

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

IN RE:

IN BANKRUPTCY NO.:

CARL F. AND CAROL M. KREYER,

MM7-90-01260

Debtors.

IN ADVERSARY PROCEEDING NO.:

JOHN ELFELT,

90-0189-7

Plaintiff,

v.

CARL F. AND CAROL M. KREYER

Defendants.

FILED

JAN 24 1991

STATEMENT OF REASONS:

CLERK, U.S.
BANKRUPTCY COURT
CASE NO. _____

On May 7, 1990 the debtors, Carl F. and Carol M. Kreyer, filed a chapter 7 petition. In Schedule B-1 -- Real Property, the debtors listed a parcel of land located in Columbia County, Wisconsin. Shortly thereafter, on July 13, 1990 the trustee of the estate, Jerry J. Armstrong, filed a "no-asset" report in which he stated that he had neither received nor paid any money on account of the estate, and that he had made diligent inquiry regarding all property belonging to the estate and found that there were "no assets in the estate which: (1) are not either inconsequential in value or burdensome to the estate, or (2) would be reasonable to administer and have value over and above the exemptions claimed by the debtor(s) and to which the undersigned makes no objection."

On August 15, 1990 the plaintiff, John Elfelt, filed the pending adversary proceeding, seeking to quiet title to the Columbia County real estate on which debtors live. The Elfelts claim to have purchased the property at a tax sale and have sought in this and prior law suits to evict the debtors. On January 8,

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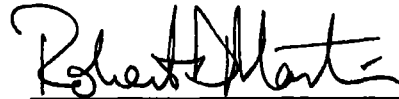
1991 the debtors challenged this court's subject matter jurisdiction over the dispute. On January 18, 1991 the debtor's filed a "notice of withdrawal of jurisdictional challenge." Notwithstanding the withdrawal of the debtors' challenge to jurisdiction, this court, pursuant to FRCP 12(h) and Bankruptcy Rule 7012(b), must dismiss an action "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter." The Seventh Circuit Court of Appeals has provided specific guidance to this court on the need to avoid construing its jurisdiction overbroadly. Matter of Kubly, 818 F2d 643 (7th Cir 1987).

At the outset of the debtors' chapter 7 case, this court possessed subject matter jurisdiction over the property listed in the debtors' schedules. However, jurisdiction does not follow property, and when the trustee of the estate disclaimed all interest in the scheduled property, the Columbia County property left the estate and this court's jurisdiction over the Columbia County property lapsed. See Matter of Xonics, Inc., 813 F2d 127, 131 (7th Cir 1987), citing In re Chicago, Rock Island & Pacific Railroad, 794 F2d 1182 (7th Cir 1986).

"There is jurisdiction under [28 USC] § 157(c)(1) only when the dispute is 'related to' the bankruptcy--meaning that it affects the amount of property available for distribution or the allocation of property among creditors." Xonics, 813 F2d at 131. Resolution of the pending adversary proceeding would affect neither payments to the debtors' other creditors, nor the administration of the

debtors' estate. This court therefore lacks jurisdiction to resolve the controversy, and Adversary Proceeding No. 90-0189-7 is accordingly dismissed.

Dated January 24, 1991.

A handwritten signature in cursive script, appearing to read "Robert D. Martin", written over a horizontal line.

ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

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ORDER:

**CLERK, U.S.
BANKRUPTCY COURT
CASE NO. _____**

The court having this day entered its statement of reasons in the above-entitled matter,

IT IS HEREBY ORDERED that Adversary Proceeding No. 90-0189-7 is dismissed for lack of subject matter jurisdiction.

Dated January 24, 1991.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

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Plaintiff,

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STATEMENT OF REASONS AND ORDER:

CARL F. AND CAROL M. KREYER,

Defendants.

Copies of this statement of reasons and order were mailed to the following on January 24, 1991:

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