

KRAFT, JASON N. AND KELLY K., Case No. 06-10113, Chapter 7, (bench ruling, March 15, 2007). **Issue:** Whether Debtors could claim accrued but unpaid wages not subject to garnishment exempt under S.D.C.L. § 43-45-4? **Ruling:** Yes. S.D.C.L. §§ 21-18-53 and 43-45-14 are clear, certain, and unambiguous, and according to their terms, those sections would prevent a debtor from claiming his wages exempt under § 43-45-4 or any other statute other than S.D.C.L. §§ 21-18-51 and -52. However, a literal interpretation of §§ 21-18-53 and 43-45-14 would lead to absurd results. For example, a debtor who was being garnished could protect a specified portion of his accrued but unpaid wages - under §§ 21-18-51 or -52 - but a debtor who was not being garnished could not protect any portion of his accrued but unpaid wages. Similarly, a debtor who received his paycheck the day before filing a bankruptcy petition and deposited his paycheck in his checking account could - assuming he had not maxed out his exemptions under § 43-45-4 - claim those funds exempt, but a debtor who received his paycheck the day after filing a bankruptcy petition could not. The Court must presume the South Dakota legislature did not intend those results. In addition, notwithstanding §§ 21-18-53 and 43-45-14, a debtor may in fact protect his wages under at least two other statutes, S.D.C.L. §§ 15-20-12 and 21-19-17. Those sections - even more clearly than § 43-45-4 - appear to be in direct conflict with §§ 21-18-53 and 43-45-14. However, that conflict is readily resolved if §§ 21-18-53 and 43-45-14 are interpreted to apply only to wages subject to garnishment, so that a debtor may not use § 43-45-4 to exempt any wages he was not able to exempt under §§ 21-18-51 or -52. For these reasons, neither § 21-18-53 nor § 43-45-14 bars a debtor from exempting under § 43-45-4 accrued but unpaid wages not subject to garnishment, to the extent permitted by that section.

In issuing its ruling, the Court also noted the recent amendment to S.D.C.L. § 43-45-14 might well be unconstitutional, inasmuch as it appears to create different exemptions for nonbankruptcy and bankruptcy debtors, *see In re Wallace*, 347 B.R. 626 (Bankr. W.D. Mich. 2006), and suggested counsel might want to visit with the Bar's Debtor/Creditor Committee about the propriety of that amendment before March 26, 2007, veto day for the 2007 legislature.