

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

INDRU T. HINGORANI, aka  
Jerry Hingorani, and  
DIANNA SUE HINGORANI,  
fdba Jerry Hingo, Master  
Tailor, and The Executive  
Closet

Case No. 86-3354-C

Debtors.

ORDER

On April 14, 1987 the trustee's objection to debtors' claim of exempt property came on for telephonic hearing before this court in Des Moines, Iowa. Anita L. Shodeen appeared as attorney for the trustee and Timothy C. Hogan appeared on behalf of the debtors. During the hearing the attorney for the trustee made an oral motion for a continuance for the purpose of presenting testimony and the debtors raised the issue of the use of parol evidence. The trustee's attorney was given until May 14, 1987 to file a brief and set forth Justification for a further hearing. The debtors' attorney was given until May 28, 1987 to file a response. A hearing on the trustee's objection to claim of exempt property was thus continued pending a decision upon written arguments. 1 The matter was considered fully submitted on

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1 On May 4, 1987 the court granted the debtors' request to continue a Rule 2004 examination by the trustee until a decision was reached on the issue raised during the April 14, 1987 hearing.

May 28, 1987.

### Background

The debtors filed a voluntary petition for relief under Chapter 7 on December 23, 1986. Listed on the debtors' Schedule B-4 (Property Claimed as Exempt) is a spendthrift trust for the benefit of Dianna Sue Hingorani valued at \$100,000.00. The debtors rely on 11 U.S.C. section 541(c)(2) and applicable nonbankruptcy law for the proposition that the debtors' interest in the trust fund is not property of the bankruptcy estate. In the alternative the debtors assert that they are entitled to exempt the interest in the property from the estate pursuant to section 522(b)(2).

The trustee filed an objection to the debtors' claim of exempt property on February 10, 1987. The trustee asserts that there is no statutory authorization for the exemption claimed and that applicable non-bankruptcy law does not provide a basis for an exemption. At the time of the April 14, 1987 hearing the attorney for the trustee argued that the corpus of the trust was furnished by the settlement of a lawsuit on behalf of Dianna Sue Hingorani and therefore the trust was self-settled and unenforceable under Iowa law. The trustee seeks to elicit testimony regarding the source of the funds which established the trust.

The debtors filed a resistance to the trustee's objection on February 13, 1987 and a brief supporting their resistance on April 13, 1987. The debtors argue that the trust agreement is a written document assumed to be the exclusive and

final word concerning the parties' intent and, therefore, parol evidence regarding prior negotiation which adds to or which contradict the terms of the agreement is not permissible. The debtors thus resist the trustee's efforts to elicit further testimony.

#### Analysis

Section 541(a)(1) sets forth the broad concept of property of the estate as including "all legal or equitable interests of the debtor in property as of the commencement of the case" except as otherwise provided in subsequent subsections. Section 541(c)(2) recognizes an exception for spendthrift trusts that are enforceable under state law by providing:

A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

This section was intended to exclude from property of the estate only traditional spendthrift trusts created under state law. In re Graham, 24 B.R. 305, 310 (Bankr. N.D. Iowa 1982) aff'd 726 F.2d 1268 (8th Cir. 1984). Accordingly, the issue presented is whether the trust at issue is a traditional spendthrift trust under Iowa law.

Spendthrift provisions in trust instruments are generally valid in Iowa. See Matter of Estate of Dodge, 281 N.W.2d 447, 458 (Iowa 1979). A spendthrift trust is defined as a trust created for the purpose of maintaining a designated

beneficiary and is insulated from the claim of the beneficiary's creditors. See In re Bucklin's Estate, 243 Iowa 312, 316, 51 N.W.2d 412, 414 (1952). In a valid spendthrift trust, the settlor cannot also be the beneficiary. DeRousse v. Williams, 181 Iowa 379, 389, 164 N.W. 896, 899 (1917); Harrison v. City National Bank of Clinton, 210 F.Supp. 362, 370 (S.D. Iowa 1962); Restatement of the Law, Second, Trusts § 156, pp. 326-327 (1959). The general rule is well established that if a settlor creates a trust for his or her own benefit and inserts a spendthrift clause restraining alienation or assignment it is void as far as creditors are concerned and they can reach the settlor's interest in the trust. See Matter of Goff, 706 F.2d 574, 587 (5th Cir. 1983); Annot., 34 A.L.R.2d 1335, 1342 (1954).

In the instant case the trustee does not challenge the spendthrift provisions of the trust agreement. Moreover, the trustee acknowledges that the trust agreement identifies trustor, trustee and beneficiary as three distinct entities. The trustee's concern, however, is with the circumstances and source of the assets used to fund the trust. The trustee contends that the debtor received \$100,000.00 in exchange for the settlement of her lawsuit and allowed the funds to be placed in a trust for her own benefit, thereby providing consideration for the trust. The trustee further contends that testimony regarding the source of the trust funds would not involve the parol evidence rule. The

trustee asserts that such testimony would not vary or alter the terms of the trust agreement but would explain an ambiguity and provide a setting to the writing.

The debtors vigorously resist the trustee's effort to present evidence which is not contained in the body of the trust agreement. The debtors maintain that the trust agreement is clear and unambiguous on its face and, therefore, no extrinsic evidence should be allowed. The debtors further challenge the trustee's assertion that the trust is self-settled for the reason that the debtors had no right nor entitlement to the res of the trust prior to the court approved settlement.

The court acknowledges that the parol evidence rule excludes extrinsic evidence which is solely offered for the purpose of varying, adding to or subtracting from a written agreement. However, extrinsic evidence is admissible as an aid to interpretation when it sheds light on the situation of the parties, antecedent negotiations, the attendant circumstances and the objects they were striving to attain. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 433 (Iowa 1984). The present trust agreement provides that the trustor, St. Paul Fire & Marine Insurance Company, has transferred to the trustee, Norwest Bank Des Moines, assets listed on Schedule "A". Schedule A describes a \$100,000.00 cash contribution from "St. Paul Fire & Marine Insurance-Dianna Sue Hingorani Share Trust Under Agreement Dated

5-9-86." The court finds this characterization of the source of assets and the circumstances of their transfer to be far from clear, especially given the allegation that the trust res may have been proceeds the debtor received in settlement of a lawsuit. However, the court has no information concerning whether any settlement required the proceeds to be placed in trust. See Farmers State Bank v. Janish, 410 N.W.2d 188, 190 (S.D. 1987). Nor is it known whether the beneficiary in fact gave consideration for the conveyance upon a trust. See DeRousse v. Williams, 181 Iowa 379, 164 N.W. 896, 898 (1917). Such information is essential in determining whether the trust is enforceable under applicable nonbankruptcy law and would not vary or contradict the provisions of the written document. A court may indeed look through the formalities of a trust arrangement to evaluate the true nature of the transaction. In re Graham, 24 B.R. 305, 310 (Bankr. N.D. Iowa 1982). To constitute a self-settled trust the beneficiary need not have conveyed the property held in trust. It is sufficient that he or she gave consideration for a conveyance upon a trust of which he or she is a beneficiary. Restatement of Law, Second, Trusts § 156, pp 326-327 (1959). See also Black's Law Dictionary, 1231 (5<sup>th</sup> ed. 1979) (a settlor is "one who furnishes the consideration for the creation of a trust, though in form the trust is created by another.") Accordingly, in order to give consideration to the true nature of the circumstances

giving rise to the written trust agreement at issue the court will allow the presentation of evidence requested by the trustee.

Conclusion

WHEREFORE, for the reasons expressed above, the court finds that additional evidence is necessary to determine whether the trust agreement is enforceable under applicable nonbankruptcy law and, accordingly, whether the trust fund is not property of the estate.

THEREFORE, IT IS ORDERED that the trustee's objection to the debtors' claim of exemptions shall be continued. An evidentiary hearing on the property of the estate issue shall be scheduled upon the request of the parties.

IT IS FURTHER ORDERED that this court's May 4, 1987 order continuing a 2004 examination is no longer in effect.

Signed and filed this 30th day of November, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
INDRU T. HINGORANI, aka Case No. 86-3354-C  
Jerry Hingorani, and  
DIANNA SUE HINGORANI,  
fdba Jerry Hingo, Master  
Tailor, and The Executive  
Closet,

Debtors.

ORDER ON MOTION TO RECONSIDER

On December 9, 1987 the debtors filed a motion to reconsider this court's order entered November 30, 1987 which found that additional evidence is necessary to determine whether the trust agreement in question is enforceable under applicable non-bankruptcy law and, accordingly, whether the trust fund is not property of the estate. On January 21, 1988 the debtors submitted a copy of the settlement agreement entered on May 9, 1986 between the parties to the state court action. The debtors assert that the settlement agreement will provide the court with the information needed to make a final decision in this matter. The debtors have requested that the terms of the agreement remain confidential. The court will abide by this request.

As noted in this court's November 30, 1987 order:

In a valid spendthrift trust, the settlor cannot also be the beneficiary. DeRousse v. Williams, 181 Iowa 379, 389,



164 N.W. 896, 899 (1917); Harrison v. City National Bank of Clinton, 210 F.Supp. 362, 370 (S.D. Iowa 1962); Restatement of the Law, Second, Trusts 156, pp. 326-327 (1959). The general rule is well established that if a settlor creates a trust for his or her own benefit and inserts a spendthrift clause restraining alienation or assignment it is void as far as creditors are concerned and they can reach the settlor's interest in the trust. See Matter of Goff, 706 F.2d 574, 587 (5th Cir. 1983); Annot., 34 A.L.R.2d 1335, 1342 (1954).

At that time the court did not have sufficient information to determine whether the debtor gave consideration for the conveyance upon a trust so as to fall within the rule of DeRousse v. Williams, 181 Iowa 379, 164 N.W. 896, 899 (1917).

The settlement agreement submitted by the debtors provides that information. The agreement provided that the debtor, Dianna Sue Hingorani, shall release all claim against certain defendants in exchange for a sum of money. The defendants' insurer agreed to transfer sums to Norwest Bank as trustee for the benefit of the debtor and her son "in consideration for the release and dismissal of their insureds." This language establishes that the debtor gave consideration for the creation of the trust of which she is a beneficiary. Accordingly, the debtor's interest in the trust can be reached by creditors. See DeRousse v. Williams, 181 Iowa 379, 164 N.W. 896 (1917); Restatement of the Law, Second, Trusts 5 156 at pp. 326-327 (1959).

The debtor's motion to reconsider the order dated November 30, 1987 in light of the settlement agreement and without an evidentiary hearing is hereby granted.

WHEREFORE, based on the foregoing analysis, the court hereby finds that the debtor's interest in the spendthrift trust is not excluded from the property of the estate pursuant to 11 U.S.C. section 541(c)(2).

THEREFORE, the trustee's objection to the debtor's claim of exemptions filed on February 10, 1987 is sustained.

Signed and filed this 19th day of February, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE