

O.R.S. 23.160(1)(k)  
§ 541(c)(2)

In re Douglas - 388-02785-P7  
Bishop v. Douglas - 88-0447  
CEL  
8\15\89  
P89-~~227~~ 27(4)

Trustee sought turnover of funds held by the debtor's employer under a deferred compensation plan. The funds, which were generated by debtor's voluntary contributions, are property of the estate and are therefore subject to turnover to the trustee.

89-27



1 approximately \$4,200 of debtor's contributions and the debtor  
2 claims only \$332.00 thereof as exempt.

3 The City has answered by general denial, and  
4 affirmatively asserts that the Deferred Compensation Plan is  
5 exempt and not property of the debtor's estate.

6 The City is not entitled to claim the exemption on behalf  
7 of the debtor. Bishop v. Cates, 73 B.R. 874 (Bankr. D. Or.  
8 1987).

9 The issue in the case is whether or not the money held by  
10 the City is part of the debtor's estate. The matter was  
11 submitted for trial on stipulated facts.

12 11 U.S.C. § 541 defines property of the estate. The  
13 estate consists of all legal or equitable interests of the debtor  
14 in property as of the commencement of the case except for power  
15 that may be exercised solely for the benefit of an entity other  
16 than the debtor, interest as a lessee under a lease of  
17 nonresidential real property that has terminated before the  
18 commencement of the case or at the expiration of the stated term  
19 during the case, and property under 11 U.S.C. § 541(c)(2) which  
20 is that subject to a "restriction on the transfer of a beneficial  
21 interest of the debtor in a trust that is enforceable under non-  
22 bankruptcy law is enforceable in a case under this title".

23 The City of Lake Oswego argues that the funds are not  
24 trust funds but are property of the City under the decision of  
25 IMCA Retirement Corp. v. Executive Department, 92 Or. App. 188,  
26 757 P.2d 868, rev. denied 306 Or. 661 (1988), but are admittedly

1 subject to the debtor's right therein as a general creditor of  
2 the City. As such the fund is subject to the debtor's legal or  
3 equitable interest as a general creditor. Any rights of the  
4 debtor pass to the trustee of the debtor's bankruptcy estate  
5 under 11 U.S.C. § 541.

6 The case of Bishop v. Harbour, Adv. Pro. No. 87-0446  
7 (Bankr. D. Or.) was decided March 1, 1988, before the ICMA case  
8 was decided on July 20, 1988. However, it is not necessary that  
9 the deferred compensation plan be treated as a trust in order for  
10 the case to support the trustee's right to the fund in the face  
11 of claimed exemption, nor because of the claim that the fund  
12 remains the property of the City until disbursed. There is  
13 nothing in the Plan to provide that the funds herein have not  
14 become vested, and it would appear that the accounts are subject  
15 to the rights of those who funded them, as a general creditor of  
16 the City.

17 The trustee as a general creditor of the City may  
18 presently enforce his rights to turnover so long as the fund is  
19 solvent. The language in the Plan delaying payment until the  
20 employer retires, leaves employment or dies does not in the  
21 absence of third party equities not shown herein entitle the  
22 debtor or the Plan administrators to delay payment because the  
23 anti-alienation and anti-assignment provisions of the Plan are  
24 unenforceable against the trustee in bankruptcy. The fund is  
25 generated by the voluntary contributions of the debtor.

26 While ERISA plans are governed by different provisions

1 from the Title 26 U.S.C. § 457 deferred compensation plan, the  
2 language of the court in In re Goff, 706 F.2d 574, 587 (5th Cir.  
3 1983) is apposite:


4 "The Bankruptcy Code was generally intended to  
5 broaden the 'property of the estate' available to  
6 creditors in bankruptcy and, specifically,  
7 intended to limit any exemption of pension funds.  
8 These policy based provision [sic] of the Code  
9 would be frustrated were ERISA's anti-alienation  
and assignment provisions applied with a sweeping  
brush. Thus, ERISA's specific provisions  
precluding interference with the operation of  
federal law renders the Bankruptcy Code effective  
over any ERISA provisions to the contrary."

10 See also In re Kincaid, Case No. 385-05403, BAP No. OR-88-1001  
11 JMOAs (BAP 9th Cir. March 16, 1989).

12 This Memorandum Opinion contains the court's Findings of  
13 Fact and Conclusions of Law and pursuant to Bankruptcy Rule 7052  
14 they will not be separately stated.

15 The trustee may submit an appropriate turnover order  
16 forthwith, showing proof of service of the proposed order on the  
17 debtors' attorney and the attorney for the City of Lake Oswego  
18 before presentation to the court.

19 August 15, 1989.

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21   
22 C. E. Luckey  
Bankruptcy Judge

23 cc: Sanford R. Landress  
24 William Valent  
25 Alexander T. Bishop  
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