

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

DEAN B. FARMER, TRUSTEE

Plaintiff

v.

Adv. Proc. No. 01-3083

BUTCH FAMILY PRESERVATION TRUST;  
MARK PLOE, individually and in his capacity  
as trustee and beneficiary of the Butch Family  
Preservation Trust; DONALD A. TANGWALL,  
individually and in his capacity as beneficiary  
of the Butch Family Preservation Trust; and  
GOODRICH MANUFACTURING COMPANY

Defendants

**MEMORANDUM ON MOTION FOR PARTIAL SUMMARY JUDGMENT**

APPEARANCES: HODGES, DOUGHTY & CARSON, P.L.L.C.  
Keith L. Edmiston, Esq.  
Post Office Box 869  
Knoxville, Tennessee 37901  
Attorneys for Plaintiff

STAPLETON & ELLIS, P.C.  
J. Patrick Stapleton, Esq.  
Post Office Box 4428  
Sevierville, Tennessee 37864

MARK JENDREK, P.C.  
Mark Jendrek, Esq.  
Post Office Box 549  
Knoxville, Tennessee 37901  
Attorneys for Defendants Mark Ploe and  
Butch Family Preservation Trust

WOOLF, McCLANE, BRIGHT, ALLEN &  
CARPENTER, PLLC  
Gregory C. Logue, Esq.  
Post Office Box 900  
Knoxville, Tennessee 37901  
Attorneys for Defendant Goodrich Manufacturing Co., Inc.,  
through its court-appointed receiver, Robert Looby

Donald Tangwall  
576 Foothills Plaza  
Maryville, Tennessee 37801  
Defendant, *Pro Se*

**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

Presently before the court is the Motion for Partial Summary Judgment (Summary Judgment Motion) filed by Mark Ploe (Defendant) on December 7, 2001. The Summary Judgment Motion comes in response to the Complaint filed by the Chapter 7 Trustee, Dean B. Farmer (Plaintiff), on June 26, 2001. The Plaintiff's action, involving the Debtor's purported interest in the Butch Family Preservation Trust (BFPT or the Trust),<sup>1</sup> seeks the following specific relief:

- 2) [T]he judgment of this Court declaring that the Debtor is a beneficiary of the Trust;
- 3) the judgment of this Court declaring that the Debtor is the holder of a 50% beneficial interest in the Trust;
- 4) the judgment of this Court requiring the trustees of the Trust to provide the Plaintiff with a complete and accurate accounting of the assets and liabilities of the Trust;
- 5) an order from the Court requiring Goodrich Manufacturing, Inc., to pay its rental payments due to the Trust to the Trustee to be held in escrow or into this Court, pending final determination of the Debtor's interests in the Trust;
- 6) the judgment of this Court requiring the defendants to turnover in cash or property the equivalent of 50% of the Present value of the Trust;
- 7) the judgment of this Court setting aside each and every post-petition transfer made by the Defendants of assets of the Trust[.]

The Defendant seeks summary judgment on Prayers Four through Seven.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (E) (West 1993).

I

---

<sup>1</sup> BFPT was purportedly established under the laws of the State of Michigan. The Defendant reserves the argument that the Trust was, in fact, never validly created. For the purposes of this Memorandum only, the court will presume the Trust's validity, as the ultimate issues of BFPT's legality and the Debtor's alleged interest therein are not presently before the court.

BFPT was established by Charles Ploe through a Declaration of Trust dated June 6, 1990. The original trustees were the Defendant and John H. Ploe. According to the Plaintiff, all 200 Units of Beneficial Interest in the Trust were initially given to Charles Ploe and later transferred to the Defendant and John Ploe in equal shares.<sup>2</sup>

The Declaration of Trust contains language characteristic of a spendthrift trust, providing in relevant part:

8. That the TRUSTEES may disburse all or any portion of the net income of this Trust at their discretion and also a portion of the currently existing corpus, not exceeding five per cent in any one year, to the Beneficiaries hereunder . . . .

. . . .

22. That no Beneficiary, as such, shall be empowered to control the TRUSTEES in any way or dictate management or investment policies to the Trust, or determine the disbursement of Trust income or corpus. . . .

23. That no creditor of any Beneficiary of this Trust shall be eligible to sue, or obtain from, this Trust any of the distributions made by, or due from, this Trust to any Beneficiary thereof.

. . . .

43. That neither the death nor insolvency or bankruptcy of any Trustee or holder of a Certificate of Beneficial Interest shall in any way affect the operation or continuity of this TRUST.

The Defendant relies on this spendthrift language in support of his Summary Judgment Motion.

Interestingly, in his Reply of Mark Ploe to the Response of Trustee Dean B. Farmer to Mark

---

<sup>2</sup> The Declaration of Trust unambiguously establishes that "[t]here shall never be more than 200 Units of Beneficial Interest in this Trust." Less unambiguously, however, the document also contains provisions for the distribution of a total of 400 Units - 200 to Charles Ploe in exchange for funding the Trust, and 100 each to the Defendant and John Ploe. The "Minutes of the Board of Trustees: First Meeting," dated June 6, 1990, confirms that 200 Units were in fact issued to Charles Ploe. Then, according to the Minutes of the second board meeting, dated June 29, 1990, the Defendant and John Ploe each received an allocation of 100 Units as evidenced by "Certificate No. 2" and "Certificate No. 3." Whether the first and second distribution involved the same 200 shares is unclear.

Ploe's Motion for Summary Judgment" filed on December 31, 2001, the Defendant denies asserting that BFPT is a spendthrift trust. Instead, the Defendant states that he is relying on provisions of the [BFPT] that limit the abilities of beneficiaries to dictate the management of the trust and prohibit the beneficiary for [sic] accessing the corpus of the trust." However, under Michigan law, "a spendthrift trust is one that restrains either the voluntary or involuntary alienation by a beneficiary of his interest in the trust, or which, in other words, bars such interest from seizure in satisfaction of his debts." *Fornell v. Fornell Equip., Inc.*, 213 N.W.2d 172, 176 (Mich. 1973) (citation omitted). Irrespective of the Defendant's preferred semantic label, the court will use the term "spendthrift" in this Memorandum when referencing the restrictions purportedly contained within the Trust.

## II

Rule 56 of the Federal Rules of Civil Procedure provides for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). Rule 56(c) is made applicable to this adversary proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure.

The nonmoving party bears the burden of producing specific facts showing that there is a genuine issue for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing FED. R. CIV. P. 56(e)). The facts, and all inferences to be drawn from

them, must be viewed in the light most favorable to the nonmovant. *See Matsushita*, 106 S. Ct. at 1356. A summary judgment motion does not require the court to “weigh the evidence and determine the truth of the matter[.]” *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2511 (1986). Instead, at issue is whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 2512.

### III

In seeking summary judgment on Prayers Five, Six, and Seven, the Defendant relies upon the restrictions created by BFPT’s spendthrift provisions. Because of several material questions of fact and law regarding the Trust’s spendthrift nature,<sup>3</sup> the Defendant’s Summary Judgment Motion must be denied as to those counts of the Complaint.

As noted, the Beneficial Units of BFPT may have been initially issued to Charles Ploe. Under Michigan law, “[a] person cannot . . . create a true spendthrift trust for himself.” *Fornell*, 213 N.W.2d at 176. Also, at times the Defendant, John Ploe, and possibly the Debtor each simultaneously held the status of trustee and beneficiary. Although unsettled under Michigan law, the merger of these interests (trustee and beneficiary) may have been sufficient to destroy the spendthrift character of the Trust. *See, e.g., Strong v. Page (In re Page)*, 239 B.R. 755, 763-65 (Bankr. W.D. Mich. 1999).

---

<sup>3</sup> Because BFPT was created under Michigan law, the court must look to that law in resolving the property issues raised by the present motion. *See Butner v. United States*, 99 S. Ct. 914, 917-18 (1979).

Additionally, the Debtor has testified that he contributed at least \$140,000.00 to the Trust in 1998. To the extent that a trust is self-settled, its anti-alienation provisions may be rendered ineffective. *See In re Benton*, 237 B.R. 353, 360 (Bankr. E.D. Mich. 1999) (citation omitted); *cf. Fornell*, 213 N.W.2d at 176 (“Public policy does not permit a man to place his own assets beyond the reach of his creditors.”). The Debtor has further testified that the Defendant and Charles Ploe each received distributions of Trust income and principal in excess of the amounts permitted by the Declaration of Trust.

Because of the presence of material issues of fact and law, the Defendant’s Summary Judgment Motion must be denied as to Prayers Five, Six, and Seven. The court therefore need not address the Plaintiff’s estoppel argument in which he cites a contradictory position taken by the Defendant in prior litigation before the United States District Court for the Eastern District of Michigan.<sup>4</sup> While the estoppel effect of the Defendant’s prior statements need not be decided at this time, the court is compelled to take note of the inconsistency reflected in the Defendant’s current position. *See Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1217-18 (6<sup>th</sup> Cir. 1990) (Cautioning against parties “abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposite to suit an exigency of the moment.”).

#### IV

---

<sup>4</sup> In that proceeding, which was purportedly dismissed voluntarily by the Debtor, the Defendant stated that “despite Plaintiff Tangwall’s assertions to the contrary, the assertion that [BFPT] is a spendthrift trust is simply not legally correct.” The Defendant further asserted that BFPT “contains provisions that ensure that it is not a spendthrift trust.” *Cf. supra* n.3.

The Summary Judgment Motion must also be denied as to Count Four which asks for an order requiring each trustee to provide a complete accounting of BFPT's assets and liabilities. The Defendant argues that he has only been a trustee since February 2, 2000. While willing to provide an accounting from that date forward, the Defendant asserts that he does not have sufficient information to account for prior transactions.

In response, the Plaintiff agrees that the Defendant cannot be required to account for transactions of which he took no part." The issue is therefore moot and summary judgment will therefore also be denied on this issue.

An order consistent with this Memorandum will be entered.

FILED: January 9, 2002

BY THE COURT

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE



**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

DEAN B. FARMER, TRUSTEE

Plaintiff

v.

Adv. Proc. No. 01-3083

BUTCH FAMILY PRESERVATION TRUST;  
MARK PLOE, individually and in his capacity  
as trustee and beneficiary of the Butch Family  
Preservation Trust; DONALD A. TANGWALL,  
individually and in his capacity as beneficiary  
of the Butch Family Preservation Trust; and  
GOODRICH MANUFACTURING COMPANY

Defendants

**ORDER**

For the reasons stated in the Memorandum on Motion for Partial Summary Judgment filed this date, the court directs that the Motion for Partial Summary Judgment filed by Defendant Mark Ploe on December 7, 2001, is DENIED.

SO ORDERED.

ENTER: January 9, 2002

BY THE COURT

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE