



SO ORDERED.

SIGNED this 25 day of September, 2006.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

**PHILLIP L. HILGERS,
NANETTE HILGERS,**

Debtors.

**Case No. 04-11019
Chapter 7**

D. MICHAEL CASE, TRUSTEE,

Plaintiff,

v.

Adv. No. 04-5281

**STEPHEN A. HILGERS, as Trustee of the Blanche
A. Hilgers Trust; STEPHEN A. HILGERS, as
Trustee of the Jack E. Hilgers Trust; PHILLIP L.
HILGERS, as Trustee of the Laverne W. Hilgers
Trust; PHILLIP L. HILGERS and TURNBULL
OIL, Inc.,**

Defendants.

JUDGMENT ON DECISION

The chapter 7 trustee seeks a declaration that debtor Phillip Hilgers's one-fourth remainder interest in the residue of three revocable inter vivos spendthrift trusts is an asset of the bankruptcy estate and subject to turnover. Turnbull Oil, Inc., by virtue of its pre-petition garnishment to enforce a state court judgment obtained against debtor, claims a prior interest in Phillip's remainder interest under the trusts.

Because the determination of whether an asset is property of the bankruptcy estate under 11 U.S.C. § 541 must be made as of the date debtor filed his bankruptcy petition and subject to turnover, the nature of debtor's interest under the trusts must be determined as of the date debtor filed his bankruptcy petition. If debtor's interest is subject to a valid and enforceable spendthrift provision on the date of filing, the debtor's remainder interest is not property of the estate. *See* 11 U.S.C. § 541(c)(2). After construing the language of the trust instruments and applying the Restatement (Third) of Trusts § 61 (2005) and the Kansas Uniform Trust Code, KAN. STAT. ANN. § 58a-101 *et seq.* (2005), the Court concludes that the trusts terminated and debtor's one-fourth remainder interest in the trusts' residue vested under each trust upon the death of the life beneficiary. Upon the termination of the trusts, the spendthrift clause in each trust became unenforceable. Under the stipulated facts of this case, the deaths of the life beneficiaries under each trust occurred several years prior to debtor's bankruptcy filing, thereby triggering the mandatory distribution of the trust corpus and termination of the trusts. Thus, debtor had a vested one-fourth interest in the trust corpus on the date of his bankruptcy filing and it was property of the estate that was subject to turnover to the bankruptcy trustee.

Since Turnbull Oil garnished debtor's interest under the trusts after the death of the last life beneficiary and prior to debtor's bankruptcy, its lien attached to the trust property pre-petition and

prior to the interest of the bankruptcy trustee.

Judgment is entered in favor of the bankruptcy trustee on its complaint. Debtor's one-fourth interest in the trust property shall be turned over to the bankruptcy trustee, who takes such property subject to the prior garnishment lien of Turnbull Oil.

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