

FILED

SEP 29 1986

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

CLERK, U.S.  
BANKRUPTCY COURT  
CASE NO.                     

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In re:

Case Number:

JOSEPH A. PUTNAM  
ROSE MARY PUTNAM,

WF7-82-01311

Debtors.

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JOSEPH A. PUTNAM,

Plaintiff,

Adversary Number:

v.

85-0282-7

STOCKBRIDGE-MUNSEE INDIAN TRIBE

Defendant.

ORDER

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The court having this day entered its memorandum opinion,  
findings of fact, and conclusions of law;

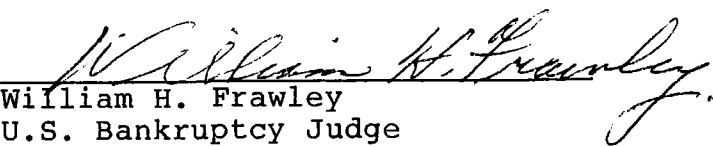
NOW, THEREFORE, IT IS HEREBY ORDERED that the Stockbridge-  
Munsee Indian Tribe shall cease discriminating against the  
plaintiff simply because he has filed for relief under the  
Bankruptcy Code.

IT IS FURTHER ORDERED that the Stockbridge-Munsee Indian  
Tribe shall pay the debtor \$3,350.00 in compensation for damages  
suffered by the plaintiff and \$2,649.18 in compensation for legal  
costs and expenses incurred in this proceeding, which amounts to

a sum of \$5,999.18, and that judgment be entered accordingly, to be prepared and submitted by plaintiff's attorney.

Dated: September 29, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

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

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JOSEPH A. PUTNAM,

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STOCKBRIDGE-MUNSEE INDIAN TRIBE,

Defendant.  
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MEMORANDUM OF LAW,  
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The plaintiff, by Terrence J. Byrne, has filed a complaint alleging that he has been subjected to discriminatory treatment in contravention of 11 U.S.C. § 525(a). The Stockbridge-Munsee Indian Tribe is the defendant in this proceeding and appears by Kimberly M. Vele. A trial was held in this matter on September 9, 1986. At said trial a substantial amount of testimony was presented. The parties have submitted the issues to the court for determination through briefs.

Initially, the court must address the issue of whether a specific exhibit presented at trial should be admitted into evidence. The debtor attempted to introduce into evidence a memorandum dated September 12, 1985, written by Attorney Vele to

the Stockbridge-Munsee Tribal Council and the Stockbridge-Munsee Forestry Committee members. The debtor was apparently handed a copy of the memorandum by a council member when he attended the special council meeting of September 12, 1986. The defendant argues that the legal memorandum was intended as a confidential attorney-client communication and should be protected by the attorney-client privilege. The court disagrees. The attorney-client privilege protects against the testimonial disclosure of a client's confidential communication to its attorney. Lilly, The Law of Evidence, § 90 (1978). "Theoretically, the privilege applies only to the client's statements and not those of the attorney." Id. The privilege is held by the client, although, an attorney can normally invoke the privilege on the client's behalf. However, a client can waive the attorney-client privilege. Id. at § 91. To the extent that Attorney Vele's legal memorandum may have been protected by the attorney-client privilege, the privilege was waived when a member of the committee published the memorandum by presenting it to the plaintiff.

On October 1, 1979, the plaintiff was issued a contract to cut timber on the Stockbridge-Munsee Reservation. The plaintiff had previously had nine logging permits from the tribe and had completed all nine satisfactorily. The debtor was not able to complete performance on the October 1 contract. The tribe assessed a \$631.43 debt against the plaintiff for failure to complete the contract. Of this amount \$200.61 was for wood actually cut but not paid for and \$430.82 was for standing timber

included in the contract but not cut by the plaintiff. On July 28, 1982, the plaintiff filed a petition for relief under Chapter 7 of the Bankruptcy Code. The plaintiff was granted a bankruptcy discharge on November 29, 1982. There were no objections filed to the plaintiff's discharge. The \$631.43 above-mentioned debt was one of the obligations that was discharged in the plaintiff's bankruptcy case.

In April of 1985, the plaintiff appeared before the Forestry Committee of the Stockbridge-Munsee Tribe to request a "clearing" permit to cut two acres of timber around his homestead, which was located on the reservation, for pasture. On June 6, 1985, the plaintiff again appeared before the Forestry Committee to request a "free use" permit to cut logs on the reservation in order to build a barn on his homestead property. Neither of the plaintiff's applications was granted. Apparently the debtor also applied for a "logging" permit in April of 1985. The debtor did not pursue this last application.

A "clearing" permit is a permit issued to tribal members which allows the members to clear land of timber around their homestead. These permits are granted if the land is to be used for: the homestead generally, expanding a farming operation, or clearing a garden area. The logging ability of an applicant is not a factor used in determining whether a clearing permit should be granted. The plaintiff intended to clear pasture land for his cattle. It was necessary for the plaintiff to purchase an addi-

tional \$350.00 of feed for his cattle because he did not have this pasture land available.

A "free use" permit is a permit issued to tribal members which allows an applicant to cut timber on the reservation for the purpose of using the timber to build on tribal property. The logging ability of an applicant is not a factor used in determining whether a "free use" permit should be granted. The plaintiff submitted application for a permit to cut 10,000 board feet of timber on the reservation in order to build a barn on his homestead. The fair market value of 10,000 board feet of rough wood is approximately \$3,000.00.

The plaintiff argues that the only reason he was denied the permits was because he had not paid the \$631.43 debt that was discharged in his bankruptcy. The defendant asserts that the applications were not granted partially due to the perception that the plaintiff was not a competent logger. The assertions of the defendant are not persuasive. The evidence revealed that the debtor was in fact a highly competent and responsible logger. The credible testimony disclosed by the witnesses indicated that the only reason the applications were not approved was the \$631.43 unpaid debt that was discharged in bankruptcy. In addition, competency as a logger and financial responsibility were not factors used in determining whether "free use" or "clearing" permits should be issued. The plaintiff met all of the qualifications necessary for the granting of the permits. The only logical explanation for the denial of the permits is that the

plaintiff had not paid the debt that was discharged in bankruptcy.

§ 525. Protection against discriminatory treatment.

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§ 499a-499s), the Packers and Stockyards Act, 1921 (7 U.S.C. §§ 181-229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1948 (57 Stat.422; 7 U.S.C. § 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C. § 525(a) (emphasis added). The Stockbridge-Munsee tribal government is a "governmental unit" within the meaning of § 525(a) of the Bankruptcy Code. Joseph Putnam v. Stockbridge-Munsee Indian Tribe, (W.D. Wis. 86-C-88-S, June 10, 1986). It is evident that the plaintiff's applications for the "free use" and "clearing" permits were not granted because the plaintiff had not paid a debt that was discharged in bankruptcy. This is clearly contrary to the provisions of 11 U.S.C. § 525(a). With respect

to the "logging" permit that the plaintiff applied for but did not pursue, the court cannot presume that the debtor would have been discriminated against had he pursued the application even though such discrimination would have been substantially likely.

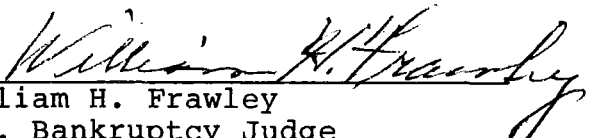
The plaintiff seeks to be reimbursed for attorney fees and costs with respect to these proceedings. The defendant argues that attorney fees should not be awarded unless exceptional circumstances exist, and that such circumstances do not exist in this instance. The plaintiff implicitly argues that a financially distressed debtor should not be required to bear the costs of vindicating his own rights. In re AM Intern, Inc., 46 B.R. 566 (Bankr. M.D. Tenn. 1985). The plaintiff also points out that a substantial portion of the attorney fees incurred by the plaintiff were a direct result of the litigiousness of the defendant, who has a staff attorney to prosecute cases. The court agrees with the plaintiff in that a debtor should not be required to bear the costs of vindicating his rights under § 525(a). Note that if the plaintiff were required to bear the costs himself, such costs would exceed the amount of the actual debt discharged. Hence, § 525 might soon become ineffectual in protecting the rights of debtors if courts fail to impose costs on parties that have clearly acted in contravention of this section of the Bankruptcy Code. 11 U.S.C. § 525(a). The plaintiff incurred \$2,699.18 in legal fees and costs in connection to these proceedings. These costs seem necessary and reasonable in every respect.



It is the conclusion of the court that the Stockbridge-Munsee Indian Tribe, in contravention of 11 U.S.C. § 525(a), has wrongfully denied the plaintiff's applications for a "clearing" permit and a "free use" permit. The plaintiff has suffered direct damages in the amount of \$3,350.00 as a result of the defendant's conduct. The plaintiff has also incurred legal costs and expenses in the amount of \$2,649.18 as a result of the defendant's conduct. The defendant should pay to the plaintiff the sum of \$5,999.18 pursuant to these findings by the court. The defendant should also discontinue discriminating against and/or persecuting the debtor simply because he exercised his statutory right as a United States citizen to file for relief under the Bankruptcy Code.

Dated: September 29, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

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