

## PROBATE CORNER

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ARTICLE: Spendthrift Trusts Are Alive & Well In Palm Beach County

A spendthrift trust is a trust "created with a view of providing a fund for the maintenance of another, and at the same time securing it against his own improvidence or incapacity for self-protection." See Croom v. Ocala Plumbing & Elec. Co., 62 Fla. 460, 57 So. 243 (1911). When a trust includes a valid spendthrift provision, a beneficiary may not transfer his interest in the trust and a creditor or assignee of the beneficiary may not reach any interest or distribution from the trust until the beneficiary receives the interest or distribution. See §736.0502(3), Fla. Stat. [*But see* §736.0503 Exceptions to spendthrift provision].

In Miller v. Kresser, 34 So. 3d 172 (Fla. 4<sup>th</sup> DCA 2010), the settlor established a Trust for the benefit of her son, James and named her other son, Jerry, sole trustee. The James Trust is a discretionary trust under which Jerry has absolute discretion to make distributions for James and James' qualified spouse. The James Trust contains a spendthrift provision and a provision under Article V(B) which gives Jerry, as trustee, the complete discretion to terminate the trust by distributing the entire principal to the beneficiary for any reason.

James' creditor sued to invalidate or pierce the spendthrift provision in the James Trust. In the Final Judgment, the trial court set forth a detailed account of James' significant control over the James Trust and over Jerry, as trustee. The court found that Jerry had almost completely turned over management of the trust's day-to-day operations to James. James controlled all important decisions concerning the trust assets, including investment decisions. Jerry never independently investigated these decisions to determine whether they were in the best interest of the trust, and some of the decisions have turned out to be unwise. The trial court concluded that Jerry simply rubber-stamped James's decisions and "serve[d] as the legal veneer to disguise [James's] exclusive dominion and control of the Trust assets." The court held that James' exclusive dominion and control over the James Trust served to terminate the trust's spendthrift provision, allowing James' creditor to reach all of the trust's assets to satisfy his judgment. The court further concluded that Jerry, by giving James control over the trust and complete access to the trust's assets, effectively turned over to James all of the trust's assets pursuant to Article V(B) of the trust, thereby subjecting the assets to execution.

On appeal, the court found that under §736.0502(2), Fla. Stat., a creditor could not reach any interest in a spendthrift trust until the beneficiary received a distribution. Under § 736.0504(2), Fla. Stat., when a trust provided a trustee with complete discretion over distributions, a creditor could only reach the distributions made by the trustee and a creditor could not compel distributions even if the trustee abused his discretion in managing the trust. The court stated: "While we agree that the facts in this case are perhaps the most egregious example of a trustee abdicating his responsibilities to manage

and distribute trust property, the law requires that the focus must be on the terms of the trust and not the actions of the trustee or beneficiary. In this case, the trust terms granted Jerry, not James, the sole and exclusive authority to make distributions to James. The trust did not give James any authority whatsoever to manage or distribute trust property.” As there had been no distribution to the beneficiary, and as the trustee had complete control over trust distributions, the court found that the trial court erred in invalidating the spendthrift provisions and permitting the creditor to reach undistributed trust assets.

In addition, the trial court erred in concluding that there was a merger under the trust terms. For the merger doctrine or Article V(B) to apply, Jerry would have to convey legal title of the trust principal to James. This conveyance never occurred. Moreover, the trial court did not terminate the trust, as would be required with a merger or under Article V(B).