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FILED
SID J. WHITE
MAY 8 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,495

IN R E PAUL4 L. MCCOLLAM,

Debtor

THOMAS E. LECROY

Petitioner,

vs.

PAUL4 L. MCCOLLAM,

Respondent.

Certified Question from the
United States Court of Appeals,
Eleventh Circuit

AMICUS CURIAE BRIEF OF ANDREA A. RUFF, TRUSTEE FILED PURSUANT TO THE ORDER OF APRIL 7,1992 OF THE SUPREME COURT OF FLORIDA

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INTRODUCTION

The Eleventh Circuit certified the following question to the Florida Supreme Court:

> Whether, as a matter of law, an annuity contract which is established in lieu of a creditor paying a debtor a lump sum presently owed is exempt from creditor claims in bankruptcy under Florida Statutes $222.14.

This question has applications much more broad than the application to the facts presented in *McCollam* alone. In fact, in certifying the question, the Eleventh Circuit stated:

> That is, it is appropriate for the highest court of Florida to determine whether the intent of the legislature is to exempt from the claims of creditors in bankruptcy annuities in the nature of retirement instruments, or all debts structured as annuities, including those that derive from personal injury settlements.

Thus, this highest court in Florida will also be determining whether the intent of the legislature is to exempt all debts structured as annuities, including those that derive from winning a State lottery. TRUSTEE/PLAINTIFF ANDREA A. RUFF asserts that the Florida legislature never intended for lottery wins to be exempt from creditors pursuant to Florida Statutes §222.14.

FACTS

ANDREA A. **RUFF** serves as the TRUSTEE in the Chapter 7 main case IN ***RE:*** *THOMAS BERTRAM* DLXSON, Case No. 89-0105-BKC-6XC, and she serves as PLAINTIFF in the adversary proceeding ANDREA A. RUFF, *TRUSTEE*, ***vs.*** THOMAS BERTRAM DIXSON, Case No. 89-93, in the U.S. Bankruptcy Court for the Middle District of Florida, Orlando Division. Debtor Thomas Bertram Dixson ("Dixson) filed his original Petition for Relief in the Middle District of Florida on January 11, 1989. Dixson claimed as exempt from creditors an annuity, the origin of which was a lottery win in the State of Arizona when he was a resident of the State of Arizona. The balance of the debt due the Debtor from the State of Arizona at the time of the filing was $1,785,000.00 due in seventeen annual installments of $105,000.00 each.

The TRUSTEE timely filed her objection to the Debtor's claim of any Florida exemptions alleging, inter *alia*, that under Florida Statutes **$222.14,** this lump sum payment of a debt, denominated

as an annuity, was not in fact an annuity, and alternatively that this type of structured payout should not be considered exempt under Florida Statutes $222.14. TRUSTEE's arguments were raised in response to Debtor's Motion for Summary Judgment to Trustee's Objections to Debtor's Exemptions. That Motion for Summary Judgment remains pending.

The TRUSTEE also alleged that Dixson was not a Florida resident, and therefore the lottery annuity is not exempt. Additionally, TRUSTEE timely filed her Complaint to Deny Discharge of the Debtor. The consolidated cases went to trial in July 1990 before the Honorable Timothy C. Corcoran, III. At the conclusion of TRUSTEE/PLAINTIFF's case, Debtor/Defendant made an oral Motion to Dismiss. That Motion remains pending.

The origin of the subject lottery win began in January 1986 when Jodie Ann Dixson, the Debtor's wife at that time, purchased a $1.00 lottery ticket which enabled her to win an Arizona state lottery prize of $4.2 million. Because of her marriage and the laws of the community property state of Arizona, one-half of the proceeds belonged to her husband, the Debtor. The Arizona Lottery Commission required that any win of over $400,000.00 be paid via twenty annual payments. To accomplish this, the Arizona Lottery Commission entered into a contract with Central Life Assurance Company in Des Moines, Iowa for the purchase of an annuity policy which would, over the span of twenty years, pay $4.2 million.

The Debtor and his wife had no control over whether this annuity was purchased or from what company. The State of Arizona is the actual owner of the annuity. The Dixsons were named by the State of Arizona as the annuitants. The Dixsons are not allowed to commute the value to a present day value, nor may they sell or assign their interest to anyone else. As a result, Jodie and Thomas Dixson together were entitled to receive a total of $210,000.00 gross per year as their prize payment.

Immediately after this windfall was visited upon Jodie and Thomas Dixson, Thomas Dixson began a spree of business investments, holding out to creditors the lottery win as the basis of his financial worth and obtaining substantial business loans. The Debtor no longer had the time nor the inclination to continue his previous employment. As a result of his marriage ending in divorce in

February **1988,** Debtor was awarded one-half the annual prize payments, or $105,000.00 annually, subject to federal and Arizona state income tax withholdings. The receipt of this money is to pay off the debt incurred in January 1986 by the Arizona Lottery Commission to Jodie and Thomas Dixson.

Debtor managed to amass debts amounting to over $500,000.00 prior to coming to Florida and filing his bankruptcy petition. A successful attachment in Arizona by a major creditor, Valley National Bank, against Jodie Dixson's lottery annuity confirms that Arizona state law does not exempt this lottery annuity in Arizona. There is **a** factual dispute as to whether Thomas Dixson ever formed the requisite intent to become a Florida resident. But assuming *arguendo* that Thomas Dixson is a Florida resident, the legal question which is germane to this Court's decision remains as to whether this Arizona lottery win, or a Florida lottery win, or any other state lottery win paid out in the **form** of an annuity, is exempt pursuant to Florida Statutes 8222.14.

ARGUMENT

In certifying the question to this Court, the Eleventh Circuit noted that the *McCollam* bankruptcy court relied upon ***In*** Re *Vincent R. Benedict,* 88 B.R. 387 (Bankr. M.D. Fla. 1988). The Eleventh Circuit, however, also noted that a Florida court may find the reasoning of the court in ***In*** Re Benedict unpersuasive. **TRUSTEE RUFF** asserts that regardless of whether this Court finds Benedict persuasive in the context of personal injury settlement, the Florida legislature never intended lottery winnings to be exempt from creditors,

The legislative history of the amendment to Florida Statutes **$222.14** in 1978 to include annuity contracts provides great insight into the legislative intent as to the scope of the exemption. The Senate Staff Analysis and Economic Statement submitted by the Commerce Committee on December 12, **1977,** states:

11. PURPOSE

A. Present Situation:

> In 1977 the definition of "life insurance" in the Insurance Code, ch. **624-632,** F.S., was expanded to include annuity contracts (ch. 77-295). Currently, $222.14, which is not in the Insurance Code, exempts the cash surrender value of life insurance from attachment, garnishment or legal process. It is not clear

whether the term "life insurance" as used in **4222.14** included proceeds of annuities.

The statement submitted by the Judiciary-Civil Committee on January 10, 1978, is identical. The language used by these committees as a statement of the purpose for amending **$222.14** clearly dictates that the legislature intended to expand the scope of the exemption to the same limit that the insurance code expanded the definition of "life insurance" and nothing more, Thus, Senate Bill **163,** which became the amended **§222.14,** provides:

> Section **1. 0222.14,** Florida Statutes, **is** amended to read:
>
> **222.14** Exemption **of** cash surrender value of life insurance policies and annuity contracts from legal process. -- The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

[Words underlined are the Legislative additions to the statute,]

Chapter **77-295,** to which the legislative history of the 1978 amendment to **$222.14** refers, provides:

> Section 1. Subsection (1) of **$624.602,** Florida Statutes, is amended to read: **624.602** "life insurance," "life insurer" defined. --
>
> (1) "Life insurance" is insurance of human lives. The transaction of life insurance includes also the granting of annuity contracts, the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Life insurance does not include workmen's compensation coverages.

[Words underlined are the Legislative additions to the statute,]

Thus, because the Florida legislature wanted the exemptions to track the definition of "life insurance" exactly, out of an abundance of caution the legislature amended **9222.14** so that it would track the language of the insurance code precisely. The only annuity contracts which are exempt pursuant to **§222.14** are those annuity contracts which involve the insurance of human lives. The gambling winnings in this case in no way involve the insurance of human lives, but rather these gambling winnings are a windfall caused by the purchase of one $1.00 gambling ticket.

Judge Proctor in his decision in ***In*** Re ***Benedict,*** 88 **B.R.** 387 (Bankr, **M.D.Fla.** 1988), arguably supported the interpretation that the annuity contract must involve the insurance of human lives. That case involved the settlement of the Debtor's personal injury suit through a "structured settlement agreement." The Debtor had been involved in a motor vehicle accident in which he suffered severe and incapacitating injuries. The Settlement Agreement provided for lump-sum payments of $100,000.00 and periodic payments to be made to both Eileen and Vincent Benedict. The Debtor was to receive **$3,333.33** per month for the greater of ten years or the duration of his life and Eileen Benedict was to receive the same amount for the greater of thirty years or the duration of her lifetime. The objective of the agreement was to provide for periodic annuity payments of personal injury damage awards over an extended period of time **as** opposed to a single term lump-sum distribution. If properly structured, the proceeds of the annuity contracts are excluded from the recipient's gross income for tax purposes. The Court noted:

> To achieve this objective, $130 of the Internal Revenue Code, Title 26, United States Code, requires that the annuity contracts comply with certain procedural guidelines. First, the rights of the plaintiff to receive the annuity payments must be no greater than the rights of a general creditor of the defendant or the defendant's assignee. Second, the plaintiff may not have any ownership rights in the asset in which the defendant invests to provide these payments. Third, the defendant may not set aside specific assets for the plaintiff's benefit or agree to a lump-sum settlement and then require the defendant to invest the lump-sum on the plaintiffs behalf. ***Finally, the plaintiff must receive the payments through suit or settlement as payments*** of ***damages on account*** of ***personal injury.*** [Emphasis supplied.]

Id., at 388. The issue before that Court was whether an annuity issued pursuant to a structured settlement and §130 of the Internal Revenue Code may be claimed as exempt under Florida law and the Bankruptcy Code. The Court additionally noted that "exemptions under state law rest on considerations of public policy and should be liberally construed in favor of the Debtor." ***Id.,*** at 389. The Court found:

> Even though Merrill Lynch is named as the designated owner under the annuity contracts, it is clear from the settlement agreements that they were purchased for the benefit of the Benedicts. ***Furthermore, they are the ones who suffered the loss and the ones who need*** *the* ***protection*** of ***the*** *statute.* [Emphasis supplied.]

Id. The *Benedict* case, therefore, arguably keeps intact the public policy consideration espoused by the Florida legislature that these exempt annuity contracts must be the insurance of human lives. Part of Mr. Benedict's life was destroyed by this accident and he was compensated for that loss of that part of his life through a structured settlement funded by an annuity contract, Mr. Benedict suffered the loss and he is the one who needed the protection of the statute so that he and his family would not have to become wards of the state.

Even Judge A. Jay Cristol in the *McCollam* case below clearly differentiates between annuities established to compensate for humanitarian loss and annuities established to pay off a lottery debt. In his Order on Objection To Exemption dated January 31, 1990, at page 5, Judge Cristol stated:

> I am convinced from the fact of the humanitarian loss for which the annuity compensates Debtor that there can be no suggestion of fraud or any improper conduct by the Debtor to avoid creditors in establishing the annuity. Therefore, the policy argument set forth in the objector's Brief which compares the Debtor's annuity to an annuity purchased to pay off a lottery debt or a lawyer's fee is totally unrelated to the facts here.

Additionally, Judge Duane J. Kelleher, in his oral order of March 21, 1989, in the *Dixson* case pursuant to a motion by the Debtor to require the Trustee to surrender the 1989 lottery payment, indicated at page 9 that lottery proceeds might be different from the annuity contracts referred to in 9222.14. He further stated at page 11: "In my opinion *In* Re *Benedict* doesn't control, . . ." [These two pages attached hereto as Appendix A.]

Judge Kelleher is correct in that lottery proceeds are different. Florida's Lottery Statute, Chapter 24, provides at §24.115(1)(a):

> The right of any person to a prize shall not be assignable. ***However, a prize may be*** *paid* ***to the estate*** of ***a deceased prize winner or to a person designated pursuant to an appropriate judicial order.*** [Emphasis supplied.]

This clear language of the Florida Lottery statute, passed nine years after the amendment of Florida Statutes §222.14 which included annuities in the definition of life insurance, obviously reflects the legislative intent that lottery winnings do not lose their identity as prize payments after they are won. The legislature contemplated the purchasing of annuities for the payment of lottery winnings. These annuities are subject to payment to a person designated pursuant to an appropriate judicial order,

i.e., garnishment, attachment, and other legal proceedings. Additionally, Florida Statutes §24.115(4) provides:

> It is the responsibility of the appropriate state agency and of the judicial branch to identify to the department, in the form and format prescribed by the department, persons owing an outstanding debt to any state agency or owing child support collected through a Court. Prior to the payment of a prize of $600 or more to any claimant having such an outstanding obligation, the department may transmit the prize money to the Comptroller who may authorize payment of the balance to the prize winner after deduction of the debt. If a prize winner owes multiple debts subject to offset under this subsection and the prize is insufficient to cover all such debts, the amount of the prize shall be applied in the manner that the Comptroller deems appropriate.

Clearly, lottery winnings are different. Annuities which are insurance on human life are not subject to automatic deduction for such debts and they are not subject to being paid to a person designated pursuant to an appropriate judicial order.

Because this case deals with Arizona lottery winnings, this Court should also consider Arizona law in determining whether Arizona lottery winnings are subject to payment to a person pursuant to an appropriate judicial order. Chapter 5 of the Arizona Statutes, §5-513, provides the necessary law:

> **A.** The right of any person to a prize is not assignable, except that:
> 1. Payment of any prize drawn or ***the remainder*** of ***any annuity purchased*** may be paid to the estate or beneficiary of a deceased prize winner or to a person ***pursuant to an appropriate judicial order.*** [Emphasis supplied.]
> 2. Payments to winners in an amount in excess of ***six*** hundred dollars are subject to setoff pursuant to §5-525.

Section 5-525 provides for a setoff for debts to state agencies, including a delinquency in Court ordered payments for support or maintenance of a child or for spousal maintenance to the parent with whom the child is living. Thus, Arizona and Florida both provide statutory authority for the payment of annuity proceeds whose source of funding is a lottery win to any person pursuant to an appropriate judicial order. The annuity proceeds are subject to garnishment, attachment, or other legal process. Lottery prize payments keep their identity as lottery prize payments even though the state purchases an annuity to fund those payments.

The Internal Revenue Service also treats lottery prize payments different from annuities set up to compensate for humanitarian losses. Every year, the Internal Revenue Service requires Dixson to file

a form W-2G entitled "Statement for Certain Gambling Winnings." Prior to the payment of the annual prize installment, the federal government and the Arizona state government withhold income tax. This practice is totally different from the annuity payments in the *Benedict* case where the annuity payments were excluded from the recipient's gross income. The 1040 U.S. Individual Income Tax Return also contains a line item for Gambling Winnings, as does the Arizona Form 140 and Arizona Form 140NPR. These payments never lose their identity as gambling winnings as far as the federal and state internal revenue services are concerned. Likewise, these payments never lose their identity as gambling winnings as far as the state legislatures of Florida and Arizona are concerned, as evidenced by the virtually identical lottery statutes. The social good intended by the Florida legislature by the enactment of the annuity exemption in §222.14 does not impact upon lottery winnings. No one is injured; no one has died; no one is incapable of providing food and shelter for himself and his family because he has won the lottery, There is no social good to exempting lottery winnings from the process of law.

The U.S. District Court in the Northern District of Indiana was faced with a similar question concerning the identity of Arizona Lottery winnings in Matter *of Brown*, 86 B.R. 944 (N.D. Ind. 1988). In that case, the Browns won $1.5 million in the Arizona Lottery in 1985. They received an initial distribution of $39,500.00 and spent it prior to filing their bankruptcy petition on July 17, 1986. The balance of the lottery money was made payable to Joseph E. Brown as beneficial owner of John Hancock Mutual Life Insurance Company Annuity Number LA 000240, at $1,000.00 weekly for 948 weeks, from May 1, 1986, through and including June 24, 2004. Mr. Brown could not choose to receive his winnings in a full cash payment, and had no right to negotiate the terms of the annuity contract. His wife, Kimberly, was the named beneficiary of the annuity. The annuity purchased by the Lottery Commission contained a required nonalienation notice.

The Brown Debtors argued that the annuity contract's restriction on transfer qualified the proceeds as excludable from the bankruptcy estate pursuant to 11 U.S.C. §541(c)(2). The trustee argued that the Debtor's interest in the annuity contract and the right to receive weekly payments is property of the estate as defined in 11 U.S.C. §541(c)(1). The Court held that the annuity contract in this case was

distinct in several ways from the retirement plans examined on a case by case basis in prior Court decisions. All the ERISA-qualified retirement plans involved at least partial contributions from employee wages. By contrast, the Browns' annuity payments were a windfall. The Court further found:

> The annuity agreement in this case is a contract between an Indiana resident and the Arizona Lottery Commission. Its purpose is to specify a method of payment from Arizona lottery winnings. In a sense, the agreement is the remaining portion of the prize itself. . . . The debtors' weekly payments are here assured by a contractual agreement that is presumed to be legally enforceable, at least in Arizona. For purposes of the underlying bankrutcy, as correctly determined by the bankruptcy court, the agreement represents a contractual interest of the Debtor, rightfully considered part of the bankruptcy estate.
>
> The debtors' position, particularly in the State of Indiana, boggles the mind from a policy perspective, and certainly offends the spirit of bankruptcy law, These debtors would wish to enjoy their windfall uninhibited by previously established debts. The Browns tend not, as millionaires, to evoke an image of being trapped in a pit of debt, in need of a fresh start. With the monthly income that they can rely on enjoying for the next decade and beyond, free of the usual consumption of energy and investiture of time, it is understandable that the trustee has asserted that "[i]t would be inequitable to allow a millionaire to discharge $80,000.00 of debt." The weekly annuity payments should be, and are as a matter of law and policy, included in the bankruptcy estate.

Id., at 947. Dixson, in this case, seeks to discharge $531,000.00 in debt as evidenced by filed proof of claims. The Brown Court further held:

> It is unthinkable that the Arizona Lottery Commission would have intended, in setting up this method of payment, to aid these Indiana debtors in avoiding creditors' claims in bankruptcy. More likely the plan was seen as having certain tax advantages for all concerned, and as allowing the bulk of the money to remain with the State of Arizona for whatever purposes allowed under Arizona law. As an incidental advantage, the plan does protect these debtors from a short-lived misuse of their windfall.

Id., at 948. The Court continued:

> It is not unheard of, even in the context of a valid spendthrift trust, not here found under Indiana law, that an arrangement be made to turn over money to a third party as it is received by a beneficiary.

Id. The Court concluded:

> This arrangement in the State of Arizona was born of fiscal concerns quite apart from those asserted here by the Browns. Those concerns were in no way intended to permit these instant millionaires from paying their legitimate debts. Nothing in the law of Indiana excuses the payment of these debts. Given all the liberal intendments of the Bankruptcy Act, the same does not remotely authorize this scheme. These debtors will not be permitted to avoid their obligations by using this Arizona state-created device. The message to the Browns is clear: You won big in the Arizona lottery. You lose here!

Id.

So, too, must Dixson lose here, Neither the Florida legislature nor the Arizona legislature ever intended to provide a vehicle to allow this instant millionaire to escape payment of his legitimate debts. In Dixson's case, his attempt to keep his lottery win appears even more egregious since it was only after winning the lottery and because he won the lottery that Dixson applied for the loans he **now** seeks to discharge* The annuity agreement in this case is a contract devised for the purpose of specifying a method of payment for Arizona lottery winnings. The agreement is the remaining portion of the prize itself--a legally enforceable debt owed by the State of Arizona to Dixson. Both the Arizona Lottery Statute and the Florida Lottery Statute clearly allow the remaining portion of prize winnings to be subject to the process of law. Thus, the lottery winnings are properly a contractual interest of the Debtor, rightfully considered part of the bankruptcy estate, with **no** valid exemption.

A similar and equally applicable analysis is presented in the case of In the Mutter ***of Young,*** 806 F.2d 1303 (5th Cir. 1987), 15 **B.C.D.**378 (E.D.La. 1986). **In** that case, the Debtor was an attorney who had won a settlement of a death claim €or his clients, a surviving spouse and children, against Offshore Logistics, Inc. The settlement entered into on July 7, 1982, was structured in the form of an annuity which provided the Debtor's attorneys fees would be paid with $25,000.00 up front and thereafter monthly installments of $1,875.00 for fourteen years beginning August 1, 1982. The monthly payments were to come from an annuity contract executed by Gerald J. Sullivan & Associates for the benefit of Neil Young, the Debtor, and was issued by First Colony Life Insurance Company.

Like Florida, Louisiana has opted out of the Federal exemption laundry list. Two Louisiana state statutes provide that annuities are exempt under Louisiana law. The relevant statutes are La.Rev.Stat.Ann. §20:33 which provides in relevant part:

> The following shall be exempt from all liability for any debt except alimony and child support:
>
> (1) All pensions, all proceeds of and payments under annuity policies or plans, all individual retirement accounts, all Keogh plans, and all other plans qualified under Section 401 or 408 of the Internal Revenue Code. . . . No contribution shall be exempt if made less than one calendar year from the date of filing for bankruptcy, whether voluntary or involuntary, or less than one calendar year from the date writs of seizure are filed against such account or plan.

The *Young* court found that the settlement was more than one year from the date of filing and therefore the annuity *might* be exempt under §20:33 and §22:657(B).

La.Rev.Stat.Ann. §22:657(B) provides in relevant part:

> The lawful beneficiary, assignee, or payee, including the annuitant's estate, of an annuity contract, heretofore or hereafter elected, shall be entitled to proceeds and avails of the contract against the creditors and representatives of the annuitant or the person effecting the contract, or the estate of either, and against the heirs and legatees of either such person, saving the rights of forced heirs, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, payee, or assignee or estate, existing at the time the proceeds or avails are made available for his own use.

The Court, however, first had to determine whether the monthly payments were annuity payments or accounts receivable. In making that evaluation, the Court cited Black's Law *Dictionary* 82, 17 (rev. 5th ed. 1979) for the definition of an annuity as "a right to receive fixed, periodic payments either for life or for a term of years whereas an account receivable is a claim against the Debtor usually arising from sales or services rendered." Id., at 1306. "*An* annuity is essentially a form of investment which pays periodically during the life of the annuitant or during a fixed term, fixed by contract, rather than on the occurrence of a future contingency," *Id.* The difference between an annuity and another periodic payment, an account receivable, was stated by that Court as follows:

> Its determining characteristic is that the annuitant has an interest only in the payments themselves and not in any principal fund or course from which they may be derived. The purchaser of an annuity surrenders all right and title to the money he pays for it. On the other hand, where a debtor agrees to pay his creditor in installments at regular intervals, the debt or principal sum itself is due to the creditor although payable only in the matter agreed upon; it is an account receivable in which he has a property interest. Therefore, installment payments of a debt, or payments of interest on a debt, do not constitute an annuity.

Matter of Young, 806 F.2d 1303, 1307 (5th Cir. 1987).

That court quoted with approval the analysis followed by the Bankruptcy Court, which first considered whether or not the annuity was entitled to protection under the exemption laws, or was an account receivable. The Bankruptcy Court decided that, because the Debtor was a creditor for whom the annuity was established and retained an enforceable interest in the principal debt despite agreement to receive monthly installment payments through the device of an annuity, the Debtor had an interest in the principal fund or source. This substantial difference between the traditional annuity contract and

the obligation actually sought to be paid through the device of an annuity rendered the "annuity, in substance, nothing more than an account receivable, and not exempt from the bankruptcy estate." *Id.*

The Louisiana Court noted with particularity that if Young (the Debtor) had accepted the total fees owed to him by the Fanguays (his Clients) in **1982,** paid taxes on the income and then purchased an annuity policy with the balance, there would be no question that the monthly payments would be exempt under the annuity statutes *of* Louisiana, **R.S.** 22:33 and 22:647(B), since he would have transferred his interest in and to the funds as consideration for the periodic payments which he was purchasing. The Court continued:

> However, in the present scenario, Young retains an interest in the debt which is due him. The Underwriters paid a single premium of $155,196.00 to Sullivan in consideration for the annuity payment which would pay the obligation of $1,875.00 per month to the Debtor, Young agreed to accept the debt owed to him in installment payments via the annuity policy. He has not relinquished his interest in and to the debt awed to him; the payment in satisfaction *of* the debt amounts to an account receivable. **See,** *e.g., Beisel,* 13 k 2 d at **421.**

Id., at 381.

In the *Dixson* case, the obligation of the State of Arizona to Dixson to pay the lottery proceeds gives Dixson an interest not only in the payments made under the annuity, but also an interest in the underlying debt. He has a right to receive the remaining $1,785,000.00 on the debt, which debt is enforceable aside from the annuity contract. This subject annuity contract payment made in satisfaction of the debt owed to Dixson by the State of Arizona is an account receivable.

The State of Arizona could have chosen almost any way to make periodic payments. The State decided that lottery awards of more than $400,000.00 should be paid through the device of an annuity or some other investment contract payment. This has substantial monetary benefit for the lottery and the state, in general, as a single premium annuity is far cheaper than yearly payments directly from the coffers of the state. The present dollar value of a $2,000,000.00 win is, as is evidenced by the annuity contract, much cheaper for the state than the dollar-for-dollar payment thereof. By using an annuity, the State of Arizona realized substantial savings over the life of the payments resulting from the lottery win which created this annuity.

Additionally, the Florida legislature has provided an exemption for annuities under *Florida Statutes* $222.14. Elsewhere in the Florida Code an annuity is defined as a contractual agreement between parties which fulfills the requirements of Florida *Statutes* §627.464--.472. As is stated in **0627.464,** the annuity must include the following provisions as a basis for rights granted in the contract, or must provide some other method of granting benefits which the Florida Department of Insurance finds to be just as beneficial to the policyholder as those enumerated in the Code. Generally, Insurance Code provisions which are held to benefit the policyholder include a thirty **(30)** day grace period within which periodic payments may be made, during which the contract remains in force without lapse. Overdue payments may be deducted from any claim made during the grace period. Any required statements required by the annuity company other than the ages, sexes, and identifications of the annuitants become incontestable two years after those statements are required to be made. Additionally, in fixed dollar annuity, the contract must provide it is the entire contract between the parties, without amendment (other than in writing and agreed to by both parties). All interest chargeable to the annuitant or beneficiary must be at less than or equal to 6% per annum, including charges for overpayments made as a result of a misstatement of the age, sex, or identification of an annuitant or beneficiary thereof.

The provisions for annuities under Arizona law are substantially similar. In Ariz.Rev.Stat.Ann. §20-254.01, the Arizona State legislature has defined an annuity to be any agreement to make periodic payments, other than those made under a life insurance contract as defined by the Code, where the making of some or all of the payments, or the amount of the payment, is dependent upon the continuance *of* a human life. Again, the applicable provisions of the Code (Ariz.Rev.Stat.Ann. §§ 20-**218--1225** and 1229) provide for a one month grace period; for incontestability of information; that fixed dollar annuities must state, within the annuity contract, that it is the whole contract between the parties; and for setting a limit on the amount of interest which may be charged back to the annuitant or beneficiary. Additionally, Arizona provides for methods of apportioning surplus on participating

annuities between annuitants. Both in Arizona and in Florida the contract may be reinstated within one year of default if the payments are made to the insurer who issued the annuity.

However, while both states have statutes dealing with annuities, only one state has an exemption from creditors for proceeds of annuity contracts. That state is Florida. Dixson left Arizona for the sole special purpose of filing his bankruptcy petition in a state with an annuity exemption statute. Dixson has claimed a Florida state-created exemption. The scope of that claim is to be determined by reference to State law. Because Dixson is claiming a Florida exemption, it follows that reference must be had to those statutes defining annuities in the State of Florida to determine whether the instant annuity contract qualifies as an annuity for the purposes of State law,

This Court may look behind the name of the investment to determine, under all facts and circumstances and with reference to the contractual agreement between the parties, whether the annuity is one of the "types of investments which the State Legislature had in mind in enacting" the exemption statute. *In* re *Sederstron*, 52 B.R. **448** (Bankr. D. Minn. 1985). In that case, the Court found that the investments, while purportedly made for the purpose of providing for retirement, were really the normal type of investment (in stocks and bonds, and like investments), in which a person might invest without intent to provide for retirement. This is noted in dicta, as the issue of whether the annuity qualified as an annuity under State law was not raised.

The point remains that the substance of the arrangement controls, rather than the label affixed to it. If the label says one thing, and the substance **says** the other, substance controls over form and the label attached, whether annuity or account receivable, will have no effect upon the Court's decision of whether or not the agreement constitutes an annuity.

In this case, the annuity contract is a matter of a few pages (attached hereto as Appendix B). None of the provisions which are required to be included under the laws of Florida appear in this contract, nor do the provisions required under the laws of Arizona. Therefore, under neither state's laws is the contract, though denominated an annuity, an actual annuity. The total absence of the statutory requirements in the contract means that the contract cannot be considered an annuity contract,

and the payments made thereunder are not made pursuant to a qualified annuity. The payments are not exempt under Arizona law nor under Florida law.

CONCLUSION

Regardless of whether this court accepts or rejects the reasoning in *Benedict*, lottery winnings paid to a Debtor in Florida through the vehicle of an annuity are not exempt from creditors under any theory whatsoever. A ruling by this Court to exclude lottery winnings from the definition of "annuity" as that word is used in ***Florida Statutes* §222.14 is of** extreme importance, in that Dixson is not the only lottery instant millionaire to come to Florida and file his bankruptcy petition. TRUSTEE **RUFF** knows of another lottery instant millionaire, this time involving the Connecticut lottery, who has filed her bankruptcy petition in Ft. Lauderdale, expecting to keep her lottery winnings as exempt from her creditors via ***Florida Statutes* 0222.14.** ***(In Re Kathleen Pizzi,*** Case No. 92-30972-BKC-RAM, filed on March **24, 1992,** Southern District of Florida, West Palm Beach Division, Judge Robert Mark.) Such is not the intention of the Florida Legislature and such is most definitely opposed to public policy.

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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY **that a true and correct copy of the foregoing has been furnished within the United States by First Class mail postage prepaid in full on this** 7th **day of May, 1992 to those listed** on **the attached Service List.**

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