

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

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

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February 3, 1997

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Subject: **United States v. Danielson**
(In re Dan E. Danielson),
Adversary No. 96-4007;
Chapter 13; Bankr. No. 96-40163

Dear Counsel:

The matters before the Court are the parties' cross motions for summary judgment. These are core proceedings under 28 U.S.C. § 157(b)(2). This letter decision and accompanying judgment shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that a criminal restitution order, now enforceable as a civil judgment, is non dischargeable under 11 U.S.C. § 1328(a)(3).

Summary of Case. Debtor plead guilty to making a false statement to the Small Business Administration. As part of the August 12, 1991 criminal judgment, Debtor was ordered to pay restitution of \$65,835.36. On March 24, 1992, the criminal court amended the criminal sentence by directing Debtor to pay \$400.00 per month in restitution "until further order of the Court." On August 30, 1995, the government obtained a civil judgment against Debtor for the balance due of \$46,795.36. On September 29, 1995, an attorney for the government then filed a satisfaction for the criminal judgment that stated the criminal judgment had been superseded by the civil judgment.

Both parties have filed cross motions for summary judgment and briefs. The government argues that the civil judgment still represents the criminal court's restitution order and that the debt cannot be discharged under § 1328(a)(3). Debtor argues that the

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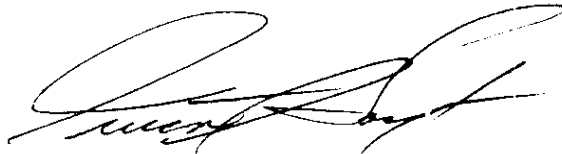
restitution debt was satisfied and that the civil judgment is dischargeable.

Discussion. Section 3663 of Title 18 of the United States Code governs restitution orders. Subsection (h) provides that the United States may enforce an order of restitution in one of two ways. The government may collect the restitution in the same manner as fines are collected under Chapter 229 of Title 18 or it may collect the restitution "in the same manner as a judgment in a civil action[.]" 18 U.S.C. §§ 3663(h)(1)(A) and (h)(1)(B); see *Auclair v. Sher*, 63 F.3d 407, 409 (5th Cir. 1995). Subsection (h) of § 3663 was in place when Debtor was convicted and when the government transformed its criminal judgment into a civil judgment.

When the Court considers 18 U.S.C. § 3663(h)(1)(B) and 11 U.S.C. § 1328(a)(3) in a harmonious light, as it must, *Nichols v. Rysavy*, 809 F.2d 1317, 1331 (8th Cir. 1987) (cites therein), it is clear that the two statutes can be read to give full effect to both. Section 1328(a)(3) of Title 11 states that a debt for "restitution" included in a criminal sentence is non dischargeable. Section 1328(a)(3) does not concern itself with how the restitutory debt is enforced. Section 3663(h)(1)(B) states that restitution may be enforced under a civil judgment. Therefore, although the method of enforcing the Court's restitution order was transformed from a criminal judgment to a civil judgment, the debt is still one for restitution that was included in Debtor's criminal sentence and it remains non dischargeable under § 1328(a)(3).

A summary judgment for the Defendant shall be entered.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: adversary file (docket original; copies
to parties in interest)

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

FEB 04 1997

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

Case: 96-04007 Form id: 122 Mtc Date: 02/04/97 Off: 4 Page : 1
Total notices mailed: 5

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