

ORS 23.240(1)  
Homestead Exemption  
Security deposit  
Pre-paid Rent

Sticka v. Casserino (In re Casserino)

BAP # OR-02-1512-MORyB

2/28/03

BAP (affirming Radcliffe)  
(See E02-5 for underlying bankruptcy court opinion)

Published

Debtors filed a joint Chapter 7; however, they were separated and the husband was living in a month-to-month rental property. Under his month-to-month agreement, Debtor pre-paid the last month's rent of \$750 and pre-paid a security deposit, \$100 of which was non-refundable. He claimed the last month's rent and the security deposit exempt under ORS 23.240, Oregon's homestead exemption. The trustee objected.

At issue was the scope of Oregon's homestead exemption. The trustee argued the pre-paid rent and security deposit were similar to an account or a form of cash, which would only be exempt under ORS 23.160(1)(n) (now (o)), i.e. the pourover exemption. Debtor argued the pre-paid rent and deposit were so integral to his tenancy, they were covered by the homestead exemption.

The bankruptcy court held for the debtor, overruled the objection and allowed the exemption. Trustee appealed.

The Bankruptcy Appellate Panel affirmed:

The BAP first held that possessory leasehold interests were covered by the Oregon homestead exemption. It then held that the exemption covered the rents and deposits at issue, agreeing with the bankruptcy court that they were integral to debtor's tenancy, and noting and agreeing with similar decisions in other jurisdictions. The court's decision was guided by the policy that the homestead exemption be given a liberal and humane interpretation.

**E03-2(16)**

ORDERED PUBLISHED

FILE

FEB 28 2003

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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

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In re:	)	BAP No. OR-02-1512-MoRyB
	)	
MATTHEW J. CASSERINO and	)	Bk. No. 699-66978-aer7
JOANI M. CASSERINO,	)	
	)	
Debtors.	)	
<hr/>		
RONALD R. STICKA, Chapter 7	)	
Trustee,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
MATTHEW J. CASSERINO and	)	
JOANI M. CASSERINO,	)	
	)	
Appellees.	)	

O P I N I O N

Argued By Video Conference and Submitted  
on January 23, 2003

Filed - February 28, 2003

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

Honorable Albert E. Radcliffe, Bankruptcy Judge, Presiding.

Before: Montali, Ryan and Brandt, Bankruptcy Judges.

1 MONTALI, Bankruptcy Judge:

2

3 A debtor claimed a homestead exemption in the prepaid rent  
4 and the refundable portion of a security deposit paid by him to  
5 his landlord. The bankruptcy court overruled the trustee's  
6 objection to the homestead exemption. Trustee appeals. We  
7 AFFIRM.

8

I.  
FACTS

9

10 On November 22, 1999, appellee Matthew Casserino ("Debtor")  
11 filed a joint Chapter 7 petition with his then wife. At the time  
12 of filing, Debtor was separated from his wife and was living in  
13 rental property. To obtain the rental housing, Debtor signed a  
14 rental agreement on September 24, 1999, and paid his landlord  
15 \$2,000, representing the first month's rent (\$750), the last  
16 month's rent (\$750) (the "rent"), and a \$500 security deposit, of  
17 which \$400 was refundable (the "deposit").

18 Debtor did not initially disclose the rent and deposit in  
19 his schedules, although the homestead exemption was claimed for  
20 the house in which his estranged wife separately resided. On  
21 November 6, 2001, Appellant Ronald R. Sticka ("Trustee") filed an  
22 adversary proceeding against Debtor's landlord for turnover of  
23 the rent and the deposit. Debtor thereafter amended his  
24 schedules to list the rent and the deposit as assets. He claimed  
25 their full value as exempt under Oregon law.

26 On March 1, 2002, Trustee filed his objection to the  
27 Debtor's claimed exemptions (the "Objection"). Specifically,  
28 Trustee contended: "There is no statutory basis to claim

1 homestead exemption in rental deposit and prepaid rent.  
2 Exemption should also be denied as in bad faith with sanctions  
3 awarded to trustee. This is amplified in trustee's separate  
4 motion." On March 19, 2002, Debtor filed a Request for Hearing  
5 on Objection to Claimed Exemption and a motion to compel  
6 abandonment of the deposit and rent.

7 On April 4, 2002, the court held a hearing on Trustee's  
8 Objection.<sup>1</sup> At the hearing, the bankruptcy court attempted to  
9 clarify the nature of Debtor's homestead exemption and of  
10 Trustee's Objection:

11 Let me inquire, because I want to be clear if we're  
12 going to go forward with the argument, on what we're arguing  
13 about. My understanding was the argument turned on a  
14 deposit that had been made to the landlord. And I think  
15 we're talking about \$1,150 of a deposit. So, we're not  
16 talking about claiming an exemption in the leased premises,  
17 but rather in the deposit. And if I don't understand  
18 correctly, I need to be corrected.

16 In response, Trustee stated:

17 No, your understanding is correct, your Honor. That's  
18 precisely the issue [sic] is whether or not there can be a  
19 homestead exemption claim in rent deposits which had been  
20 posted at an earlier time, but which had not been earned,  
21 for which the trustee believes the landlord is accountable  
22 as holding money to which the landlord is not entitled.

21 \* \* \*

22 I think the homestead exemption statute is pretty  
23 clear. I don't think the issue we need to deal with here is

24 <sup>1</sup>The transcript of the hearing indicates that the hearing  
25 was set on Trustee's separate motion for sanctions (which has not  
26 been included in the excerpts of record). The parties and the  
27 substantive issue of whether Debtor could claim a homestead  
28 exemption in the rent and deposit before addressing the request  
for sanctions. Thus, they proceeded as though the hearing had  
been scheduled on Trustee's objection to Debtor's claim of  
exemption.

1 what type of estate is involved. I'm not claiming something  
2 that relates to an estate in land, so I don't think we need  
to deal with even the leasehold issue.

3 The bankruptcy court took the matter under advisement and  
4 issued a Memorandum Opinion on August 15, 2002, indicating that  
5 it would overrule Trustee's Objection. In re Casserino, 282 B.R.  
6 490 (Bankr. D. Or. 2002). The court entered its Order Denying  
7 Trustee's Objections to Claimed Exemptions on August 15, 2002,  
8 and Trustee filed a timely notice of appeal on August 22, 2002.  
9 The order has been stayed pending appeal.

10  
11 **II.**  
**ISSUE**

12 Did the bankruptcy court err in concluding that Debtor may  
13 claim a homestead exemption in the rent and deposit?  
14

15 **III.**  
**STANDARD OF REVIEW**

16 "The scope of a state law exemption involves construction of  
17 state law, which is reviewed de novo." Yaden v. Osworth (In re  
18 Osworth), 234 B.R. 497, 498 (9th Cir. BAP 1999) (citation  
19 omitted).  
20

21 **IV.**  
**JURISDICTION**

22 An order denying or granting a claimed exemption is final  
23 for appeal purposes and we therefore have jurisdiction to hear an  
24 appeal of that order. White v. White (In re White), 727 F.2d  
25 884, 886 (9th Cir. 1984); 28 U.S.C. § 158(b).  
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V.  
DISCUSSION

A debtor in bankruptcy is entitled to exempt certain assets from the bankruptcy estate. 11 U.S.C. §§ 522, 541. Oregon has "opted out" of the federal exemption scheme (Or. Rev. Stat. § 23.305 (2001)), so Oregon homestead exemption law controls whether the rent and deposit are exempt. The relevant date for determining the status of exemptions is the petition date. Little v. Reaves (In re Reaves), 285 F.3d 1152, 1156 (9th Cir. 2002); Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th Cir. BAP 2000), aff'd, 35 Fed. Appx. 592 (9th Cir. 2002); Heintz v. Carey (In re Heintz), 198 B.R. 581, 585 (9th Cir. BAP 1996). Oregon Revised Statute section 23.240 ("section 23.240")<sup>2</sup>

<sup>2</sup>The Oregon homestead exemption statute provides in relevant part:

(1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of \$25,000, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed \$33,000. The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the exemption shall not be impaired by:

(a) Temporary removal or temporary absence with the intention to reoccupy the same as a homestead;

(b) Removal or absence from the property; or

(c) The sale of the property.

(2) The exemption shall extend to the proceeds derived  
(continued...)

1 provides that a homestead "shall be exempt from sale on  
2 execution, from the lien of every judgment and from liability in  
3 any form for the debts of the owner to the amount in value of  
4 \$25,000. . . ." Or. Rev. Stat. § 23.240 (2001). While the  
5 homestead must "be the actual abode and occupied by the owner," a  
6 sale of the property shall not impair the exemption. Or. Rev.  
7 Stat. § 23.240(1)(c).

8 Section 23.240 does not define "homestead,"<sup>3</sup> although it  
9

10 <sup>2</sup>(...continued)  
11 from such sale to an amount not exceeding \$25,000 or  
12 \$33,000, whichever amount is applicable under  
13 subsection (1) of this section, if the proceeds are  
14 held for a period not exceeding one year and held with  
the intention to procure another homestead therewith.

15 \* \* \*

16 (5) Except as provided in subsection (7) of this  
17 section, no homestead that is the actual abode of and  
18 occupied by the judgment debtor, or that is the actual  
19 abode of and occupied by a spouse, dependent parent or  
20 dependent child of the judgment debtor, shall be sold  
on execution to satisfy a judgment that at the time of  
entry does not exceed \$3,000. However, such judgment  
shall remain a lien upon the real property, and the  
property may be sold on execution:

21 (a) At any time after the sale of the property by  
22 the judgment debtor; and

23 (b) At any time after the property is no longer the  
24 actual abode of and occupied by the judgment debtor or  
the spouse, dependent parent or dependent child of the  
judgment debtor.

25 Or. Rev. Stat. § 23.240 (2001).

26 <sup>3</sup>Although this provision does not define "homestead," Oregon  
27 tax statutes define "homestead" as the "taxable principal  
dwelling located in Oregon, either real or personal property,  
28 rented by the taxpayer . . ." and as "the owner occupied  
principal dwelling, either real or personal property, owned by  
the taxpayer. . ." Or. Rev. Stat. §§ 310.630(5) and 311.666(3).

1 does refer to the "actual abode of . . . the owner." The  
2 bankruptcy court treated the debtor (a lessee) as an owner of a  
3 possessory interest in the rented property and thus an "owner"  
4 for the purposes of the Oregon homestead statute. Trustee  
5 disagrees with this interpretation, arguing that a debtor's  
6 ownership interest must entitle him to proceeds from a sale of  
7 the property as described in subsection (2) of section 23.240 and  
8 entitle him to sell the property as contemplated in subsection  
9 (5) of section 23.240. In response, Debtor argues that Trustee  
10 has waived any argument regarding the right of a tenant to claim  
11 a homestead exemption in the leased property. Even if the  
12 argument had not been waived, Debtor contends that section 23.240  
13 does apply to a tenant's interests in a leasehold. We will  
14 address each of these arguments in turn.

15 A. Did Trustee Waive His Argument That A Leasehold Estate Is  
16 Not a Homestead Under Oregon Law?

17 At the hearing on April 4, 2002, the bankruptcy court and  
18 the Trustee engaged in the colloquy described above in the  
19 "Facts" section. In particular, in response to the court's query  
20 whether Debtor was claiming an exemption in the rent and the  
21 deposit rather than in the leased premises, Trustee agreed that  
22 the issue was whether a homestead exemption could be claimed in  
23 "rent deposits" and further stated "I don't think the issue we  
24 need to deal with here is what type of estate is involved. I'm  
25 not claiming something that relates to an estate in land, so I  
26 don't think we need to deal with even the leasehold issue." In  
27 light of these statements, the bankruptcy court noted in its  
28 Memorandum Opinion that Trustee "takes no issue with [the]

1 proposition" that "[s]ince a month to month tenancy carries with  
2 it the right of possession, it will support a homestead  
3 exemption." Casserino, 282 B.R. at 491 (n.2 and accompanying  
4 text).

5 Nothing has been provided in the record showing that Trustee  
6 argued before the bankruptcy court (either in writing or in oral  
7 argument) that section 23.240 excludes possessory leasehold  
8 interests. Rather, Trustee primarily argued that the rent and  
9 deposit were accounts or funds and thus not real property  
10 interests entitled to the protection of the homestead exemption.  
11 Nonetheless, the record does not contain any concession by  
12 Trustee that a month to month tenancy carrying a right to  
13 possession will support the homestead exemption, notwithstanding  
14 the bankruptcy court's statement that "[Trustee] takes no issue  
15 with this proposition." Id.

16 In addition, the question had been placed at issue by Debtor  
17 prior to the hearing in his Request for Hearing On Objection to  
18 Claimed Exemption, when he argued that "ORS 23.240 does not  
19 require the Debtor to have vested legal or equitable title to the  
20 subject residential real property, the statute requires the  
21 debtor legal right [sic] to have possession (actual abode and  
22 occupied by the debtor)." Although an appellate court generally  
23 will not consider arguments raised for the first time on appeal,  
24 it may address arguments that had been raised by the opposing  
25 party. Nghiem v. Ghazvani (In re Nghiem), 264 B.R. 557, 560 n.5  
26 (9th Cir. BAP 2001), aff'd, 53 Fed. Appx. 489 (9th Cir. 2002).  
27 Therefore, we will consider on appeal whether the Oregon  
28 homestead exemption statute covers leasehold interests.

1 B. Are Possessory, Leasehold Interests Covered By the Oregon  
2 Homestead Exemption?

3 A strong policy underlies Oregon law favoring liberal  
4 interpretation of exemption statutes for the benefit of a debtor.  
5 In re Stratton, 269 B.R. 716, 718 (Bankr. D. Or. 2001). As the  
6 Oregon Supreme Court stated in Banfield v. Schulderman (In re  
7 Banfield's Estate), 137 Or. 167, 178-79, 298 P. 905 (1931):

8 The object of the homestead exemption laws is well  
9 understood. This object is to assure to the  
10 unfortunate debtor, and his equally unfortunate but  
11 more helpless family, the shelter and the influence of  
12 home; and, in its promotion, courts may well employ the  
13 most liberal and humane rules of interpretation.

14 (Emphasis added). See also Wilkinson v. Carpenter, 277 Or. 557,  
15 565, 561 P.2d 607, 611 (1977) (the purpose of the homestead  
16 exemption, "is not only to insure indigent individuals the  
17 comforts of home, but also to protect the general economic  
18 welfare of all citizens, creditors and debtors alike, by  
19 promoting the stability and security of our society"). We must  
20 therefore examine section 23.240 in light of this policy of  
21 liberal interpretation when determining if leasehold and  
22 possessory interests are included within its scope.

23 As Trustee argues, section 23.240 does mention "owners" and  
24 the rights of an "owner" to exempt proceeds of a sale. The  
25 section, however, does not define "homestead" and does not define  
26 "owner." It solely requires that the homestead be the actual  
27 abode of the owner. Debtor therefore argues, and the bankruptcy  
28 court held, that an owner of a possessory interest in leased  
property in which he resides may claim a homestead exemption to  
the extent of that interest. We agree with the bankruptcy

1 court's holding for several reasons.

2 First, despite Trustee's argument to the contrary, the  
3 bankruptcy court's interpretation of section 23.240 is not  
4 inconsistent with the statute. Debtor is the owner -- as a  
5 month-to-month tenant -- of a possessory interest in the leased  
6 property. Absent an anti-assignment clause in the lease, a  
7 tenant could sell and assign his interest under a lease; he would  
8 be entitled to the proceeds from the sale or assignment of his  
9 leasehold interest.<sup>4</sup> In other words, a tenant owns an interest  
10 -- albeit neither legal title nor beneficial ownership -- in the  
11 property in which he resides. Consequently, the language  
12 pertaining to "owner" and "sale" and "proceeds" contained in  
13 subsections (1), (2) and (5) of section 23.240 do not necessarily  
14 preclude Debtor (as a tenant holding a possessory interest) from  
15 the protections of the homestead exemption.

16 Second, by broadly interpreting "owner" and "homestead" as  
17 used in section 23.240, the bankruptcy court adhered to the  
18 policy of liberal and humane application of exemptions in Oregon.  
19 Banfield's Estate, 137 Or. at 178-79. Often, tenants who file  
20 for bankruptcy have difficulty paying their monthly rent;  
21 requiring them to pay a second security deposit and additional  
22

23  
24 <sup>4</sup>Similarly, unless an exemption impairs his ability to do  
25 so, a trustee could sell and assign a bankruptcy estate's  
26 possessory leasehold interest by way of an assumption and  
27 assignment under 11 U.S.C. § 365. "The petition date is  
28 appropriate [to be the date for determining the nature and extent  
of a debtor's exemptions] because the existence of exemptions  
presupposes a hypothetical attempt by the trustee to levy upon  
and sell all of the debtor's property upon the filing of the  
petition." Harris v. Herman (In re Herman), 120 B.R. 127, 130  
(9th Cir. BAP 1990).

1 prepaid rent in order to avoid eviction from their homes  
2 contravenes not only Oregon's policy of humane application of  
3 exemption laws, but also the Bankruptcy Code's goal of providing  
4 a fresh start to honest debtors. See Talmadge v. Duck (In re  
5 Talmadge), 832 F.2d 1120, 1126 (9th Cir. 1987) ("Exemption  
6 statutes save for the debtor certain items owned or possessed by  
7 him or her which comprise the minimum of things necessary to  
8 prevent the debtor from becoming destitute and which would  
9 otherwise be taken by creditors. The cornerstone of this policy  
10 is to assure overburdened debtors a fresh start.") (emphasis in  
11 original).

12 Third, several cases applying Oregon law support the  
13 bankruptcy court's conclusion that a holder of a mere possessory  
14 interest can claim a homestead exemption.<sup>5</sup> In Troutman v.  
15 Erlandson, 44 Or. App. 239, 605 P.2d 1200 (1980), the defendants  
16 claimed a homestead exemption in their mobile home and the land  
17 upon which it was located.<sup>6</sup> The defendants owned the mobile  
18 home, but did not own the land. Rather, the defendants held an  
19 option to purchase the land, but the court held that the option  
20 had "not been effectively exercised." Troutman, 44 Or. App. at  
21 244. Nonetheless, the defendants did hold the right to possess  
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23 <sup>5</sup>Trustee has cited no Oregon case holding that the  
24 possessory leasehold interest is insufficient for the purposes of  
25 claiming a homestead exemption.

26 <sup>6</sup>The defendants claimed the exemption under Or. Rev. Stat. §  
27 23.164(1), which (at that time) allowed a debtor to exempt up to  
28 \$12,000 for his mobile home and the property upon which it was  
situated. Subsection (6) of section 23.164 limited the exemption  
to \$10,000 if a debtor owned the mobile home but not the property  
upon which it was situated. Troutman, 44 Or. App. at 243 n.1.

1 the property under a judicial decree. The Oregon court held that  
2 this possessory interest was sufficient ownership interest to  
3 support the defendant's homestead exemption claim in the  
4 underlying land, stating that the "possessory right is an  
5 interest in property to which the homestead exemption as  
6 contained in ORS 23.164 would attach." 44 Or.App. at 245.

7 The bankruptcy court also cited a persuasive unpublished  
8 decision of the United States District for the District of  
9 Oregon: Fiet v. O'Dwyer, Civil No. 85-984LE, filed on September  
10 13, 1985. In Fiet, the debtor conveyed his ownership interest in  
11 his house to his wife prior to bankruptcy. The debtor  
12 nevertheless continued to reside in the house. Even though the  
13 debtor did not hold title to the property as of his petition  
14 date, the court concluded that he was entitled to claim a  
15 homestead interest in the property, stating:

16 It is possession, not legal title, which establishes  
17 the applicability of the homestead exemption. See  
18 Troutman v. Erlandson, 44 Or.App.239, 245, 605 P.2d  
19 1200 (1980) (possessory right is an interest in  
property to which the homestead exemption attaches).

20 Fiet v. O'Dwyer, Civil No. 85-984LE (D. Or. Sept. 13, 1985) at 2.  
21 In White v. White (In re White), 727 F.2d 884 (9th Cir.  
22 1984), an Oregon state court awarded ownership of the family  
23 residence to the debtor's former spouse and granted a judgment  
24 lien against the residence to the debtor. The debtor filed for  
25 bankruptcy and claimed a homestead interest in the value of the  
26 lien. The Ninth Circuit held that the lien was insufficient to  
27 be the basis of a homestead exemption "[b]ecause the lien gives  
28 [the debtor] no right to possession" and because no case had  
"held that a non-possessory interest may be the basis of a

1 homestead exemption." Id. at 886-87. The Ninth Circuit noted  
2 that the lien did "not preserve a roof over [the debtor's] head;  
3 it gives him no right to live on the premises." Id. at 886. In  
4 contrast, the month-to-month lease agreement here does give  
5 Debtor a right to possess the leased premises and thereby  
6 preserves the roof over his head. White suggests that because  
7 Debtor has a right of possession in the residence, he could claim  
8 a homestead exemption in it.

9 Fourth, case law from other states with similar homestead  
10 exemption statutes supports the bankruptcy court's holding. For  
11 example, in Matter of Buzzell, 110 B.R. 440 (Bankr. D. Neb.  
12 1990), the Nebraska Homestead Act -- like the Oregon homestead  
13 statute here -- referred to "owners" but did "not specify the  
14 nature of the property interest which must be owned by the  
15 claimant in order to qualify for the exemption." Id. at 441.  
16 The court held that the "homestead exemption is not limited to  
17 property held in fee simple. A life estate or leasehold interest  
18 in the homestead tract is sufficient." Id. The court therefore  
19 overruled the trustee's objection to the claim of exemption by  
20 the debtors in the leased land upon which their mobile home was  
21 located. See also Matter of Bartlett, 153 B.R. 881, 883 (Bankr.  
22 D. Neb. 1993) (homestead can be claimed on leased property); In  
23 re McAtee, 154 B.R. 346, 347 (Bankr. N.D. Fla. 1993) (debtor  
24 could claim homestead exemption for residence situated on public  
25 land under long term lease).

26 In Capitol Aggregates, Inc. v. Walker, 448 S.W.2d 830 (Tex.  
27 Civ. App. Austin 1969), the debtors leased land on a month-to-  
28 month basis; the debtors' mobile home was located on the lot.

1 The court held that the month-to-month lease of the lot was a  
2 sufficient interest in realty to sustain the homestead claim  
3 under Texas law. Id. at 835. See also Lane v. Small Business  
4 Admin. (In re Lane), 103 B.R. 816, 818 (Bankr. N.D. Tex. 1987)  
5 (in Texas, homestead rights can attach to leased premises). But  
6 see In re Tenorio, 107 B.R. 787, 788 (Bankr. S.D. Fla. 1989)  
7 (debtor's interest in condominium was not exempt under Florida  
8 homestead law because year-to-year lease does not constitute  
9 ownership interest and also evidences lack of intent to make  
10 property permanent place of residence; furthermore, leases of  
11 this type are typically classified as chattels real and regarded  
12 as personal property, not real property; since debtor had already  
13 used up maximum allowed under personal property exemption, she  
14 could not exempt her interest in condominium under personal  
15 property exemption); McClanahan v. Kimball (In re Kimball), 2  
16 B.R. 560, 562 (Bankr. W.D. La. 1980) (Louisiana exemption statute  
17 does not permit use of homestead exemption by non-homeowners,  
18 since Louisiana homestead exemption statute describes "homestead"  
19 as residence "owned and occupied" by any person, with word  
20 "owned" indicating intent of drafters to disallow use of  
21 homestead exemption by lessees).

22 In light of the policy of liberal and humane interpretation  
23 of Oregon's exemptions, the foregoing cases construing Oregon law  
24 and the case law of other states, we hold that the bankruptcy  
25 court correctly concluded that the Oregon homestead exemption  
26 applies to leasehold interests.

1 C. Does the Homestead Exemption Cover the Rent and Deposit?

2 Having decided that the Oregon homestead exemption applies  
3 to possessory, leasehold interests, we must now decide whether  
4 the exemption covers the rent and deposit. Trustee argued before  
5 the bankruptcy court that the rent and deposit were essentially  
6 an account or other form of cash which could be exempt only under  
7 Or. Rev. Stat. § 23.160(1)(n) (Oregon's pourover exemption). The  
8 bankruptcy court, however, held that the rent and deposit were  
9 integral to Debtor's tenancy and thus covered by the exemption.  
10 As noted by the bankruptcy court:

11 Other courts interpreting statutes similar to Oregon's  
12 have held that prepaid rents and security deposits are  
13 exempt, recognizing that a leasehold is exempt, thus  
rights attendant thereto are likewise exempt. . . .

14 This Court is persuaded that the reasoning of the  
15 Quintana and Nagel courts is correct. To hold  
16 otherwise allows trustees to interfere with the  
17 exemption rights granted to debtors under Oregon law.  
18 Frequently, the landlord (although it may have a  
19 security interest in the rent and deposit) may turn the  
20 money over to the trustee upon demand and require that  
21 the debtor restore the deposit in order to remain in  
possession of the debtor's abode.['] Debtors who are  
unable or unwilling to make such double payment may be  
evicted from their homestead. Oregon's policy that the  
homestead exemption be given a liberal and humane  
interpretation, mitigates against such a result.

22 Oregon law may be violated if a debtor is required to make  
23 a second deposit within the first year of his lease. See Or.  
24 Rev. Stat. § 90.300(3)(a) ("A landlord may not change the rental  
25 agreement to require the payment of a new or increased security  
26 deposit during the first year after the tenancy has begun, except  
27 that an additional deposit may be required if the landlord and  
28 tenant agree to modify the terms and conditions of the rental  
agreement to permit a pet or for other cause and the additional  
deposit relates to that modification."). In addition, Oregon law  
mandates that the last month's rent "shall be applied to the rent  
due for the last month of the tenancy." Or. Rev. Stat. §  
90.300(7). Trustee's efforts to collect the deposit and rent run  
afoul of the spirit of these laws, by jeopardizing Debtor's legal  
rights provided under the statute.

1 Casserino, 282 B.R. at 492, citing In re Quintana, 28 B.R. 269,  
2 270 (Bankr. D. Colo. 1983) (construing the Colorado homestead  
3 exemption which, at that time, was similar to Oregon's present  
4 statute; holding that homestead exemption could be claimed in a  
5 \$700 security deposit on leased premises and in \$209.70 in  
6 prepaid rent); and In re Nagel, 216 B.R. 397, 398-99 (Bankr. W.D.  
7 Tx. 1997) (holding that security deposit, pet deposit, and pre-  
8 paid rent required by Chapter 7 debtor-tenant's lease contract  
9 were exempt where leasehold interest created by contract was  
10 exempt as debtor's homestead).

11 Payment of the rent and deposit was a condition precedent to  
12 Debtor's right to obtain possession of the property under the  
13 lease agreement. It is as simple as that: no deposit, no lease.  
14 The rent and deposit represented integral rights and  
15 responsibilities accruing under the lease. Therefore, in light  
16 of Nagel, Quintana, and the bankruptcy court's convincing  
17 analysis, we agree with the conclusion that the rent and deposit  
18 were protected by section 23.240.

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21 VI.  
CONCLUSION

22 For the foregoing reasons, we AFFIRM.  
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