair reading of 15301(b) is that it sets out  
26 the procedure that a creditor must follow to satisfy her claim  
27 from the principal of a spendthrift trust once it is payable but  
28 not yet distributed to the beneficiary. First, she must file a  
petition with the court under Cal. Civ. Proc. Code (C.C.P.)  
§ 709.010 (procedure for enforcement of a money judgment against  
interest in trust). DeMille v. Ramsay, 207 Cal. App. 3d 116,

1 126-27 (Cal. App. 1989). The court then has the discretion to  
2 order the trustee to satisfy the claim to the extent allowable  
3 under 15304-15307. Id.

4 C.C.P. § 709.010 emphasizes that the court's discretion to  
5 order satisfaction of a judgment does not affect the limitations  
6 on the enforcement of a debtor's interest in a trust under the  
7 Probate Code. C.C.P. § 709.010(c). Thus, Probate Code 15304-  
8 15307 "governs the rights of transferees and creditors of the  
9 beneficiary of a trust to reach the beneficial interest in the  
10 trust." See Official Law Commission Comments, C.C.P.

11 § 709.010(c). Consequently, whether and to what extent the  
12 Trustee may reach the Debtor's beneficial interests in the Family  
13 Trust and the Survivor's Trust is determined by the application  
14 of 15304-15307, not 15301(b).

## 15 **2. Probate Code 15304-15306**

16 The exceptions contained in 15304-15307 are important in  
17 understanding the statutory framework and general purpose of the  
18 Probate Code because they reflect a policy recognition that  
19 certain creditors should have greater rights to a beneficiary's  
20 interest in order to satisfy their claims. To that end, 15305  
21 provides special rights for creditors who hold claims for child  
22 or spousal support. Support creditors are considered "preferred"  
23 creditors "entitled to rights unavailable to a general creditor."  
24 Ventura Cnty., 117 Cal. App. 4th at 151. A support creditor may  
25 reach a beneficiary's interest in a spendthrift trust and be paid  
26 from payments (either from income or principal) "as they become  
27 due and payable, presently or in the future" in an amount that  
28 the court determines is equitable and reasonable. Cal. Prob.

1 § 15305(b). A court may even overcome a trustee's discretion to  
2 make or withhold payments to the beneficiary if the trustee acts  
3 dishonestly or with an improper motive.

4 The same is true for payment of restitution judgments. Cal.  
5 Prob. Code § 15305.5; Young, 147 Cal. App. 4th at 1084-85.

6 Similarly, if the beneficiary is liable for reimbursement to the  
7 state for public support benefits, the court may direct the  
8 trustee to satisfy all or part of the liability out of payments  
9 (from trust income or principal) due and payable, presently or in  
10 the future. Cal. Prob. Code 15306.

11 These exceptions reflect a clear policy position, which  
12 permits particularly identified creditors to reach a  
13 beneficiary's interest in a spendthrift trust with little  
14 restriction (the only limiting factor depends on what the court  
15 finds to be reasonable and equitable). Consequently, the  
16 Trustee's argument that any creditor should similarly be able to  
17 satisfy its claim from trust principal under 15301(b) is  
18 unavailing.

### 19 **3. Probate Code 15306.5 and 15307**

20 Probate Code 15306.5 and 15307 address two other exceptions  
21 to the anti-alienation provisions of a spendthrift trust, which  
22 are central to this appeal. Probate Code 15306.5 allows a money  
23 judgment creditor to satisfy its judgment out of the payments to  
24 which the beneficiary is entitled under the spendthrift trust "so  
25 long as the payment does not 'exceed[ ] 25% of the payment that  
26 otherwise would be made to . . . the beneficiary.'" In re  
27 Neuton, 922 F.2d at 1383, citing Cal. Prob. Code § 15306.5(b).  
28 However, "any amount that the court determines is necessary for

1 the support of the beneficiary and all the persons the  
2 beneficiary is required to support" is exempt from the payments  
3 to which a creditor would be entitled under 15306.5. Cal. Prob.  
4 Code § 15306.5(c).

5 The Ninth Circuit, in In re Neuton, held that because a  
6 bankruptcy trustee is a hypothetical judgment creditor under 11  
7 U.S.C. § 544(a)(1), a debtor/beneficiary's bankruptcy estate was  
8 entitled to an interest in one-fourth of the payments due to the  
9 beneficiary. Id. at 1383. "The relevance of § 15306.5 is that  
10 it removes 25% of the debtor's interest in the trust from  
11 traditional spendthrift status." Id. Even though a bankruptcy  
12 trustee may reach 25% of what the debtor/beneficiary is entitled  
13 to receive, that amount may be reduced by whatever amount the  
14 court determines is necessary for the beneficiary's (and his  
15 dependents') support. Cal. Prob. Code § 15306.5(c); In re  
16 Neuton, 922 F.2d at 1384.

17 The Trustee agrees that 25% of the Debtor's interest in the  
18 Family Trust and the Survivor's Trust constitutes property of the  
19 bankruptcy estate. Nevertheless, she argues that the estate's  
20 interest is not limited to what it can reach under 15306.5. The  
21 Trustee asserts that the estate may alternatively use 15307 to  
22 reach any amount to which the beneficiary is entitled that is in  
23 excess of what the beneficiary needs for his own education and  
24 support.<sup>4</sup>

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26 <sup>4</sup> The difference here would be that under 15306.5, the  
27 Trustee would be limited to 25% of the \$250,000 distribution from  
28 the Family Trust and 25% of each 100,000 distribution from the  
Survivor's Trust, or \$312,500 over 10 years (not considering the

(continued...)

1 Probate Code 15307 is titled "Income in excess of amount for  
2 education and support; application to creditors' claim." It  
3 reads:

4 Notwithstanding a restraint on transfer of a  
5 beneficiary's interest in the trust under Section 15300  
6 or 15301, any amount to which the beneficiary is  
7 entitled under the trust instrument or that the  
8 trustee, in the exercise of the trustee's discretion,  
9 has determined to pay to the beneficiary in excess of  
10 the amount that is or will be necessary for the  
11 education and support of the beneficiary may be applied  
12 to the satisfaction of a money judgment against the  
13 beneficiary. Upon the judgment creditor's petition  
14 under Section 709.010 of the Code of Civil Procedure,  
15 the court may make an order directing the trustee to  
16 satisfy all or part of the judgment out of the  
17 beneficiary's interest in the trust.

18 Cal. Prob. Code § 15307.

19 This section lacks clarity. For instance, its title  
20 suggests that it provides creditors the ability to reach  
21 trust income. But the text of the statute states that it  
22 applies notwithstanding restraints on both income and  
23 principal by its reference to 15300 or 15301. Thus, the  
24 language of 15307 seems to allow a money judgment creditor  
25 to satisfy its claim from any amount, either income or  
26 principal, that is in excess of what the beneficiary needs  
27 for his own education and support.

28 However, that reading is inconsistent with 15306.5,  
which limits a money judgment creditor to 25% of the  
beneficiary's interest in a spendthrift trust. Indeed, if

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26 <sup>4</sup>(...continued)  
27 unknown potentially large final distribution from the Survivor's  
28 Trust). Under the Trustee's interpretation of 15307, she could  
reach \$1,250,000 (10 x 100,000 + 250,000) less any amounts  
necessary for the Debtor's education and support.

1 the Probate Code sections are separate avenues for  
2 collection, 15306.5 would make no sense: Why would a  
3 judgment creditor ever choose to satisfy its claim under  
4 15306.5, which is limited not just by the 25% cap on the  
5 beneficiary's interest but by the needs of the debtor and  
6 his or her dependents, when 15307 is only limited by the  
7 debtor's own educational and support needs?

8         The language of a statute should not be given a literal  
9 meaning if doing so would result in absurd consequences.

10 People v. Broussard, 5 Cal. 4th 1067, 1071 (1993) (internal  
11 citation omitted); People v. Mendoza, 23 Cal. 4th at 912,  
12 n.7. In such circumstances, the "intent prevails over the  
13 letter" and the statute is read to conform to the statute's  
14 intention. Broussard, 5 Cal. 4th at 1071-72. Interpreting  
15 15307 as providing the Trustee the ability to satisfy  
16 creditor's claims with all trust income and principal over  
17 what the Debtor requires for his education and support would  
18 result in absurd consequences. As noted, it would render  
19 15306.5(a)-(f) meaningless. It also would allow a general  
20 creditor to satisfy its claim to nearly the same extent as a  
21 preferred creditor.

22         The Trustee complains that the bankruptcy court's  
23 interpretation -- that 15306.5 caps the amount of trust  
24 income or principal that a judgment creditor may reach --  
25 makes 15307 superfluous. But the Trustee's interpretation  
26 renders 15306.5 superfluous. Therefore, because 15307 is  
27 capable of differing interpretations, it is ambiguous, and  
28 we may review legislative history or other extrinsic sources

1 to aid in our interpretation.

2       The official Law Revision Commission Comments to 15307  
3 state that “[w]hile sections 15305 and 15306 permit only  
4 preferred creditors to reach the beneficiary’s interest in  
5 the trust, Section 15307 permits an ordinary creditor to  
6 reach income under limited circumstances.” (Emphasis  
7 added). Despite the language in 15307, “notwithstanding a  
8 restraint on transfer of a beneficiary’s interest in the  
9 trust under Section 15300 or 15301,” which refers to both  
10 trust income and principal, it is more consistent with  
11 legislative intent to read 15307 as limiting a non-preferred  
12 creditor to only income payments that are in excess of what  
13 is necessary for the beneficiary’s support.

14       This interpretation is bolstered by earlier versions of  
15 the Probate Code. In Canfield v. Sec.-First Nat’l Bank of  
16 Los Angeles, 13 Cal. 2d 1, 11 (1939), the court explained  
17 that spendthrift trusts were initially recognized under  
18 California law without limitation. Id. In 1872, California  
19 law imposed a singular limitation on spendthrift trusts:  
20 where a trust was created to receive the rents and profits  
21 of real property, the surplus of the rents and profits  
22 (i.e., the income from the real property) over what was  
23 necessary for the education and support of the beneficiary  
24 was liable to claims of creditors. Id. at 12. The Probate  
25 Code’s immediate predecessor, Cal. Civ. Code § 859, followed  
26 the same principle. It permitted creditors to reach a  
27 beneficiary’s income distributions except for amounts  
28 necessary for the beneficiary’s education and support. Id.;



1 Estate of Johnston, 252 Cal. App. 2d at 926.

2       The Probate Code replaced Cal. Civ. Code § 859 in 1986.  
3 Prior to 1986, even though there was a recognition that  
4 certain creditors, such as support creditors, should be  
5 preferred creditors, they could not reach a beneficiary's  
6 interest in a spendthrift trust without a determination that  
7 there was income in excess of the amount needed by the  
8 beneficiary for his support and education. Id. at 928. The  
9 Probate Code codified public policy concerns and provided  
10 certain creditors the ability to reach a greater amount of a  
11 beneficiary's interest in a spendthrift trust than general  
12 creditors and coordinated a "patchwork" of existing law on  
13 spendthrift trusts. Ventura Cnty., 117 Cal. App. 4th at  
14 151. Based on this history, Probate Code 15307 appears to  
15 be a vestige of the root limitation on a creditor's reach  
16 solely to income distributions.

17       The more plausible reading of 15307, which is  
18 consistent with the legislative intent, is that it restricts  
19 the reach of a non-preferred creditor to income payments,  
20 notwithstanding its reference to 15301. As with the  
21 Trustee's interpretation of 15301(b), an interpretation that  
22 reads 15307 as an avenue for money judgment creditors to  
23 satisfy claims from income and principal with the only  
24 restriction being the educational and support needs of the  
25 debtor would elevate "ordinary creditors" to "preferred"  
26 status. It would therefore render sections of the Probate  
27 Code meaningless and superfluous and would not promote the  
28 purpose of the Probate Code.



1 PAPPAS, Bankruptcy Judge, Dissenting:

2  
3 I reluctantly decline to join my colleagues' opinion  
4 because I do not believe the California legislature intended  
5 that a debtor, without exception, should have access to  
6 potentially large distributions of cash from a trust not  
7 needed for his support or education in preference to the  
8 legitimate claims of his creditors.

9 The California Probate Code provisions dealing with the  
10 rights of a spendthrift trust beneficiary's creditor to  
11 access income and principal distributions are opaque.  
12 However, in this case, I do not think those statutes prevent  
13 the Trustee from asserting a right to more than 25% of the  
14 distributions to be made to the Debtor. In coming to this  
15 conclusion, and in contrast to the majority, I would  
16 reconcile the Probate Code as follows.

17 Sections 15300 and 15301(a) generally validate the  
18 inclusion of "spendthrift" provisions to protect trust  
19 income and principal from the reach of a beneficiary's  
20 creditors while the assets remain in the trust. As the  
21 statutes note, there are the several exceptions to the  
22 general rule authorizing spendthrift trusts, which are  
23 codified in section 15301(b) and sections 15304 through  
24 15307.

25 For example, section 15301(b) allows a California  
26 court, upon petition of a beneficiary's judgment creditor  
27 (or in this case, the beneficiary's bankruptcy trustee), in  
28 the exercise of its discretion, to order the trustee of the

1 trust to pay an amount of the principal of the trust, which  
2 has become "due and payable" to the beneficiary, to the  
3 creditor. Under sections 15305 and 15305.5, creditors  
4 holding support or restitution claims are, with an  
5 appropriate court order, not restricted by the spendthrift  
6 restrictions of a trust, and may reach either present or  
7 future distributions to a debtor of trust income or  
8 principal.

9       The Probate Code contains other relevant provisions  
10 concerning a court's power to order that trust distributions  
11 be made to a beneficiary's creditors. For example, section  
12 15306.5, like section 15301(b), allows a court, upon a  
13 creditor's petition, to order the trustee to pay a creditor  
14 instead of the beneficiary. But unlike section 15301(b), a  
15 court order under this section of the Probate Code may  
16 impact amounts of both principal and income that "the  
17 trustee, in the exercise of the trustee's discretion, has  
18 determined or determines in the future to pay to the  
19 beneficiary."

20       However, under section 15306.5(b), the court's  
21 authority under subsection (a) is limited, and a  
22 beneficiary's rights are protected. This statute provides,  
23 as a general rule, that the court may not order more than  
24 25% of the payment that otherwise would go to the  
25 beneficiary be paid to the creditor. Section 15306(c) is  
26 another beneficiary protection. It prohibits any payment to  
27 a creditor of amounts necessary for the support of the  
28 beneficiary and his or her dependents. In other words, via

1 this provision, an impecunious debtor may be able to  
2 persuade a court to prevent a creditor from reaching even  
3 the 25% of a distribution generally allowed under section  
4 15306.5(b).

5 Finally, section 15307 plays a critical role in  
6 protecting creditors' rights in this context. It allows a  
7 court, "[n]otwithstanding" the general validity of  
8 spendthrift provisions allowed in sections "15300 or 15301,"  
9 upon petition of a judgment creditor, to order payment to  
10 the judgment creditor from "any amount to which the  
11 beneficiary is entitled under the trust or that the trustee,  
12 in the exercise of trustee's discretion, has determined to  
13 pay the beneficiary" of amounts "in excess of the amount  
14 that is or will be necessary for the education and support  
15 of the beneficiary . . . ."

16 Viewed collectively, to me, the California statutory  
17 scheme attempts to balance the rights of a beneficiary's  
18 creditors, the trustor, and a beneficiary's needs for  
19 financial support. Under the Probate Code, a spendthrift  
20 trust may be created by a trustor to protect the payments to  
21 which the beneficiary may be entitled from the trust from  
22 the reach of the beneficiary's creditors. While this is an  
23 obviously valid legislative goal, absent exceptions to this  
24 general rule, the use of such trusts could prove abusive  
25 where beneficiaries with unpaid creditors have no legitimate  
26 need for trust distributions. To balance the scales, the  
27 California legislature allows creditors, in some cases, to  
28 reach some, or perhaps even all, of those distributions.

1 For most creditors (i.e., not those holding claims for  
2 support or restitution creditors), that amount will be 25%  
3 of the distribution. However, the statutes allow either a  
4 creditor or the beneficiary to petition the state court and  
5 to perhaps persuade it, in the exercise of its discretion,  
6 to either increase or decrease the amount going to the  
7 creditor depending upon the beneficiary's financial needs.

8         Interpreting the statutes in this fashion makes good  
9 sense. Spendthrift trusts are generally allowed, but they  
10 are subject to the exercise of judicial discretion to  
11 prevent them from being used to inequitably shield  
12 financially independent beneficiaries from the legitimate  
13 claims of creditors. Putting this policy in context, why  
14 would the California legislature favor a testator's goal of  
15 providing cash payments to a beneficiary over the rights of  
16 a beneficiary's creditors when the facts show that the  
17 beneficiary does not need the money? In particular, when  
18 according to the trust instrument, or in the trustee's  
19 discretion, it is time to distribute principal to a  
20 beneficiary, why insulate those distributions from the  
21 claims of creditors of an affluent beneficiary?

22         Unlike my colleagues, I do not believe this reading of  
23 section 15307 renders section 15306.5 superfluous. On the  
24 other hand, as my colleagues concede, the majority's  
25 interpretation does indeed render section 15307 surplusage  
26 unless we take the extraordinary step of judicially limiting  
27 section 15307's application solely to trust income  
28 distributions. As the majority acknowledges, to reach their

1 result, they must ignore the express language of section  
2 15307 which makes it applicable "[n]otwithstanding a  
3 restraint under . . . 15300 [income] or 15301 [principal]."  
4 (Emphasis added). Doing so violates many of the same canons  
5 of statutory construction upon which the majority relies to  
6 support its interpretation.

7 Because I decline to believe that the California  
8 legislature intended us to read the Probate Code in a manner  
9 implementing a bad, perhaps even an absurd policy, I  
10 respectfully dissent. We should vacate the bankruptcy  
11 court's order limiting the right of the Trustee to 25% of  
12 the trust distribution, and remand for consideration by the  
13 bankruptcy court of what amounts are truly necessary for the  
14 education and support of the debtor as required by section  
15 15307.