

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 at 234 BR 497

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, ) Bk. No. 697-67189-fra7  
L. OSWORTH, )  
Debtors. )

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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

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Before: MEYERS, RUSSELL and RYAN, Bankruptcy Judges.

1 MEYERS, Bankruptcy Judge:  
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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.  
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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.<sup>1</sup> "When we look to the plain language of a  
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25 <sup>1</sup> 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.<sup>2</sup> 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.

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26 <sup>2</sup> 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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