

ORS 18.395(1)  
ORS 18.395(2)  
FRBP 4003(c)  
Homestead exemption  
Proceeds  
Rent

In re Gary and Pamela Wynn

Case No. 04-69352-aer7

5/17/07

Radcliffe

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Debtors Husband and Wife separated and sold their home pre-petition, depositing \$33,000 (the then maximum homestead exemption amount for joint debtors) of the proceeds into their bankruptcy attorney's trust account. They then filed a joint Chapter 7 petition, and claimed the \$33,000 exempt under ORS 18.395. Within a year of the sale, the Husband and Wife rented separate residences, paying \$6,000 and \$1,643 respectively in rent from the proceeds. Wife then, within a year of the sale, used \$25,357 of the proceeds to purchase a home.

After a year from the sale had lapsed, Trustee sought turnover, arguing Wife had "overspent" her share of the proceeds because she had spent more than the maximum amount allowed to a single debtor (then \$25,000). Trustee also argued by implication that "rent" was not reinvestment.

The court denied the motion for turnover, and held the proceeds exempt. In interpreting ORS 18.395(2), it held all of the funds had been properly reinvested in a new homestead. Relying on Sticka v. Casserino (*In Re Casserino*), 379 F.3d 1069 (9<sup>th</sup> Cir. 2004), the court held that "rent" was reinvestment within the statute. Further, based on the long-standing policy to construe exemption statutes liberally, the court held the Husband and Wife could allocate the proceeds as they deemed fit, recognizing the statute itself was silent on this point, and no legislative history reviewed by the court helped to clarify the issue.

**E07-4 (7)**

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9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE DISTRICT OF OREGON

11 In Re: ) Bankruptcy Case  
12 ) No. 04-69352-aer7  
13 GARY RICHARD WYNN and )  
PAMELA ANN WYNN, ) MEMORANDUM OPINION  
14 )  
Debtors. )

15 This matter comes before the court on the Chapter 7 Trustee's  
16 (Trustee) motion for turnover of proceeds from a pre-petition sale of  
17 Debtors' homestead. The parties submitted pre-hearing briefs. After a  
18 scheduled hearing, at which there were no appearances, the matter was  
19 taken under advisement. Based upon the court's findings and conclusions  
20 which follow, the trustee's motion will be denied.

21 Facts:

22 The facts pertinent to this opinion are set forth in the parties'  
23 briefs. They do not appear to be in dispute.

24 Sometime in September, 2004, Debtors separated. On November 2,  
25 2004, Debtors sold their marital home and deposited \$33,000 in their  
26 attorney's trust account. On November 30, 2004, Debtors filed their

1 Chapter 7 petition, herein, listing the \$33,000 on Schedule B and  
2 claiming it as exempt proceeds on Schedule C pursuant to ORS 18.395.  
3 Trustee objected to the exemption claim “. . .if either it is not  
4 reinvested as required by the statute or if the home which was sold was  
5 not the debtor’s residence as required by ORS 18.395.”<sup>1</sup> On June 14,  
6 2005, Debtors were divorced pursuant to a stipulated judgment of  
7 dissolution entered in the Circuit Court of the State of Oregon for  
8 Klamath County.

9 From the time of the sale in November, 2004, Debtors rented  
10 separate housing. During the year following the sale, Debtor Gary Wynn  
11 (Gary) paid \$6,000 in rent; Debtor Pamela Wynn (Pamela) paid \$1,643 in  
12 rent. On October 22, 2005, Pamela purchased a new home, using at least  
13 \$25,357 of the proceeds. Gary did not purchase a new home within a year  
14 of sale.<sup>2</sup>

15 Issue:

16 The issue here turns on the allocation and character of the  
17 homestead exemption. By implication, Trustee argues that rent does not  
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21 <sup>1</sup> The objection contained a self-effectuating order if Debtors did not  
22 timely request a hearing. In fact, Debtors did not request a hearing.  
23 Trustee does not press the effect of the self-effectuating order, probably  
because it is couched in conditional language, the meaning of those conditions  
being the issue here.

24 <sup>2</sup> It is unclear whether the monies paid as rent came from the \$33,000  
25 held in trust. The underlying issue is the validity of Debtors’ exemption  
26 claim. Under FRBP 4003(c), Trustee has the burden of proof to show that the  
exemption is not properly claimed, Kelley v. Locke (In Re Kelley), 300 B.R. 11  
(9<sup>th</sup> Cir. B.A.P. (N.D. Cal.) 2003), thus she bears the consequences of any lack  
of proof.

1 qualify as "reinvestment". She also contends that Pamela has spent more  
2 than her share of the proceeds.<sup>3</sup>

3 Discussion:

4 Resolution of the issues here is governed by Oregon law. The  
5 applicable statutory provisions are ORS 18.395(1) and (2). At the time  
6 the main case was filed,<sup>4</sup> they provided as follows:

7 (1) A homestead shall be exempt from sale on execution,  
8 from the lien of every judgment and from liability in any  
9 form for the debts of the owner to the amount in value of  
10 \$25,000, except as otherwise provided by law. The  
11 exemption shall be effective without the necessity of a  
12 claim thereof by the judgment debtor. When two or more  
13 members of a household are debtors whose interests in the  
14 homestead are subject to sale on execution, the lien of a  
15 judgment or liability in any form, their combined  
16 exemptions under this section shall not exceed \$33,000.  
17 The homestead must be the actual abode of and occupied by  
18 the owner, or the owner's spouse, parent or child, but the  
19 exemption shall not be impaired by:

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

16 (b) Removal or absence from the property; or

17 (c) The sale of the property.

18 (2) The exemption shall extend to the proceeds derived  
19 from such sale to an amount not exceeding \$25,000 or  
20 \$33,000, whichever amount is applicable under subsection  
21 (1) of this section, if the proceeds are held for a period  
22 not exceeding one year and held with the intention to  
23 procure another homestead therewith.

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23 <sup>3</sup> Trustee posits three scenarios: 1) Pamela is entitled to a \$25,000  
24 exemption and Gary an \$8,000 exemption; 2) Pamela and Gary are each entitled  
25 to a \$16,500 exemption; or 3) Pamela is entitled to an \$8,000 exemption and  
26 Gary a \$25,000 exemption. The third scenario would most benefit the bankruptcy  
estate.

<sup>4</sup> The homestead amounts have since been raised to \$30,000 for a single  
debtor, and \$39,600 for joint debtors. ORS 18.395(1) and (2) (2005).

1           In order to exempt proceeds under ORS 18.395(2), two (2)  
2 conditions must be met. First, the debtors must have a bona fide present  
3 intent to invest the proceeds in another homestead; and 2) the debtors  
4 must in fact reinvest those proceeds in another homestead within a year  
5 of their receipt. In Re Earnest, 42 B.R. 395, 397 (Bankr. D. Or. 1984)  
6 (interpreting identical language in the former statute, ORS 23.240(2)).

7           Rent as Reinvestment:

8           Trustee addresses each debtor's entitlement to the exemption.  
9 She argues Gary lost the exemption by not reinvesting within one year.<sup>5</sup>  
10 This argument implies that rent is not reinvestment. Debtors argue that  
11 rent is reinvestment in reliance on Sticka v. Casserino, (*In Re*  
12 *Casserino*), 379 F.3d 1069 (9<sup>th</sup> Cir. 2004). In Casserino, the court held  
13 a month-to-month tenancy can support an Oregon homestead exemption claim.  
14 There, the court held that a security deposit and last month's rent  
15 qualify as exempt under the homestead exemption. Accordingly, it seems  
16 clear that monthly rent also qualifies. As such, the proceeds paid as  
17 rent by Gary and Pamela are exempt.

18           Allocation:

19           Trustee argues, that despite Pamela's timely reinvestment of the  
20 remaining \$25,357 in a new homestead, a portion thereof is not exempt.  
21 She argues, citing this court's opinion in In Re Meyers, Case  
22 #698-63466-aer7 (Bankr. D. Or. Jan. 21, 1999) (unpublished)  
23 (Radcliffe, J.), that any one debtor, subject to the joint exemption, is  
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25           <sup>5</sup> Trustee does not question, and the court does not address, whether  
26 joint debtors may reinvest in different properties, as here.

1 not entitled to more than the maximum exemption amount for an individual  
2 debtor (here \$25,000). Trustee's reliance on Meyers is misplaced.

3 In Meyers, each spouse filed a separate Chapter 7 case. Each  
4 sought to claim, in the same property, the \$25,000 homestead exemption  
5 then allowed a single debtor. (See, former ORS 23.240(1).) The  
6 husband's case was filed first, his exemption was allowed. The wife  
7 filed while the husband's case was still open. At the time, she was not  
8 living in the homestead (her homestead claim was based on her vicarious  
9 occupancy through her husband.) The wife indicated she was either  
10 contemplating or in the process of obtaining a divorce. The main issue  
11 was whether the husband and wife were "members of a household" (even  
12 though they were living separately) for purposes of former ORS 23.240(1)  
13 (now, ORS 18.395(1)), thereby limiting the exemption to the (then  
14 \$33,000) maximum for joint debtors. This court held the husband and wife  
15 were members of the same household, thereby limiting the wife to an  
16 \$8,000 exemption, because the husband had already been allowed a \$25,000  
17 exemption. This court's rationale, after examining the statute's  
18 legislative history, was that the household exemption for joint debtors  
19 was for a "family purpose" and that a married couple fit within that  
20 purpose.

21 Contrary to Trustee's contention here, Meyers did not limit how  
22 the exemption should be allocated between the husband and wife. There,  
23 because the husband had already been allowed a \$25,000 exemption, the  
24 court was compelled to limit the wife's exemption to \$8,000 *vis a vis her*  
25 *bankruptcy estate and creditors claiming therein*. Significantly, the  
26 court recognized that the \$25,000/\$8,000 split was not binding between

1 the husband and wife, and that they were free "to seek an equitable  
2 distribution of the aggregate \$33,000 exemption as part of the  
3 dissolution proceedings or otherwise." Id. at p. 9, n.3. Here, unlike  
4 Meyers, Gary and Pamela filed a joint case. They have only claimed the  
5 joint homestead exemption in the proceeds. Allowing them to allocate the  
6 proceeds as they choose is in fact contemplated, instead of contravened,  
7 by Meyers.

8 Trustee cites no other authority supporting her position. When  
9 interpreting an Oregon statute, the court looks first to its text, in  
10 context. Premier West Bank v. GSA Wholesale, LLC, 196 Or. App. 640, 649,  
11 103 P.3d 1169, 1175 (2004). As to allocation of homestead proceeds  
12 between joint debtors, ORS 18.395 is silent.

13 Where a statute's language is not determinative, the court may  
14 then look to legislative history. Id. As noted in Meyers, the joint  
15 (household) exemption was added to Oregon's homestead statute in 1975.  
16 Or. Laws 1975, c.208, § 5. None of the legislative history reviewed by  
17 the court, (see discussion in Meyers), addresses the allocation issue at  
18 bar.<sup>6</sup>

19 If legislative history is to no avail, the court may look to  
20 other interpretive aids. Id. In that regard, the courts have  
21 traditionally construed Oregon's homestead exemption in a "liberal and  
22 humane manner," Casserino, supra at 1072, remembering the homestead  
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24 <sup>6</sup> The requirements as to the one year holding period and intent to  
25 reinvest were enacted in substantially their current form in 1919. Or. Laws  
26 1919, c.112, § 1 (codified in Or. Laws § 221(Olson 1920)). Then, there was  
only a single exemption, thus allocation amongst joint debtors was not a  
relevant consideration.

1 exemption's purpose is to "assure to the unfortunate debtor . . . the  
2 shelter and influence of home." Id. With that policy in mind, the court  
3 concludes that Debtors may allocate the proceeds here at their  
4 discretion<sup>7</sup>.

5 The above constitute the court's findings of fact and conclusions  
6 of law under FRBP 7052; they shall not be separately stated.

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22 <sup>7</sup>The court rejects Trustee's alternative argument, that Debtors should  
23 somehow be penalized because they did not keep the Trustee apprised of their  
24 reinvestment, nor did they obtain a court order authorizing same. There is  
25 nothing in the record except Trustee's bare argument indicating Debtors failed  
26 to keep Trustee advised. Trustee has the burden to show the exemption is not  
properly claimed. FRBP 4003(c). In the case at bar, the proceeds were fully  
disclosed on Schedule B as being in Debtors' attorney's trust account. In any  
case, there was no prejudice to the estate. The proceeds were all reinvested  
appropriately.