

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

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MICHAEL WAYNE KOCHINSKI, d/b/a  
Men's Wear 1000; f/d/b/a Mandate;  
Country Roads & Oak Shoppe Ltd.  
ELIZABETH KOCHINSKI,  
Debtors

In Bankruptcy:

No. WF7-82-00274 ✓

JOHN CORY,

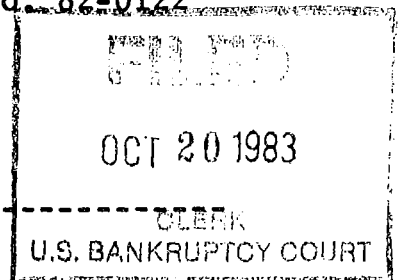
Plaintiff

vs.

Adversary No. 82-0122

MICHAEL WAYNE KOCHINSKI,

Defendant.



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FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
JUDGMENT DENYING DISCHARGEABILITY OF DEBT

This matter having come on for trial before the Court on June 14, 1983; and the plaintiff appearing in person and by his attorney, Mark A. Seidl; and the defendant appearing in person and by his attorney, David J. Worzalla; and the Court having heard the evidence and considered the arguments of counsel and the briefs of the respective parties, and all the filings and proceedings herein, FINDS:

1. That the plaintiff is an adult resident of 1524 Plover Street, Stevens Point, Portage County, Wisconsin 54481.

2. That the defendant is an adult and resides at 1800 Michigan Avenue, Stevens Point, Portgage County, Wisconsin 54481.

3. That in the fall of 1979 the defendant, Michael Wayne Kochinski, and non-party, Gary Omernick, were the shareholders, officers and directors of Oak Shoppe Ltd., a Wisconsin corporation which owned three men's clothing stores, including Men's Wear 1000 in Stevens Point, Wisconsin (Stevens Point store).

4. That in June 1979 the plaintiff approached one Mr. Boson of Northway Mall Associates seeking employment at the Marshfield mall as a manager of a men's clothing store.

5. That the plaintiff and the defendant were acquainted in that the two of them had worked in a men's clothing store in Stevens Point sometime prior to 1979.

6. That a series of meetings were held which resulted in an agreement that the plaintiff would manage the Marshfield store, which would be a new business to commence in the spring of 1980.

7. That plaintiff left a full-time employment to work in the Oak Shoppe Ltd. store until the Marshfield store was opened and was paid a salary therefor.

8. That on November 12, 1979, the plaintiff, the defendant and Gary Omernick signed a written agreement, as follows:

TO WHOM IT MAY CONCERN:

This contract is to substantiate an agreement between Michael Kochinski, Gary Omernick, and John Cory this day November 9, 1979 to manage and be part owner of Men's Wear 1000's Marshfield store to open on or about March 1, 1980. Mr. Cory's contribution (\$15,000) will be used for his training and will solidify his percentage (10-15%) of the business.

His salary shall be \$17,500 per annum plus profit sharing on an equal percentage. The exact percentage will be verified on the day the final business note is signed on or about April, 1980.

Mr. Cory's duties shall be commensurate with the duties of a store manager with final approval of Mr. Kochinski and Mr. Omernick. Mr. Kochinski and Mr. Omernick will provide Mr. Cory with a family health plan equal to the policy provided to other key store personnel at no extra charge. Any drastic wavering from this plan shall constitute a forfeiture on both parties. There shall be a buy out agreement to be named at the loan closing date.

s/  
\_\_\_\_\_  
Michael W. Kochinski

s/  
\_\_\_\_\_  
Gary Omernick

s/  
\_\_\_\_\_  
John Cory

Witnessed this 12th day of November, 1979. s/\_\_\_\_\_  
Marie E. Mayek

9. That the plaintiff obtained a loan of \$15,000 from Tri-County State Bank in Marshfield and delivered his check, made payable to "Mike Kochinski", on or about the 9th day of November, 1979, to defendant.

10. That the check was to be in payment of the \$15,000 described in the above written agreement.

11. That a separate business was never established for the Marshfield store.

12. That the check was not held in escrow until the establishing of the Marshfield store but was deposited in the account of Oak Shoppe Ltd. at Citizens National Bank of Stevens Point.

13. That on the 13th day of November, 1979, the date that said check was so deposited by the defendant, the Oak Shoppe Ltd checking account was overdrawn in the amount of \$42,954.30.

14. That Oak Shoppe Ltd never had an interest in the Marshfield store.

15. That the Marshfield store opened on April 15, 1980, with sundry loans, transfers of merchandise and co-mingling from the Oak Shoppe Ltd and the parties.

16. That in May of 1981 the store was closed because of financial problems.

17. That Thomas Bertz, the attorney representing the defendant and Mr. Omernick, recommended that no separate corporation be formed for the Marshfield store and there were no shares or interest issued to the plaintiff for his \$15,000 contribution.

18. That plaintiff made numerous demands of the defendant Kochinski to return the payment of \$15,000 and that prior to the commencement of this action two payments were made to the plaintiff in the total sum of \$450.00, by the defendant.

19. That said debt is not dischargeable under the Bankruptcy Act.

20. That numerous other items of dealings were brought out in the testimony, none of which it is necessary to enumerate herein, or various claims by each of the parties relative to said additional evidence.

#### CONCLUSIONS OF LAW

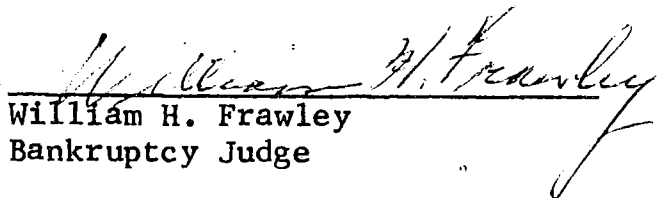
That the Court enter an order determining said debt

due the plaintiff from the defendant in the sum of \$15,000.00, less \$450.00 paid thereon, to be non-dischargeable under the Bankruptcy Act and that said plaintiff recover judgment herein for said sum of \$14,550.00 with interest to commence as of the date of this judgment.

NOW, THEREFORE, IT IS ORDERED: That the debt in the sum of \$14,550.00 found to be due the plaintiff from the defendant is not dischargeable under the Bankruptcy Act and that said plaintiff be granted judgment in the sum of \$14,550.00 with interest from the date of this decision; that no costs or attorney fees be allowed to any of the parties.

Dated: October 20, 1983.

BY THE COURT:

  
William H. Frawley  
Bankruptcy Judge