

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

YVONNE S. HENRICKSON and
LESLIE J. HENRICKSON,

Debtors.

Case No. A03-00955-DMD
Chapter 7

**Filed On
3/5/07**

**MEMORANDUM REGARDING OBJECTIONS TO DEBTORS'
CLAIM OF EXEMPT PROPERTY**

The debtors filed for Chapter 7 relief on August 27, 2003. They elected the state exemptions. Trustee William Barstow filed timely objections to some of their claims of exempt property. The debtors filed an amended claim of exempt property. While some of the trustee's objections have been resolved, two objections remain unresolved: A claim of exemption of \$400.00 for accrued vacation pay due Leslie Henrickson and a claim of \$2,391.50 for a joint tax refund.

The debtors have claimed exemptions under A.S. 09.38.030(a) and (e) for both the vacation pay and the refund. A.S. 09.38.030(a) provides:

(a) Except as provided in (b), (c), (f), and (h) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$350. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings

all sums required by law or court order to be withheld and dividing the remainder by 2.17.

The \$350.00 exemption increased to \$438.00 under 8 AAC 95.030. A.S. 09.38.030(e) provides:

(e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service.

“Exemption laws are remedial in character and should be liberally construed in favor of the debtor.”¹

The debtor claims \$400.00 in accrued vacation pay as exempt under a proceeds theory. A.S. 09.38.060 provides:

(a) If property, or a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value

¹*Gutterman v. First National Bank of Anchorage*, 597 P.2d 969, 972 (Alaska 1979) citing *In re Canutt*, 264 F.Supp. 919, 920 (D. Or. 1967).

limitation under AS 09.38.020(a)(1), or (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for 12 months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for six months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the individual claiming the exemption.

The debtors argue that because their wages are exempt, proceeds of the wages in the form of accrued vacation pay, must also be exempt under 09.38.060(b). Subsection (b) is ambiguous. Does “are traceable under this section” refer solely to property listed in (a) or any exempt property found in Chapter 38, including wages?

As noted in *In re Melin*²:

‘Statutory construction begins with analysis of the language of the statute construed in view of its purpose.’

The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others. Though we give unambiguous statutory language its ordinary and common meaning, we have rejected the “plain meaning” rule as an exclusionary rule, and we may look to legislative history as a guide to construing a

²6 A.B.R. 310, 312 - 313 (Bankr. D. Alaska 2000); *aff’d* 6 A.B.R. 481 (D. Alaska 2000).

statute's words. The plainer the meaning of the statute, the more persuasive any legislative history to the contrary must be.

A.S. § 09.38.030 was adopted as a part of a comprehensive legislation revising Alaska's exemption statutes in 1981. The policies underlying the legislative revisions were outlined in a memorandum from John W. Abbott, Chairman of the Alaska Code Revision Commission:

The commission has determined that the exemption laws of the state are out of date and do not provide adequate protection for property in possession of an individual which is necessary to provide the basic necessities of life for the individual and his family. . . .

The Alaska Code Revision Commission has attempted to present suggested legislation which balances the often-competing interests of both debtors and creditors. Creditors need simple and inexpensive procedures for collecting unsecured debts while debtors must have protection for their property so that they are not deprived of property which supplies the basic necessities of life or be required to seek public assistance benefits. . . . Seasonally employed individuals are afforded protection from garnishment of their earnings in a way that permits the exercise of an exemption for funds accumulated during the work season over the entire year. . . . (footnotes omitted)³

A.S. 09.38.060 was adopted as part of the same comprehensive legislation as A.S. 09.38.030.

The purpose of the exemption legislation was to provide for the basic necessities of life.

Allowing the tracing of proceeds of exempt wages furthers that goal. I conclude that the debtors may trace their exempt wages as property under 09.38.060(a).

³*Id.*

That does not end my inquiry. Even if the debtors are allowed to trace proceeds from wages to accrued vacation pay, the exempt wages are limited to “the debtor’s weekly net wages not to exceed \$438.00” under 09.38.030(a). The debtors are only entitled to the pro-rata vacation pay for one week, not for the weeks, months or years preceding the filing. I suspect that the debtor’s vacation benefits accrued over a three to six month period preceding the filing of his petition in bankruptcy. If my suspicion is wrong, the debtors may correct me. Otherwise, their claim of exemption for accrued vacation pay under A.S. 09.38.030(a) will be disallowed. I have also reviewed A.S. 09.38.030(e). It does not provide a separate basis for the exemption of the vacation benefits.

The debtors also claim an exemption of \$2,391.50 of their income tax refund under the same statutes based upon the same tracing theory. Again, even if the debtors are allowed to trace exempt property, they face the weekly net earnings limitation of 09.38.030(a), \$438.00 each. Under my view of 09.38.030(a), the debtors could trace a pro-rata portion of their refund to the week of August 23, 2003. It would be a negligible amount, however. The bulk of the refund claim accrued in the eight and one-half months preceding the week of August 23, 2003.

There is another reason the debtors’ claim of exemption is not well founded. The debtors relied upon the *Cedor*⁴ case as authority for their exemption. *Cedor* was a Bankruptcy Act case. A federal district court found that tax refunds from pre-petition overwithholding of federal income taxes were wages subject to a claim of exemption by the debtors. The debtors were able to claim 75% of the tax refund as exempt under the

⁴*In re Cedor*, 337 F.Supp. 1103 (D. N. D. Cal. 1972); *aff’d. Matter of James*, 470 F.2d 996 (9th Cir. 1972); *cert. denied, Walsh v. Cedor*, 411 U.S. 973 (1973).

Consumer Credit Protection Act's limitation on wage garnishment. *Cedor* was overruled by the Supreme Court's decision of *Kokoszka v. Belford*⁵ in 1974. The Supreme Court found that tax refunds were property of the bankruptcy estate and not subject to exemption as wages under the Consumer Credit Protection Act. *Cedor* does not support the debtors' claim of exemption.

I have also reviewed the categories listed in A.S. 09.38.030(e) with regard to income tax refunds. I conclude that the debtor's income tax refund does not qualify for exemption under any of the five subdivisions of (e).

An order sustaining the trustee's objections to the debtors' claim of exempt property will be entered.

DATED: March 5, 2007.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: E. LeRoy, Esq.
R. McFarlane, Esq.
J. Ruebelmann, Esq.
W. Barstow, Trustee

03/05/07

⁵417 U.S. 642 (1974).