

Exemptions - wages
O.R.S. 23.185
O.R.S. 23.166

In re Edward and Kerry Osworth 697-67189-fra7
BAP # OR-98-1409-MeRRy

4/19/99 BAP Reversing Alley Published

The Debtors are self-employed real estate agents. At the petition date, Mr. Osworth had a commission receivable for which he claimed an exemption under O.R.S. 23.185. The Trustee objected to the exemption on two grounds: 1) that the Oregon garnishment statute of O.R.S. 23.185 does not create an exemption recognizable in bankruptcy, and 2) the garnishment statute does not protect self-employed persons. The bankruptcy court denied the Trustee's objection on both grounds.

The BAP looked to the line of cases interpreting the Federal Consumer Credit Protection Act, upon which Oregon's and other states' statutes were modeled, and held that O.R.S. 23.185 protects only debtors who are employees, not self-employed persons. Because it had ruled that the debtor was not protected by the Oregon statute, the BAP declined to address the trustee's other ground for objection that the statute did not provide an exemption recognizable in bankruptcy.

E99-13(7)

(The underlying Bankruptcy
Court opinion is numbered E98-
4(7))

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ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re) BAP No. OR-98-1409-MeRRy
EDWARD M. OSWORTH and KERRY,)
L. OSWORTH,) Bk. No. 697-67189-fra7
Debtors.)

BOYD YADEN, Chapter 7)
Trustee,)
Appellant,)
v.)
EDWARD M. OSWORTH and KERRY)
L. OSWORTH,)
Appellees.)

FILED

APR 19 1999

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

O P I N I O N

Argued and Submitted on January 21, 1999
at San Francisco, California

Filed - April 19, 1999

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Frank R. Alley, III, Bankruptcy Judge, Presiding

Before: MEYERS, RUSSELL and RYAN, Bankruptcy Judges.

1 MEYERS, Bankruptcy Judge:
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3

4 I

5 The bankruptcy court allowed the debtors to exempt an account
6 receivable for a real estate commission.

7 We REVERSE and REMAND.
8

9 II

10 FACTS

11 Edward and Kerry Osworth ("Debtors") were self-employed real
12 estate agents. They filed for relief under Chapter 7 of the
13 Bankruptcy Code ("Code") on December 15, 1997. The Debtors
14 scheduled an account receivable for a \$1,925 commission owed to
15 Edward Osworth. They claimed \$1,443.75, or 75%, of the commission
16 exempt as earnings. The Chapter 7 trustee, Boyd C. Yaden,
17 ("Trustee") objected to the exemption, and the bankruptcy court
18 ruled in favor of the Debtors. The Trustee appeals.
19

20 III

21 STANDARD OF REVIEW

22 The scope of a state law exemption involves construction of
23 state law, which is reviewed de novo. In re Turner, 186 B.R. 108,
24 112 (9th Cir. BAP 1995).
25

26 IV

27 DISCUSSION

28 Section 522(b)(2)(A) of the Bankruptcy Code allows a debtor to

1 exempt from property of the estate any property exempt under
2 applicable state law. Pursuant to Or.Rev.Stat. 23.305, a debtor in
3 bankruptcy must use the Oregon statutory exemptions scheme. In re
4 Godfrey, 102 B.R. 769, 771 (9th Cir. BAP 1989). Because Oregon has
5 "opted out" of the federal exemption scheme of 11 U.S.C. § 522,
6 Oregon law governs issues regarding the allowance of a claimed
7 exemption. See Turner, supra, 186 B.R. at 113. The bankruptcy
8 court decides the merits of state law exemptions, but state law
9 controls the validity of the claimed exemption. In re Been, 153
10 F.3d 1034, 1036 (9th Cir. 1998).

11 Under Section 23.185, a debtor can exempt a portion of
12 earnings from garnishment. Section 23.175 provides definitions
13 that apply also in Section 23.185. "Disposable earnings" is
14 defined as "that part of the earnings of an individual remaining
15 after the deduction from those earnings of any amounts required to
16 be withheld by law." O.R.S. 23.175(1). "'Earnings' means
17 compensation paid or payable for personal services, whether
18 denominated as wages, salary, commission, bonus or otherwise, and
19 includes periodic payments pursuant to a pension or retirement
20 program." O.R.S. 23.175(2).

21 The question before us is whether the Oregon statute applies
22 only where there is an employer-employee relationship, as the
23 Trustee contends.¹ "When we look to the plain language of a
24

25 ¹ The Trustee also contends that Section 23.185 simply limits
26 garnishment and is not an exemption statute. See In re Lawrence, 205
27 B.R. 115, 116 (E.Tenn. 1997), aff'd 219 B.R. 786 (E.D.Tenn. 1998).
We decline to address that issue because we determine that the
Osworths do not come within the scope of Section 23.185.

1 statute in order to interpret its meaning, we do more than view
2 words or sub-sections in isolation. We derive meaning from
3 context, and this requires reading the relevant statutory
4 provisions as a whole." In re Rufener Const., Inc., 53 F.3d 1064,
5 1067 (9th Cir. 1995).

6 The bankruptcy court held that the definition of earnings was
7 unambiguous and, based on that definition, the court concluded that
8 the statute did not require the existence of an employer-employee
9 relationship. It stated that the Section focused on the "type of
10 income (i.e. compensation for personal services) rather than the
11 source of that income."

12 The Oregon statute is modeled on the Federal Consumer Credit
13 Protection Act ("CCPA"), 15 U.S.C. § 1671 et seq. One concern of
14 Congress in enacting the CCPA was to preserve the stability of the
15 employer-employee relationship. Usery v. First Nat. Bank of
16 Arizona, 586 F.2d 107, 110 (9th Cir. 1978). The court in Usery
17 concluded that the CCPA was limited in "its application to
18 employers (or those who stand in the position of employers by
19 virtue of paying or owing compensation for services to the
20 individual debtor)" Id. In Kokoszka v. Belford, 417 U.S.
21 642, 650-51 (1974), the Supreme Court explained that the CCPA was
22 intended to temper harsh garnishment laws that were driving debtors
23 into bankruptcy. The Court further stated that "[t]here is every
24 indication that Congress, in an effort to avoid the necessity of
25 bankruptcy, sought to regulate garnishment in its usual sense as a
26 levy on periodic payments of compensation needed to support the
27 wage earner and his family on a week-to-week, month-to-month

1 basis." Id. at 651.

2 If our analysis ended here, we would conclude that Osworth
3 could not claim the exemption. However, Congress did not preempt
4 all state garnishment law when it enacted the CCPA. Indeed,
5 15 U.S.C. § 1677 provides as follows:

6 This subchapter does not annul, alter, or affect, or
7 exempt any person from complying with, the laws of any
8 State

9 (1) prohibiting garnishments or providing for more
10 limited garnishments than are allowed under this
11 subchapter.

12 Pursuant to this Section, states are allowed to grant debtors
13 greater protection from garnishment than they receive under the
14 CCPA. We must then decide whether the Oregon statute should be
15 read more broadly than the CCPA, indeed broadly enough to protect
16 the account receivable owed to the Debtors from garnishment.

17 Under the Oregon statute the definitions for "earnings,"
18 "disposable earnings" and "garnishment" are the same as those in
19 the CCPA.² The Oregon statute does include one definition that
20 does not appear in the CCPA. Pursuant to Section 23.175(3),

21 "Employer" means any entity or individual who engages a
22 person to perform work or services for which compensation
23 is given in periodic payments or otherwise, even though
24 the relationship of the person so engaged may be as an
25 independent contractor for other purposes.

26 ² The Oregon Supreme Court examined the scope of the terms
27 "earnings" and "wages" in the context of O.R.S. 29.401 to 29.415,
28 which concerns writs of continuing garnishment. Zidell Marine Corp.
v. West Painting, Inc., 322 Or. 347, 355 (1995). That court made
specific reference to O.R.S. 23.175, but noted that the definitions
in 23.175 apply only to terms in that Section and to 23.185. Id. The
court concluded that it needed to search further for the meaning of
"earnings." Since the court found the definitions of Section 23.175
inapplicable, the remainder of that court's discussion does not serve
to aid the Panel in deciding the issue now before us.

1 enter an order upholding the Trustee's objection to the claim of
2 exemption.

3 REVERSED and REMANDED.
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