



SO ORDERED,

A handwritten signature in blue ink that reads "Edward Ellington".

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: March 29, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:
DANNY HALL
JUDY HALL**

**CHAPTER 7
CASE NO. 11-03139EE**

**EILEEN N. SHAFFER, CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF DANNY
HALL AND JUDY HALL AND
PRIORITYONE BANK**

VS.

ADVERSARY NO. 14-00027EE

**DANNY HALL, JUDY HALL; JOE BEN
BRASSELL, AND JAMES BRASSELL**

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Edward Ellington, Judge

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON THE COMPLAINT**

THIS MATTER came before the Court for the trial on the *Complaint* (Adv. Dkt. #1) filed by Eileen N. Shaffer, Chapter 7 Trustee for the Bankruptcy Estate of Danny Hall and Judy Hall and PriorityOne Bank; the *Separate Answer and Defenses of Danny and Judy Hall* (Adv. Dkt. #18); and *Joe Ben Brassell's Responses to Complaint* (Adv. Dkt. #19). After considering same, the evidence presented at trial and the post-trial briefs, the Court finds that the *Complaint* is well-taken and should be granted.

FINDINGS OF FACTS²

I. Stipulation

On April 23, 2015, the parties filed a *Stipulation for Trial* (Adv. Dkt. #75) (Stipulation). In the Stipulation, the parties stipulated to certain facts and stipulated that a list of eighteen (18)

¹John R. Reeves entered his appearance on behalf of James Alton Brassell and Joe Ben Brassell on December 7, 2015, (Adv. Dkt. #125). Mr. Reeves did not participate in the April 24, 2015, trial nor in the post-trial briefing.

²These findings of fact and conclusions of law constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052. To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

exhibits were to be admitted at the trial. The parties stipulated to the following facts:³

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334, 28 U.S.C. §157, and Rule 7001 of the Federal Rules of Bankruptcy Procedure and related code sections and rules.
2. On September 8, 2011, Danny Hall and Judy Hall (“Debtors”) filed their petition under Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Mississippi (Case No. 11-03139 EE).
3. On April 1, 2014, the case was converted to Chapter 7. Eileen N. Shaffer was appointed the Chapter 7 Trustee.
4. On April 25, 2014, the Debtors’ §341 meeting of creditors was held for the chapter 7 proceeding. Only Judy Hall testified at that meeting. Danny Hall’s hearing was reset.
5. At the 341 meeting, Judy Hall disclosed that while the Chapter 11 proceeding was pending and before the case was converted, she had received rights to an inheritance, funds from an inheritance and funds from real estate commissions. The funds from the inheritance and funds from the real estate commissions were not deposited to the Debtors’ DIP account but were deposited in an account established at Renasant Bank, styled as “The Estate of Betty M. Brassell” Account No. xxx9375.
6. During the Chapter 11 proceeding, Judy Hall’s aunt, Earline Wolfe Greynolds died on June 2, 2013. The aunt’s possessions were in a trust styled The Earline Wolfe Greynolds Trust.
7. Also, prior to the Chapter 11 proceeding, Judy Hall had a second aunt, Maxine M. Brassell that died on March 2, 2011. The aunt’s possessions were in trust (*sic*) styled The Maxine M. Brassell Trust.
8. Eric T. Fifer at the law firm of Jensen, Hassani & Focas, P.A., 22 West Pennsylvania Avenue, Suite 606 Towson, Maryland 21204 was the attorney that handled both The Earline Wolfe Greynolds Trust and The Maxine M. Brassell Trust.
9. Prior to the filing of the Chapter 11, on August 19, 2010, Judy Hall’s mother, Betty M. Brassell died. Judy Hall was appointed the Executrix.
10. On November 16, 2012, Judy Hall, as Executrix established a bank account for The Estate of Betty M. Brassell. This account was originally at M&F Bank which was later (*sic*) became Renasant Bank. The account number remained the same.

³James Alton Brassell and Joe Ben Brassell are the brothers of Debtor Judy Hall.

11. Eric Fifer, the attorney for The Earline Wolfe Greynolds Trust caused the following wire transfers to be made –

<u>Date</u>	<u>Amount</u>	<u>Recipient</u>
01/31/14	\$15,000	James Alton Brassell / Copiah Bank
01/31/14	\$15,000	Joe Ben Brassell / Community Bank of Mississippi
01/31/14	\$30,000	Estate of Betty Brassell / Renasant Bank
03/04/14	\$9,950	James Alton Brassell / Copiah Bank
03/04/14	\$9,950	Joe Ben Brassell / Community Bank of Mississippi
03/04/14	\$336,616.67	Estate of Betty Brassell / Renasant Bank

12. By Deed dated February 28, 2014, The Earline Wolfe Greynolds Trust conveyed real property to Judy Hall, James A. Brassell and Joe Ben Brassell. Said Deed was recorded as Instrument No. 034767120 and conveyed approximately 4.039 acres located in Baltimore County, Maryland and commonly referred to as 11811 Greenspring Avenue.

13. Eric Fifer, the Attorney for The Maxine M. Brassell Trust caused the following wire transfers to be made –

<u>Date</u>	<u>Amount</u>	<u>Recipient</u>
02/28/14	\$46,403.57	James Alton Brassell / Copiah Bank
02/28/14	\$46,403.57	Joe Ben Brassell / Community Bank of Mississippi
02/28/14	\$92,832.14	Estate of Betty Brassell / Renasant Bank

14. On March 4, 2014, Judy Hall deposited \$31,740.00 to the account of The Estate of Betty M. Brassell. These funds represent commissions she earned for real estate services.

Stipulation for Trial, Adv. Case No. 14-00027EE, Adv. Dkt. #75, pp. 1-3, April 23, 2015.

To summarize the Stipulation, the time line below shows the pertinent events which occurred

both pre-petition and post-petition:

August 19, 2010	Betty M. Brassell, Judy Hall's mother, died in Rankin County, Mississippi. Judy Hall was appointed the Executrix.
March 2, 2011	Maxine M. Brassell, Judy Hall's aunt, died in the State of Maryland.
September 8, 2011	The Debtors filed a Chapter 11 bankruptcy petition.
November 16, 2012	Judy Hall, as Executrix of her mother's estate opened a bank account for <i>The Estate of Betty M. Brassell</i> .
June 2, 2013	Earline Wolfe Greynolds, Judy Hall's aunt, died in the State of Maryland.
January 31, 2014	The first wire transfers were made.
February 28, 2014	Real property located in the State of Maryland was conveyed to Judy Hall, James A. Brassell and Joe Ben Brassell.
February 28, 2014	The second wire transfers were made.
March 4, 2014	The third wire transfers were made.
March 4, 2014	Judy Hall deposited \$31,740.00 in real estate commissions she had earned into the account styled <i>The Estate of Betty M. Brassell</i> .
April 1, 2014	The Debtors converted from a Chapter 11 case to a Chapter 7 case. Eileen N. Shaffer was appointed the Chapter 7 Trustee.

II. Adversary Proceeding

On May 16, 2014, the Trustee and PriorityOne Bank (Plaintiffs) initiated the above-styled adversary proceeding with the filing of their *Complaint* (Adv. Dkt. #1) (Complaint) against Danny and Judy Hall (Debtors), Joe Ben Brassell and James Brassell. Count One of the Complaint⁴

⁴The Complaint contains two other Counts (for an injunction and for a turnover of property), however, orders have been entered resolving those Counts. For purposes of this Opinion, any reference to the Complaint refers to the remaining unresolved Count One.

requests that the Court “declare that (i) any inheritance including the funds in the mother’s estate is property of the bankruptcy estate [and] (ii) any commissions including the funds in the mother’s estate account are property of the bankruptcy estate.”⁵ In the Debtors’ *Separate Answer and Defenses of Danny and Judy Hall* (Answer), the Debtors state that “upon conversion of this case to a Chapter 7, the inherited funds do not become property of the Chapter 7 estate.”⁶ Joe Ben Brassell filed *Joe Ben Brassell’s Responses to Complaint* (Adv. Dkt. #19) in which he denies that the Trustee is entitled to any relief requested.⁷

James Alton Brassell did not file a timely response, and a *Default Judgment as to James Brassell* (Adv. Dkt. #51) (Default Judgment) was entered on November 10, 2014. The Default Judgment against James Brassell declares that any funds from The Maxine M. Brassell Trust (Maxine Trust) and The Earline Wolfe Greynolds Trust (Earline Trust) which were “included in the funds of the mother’s estate”⁸ are property of the bankruptcy estate; that James Brassell was prohibited from spending any funds received from the mother’s estate; and that James Brassell was to turnover any property of the bankruptcy estate in his possession.⁹

The Complaint was set for trial on April 24, 2015. Joe Ben Brassell did not appear at the

⁵*Complaint*, Adv. Case No. 14-00027EE, Adv. Dkt. #1, p. 9, May 16, 2014.

⁶*Separate Answer and Defenses of Danny and Judy Hall*, Adv. Case No. 14-00027EE, Adv. Dkt. #18, p. 2, June 18, 2014.

⁷The answer was filed by Joe Ben Brassell’s attorney, J. Walter Newman, IV. On August 19, 2014, J. Walter Newman, IV withdrew as Joe Ben Brassell’s attorney. [*Agreed Order to Withdraw as Counsel* (Adv. Dkt. #31)].

⁸*Default Judgment as to James Brassell*, Adv. Case No. 14-00027EE, Adv. Dkt. #51, unnumbered p. 2, Nov. 10, 2014.

⁹*Id.*

trial nor did an attorney appear on his behalf. On April 24, 2015, the *Judgment as to Joe Ben Brassell* (Adv. Dkt. #77) (Judgment) was entered. This Judgment contained language identical to the Default Judgment entered against his brother James Alton Brassell.

At the beginning of the trial, the attorney for PriorityOne, Derek A. Henderson (Henderson), clarified that the Plaintiffs are not seeking to recover any of the funds James Alton Brassell and Joe Ben Brassell received directly from either the Maxine Trust or the Earline Trust (collectively, Trusts) and to which they were entitled. (Trial Tr. at 3-4).

At the conclusion of the trial, the parties were instructed to submit a briefing schedule after the transcript was received.¹⁰ The final brief was filed on June 29, 2015. The Court took the matter under advisement at that time.

CONCLUSIONS OF LAW

I. Jurisdiction

As stipulated by the parties, this Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding as defined in 28 U.S.C. § 157(b)(1) and (2)(A) and (E).

II. Do the trusts contain *spendthrift* provisions?

The Plaintiffs called as an expert witness Robert E. Williford (Williford). Williford, a licensed practicing attorney in Mississippi, was designated as an expert in the area of wills, trusts, and estates. Williford testified that the Trusts were prepared and created in Maryland and that they involved, primarily, Maryland property.

Williford testified that the Trusts both contained *spendthrift* provisions. A *spendthrift trust*

¹⁰*See supra* note 1.

is defined as “[a] trust that prohibits the beneficiary’s interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary’s interest.”¹¹

Williford testified that while both Trusts contained *spendthrift* provisions, both provisions terminated upon the death of Judy Hall’s aunt, Earline Wolfe Greynolds. (Trial Tr. at 23-24). As for the Maxine Trust, Williford testified that upon the death of Maxine M. Brassell, her sister, Earline Wolfe Greynolds, became the beneficiary of the Maxine Trust. (Trial Tr. at 23). The Maxine Trust terminated at the death of Earline Wolfe Greynolds. Thus, Judy Hall became entitled to receive the property from the Maxine Trust and the Earline Trust at the time of Earline Wolfe Greynolds’ death. (Trial Tr. at 24). Further, Williford testified that “once [the trusts] terminated [Judy Hall] was entitled to encumber the money or . . . borrow against it once, now I’m talking about once both of these grantors died, both Earline and Maxine died.” (Trial Tr. at 24-25).

The Debtors do not dispute Williford’s opinion regarding the *spendthrift* provisions or that Maryland law applies. See *Butler v. United States*, 440 U.S. 48, 55 (1979) (recognizing that property interests are created and defined by state law). In their *Defendants Danny and Judy Hall Brief in Opposition to Complaint* (Adv. Dkt. #90) (Debtors’ Brief), the Debtors cite *Smolin v. First Fidelity Savings & Loan Ass’n.*, 209 A.2d 546 (Md. 1965). The Debtors acknowledge that the court in *Smolin* held that “when the money is received by the spendthrift beneficiary or when it is invested by him, it is available for the claims of creditors if they are able to reach it by execution, or otherwise.” *Id.* at 550. (citation omitted).

The Debtors then concede in their brief that “under Maryland law, once the beneficiary of

¹¹*Spendthrift Trust*, *Black’s Law Dictionary* (10th ed. 2014).

the spendthrift trust actually receives distributions from the trust, the spendthrift nature of those distributions no longer exists.”¹² Consequently as conceded by the Debtors, the Court finds that when Judy Hall received distributions from the Trusts, the *spendthrift* provisions in the Trusts were no longer in effect because the *spendthrift* provisions terminated at the time of Earline Wolfe Greynolds’ death.

While the Debtors agree that the *spendthrift* provisions do not apply to the distributions Judy Hall has already received from the Trusts, the Debtors state that any assets that have not been distributed by the trustee of the Maxine Trust and the Earline Trust are protected by the *spendthrift* provisions. As stated above, Williford testified that the *spendthrift* provisions in the Trusts terminated upon the death of Earline Wolfe Greynolds. The Debtors did not offer expert testimony to rebut Williford’s opinion.

In *Maryland Central Collection Unit v. Brent*, 525 A.2d 241 (Md. App. 1987), the Court of Special Appeals of Maryland addressed the issue of whether undistributed assets of a trust are protected by *spendthrift* provisions. In *Brent*, the beneficiary became entitled to the corpus of the trust upon reaching the age of forty (40). The State of Maryland argued that because the beneficiary was entitled to terminate the trust at will, the *spendthrift* provisions were no longer valid. The beneficiary argued that because she had not exercised her right to have the corpus of the trust delivered to her, the *spendthrift* provisions were still in effect.

The *Brent* court agreed with the State of Maryland, and held that:

[W]e are convinced that a beneficiary’s right to the corpus of a trust vests upon the beneficiary’s satisfying any contingency specified in the trust. Neither the beneficiary nor the trustee can thereafter defeat the rights of the creditors of the

¹²*Defendants Danny and Judy Hall Brief in Opposition to Complaint*, Adv. Case No. 14-00027EE, Adv. Dkt. #90, p. 3, June 12, 2015.

beneficiary by allowing the corpus to remain in the hands of the trustee. In short, the spendthrift trust terminates when the beneficiary satisfies the contingency specified in the trust. From that point in time forward, the spendthrift trust is invalid as against the beneficiary's creditors. If the law were otherwise, a beneficiary could, in effect, create a spendthrift trust for his or her own benefit and thereby forever foreclose a creditor's rights. To accomplish that end, all the beneficiary would have to do would be not to demand payment of the corpus from the trustee. The beneficiary would, in effect, create a spendthrift trust for himself or herself and thereby completely frustrate his or her creditors. We think that result would be a fraud on creditors, contrary to public policy and hence void.

Brent, 525 A.2d. at 244.

In the case at bar, the Trusts did not have any contingencies specified as to the beneficiaries. Rather, the sole contingency in each Trust was the death of Maxine M. Brassell and the death of Earline Wolfe Greynolds. Once these events occurred, the *spendthrift* provisions terminated, and the corpus of the Trusts vested in the beneficiaries, including Judy Hall. Therefore, applying *Brent*, any undistributed assets of the Trusts are not protected by the *spendthrift* provisions. Accordingly, if the Court determines that Judy Hall's share of assets of the corpus of the Trusts are property of the Debtors' bankruptcy estate, all of Judy Hall's share of the assets of the Trusts are available to the Trustee to pay to the Debtors' creditors.

See Next Page

III. Are the assets property of the Debtors' bankruptcy estate?

A. Assets of Betty Brassell's Estate and the Trusts

1. § 541(a)(1) and § 1115(a)(1)

Upon the filing of a bankruptcy case, an estate is created pursuant to 11 U.S.C. § 541.¹³ The bankruptcy estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). In other words, any asset owned by a debtor at the time the petition is filed, vests in the bankruptcy estate. When the Halls filed bankruptcy under Chapter 11 of the Bankruptcy Code, the Halls became the Debtors-in-Possession pursuant to § 1101 and retained control of all of the property of the Debtors'¹⁴ estate.

Once the Debtors converted to a Chapter 7, the Trustee was appointed and stepped into the shoes of the Debtors. Further, “[o]nce an asset becomes part of the bankruptcy estate, all rights held by the debtor in the asset are extinguished unless the asset is abandoned’ by the trustee to the debtor pursuant to § 554.”¹⁵

Judy Hall's mother, Betty Brassell, died before the Debtors filed bankruptcy. The Debtors do not dispute that pursuant to § 541(a)(1), any interest in property Judy Hall inherited from her mother's estate became property of the Chapter 11 bankruptcy estate when the Debtors filed their Chapter 11 petition. Upon conversion, this property continued to be property of the Debtors' Chapter 7 bankruptcy estate.

¹³Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

¹⁴The terms debtor-in-possession and debtor are synonymous.

¹⁵*Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008)(citation omitted)(footnote omitted).

As for the Trusts, although Maxine M. Brassell died pre-petition, Judy Hall was not entitled to receive any distributions from the Maxine Trust until the post-petition death of her aunt, Earline Wolfe Greynolds. Earline Wolfe Greynolds died after the Debtors had filed their Chapter 11 case, but before they converted to a case under Chapter 7. Consequently, Judy Hall was entitled to receive distributions from both Trusts before the Debtors converted to a Chapter 7.

In 2005, § 1115 was added to the Bankruptcy Code to expand the definition of property of the estate for individual Chapter 11 debtors. Since Earline Wolfe Greynolds died while the Debtors were still in a Chapter 11, the Court must look to § 1115 to determine whether the assets from the Earline Trust are property of the Debtors' bankruptcy estate. Section 1115 provides:

(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

11 U.S.C. § 1115(a).

The Court of Appeals for the Fifth Circuit recently addressed the issue of the relationship between § 541 and § 1115. The case of *Cantu v. Schmidt (In re Cantu)*, 784 F.3d 254 (5th Cir. 2015), *cert. denied*, — U.S. —, 136 S. Ct. 417, 193 L. Ed. 2d 317 (2015), is very similar to the case at bar. Like the Halls, Marco and Roxanne Cantu filed a petition under Chapter 11 of the Bankruptcy Code. Before the debtors could obtain confirmation of their plan, their case was converted to a Chapter 7.

Post-conversion, the debtors filed a malpractice suit against their Chapter 11 attorney. The Chapter 7 trustee intervened in the lawsuit contending that the malpractice claim belonged to the Chapter 7 bankruptcy estate. The malpractice claim was eventually settled and the proceeds were deposited into the court registry pending a resolution of whether the funds belonged to the Chapter 7 bankruptcy estate or to the individual debtors. The bankruptcy court ruled, and the district court affirmed, that the malpractice claim was property of the Chapter 7 bankruptcy estate.

On appeal to the Fifth Circuit, the question was whether the malpractice claim¹⁶ was property of the Chapter 7 bankruptcy estate. The Fifth Circuit held that “[t]he resolution of that question depends on timing. If the causes of action against [the attorney] arose before conversion of the [debtors’] bankruptcy to a chapter 7, the settlement belongs to the estate; otherwise, the [debtors] own the proceeds.” *Id.* at 255.

In finding that the malpractice claim was property of the Chapter 7 bankruptcy estate, the Fifth Circuit held:

The property of a chapter 11 bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). A 2005 amendment to the Bankruptcy Code expanded that definition for individual chapter 11 debtors to encompass “all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is . . . converted to a case under Chapter 7.” 11 U.S.C. § 1115(a)(1). Causes of action that belong to the debtor “at the time the case is commenced” or that are acquired after commencement but before conversion are therefore property belonging to the estate. *See Yaquinto v. Segerstrom (In re Segerstrom)*, 247 F.3d 218, 223–24 (5th Cir. 2001); *Torch Liquidating Trust v. Stockstill*, 561 F.3d 377, 386 (5th Cir. 2009); 11 U.S.C. § 1115. But if a cause of action is acquired at or after the time of conversion, it belongs to the individual debtor.

Cantu, 784 F.3d at 257-58 (footnote omitted).

¹⁶*Cantu* involved a cause of action instead of cash and real property, however, the fact that the assets involved are different does not affect the Fifth Circuit’s interpretation of § 1115.

Cantu is directly on point with the matter before the Court. It is clear from the Stipulation entered into by the parties that Betty M. Brassell and Maxine M. Brassell¹⁷ both died before the Debtors filed their Chapter 11 bankruptcy petition. As a result, any assets Judy Hall inherited from Betty M. Brassell are clearly property of the Debtors' Chapter 11 bankruptcy estate pursuant to § 541.¹⁸ Upon the conversion of the Debtors' case to a Chapter 7, these assets became property of the Debtors' Chapter 7 bankruptcy estate.

As for the Earline Trust, Earline Wolfe Greynolds died after the Debtors filed their Chapter 11 case but before the Debtors' converted their case to a Chapter 7. Upon Earline Wolfe Greynolds' death, Judy Hall clearly acquired her right to distributions from the corpus of the Trusts "after the commencement of the case but before the case . . . converted to a case under chapter 7."¹⁹ Consequently, like the malpractice claim in *Cantu*, all of the wire transfers and the transfer of the real property from the Trusts, were "acquired after commencement but before conversion [and] are therefore property belonging to the estate." *Cantu*, 784 F.3d at 257 (citations omitted).

Further, any undistributed assets from the Trusts which are still in the hands of the trustee are also property of the Debtors' Chapter 7 bankruptcy estate.

¹⁷As noted previously, Judy Hall was not entitled to any of the assets from the Maxine Trust until the death of Earline Wolfe Greynolds.

¹⁸The Court acknowledges that according to the testimony of Williford, Judy Hall was not entitled to receive any distributions from the Maxine Trust until it terminated upon the death of Earline Wolfe Greynolds. Since Judy Hall has not been totally forthcoming in this bankruptcy case about assets she has received post-petition, the Court wants to make it abundantly clear that if Judy Hall received any assets from the Maxine Trust that she has failed to disclose, those assets are property of their Chapter 7 bankruptcy estate pursuant to § 541.

¹⁹11 U.S.C. § 1115(1).

2. § 541(a)(5)(A)

In their answer and brief, the Debtors assert “property that is inherited by a debtor more than 180-days after the commencement of a case is not property of the bankruptcy estate.”²⁰

Section 541(a)(5)(A) provides how inherited property is treated in a bankruptcy case.

Section 541(a)(5)(A) provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

....

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

11 U.S.C. § 541(a)(5)(A).

The Code does not define *bequest*, *devise* or *inheritance*. A *bequest* is defined in *Black’s Law Dictionary* as the “act of giving property (usu. personal property or money) by will.”²¹ A *devise* is defined as the “act of giving property by will.”²² An *inheritance* is defined as “1. [p]roperty received from an ancestor under the laws of intestacy. 2. [p]roperty that a person receives by bequest or devise.”²³

Judy Hall did not receive the assets from either of the Trusts as a bequest, devise, or

²⁰*Separate Answer and Defenses of Danny and Judy Hall*, Adv. Case No. 14-00027EE, Adv. Dkt. #18, p. 3, June 18, 2014.

²¹*Bequest*, *Black’s Law Dictionary* (10th ed. 2014).

²²*Devise*, *Black’s Law Dictionary* (10th ed. 2014).

²³*Inheritance*, *Black’s Law Dictionary* (10th ed. 2014).

inheritance. Rather, the distribution to which Judy Hall became entitled arose by virtue of an *inter vivos* trust,²⁴ not a will or under the laws of intestacy. Indeed, both the Maxine Trust and the Earline Trust state on the first page: “Individual’s Living Trust.”²⁵

While it may appear that the Trusts were *testamentary*²⁶ in nature because Judy Hall became entitled to distributions from the Trusts upon the death of Earline Wolfe Greynolds, it does not negate the fact that Judy Hall’s rights to the trust assets were due to the provisions and terms of the *inter vivos* Trusts and not from a *bequest, devise or inheritance*.²⁷

By its express terms, § 541(a)(5)(A) only applies to assets acquired via a testamentary disposition (a bequest or devise) or under the laws of intestacy (an inheritance). The fact that Judy Hall became entitled to receive the assets from the Trusts more than 180 days after the Debtors filed bankruptcy is of no consequence because the time limits set in § 541(a)(5)(A) do not apply. Rather, it is because of the *catch-all* provisions of § 1115 that the distributions from the Trusts are property of the Debtors’ Chapter 7 bankruptcy estate.

B. Real Estate Commissions

As for the real estate commissions, these are clearly “earnings from services performed by

²⁴An *inter vivos trust* is defined as: “A trust that is created and takes effect during the settlor’s lifetime; – Also termed *living trust*.” *Inter Vivos Trust, Black’s Law Dictionary* (10th ed. 2014).

²⁵Trial Exhibit 2, *The Greynolds Trust*, and Trial Exhibit 14, *The Brassell Trust*.

²⁶A *testamentary trust* is “[a] trust that is created by a will and takes effect when the settlor (testator) dies.” *Testamentary Trust, Black’s Law Dictionary* (10th ed. 2014).

²⁷In *In re Blount*, 438 B.R. 98 (Bankr. E.D. Tex. 2010), the court addressed the question of whether assets received from an *inter vivos* trust during the 180 day period were property of the debtor’s Chapter 7 bankruptcy estate. The court found that “[v]irtually every court which has addressed the issue has come to the same conclusion—that testamentary trust distributions in the 180–day window are ‘bequests’ and therefore property of the estate but that *inter vivos* trust distributions are neither.” *Blount*, 438 B.R. at 107 (citations omitted).

the debtor after the commencement of the case but before the case [was] converted to a case under chapter 7.”²⁸ In their brief, the Debtors cite to 7 Collier on Bankruptcy ¶ 1115.04[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2016) in support of their position that the real estate commissions earned by Judy Hall post-petition are not property of their Chapter 7 bankruptcy estate.

The discussion of § 1115 in *Collier* is only four (4) paragraphs long, and no cases are cited in support of *Collier*'s position that post-petition earnings in an individual Chapter 11 case lose their status as property of the estate upon conversion to a Chapter 7.

In discussing § 1115, *Collier* first cites § 348(a) and then compares § 1115 with § 1306,²⁹ which is applicable to a case filed under Chapter 13:

Section 348(a) governs the fate of estate property in a case converted from chapter 11 to chapter 7. That section essentially provides that a conversion does not change the date of the commencement of the case; it only changes the applicable chapter. In chapter 11 cases involving individual debtors, this means that, upon conversion, the composition of property of the estate changes; property included solely under section 1115 no longer retains its status as property of the estate. As a consequence, the debtor will be entitled to regain all postpetition service income that is still identifiable that would have been excluded had the case been initially filed as one under chapter 7.

Id. (footnote omitted).

Collier further acknowledges, however, that “[t]his result, although logical, is not clear.”

Id. *Collier* then discusses the effect of the addition of § 348(f) which “explicitly provides that if property comes into a chapter 13 estate solely because of section 1306(a), it is not included in the estate in the converted case.” *Id.*

Section 348(f) by its express terms, however, only applies to a case which converts from a

²⁸11 U.S.C. § 1115(a)(2).

²⁹The language of § 1115 and § 1306 are very similar.

Chapter 13 to another chapter under the Bankruptcy Code. When § 1115(a) was added to the Bankruptcy Code in 2005, § 348(f) was not amended to include conversions from a Chapter 11 to a Chapter 7. Consequently, “[t]here is thus less clarity as to the correct result” *id.*, of whether § 1115(a) wages are property of a Chapter 7 bankruptcy estate, and the Court finds that the discussion of § 1115 in *Collier* to be of little benefit to the Court.

In their brief, the Debtors cite, with little discussion, *Harris v. Viegelahn*, — U.S. —, 135 S.Ct. 1829, 191 L.Ed.2d 783 (2015), in support of their assertion that the real estate commissions are not property of the Debtors’ Chapter 7 bankruptcy estate. *Harris* is distinguishable from the case at bar.

In *Harris*, the United States Supreme Court addressed the question of whether post-petition earnings of a Chapter 13 debtor become part of the Chapter 7 bankruptcy estate upon conversion. The Supreme Court examined § 348(f) and found that Congress specifically added § 348(f) in 1994 in response to rulings by several Courts of Appeals that post-petition wages of a Chapter 13 debtor became property of the Chapter 7 bankruptcy estate. *Harris*, 135 S.Ct. at 1837. The Supreme Court went on to find that:

[b]y excluding postpetition wages from the converted Chapter 7 estate, § 348(f)(1)(A) removes those earnings from the pool of assets that may be liquidated [by the Chapter 7 trustee] and distributed to creditors. Allowing a terminated Chapter 13 trustee to disburse the very same earnings to the very same creditors is incompatible with that statutory design. We resist attributing to Congress, after explicitly exempting from Chapter 7’s liquidation-and-distribution process a debtor’s postpetition wages, a plan to place those wages in creditors’ hands another way.³⁰

Likewise, this Court will “resist attributing to Congress”³¹ an intention to make § 348(f)

³⁰*Harris*, 135 S.Ct. at 1837.

³¹*Id.*

applicable to a case converting from a Chapter 11 to a Chapter 7. Consequently, the Supreme Court's ruling in *Harris* (and the other Chapter 13 cases cited in the Debtors' brief) is not applicable to the case at bar.

In their brief, the Debtors fail to discuss the Fifth Circuit's decision in *Cantu* as it relates to the real estate commissions, or for that matter, as it relates to the property Judy Hall received from the Trusts. Based upon the Fifth Circuit's ruling in *Cantu* and without any controlling authority to the contrary, the Court finds that the real estate commissions were "acquired after commencement but before conversion"³² of the Debtors' Chapter 11 case. Consequently, the real estate commissions that Judy Hall failed to disclose³³ and which she deposited in the bank account styled *The Estate of Betty M. Brassell* (and which she did not deposit into the Debtor-in Possession bank account) are also property of the Chapter 7 bankruptcy estate pursuant to § 1115(a)(2).

C. Summary

It is clear that Judy Hall's mother died pre-petition. Any assets Judy Hall inherited from her mother's estate became property of the bankruptcy estate when the Debtors filed their petition. Further, when Earline Wolfe Greynolds died (between the time the Debtors' filed a Chapter 11 petition and the time their case converted to a Chapter 7), Judy Hall became entitled to receive the assets from both Trusts. Pursuant to § 541, § 1115, and the Fifth Circuit's holding in *Cantu*, any assets Judy Hall received or is entitled to receive from the Trusts are property of the Debtors'

³²*Cantu*, 784 F.3d at 257.

³³The Debtors argue that Judy Hall did not have a duty to disclose the real estate commissions or the assets she received from the Trusts. While not pertinent to the Court's decision, the Court disagrees. The Fifth Circuit "has consistently held that a debtor has a continuing obligation to disclose post-petition claims, causes of action, and assets." *In re Castillo*, 508 B.R. 1, 7 (Bankr. W.D. Tex. 2014).

Chapter 7 bankruptcy estate. For the same reasons, the real estate commissions Judy Hall earned post-Chapter 11 and pre-Chapter 7, are property of the Debtors' Chapter 7 bankruptcy estate.

CONCLUSION

Under Maryland law, once a beneficiary becomes entitled to receive distributions from a trust with a *spendthrift* provision, the *spendthrift* provision ceases to exist. Therefore, any *spendthrift* provisions in either the Maxine Trust or the Earline Trust ceased to exist upon the termination of the Trusts, which occurred at the death of Earline Wolfe Greynolds. Consequently, the *spendthrift* provisions do not protect the assets of the Trusts from becoming property of the Debtor's Chapter 7 bankruptcy estate.

Since Judy Hall's mother died pre-petition, the assets Judy Hall inherited from her mother are property of the Debtors' Chapter 7 bankruptcy estate pursuant to § 541. As for assets from the Trusts, Judy Hall became entitled to receive assets from the Maxine Trust and the Earline Trust after the Debtors filed a Chapter 11, but before the Debtors converted their case to a Chapter 7. Consequently, any assets Judy Hall received or is entitled to receive from the Trusts are property of the Debtors' Chapter 7 bankruptcy estate pursuant to § 1115 and the Fifth Circuit's holding in *Cantu*.

The real estate commissions Judy Hall received post-Chapter 11 but pre-Chapter 7 are property of the Debtors' Chapter 7 bankruptcy case because they are "earnings from services performed by the debtor after the commencement of the case but before the case [was] converted to a case under chapter 7."³⁴

As to James Alton Brassell and Joe Ben Brassell, who were also beneficiaries of the Trusts,

³⁴11 U.S.C. § 1115(a)(2).

any assets they received (or are entitled to receive) directly from the Trusts are not property of the bankruptcy estate of the Debtors. Likewise, any property they inherited directly from their mother is not property of the Debtors' bankruptcy estate.

To the extent the Court has not addressed any of the parties' arguments or positions, it has considered them and determined that they would not alter the result.

A separate judgment consistent with this Opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

##END OF OPINION##



SO ORDERED,

A handwritten signature in blue ink that reads "Edward Ellington".

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: March 29, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:
DANNY HALL
JUDY HALL**

**CHAPTER 7
CASE NO. 11-03139EE**

**EILEEN N. SHAFFER, CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF DANNY
HALL AND JUDY HALL AND
PRIORITYONE BANK**

VS.

ADVERSARY NO. 14-00027EE

**DANNY HALL, JUDY HALL; JOE BEN
BRASSELL, AND JAMES BRASSELL**

**FINAL JUDGMENT
ON THE COMPLAINT**

Consistent with the Court's Opinion dated contemporaneously herewith,

IT IS THEREFORE ORDERED that Count One of the *Complaint* is well-taken and is hereby granted.

IT IS FURTHER ORDERED that any assets Judy Hall has received or becomes entitled to receive from the Maxine M. Brassell Trust and the Earline Wolfe Greynolds Trust are

property of the Chapter 7 bankruptcy estate of Danny and Judy Hall.

IT IS FURTHER ORDERED that the real estate commissions earned by Judy Hall post-Chapter 11 but pre-conversion to Chapter 7 and deposited by Judy Hall into the account styled *The Estate of Betty M. Brassell* are property of the Chapter 7 bankruptcy estate of Danny and Judy Hall.

IT IS FURTHER ORDERED that any assets received directly from the Maxine M. Brassell Trust and the Earline Wolfe Greynolds Trust by James Alton Brassell and Joe Ben Brassell, to which they were/are legally entitled, are not property of Danny and Judy Hall's bankruptcy estate.

IT IS FURTHER ORDERED that any assets James Alton Brassell and Joe Ben Brassell inherited from the estate of Betty M. Brassell, to which they were/are legally entitled, are not property of Danny and Judy Hall's bankruptcy estate.

##END OF JUDGMENT##