

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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November 18, 1998

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Sioux Falls, South Dakota 57104

Thomas A. Blake, Esq.
Counsel for Defendant-Debtor
505 W. 9th St., #201
Sioux Falls, South Dakota 57104

Subject: *David Benning v. Gasper M. Karunaratne*
(*In re Karunaratne*); Adversary No. 98-4051
Chapter 13; Bankr. No. 98-40524

Dear Counsel:

As discussed in Defendant-Debtor's Answer, Plaintiff's Complaint may be pre-mature. Since Debtor is in a Chapter 13, debts described under 11 U.S.C. § 523(a)(2)(A) may be discharged upon completion of the confirmed plan. The only debts under § 523(a) that are excepted in a Chapter 13 discharge are those described in (a)(5), (8), and (9). See 11 U.S.C. § 1328(a).

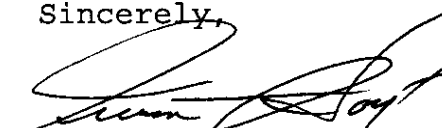
If Debtor's case converts to a Chapter 7, all creditors will be given the opportunity to file appropriate Chapter 7 discharge and dischargeability complaints. Those deadlines do not expire during the Chapter 13.

Therefore, I intend to dismiss Plaintiff's Complaint without prejudice absent persuasive argument and supporting case law from Plaintiff that indicates this § 523(a)(2)(A) adversary proceeding should continue while Debtor is in Chapter 13. Any response to this initial letter decision by Plaintiff should be filed by December 4, 1998. Defendant-Debtor may file a response within five days of service of any response by Plaintiff. If Plaintiff does not timely respond, I will presume that he has consented to the dismissal without prejudice.

The December 1, 1998 pre-trial will be canceled.

Sincerely,

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

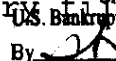

Irvin N. Hoyt
Chief Bankruptcy Judge

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

NOV 19 1998

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INH:sh

CC: adversary file Charles L. Nail, Jr., Clerk original; copies to parties in U.S. Bankruptcy Court District of South Dakota
By  Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

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Case: 98-04051 Form id: 122 Ntc Date: 11/19/1998 Off: 4 Page : 1
Total notices mailed: 3

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