

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
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In re
ADAM MICHAEL MILAZZO,
Debtor(s)

Case No. A09-00866-HAR
In Chapter 7

**MEMORANDUM FOR DENIAL OF
MOTION FOR COMPLIANCE WITH
DISCHARGE**

SUMMARY OF RULING- The debtor moved for an order requiring a hospital creditor to “remove” a pre-petition hospital lien on the grounds it violates his discharge.¹ There is no bankruptcy law requirement that this pre-petition lien be vacated or disavowed, so failure to do so does not violate debtor’s discharge. Also, the lien has already expired under the state statute.

BACKGROUND- Much of this background is from public records (a state criminal court,² an unpublished opinion of the Court of Appeals of the State of Alaska,³ and the bankruptcy schedules) of which the court will take judicial notice.

¹ ECF No. 19, filed *pro se*. There is no indication the lien creditor was served with motion.

² *State of Alaska v. Milazzo*, Case No. 3AN-06-09827-CR, disclosed in the Statement of Financial Affairs in the answer to question 4. ECF No. 1.

³ *Milazzo v. State*, 2011 WL 5248078 (Alaska Ct. of App. 2011) (“In a jury trial conducted by Superior Court Judge Michael Spaan, Adam Milazzo was convicted of murder in the second degree, one count of assault in the third degree, one count of assault in the fourth degree, and other offenses not relevant to this appeal. The convictions arose from an incident where Milazzo, driving while intoxicated, fled from the police, struck two patrol cars, and ultimately crashed into a truck driven by Gene Burch, who died from injuries received in the collision.”). The fact of debtor’s criminal conviction has no bearing or influence on the court’s decision on the debtor’s motion.

1 The lien which debtor seeks to have expunged from the state court records is a Health
2 Care Provider Lien for \$78,573.23, recorded or filed in the Anchorage Recording District,
3 document number 2006-052819-0.⁴ It purports to be for an injury occurring on “7/14/2006.” This
4 is probably related to the automobile collision described in the Court of Appeals unpublished
5 opinion as a car chase commencing “On July 13, 2006, at approximately 11:30 p.m.”⁵

6 The online database of liens for the Alaska Department of Natural Resources Record’s
7 Office has an index for the lien showing the grantor to be Leader Insurance Company and the
8 grantees to be Alaska Native Tribal Health Consortium *and* Alaska Native Service Center.⁶ The
9 lien itself, shows that it was filed by “Alaska Native Tribal Health Consortium, *d/b/a* Alaska
10 Native Service Center.” Presumably the hospital thought Leader Insurance Company had
11 coverage for debtor’s injuries.

12 The hospital lien statutes are found at AS 34.35.450-482. The court has no information
13 about any attempted enforcement of the hospital lien that was filed some 8½ years ago. The
14 purpose of the statute is to give a provider of health care service to a person with a traumatic
15 injury a lien on any settlement, judgment or insurance proceeds for service provided to the
16 injured party.⁷

17 **LEGAL ANALYSIS**- The simplest reason for denying debtor’s motion is that the lien has
18 expired by operation of law. AS 34.35.480(a), ***Enforcement of lien***, provides: “A lien under AS
19 34.35.450 - 34.35.480 may be foreclosed or enforced by an action brought by the claimant, a
20 representative, or assignee within one year after the filing of the lien.” The lien expired in 2007.

23 ⁴ Debtor attached a copy to his motion. ECF No. 19, Attachment E.

24 ⁵ Milazzo v. State, 2011 WL 5248078, at *1.

25 ⁶ A printout of the index is attached to this memorandum as Exhibit 1.

26 ⁷ AS 34.35.450(a), (b).

1 Even if it had not expired, pre-petition liens generally “ride-through,” unaffected by the
2 discharge. The discharge granted to an individual protects against *in personam* attempts to collect
3 on a pre-petition debt.⁸ On the contrary a valid pre-petition lien is generally still enforceable
4 even after the debtor receives his or her discharge.⁹

5 The case debtor cited in a letter to the creditor, In re Parry,¹⁰ is not on point. It involved a
6 **post-petition** lien which was a violation of the automatic stay, a critical distinction from the **pre-**
7 **petition** hospital lien which debtor seeks to have expunged in this case.

8 **CONCLUSION-** A separate order will be entered denying the motion. It is both
9 unnecessary and not justified.

10 DATED: January 5, 2015

11
12
13 /s/ Herb Ross
14 HERB ROSS
U.S. Bankruptcy Judge

15 **Serve :**

- 16 -Adam M. Milazzo, ACOMS # 451785, Goose Creek Correctional Center, PO Box 877790, Wasilla, AK 99687-7790
17 - Alaska Native Health Care Consortium, 4315 Diplomacy Drive, Anchorage, AK 99508
18 - Chris Johansen, Esq., bankruptcy attorney for debtor

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23 ⁸ 11 USC § 524(a).

24 ⁹ *Collier on Bankruptcy*, ¶ 524.02[2][d], Postdischarge Enforcement of Liens (16th Ed. Online); In re
25 Cortez, 191 B.R. 174, 177 (9th Cir. BAP 1995) (“It is well settled that valid, perfected liens and other secured
26 interests pass through bankruptcy unaffected.”).

27 ¹⁰ 328 B.R. 655 (Bankr. EDNY 2005), cited at ECF No. 19, Attachment D.

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Index: LI - LIENS	Amount: \$78,573.23
Desc: NTC OF HEALTH CARE PROVIDER LIEN	
Grantor - MILAZZO ADAM	
Grantor - LEADER INSURANCE COMPANY	
Grantee - ALASKA NATIVE TRIBAL HEALTH CONSORTIUM	
Grantee - ALASKA NATIVE MEDICAL CENTER	

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