

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

In re:

JAMES LEON KUCHENMEISTER
JUDI LAVONNE KUCHENMEISTER

Debtors

JAMES KUCHENMEISTER,

Plaintiff,

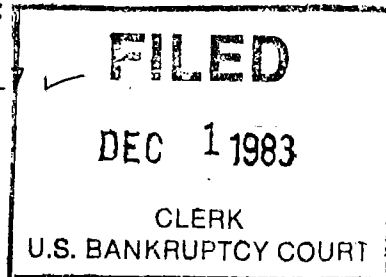
vs.

STATE OF WISCONSIN,

Defendant.

In Bankruptcy:

EF7-83-00917



Adversary No. 83-0233-7

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDERS
DENYING APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND
TO SET FOR TRIAL

The debtor-plaintiff, James Kuchenmeister, by his attorney, Kathleen M. Lindgren of Erikson & Lindgren, having filed an application for a temporary restraining order and for a preliminary injunction to prevent the State of Wisconsin from proceeding in a criminal action against him; and the State of Wisconsin, by its attorney, St. Croix District Attorney Eric J. Lundell, having

objected to said application; and hearings having been held from time to time; and a temporary restraining order having issued; and the Court having heard the arguments of counsel and considered the affidavits, briefs and pre-trial statements of the respective parties, and all the filings and proceedings herein, FINDS:

1. That the debtor, James Kuchenmeister, filed a petition for relief under Chapter 7 of the Bankruptcy Code on June 6, 1983.
2. That a criminal complaint charging the debtor with violation of Wis. Stats. sec. 943.20 (Felony Theft) was filed in St. Croix County on April 2, 1982.
3. That the debtor was arrested in the State of Texas and extradited to Wisconsin in May, 1982, upon a warrant issued, in part, by St. Croix County.
4. That the debtor was served with the St. Croix County complaint in March of 1983.
5. That the debtor was bound over for trial on the criminal matter after a preliminary hearing which was held on June 17, 1983.
6. That the St. Croix District Attorney's Office intends

to seek restitution on behalf of the criminal proceeding complainant, Howard Whiteford.

7. That this Court has authority to enjoin state criminal proceedings. In re Lare, 24 B.R. 959, 961 (D.Md. 1982) (cases collected).

8. That probability of ultimate success on the merits is a factor to be considered when issuing a temporary order. 42 AmJur2d Injunctions sec. 57 (1969)

9. That to prevail on the application for a temporary injunction against the prosecutor the debtor must show, at the least, that the prosecutor was primarily motivated by debt collection. In re Lare, supra at 961-962; cf. In re Richardello, 28 B.R. 344 (Bankr.D.Mass. 1983) (creditor-complainant enjoined from accepting restitution).

10. That the debtor appears to rely on the District Attorney's pursuit of restitution and the delay in prosecution as the only grounds for his application.

11. That these facts alone will not be sufficient to support the conclusion that the prosecutor was primarily motivated by debt collection.

CONCLUSIONS OF LAW

1. That the application for a temporary restraining order until trial should be denied.

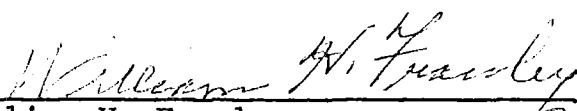
2. That said matter should be set for trial.

NOW, THEREFORE, IT IS ORDERED that the application for a temporary restraining order in the above proceedings against the State of Wisconsin be, and the same hereby is, denied.

IT IS FURTHER ORDERED that said matter be set for trial.

Dated: December 1, 1983.

BY THE COURT:



William H. Frawley
Bankruptcy Judge

APPENDIX

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FOR THE
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In re:

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Debtors

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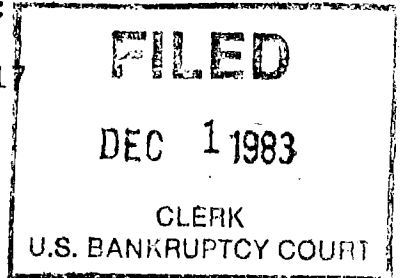
vs.

STATE OF WISCONSIN,

Defendant.

In Bankruptcy:

EF7-83-0091



Adversary No. 83-0233-7

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AND
TO SET FOR TRIAL

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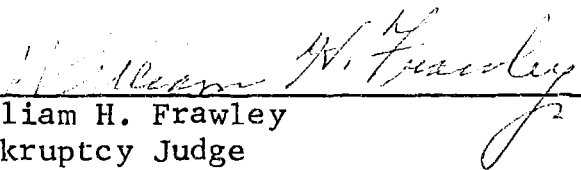
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