

2005

## Joan Booth v. John W. Booth : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

JOAN BOOTH

Plaintiff and Appellant,

v.

JOHN W. BOOTH,

Defendant,

BRENT THEODORE BOOTH,  
TRUSTEE OF THE CHARLOTTE  
BOOTH REVOCABLE TRUST,

Garnishee and Appellee.

**BRIEF OF THE  
APPELLEE/CROSS APPELLANT**

Case Number 20050242

On Appeal from Order Entered in Third District Judicial Court,  
Honorable Stephen L. Henriod, District Judge, Presiding.  
(Reassigned to Honorable Stephen Roth.) Trial Court Civil No. 874902929

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Appellee's request oral argument

UTAH APP

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## **TABLE OF CONTENTS**

Table Of Contents .....	2
Statement of Jurisdiction .....	3
Statement Of The Issue Presented For Review .....	3
Determinative Constitutional Provisions, Statutes, Ordinances, Rules, and Regulations ...	4
Statement Of The Case.....	5
Statement Of Facts .....	7
Summary Of Argument .....	8
Argument.....	9
I.    THIS COURT SHOULD DETERMINE THAT TRIAL COURT CORRECTLY QUASHED THE WRIT OF GARNISHMENT.....	9
a.    Trustee has Statutory Duties Requiring Him to Protect Interests of the Trust and Beneficiaries Thereto.....	10
b.    The General Release Bars Ms. Booth’s Claim for Proceeds From the Trust. ....	10
c.    The Trust’s Spendthrift Clause Prohibits Disbursal of Trust Funds to Creditors .....	12
d.    Trustee has not Distributed Trust Proceeds to Defendant John Booth Because Trustee has not Located Defendant John Booth.....	13
II.    THE TRIAL COURT INCORRECTLY FAILED TO AWARD THE TRUST ITS ATTORNEY FEES FOR HAVING TO DEFEND THIS ACTION..	14
Conclusion.....	15
Oral Argument Statement.....	16
Proof of Service .....	17

## **TABLE OF AUTHORITIES**

### **Cases**

<i>American Towers Owners v. CCI Mechanical</i> , 930 P.2d 1182 (Utah 1996) .....	11
---	----

<i>Carter v. Kingsford</i> , 557 P.2d 1005 (Utah 1976) .....	11
<i>Cronquist, Et Ux. v. Utah State Agr. College</i> , 114 Utah 426, 201 P.2d 280 (Utah) .....	12
<i>Fericks v. Lucy Ann Soffe Trust</i> , 2004 UT 85 .....	15
<i>Pack v. Case</i> , 2001 UT App 232.....	4

## **Statutes**

<i>Utah Code Ann. § 75-1-107</i> .....	14
<i>Utah Code Ann. § 75-7-502</i> .....	13
<i>Utah Code Ann. § 75-7-503</i> .....	13
<i>Utah Code Ann. § 75-7-506</i> .....	14
<i>Utah Code Ann. § 75-7-801</i> .....	10
<i>Utah Code Ann. § 75-1-107</i> .....	5
<i>Utah Code Ann. § 75-7-502</i> .....	13
<i>Utah Code Ann. § 75-7-503</i> .....	4
<i>Utah Code Ann. § 75-7-807</i> .....	10
<i>Utah Code Ann. § 78-2a-3</i> .....	3

## **Treatises**

<i>Restatement (Second) of Contracts § 154(b)</i> (1981) .....	11
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## **STATEMENT OF JURISDICTION**

Jurisdiction for this matter is conferred on the Utah Court of Appeals pursuant to section 78-2a-3(2)

## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

Issue I: Whether Trial Court correctly quashed writ of garnishment pursuant to contract provisions and pursuant to statutory provisions.

Standard of Review: Interpretation of the terms of a contract is a question of law.

Thus, this Court accords the trial court's legal conclusions regarding the contract no deference and review them for correctness. *See Pack v. Case*, 2001 UT App 232, ¶16. In matters of pure statutory interpretation, this Court reviews a trial court's ruling for correctness and gives no deference to its legal conclusions. *See Estate of Berkemeir v. Hartford Ins. Co.*, 2003 UT App 78, ¶9.

Issue II: Whether Trial Court incorrectly failed to award attorney fees as provided by contract.

Standard of Review: Whether attorney fees are recoverable in an action is a question of law, which we review for correctness.” *Valcarce v. Fitzgerald*, 961 P.2d 305, 315 (Utah 1998).

Issue Preserved in Trial Court: The attorney fee issue was preserved in the Trial Court at R. 64, R. 95, and R. 127.

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,  
ORDINANCES, RULES, AND REGULATIONS**

Utah Code Ann. § 75-7-503 (2) (2004):

Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

Utah Code Ann. § 75-7-506 (2004):

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

Utah Code Ann. § 75-1-107 (e) (2004):

An individual whose death is not established under Subsection (1)(a), (b), (c) or (d) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

### **STATEMENT OF THE CASE**

**Nature of the Case:** In this case, Appellant Joan Booth (hereinafter “Ms. Booth”) obtained a judgment for child support against her ex-husband and obtained a writ of garnishment, which she subsequently served upon Appellee Brent Theodore Booth, Trustee Of The Charlotte Booth Revocable Trust (hereinafter “Trustee”). [R 58] On or about May 26, 2004, Trustee filed a Motion to Quash Writ of Garnishment and sought an award of attorney fees. [R. 59]

On or about June 30, 2004, Ms. Booth opposed Trustee's Motion to Quash Writ of Garnishment. [R. 85] On or about June 11, 2004, Trustee filed a Reply to Memorandum in Support of Plaintiff's Response to Motion to Quash Garnishment [R. 93] and a Request to

Submit for Decision. [R. 98] On July 12, 2004, the Trial Court, the Honorable Stephen L. Henriod presiding, heard oral argument on Trustee's Motion to Quash Garnishment. [R. 101] On or about August 2, 2004, the District Court entered a Minute Entry Order granting Trustee's Motion to Quash Garnishment. [R. 104] On September 10, 2004, the District Court entered its Order Granting Motion to Quash. [R. 107]

On or about September 24, 2004, Ms. Booth filed Plaintiff's Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment. [R. 110] On or about October 14, 2004, Trustee filed Garnishee's Opposition to Plaintiff's Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment. [R. 121] On or about October 20, 2005, Ms. Booth filed a Reply to Garnishee's Opposition to Plaintiff's Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment [R. 142] and a Request to Submit for Decision. [R. 140] On December 29, 2004, the District Court, the Honorable Stephen L. Henriod presiding, heard oral argument on Plaintiff's Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment. [R. 149] On or about January 12, 2005, the District Court entered a Minute Entry Order denying Plaintiff's Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment. [R. 155] On February 16, 2005, the District Court entered its Order denying Motion Pursuant to Rule 59(a)(7) for Reconsideration or New Trial on the Court's Order Quashing Writ of Garnishment. [R. 158]



### **STATEMENT OF FACTS**

1. On or about February 14, 2003, Ms. Booth executed an Acceptance of Inheritance and General Release (hereinafter “General Release”) in which she released generally the Charlotte Booth Revocable Trust (hereinafter “Trust”) and the Trustee “from any and all liability, claim or demand whatsoever; and I agree and covenant to hold the above Trust and Trustee harmless and indemnify them fully, including attorney fees.” [R. 68, Acceptance of Inheritance and General Release attached to Memorandum in Support of Motion to Quash Garnishment as Exhibit 1.]

2. On or about February 4, 2004, Ms. Booth obtained a judgment in the amount of \$20,703.39 for contempt against her ex-husband for his failure to pay child support. [R. 39]

3. On or about March 23, 2004, Ms. Booth obtained a supplemental judgment against her ex-husband, John Booth, in the amount of \$22,115.00. [R. 55]

4. On or about May 10, 2004, Ms. Booth obtained a writ of garnishment, which she subsequently served on Trustee. [R. 58]

5. The Trust contains a spendthrift provision as follows: “no beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge, or otherwise dispose of or encumber all or any part of the Trust Estate nor shall any part of the Trust Estate, including income, be liable for the debts obligations, including alimony, of any beneficiary or be subject to attachment, garnishment, execution, creditor’s bill, or other legal or equitable process.” [Declaration of Trust and Agreement, pp. 6-7, ¶ 14 A, R. 75-76]

6. Trustee has not made a distribution to Trust beneficiary Defendant John Booth because Trustee cannot locate him. [R. 124]

### **SUMMARY OF ARGUMENT**

The Trial Court correctly quashed the writ of garnishment by basing its decision in contractual and statutory provisions. Trustee is statutorily bound to, among other things, administer the trust solely in the interests of the beneficiaries, take reasonable steps to take control of and protect the trust property, and take reasonable steps to enforce claims of the trust and to defend claims against the trust. Pursuant to his duties, Trustee obtained the General Release from Ms. Booth, in which she released generally Trust and the Trustee “from any and all liability, claim or demand whatsoever; and I agree and covenant to hold the above Trust and Trustee harmless and indemnify them fully, including attorney fees.” Thus the Trial Court correctly determined that Ms. Booth “released both the trust and trustee from ‘any and all’ future claims and liability.”

The Trial Court also correctly determined that the Trust’s spendthrift provision bars Ms. Booth’s claim because the spendthrift provision provides that no part of the Trust Estate is liable for the debts or obligations of any beneficiary and is not subject to attachment or garnishment for the same.

The Trial Court also correctly determined that the trust proceeds are not subject to distribution to Defendant John Booth until five years have passed since last contact with Defendant John Booth. This Court should therefore determine that the Trial Court correctly quashed the writ of garnishment.

With regard to Trustee’s cross appeal, this Court should determine that the Trust is

entitled to its attorney fees for having to defend this matter. As a general rule, attorney fees may be awarded only when they are authorized by statute or contract. The General Release provides that Ms. Booth will “hold the Trust and Trustee harmless and indemnify them fully, including attorney fees.” The Trial Court determined that General Release “released the trust and trustee from ‘any and all’ future claims and liability.” Pursuant to the General Release, Trustee argued that the Trust should be awarded its attorney fees. The Trial Court’s Minute Entries, however, are silent with regard to attorney fees. This Court should therefore determine that the Trial Court incorrectly did not award the Trust its attorney fees. This Court should also award the Trust its attorney fees on appeal.

### **ARGUMENT**

#### **I. THIS COURT SHOULD DETERMINE THAT TRIAL COURT CORRECTLY QUASHED THE WRIT OF GARNISHMENT**

Ms. Booth seeks a determination from this Court by proposing that two separate issues are before this Court. The Trial Court, however, correctly quashed the writ of garnishment based on its interpretation of the General Release and the Trust in combination with statutory provisions. *See* Minute Entry, R. 155; Order Denying Motion Pursuant to Rule 59(A)(7) for Reconsideration or New Trial on the Court’s Order Quashing Writ of Garnishment, R. 158. Thus, the only issue before this Court is whether the Trial Court correctly quashed the writ of garnishment pursuant to contract and statutory provisions.

**a. Trustee has Statutory Duties Requiring Him to Protect Interests of the Trust and Beneficiaries Thereto.**

In this case, Ms. Booth claims that Trustee is merely a neutral party holding trust proceeds for whoever may have a claim to the proceeds. Trustee, however, has statutory duties that he must carry out to protect the interests of the Trust and beneficiaries thereto. Pursuant to section 75-7-801 of the Utah Code, “[u]pon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.” Section 75-7-802 provides that “[a] trustee shall administer the trust solely in the interests of the beneficiaries.” Section 75-7-807 provides that “[a] trustee shall take reasonable steps to take control of and protect the trust property.” Section 75-7-809 provides that “[a] trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.” Consequently, Trustee is statutorily required to carry out his duties to protect the Trust. Failing to carry out those statutory duties could subject Trustee to liability.

**b. The General Release Bars Ms. Booth’s Claim for Proceeds From the Trust.**

In this case, Trustee, in accordance with his duties, obtained an Acceptance of Inheritance and General Release (hereinafter “General Release”) from Ms. Booth. [R. 68] In the General Release, Ms. Booth agreed that she would generally release the Trust and Trustee “from any and all liability, claim or demand whatsoever; and I agree and covenant to hold the above Trust and Trustee harmless and indemnify them fully, including attorney fees.” [R. 68] By serving the writ of garnishment upon the Trustee, Ms. Booth breached the terms of the General Release because she is demanding that the

Trustee pay her from the Trust estate that she has released and agreed to hold harmless.

In *American Towers Owners v. CCI Mechanical*, 930 P.2d 1182 (Utah 1996), the Utah Supreme Court determined that the agreement at issue in the matter “broadly releases ‘all other claims, actions, causes of action, and/or damages against Lender.’” *Id.* at 1186 (emphasis in original). To make that determination, the supreme court relied on its earlier decision of *Carter v. Kingsford*, 557 P.2d 1005 (Utah 1976). In *Carter*,

the plaintiff suffered a neck injury resulting from a car accident. She signed a general release for \$3,334.09. “[S]he was aware of the injury, believing it was merely a severe neck strain, but was unaware of the nature or extent of her injury.” After signing the release, she developed numbness in her arm and eventually required neck surgery. She then sued, seeking to avoid her release. This court distinguished between “‘an unknown injury and the unknown consequences of a known injury’ where ‘the former can be the basis of a mutual mistake, while the latter would be only a mistake of opinion.’” The court concluded that the release barred the action because the complications constituted “an unknown consequence of a known injury.”

*Id.* at 1187. In *American Towers Ass’n*, the supreme court determined that “[a] party may not rely upon mistake to avoid an agreement when ‘he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient.’” *Id.* (quoting Restatement (Second) of Contracts § 154(b) (1981)). The supreme court held that “[t]he Release clearly demonstrates the Association’s intent to hold First Security blameless for its activities related to the complex.” *Id.*

In this case, Ms. Booth was aware of her claim against her ex- husband John Booth when she signed the General Release, which provides as follows: “[Ms. Booth] . . .

agree[s] that this document shall serve as a ‘General Release’ of the Trust and Trustee named from any and all liability, claim or demand whatsoever; and I agree and covenant to hold the above Trust and Trustee harmless and indemnify, them fully, including attorneys fees.” General Release, R. 68. Thus, the General Release broadly releases the Trust and Trustee from any liability, claim or demand whatsoever. It does not reserve any right for Ms. Booth to obtain any proceeds that her ex-husband may be entitled to under the Trust. Had Trustee acquiesced to Ms. Booth’s writ of garnishment, he would have violated the terms of the General Release and violated his statutory duties to protect the trust proceeds. Thus, the Trial Court correctly determined that Ms. Booth “released both the trust and trustee from ‘any and all’ future claims and liability.” Minute Entry, R. 104.

**c. The Trust’s Spendthrift Clause Prohibits Disbursal of Trust Funds to Creditors**

Ms. Booth is seeking to garnish the Trust for amounts that have not been disbursed to her ex-husband as a beneficiary of the Trust. The Trust, however, has a spendthrift clause that prohibits disbursal of the trust estate for debts of a beneficiary. The Utah Supreme Court has long determined that a spendthrift trust prohibits a beneficiary from assigning an interest in the trust estate. *See Cronquist, Et Ux. v. Utah State Agr. College*, 114 Utah 426, 430, 201 P.2d 280 (Utah) (“In general, a spendthrift trust is one in which the beneficiary is prohibited from anticipating or assigning his interest in or income from the trust estate.”) The Trust’s spendthrift provision provides as follows:

no beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge, or otherwise dispose of or encumber all or any part of the Trust Estate nor shall any part of the Trust

Estate, including income, be liable for the debts obligations, including alimony, of any beneficiary or be subject to attachment, garnishment, execution, creditor's bill, or other legal or equitable process.

[R. 75-76] (emphasis added). As a result of the spendthrift provision, Ms. Booth cannot garnish the Trust to satisfy the debt of her ex-husband.

Section 75-7-503 entitles her to the trust proceeds, which provides as follows:

Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

Utah Code Ann. § 75-7-503 (2) (2004). Section 75-7-503(2) does not apply to this matter for two reasons. First, as argued above, Ms. Booth, through the General Release, generally released the Trust and Trustee “from any and all liability, claim or demand whatsoever; and I agree to covenant to hold the above Trust and Trustee harmless and indemnify them fully, including attorney fees.” [R. 68] Second, Ms. Booth has not sought to attach present or future distributions to or for the benefit of Defendant John Booth. She has sought to garnish the proceeds before the proceeds have been distributed to Defendant John Booth. Thus, section 75-7-503(2) does not apply to this matter.

**d. Trustee has not Distributed Trust Proceeds to Defendant John Booth Because Trustee has not Located Defendant John Booth.**

Section 75-7-502 of the Utah Code provides that “a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.” Utah Code Ann. § 75-7-502(3) Ms. Booth asserts that section 75-7-506

requires Trustee to distribute the proceeds. Section 75-7-506 provides as follows:

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

Section 75-1-107(e), however, provides as follows:

An individual whose death is not established under Subsection (1)(a), (b), (c) or (d) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Defendant John Booth has not been absent for a continuous period of five years. In its Order, the Trial Court determined that “[p]ursuant to section 75-1-107(e) of the Utah Code, Defendant will be presumed dead after 5 years without contact and the trust shall be distributed to Defendant’s children per stirpes after the five year period.” [R. 108] Thus, the Trial Court correctly determined that the distribution has not occurred and therefore correctly quashed the writ of garnishment. [R. 155]

### **ARGUMENT FOR CROSS APPEAL**

#### **II. THE TRIAL COURT INCORRECTLY FAILED TO AWARD THE TRUST ITS ATTORNEY FEES FOR HAVING TO DEFEND THIS ACTION**

With regard to Trustee’s cross appeal, this Court should determine that the Trust is entitled to its attorney fees for having to defend this matter. “As a general rule, attorney



fees may be awarded only when they are authorized by statute or contract.” *Fericks v. Lucy Ann Soffe Trust*, 2004 UT 85, ¶23. The General Release provides that Ms. Booth will “hold the Trust and Trustee harmless and indemnify them fully, including attorney fees.” The Trial Court determined that General Release “released the trust and trustee from ‘any and all’ future claims and liability.” [R. 104] Pursuant to the General Release, Trustee argued that the Trust should be awarded its attorney fees. [R. 64; R. 95; R. 127] The Trial Court’s Minute Entries, however, are silent with regard to attorney fees. This Court should therefore determine that the Trial Court incorrectly did not award the Trust its attorney fees based on provisions of the General Release.

### **CONCLUSION**

The Trial Court correctly determined that Ms. Booth generally released the Trust and Trustee from any demand, claim or liability, the Trust’s spendthrift provision prohibits the disbursal of the Trust estate to satisfy the liabilities of a beneficiary, and that the Trust proceeds have not yet been distributed to Defendant John Booth. As a result, the Trial Court correctly quashed the writ of garnishment.

With regard to the cross appeal, Ms. Booth agreed to hold harmless and fully indemnify the Trust and Trustee, including attorney fees. The Trust has incurred attorney fees in defending against Ms. Booth’s breach of the General Release. This Court should therefore award the Trust its attorney fees incurred in this matter both at the Trial Court and on appeal.

**ORAL ARGUMENT STATEMENT**

Oral argument is requested.

DATED this \_\_\_\_ day of September, 2005.

HAWKINS & SORENSEN, LC

A handwritten signature in black ink, appearing to read "Rick L. Sorensen", is written over a horizontal line.

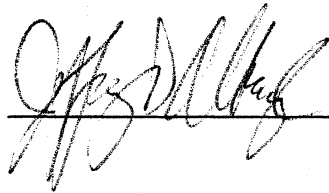
Rick L. Sorensen

Attorneys for Appellee Brent Theodore Booth,  
Trustee Of The Charlotte Booth Revocable  
Trust

### **PROOF OF SERVICE**

This is to certify that copies of the foregoing **APPELLEES' BRIEF** was sent by the method shown the day of February, 2005 to the following:

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2	Russell M. Blood Law Offices of Russell M. Blood, P.C. 11576 South State Street, Suite 1102 Draper, Utah 84020	First Class Mail

 9/14/05

## **ADDENDUM**

Minute Entry dated January 12, 2005

Refer to addenda attached to Brief of the Appellant

THIRD DISTRICT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

THIRD DISTRICT COURT  
Third Judicial District  
JAN 12 2005  
SALT LAKE COUNTY

Deputy Clerk

JOAN B. BOOTH,

Plaintiff,

vs.

JOHN W. BOOTH,

Defendant.

MINUTE ENTRY

CASE NO. 874902929

JUDGE STEPHEN L. HENRIOD

On August 2, 2004, this Court entered a Minute Entry granting the Trustee's motion and quashing the writ of garnishment because: (1) plaintiff released the trust from any and all future claims of liability pursuant to the execution of an "Acceptance of Inheritance & General Release"; and (b) by law after five years the defendant will be presumed deceased and the money will go to decedent's children per stirpes. Plaintiff asks the Court to reconsider its prior ruling.

In order to grant the Motion For Reconsideration, the Court must conclude that its prior ruling was incorrect, i.e. that the terms of the General Release are limited and only effect plaintiff's right to payment as beneficiary of the Trust—not her claims against her ex-husband for child support.

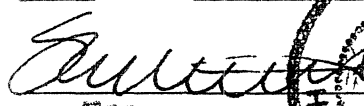
After consideration, I find, however, that ruling was appropriate in lieu of the Trust's provision and the fact that the distribution to defendant has not yet occurred. See, UCA § 75-7-502 "creditor or assignee of

beneficiary may not reach the ~~interest~~ or a distribution by the trustee before its receipt by the beneficiary".

Mr. Sorenson to prepare an Order consistent with this decision.

Dated this 12 day of January, 2005.

BY THE COURT.

  
STEPHEN L. HENNRICH  
DISTRICT COURT JUDGE

