

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**Joseph A. Putnam, Plaintiff, v.
Stockbridge-Munsee Indian Tribe, Defendant**
(In re Joseph A. Putnam, Rose Mary Putnam, Debtors)
Bankruptcy Case No. 82-01311-7, Adv. Case. No. A85-0282-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

February 4, 1987

Terrence J. Byrne, for plaintiff.
James M.D.R. Hawkins, for defendant.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

The Stockbridge-Munsee Indian Tribe (defendant) appears by James M.D.R. Hawkins and has filed a request for an extension of time to appeal the judgment that was entered in this proceeding on November 7, 1986. The debtor appears by Terrence J. Byrne and has petitioned the court to deny the defendant's motion for leave to appeal. The court has reviewed the file, motion, and supporting affidavit in this matter. It is the opinion of the court upon the aforementioned that the request for an extension of time for appeal should not be granted.

The debtor initiated the above entitled adversary proceeding on September 25, 1985, alleging that he had been subject to discriminatory treatment in contravention of § 525 of the Bankruptcy Code. The defendant objected to the complaint and moved to dismiss the complaint arguing that the Bankruptcy Court lacked jurisdiction to hear the matter. The Bankruptcy Court denied the defendant's objection and the motion to dismiss by order of the Honorable William H. Frawley dated January 16, 1986. The defendant appealed the decision of the Bankruptcy Court to the District Court for the Western District of Wisconsin. The District Court by order of the Honorable John C. Shabaz dated April 14, 1986, affirmed and adopted the decision of the Bankruptcy Court.

On September 29, 1986, a trial was held in this proceeding to determine whether the defendant had discriminated against the debtors in contravention of § 525 of the Bankruptcy Code. The court determined, as the finder of fact, that the defendant had wrongfully discriminated against the debtors. The court made this finding by order dated September 29, 1986. The order awarded attorney fees and costs in the matter. On October 24, 1986, the debtor requested that an additional \$105.00 of expenses

for costs of a subpoena be allowed. The defendant did not object to the bill of costs and an order was entered awarding same on November 6, 1986.

The debtor, pursuant to the decision of the court of September 29, 1986, submitted a judgment to be signed by the court and which was in fact signed on November 7, 1986. The defendant filed a notice of appeal and request for extension of time to file notice of appeal pursuant to Bankruptcy Rule 8002(c) on November 24, 1986. The court notes that the defendant does not request an extension of time to appeal the Bankruptcy Court's decision and order of September 29, 1986, which was duly docketed on same date. Said order awarded attorney's fees and costs against the defendant, and ordered the attorney for the debtor to prepare and submit a judgment for signature. The court further notes that the time for appealing the order of September 29, 1986, has expired. Instead, the defendant only requests an extension of time to file a notice of appeal from the judgment entered on November 7, 1986.

The standard by which this request should be determined is provided by Bankruptcy Rule 8002(c).

(c) Extension of Time for Appeal. The bankruptcy court may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect if the judgment or order appealed from does not authorize the sale of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code. (emphasis added)

A notice of appeal must be filed within 10 days of the date of the entry of the judgment or order appealed from. Bankruptcy Rule 8002(a).

In the matter at hand, the defendant did not file within the required 10 day period of time. However, the defendant did file within 20 days after the deadline and the court may grant the extension of time upon an affirmative showing of excusable neglect. It is the opinion of the court that the defendant did not make a sufficient showing of excusable neglect that would allow the court to grant an extension of time to file a notice of appeal.

The court also notes that the decision to grant an extension of time for appeal is discretionary with the court. It is the opinion of the court, given the history and nature of this case, that even if the defendant had made a showing of excusable neglect, the court still should not grant the request for an extension of time for appeal.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.