

MATHEW v. HEDRICK, et al.
Bankr. No. 382-00274
Adv. No. 83-0512

362(a)
522(g), (h)
ORS 23.160(1)(k)
23.185

Debtors sought to recover garnishments as preferential. The trustee had declined to pursue the claim. The garnished funds were nonexempt wages. The debtors based their claim of exemption on Oregon's pourover exemption, ORS 23.160(1)(k).

Held: generally for defendants

1. Claim of exemption of wages is limited to the provisions of ORS 23.185; ORS 23.160(1)(k) cannot be used to augment the exemption.
2. Debtors were entitled to return of funds garnished after bankruptcy because the garnishment violated 11 U.S.C. §362(a).

DDS 11/17/83
2 pages

Opinion JDBS

288 (2)

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U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	
PAUL FREDERICK MATHEW and)	Bankruptcy Case No. 382-00274
MARTHA LOUISE MATHEW,)	
)	Adversary Proceeding No.
Debtors,)	83-0512
)	
PAUL FREDERICK MATHEW and)	FINDINGS OF FACT AND
MARTHA LOUISE MATHEW,)	CONCLUSIONS OF LAW
)	
Plaintiffs,)	
)	
v.)	
)	
HOWARD R. HEDRICK, DORIS L.)	
HEDRICK and PENTAGON)	
INVESTMENT SERVICE CORPORATION,)	
)	
Defendants.)	

The debtors sought to recover several garnishments as preferential under 11 U.S.C. §522(h). They filed the complaint because the trustee declined to pursue the transfers. The defendant, who was the transferee, is also the major claimant in the estate. The debtors claimed an exemption in the transferred funds under Oregon's general pour-over exemption contained in O.R.S. 23.160(1)(k). The garnished funds were nonexempt wages. The Court tried the

FINDINGS OF FACT AND CONCLUSIONS OF LAW

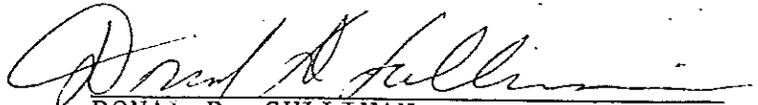
1 case on November 15, 1983.

2 The debtors cannot claim an exemption under O.R.S. 23.160(k)
3 in the nonexempt portion of wages because the statute expressly
4 prohibits the use of this exemption to augment other exemptions.
5 11 U.S.C. §522(g) picks up the prohibition by limiting the debtors'
6 claim "to the extent that the debtor could have exempted such
7 property . . . if such property had not been transferred . . . "
8 In effect, a claim of exemption of wages is limited to the pro-
9 visions of O.R.S. 23.185.

10 The funds garnished after bankruptcy in the amount of
11 \$324.82 should be returned to the debtors because the transfer
12 occurred in violation of 11 U.S.C. §362(a)(1).

13 Plaintiffs are entitled to judgment against Pentagon
14 Investment Service Corp. in the amount of \$324.82. Plaintiffs
15 abandoned their claim against Hedrick. Plaintiffs in other respects
16 should be denied relief.

17 DATED this 17th day of November, 1983.

18 
19 DONAL D. SULLIVAN
20 Bankruptcy Judge

21 cc: Charles R. Markley
22 Marc Zwerling

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