

ORS 23.160(1)(d)
ORS 23.160(1)(c) ✓
Exemptions-Motor Vehicle
Exemptions- Tool of the
Trade

In re Dormer, 685-09150
PSW April 30, 1986

A tractor used solely to pull logs from slash piles in the woods does not qualify as a "vehicle" under ORS 160(1)(d). However, it does qualify as a "tool of the trade" under ORS 23.160(1)(c) since it is necessary to enable the debtor to continue his principal business activity and is uniquely suited and solely used for this activity.

A flatbed truck may be exempted as vehicle under ORS 23.160(1)(d).

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1215(5)

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

APR 30 1986

TERENCE H. DUNN, CLERK
BY DEPUTY

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
))
EVERETT M. DORMER and) Case No. 685-09150
FAYETTE DORMER, dba)
Dorvan Enterprises,)
))
) FINDINGS OF FACT AND
 Debtors.) CONCLUSIONS OF LAW

This matter is before the court upon objection of Thomas A. Huntsberger (Trustee) to exemption of a JD 4500 tractor and flatbed truck claimed by Everett M. Dormer and Fayette Dormer (Debtors). Debtors claim exemption of the JD tractor as a motor vehicle under ORS 23.160(1)(d). The Trustee argues that the tractor does not qualify as an exempt motor vehicle since it does not have a certificate of title. Debtors claim exemption of the flatbed truck as a "tool of the trade" under ORS 23.160(1)(c). The Trustee argues that motor vehicles may not be exempted under this provision. Having heard testimony and reviewed the file, the court makes the following findings of fact and conclusions of law:

1. Debtor Everett M. Dormer is a self-employed logger, firewood cutter and farmer. He uses the tractor to pull logs from slash piles in the woods. The tractor is used solely in

1215 19.

1 this occupation. It is motorized and self-propelled and is not
2 licensed by the Oregon Department of Motor Vehicles.

3 2. ORS 23.160(1)(d) provides that a debtor may claim as
4 exempt "(A) vehicle to the value of \$1,200. As used in this
5 paragraph 'vehicle' includes an automobile, truck, trailer, truck
6 and trailer or other motor vehicle."

7 3. Although exemptions are to be liberally construed this
8 court does not believe that it was the intent of the legislature
9 to include this type of motorized machinery within the meaning of
10 ORS 23.160(1)(d).

11 4. Nor does this court believe that the motor vehicle code
12 definition necessarily applies to ORS 23.160(1)(d) as the Trustee
13 argues. Rather, this court believes that the legislature
14 intended to include in this subsection a machine which is built
15 and used for the purpose of carrying people or products on the
16 ground from point A to point B. It might or might not have a
17 certificate of title. Therefore Debtors' claim of exemption of
18 the JD tractor under ORS 23.160(1)(d) should be denied.

19 5. In an amended B-4 schedule filed on February 27, 1986,
20 Debtors have also claimed an exemption of \$1,125.00 for the
21 tractor as a tool of the trade under ORS 23.160(1)(c) in the
22 event the trustee's objection to an exemption under ORS
23 23.160(1)(d) was sustained.

24 ORS 23.160(1)(c) provides an exemption for "(t)he tools,
25 implements, apparatus . . . necessary to enable the . . . debtor
26 to carry on the trade, occupation or profession by which the . . .
27 debtor habitually earns a living, to the value of \$750." A
28 vehicle does not constitute a "tool of the trade" "unless it is
FINDINGS OF FACT AND CONCLUSIONS OF LAW-2

1 uniquely suited for and principally used in connection with a
2 principal business activity." Lindsay v. U.S. Bank (In re
3 Lindsay), 29 Bankr. 25, 26 (Bankr. D.Or. 1983).

4 This court finds that the JD 4500 tractor is necessary to
5 enable Debtor Everett M. Dormer to carry on logging and cutting
6 firewood which constitutes his principal business activity. The
7 JD 4500 tractor is uniquely suited and solely used for this
8 activity.

9 Therefore the tractor constitutes a "tool of the trade"
10 within the meaning of ORS 23.160(1)(c).

11 7. At the hearing the Trustee objected to the value of the
12 tractor as listed on the amended schedule B-4. Since only Debtor
13 Everett Dormer is in the business in which the tractor is used,
14 only he may claim the exemption in the tractor as a tool of the
15 trade. Mrs. Dormer may not claim an exemption for the tractor.
16 Therefore, the value of exemption allowed will be \$750.

17 8. Debtor Everett M. Dormer uses the flatbed truck to
18 remove firewood from the woods and transport it to residences.

19 9. Cutting and hauling firewood is now Debtor Everett M.
20 Dormer's primary business and has been for the past 15 to 16
21 months.

22 10. Debtors installed a larger engine in the truck, a heavy
23 duty bumper and wood racks on the sides.


24 11. Debtors claim the flatbed truck as exempt under ORS
25 23.160(1)(c) or in the alternative, if the Trustee's objections
26 are allowed, as a motor vehicle under ORS 23.160(1)(d).

27 12. The flatbed truck is principally used in connection with
28 the principal business activity of hauling and delivering wood.

1 However the truck is not uniquely suited for or specially or
2 uniquely equipped for the activity. Lindsay, supra, 29 Bankr. at
3 26. It is basically the same as any other flatbed truck with
4 minor modifications. Therefore the Debtors may not claim the
5 flatbed truck as exempt under ORS 23.160(1)(c).

6 13. The flatbed truck does qualify as a vehicle under ORS
7 23.160(1)(d). Therefore, the Debtors may claim the flatbed truck
8 as exempt in the amount scheduled of \$400 under ORS 23.160(1)(d).

9 An order consistent herewith will be entered.

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12 POLLY S. WILHARDT
13 Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
)
EVERETT M. DORMER and) Case No. 685-09150
FAYETTE DORMER, dba)
Dorvan Enterprises,)
) ORDER
Debtors.)

The court, having entered its Findings of Fact and
Conclusions of Law in the above proceedings, and based thereon,
IT IS HEREBY ORDERED that the Trustee's objection to
exemption of the JD 4500 tractor and flatbed truck is sustained;
and

IT IS FURTHER ORDERED that the Debtors' alternative
claim of exemptions is granted in the amount of \$750 as to the
JD 4500 tractor and \$400 as to the flatbed truck.

[Signature]
POLLY S. WILHARDT
Bankruptcy Judge