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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LVB-OGDEN MARKETING, LLC,

Plaintiff,

v.

DAVID S. BINGHAM, SHARON
BINGHAM, CHRISTOPHER
BINGHAM, CHERISH BINGHAM,
KELLY BINGHAM, BINGO
INVESTMENTS, LLC, CCRB
ENTERPRISES, LLC, SKBB
ENTERPRISES, LLC, PARK
PLACE MOTORS, LTD., HYTECH
POWER, INC., HENRY DEAN, in
his individual capacity and as Trustee
for the SHARON GRAHAM
BINGHAM 2007 TRUST, and BGH
HOLDINGS, LLC,

Defendants.

C18-243 TSZ
ORDER

THIS MATTER comes before the Court on Plaintiff’s Motion, docket no. 137, for Summary Judgment seeking a Declaratory Judgment regarding (1) LVB’s right to seize self-settled assets held by the Sharon Graham Bingham 2007 Trust (the “SGB Trust”); and (2) LVB’s right to seize distributions received by or accrued for the benefit of Sharon Bingham from the O.D. Fisher Trust and Nellie Hughes Fisher Trust (the “Fisher

1 Trusts”). The Court has reviewed all papers filed in support of, and in opposition to, the
2 motion and enters the following order.

3 **Background**

4 **I. The History of the SGB Trust and the Judgments Against the**
5 **Binghams**

6 In 2007, the SGB Trust was created and funded by Frances Graham with shares of
7 stock from the O.D. Fisher Investment Company. The SGB Trust was established as an
8 irrevocable trust for the benefit of her daughter, Sharon Graham Bingham. Declaration
9 of Henry W. Dean, docket no. 42 (“Dean Decl.”), ¶ 2. At all times material after
10 September 10, 2010, Henry W. Dean has been the Trustee of the SGB Trust. Dean Decl.,
11 docket no. 42, ¶ 5 (hereinafter “Trustee”). The SGB Trust documents grant the Trustee
12 broad authority to “acquire and retain so long as the Trustee deems advisable, any kind of
13 real and personal property . . . all without need for diversification as to kind or amount
14 and whether or not income producing” Declaration of Trust, Sharon Graham
15 Bingham 2007 Trust, docket no. 5-22, at 7. The Trustee is also permitted to make loans
16 to anyone on terms the Trustee “deems advisable.” *Id.* at 8. It is undisputed that the SGB
17 Trust is a spendthrift trust created by a mother to support her daughter. Plaintiff’s Motion
18 for Temporary Restraining Order, docket no. 4, at 3-4.

19 After the creation of the SGB Trust, Sharon Bingham and her husband David
20 Bingham (hereinafter, “the Binghams”) began experiencing financial difficulties arising
21 out of the 2008 mortgage crisis. By 2009 the Binghams had defaulted on tens of millions
22 of dollars in loans and personal guarantees. Opposition to Plaintiff’s motion, docket
23 no. 147 at 4. Beginning in at least 2009, various creditors sued the Binghams on these

1 personal guarantees. For example, Umpqua Bank obtained a judgment against the
2 Bingham and other defendants in June 2009 for \$23 million. Dean Decl., docket no. 42,
3 Ex. H. As part of the Umpqua litigation, the bank had taken the position it could recover
4 its judgment from the SGB Trust assets. The Trustee of the SGB Trust, Dean, contended
5 the Trust was not subject to execution because of its spendthrift nature. Later Dean, as
6 Trustee, entered into the Umpqua Forbearance and Settlement Agreement (hereinafter the
7 “Umpqua Settlement”), and paid \$3,115,152.81 from the SGB Trust to Umpqua Bank in
8 order to settle the Umpqua Judgment. *Id.*, Ex. L. The Umpqua Settlement included an
9 assignment of Umpqua Bank’s judgment to the SGB Trust. *Id.*, Ex. L, ¶ 11.

10 Similarly, Washington Trust Bank obtained a judgment against the Bingham and
11 Bingo Investments LLC in June 2010 in the amount of \$1,792,707.83 plus interest and
12 costs. *Id.*, ¶¶ 17-18. Once again, Dean, as Trustee of the SGB Trust, negotiated a
13 settlement with Washington Trust allowing the debtors, including Sharon Bingham, to
14 pay one million dollars over time. *Id.*, Ex. Q. On behalf of Sharon Bingham, the SGB
15 Trust paid \$200,000 on or about February 4, 2001, and later an additional payment of
16 \$830,000 to the Bank. *Id.*

17 Like Umpqua Bank and Washington Trust, Centrum Financial Services was a
18 creditor that threatened litigation against the SGB Trust. Centrum held a judgment for
19 \$57,617,482.96 against the Bingham. *Id.*, Ex. R. The SGB Trust defended
20 supplemental proceedings against it contending it was a spendthrift trust. *Id.* at 19-20.
21 Because the Bingham had no liquid assets to fund a settlement, the SGB Trust ultimately
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1 agreed to make payments of \$3,750,000 to Centrum and the unsatisfied balance of the
2 Centrum Judgment was assigned to the SGB Trust. *Id.* at 21.

3 The Bingham's purchased the M/V Bingo, a large pleasure boat, and received
4 financing in part from Key Bank. Key Bank later sued, in rem, and the vessel was
5 arrested. Key Bank held a \$1.5 million Preferred Ships Mortgage. Declaration of
6 R. Bruce Johnston, docket no. 35, ¶ 17. Ultimately the SGB Trust posted a \$550,000
7 bond for the release of the Bingo to the Bingham's. In connection with the release of the
8 Bingo from arrest, the SGB Trust also secured the release of a \$1.5 million mortgage held
9 by Key Bank in exchange for a \$600,000 letter of credit. Opposition, docket no. 147, at
10 5. As the Trustee explained, "[i]n short, the 2007 Trust put up a \$600,000 letter of credit
11 and thereby successfully caused the M/V Bingo to be released from arrest, and to be
12 released from Key Bank's \$1.5 million marine mortgage." Dean Decl., docket no. 42, at
13 23.

14 Plaintiff, another of the Bingham's creditors, obtained a judgment against the
15 Bingham's and others on September 29, 2010, for \$70 million plus post-judgment interest.
16 The Judgment is registered in this District, docket no. 82-4. This Judgment forms the
17 basis for Plaintiff's attack on the spendthrift nature of the SGB Trust.

18 **II. The Disputed Assets in the SGB Trust**

19 In the midst of the Bingham's financial difficulties, the Trustee also made a series
20 of loans to the Bingham's *from SGB Trust assets*, secured by property the Bingham's
21 possessed *outside* the SGB Trust. In December 2011, the Trustee loaned the Bingham's
22 \$740,805.34, and the Bingham's executed a promissory note in favor of the SGB Trust for
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1 the loan. Declaration of Cicilia Elali, docket no. 148, ¶ 3. The December note included a
2 provision for future advances from the SGB Trust. *Id.*, Ex. A at 1-2. The note was also
3 accompanied by a security agreement executed by the Bingham and the Trustee granting
4 the Trustee a security interest in the following assets outside the SGB Trust: (1) shares of
5 stock in Park Place Motors, Ltd.;¹ (2) 1,263,333 shares of stock in Biolytical
6 Laboratories, Inc.; (3) a preferred ship’s mortgage on the M/V Bingo; (4) the Bingham’s
7 furniture, fixtures, equipment, and appliances; and (5) Sharon Bingham’s wedding ring.²
8 *Id.*, Ex. A at 4, 24 (hereinafter the “Disputed Assets”).

9 Over the course of 2012, the Trustee made additional transfers of SGB Trust assets
10 to the Bingham, as contemplated by the December 2011 promissory note, ultimately
11 totaling \$1,926,940.60. *Id.* ¶ 4, Ex. B. Defendants concede that “these sums were
12 advanced by the Trust as loans necessary and a result of the beneficiary’s obvious and
13 very public financial troubles.” Opposition to Summary Judgment, docket no. 147, at 4.
14 Unable to repay these loans, the Bingham agreed to transfer the Disputed Assets to the
15 Trustee to satisfy the promissory note. On December 31, 2012, the Bingham and the
16 Trustee entered a “Settlement Agreement” that deemed the outstanding balance of
17 \$1,926,940.60 satisfied upon assignment or conveyance of the Disputed Assets to the
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20 ¹ The Bingham originally transferred 100% of the stock of Park Place Motors, Ltd. to the SGB Trust.
Dean Decl., docket no. 42, ¶ 24.f. In 2014 the Trustee distributed 57.5% of the stock of Park Place and
there now remains 42.5% of the stock in the SGB Trust. *Id.*

21 ² The security agreement also granted the Trustee an interest in other assets not listed here. Plaintiff has
22 failed to adequately address other assets, including without limitations membership interest in Bingo
Properties, LLC and membership interest in Bingo Venture Capital, LLC, *see* Motion for Summary
23 Judgment, docket no. 137 at 8, and the Court denies the motion for summary judgment, without prejudice
as to any assets not defined by this Order as Disputed Assets.

1 SGB Trust pursuant to the Settlement Agreement. Faria Decl., docket no. 137-5. On the
2 same day, the Bingham transferred the Disputed Assets to the SGB Trust. Dean Decl.,
3 docket no. 42, ¶ 24.f (discussing transfer of Park Place Motors, Ltd. stock), ¶ 24.g
4 (transfer of 1,263,333 shares of Biolytical Laboratories, Inc. stock); ¶ 24.l (describing
5 SGB Trust payment of \$150,000 to Centrum Financial Services to extinguish Centrum’s
6 claims to the matrimonial rings); ¶ 24.m (describing creation of security interests in favor
7 of SGB Trust in the Bingham’s personal property). It is undisputed that the Disputed
8 Assets were transferred to the SGB Trust by the Bingham pursuant to the Settlement
9 Agreement. The only dispute is whether that transfer is void or otherwise unprotected by
10 the SGB Trust’s spendthrift provisions. Plaintiff seeks an order that it is entitled to seize
11 the Disputed Assets as “self-settled” because they are no longer protected by the
12 spendthrift nature of the SGB Trust.

13 **Discussion**

14 **I. The Disputed Assets Are Self-Settled**

15 RCW 6.32.250 is clear: the property of a debtor is subject to creditor seizure,
16 unless it is “any money, thing in action or other property held in trust for a judgment
17 debtor where the trust has been created by, or the fund so held in trust has proceeded
18 from, a person other than the judgment debtor.” The property that Plaintiff is attempting
19 to seize was placed in the trust by the Bingham—it did not proceed from a person other
20 than the judgment debtors and it is subject to seizure. The Trustee had the legal right to
21 loan money to the Bingham from the SGB Trust. No one disputes this right. The
22 Trustee loaned the Bingham nearly \$2 million from the SGB Trust. Once that money
23 left the Trust, it no longer had spendthrift trust protection under Washington law. Before

1 the Binghams transferred the Disputed Assets to the Trustee as part of the 2012
2 Settlement Agreement, the Disputed Assets were subject to creditor seizure. Nothing
3 changed with the transfer of the Disputed Assets into the Trust. They are subject to
4 seizure. RCW 6.32.250.

5 There is a second independent basis for the Court to conclude the Disputed Assets
6 are subject to seizure. Any transfer “made in Trust” for the use of the person making the
7 transfer is void as to creditors pursuant to RCW 19.36.020. The statute voids so-called
8 self-settled transfers, which the statute defines as “all deeds of gift, all conveyances, and
9 all transfers or assignments, verbal or written, of goods, chattels, or things in action,
10 made in trust for the use of the person making the same”

11 In *In re Jordan*, Jordan entered into a structured settlement with Burlington
12 Northern Railroad (hereinafter “BN”) which provided that payments to be made pursuant
13 to an annuity contract would not be subject to attachment by any creditor. Jordan later
14 filed for bankruptcy and sought to claim spendthrift trust protection for these annuity
15 payments under Washington law. The Chapter 7 trustee sought to recover the funds. The
16 Ninth Circuit concluded that the fund created by the settlement was not entitled to
17 spendthrift trust protection under Washington law. The Ninth Circuit reasoned that
18 “[b]ecause the money placed in the fund is directly traceable to Ronald Jordan’s property
19 interest in his cause of action against BN, he was the settlor of the Trust.” 914 F.2d 197,
20 199 (9th Cir. 1990). The Binghams have reaped the benefits of the SGB Trust assets—by
21 receiving them from the Trust in the form of loans—and they have used the money to pay
22 off creditors or otherwise enjoy the money outside the Trust. The Washington statutory
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1 prohibitions on self-settling are designed to ensure any assets so-transferred remain
2 available for seizure by creditors. Any attempts to return assets to the Trust are void as to
3 creditors.

4 There is no exception in the statute for transfers into trusts where consideration is
5 exchanged. The Trustee urges such an exception nonetheless, asking this Court to read
6 “made in trust” to mean made without consideration. Dean’s Opp., docket no. 147, at 6-
7 7. Defendants cite a number of cases purportedly supporting their reading that “made in
8 trust” means “made without consideration.” The Court is unconvinced. The cases only
9 stand for the basic premise that a creditor may favor one creditor over another as long as
10 the transfer is not fraudulent. *See Samuel v. Kittenger*, 6 Wash. 261, 268-69, 33 P. 509
11 (1893) (holding that transfers from a debtor to various other creditors for repayment of
12 preexisting debts, “where there is no such trust agreed upon or understood between the
13 parties” were valid even though the “effect may be to preclude the creditors from
14 subjecting the property to the payment of their claims against the common debtor”);
15 *Tomlinson v. Burgess*, 185 Wash. 33, 52 P.2d 1259 (1935) (holding that transfers from a
16 debtor to creditors who were not trustees of a trust for the which the debtor was a
17 beneficiary were valid and not fraudulent); *Van Stewart v. Townsend*, 176 Wash. 311, 28
18 P.2d 999 (1934) (holding that transfer from parents to a trust for the children was not
19 void when it was “created in good faith when the grantors were fully solvent”). None of
20 these cases cited by Defendants endorse the novel position advanced by Defendants—
21 that a debtor can protect its assets from seizure by taking out loans from a spendthrift
22 trust and then transferring other assets back into the trust. Once the assets leave the
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1 shelter of the spendthrift trust, the creditors may claim them under Washington law.

2 Likewise, any assets transferred into a spendthrift trust by the beneficiary are subject to
3 seizure.

4 Defendants contend that finding these transfers to be self-settled would read
5 “made in trust” out of RCW 19.36.020. On the contrary, this result applies the statute’s
6 plain meaning, which provides that transfers made into a trust for a beneficiary are void if
7 the beneficiary is the one performing the transfer *into the trust*. See also RCW 6.32.250
8 (authorizing seizure of self-settled assets without any reference to whether those transfers
9 were “made in trust”).³

10 Contrary to Defendants’ contention, the multi-factor analysis of potential fraud
11 applied in other cases is inapplicable to the question of whether the assets are self-settled.
12 The badges of fraud analysis does not create a dispute of material fact precluding
13 summary judgment in this case because Plaintiff is not moving for summary judgment on
14 its fraudulent transfer claim. Rather, Plaintiff presents an issue of law, which the Court
15 concludes can be resolved on summary judgment. The Disputed Assets are self-settled

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18 ³ Defendants’ efforts to ascribe a different meaning—i.e. that “made in trust” implies made without
19 consideration—has no merit. Defendants argue that “transfers made in consideration of securing or in
20 satisfaction of debt are not the same as transfers made in trust for no consideration,” but Defendants
21 apparently believe that “made in trust” means something other than no consideration because otherwise
22 Defendants would not need to add the qualification “for no consideration” after “made in trust.” Dean’s
23 Opp., docket no. 147, at 7. The Court’s interpretation does not “render RCW 11.98.070 meaningless and
void.” *Id.* at 16. The statute authorizes trustees to make loans to any person, including beneficiaries. The
statute says nothing about whether loaned funds are subject to seizure by a beneficiary’s creditors, and
Defendants point to no authority indicating the funds remain protected after being loaned out of a
spendthrift trust. Nothing in this Order would prevent a trustee from making a loan, secured or
unsecured, to a beneficiary. However, once spendthrift assets are removed from the protection of a
spendthrift trust, they are subject to seizure and cannot be returned to the trust in a different form and not
be “self-settled.”

1 and are entitled to seizure by creditors. The Court need not reach the question of whether
2 these transfers were fraudulent.⁴ See Restatement (Third) of Trusts § 58 (“The rule of
3 this subsection [regarding self-settled assets] does not depend on the settlor having made
4 a transfer in fraud of creditors”); see also *In re Huber*, 493 B.R. 798, 809-11 (W.D.
5 Wash. Bankr. 2013) (holding that transfer was self-settled and also, independently, could
6 be set aside as fraudulent); *In re White*, 61 B.R. 388, 393 (W.D. Wash. Bankr. 1986)
7 (“The fact that [debtor] acted without intent to defraud his creditors is not relevant.”).

8 There is no material factual dispute here—the Disputed Assets were transferred to
9 the SGB Trust by the Defendants, including Sharon Bingham, the sole beneficiary of the
10 SGB Trust. Those assets, now held in trust for Sharon Bingham in the SGB Trust, are
11 subject to seizure by judgment creditors. RCW 6.32.250. The transfers are also void as
12 to those creditors because they were made in trust for the use of the person making the
13 transfer. RCW 19.36.020. The fact that consideration was exchanged is immaterial to
14 the question of whether the Disputed Assets are self-settled.

15 **II. Plaintiff is Entitled to Seize Fisher Trust Disbursements**

16 Plaintiff’s motion also seeks summary judgment relating to the Fisher Trusts.
17 There appears to be no dispute that Plaintiff is entitled to seize money already distributed
18 from the Fisher Trusts. Combined Opp. to Pltf.’s Motion for a Temporary Restraining
19 Order, docket no. 36, at 7 (“LVB is not precluded from executing on those assets no
20 longer in the trust”); see also *In re Pettit*, 61 B.R. 341, 346 (W.D. Wash. Bankr.
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22 ⁴ Nothing in this Order addresses Plaintiff’s independent claim alleging fraudulent conveyances. That
23 matter is reserved for trial.

1 1986) (“Where a valid spendthrift trust exists, [] the portion of the trust which has
2 accrued and is ready for distribution to the beneficiary is subject to seizure.”). The
3 parties dispute whether the assets of the Fisher Trusts, now accrued or available for
4 distribution, are protected. The Court concludes, as a matter of law that Plaintiff is
5 entitled to seize any distributions made or hereafter distributed to Sharon Bingham and/or
6 the SGB Trust from the Fisher Trusts.⁵ The issue of whether Sharon Bingham, as the
7 beneficiary of the Fisher Trusts, is “incapable of managing to . . . her own best interest
8 and advantage the property to be distributed” is currently the subject of a separate
9 proceeding. *See* LVB-Ogden Marketing, LLC v. Bingham, Case No. 18-786-TSZ, Order,
10 docket no. 40, at 6. Nothing in this Order is intended to address that issue.

11 **Conclusion**

12 For the foregoing reasons, the Court grants Plaintiff’s Motion, docket no. 137, in
13 part as follows:

14 (1) Plaintiff is entitled to seize the following self-settled assets of Defendant
15 Sharon Bingham in the SGB Trust:

- 16 (a) 42.5% of the stock of Park Place Motors, Ltd;
- 17 (b) 1,263,333 shares of stock in Biolytical Laboratories, Inc.;
- 18 (c) the Note and Preferred Mortgage secured by the M/V Bingo in favor
19 of the SGB Trust;

20 ⁵ The Court notes that Sharon Bingham may have authorized the deposit of distributions from the Fisher
21 Trust into the SGB Trust. Those transfers, if any occurred, are also self-settled and subject to seizure by
22 creditors. *Compare* Declaration of William R. Squires III Controverting Garnishee Bank of the West’s
23 Answer, Exhibit 7, docket no. 5-7 in Case No. 18-cv-786, at 2, 4 (ACH forms authorizing deposits from
the Fisher Trusts payable to Sharon Graham Bingham in an account ending 6949) *with* Declaration of
Elyse Kowalewski, docket no. 31 in Case No. 18-cv-786, ¶ 6 (identifying accounts associated with the
SGB Trust, including one ending 6949).

1 (d) Sharon and David Bingham's furniture, fixtures, equipment, and
2 appliances transferred pursuant to the Settlement Agreement, (Ex. 4)
Dean Decl., docket no. 42, ¶ 24.m; and

3 (e) Sharon Bingham's wedding ring.

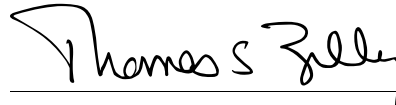
4 (2) Plaintiff is entitled to seize any distributions made or hereafter distributed
5 to Sharon Bingham and/or the SGB Trust from the Fisher Trusts.

6 (3) The Plaintiff's remaining claims for declaratory relief (FAC, docket no. 82,
7 ¶ 118(b)-(g)) and for violation of the Uniform Fraudulent Transfer Act (second cause of
8 action) remain set for trial on April 29, 2019.

9 (4) Except as provided in this Order, Plaintiff's motion for summary judgment
10 is otherwise DENIED.

11 IT IS SO ORDERED.

12 Dated this 7th day of December, 2018.

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15 Thomas S. Zilly
16 United States District Judge
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