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

TELEPHONE (605) 224-0560 FAX (605) 224-9020

November 29, 2001

John E. Harmelink, Esq. Counsel for Debtors Post Office Box 18 Yankton, South Dakota 57078

Stephanie C. Bengford, Assistant United States Attorney Counsel for the Farm Service Agency Post Office Box 5073
Sioux Falls, South Dakota 57117

Subject: In re Bradley M. and Debra J. Doerr, Chapter 7; Bankr. No. 01-40036

Dear Counsel:

The matter before the Court is the Motion to Approve Stipulation to Revoke Discharge Between Debtors and the United States of America. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, the Court concludes that the Motion shall be denied because the stipulation that the parties want approved is unnecessary.

Summary. On January 11, 2001, Bradley M. and Debra J. Doerr ("Debtors") filed a Chapter 7 petition. On the Statement of Intention filed January 26, 2001, Debtors indicated that they intended to reaffirm certain secured debts with the Farm Service Agency ("FSA"). On February 26, 2001, Debtors and their attorney of record in the bankruptcy case signed a "New Promise to Pay" with FSA, which contained the disclosures and other information required for an enforceable reaffirmation agreement under 11 U.S.C. 524(c). With his signature, Debtors' attorney made the several declarations required by \$ 524(c)(3). Debtors' general order of discharge was entered April 16, 2001. On May 23, 2001, Debtors filed the New Promise to Pay that had been signed and dated by Debtors and their attorney on February 26, 2001.

On September 14, 2001, Debtors and FSA filed a Stipulation to Revoke Discharge Between Debtors and the United States of America, and

¹ An attachment referenced in the agreement was not filed.

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Debtors filed a motion to approve the stipulation. In the stipulation, the parties stated:

Given that the reaffirmation agreement [New Promise to Pay] was filed and made subsequent to discharge, the Bankruptcy Code does not recognize that Debtors have entered into a reaffirmation agreement with FSA. Given that the Bankruptcy Code does not recognize that Debtors have entered into a reaffirmation agreement, FSA cannot recognize that Debtors have entered into a reaffirmation agreement.

Based on that premise, the parties further stipulated that they would ask the Court to revoke the April 16, 2001, discharge order and then enter another one so that the reaffirmation agreement that was filed May 23, 2001, would be enforceable.

Discussion. The reaffirmation agreement filed by Debtors on May 23, 2001, is enforceable under \$ 524(c) without revoking or vacating Debtors' April 16, 2001, discharge order. Section 524(c)(1) requires only that the agreement be "made" before the discharge is entered, not that it be "filed" before the discharge is entered. In re Collins, 243 B.R. 217, 219-20 (Bankr. D. Conn. 2000); see In re LeBeau, 247 B.R. 537 (Bankr. M.D. Fla. 2000). Here, Debtors and their counsel clearly signed FSA's New Promise to Pay on February 26, 2001, well before the discharge order was entered on April 16, 2001. Thus, the agreement was "made" before the discharge. That the agreement was filed post-discharge does not impair is enforceability.

Consequently, there is no need to vacate the discharge order. That extraordinary step, even assuming it is permitted under the Bankruptcy Code and applicable Rules of Federal Civil and Bankruptcy Procedure, see In re Edwards, 236 B.R. 124 (Bankr. D.N.H. 1999); but see Rigal v. Fleet Mortgage Corp. (In re Rigal), 254 B.R. 145 (Bankr. S.D. Texas 2000), would be superfluous.

An order denying the September 14, 2001, Motion to Approve Stipulation to Revoke Discharge Between Debtors and the United States of America will be entered.

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.

NOV 3 0 2001

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

Sincerely,

-coe.

Irvin M. Hoyt' Bankruptcy Judge NOTICE OF ENTRY Under F.R.Bankr.P. 9022(a) Entered

NOV 30 2001

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

INH:sh

CC: case file (docket original; serve parties in interest)

Case: 01-40036 Form id: 122 Ntc Date: 11/30/2001 Off: 4 Page: 1

Total notices mailed: 7

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