

In re Lucas, Case No. 388-00171-H7

10-22-90 HLH Unpublished

The debtors claimed their interest in ERISA-qualified pension plans exempt under Oregon law. THE bankruptcy court overruled a creditor's objections to the claim of exemption and the creditor appealed to the BAP.

On appeal, the BAP found that one of the debtors had exercised excessive control over the plans until he resigned 6 months before filing for chapter 7 relief. In re Lucas, BAP No. OR 89-1503-AsVR (9th Cir. BAP 1990). Thus, according to the BAP, only contributions during the 6 month period would be exempt under Oregon law. The debtors conceded in the trial court and on appeal that the property was not property of the estate under §541(c)(2). The BAP remanded the case to the bankruptcy court to determine the amount of money contributed during the 6 month period.

On remand, the debtor conceded that nothing was contributed during that time but argued this time that the debtors' interest in the plans was not property of the estate under §541(c)(2) or, alternatively, that they were exempt under federal law.

The court ruled that the debtor had twice conceded that the interest in the plans was property of the estate and could not now retract that concession. The court further ruled that there is no federal exemption available for ERISA-qualified plans. In re Daniel, 771 F.2d 1352 (9th Cir. 1985).

The court also disposed of a specious equal protection argument. As a result, the debtors claim of exemption was denied.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

Published  
Unpublished

In Re )  
 ) Case No. 388-00171-H07  
VIRGIL M. LUCAS )  
SHIRLEY A. LUCAS ) MEMORANDUM OPINION  
 )  
Debtor. )

This matter came before the court upon Lumber Sales, Inc.'s (the "creditor") objection to the debtors' claim of exemption. The debtors were represented by Craig McMillin of Salem, Oregon and the creditor was represented by Dale Crandall, also from Salem, Oregon.

The court has reviewed the memos filed by the parties in this case and reached the following findings and conclusions.

Findings of Fact

The findings of fact are set out in In re Lucas, BAP No. OR 89-1503-AsVR, slip op. at p.2 (9th Cir. BAP 1990).

In Lucas, the Bankruptcy Appellate Panel ("BAP") held that these debtors' interest in certain ERISA pension plans was

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1 not exempt under Oregon law except for the contributions to the  
2 plans made during the 6 month period that Mr. Lucas was not the  
3 trustee of the plans. Thus, the BAP remanded the matter to  
4 this court to determine the amount of money contributed during  
5 that 6 month period.

6 At the hearing on remand in this court, the debtors  
7 conceded that no contributions were made during the time Mr.  
8 Lucas was not the trustee. In addition, however, the debtors  
9 argued, for the first time, that the property is exempt under  
10 federal law, if not Oregon law. Alternatively, the debtors  
11 seem to be arguing, again for the first time, that the plans  
12 are not property of the estate under 11 U.S.C. Section  
13 541(c)(2).

#### 14 ISSUES

- 15 1. Is the debtors' interest in the pension plans  
16 property of the estate?
- 17 2. If so, is the debtors' interest in the pension plans  
18 exempt under federal law?

#### 19 CONCLUSIONS OF LAW

- 20 1. Is the debtors' interest in the pension plans  
21 property of the estate?

22 11 USC Section 541(c)(2) states:

23 A restriction on the transfer of a  
24 beneficial interest of the debtor in a  
25 trust that is enforceable under  
26 applicable nonbankruptcy law is  
enforceable in a case under this title.

1 In its appellate opinion in this case, the BAP stated:

2 [T]he debtors in this case have not denied  
3 that their interest in the pensions are [sic]  
4 property of the estate. As a result, the  
5 bankruptcy court expressly declined to address the  
6 issue. As in the bankruptcy court neither party  
7 to this appeal contends that the debtors' interest  
8 in the plans is not property of the estate.  
9 Therefore, our analysis proceeds under the  
10 assumption that pursuant to Oregon law a valid  
11 spendthrift trust did not exist, and we move to  
12 the question of whether the debtors' interest in  
13 the plans was nevertheless exempt. In re Lucas,  
14 BAP No. OR 89-1503-AsVR, slip op. at 4 (9th Cir.  
15 BAP 1990).

16 Thus, the debtor has twice conceded that the debtors'  
17 interest in the pension plans is property of the estate and the  
18 court will not now consider arguments to the contrary.

19 2. Is the debtors' interest in the pension plans exempt  
20 under federal law?

21 The BAP held that the debtors may not exempt their  
22 interest in the plans under Oregon law. The debtors now argue  
23 that the property is exempt under federal law. This argument  
24 was not made to the BAP or to this court until now and may also  
25 be untimely.

26 Even if it is timely, the argument is unavailing since  
there is no exemption for ERISA plans arising from the  
boilerplate language used in the plan or the Internal Revenue  
Code. In re Daniel, 771 F.2d 1352, 1361 (9th Cir. 1985).  
Further, the debtor has pointed to no other federal law (and  
the court is not aware of any) that creates an exemption for

1 this property. Thus, the debtors' interest in the plans is not  
2 exempt under either state or federal law.

3 3. Other arguments.

4 The debtors finally argue that denying their claim of  
5 exemption denies them equal protection under the law. They  
6 seem to argue that their exemption claim is being denied  
7 because the debtors participated in a federally-approved  
8 pension plan. Apparently, the debtors argue that if they had  
9 participated in a state-approved plan then the exemption would  
10 have been allowed.


11 The outcome in this case does not depend upon the source  
12 of the law governing the plans. Rather, as the BAP stated in  
13 its opinion, "the central inquiry is the degree of control that  
14 the debtor exercised over the assets of the pension plans."  
15 Lucas at 10. Had Mr. Lucas not exercised the degree of control  
16 he did, the property may have been exempt under Oregon law,  
17 even though there is no federal exemption recognized in this  
18 Circuit. Thus, the premise upon which this argument is based  
19 is incorrect. As a result, the conclusion is also incorrect  
20 and the equal protection argument must fail.

21 RESULT

22 The creditor's objection to the claim of exemption will  
23 be sustained. The creditor shall prepare and submit an  
24 appropriate order denying the exemption and requiring the  
25 debtors to cooperate in transferring the property to the  
26

1 Chapter 7 trustee for distribution according to the Bankruptcy  
2 Code.

3 DATED this 22nd day of October, 1990.

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6 Henry L. Hess, Jr.  
7 Bankruptcy Judge  
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23 cc: Craig McMillin  
24 Dale L. Crandall  
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