

§ 522(f)(2)(A)
✓ ORS 23.160(1)(f)
FTC regulation

In re Cornutt

Chapter 13
686-09045
6/29/87
PSW

Stereo speakers are household goods under 522(f)(2)(A) and ORS 23.160(1)(f). The FTC definition of household goods has no application in the bankruptcy context.

1 household goods. The statute exempts from execution the
2 following:

3 (f) Household goods, furniture, radios, a television
4 set and utensils all to the total value of \$1,450, if
5 the judgment debtor holds the property primarily for
6 the personal, family or household use of the judgment
debtor; provisions actually provided for family use and
necessary for the support of a householder and family
for 60 days and also 60 days' supply of fuel.

7 O.R.S. 23.160(1)(f).

8 Brandt argues that since O.R.S. 23.160(f) lists specific
9 items such as a television, furniture, utensils and radios
10 separately, it was the legislature's intent to specify those
11 items which would be exempt. Additionally, the statute, as
12 originally framed in 1957, included "television sets" and a
13 "radio," but was amended in 1965 in order to exempt "a television
14 set" and "radios." Ch. 687, 1957 Or. Laws; Ch. 577, 1965 Or.
15 Laws. Thus, Brandt further argues the changes indicate an intent
16 to include only the electronic items actually listed.

17 However, the fact that some items are listed separately and
18 the list has been amended does not indicate a legislative
19 intention that courts should depart from established rules of
20 statutory construction. The plain meaning rule requires that
21 words be given their common and approved usage. 2A Sutherland
22 Statutory Construction § 46.01 (4th ed. 1984). The dictionary
23 defines "goods" as personal property having intrinsic value, but
24 excluding money, negotiable instruments and securities.
25 Webster's Ninth New Collegiate Dictionary 527 (1984). Black's
26 defines "household" when used as an adjective as "belonging to
27 the house and family." Black's Law Dictionary 666 (5th ed. 1979).

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1 Thus, household goods are simply personal property belonging to
2 the house and family.

3 Courts are unanimous in giving liberal construction to
4 exemption statutes. 3A Sutherland Statutory Construction § 69.06
5 (4th ed. 1986). In Turner v. Bovee, 92 F.2d 791 (9th Cir. 1937),
6 the court stated that state exemptions permitted by the
7 Bankruptcy Act should be construed liberally. Id. at 794.
8 Restrictions not contained in the statute should not be read into
9 it by judicial construction. Id., 92 F.2d at 793.

10 The legislative history indicates that there was no
11 educational television in Oregon in 1957, and that "at this
12 present time televisions sets are not under household goods or
13 musical instruments[.]" (Underlining added). Hearing on S.B. 363
14 Before the Senate Judiciary Committee, 1957 Session, Mar. 28,
15 1957 (Statement of Sen. Husband and Sen. Gill). The inference
16 from this history is that in 1957 it was unclear how televisions
17 would be categorized, and the legislature wanted to insure
18 televisions were included. However, the legislative history and
19 the language of the statute do not indicate that other categories
20 should be restrictively interpreted.

21 Because of the enumeration of items and the amendments to
22 them, a statutory ambiguity concerning how to treat
23 non-enumerated items is created. However, ambiguities in state
24 exemption laws should be resolved in favor of the debtor and the
25 creditor has the burden of proving that an exemption was
26 improperly claimed. In re Sanford, 8 Bankr. 761 (N.D. Cal.
27 1981); and see, Bankr. Rul. 4003(c). Thus, the enumeration of
28 items should not be construed to restrict or prohibit an

1 exemption in an item that would otherwise qualify as a household
2 good. Turner, 92 F.2d at 793, 794.

3 This court notes that at the present time speakers, as well
4 as a host of other electronic equipment, are normally found in
5 and around a household. Thus the court holds that stereo
6 speakers are household goods under O.R.S. 23.160(1)(f).

7 It still remains for the court to determine if stereo
8 speakers are "household goods" under the provisions of §
9 522(f)(2)(A). That section states:

10 (f) Notwithstanding any waiver of exemptions, the
11 debtor may avoid the fixing of a lien on an interest of
12 the debtor in property to the extent that such lien
impairs an exemption to which the debtor would have
been entitled under subsection (b) of this section, if
such lien is--

13 (2) a nonpossessory, nonpurchase-money
security interest in any--

14 (A) household furnishing, household
15 goods, wearing apparel, appliances,
16 books, animals, crops, musical
17 instruments, or jewelry that are held
primarily for the personal, family,
or household use of the debtor or a
dependent of the debtor. . . .

18 11 U.S.C. § 522(f)(2)(A).

19 In Coghill v. Associates Financial Services, Inc., No. 81-55
20 (D.Or. Mar. 25, 1981), affg, Coghill v. Associates Financial
21 Services, Inc. (In re Coghill), No. 380-01292, Adv. No. 80-0146
22 (Bankr. D.Or. Oct. 24, 1980), Judge Panner was asked to decide if
23 original art works constituted "household goods" under the
24 federal exemption scheme. Id. In defining the term he stated,
25 "'Household goods' is a wider term than 'furniture' and includes
26 everything about the house that is usually held and enjoyed and
27 that lends to the comfort and accommodation of the household."
28 Id., No. 81-55, slip op. at 2; in accord, In re Coleman, 5 Bankr.

1 76 (Bankr. M.D. Tenn. 1980); In re Bandy, 62 Bankr. at 438
2 (Bankr. E.D. Cal. 1986); In re Vaughn, 64 Bankr. 213 (Bankr. S.D.
3 Ind. 1986).

4 Courts have generally applied § 522(f)(2)(A) liberally,
5 finding that Congress revealed no intention to depart from a
6 liberal construction of exemption statutes. Coleman, 5 Bankr. at
7 79; Vaughn, 64 Bankr. 213; In re Beard, 5 Bankr. 429 (Bankr. S.D.
8 Iowa 1980; contra, In re Ruppe, 3 Bankr. 60 (Bankr. D. Colo.
9 1980). The definition of household goods used by Judge Panner is
10 consistent with a liberal construction of the statute. A liberal
11 construction of § 522(f)(2)(A) is especially warranted in order
12 to protect exemptions granted under broad and liberally construed
13 state statutes. Coleman, 5 Bankr. at 79.

14 The court holds that stereo speakers are household goods
15 under § 522(f)(2)(A).

16 Brandt also suggests that the court should adopt, for the
17 purpose of defining "household goods" under 11 U.S.C. §
18 522(f)(2)(A), the Federal Trade Commission's (FTC) definition of
19 household goods promulgated for the regulation of unfair trade
20 practices. Such definition excludes electronic equipment other
21 than one television and one radio. 16 C.F.R. 444.1(i). Every
22 court that has considered the application of the FTC definition
23 to bankruptcy proceedings has rejected the suggestion. Vaughn,
24 64 Bankr. at 215; In re Boyer, 63 Bankr. 153, 158-159 (Bankr.
25 E.D. Mo. 1986); In re Lanzoni, 67 Bankr. 58 (Bankr. W.D. Mo.
26 1986); Matter of Smith; 57 Bankr. 330 (Bankr. N.D. Ga. 1986); In
27 re Miller, 65 Bankr. 263 (W.D. Mo. 1986). This court agrees with
28 these courts. The FTC regulation is not an act of Congress

1 binding on the bankruptcy courts, the regulation was promulgated
2 for the purpose of defining unfair trade practices and not to
3 establish the parameters of exemption statutes, and the
4 regulation has no application in the bankruptcy context. Vaughn
5 at 215; Boyer at 158-159; Lanzoni at 58.

6 The debtors valued the speakers in their schedules at \$1,200.
7 At the hearing on the motion to invalidate the lien on April 14,
8 1987, Brandt raised the issue for the first time that the
9 speakers might have a different value than that scheduled. As
10 Brandt did not put on any evidence to support its statement, the
11 court must accept the debtors' valuation.

12 This memorandum opinion contains the court's findings of
13 fact and conclusions of law and pursuant to Bankruptcy Rule 9014,
14 which incorporates Rule 7052, they will not be separately stated.

15 An order consistent herewith shall be entered.

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18 POLLY S. WILHARDT
19 Bankruptcy Judge
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