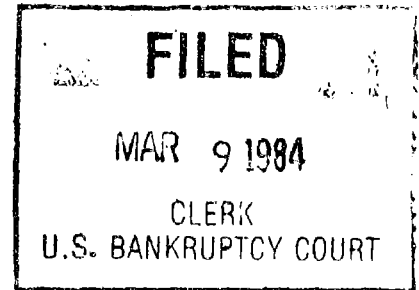


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

JAMES LEON KUCHENMEISTER
JUDI LAVONNE KUCHENMEISTER

Debtors.

Case Number:

EF7-83-00917

JAMES KUCHENMEISTER,

Plaintiff,

v.

STATE OF WISCONSIN

Defendant.

Adversary Number:

83-0233-7

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DISMISSING COMPLAINT

The debtor-plaintiff, James Kuchenmeister, by his attorneys, Erickson & Lindgren, having filed a Complaint Seeking to Enjoin Continuation of Action in Violation of Automatic Stay to prevent the State of Wisconsin from proceeding in a criminal action against him; and a trial having been held; and the debtor-plaintiff appearing by his attorneys; and the State appearing by its attorneys, the Office of the District Attorney, St. Croix County, Wisconsin;

and the Court having heard the evidence, considered the oral and written arguments of counsel, and reviewed the complete record and file herein, FINDS:

1. That the Findings in this Court's decision denying the debtor-plaintiff's application for a temporary restraining order, Kuchenmeister v. State (In re Kuchenmeister), Adversary No. 83-0233-7 (Bankr. W.D. Wisc. December 1, 1983) (set forth as an Appendix to this Decision), are relevant and res judicata in this matter.

2. That the complainant in the State criminal proceeding, Howard Whiteford, was of the impression that the St. Croix District Attorney's Office would attempt to collect money that Whiteford had paid to the debtor.

3. That the only person in the St. Croix District Attorney's Office that spoke to Mr. Whiteford concerning his criminal complaint, paralegal Deborah Dahle, did not testify.

4. That St. Croix District Attorney Eric J. Lundell testified that, while it is the policy of his office to request restitution of underlying debts, Wisconsin courts may not order restitution with a prison sentence.

5. That District Attorney Lundell further testified that, given the facts in this case, his office would, upon conviction,

probably request a prison sentence. But compare Finding 1 (Appendix Finding 6) and Finding 4.

6. That the District Attorney's Office and the debtor have had no contact regarding restitution.

7. That, as the debtor seeks no relief from the actions of the criminal complainant, proffered evidence regarding the complainant's the/motivation is irrelevant. See In re Richardello, infra Appendix Finding 9; cf. In re Van Riper, 25 B.R. 972, 976 (Bankr. W.D.Wis. 1982) ("The question in the present case is not whether a criminal prosecution should be enjoined, but rather, whether . . . a creditor may . . . collect a debt by use of the criminal process . . .").

8. That, as the debtor has not been convicted of the alleged criminal acts, proffered evidence regarding the possibility and propriety of court ordered restitution is irrelevant. See generally Barnette v. Evans, 673 F.2d 1250, 1252 (11th Cir. 1982) (adopting the prosecutor's characterization of similarly speculative injury to the debtor: "if we had some ham, we could have some ham and eggs, if we had some eggs.").

9. That, as this Court's authority to enjoin criminal prosecutions is limited to cases involving abuse of prosecutorial discretion, see Appendix Finding 9, proffered evidence regarding

the wisdom--as opposed to the propriety--of prosecuting the debtor is irrelevant.

10. That the debtor has not shown that the District Attorney of St. Croix County was primarily motivated by debt collection.

CONCLUSION OF LAW

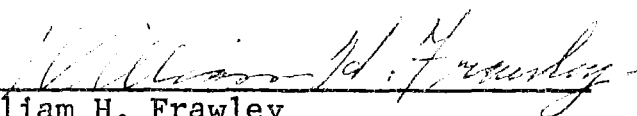
That the criminal prosecution of the debtor in St. Croix County, Wis should not be enjoined.

ORDER

IT IS ORDERED THAT the Complaint Seeking to Enjoin Continuation of Action in Violation of Automatic Stay in the above captioned matter be, and the same hereby is, dismissed without costs.

Dated: March 9, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge