

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re:

TONY B. DAVIS,

Debtor.

Case No. A02-01221-DMD
Chapter 13

Filed On
6/28/05

MEMORANDUM REGARDING OBJECTIONS TO
EXEMPT PROPERTY

I have taken judicial notice of the following: (1) the contents of the debtor's bankruptcy file; (2) proof of claim number 5 submitted by Chase Manhattan Mortgage Corp., and (3) the rate of appreciation for single family homes in Anchorage for 2003.

Courts are divided on the issue of when exemptions are to be determined in cases converted from Chapter 13. The Fifth Circuit looks to the date of filing¹; the Ninth Circuit bankruptcy appellate panel looks to the date of conversion.² The trustee's objections fail on either date.

The debtor's petition was filed November 5, 2002. His residence was sold in December 2003 for \$148,000.00 plus free rental for six weeks. The trustee is holding \$9,250.00 in sale proceeds. The balance was paid to costs of sale together with approximately \$138,000.00 to Chase Manhattan Bank's secured claim. The trustee values the free rental associated with the sale at \$2,000.00. Assuming a 5.5% annualized rate of

¹*Lowe v. Sandoval (In re Sandoval)*, 103 F. 3d 20 (5th Cir. 1997).

²*In re Winchester*, 46 B.R. 492 (9th Cir. B.A.P. 1984); *In re Alderman*, 195 B.R. 106 (9th Cir. B.A.P. 1996).

appreciation for 13 months,³ and a sales price of \$150,000.00, the house was worth \$141,000.00 as of the petition date. Chase Manhattan's claim was \$124,469.90 on the same date. The debtor's 50% equity in the property was worth \$8,265.05, well within the claimed exemption. The maximum allowed by 11 U.S.C. § 522(d)(1) was \$17,425.00 at the time.

The case was converted on September 16, 2003. The discounted value of the home plus free rental was \$148,500.00 on that date. Chase Manhattan's claim was \$135,700.00 and the debtor's 50% equity was worth just \$6,400.00. I conclude that the debtor did not injure the estate by not making his mortgage payments. He simply diminished his exempt interest in his homestead. The trustee's objections to the debtor's claim of exempt property will be denied.

DATED: June 28, 2005.

BY THE COURT

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

Serve: C. Johansen, Esq.
W. Artus, Esq.
K. Battley, Trustee
U. S. Trustee

06/28/05

³Richtmeyer, Richard, *Hot but cooling*, Anchorage Daily News, January 25, 2004, p. E-1.