

ORS 23.240
ORS 23.250
Homestead exemption
Extraterritoriality

In Re Stratton

600-66349-aer7

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Radcliffe

Published

Debtor owned real property in California which she claimed exempt under the Oregon homestead exemption. The trustee objected. The only issue was whether Oregon's homestead exemption should be given extraterritorial effect.

In a case of first impression, the Court held that it should, relying heavily on In Re Arrol, 170 F.3d 934 (9th Cir. 1999) which gave extraterritorial effect to California's homestead exemption. The Court relied on Oregon authority (similar to the California authority relied on by the Arrol court), which noted that the homestead exemption's purpose was to assure the debtor and his family shelter, and the comforts and stability of a home. The Court agreed with the Arrol court that this goal exists independent from state boundaries. The Court also noted the homestead exemption should be liberally construed.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 600-66349-aer7
JUDITH M. STRATTON,)
) MEMORANDUM OPINION
)
)
) Debtor.)

This matter comes before the court upon the trustee's objections to certain exemptions claimed by the debtor. The debtor claimed exemptions in two vehicles, a Mercedes and a 5th wheel trailer, and the Oregon homestead exemption in real property which is located in Lake Forest, California (the property). After a hearing, the trustee's objection was sustained as to the 5th wheel trailer; the debtor was allowed to claim her statutory exemption in the Mercedes. The issue of the homestead exemption was taken under advisement.

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1 This prevailing viewpoint has been called into question,
2 however, by a recent 9th Circuit case, In re Arrol, 170 F.3d 934 (9th
3 Cir. 1999). There, the court allowed a debtor to claim the
4 California homestead exemption in real property located in Michigan.

5 The trustee urges this court to give a narrow reading to the
6 Arrol opinion, limiting its application to California law. In so
7 doing, the trustee relies heavily upon an 1898 Oregon Supreme Court
8 case, Bond v. Turner, et al., 33 Or. 551, 54 P. 158 (1898). In
9 addition, he argues, as a matter of policy, that allowing the Oregon
10 homestead exemption to apply to property outside the State of Oregon
11 will lead to forum shopping and unfair interference with
12 debtor/creditor relationships.

13 The debtor maintains that the 9th Circuit's holding in Arrol,
14 is exactly on point. It is consistent with the strong policy
15 underlying federal bankruptcy law that exemption statutes be
16 interpreted liberally, in favor of the debtor, to assist with the
17 debtor's fresh start.

18 Indeed, Arrol does appear to be directly on point. There,
19 the court noted that "the California exemption statute does not
20 limit the homestead exemption to dwellings within California." 170
21 F.3d at 936. The court further noted that:

22 In *Strangman v. Duke*, 140 Cal.App.2d 185, 295
23 P.2d 12 (1956), the California court of appeals
24 articulated the legislative goal of "provid[ing] a
25 place for the family and its surviving members, where
26 they may reside and enjoy the comforts of a home,
freed from any anxiety that it may be taken from them
against their will. . . ." *Id.* at 190, 295 P.2d 12.

1 Id. The court explained that “[t]his goal exists independently from
2 state boundary lines.” Id. In conclusion, the Arrol court stated
3 “we are mindful of the strong policy underlying both California law
4 and federal bankruptcy law to interpret exemption statutes liberally
5 in favor of the debtor.” Id. at 937.

6 Like California’s homestead exemption statute, Oregon’s
7 homestead exemption is silent as to its extraterritorial effect and
8 has been so since its enactment in 1893. The current provisions for
9 the homestead exemption may be found in ORS 23.240 and ORS 23.250.²
10 Nevertheless, the trustee urges that the interpretation given to the
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12 ² ORS 23.240 provides, in pertinent part:

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

- 26 (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.

ORS 23.250 provides:

The homestead mentioned in ORS 23.240 shall consist,
when not located in any town or city laid off into blocks
and lots, of any quantity of land not exceeding 160
acres, and when located in any such town or city, of any
quantity of land not exceeding one block. However, a
homestead under this section shall not exceed in value
the sum of \$25,000 or \$33,000, whichever amount is
applicable under ORS 23.240 (1).

1 extraterritorial effect of the California homestead exemption may be
2 distinguished from that accorded to the Oregon statutes, by virtue
3 of Bond v. Turner, supra.

4 Bond, however, did not involve the homestead exemption, nor
5 the issue of extraterritoriality. Rather, the Oregon Supreme Court
6 held that non-residents, who are sued in Oregon, could claim the
7 Oregon exemptions, in property located in Oregon, to the same extent
8 as residents. Although the court did indicate that: "[e]xemption
9 statutes are . . . confined in their operation to the state in which
10 they are enacted" 33 Or. at 553, this appears to have been mere
11 dicta.

12 Furthermore, later decisions by the Oregon Supreme Court
13 reflect the same policy concerns that the Arrol court discovered
14 when it cited to the California case of Strangman v. Duke, 140 Cal.
15 App.2d 185, 295 P.2d 12 (1956). In Banfield v. Schulderman, et al.
16 (In re Banfield's Estate), 137 Or. 167, 298 P. 905 (1931), the
17 Oregon Supreme Court stated:

18 The object of the homestead exemption laws is well
19 understood. This object is to assure to the
20 unfortunate debtor, and his equally unfortunate but
21 more helpless family, the shelter and the influence of
22 home; and, in its promotion, courts may well employ
23 the most liberal and humane rights of interpretation.

24 137 Or at 178, 179; see also, Wilkinson v. Carpenter, 277 Or. 557,
25 565, 561 P.2d 607, 611 (1977) (the purpose of the homestead
26 exemption, "is not only to insure indigent individuals the comforts
of home, but also to protect the general economic welfare of all
citizens, creditors and debtors alike, by promoting the stability

1 and security of our society."). As the court noted in Arrol, these
2 policy goals exist independently from state boundary lines.

3 The trustee's policy arguments are also misplaced. Many of
4 the policy arguments urged by the trustee were eloquently stated by
5 the court in In re Halpin, 1994 WL 594199 (Bankr. D. Id. 1994)
6 (WestLaw only). That case was decided, however, five years before
7 Arrol, therefore, it lacks persuasive effect. Finally, the
8 reasoning employed in Arrol has been followed by courts outside the
9 Ninth Circuit. See, In re Weza, 248 B.R. 470 (Bankr. D.N.H. 2000).

10 CONCLUSION

11 Since the parties have agreed that the property would qualify
12 as the debtor's homestead if located in Oregon and that Oregon law
13 applies, this court concludes that the debtor may claim the
14 homestead exemption, provided by Oregon law, in the property for the
15 reasons set forth above. The trustee's objection to this exemption
16 should be overruled and an order consistent herewith entered. This
17 opinion constitutes the court's findings of fact and conclusions of
18 law; they shall not be separately stated.

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21 ALBERT E. RADCLIFFE
22 Chief Bankruptcy Judge
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