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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DENNIS J. COOK,

Debtor,

No. 08-60053

BAP No. CC-08-01091-HMoD

WENETA M.A. KOSMALA, Chapter 11
Trustee, Chapter 7 Trustee of the Estate of
Dennis James Cook,

Appellant,

MEMORANDUM*

v.

DENNIS JAMES COOK; DONALD D.
COOK, Jr., Successor Trustee of the
Donald D. Cook and Nancy A Cook
Revocable Trust,

Appellees.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Hollowell, Montali, and Dunn, Bankruptcy Judges, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted March 4, 2010**
Pasadena, California

Before: CANBY, GOULD and IKUTA, Circuit Judges.

Because property devised to an inter vivos trust from a will “is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given,” Cal. Prob. Code § 6300, the real property at issue here became a part of the inter vivos trust to which it was devised. We have held that “‘income distributions derived from an intervivos trust do not fit within’ the definition of § 541(a)(5)(A) and therefore escape ‘the pale of the 180 day dragnet.’” *Neuton v. Danning (In re Neuton)*, 922 F.2d 1379, 1384 n.6 (9th Cir. 1990) (quoting *Newman v. Magill*, 99 B.R. 881, 884–85 (C.D. Ill. 1989)). Therefore, the Debtor’s interest in the inter vivos trust assets is not property of the bankruptcy estate.

AFFIRMED.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).