

APR 11 2013

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. EC-12-1537-DJuMk  
 )  
 SANTIAGO OMAR HERNANDEZ and ) Bk. No. 12-24502  
 MICHELLE PATRICE HERNANDEZ, )  
 )  
 Debtors. )  
 \_\_\_\_\_ )  
 )  
 SANTIAGO OMAR HERNANDEZ; )  
 MICHELLE PATRICE HERNANDEZ, )  
 )  
 Appellants, )  
 )  
 v. ) **MEMORANDUM<sup>1</sup>**  
 )  
 J. MICHAEL HOPPER, Trustee, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Argued and Submitted on March 22, 2013  
at Sacramento, California

Filed - April 11, 2013

Appeal from the United States Bankruptcy Court  
for the Eastern District of California

Honorable Christopher M. Klein, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
 George T. Burke, Esq., argued for the Appellants  
 Santiago and Michelle Hernandez; J. Luke Hendrix,  
 Esq., argued for Appellee J. Michael Hopper,  
 Trustee.

Before: DUNN, JURY, and MARKELL, Bankruptcy Judges.

\_\_\_\_\_  
<sup>1</sup> This disposition is not appropriate for publication.  
 Although it may be cited for whatever persuasive value it may  
 have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.



1 this agreement, the beneficiary of that trust shall have the  
2 immediate right to demand and receive [sic] immediate amount that  
3 may be withdrawn shall be the amount of the Internal Revenue Code  
4 section 2503(b) annual gift tax exclusion remaining available to  
5 the donor for gifts made to the distribution rights holder in the  
6 calendar year in which the gift is made. . . ." Under Article  
7 Two, Section C of the Trust Agreement, the right to demand  
8 distribution expires if a written notice is not delivered to the  
9 trustee of the Trust within forty-five days following the date of  
10 the gift.

11 Article Six, Section B of the Trust Agreement states a  
12 spendthrift trust provision ("Spendthrift Trust Provision"):

13 No interest in the principal or income of any trust  
14 created under this instrument shall be voluntarily or  
15 involuntarily anticipated, assigned, encumbered, or  
subjected to creditor's claim or legal process before  
actual receipt by the beneficiary.

16 Debtors and the Trustee agree that the Spendthrift Trust  
17 Provision is valid under California law.

18 In their schedules filed with their bankruptcy petition, on  
19 Schedule B, the Debtors identified a Trust interest of  
20 Ms. Hernandez, valued at \$7,000, as follows:

21 Future beneficiary of Mother's Irrevocable Trust - Mrs.  
22 Hernandez had 45 day window after November 18, 2011 to  
23 withdraw \$6,872 from annual gift to Trust but did not  
withdraw, as per Mother's indicated preference.

24 In their Schedule C, the Debtors claimed a corresponding  
25 exemption in the amount of \$7,000 in the \$6,782 annual gift to  
26 the Trust under California Code of Civil Procedure ("C.C.P.")

1 § 703.140(b)(5).<sup>3</sup>

2 On June 22, 2012, the Debtors amended their Schedule C to  
3 claim an exemption in "100% of Fair Market Value" of the Trust  
4 under § 541(c)(2).<sup>4</sup> The Trustee filed a timely objection  
5 ("Objection") to the exemption claimed in the Trust. The Trustee  
6 first argued that § 541(c)(2) did not provide a valid basis to  
7 claim an exemption. The Trustee further argued that the Debtors  
8 did not provide any description of the value of the Trust, and  
9 there was no clear statement as to what assets were included in  
10 the Trust. The Trustee stated that the Objection was filed "to  
11 protect the bankruptcy estate's interest in at least 25% of the  
12 Debtors' beneficial interest in the Trust."

13 The Debtors responded to the Objection that Ms. Hernandez's  
14 contingent interest in the Trust was excluded from the Debtors'  
15 bankruptcy estate under § 541(c)(2) and further argued that  
16 California Probate Code ("C.P.C.") § 15306.5(a) did not apply to  
17 allow the Trustee to claim up to 25% of Ms. Hernandez's  
18  
19  
20

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21 <sup>3</sup> Under C.C.P. § 703.140(b)(5), California debtors can claim  
22 an exemption in the amount of up to \$925 in any property, plus  
23 any amount up to \$17,425 that is not otherwise used to exempt  
24 value of "real property or personal property that the debtor or a  
25 dependent of the debtor uses as a residence, in a cooperative  
26 that owns property that the debtor or a dependent of the debtor  
27 uses as a residence, or in a burial plot for the debtor or a  
28 dependent of the debtor" under C.C.P. § 703.140(b)(1).

26 <sup>4</sup> Section 541(c)(2) provides that, "A restriction on the  
27 transfer of a beneficial interest of the debtor in a trust that  
28 is enforceable under applicable nonbankruptcy law is enforceable  
in a case under this title."

1 contingent future interest in the Trust.<sup>5</sup>

2 The bankruptcy court held a hearing ("Objection Hearing") on  
3 the Objection on August 28, 2012. At the Objection Hearing, the  
4 bankruptcy court heard argument from counsel for the Debtors and  
5 the Trustee and, determining that there were no factual issues,  
6 announced its conclusions of law based on the record before it,  
7 sustaining the Objection. At the Objection Hearing, Trustee's  
8 counsel confirmed that the Trustee sought no more than a  
9 conclusion that "25 percent of the [Trust] is not excluded from  
10 the estate under 541(c)(2)." The Trustee did not seek turnover  
11 of any Trust interest or any particular Trust assets. The  
12 bankruptcy court entered a minute order sustaining the Objection  
13 on September 3, 2012.

14 The Debtors filed their Motion for Amended Findings on  
15 September 10, 2012, arguing that the bankruptcy court made a  
16 manifest error of law in determining that the Trustee could claim  
17 25% of Ms. Hernandez's contingent future interest in the Trust as  
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19 <sup>5</sup> C.P.C. § 15306(a) provides that, "Notwithstanding a  
20 restraint on transfer of the beneficiary's interest in the trust  
21 under Section 15300 or 15301, and subject to the limitations of  
22 this section, upon a judgment creditor's petition under  
23 Section 709.010 of the Code of Civil Procedure, the court may  
24 make an order directing the trustee to satisfy all or part of the  
25 judgment out of the payments to which the beneficiary is entitled  
26 under the trust instrument or that the trustee, in the exercise  
27 of trustee's discretion, has determined or determines in the  
28 future to pay the beneficiary." However, C.P.C. § 15306.5(b)  
limits the scope of the preceding subsection (a), as follows: "An  
order under this section may not require that the trustee pay in  
satisfaction of the judgment an amount exceeding 25% of the  
payment that otherwise would be made to, or for the benefit of,  
the beneficiary."

1 an asset of the estate. The Trustee responded, arguing that the  
2 Debtors were not entitled to the extraordinary remedy requested  
3 in the Motion for Amended Findings in that the Debtors presented  
4 no new authorities or facts that would justify the relief  
5 requested.

6 The bankruptcy court heard arguments on the Motion for  
7 Amended Findings on October 9, 2012, and stated its conclusions  
8 orally, denying the Motion for Amended Findings. The bankruptcy  
9 court entered a minute order denying the Motion for Amended  
10 Findings on October 9, 2012.

11 The Debtors filed a timely Notice of Appeal from the order  
12 sustaining the Objection and the order denying the Motion for  
13 Amended Findings on October 19, 2012.

#### 14 JURISDICTION

15 The bankruptcy court had jurisdiction under 28 U.S.C.  
16 §§ 1334 and 157(b)(2)(A) and (B). We have jurisdiction under  
17 28 U.S.C. § 158.

#### 18 ISSUE PRESENTED

19 Did the bankruptcy court err as a matter of law in  
20 determining that Ms. Hernandez's contingent future interest in  
21 the Trust was an asset of the bankruptcy estate and that the  
22 Trustee could claim up to 25% of Ms. Hernandez's contingent  
23 future interest in the Trust for the estate?

#### 24 STANDARDS OF REVIEW

25 We review issues of statutory construction and conclusions  
26 of law de novo. Ransom v. MBNA Am. Bank, N.A. (In re Ransom),  
27 380 B.R. 799, 802 (9th Cir. BAP 2007), aff'd, 577 F.3d 1026 (9th  
28 Cir. 2009), aff'd, 131 S. Ct. 716 (2011).

1 We may affirm on any ground supported by the record. Shanks  
2 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

3 **DISCUSSION**

4 1. Dealing with Procedural Anomalies

5 Debtors have not raised any procedural irregularity as an  
6 issue in this appeal and did not discuss any procedural issue in  
7 their opening brief. Accordingly, any such issues are waived.  
8 See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919  
9 (9th Cir. 2001) (issues not specifically argued in opening brief  
10 are waived). Nevertheless, there are procedural anomalies in  
11 this case that merit discussion in order to provide a complete  
12 understanding of the record. Accordingly, before we get to the  
13 heart of this appeal, we take a brief stroll down a procedural  
14 byway.

15 The events leading to this appeal were initiated by the  
16 Debtors filing an amended Schedule C claiming that 100% of the  
17 fair market value of Ms. Hernandez's contingent future interest  
18 in the Trust was "exempt" under § 541(c)(2). As the trustee  
19 pointed out in the Objection, § 541(c)(2) does not provide a  
20 valid basis for a claim of exemption. Rather, § 541(c)(2)  
21 provides a basis for excluding certain trust assets from the  
22 estate. In their response to the Objection, the Debtors embraced  
23 the concept that Ms. Hernandez's beneficial interest in the Trust  
24 was excluded from the bankruptcy estate, and the fight was on.

25 An estate in bankruptcy consists of all the interests  
26 in property, legal and equitable, possessed by the  
27 debtor at the time of filing, as well as those  
28 interests recovered or recoverable through transfer and  
lien avoidance provisions. An exemption is an interest  
withdrawn from the estate . . . for the benefit of the  
debtor.

1 Owen v. Owen, 500 U.S. 305, 308 (1991). See Gebhart v. Gaughan  
2 (In re Gebhart), 621 F.3d 1206, 1210 (9th Cir. 2010); McLain v.  
3 Newhouse (In re McLain), 516 F.3d 301, 315 (5th Cir. 2008)  
4 (“ “[P]roperty that is entitled to be exempted is initially  
5 regarded as estate property until it is claimed and distributed  
6 as exempt.”) (quoting Cyrak v. Poynor, 80 B.R. 75, 79 (N.D. Tex.  
7 1987); Bronner v. Gill (In re Bronner), 135 B.R. 645, 647 (9th  
8 Cir. BAP 1992) (“A debtor . . . may remove or acquire property of  
9 the estate by claiming exemptions.”) (emphasis in original).

10 Procedurally, the Objection was handled as a contested  
11 matter. Arguably, since the issues actually determined were  
12 whether all or any portion of Ms. Hernandez’s contingent future  
13 beneficial interest in the Trust was property of the estate, the  
14 bankruptcy court could have required that the matter be resolved  
15 in an adversary proceeding pursuant to Rule 7001(1), (2) or (9).<sup>6</sup>  
16 Our review of the transcript of the Objection Hearing leads us to  
17 suspect that the bankruptcy court considered sustaining the  
18 Objection on the basis that § 541(c)(2) did not provide an  
19 appropriate basis for an exemption claim and leaving the  
20 “property of the estate” issue(s) for further proceedings.  
21 However, after confirming that the necessary evidentiary record  
22 was complete, and there were no factual disputes between the  
23

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24 <sup>6</sup> Rule 7001 provides in relevant part: “The following are  
25 adversary proceedings: (1) a proceeding to recover money or  
26 property, other than a proceeding to compel the debtor to deliver  
27 property to the trustee, . . . ; (2) a proceeding to determine  
28 the validity, priority, or extent of a lien or other interest in  
property, . . . ; (9) a proceeding to obtain a declaratory  
judgment relating to any of the foregoing; . . . .”



1 parties, the bankruptcy court proceeded to rule on the legal  
2 questions presented.

3 The bankruptcy court did not err in so proceeding. "[A]  
4 bankruptcy court's decision not to require an adversary  
5 proceeding is subject to a harmless error analysis, and under  
6 that standard, if the failure to commence an adversary proceeding  
7 did not cause prejudice, form should not be elevated over  
8 substance." Stasz v. Gonzalez (In re Stasz), 2011 WL 3299162  
9 (9th Cir. BAP 2011), citing Austein v. Schwartz (In re Gerwer),  
10 898 F.2d 730, 734 (9th Cir. 1990); and Korneff v. Downey Reg'l  
11 Med. Ctr.-Hosp., Inc. (In re Downey Reg'l Med. Ctr.-Hosp., Inc.),  
12 441 B.R. 120, 127-28 (9th Cir. BAP 2010).

13 The Debtors did not raise any objection to the bankruptcy  
14 court handling the Objection as a contested matter in their  
15 response to the Objection or in any of their papers filed in  
16 support of the Motion for Amended Findings, nor did they raise  
17 any such objection at the Objection Hearing. At the hearing on  
18 the Motion for Amended Findings, the following colloquy between  
19 the court and counsel took place:

20 MR. BURKE: Your Honor, it's my understanding that a  
21 party can object to jurisdiction at any time in the  
22 proceedings. At this point, we'd like to move to  
vacate the judgment based on a lack of subject matter  
jurisdiction. The Trustee -

23 THE COURT: A lack of subject matter jurisdiction?

24 MR. BURKE: The Trustee objected to an exemption. We're  
25 claiming that the [T]rust is excluded. It's not an  
26 exemption. And they should have to file an adversary  
proceeding, Your Honor, to determine the ownership of  
the [T]rust.

27 THE COURT: Mr. Hendrix, is this the first you heard of  
28 that?

1 MR. HENDRIX: It is, Your Honor.  
2 Tr. Of October 9, 2012 hr'g, 9:9-22. Debtors' counsel did not  
3 allege that the Debtors had suffered any prejudice from the  
4 bankruptcy court's handling of the Objection as a contested  
5 matter. The bankruptcy court went on to explain why Debtors'  
6 counsel was not raising any legitimate question as to the  
7 bankruptcy court's subject matter jurisdiction and proceeded to  
8 deny the Motion for Amended Findings based on its conclusion that  
9 it had not erred as a matter of law in its prior decision. As  
10 noted above, Debtors have not raised any question as to the  
11 bankruptcy court's handling of the Objection as a procedural  
12 matter in this appeal.

13 2. Contingent Trust Interests as Property of the Estate

14 The primary problem for Debtors in this appeal is we are not  
15 writing on a clean slate. The Debtors concede that under  
16 § 541(a), "contingent interests are part of the bankruptcy  
17 estate." Appellants' Opening Brief at 13. The Debtors also  
18 concede that the relevant date for determining whether an asset  
19 is property of the estate is the petition date. Id. at 34. See  
20 Cisneros v. Kim (In re Kim), 257 B.R. 680, 687 (9th Cir. BAP  
21 2000). However, Debtors insist that Ms. Hernandez's entire  
22 contingent future interest in the Trust is excluded from the  
23 estate under § 541(c)(2) based on the Spendthrift Trust Provision  
24 "that is enforceable under applicable nonbankruptcy law."

25 The Trustee concedes the existence of the Spendthrift Trust  
26 Provision and that such provisions are valid under California  
27 law. See Appellee's Opening Brief at 6. However, the Trustee  
28 further argues that the Spendthrift Trust Provision is subject to

1 the restrictions on such restraints on alienation set forth in  
2 C.P.C. § 15306.5. Accordingly, § 541(c)(2) only operates "to  
3 exclude 75% of the Debtors' interest in the Trust from property  
4 of the bankruptcy estate." Id. at 7.

5 The Debtors respond that the issue as to whether the  
6 bankruptcy estate has an interest in the remaining 25% of  
7 Ms. Hernandez's contingent beneficial interest in the Trust is an  
8 issue of first impression that requires a detailed analysis of  
9 the provisions of C.P.C. § 15306.5. In essence, Debtors ask us  
10 to make a prediction as to how the California Supreme Court would  
11 rule if confronted with the issues before us. However, we  
12 decline that invitation because that prediction already  
13 effectively has been made in binding prior decisions of the Ninth  
14 Circuit and this Panel.

15 In Neuton v. Danning (In re Neuton), 922 F.2d 1379 (9th Cir.  
16 1990), the Ninth Circuit was confronted with the following  
17 situation: The debtor-appellant ("Neuton") had filed a chapter 7  
18 bankruptcy petition on November 12, 1987. At the time of his  
19 bankruptcy filing, Neuton had a contingent future interest in a  
20 spendthrift trust established by his mother (the "Neuton Trust").  
21 The Neuton Trust provided that its trustee would pay a portion of  
22 trust income to Neuton's mother during her lifetime and a portion  
23 of trust income to her children, including Neuton, after her  
24 death. Neuton's mother died on December 28, 1987, "at which  
25 point [Neuton's] interest in the trust vested." Id. at 1381. On  
26 January 25, 1988, the trustee objected to Neuton's claim of  
27 exemption in the Neuton Trust beyond a value of \$1,135 claimed as  
28 exempt in Neuton's schedules. On April 7, 1988, the bankruptcy

1 court issued a Memorandum Decision and Order, essentially  
2 recognizing that 75% of Neuton's interest in the Neuton Trust was  
3 excluded from the estate under § 541(c)(2), but holding that 25%  
4 of Neuton's interest in the trust belonged to the estate. Id.  
5 On appeal, this Panel affirmed those holdings but remanded for  
6 valuation purposes.

7 On further appeal, the Ninth Circuit held that in light of  
8 the expansive definition of property of the estate under the  
9 Bankruptcy Code, "contingent interests of the type at issue in  
10 this case" constitute property of the estate, citing the Supreme  
11 Court decision in Segal v. Rochelle, 382 U.S. 375 (1966). Neuton  
12 made the same argument to the Ninth Circuit that the Debtors make  
13 before us: Since the Neuton Trust had a valid spendthrift trust  
14 provision under California law, Neuton's entire interest in the  
15 Neuton Trust was excluded from the estate by § 541(c)(2).

16 The Ninth Circuit agreed with him as to 75% of his interest  
17 in the Neuton Trust, but after considering the provisions of  
18 C.P.C. §§ 15301-15307, rejected Neuton's claim as to up to 25% of  
19 his interest in the trust.

20 [T]he Probate Code provides that despite such  
21 restraints a creditor may obtain an "order directing  
22 the trustee to satisfy all or part of the judgment out  
23 of the payment to which the beneficiary is entitled  
24 under the trust instrument," so long as the payment  
25 does not "exceed[ ] 25% of the payment that otherwise  
26 would be made to . . . the beneficiary." [C.P.C.]  
27 § 15306.5. In other words, the spendthrift restriction  
28 fully protects only 75% of the interest in the trust.  
Because the trustee enjoys the power of a hypothetical  
judgment creditor, [§ ] 544(a)(1), we agree with the  
BAP that the remaining one-fourth is not excluded from  
the estate pursuant to [§ ] 541(c)(2). In short, the  
bankruptcy estate possesses an income interest in one-  
fourth of the payments due to Neuton . . . The  
relevance of § 15306.5 is that it removes 25% of  
[Neuton's] interest in the trust from traditional

1 spendthrift status.

2 Id. at 1383 (emphasis added).

3 The Debtors argue that the Neuton decision is  
4 distinguishable from this appeal in that the Ninth Circuit did  
5 not engage in "statutory construction" with respect to  
6 § 15306.5(a) and "did not even analyze C.P.C. 15306.5(a)."  
7 Appellants' Opening Brief at 7 and 9. To make that argument in  
8 light of the extensive analysis of the application of C.P.C.  
9 § 15306.5, as a matter of first impression, set forth in the  
10 Ninth Circuit's Neuton decision is nonsense. However, whatever  
11 level of analysis the Ninth Circuit applied in considering the  
12 application of C.P.C. § 15306.5 in Neuton, its decision has never  
13 been overruled, and the bankruptcy court correctly determined,  
14 and we concur, that to the extent Neuton applies in this appeal,  
15 we are bound by it.

16 In one significant respect, Neuton is distinguishable from  
17 the appeal before us, as the contingent trust interest in Neuton  
18 was an interest in future income only and did not involve trust  
19 principal. Id. at 1381 and 1382 n.2. That distinction possibly  
20 would have more traction if the issue had not been dealt with  
21 directly in two subsequent published opinions of this Panel.

22 In Cisneros v. Kim (In re Kim), 257 B.R. 680 (9th Cir. BAP  
23 2000), this Panel considered a different form of California  
24 "trust." At the time of his chapter 7 bankruptcy filing, the  
25 debtor ("Kim") was employed as a bus driver for the Los Angeles  
26 Metropolitan Transit Authority and was a beneficiary of the Los  
27 Angeles County Metropolitan Transportation Authority Retirement  
28 Income Plan (the "MTA Plan"). Kim claimed an exemption in his

1 "retirement funds" under the MTA Plan pursuant to C.C.P.  
2 § 704.110.<sup>7</sup> Subsequent to his bankruptcy filing, Kim withdrew  
3 his retirement funds from the MTA Plan and rolled them over into  
4 an IRA account.

5 The trustee objected to Kim's exemption claim on three  
6 grounds: 1) the retirement funds were not being used for  
7 retirement purposes; 2) the MTA Plan was not a spendthrift trust  
8 subject to exclusion from the estate; and 3) Kim was not  
9 otherwise entitled to an exemption under California law. The  
10 bankruptcy court ultimately determined that the retirement funds  
11 held in the MTA Plan on the petition date were fully exempt under  
12 California law. It also held that the MTA Plan was a valid  
13 spendthrift trust under California law, which excluded the  
14 retirement funds from the bankruptcy estate, except for 25% of  
15 the funds, which remained subject to creditor claims under  
16 California law. Id. at 683.

17 On appeal, this Panel held that "[t]he bankruptcy court did  
18 not err in holding that the relevant date for determining the  
19 status of the exemptions was the petition date." Id. at 685.  
20 The Panel also noted that the holdings of the bankruptcy court  
21 were correct in concluding that the MTA Plan was a valid  
22 spendthrift trust under California law and that Kim's interest in  
23 the MTA Plan was excluded from the estate "except for 25%." Id.  
24 at 688.

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26 <sup>7</sup> C.C.P. § 704.110 provides an exemption for "all amounts  
27 held, controlled or in process of distribution" as retirement  
28 benefits from a "public entity" such as a state, city or county  
government or a public corporation or board.

1 [T]he [C.P.C.] has limited the scope of the spendthrift  
2 protection. [C.P.C.] section 15306.5 provides that a  
3 judgment creditor may obtain an "order directing the  
4 trustee to satisfy all or part of the judgment out of  
5 the payment to which the beneficiary is entitled under  
6 the [spendthrift] trust instrument, . . ." as long as  
7 the payment does not exceed 25 percent of the funds  
8 otherwise available to the beneficiary. See [C.P.C.]  
9 § 15306.5 (West 1991). The bankruptcy court, applying  
10 section 15306.5 and following [Neuton], held that only  
11 75% of the spendthrift trust was excluded from the  
12 estate.

13 Id. at 683 n.4. Accordingly, in Kim, this Panel followed the  
14 Neuton interpretation of C.P.C. § 15306.5 in a context involving  
15 the principal, rather than income, of a spendthrift trust.

16 Finally, in Bendon v. Reynolds (In re Reynolds), 479 B.R. 67  
17 (9th Cir. BAP 2012), this Panel was confronted with a spendthrift  
18 trust situation similar to what we face in this appeal. The  
19 debtor ("Reynolds") was a named beneficiary in three family  
20 trusts, the Bypass Trust, the Marital Trust and the Survivor's  
21 Trust. (Hereafter, the Bypass Trust and the Marital Trust are  
22 referred to collectively as the "Family Trust.") If Reynolds  
23 survived his father by thirty days, he would be entitled to  
24 receive distributions from both the Family Trust and the  
25 Survivor's Trust.

26 From the Family Trust, [Reynolds] was entitled to  
27 \$250,000. Additionally, [Reynolds] was a one-third  
28 beneficiary of the Survivor's Trust, along with his  
29 sisters, entitled to receive \$100,000 per year for ten  
30 years.

31 Id. at 70. However, the assets in the Survivor's Trust were  
32 interests in undeveloped real property that did not generate any  
33 income. Id. No income distributions were expected from any of  
34 the trusts.

35 Reynolds' father passed away on March 3, 2009. Reynolds,

1 apparently unaware of the trusts or that he was a beneficiary of  
2 the trusts, filed a chapter 7 bankruptcy petition one day later  
3 on March 4, 2009. Reynolds' interests in the trusts consequently  
4 were either vested on the petition date or shortly thereafter.

5 On April 28, 2009, one of the trustees of the Family Trust  
6 and the Survivor's Trust, filed an adversary proceeding seeking a  
7 declaratory judgment to determine whether and to what extent the  
8 bankruptcy estate held an interest in the trusts. Id. The  
9 trusts both included spendthrift trust provisions to protect  
10 their beneficiaries. On January 14, 2010, Reynolds filed a  
11 motion for partial summary judgment in the adversary proceeding,  
12 requesting a declaration that "pursuant to [C.P.C.] §§ 15300 et  
13 seq. . . . , particularly § 15306.5, a maximum 25% of a  
14 beneficiary's interest in a spendthrift trust is property of a  
15 bankruptcy estate." Accordingly, Reynolds sought a determination  
16 that the estate and his trustee could reach no more than 25% of  
17 his interests in the Family Trust and the Survivor's Trust. Id.  
18 The trustee opposed the motion, acknowledging that C.P.C.  
19 § 15306.5 capped the estates's potential recovery at 25% of the  
20 beneficiary's interest in a spendthrift trust, but argued that  
21 distributions of principal from such trusts are not protected  
22 under C.P.C. § 15301(b). At the hearing on the motion for  
23 partial summary judgment, the bankruptcy court ruled against the  
24 trustee, interpreting the California Probate Code as allowing as  
25 an estate asset "a maximum of 25% of a debtor's interest in a  
26 spendthrift trust, less any amount the debtor needed for his  
27 support or support of his dependents." Id. at 71.

28 On appeal, after discussing principles of statutory



1 construction, this Panel analyzed the relevant provisions of the  
2 California Probate Code, C.P.C. §§ 15300-15307. See id. at 72-  
3 77. Citing Neuton, this Panel concluded that under § 15306.5,  
4 the estate could claim up to 25% of the debtor beneficiary's  
5 interest in a spendthrift trust.

6 "The relevance of § 15306.5 is that it removes 25% of  
7 the debtor's interest in the trust from traditional  
8 spendthrift status." [In re Neuton, 922 F.2d at 1383.]  
9 Even though a bankruptcy trustee may reach 25% of what  
10 the debtor/beneficiary is entitled to receive, that  
11 amount may be reduced by whatever amount the court  
12 determines is necessary for the beneficiary's (and his  
13 dependents') support. [C.P.C.] § 15306.5(c); In re  
14 Neuton, 922 F.2d at 1384.

15 In re Reynolds, 479 B.R. at 75. The Panel further rejected the  
16 trustee's argument that C.P.C. § 15307 gave the trustee a means  
17 beyond the 25% limitation of C.P.C. § 15306.5 to reach any amount  
18 to which the debtor/beneficiary of a spendthrift trust was  
19 entitled in excess of what he needed for education and support.  
20 "[T]hat reading is inconsistent with § 15306.5, which limits a  
21 money judgment creditor to 25% of the beneficiary's interest in a  
22 spendthrift trust." Id. at 75-76. Ultimately, the Panel  
23 determined that it was more consistent with legislative intent to  
24 interpret C.P.C. § 15307 as applicable only with respect to  
25 income distributions from spendthrift trusts, and since Reynolds'  
26 potential future "distributions are only from principal and not  
27 income, under our interpretation of the [C.P.C.], § 15307 does  
28 not apply in this case." Id. at 76-77.

29 In reviewing the foregoing authorities, we recognize that in  
30 Kim, since the Panel affirmed the bankruptcy court's initial  
31 conclusion that Kim's retirement funds were fully exempt, its  
32 subsequent conclusions regarding the application of C.P.C.

1 § 15306.5 could be characterized as dicta. However, in Reynolds,  
2 this Panel's conclusion in interpreting the California Probate  
3 Code that under C.P.C. § 15306.5, the bankruptcy estate had an  
4 interest in up to 25% in a debtor/beneficiary's interest in a  
5 spendthrift trust was central to its decision.

6 Both Kim and Reynolds are published opinions of this Panel  
7 that have not been reversed or limited on appeal. Absent a  
8 change in the law, we are bound by our prior precedential  
9 opinions. Gaughan v. The Edward Dittlof Revocable Trust (In re  
10 Costas), 346 B.R. 198, 201 (9th Cir. BAP 2006); Ball v. Payco-  
11 Gen'l Am. Credits, Inc. (In re Ball), 185 B.R. 595, 597 (9th Cir.  
12 BAP 1995):

13 [W]e have recognized that the BAP was created in part  
14 to provide a uniform and consistent body of bankruptcy  
15 law throughout the Ninth Circuit. In re Proudfoot,  
16 III, 144 B.R. 876, 878 (9th Cir. BAP 1992). Plainly,  
17 compliance with precedent encourages uniformity of  
18 result.

19 The Debtors assert that Ms. Hernandez's entire interest in  
20 the Trust should be excluded from the estate based on an  
21 elaborate statutory construction argument focusing on C.P.C.  
22 § 15306.5(a). They argue that the California Supreme Court would  
23 never apply the terms "payments to which the beneficiary is  
24 entitled under the trust instrument" to a contingent future  
25 interest in principal of a spendthrift trust. We are not  
26 convinced. If the California Supreme Court had issued a decision  
27 consistent with the Debtors' position, that is something we could  
28 (and would) consider. However, the California Supreme Court has  
issued no such decision, and in the absence of such a definitive  
opinion from the California Supreme Court, we are bound by the

1 line of authority running from Neuton through Kim and Reynolds  
2 interpreting C.P.C. § 15306.5 as allowing the bankruptcy estate  
3 of a contingent future trust beneficiary debtor to claim up to  
4 25% of the debtor's interest in a California spendthrift trust.  
5 Based on that line of authority, we find no error in the  
6 bankruptcy court's decisions to sustain the Objection and deny  
7 the Motion for Amended Findings. What, if anything, the Trustee  
8 can collect from the Trust for the benefit of the Debtors' estate  
9 is an unresolved matter that is left for determination in future  
10 proceedings.

11 **CONCLUSION**

12 For the foregoing reasons, we AFFIRM both orders of the  
13 bankruptcy court.