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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February 15, 2002

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Subject: *American Family Insurance and Rhonda Opsahl v. Bruce A. Williamson (In re Williamson)*, Adversary No. 01-1019; Ch. 7; Bankr. No. 01-10216

Dear Counsel:

The matter before the Court is the Motion for Summary Judgment filed by Defendant-Debtor and Plaintiffs' response. This is a core proceeding under 28 U.S.C. § 157(b)(2). As set forth below, the Court concludes that Defendant-Debtor's Motion will be granted.

Summary of facts. Rhonda Opsahl and her insurer, American Family Insurance, obtained a default judgment against Bruce Williamson for $9,839.85 in December 2000. Under the compliant Opsahl and American Family Insurance had alleged that Williamson had caused an auto accident with Opsahl when he failed to yield his vehicle to hers. The damages sought were for the damages to Opsahl's vehicle.

In July 2001, Williamson filed a Chapter 7 petition in bankruptcy. American Family and Opsahl then commenced this adversary proceeding seeking a declaration that their pre-petition judgment was nondischargeable under 11 U.S.C. § 523(a)(6) as one arising from a willful and malicious injury.

Defendant-Debtor Williamson moved for summary judgment on the grounds that, as a matter of law, the facts as alleged by American Family and Opsahl, do not fall under § 523(a)(6). He cited several cases in support of his argument, including *Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998). In Kawaauhau*, the Court held that a nondischargeable "willful" act under § 523(a)(6)

> takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.

Id. at ___, 118 S.Ct. at 977 (emphasis in original).

Defendant-Debtor Williamson responded by brief. He cited several case, all older than the *Kawaauhau* decision. In particular, Williamson urged the Court to follow *Moore v. Pechar (In re Pechar)*, 78 B.R. 568 (Bankr. D. Neb. 1987). In *Pechar*, the debtor-driver operated his car knowing that he did not have liability insurance coverage. The Bankruptcy Court found that this act was willful, that is, he wilfully drove his car with the knowledge he did not have insurance. The Bankruptcy Court also found that the driver had acted maliciously in that he knowingly did not "protect [through insurance] those innocent persons who would be injured by his driving." *Id.* at 570. Williamson asked the Court to distinguish *Kawaauhau* on the facts.

Summary judgment standard. Summary judgment is appropriate when "there is no genuine issue [of] material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Bankr.P. 7056 and Fed.R.Civ.P. 56(c). An issue of material fact is *genuine* if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992)(quotes therein). A genuine issue of fact is *material* if it might affect the outcome of the case. *Id.* (quotes therein).

The matter must be viewed in the light most favorable to the party opposing the motion. *F.D.I.C. v. Bell*, 106 F.3d 258, 263 (8th Cir. 1997); *Amerinet, Inc. v. Xerox Corp.*, 972 F.2d 1483, 1490 (8th Cir. 1992)(quoting therein *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587-88 (1986), and cites therein). The non moving party is entitled to all reasonable inferences that can be drawn from the evidence without resorting to speculation. *P.H. v. School District of Kansas City, Missouri*, 265 F.3d 653, 658 (8th Cir. 2001)(quoting therein Anderson v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Only disputes over facts that might affect the outcome of the suit under the applicable law properly preclude the entry of summary judgment. *P.H. v. School District*, 265 F.3d at 658.

The movant meets his burden if he shows that the record does not contain a genuine issue of material fact and he identifies that part of the record that bears out his assertion. *Handeen v.*

LeMaire, 112 F.3d 1339, 1346 (8th Cir. 1997)(quoting therein *City of Mt. Pleasant v. Associated Electric Coop*, 838 F.2d 268, 273 (8th Cir. 1988). No defense to an insufficient showing is required. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 156 (1970) (cite therein); *Handeen*, 112 F.3d at 1346. If the movant meets his burden, however, the non movant, to defeat the motion, "must advance specific facts to create a genuine issue of material fact for trial." *Bell*, 106 F.3d at 263 (quoting *Rolscreen Co. v. Pella Products of St. Louis, Inc.*, 64 F.3d 1202, 1211 (8th Cir. 1995)). The non movant must do more than show there is some metaphysical doubt; he must show he will be able to put on admissible evidence at trial proving his allegations. *Bell*, 106 F.3d 263 (citing *Kiemele v. Soo Line R.R. Co.*, 93 F.3d 472, 474 (8th Cir. 1996), and *JRT, Inc. v. TCBY System, Inc.*, 52 F.3d 734, 737 (8th Cir. 1995)).

Discussion. The definition of "willful" as espoused in *Pechar* has been replaced by the definition set forth in *Kawaauhau*. Moreover, the District Court for the District of Nebraska reversed the Bankruptcy Court's decision in *Pechar*. *See Pechar v. Moore*, 98 B.R. 488 (D. Neb. 1988)(it was not the debtor's failure to procure insurance that caused the accident). Thus, *Pechar* is no longer good law.

While Williamson has admitted fault in causing the accident, there simply is no evidence that he intentionally caused the accident or intentionally damaged Opsahl's car. Thus, under the facts as pled, Opsahl's judgment did not arise from a willful injury to property and her claim is not protected from discharge by § 523(a)(6). Williamson's Motion for Summary Judgment will therefore be granted.

The Court will enter an appropriate order. The pre-trial conference set for February 19, 2002, will be canceled.

Sincerely,

Irvin N. Hoyt
Bankruptcy Judge

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.

FEB 15 2002

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By

INH:sh

CC: adversary file (docket original; serve parties in interest by fax)

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

FEB 15 2002

Charles L. Nail, Jr., Clerk

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