

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re: Case No. A04-00716-DMD

BEN A. THOMAS, INC.,

Debtor.

Chapter 11

WASSER & WINTERS COMPANY,

Plaintiff,

v.

RICHE BROS. AUCTIONEERS
(AMERICA), INC.,

Defendant.

Adversary No. A04-90044-DMD

Filed On
8/29/05

MEMORANDUM REGARDING RECONSIDERATION

In addition to the arguments presented by Mr. Gilmore in his briefs, there is another reason why this court's order and judgment of June 15, 2005 must be vacated. Fundamentally, plaintiff's complaint is a state law contract dispute. It presents a classic *Marathon*¹ situation over which a bankruptcy court has no jurisdiction. This court did not have jurisdiction to enter the June 15, 2005 order and judgment. They will be vacated and a motion to withdraw the reference will be filed.

DATED: August 26, 2005.

BY THE COURT

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

Serve: P. Gilmore, Esq.
M. Mills, Esq.
P. Gingras, Adv. Case Mgr. - served 8/26/05 – pg.
08/29/05

¹*Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).