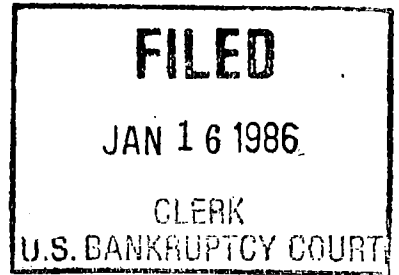


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

JOSEPH A. PUTNAM  
ROSE MARY PUTNAM

Case Number:

WF7-82-01311

Debtors.

JOSEPH A. PUTNAM,

Plaintiff,

Adversary Number:

v.

85-0282-7

U. S. DEPARTMENT OF INTERIOR,  
STOCKBRIDGE-MUNSEE INDIAN TRIBE,

Defendants.

OPINION AND ORDER

The debtor filed this adversary proceeding against the U.S. Department of Interior, Stockbridge-Munsee Indian Tribe (defendant), claiming that the defendant has wrongfully denied the debtor's application for a permit to cut timber and clear land around his home on the Stockbridge-Munsee Indian Reservation. The complaint further alleges that same application was denied because of a debt owed to the defendant that was discharged in these Chapter 7 proceedings on November 29, 1982. The debtor claims that this was in violation of section 525 of the Bankruptcy Code and prays for relief pursuant to Rule 7065 of the Bankruptcy Rules and Rule 65 Federal Rules of Civil Procedure.

The defendant has moved this court to dismiss the complaint. The defendant maintains that it is protected by the doctrine of sovereign immunity and therefore, (1) the court lacks subject matter jurisdiction under 12(b)(1) Federal Rules of Civil Procedure, and 2) the complaint fails to state a claim upon which relief can be granted under 12(b)(6) Federal Rules of Civil Procedure. These rules are made applicable to the Bankruptcy Code by Rule 7012(b) Bankruptcy Rules.

Terrence J. Byrne represents the debtor and Kimberly M. Vele appears for the defendant. The issue has been submitted for determination on briefs and affidavit and therefore this shall be treated as a Rule 56 Federal Rules of Civil Procedure motion for summary judgment. Fed. R. Civ. P. 12(b). The sole and narrow issue being decided is whether this court has jurisdiction to hear this case given the sovereign status of the Stockbridge-Munsee Indian Tribe.

The jurisdiction of this court is initially provided in 28 U.S.C. § 1471. Specifically, the bankruptcy court has original jurisdiction of all proceedings arising under Title 11 or arising in or related to cases under Title 11.

The Stockbridge-Munsee Indian Tribe is a federally reorganized Indian Tribe, reorganized under the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq. 47 Fed. Reg. 227 (Nov. 24, 1984). As such, they are generally immune from civil suit absent authority in a federal statute or lawful consent. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). However, section 525 of

the Bankruptcy Code provides Congressional statutory authority for civil suit and therefore the defendant is not able to claim sovereign immunity.

A governmental unit is forbidden from denying a license or permit to a person solely because he has not paid a debt that is dischargeable in a case under Title 11. 11 U.S.C. § 525. A "'governmental unit' means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government."

11 U.S.C. § 101(24). This definition is meant to apply to "governmental units" in its broadest sense. Notes of Committee on the Judiciary, Senate Report No. 95-989. Indian Governments are "governmental units" as defined by the Bankruptcy Code. In re Shape, 25 B.R. 356 (Bankr. D. Mont. 1982); In re Sandmar Corp., 12 B.R. 910 (Bankr. D. N.M. 1981).

Section 106(c) of the Bankruptcy Code provides for the applicability of the Bankruptcy Code to governmental units claiming sovereign immunity. 11 U.S.C. § 106(c).

Section 106(c) of Title 11 provides that notwithstanding any assertion of sovereign immunity any provision of Title 11 applying to creditors, entities or governmental units applies to governmental units and a determination by the bankruptcy court of an issue arising under such a provision binds governmental units. Thus it is seen that if a section of Title 11 is applicable to a governmental unit, sovereign immunity is waived and the bankruptcy court has jurisdiction to hear, decide and enforce its decision.

In re Coleman AM. Moving Services, Inc., 8 B.R. 379 (Bankr. D. Kan. 1980). Given this express congressional authority the defendant has no basis for claiming sovereign immunity.

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

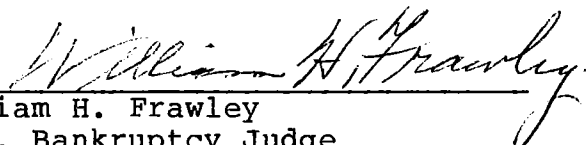
ORDER

NOW THEREFORE, IT IS ORDERED THAT the motion to dismiss the complaint is hereby denied.

IT IS FURTHER ORDERED THAT an evidentiary hearing be forthwith scheduled.

Dated: January 16, 1986.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Kimberly M. Vele  
Attorney Terrence J. Byrne