

11 USC § 101(54)  
11 USC § 522(d)(5)  
11 USC § 522(h)  
11 USC § 547(b)(5)  
11 USC § 547(c)(8)  
ORS 18.300  
ORS 18.385  
ORS 18.700(1), (2)  
ORS 18.735  
check  
federal wildcard exemption  
garnishment  
preference  
transfer

Cronk v. Oregon Credit and Collections Bureau, Inc. (In re Cronk) Adv. No. 14-6220-tmr  
9/25/15 Renn 2015 WL 5673120

In this Chapter 7 case, Debtor/Plaintiff attempted to recover under § 522(h) pre-petition wage garnishments within 90 days of her bankruptcy filing. Two of the garnishments, which totaled less than \$600 in aggregate, were completed when the case was filed. The last however was pending. That is, the writ had been served and the wages earned, but the check although issued by the garnishee/employer on the date of the bankruptcy filing, was received by the creditor/Defendant post-petition. Upon receipt, Defendant promptly returned the undeposited check to Plaintiff. Defendant defended under § 547(c)(8), arguing less than \$600 had been preferentially transferred. The Court upheld the defense.

As to the pending garnishment, the Court held the check did not effectuate a pre-petition transfer because it had not been honored pre-petition. It also held that under Oregon law, the writ itself (even absent payment thereon), transferred an interest to Defendant in Plaintiff's earned wages. That interest, however, be it a lien or a corollary, while having priority over subsequent lien creditors such as the Ch. 7 trustee, did not have priority over an allowable exemption in the funds. The Court held Defendant could assert her federal wildcard exemption therein. Because that exemption covered the entire amount of wages subject to the pending garnishment, the Court held the interest transferred by virtue of the writ alone did not improve Defendant's position for purposes of § 547(b)(5), and thus was not preferential. Eliminating the pending garnishment from the preference analysis brought Defendant under the \$600 threshold such that it could keep the first two (admittedly) preferential payments.

Subject to timely objection, the Court also ordered Plaintiff to return to the garnishee the uncashed/undeposited check payable to Defendant, and ordered the garnishee to issue a replacement check payable to Plaintiff.

**E15-6(6)**

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

IN RE	)	
WENDY ANNE CRONK,	)	Bankruptcy Case
	)	No. 14-64115-tmr7
	)	
Debtor.	)	
WENDY ANNE CRONK,	)	Adversary Proceeding
	)	No. 14-6220-tmr
Plaintiff,	)	
v.	)	
OREGON CREDIT AND COLLECTIONS	)	MEMORANDUM OPINION
BUREAU, INC.,	)	
Defendant.	)	

The parties have submitted the preference claims in this adversary proceeding upon briefs and stipulated facts. The matters are ripe for decision.

Factual and Procedural History:

On July 31, 2014, a judgment totaling more than \$20,931 was entered in Lane County Circuit Court in favor of Linn-Co Federal Credit Union against Plaintiff. On August 27, 2014, the judgment was assigned to Defendant.

On September 29, 2014, the Lane County Court Administrator issued a writ of garnishment to Columbia Distributing, Plaintiff's employer. The amount subject to garnishment as of that date was

1 \$22,053.26. The writ provided that it garnished “all . . . [w]ages that you owe the Debtor at the time this writ  
2 is delivered to you and all wages that the Debtor earns during the 90 day period following the date on which  
3 you receive this writ.”

4 Pursuant to the writ, on or about October 21, 2014, and November 4, 2014, Defendant received and  
5 deposited checks from Columbia Distributing for \$257.31 and \$256.12 respectively (total \$513.43).

6 On November 14, 2014, Columbia Distributing, through its payroll agent, issued a third garnishment  
7 check, this one for \$261.70. That same date Plaintiff filed her Chapter 7 Petition.<sup>1</sup> On Schedule B she listed  
8 a “Preference Claim” valued at \$740, and on Schedule C claimed the entire scheduled value exempt under 11  
9 U.S.C. § 522(d)(5),<sup>2</sup> the federal wildcard exemption.

10 On November 18, 2014, Defendant received the \$261.70 check in the mail, as well as a separate letter  
11 from Plaintiff’s counsel requesting return of the garnished wages. Defendant, through its President,  
12 immediately sent a letter to Plaintiff’s counsel enclosing the undeposited, unendorsed check, along with a  
13 payment history indicating that, other than the \$261.70 check, Defendant had only received \$513.43 in the  
14 90 days preceding the bankruptcy filing, which was below the \$600 threshold [of § 547(c)(8)], and thus no  
15 further monies would be remitted.

16 On February 17, 2015, Plaintiff received her discharge and the main Chapter 7 case closed as no-  
17 asset.

18 Plaintiff has not deposited or cashed the \$261.70 check.

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24 <sup>1</sup>The Stipulation of Facts does not indicate whether the \$261.70 check was issued before or after the  
25 petition was filed.

26 <sup>2</sup>Unless otherwise indicated, all subsequent statutory references are to Title 11 of the United States  
Code.



1 uncashed November 14 check did not constitute a “transfer” and, thus, the \$600 threshold has not been met.  
2 The Court agrees.

3 “The term ‘transfer’ means-- (A) the creation of a lien . . . or (D) each mode, direct or indirect,  
4 absolute or conditional, voluntary or involuntary, of disposing of or parting with-- (i) property; or (ii) an  
5 interest in property.” § 101(54). A transfer via an ordinary check occurs when the check is honored by the  
6 drawee bank. Barnhill v. Johnson, 503 U.S. 393, 394-395, 112 S. Ct. 1386, 1387-1388 (1992).<sup>6</sup> Because the  
7 \$261.70 check was never presented to (let alone honored by) the drawee bank, no transfer took place.<sup>7</sup>

8 The Court recognizes there were other pre-petition transfers besides the payments discussed above.  
9 However, they were not preferential. Under Oregon law, service of a writ of garnishment “transfers some  
10 interest [in the fund being garnished] to the garnishor.” In re Reeves, Case No. 302-42183-elp11, 7 n.3  
11 (Bankr. D. Or. June 12, 2003) (Perris, J.) (unpublished letter op.). Here, those transfers took place when  
12 Plaintiff acquired rights in the subject wages, § 547(e)(2), (3), all of which occurred within 90 days of the  
13 petition.

14 When monies owed are being garnished, it is frankly unclear whether the interest transferred by  
15 virtue of the writ is a lien or some other undefined analog. Compare Reeves, Case No. 302-42183 at 5  
16 (garnishment of debtor’s note receivable did not create a lien), with Davis v. F.W. Fin. Servs., Inc., 260 Or.  
17 App. 191, 206, 317 P.3d 916, 925 (2013) (garnishor of debtor’s accounts receivable is a “judgment lien  
18 creditor” within the meaning of the Uniform Commercial Code). Whatever its precise nature, the interest “is  
19 superior to claims of later lien creditors.” Reeves, Case No. 302-42183-elp11 at 7 n.3.

20 However, to be preferential, the transferred interest must have enabled Defendant to receive more  
21 than it would have in a hypothetical Chapter 7 case if the transfer had not been made. § 547(b)(5). Here,

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23 <sup>6</sup>Plaintiff cites no authority that distinguishes the Barnhill rule in cases where a third party as here,  
24 issues a check representing funds it owes the debtor.

25 <sup>7</sup>Had the \$261.70 check been presented and honored, the transfer would have occurred post-petition.  
26 The § 547(c)(8) defense would, however, still be valid, as §§ 547(b) and (c) only apply to pre-petition  
transfers.

1 Plaintiff's federal wildcard exemption covers the entire value of the funds subject to garnishment and takes  
2 priority over any interest created by the writ.<sup>8</sup> Thus whatever interest was transferred by virtue of the writ  
3 did not improve Defendant's position for purposes of § 547(b)(5).<sup>9</sup>

4 Conclusion:

5 Under § 547, a completed Oregon wage garnishment involves two transfers. The first takes place  
6 when the lien (or other similar interest) arising by virtue of the writ attaches to the judgment debtor's earned  
7 wages. The second occurs when the garnishee pays over the funds to the garnishor. The former is not  
8 preferential if the debtor's allowable exemptions, including the federal wildcard, cover the entire amount of  
9 the subject wages. The latter is preferential if the requirements of § 547(b) are met.

10 Because here, the only preferential transfers were the first two payments totaling less than \$600,  
11 Defendant's § 547(c)(8) defense will be sustained, and judgment will be entered dismissing Plaintiff's  
12 complaint with prejudice and awarding Defendant its reasonable costs and disbursements to be determined  
13 by the procedures set forth in LBRs 7054-1 and 9021-1(d).

14 As a final matter, the Court is prepared to determine the parties' rights in the \$261.70, whose transfer  
15 was interrupted by the Chapter 7 petition. Most likely because of Plaintiff's exemption claim, it appears  
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18 <sup>8</sup>Under Oregon law, a judgment debtor has 120 days after being served with the writ, ORS  
19 18.700(2)(a), to challenge a wage garnishment so as to "claim such exemptions from garnishment as are  
20 permitted by law." ORS 18.700(1). The Court sees no reason why the federal wildcard would not qualify as  
21 an exemption "permitted by law" if bankruptcy intervenes. Further, ORS 18.300(1) allows a debtor to  
22 choose the federal exemptions "[f]or purposes of a bankruptcy petition." Again, the parties have presented no  
23 reason why that choice is not for all purposes inherent in the bankruptcy distribution scheme, a scheme  
24 which pays exemptions before Oregon judgment liens and analogous interests.

25 <sup>9</sup>In Panaretos v. Creditors Protective Assoc., Inc. (In re Panaretos), Adv. No. 94-3183-dds (Bankr. D.  
26 Or. Sept. 23, 1994) (Sullivan J.) (unpublished), the court came to the same conclusion but in a shorthand  
27 way. There, it found the debtor did not have standing under § 522(h) to avoid a judgment lien where  
28 avoidance was not necessary to fund the exemption or where the judgment lien did not impair the exemption.  
29 At that point, controlling caselaw dictated that, because Oregon law recognized exemptions ahead of  
30 judgment liens, such liens could not impair the exemption. Id. at 2 (citing City National Bank v. Chabot (In  
re Chabot), 992 F.2d 891 (9th Cir. 1993)). Since then "impairment" has been re-defined as the difference  
31 between the amount of liens plus exemption, and the property's value. § 522(f)(2).

1 neither Defendant nor the trustee claims an interest in those funds. Plaintiff is holding the unendorsed  
2 uncashed check. The check however is stale. See Ex. D to Stipulation of Facts indicating the check is void 6  
3 months after date of issue; see also ORS 74.4040. To facilitate Plaintiff's receipt of the funds, a separate  
4 order will be entered requiring her to return the check to Columbia Distributing with the notation "VOID"  
5 thereon. The order will require Columbia Distributing upon receipt of the voided check to issue a  
6 replacement \$261.70 check to Plaintiff within 30 days. The order will be subject to objection by any party in  
7 interest including Columbia Distributing, within 14 days of its entry.<sup>10</sup>

8 The above constitute the Court's findings of fact and conclusions of law under FRBP 7052. They  
9 shall not be separately stated. The Court will draft the appropriate judgment and order.

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13 THOMAS M. RENN  
14 Bankruptcy Judge  
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<sup>10</sup>Alternatively, the Court will entertain a stipulated order as to how to deal with the \$261.70.