Exemptions
ORS 23.160(1)(j)

In re Samantha M. Smith 696-64564-fra7

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The trustee objected to the Debtor's claimed exemption of funds received by her from a California workers' compensation award for injuries suffered by her while working in California. The funds were held at the petition date in a separate account in the Debtor's parents' names. The property and the exemption were fully disclosed by the Debtor in her petition. Evidence was presented and accepted by the court that the funds were held in a trust relationship with the Debtor retaining the beneficial interest. The trustee argued that only the legal interest may be exempted and that since that was in the parents' names, no exemption could be claimed. Further, the trustee argued that the funds were subject to recovery as a fraudulent transfer.

The court held that a debtor may exempt his or her beneficial interest in otherwise exempt property. The funds themselves, while not exempt as workers' compensation proceeds (ORS 656.234 applies only to Oregon workers' compensation proceeds), could be exempted under ORS 23.160(1)(j)(B) and/or (C) which allows an exemption for funds traceable to payments made for personal injury and for loss of future earnings. The Debtor's beneficial interest was therefore exempt. Prior to the petition date, the Debtor had allowed her parents to withdraw $1,600 as a loan which they repaid post-petition. The court ruled that the $1,600 lost its exempt status when it was loaned to the parents and was thus subject to turnover.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

IN RE	)	Case No. 696-64564-fra7
	)	
SAMANTHA M. SMITH	)	
	)	
Debtor.	)	MEMORANDUM OPINION

I. INTRODUCTION

The Trustee has filed an objection to the Debtor's claimed exemption of funds awarded to her for injuries suffered while she was working in California. For the reasons that follow, the Trustee's objection is denied, but only to the extent that funds can be traced to the award.

II. FACTS

The Debtor was injured while performing her duties as a mental health counselor in Citrus Heights, California. She filed a claim for worker compensation benefits with the California Division of Workers' Compensation and was awarded $19,000. Certain amounts were deducted from the total award and the

remaining balance of $13,180 was paid directly to the Debtor by the workers' compensation insurer.

The funds were placed in a savings account at Evergreen Federal Savings in an account opened by the Debtor's parents, Clifford and Elizabeth Smith, for the sole purpose of holding these funds. Debtor testified without contradiction that the account, while in her parents' names, was entirely for her benefit, and that no withdrawals were to be made without her knowledge and consent. Debtor testified that she set up this arrangement to make it more difficult for a man she was then living with to cajole her into giving him access to the funds.[1] Prior to filing her bankruptcy petition, the debtor had agreed to lend her parents $1,600 and authorized them to withdraw the funds from the account for that purpose. An additional $1,300 was withdrawn for this purpose post-petition. The entire $2,900 was repaid on November 6, 1996, several weeks after the petition was filed.[2]

At the petition date the account contained $7,552.34, plus interest accrued from June 24, 1996. The debtor fully disclosed her interest in the funds on Schedule B as well as the account number and the fact that the account was in her parents' names. She claimed an exemption for the funds under ORS 656.234, which allows an exemption for workers' compensation proceeds, and

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[1]Debtor testified that nearly all the debt she seeks to discharge in her bankruptcy case was incurred for her boyfriend's benefit.

[2]Debtor filed her petition on September 13, 1996.

listed the exemption amount at $10,000.

At the first meeting of creditors held on November 5, 1996, at which the Debtor's parents were present, the Trustee remarked that he believed that the placement of the funds into the account constituted an avoidable transfer and that he would lay claim to the account. Shortly thereafter, the Debtor's parents decided to relinquish their control of the funds and tendered them back to the Debtor. The funds were thereafter held in an account in the Debtor's name which was "frozen" by agreement of the parties' attorneys. The Debtor subsequently amended her claim of exemption, claiming them as exempt under ORS 23.160(1)(j).

III. ANALYSIS

The Debtor argues that she should be allowed an exemption for her beneficial interest in the funds being held by her parents. The Trustee counters that only the legal interest may be exempted, and that the legal interest was held by the Debtor's parents. Because the legal interest was not held by the Debtor, the funds were not property of the estate at the petition date and could be recovered by the estate through the exertions of the Trustee. As "recovered" property, the Debtor would no longer be able to avail herself of the allowable exemptions pursuant to 11 U.S.C. §§ 551 and 522(g). See In re Glass, 60 F.3d 565 (9th Cir. 1995). Further, the Trustee argues that the Oregon statute invoked to claim an exemption in the funds is not applicable in this instance.

A. Applicability of Exemption Statute

The Debtor originally claimed the funds were exempt under ORS 656.234. That statute exempts from execution those funds received under workers' compensation, but only if the funds were awarded under the Oregon Workers' Compensation Law. Because the funds were actually awarded under California workers' compensation laws for injuries suffered in California, ORS 656.234 would not be applicable in this instance.

The Debtor, however, amended her exemption schedule to claim the funds exempt under ORS 23.160(1)(j)(B) and ORS 23.160(1)(j)(C). Those provisions read as follows:

> 23.160 Leviable property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor . . . at the time of the levy, or as soon thereafter before sale thereof as the time shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, . . . shall be exempt from execution:
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> * * *
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> (j) The debtor's right to receive, or property that is traceable to:
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> * * *
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> (B) A payment, not to exceed $10,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor . . .; or
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> (C) A payment in compensation of loss of future earnings of the debtor . . ., to the extent reasonably necessary for the support of the debtor or any dependent of the debtor.

While one may argue that property which is specifically exempted by one statute is not also exemptable under a more

general statute,[3] that is not the case here. The funds cannot be exempted under ORS 656.234 because that statute only exempts funds received under the Oregon Workers' Compensation Law. If the funds otherwise qualify for exemption under ORS 23.160(1)(j)(B) and/or (C), those statutes may be utilized to exempt the funds in this case.

B. Exemption in Beneficial Interest

1. Existence of Trust Relationship

In Oregon, a resulting trust is formed "wherever the circumstances surrounding the disposition of property raise an inference, not rebutted, that the transferor does not intend that the person taking or holding the property, or a third person, should have the beneficial interest therein." Belton v. Buesing, 240 Or. 399, 407 n. 4, 402 P.2d 98, 102 (1965). The Debtor offered unrebutted testimony that she retained the beneficial interest in the funds and that the purpose for the trust relationship was to insulate the funds from the demands of her then boyfriend. The court is convinced from the evidence presented in this case that a resulting trust, if not an express trust, was formed when the funds in question were transferred to the Debtor's parents and that the Debtor retained a beneficial interest in those funds.

2. Interests Which May Be Exempted

ORS 23.160, the statute under which the exemption is being claimed, grants an exemption from execution for specified

[3]The court makes no ruling with regard to this question.

property, or "rights or interest therein" of the debtor. There is substantial authority that a beneficial interest in exempt property is also exempt. See In re Wallaert, 149 B.R. 665, 666 (Bankr. W.D. Wash. 1992)("an equitable interest in residential property is sufficient to support a homestead exemption under Washington law"); In re Moffet, 107 B.R. 255 (Bankr. C.D. Cal. 1989)(California law allows exemption of debtor's interest as a beneficiary holding a life estate under a self-settled living trust). I am of the opinion that, ,under Oregon law as well, the Debtor's beneficial interest in the funds held in the account in her parents' names is exempt to the extent the funds themselves are otherwise exempt.

C. Amount of Exemption

11 U.S.C. 522(b)(2) states, inter alia, that a debtor may exempt from property of the estate property which is exempt under State or local law that is applicable on the date of the filing of the petition.[4] On the petition date, funds traceable to a payment made to Debtor for a personal injury were held by the Debtor's parents in the amount of $7,552.34. Under ORS 23.160(1)(j)[5], those funds are exempt. Debtor's beneficial

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[4]Pursuant to 11 U.S.C. § 522(b), Oregon excluded use of federal exemptions. ORS 23.305.

[5]Debtor stated that the funds in question are exempt under both ORS 23.160(1)(j)(B) and (C). While there may be an element of both in the award (loss for personal injury and loss of future earnings), it is unclear from the record what allocation, if any, should be made. The court is satisfied, however, especially given the lack of any objection on those particular grounds, that the funds at issue are exempt under one or both of the statutes.

interest in those funds is likewise exempt. Funds which had been transferred from the account at the petition date for the purpose of the loan to Debtor's parents lost their status as funds traceable under ORS 23.160(1)(j) and therefore lost their exempt status.

IV. CONCLUSION

Debtor's beneficial interest in funds held in her parents' names at the petition date in the amount of $7,552.34 is exempt under 11 U.S.C. § 522(b) and ORS 23.160(1)(j). Funds in excess of that amount less any post-petition interest earned now held by the Debtor in a separate account in her name remain property of the estate and must be turned over to the Trustee. An order consistent with the foregoing will be entered.

FRANK R. ALLEY, III
Bankruptcy Judge