

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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Filed On
1/19/12

In re
COLLEEN CLOUTIER,
Debtor(s)

Case No. A07-00582-HAR
In Chapter 7

**MEMORANDUM DENYING MOTION TO
RECONSIDER DENIAL OF MOTION TO
AVOID JUDICIAL LIENS**

In a motion for reconsideration,¹ the debtor's decedent estate explained that she only had a half interest in the residential real property as a tenant-in-common which was worth only \$76,800 for debtor's share. The motion acknowledges that the correct homestead exemption was only \$32,400 for debtor's proportionate interest.²

The motion suggests that, in hindsight, these figures might have left some value for the judgment lien creditors after a \$32,400 exemption, but the creditors did not object to the actual exemption claimed, \$51,573.93, so they are debarred from now objecting to the higher exemption claim by Freeland v. Taylor & Kronz.³ But, failure to timely object to the debtor's claim of

¹ Docket No. 42.

² AS 09.38.010(b).

³ 503 U.S. 638 (1992).

1 exemption⁴ is not a bar for a lien creditor to make a challenge that the exemption claim is too
2 large.⁵

3 The calculation to show that there is still equity for the judgment liens to attach to after a
4 \$32,400 exemption is:

5 FMV of real property	\$153,600.00
6 Less: mortgage debt	(\$50,452.14)
7 Total equity for co-tenants after mortgage debt	\$103,147.86
8 Debtor's half share of equity	\$51,573.93
9 Less: exemption (debtor actually claimed only \$51,573.93)	(\$32,400.00)
10 Remaining equity to cover two judgments	<i>\$19,173.93</i>

11 Debtor's decedent estate filed a motion under 11 USC § 522(f)(1) to avoid the judgment
12 liens of First National Bank Alaska (Case No. 3AN-01-2163 SC for \$3,231.62 on about 06/14/01)
13 and NCO Portfolio Management and/or First USA Bank, N.A. (Case No. 3AN-04-03767 CI for
14 \$8,589.78 on about 08/12/04).⁶ The two judgments total ***\$11,821.40***, plus some accrued interest up
15 to the date of the petition on November 1, 2007. There have been no objections to this motion,
16 but there nonetheless appears to be sufficient equity in excess of a \$32,400 exemption to cover the
17 principal and some of the interest on these judicial liens.

18 DATED: January 19, 2012

19 _____
20 /s/ Herb Ross
21 HERB ROSS
22 U.S. Bankruptcy Judge

23 _____
24 ⁴ 11 USC § 522(l) and FRBP 4003(b).

25 ⁵ In re Morgan, 149 BR 147, 151 (9th Cir. BAP 1993).

26 ⁶ Docket No. 30.

27 MEMORANDUM DENYING MOTION
28 TO RECONSIDER DENIAL OF MOTION
TO AVOID JUDICIAL LIENS

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Serve:

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01/19/12

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TO RECONSIDER DENIAL OF MOTION
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