

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
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5 **Filed On**
6 **11/26/07**

7 Case No. A07-00076-HAR
8 In re MACARIO D. BILIRAN and INEZ F. BILIRAN,
9 Debtor(s)
10 KENNETH BATTLE, Trustee,
11 Plaintiff(s)
12 v.
13 MACARIO D. BILIRAN; INEZ F. BILIRAN; RESY AYERS; and PHILLIP AYERS
14 Defendant(s)

In Chapter 7

Adv Proc No A07-90017-HAR

**BANKRUPTCY COURT'S
RECOMMENDATION FOR
WITHDRAWAL OF REFERENCE**

15 TO: the judges of the United States District Court for the District of Alaska

16 **The court recommends that the reference be withdrawn and this adversary proceeding be**
17 **transferred to a district judge of the United States District Court for the State of Alaska for**
18 **further proceedings.**¹ The matter is currently in the bankruptcy court under this district's general
19 order of reference.²

20 Local Alaska Bankruptcy Rule 5011-1 provides a procedure for handling a motion to
21 withdraw the reference so a matter may be returned to the district court for some proper purpose.
22 Such a motion is often filed by one of the parties, but the bankruptcy judges in this district
23

24 ¹28 USC § 157(d): "The district court may withdraw, in whole or in part, any case or proceeding
25 referred under this section, on its own motion or on timely motion by any party, for cause shown."

26 ²11 USC § 157(a); see, *Amended General Order*, Order No. 503, filed in the district court on May 17,
27 1985 (located at <http://www.akd.uscourts.gov/reference/mgo/mgo-503.pdf>)

1 commonly make a recommendation on their own to facilitate handling of a matter in an
2 appropriate case.

3 In this adversary proceeding, which involves an alleged fraudulent transfer of property to
4 debtors' relatives, the bankruptcy court makes the recommendation for withdrawal of the
5 reference because a timely request for a jury trial has been made,³ and at least one of the parties
6 has not consented for the bankruptcy judge to conduct the trial.⁴ Under these circumstances, the
7 bankruptcy court is not authorized to conduct a jury trial.⁵

8 The nondebtor defendants have not filed claims against the estate, and both plaintiff and
9 defendants say there is a right to a jury trial. Most courts, following the Granfinanciera case from
10 the Supreme Court, agree.⁶ I, too, believe that the defendants (at least the nondebtors) have a
11 right to a jury trial.

12 DATED: November 26, 2007

13
14 /s/ Herb Ross
15 HERB ROSS
U.S. Bankruptcy Judge

16 Serve:
17 William Artus, Esq., for π
18 J. Mitchell Joyner, Esq., for Δ
19 Kenneth Battley, Trustee
20 Debtors
US Trustee
21 Peggy Gingras, Adv. Proc. Mgr.
22 Ida Romack, Clerk of U.S. District Court

23 11/26/07

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24 ³Docket Nos. 10 and 23.

25 ⁴Docket No. 24.

26 ⁵28 USC § 157(e) provides a jury trial may only be heard by a bankruptcy judge if all parties expressly
27 consent.

28 ⁶Granfinanciera, S.A. v Nordberg, 109 SCt 2782 (1989); In re Transcon Lines, 121 BR 837, 839-40 (CD Cal 1990).