

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

12-27-79  
WHF

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In the Matter of

IN BANKRUPTCY

ARTHUR CONTI, d/b/a  
Conti Farms

No. 78-1311 Vol.

and

AND

ROSE CONTI, d/b/a  
Conti Farms,

No. 79-1312 Vol.

Bankrupts  
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Trustee having petitioned the Court for authority to abandon two claims being causes of action, on the bankruptcy schedule B-3 of the above named bankrupts and reading as follows, to-wit:

Malpractice lawsuit (legal) William Mattka, 1719 Main Street, Whitehall, WI 54773 potential claim of legal malpractice as a result of the various mismanagement, conflict of interest situation and general malfeasance of property; claim has not been commenced yet by Attorney Edmund Nix, 314 Rivoli Bldg, La Crosse, WI 54601 has done the preliminary background and investigation and it is believed he is willing to proceed thereon. Market value of malpractice suit is \$500,000.00.

A fraud and negligent misrepresentation and misapplication of funds against State Bank of Independence, Independence, Wisconsin, a banking corporation - potential claim against the bank for fraud, misrepresentation, negligent misrepresentation and misapplication of funds - \$500,000.00.

on the basis that said items are burdensome to said estate and that the Trustee does not have sufficient funds with which to pay an attorney to prosecute said claims and the said William A. Mattka having duly filed an application for an order of private sale without further notice to him of the claim for \$250.00, and having objected to the abandonment by the Trustee of the said claim coming on for hearing before the Court after notice to all of the creditors in the said proceedings and the only parties appearing being the State Bank of Independence by Whyte & Hirschboeck, its attorneys, by Richard E. Braun, and William A. Mattka, named in said claim appeared by Frederic J. Berns, his attorney, and Mr. Braun having offered the sum of \$100.00 for sale of claim against the State Bank of Independence; and the Trustee having appeared in person and the Court having heard the testimony of said Trustee, and duly considered arguments of counsel; and the attorneys each having filed a brief in said matter; and the

Court being fully advised in the premises, FINDS

1. That the said Trustee on the 1st day of November, 1979, filed said Petition for Abandonment of said claims;

2. That said William A. Mattka named in said petition has filed the following claims:

Claim #12 in the amount of \$12,238.20 (Unsecured)

Claim #13 in the amount of \$65,000.00 (Unsecured)

and the State Bank of Independence has filed the following claims:

Claim #20 in the amount of \$71,193.92 (Judgment  
Creditor)

Claim #21 in the amount of \$30,153.93 (Judgment  
Creditor)

Claim #22 in the amount of \$12,470.65 (Judgment  
Creditor)

Claim #23 in the amount of \$406,244.54 (Judgment  
Creditor)

Claim #24 in the amount of \$154,642.50 (Unsecured)

3. That the Summary of Debts and Assets shows total debts of \$3,464,122.06 and assets of \$1,606,245.00 and exempt property of \$526,245.00;

4. That most of said property of said estate is encumbered and the real estate has been duly abandoned by an order of the Court pursuant to notice to creditors.

5. That the only sums coming into the hands of said Trustee to date is the sum of \$1,980.00;

6. That the total of the two bids amounted to \$350.00.

7. That said Trustee has duly investigated said claims on schedule B-3 as duties of Trustee provides and he has been informed by one Edmund Nix, an attorney of La Crosse, Wisconsin, who believes that there is sufficient evidence to institute litigation and proceedings on said claims;

8. That the said attorney who has done the preliminary work decided and requests before proceeding, a retainer of \$12,000.00 to proceed in said matter.

9. That there are no funds to pay said attorney.

10. That the contention of the two creditors, Mr. Mattka and the State Bank of Independence that the claims must be sold and cannot be abandoned is not well-founded;

11. That to permit the sale and disposition of the causes of action by the respective possible defendants for the sum of \$350.00 would be a travesty of justice in the worst sense;

12. That said sums are not sufficient to justify authorizing said sales and are de minimis in nature;

13. That the sale power in bankruptcy should not in equity be used to defeat claims such as involved herein;

14. That said claims may be the personal rights of the bankrupts and exempt which determination can be made after the litigation is completed;\*\*

15. That the bankrupts believe they can arrange for prosecution of said claims which Trustee is financially unable to do;

16. That the application for approval of sale be denied and dismissed;

17. That said Bankruptcy Court is a Court of equity;

18. That it appears from the Court's examination of the law\* relative to abandonment of assets and the sale of assets, that said sale is not necessary, and that the Court can abandon the two claims to the bankrupts to proceed with litigation on the provision that the Court will later determine the interest the bankrupt estate may have in any funds realized from said actions; and as

#### CONCLUSIONS OF LAW

An order be entered granting the abandonment and denying the application to sell and reserving to the Court the ruling on any interest in proceeds of said claims.

NOW, THEREFORE, IT IS ORDERED:

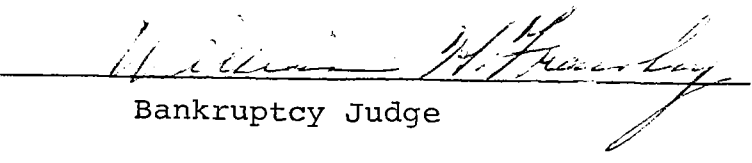
1. That the petition of the Trustee to abandon the claims as above described on schedule B-3 is hereby granted and reserving to the Court a later determination of any interest to

the bankruptcy estate therein.

2. That the application of the creditors, Mr. Matka and the State Bank of Independence for sale of said claims is hereby denied and dismissed.

3. That no costs be taxed to either party.

Dated this 27th day of December, 1979, at Eau Claire, Wisconsin.

  
Bankruptcy Judge

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\*Bankruptcy Act & Rules, Sec. 70  
Colliers Bankruptcy Manual, Vol. 1, Pages 11-11  
Vol. 3, Pages 467, 469  
Cowans Bankruptcy Law and Practice, Vol. 2, Page 300  
Am. Jur. 2nd, Vol. 9, Pages 634, 658, 702-707  
1979 Pocket Part, Pages 118-119

\*\*Peeples v. Sargent, 77 Wis. 2d, 612  
In Re Buda, 323 F. 2d, 748

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

12-26-79  
WHF

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In the Matter of

IN BANKRUPTCY

ARTHUR CONTI, d/b/a  
Conti Farms

No. 78-1311 Vol.

and

ROSE CONTI, d/b/a  
Conti Farms,

No. 78-1312 Vol.

Bankrupts

STATE BANK OF INDEPENDENCE,  
a Wisconsin banking corporation,

Plaintiff

vs.

ARTHUR CONTI AND  
ROSE CONTI,

Defendants  
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The State Bank of Independence, a Wisconsin banking corporation, having moved the Court for an order compelling testimony from Arthur Conti at an adjourned hearing in the above entitled matter held on the 26th day of July, 1979, in reference to Mr. Conti's personal background and other information prior to 1972, and the Court having sustained the objection on behalf of Mr. Conti based on the immunity and privilege under Rule 501 of the Federal Rules of Evidence which relate to the identity of an informer, and such privilege having been claimed by a duly authorized representative of the United States of America, and the Court having considered the pleadings and the proceedings and briefs filed herein and arguments of counsel:

NOW, THEREFORE, IT IS ORDERED that the plaintiff's motion is granted in part and denied in part as follows:

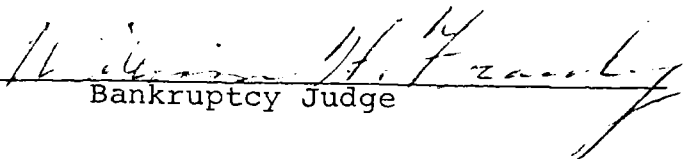
1. That the immunity and privilege requested by a representative of the Federal Government related to Arthur Conti and his identity under the informer's statute prior to 1972 and more specifically his personal background and other information

relating thereto is hereby granted.

2. That Arthur Conti is directed to further appear at such date and time to be hereinafter set by the Court to continue the examination commenced on the 26th day of July, 1979, and answer any and all questions of the said plaintiff to the extent that they are relevant to the lawsuit or reasonably material thereto, with the exception that he will not be required to answer any questions with respect to his personal background prior to 1972.

IT IS FURTHER ORDERED that the objection on behalf of Mr. Conti by his counsel in refusing to answer the questions on behalf of the plaintiff, State Bank of Independence at the time of the July 26, 1979 hearing are hereby sustained.

Dated at Eau Claire, Wisconsin, this 26th day of December, 1979.

  
Bankruptcy Judge