

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JANE DOE,)	
)	
Judgment Creditor)	
)	
v.)	Civil No. 99-262-P-DMC
)	
WAYNE D. MANSON,)	
)	
Judgment Debtor)	

MEMORANDUM DECISION AND ORDER

In the wake of disclosure hearings held on April 18 and July 6, 2006, the judgment creditor (“Creditor”) seeks an order (i) increasing the amount of the judgment debtor’s (“Debtor’s”) monthly payment to no less than \$407, (ii) attaching any distributions from the Alice K. Manson Revocable Trust (“Trust”) to the Debtor, and (iii) compelling a judicial sale of the Debtor’s beneficial interest in the Trust. *See Plaintiff’s Post-Disclosure Memorandum (“Creditor’s Brief”)* (Docket No. 44) at 2. For the reasons that follow, I (i) order that the Debtor henceforth make monthly payments of \$113, (ii) grant, with limitations, the Creditor’s request to attach future Trust distributions, if any, to the Debtor, and (iii) otherwise deny the Creditor’s requested relief.

I. Backdrop

On June 23, 2000 this court entered a judgment in favor of the Creditor as against the Debtor in the amount of \$250,000. *See Judgment* (Docket No. 21). The Creditor also was awarded \$738.81 in costs of suit. *See Bill of Costs* (Docket No. 22). Prior to 2006, disclosure hearings were held in this matter on

two occasions: September 18, 2000 and June 17, 2003. *See* Docket Nos. 25, 29. Following the first such hearing, the Debtor was ordered to turn over savings and investment accounts in the combined amount of \$7,994.70. *See* Docket No. 25. Following the second hearing, he was ordered to pay \$50 a month toward the balance of the instant judgment debt. *See* Order (Docket No. 30). At the Creditor's request, a disclosure hearing was again held before me on April 18, 2006 at which the Debtor appeared *pro se* and the Creditor appeared via counsel. *See* Docket No. 39. At the close of that hearing, I denied the Creditor's requests to obtain proceeds from (i) two life insurance policies (totaling approximately \$3,200) paid to the Trust following the death of the Debtor's mother on March 5, 2005 and (ii) the Debtor's redemption of a bond (totaling \$3,060), the proceeds of which he deposited in a Trust account to help defray costs of his mother's burial. I deferred ruling on the Creditor's further requests to obtain (i) an increase in the amount of the Debtor's monthly payment and (ii) judicial sale of the Debtor's beneficial interest in the Trust, permitting the parties an opportunity to file post-hearing briefs addressing those issues. I commented that unless the Creditor's counsel could persuade me that a greater increase was justified, I would order the Debtor's monthly payment increased to \$95.

In due course, the Creditor filed her post-disclosure-hearing memorandum. *See* Creditor's Brief. The Debtor filed no response; however, I granted a motion by Cheri Davis, trustee of the Trust ("Trustee"), to intervene. *See* Motion To Intervene (Docket No. 47) & endorsement thereon (Docket No. 49). The Trustee took no position on the Creditor's request for an increase in the amount of the Debtor's monthly payment but urged that the court deny the requested attachment or, alternatively, limit its scope. *See* Intervenor's Opposition to Plaintiff's Post-Disclosure Memorandum ("Trustee's Response") (Docket No. 48) at 1 & n.1. She opposed the requested judicial sale of the Debtor's beneficial interest in the Trust. *See*

id. The Creditor then filed a reply brief. *See* Plaintiff’s Reply Memorandum (“Creditor’s Reply”) (Docket No. 50).

After carefully considering these papers, I decided to reopen the disclosure hearing, directing that the parties appear before me on July 6, 2006 and ordering the Debtor to bring with him at that time certain documents. *See* Procedural Order (Docket No. 51). The supplemental disclosure hearing was held as scheduled. *See* Docket No. 52. The Debtor again appeared *pro se*, while the Creditor appeared via counsel. *See id.*

II. Analysis

A. Requested Increase in Monthly Payment

The Creditor clarifies that she seeks an increase in the Debtor’s monthly payment to no less than \$407, using Maine’s child-support guidelines as a reference point. *See* Creditor’s Brief at 3. She reasons that (i) the Debtor has a gross annual income from his pension of \$22,389, (ii) per the child-support guidelines, a parent with an annual gross income of \$22,200 is expected to contribute \$94 per week, or \$407 per month, to the support of one teenage child, and (iii) the Debtor reasonably should be expected to pay at least that much in this case in view of the fact that he is living rent-free in a home owned by the Trust and can afford a car-lease payment of \$422 per month. *See id.*; *see also* Child Support Guidelines, Code Me. R. 10-144 ch. 351, § 2. In her reply brief, the Creditor further points out that (i) the Debtor filed no brief in opposition to this proposal, and (ii) the Trustee took no position on it. *See* Creditor’s Reply at 2. For all of the foregoing reasons, she asks that her first request be granted as prayed for. *See id.*

As the Creditor acknowledges, *see* Creditor’s Brief at 3, the Debtor’s pension-benefit payments are exempt from installment-payment order “to the extent reasonably necessary for the support of the debtor[.]” 14 M.R.S.A. §§ 3126-A(2), 4422(13)(E). The Creditor’s child-support-guidelines argument is

facially appealing, particularly in view of the circumstances that gave rise to her judgment against the Debtor. Nonetheless, those guidelines obviously are not controlling in this context and, in my view, cannot stand proxy for the sort of thorough, individualized scrutiny contemplated by the controlling statutes when a judgment creditor seeks to obtain a portion of a judgment debtor's pension benefits. Nor does the Debtor's failure to file an opposition brief, in these circumstances, constitute a concession of ability to pay the requested amount or otherwise relieve the court of its duty to make a careful, independent analysis pursuant to the controlling statutes. With those precepts in mind, I proceed to examine the Debtor's income and expenditures.

The record reveals that the Debtor's retirement pension currently is his only source of income. In 2005 he received a gross pension benefit of \$22,389 on which he paid federal income taxes of \$1,281 and state income and use taxes of \$175, leaving net proceeds of \$20,933 – an average of \$1,744.42 per month. *See* Plaintiff's Exh. 4. The sum of \$314.36 is deducted monthly from his pension payment for health- and dental-insurance premiums and teachers' association dues. *See* Court Exh. 1. The net amount available for his support accordingly is \$1,430.06 per month.¹ His average monthly debt/bill payments total approximately \$1,374.34, consisting of \$422.83 for a Chrysler car lease (for a 2005 Dodge Caravan minivan), \$62 to NEA Credit, \$189 to MBNA (for a line of credit used in part to cover costs of legal representation), \$97 toward an AAA Financial loan, \$91 on a Capital One debt, \$80 in Metlife auto-insurance premiums, \$100 in prescription-drug co-payments, \$11.80 in laboratory co-payments, \$17.83 in premiums for life and AD&D insurance, \$11.56 to Central Maine Power, \$41.90 to Verizon (telephone), \$49.64 to Comcast (cable), \$25.20 to Waste Management for trash removal, \$14.58 to Seacoast

¹ The Debtor receives monthly pension checks totaling \$1,536.40. *See* Court Exh. 1. This exceeds the amount I have (*continued on next page*)

Newspapers,² approximately \$65 toward either special household projects or other household expenditures, and, since the April 18, 2006 disclosure hearing, \$95 to Kelly, Remmel & Zimmerman (toward the instant judgment debt). *See* Court Exh. 2.³ He spends whatever is left over on groceries, gasoline and occasional purchases; he estimated that groceries cost about \$40 to \$45 per week. The Debtor's average monthly expenditures (which total approximately \$1,547.67 to \$1,569.34) thus slightly exceed his net monthly income of \$1,430.06.

During cross-examination of the Debtor on July 6, counsel for the Creditor established that one of the Debtor's expenditures – the average monthly payment of \$17.83 in premiums for life and AD&D insurance – is unreasonable. The Debtor testified that his mother, who is now deceased, was the named beneficiary and that he never has had any dependents. Asked why he maintained these policies, he answered: "Good question. I don't know." The Creditor otherwise points to no expenditure (other than arguably that for the car lease) as unreasonable. However, the Creditor adduces no evidence on the basis of which I can conclude that the lease is in fact an unreasonable expenditure. Certainly, it is not unreasonable for the Debtor to possess a car, and the car he has chosen to lease (a Dodge Caravan) is not a luxury make or model.

That said, the Debtor testified at hearing on April 18 that he and the Trustee had just instituted a new arrangement whereby, for the Trustee's convenience, instead of the Debtor paying \$200 a month in rent to the Trust and approximately \$13 to \$15 a month for electricity, he had ceased paying rent and

determined to be his net available monthly income because insufficient sums are withheld to cover his federal and state income tax liability. *See id.*; Plaintiff's Exh. 4.

² The Debtor listed an average monthly expenditure to Seacoast Newspapers of \$21.25 based on quarterly payments of \$43.75. *See* Court Exh. 2. However, he appears to have made a mathematical error; by my calculations, this comes to a monthly average cost of \$14.58. I have used the lower amount in calculating his average monthly expenses.

³ The Debtor testified at the July 6 hearing that he believed I had ordered him as of the April 18 hearing to increase his
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begun, instead, to pay utility bills previously paid by the Trust. He estimated that whereas he previously had paid a total of \$213 to \$215 monthly for rent/utilities, he now was paying about \$169 for utilities – a difference of approximately \$45 monthly. I indicated at hearing on April 18 that the benefit of that bargain should redound to the Creditor, and the Debtor has in fact been paying that additional amount to the Creditor since then.

Therefore, I determine that the Debtor's monthly payment on the instant debt should be increased effective immediately to a total of \$113, reflecting (i) the Debtor's windfall of \$45 monthly as a result of his new arrangement with the Trustee and (ii) the average monthly cost of \$17.83 (rounded to \$18) in premiums for life and AD&D insurance policies the retention of which the Debtor was unable to justify. Inasmuch as the Debtor's monthly expenses actually exceed his net monthly income, no further increase is justified at this time.

B. Requested Attachment of Trust Distributions

At the April 18 hearing, the Debtor testified that he had not received any cash or monetary distributions from the Trust; he reaffirmed on July 6 that this remained the case. Nor does the Trust instrument provide him with an entitlement to such distributions; rather, the Trustee has "sole and absolute discretion" to make such distributions as she deems to be in his best interests but is not obliged to make any distribution to him. *See* Trust Agreement Establishing Alice K. Manson Revocable Trust & amendments thereto ("Trust Agreement"), Plaintiff's Exhs. 1-3, §§ 4.1, 6.1. The Creditor acknowledges that she cannot compel distributions from the Trust (which I conclude assuredly qualifies as a "discretionary trust"), *see* Creditor's Brief at 4; Creditor's Reply at 3; 18-B M.R.S.A. § 504(1); however, she correctly points out

monthly payments on the instant judgment debt to \$95. In fact, I reserved judgment on that question; however, he has
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that because the Trust is not structured as a spendthrift trust, a court may order “attachment of present or future distributions to the beneficiary[.]” *see* Creditor’s Brief at 4 (quoting 18-B M.R.S.A. § 501). Nonetheless, the court “may limit the award to such relief as is appropriate in the circumstances.” 18-B M.R.S.A. § 501. Per commentary to the statute, “In exercising its discretion to limit relief, the court may appropriately consider the support needs of a beneficiary and the beneficiary’s family.” *Id.* uniform cmt.

The Trustee requests that if an attachment order is entered, it be limited to distributions, if any, that she elects to make directly to the Debtor. *See* Trustee’s Response at 2-3. She maintains – and the Creditor does not dispute – that for the benefit not only of the Debtor but also the remaindermen of the Trust, she should be allowed to pay reasonable expenses of maintaining the Trust’s assets (in particular its real property), including real-estate taxes, insurance premiums, reasonable and necessary expenses for repairs and maintenance and utility charges. *See id.* at 3; *see also* Creditor’s Reply at 3.⁴

I agree that the attachment order should be limited; however, the Trustee’s proposed verbiage is, at the same time, underinclusive and overinclusive. It is underinclusive in that the Trust Agreement permits not only direct distributions to the Debtor but also distributions to third parties on his behalf. *See* Trust Agreement § 6.1. Thus, pursuant to the attachment order as the Trustee has proposed it be limited, Trust funds paid, say, to a travel agent to cover the cost of a Bermuda trip for the Debtor would elude the Creditor’s grasp because the distribution was not made “directly” to the Debtor. On the other hand, the Trustee’s proposed language is overinclusive in that it encompasses distributions of any kind or nature made directly to the Debtor. The Debtor is in fact currently receiving a significant in-kind distribution from the

been paying \$95 per month toward that debt since then.

⁴ The Trustee is empowered, *inter alia*, “to pay all charges incident to maintaining [real estate distributed to the Trust] including, without limitation, all assessments, insurance premiums, taxes and ordinary repairs[.]” Trust Agreement § 8.1(f).

Trust: He has been permitted to live rent-free, or in exchange for below-market-value rent, in Trust-owned property.⁵ Whereas I am satisfied that attachment of any monetary distributions to the Debtor (or on his behalf) is appropriate in view of the fact that such distributions are not at present necessary for his support, that is not the case with respect to the provision of housing. The Debtor's housing arrangement constitutes a critical piece of his overall support. Were he obliged to pay its value over to the Creditor, he would have insufficient income to maintain his current modest lifestyle or, for that matter, to continue the current court-ordered monthly payment.

I therefore adopt the Creditor's proposed form of attachment language with modifications, as follows:

Until further ordered, any distributions to or on behalf of the Debtor of any kind or nature from the Alice K. Manson Revocable Trust, under trust instrument dated February 17, 1999 as amended, are hereby attached, with the following exceptions:

1. This attachment does not extend to any distribution made for the purpose of maintaining the Trust's assets (including but not limited to real property), including but not limited to payment of real-estate taxes, insurance premiums, reasonable and necessary expenses for repairs and maintenance, and utilities.
2. This attachment does not extend to any in-kind distribution to the Debtor in the form of the provision of housing rent-free or at below-market-value rental rates.

C. Requested Judicial Sale of Debtor's Interest in Trust

The Creditor finally requests a judicial sale of the Debtor's beneficial interest in the Trust, asserting that such relief is authorized by the common law and by statute and is her only realistic hope of ever

⁵ At the July 6 hearing the Debtor testified that a second property owned by the Trust, nearby the house in which he lives
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obtaining satisfaction of her judgment. *See* Creditor’s Brief at 4. The Creditor emphasizes that the relief she seeks is limited: She is not seeking seizure on execution or sale of any Trust property, but rather asks only that the court order the judicial sale of the Debtor’s beneficial interest in the Trust via a procedure known as a “creditor’s bill to reach and apply,” or an “equitable execution.” *See id.* at 6. She observes that if the Debtor wishes to retain his beneficial interest he may bid accordingly; if not, in all likelihood she would purchase it, placing her in a position to pursue whatever rights and benefits may inure to the owner of that interest. *See id.* at 7. In either event, she observes, the court would be able to quantify the value of that interest by what is paid for it and apply that amount against the judgment debt. *See id.*; *see also* Creditor’s Reply at 6-7.

Before reaching the merits of this argument, it is critical to understand the nature of the interest in issue. At hearing on April 18, the Debtor testified that he understood that he had a life estate in property owned by the Trust in which he currently resides – that is, a right to live there for the remainder of his life should he so choose. However, that is not what the Trust instrument provides. No life estate or specific real estate is mentioned. *See generally* Trust Agreement. Instead, the Trust vests discretion in the Trustee “to distribute all or any part of either the net income or the principal, or both, of a trust . . . by distributions in cash or kind[.]” *Id.* § 6.1. For the Trustee’s guidance, the “best interests” of the beneficiary are defined; however, the best-interests standard “is intended solely as a precatory guide to the Trustee and shall in no way be construed to alter, limit or enlarge the discretions and powers conferred upon the Trustee by any other provision hereof nor to require the Trustee to make any distribution to any beneficiary.” *Id.* § 6.2. Accordingly, while the Debtor has a beneficial life interest in the Trust, he has no interest in real estate

and less desirable, is rented to a third party for \$500 per month.

owned by the Trust and no entitlement either to live at his current residence or to receive any other distribution from the Trust.

The Creditor cites several statutory and common-law authorities in support of her request for “judicial sale” of the Debtor’s beneficial interest. *See* Creditor’s Brief at 4-7. As she points out, *see* Creditor’s Reply at 4-5, “in the absence of a controlling federal statute, the district court has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law[.]” *United States ex rel. Goldman v. Meredith*, 596 F.2d 1353, 1357 (8th Cir. 1979) (citing, *inter alia*, Federal Rule of Civil Procedure 69(a)). Nonetheless, the authorities she cites stand at most for the proposition that, in appropriate circumstances, a judgment creditor may reach and apply a judgment debtor’s beneficial interest in a trust; they do not make clear that it is appropriate to enter such an order with respect to a beneficial interest like that in issue here. *See, e.g.*, 14 M.R.S.A. § 6051(11) (Maine Superior Court has jurisdiction “to grant appropriate equitable relief[.]” *inter alia*, “in civil actions, by creditors, to reach and apply in payment of a debt any property, right, title or interest, legal or equitable, of a debtor or debtors, which cannot be come at to be attached on writ or taken on execution in a civil action”); *Haley v. Palmer*, 78 A. 368, 369-70 (Me. 1910) (debtor’s equitable fee-simple estate in trust that was not structured as spendthrift trust was subject to “equitable trustee process”); Restatement (Second) of Trusts § 147 (1959) (“Except as stated in §§ 149-162 [relating to restrictions on voluntary and involuntary transfers], creditors of the beneficiary of a trust can by appropriate proceedings reach his interest and thereby subject it to the satisfaction of their claims against him.”); 11 George Gleason Bogert, George Taylor Bogert & Amy Morris Hess, *The Laws of Trusts and Trustees* § 193 (rev. 2d. ed. 1992) (“Bogert”) (noting that if trust is active, creditor of beneficiary can subject latter’s interest in trust to satisfaction of debt, either in law or equity, unless statute or valid spendthrift provision prevents result; but

also noting that special case of discretionary trusts is treated elsewhere in treatise).⁶

I agree with the Trustee, *see* Trustee’s Response at 5, that the Creditor’s request is in tension with, and seems designed to end-run, the Maine Uniform Trust Code, which specifically provides that “a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion,” 18-B M.R.S.A. § 504(1); *see also, e.g.*, Bogert § 228 (if trust is a true “discretionary” trust, beneficiary “cannot secure the aid of a court in compelling the trustee to pay or apply trust income or principal to him since the terms of the trust permit the trustee to withhold payments at his will. Until the trustee elects to make a payment the beneficiary has a mere expectancy.”); *Hamilton v. Drogo*, 150 N.E. 496, 497 (N.Y. 1926) (creditor of beneficiary of discretionary trust could reach trust assets on execution only to extent distributions were made).

The Creditor protests that she is not seeking to compel any distribution or sale of the Trust assets themselves but rather simply seeks sale of the Debtor’s interest, whereupon the buyer will stand in his shoes. *See* Creditor’s Reply at 3. Nonetheless, the Creditor makes clear that she is a possible (and, as discussed below, in my view, likely) buyer of the Debtor’s interest. *See id.* at 6-7. A beneficiary – as opposed to a creditor – is not barred by statute from seeking to compel distributions from a discretionary trust. *See* 18-B M.R.S.A. § 504(2). Thus, were the Creditor to displace the Debtor as Trust beneficiary, she would be in a position at least to attempt to compel distributions (if not to succeed in so doing). Such a scenario, in my view, end-runs the prohibition contained in section 504(1).

Nonetheless, even assuming *arguendo* that the requested judicial sale would not run afoul of section 504(1), I decline to order it. The Creditor in her reply brief cites authority for the proposition that in some

⁶ The Creditor also relies in part on 14 M.R.S.A. §§ 2201 and 4451, dealing with seizure and sale of “all rights and
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circumstances a creditor might be permitted to force a sale of a beneficial interest in a discretionary trust. *See* Creditor's Reply at 6. However, it is clear even from those authorities that such a scenario is the exception, not the rule. *See, e.g.*, 18-B M.R.S.A. § 501 uniform cmt. ("A creditor typically will pursue a claim by serving an order on the trustee attaching the beneficiary's interest. Assuming that the validity of the order cannot be contested, the trustee will then pay to the creditor instead of to the beneficiary any payments the trustee would otherwise be required to make to the beneficiary, as well as discretionary distributions the trustee decides to make. The creditor may also, in theory, force a judicial sale of a beneficiary's interest."); Restatement (Third) of Trusts § 56 cmt. e (2003) ("In some circumstances, the court may order a sale of the beneficiary's interest and payment of the creditor's claim from the proceeds. Sale may be appropriate when it appears unlikely that the debt can be satisfied from distribution(s) within a reasonable time, particularly when the beneficiary's interest is a future interest. Even then the uncertainty or remoteness of the interest may be such that its forced sale would produce little relative to its value to the beneficiary, and perhaps also too little to satisfy the creditor's claim. In that case, unless a loan or other arrangement can be obtained, it would be appropriate for the court to grant the creditor a lien on the beneficiary's interest, to be realized if and when it falls into possession.").

There is good reason for the rarity of this form of relief in these circumstances: a beneficial interest in a discretionary trust is not a particularly salable commodity. *See, e.g.*, Bogert § 228 ("The discretionary trust effects an indirect restraint on alienation in that it discourages attempts at voluntary alienation and efforts by creditors to reach the interest of the beneficiary. Few persons will be willing to purchase the expectancy of the beneficiary, because whether it ripens into a benefit depends on the uncontrolled

interests" in attachable real estate. *See* Creditor's Brief at 5-6. However, as already discussed, the Debtor's interest in the
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discretion of the trustee, even though they may secure something of value if the trustee later elects to pay or apply.”).

As a practical matter, were the Creditor’s request granted, the only bidders for the Debtor’s uncertain interest would be the Creditor and the Debtor. The Creditor hopes that the Debtor would be willing to place a substantial bid to preserve his interest. *See* Creditor’s Reply at 6-7 (“If he wishes to retain this valuable interest, he may bid accordingly. Any bid will have to be substantial, or it [the beneficial interest] will probably be purchased by [Creditor].”). However, from all that appears, the Debtor lacks the resources to place such a bid. The Creditor accordingly likely would emerge the victorious bidder. In that case, the initial impact would be a wash: Funds paid by the Creditor to obtain the Debtor’s interest would be attached and, in effect, returned to her as payment toward the judgment debt. Theoretically, she might in the future receive distributions from the Trust, but the record affords no reason to believe that the Trustee would be inclined to pay her out a dime, and she cites no authority for the proposition that, were she to stand in the Debtor’s shoes as beneficiary, she would have a realistic hope of succeeding with a petition to compel Trust distributions. Thus, from all that appears, the requested relief would amount to an exercise in futility.⁷

As sympathetic as I am to the Creditor’s quest to obtain satisfaction of her judgment, I conclude that the requested judicial sale, even assuming it does not run afoul of 18-B M.R.S.A. § 504(1), is not an appropriate means in these circumstances by which to accomplish her end. Accordingly, I decline to order it.

III. Conclusion and Order

Trust cannot fairly be characterized as an interest in real estate.

For the foregoing reasons, and based on evidence presented at the disclosure hearing held before me on April 18 and July 6, 2006, it is hereby ordered that:

1. Until further ordered, the installment to be paid toward the instant judgment by judgment debtor Wayne D. Manson is increased from \$50 to \$113 per month effective as of the next payment due date of August 1, 2006. Installment payments shall continue to be due on the first day of each month and to be paid to the order of Kelly, Remmel & Zimmerman.

2. Until further ordered, any distributions to or on behalf of the Debtor of any kind or nature from the Alice K. Manson Revocable Trust, under trust instrument dated February 17, 1999 as amended, are hereby attached, with the following exceptions:

A. This attachment does not extend to any distribution made for the purpose of maintaining the Trust's assets (including but not limited to real property), including but not limited to payment of real-estate taxes, insurance premiums, reasonable and necessary expenses for repairs and maintenance, and utilities.

B. This attachment does not extend to any in-kind distribution to the Debtor in the form of the provision of housing rent-free or at below-market-value rental rates.

So ordered.

Dated this 7th day of July, 2006.

David M. Cohen
United States Magistrate Judge

Plaintiff

JANE DOE

represented by **CHRISTOPHER R. CAUSEY**
KELLY, REMMEL & ZIMMERMAN

⁷ Indeed, the Creditor might find herself worse off if, as a result of her acquisition of the Debtor's Trust interest, he no longer was in a position to make even modest monthly payments toward her judgment debt.

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