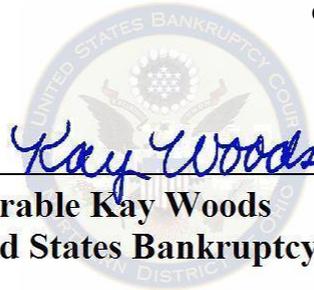


IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MARK D WHITCOMB and
TIFFANY L WHITCOMB,

Debtors.

*
* CASE NUMBER 07-42529
*
* CHAPTER 7
*
* HONORABLE KAY WOODS
*
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ORDER REGARDING DAIMLERCHRYSLER FIN. SERVS. AMERS. LLC SBMT
DAIMLERCHRYSLER SERVS. NA LLC'S MOTION FOR AN ORDER CONFIRMING
TERMINATION OF THE AUTOMATIC STAY
Not For National Publication

The following Order is not intended for national publication and carries limited precedential value. The availability of this opinion by any source other than www.ohnb.uscourts.gov is not the result of direct submission by this Court. The opinion is available through electronic citation at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

This cause is before the Court on the Motion for Entry of Order Confirming Termination of Automatic Stay Pursuant to 11 U.S.C. §362(j) [sic] ("Motion") filed on March 3, 2008, by DaimlerChrysler Fin. Servs. Amers. LLC sbmt DaimlerChrysler Servs. NA LLC ("DaimlerChrysler"). DaimlerChrysler seeks entry of an order confirming the automatic stay has terminated on the grounds that "Debtors have not performed the stated intention with respect to the personal property securing Creditor's claim" because Debtors have not: (i) entered into a reaffirmation agreement, (ii) filed a motion to redeem, or (iii) returned the collateral. (Mot. ¶¶ 7, 8.) Debtors Mark D. Whitcomb and Tiffany L. Whitcomb ("Debtors") have not filed a response.

Although the caption of the Motion states that it is being made "pursuant to 11 U.S.C. § 363(j)," DaimlerChrysler bases the Motion on "11 U.S.C. § 362(c) in association with § 362(h)." (Mot. ¶ 3.)

Section 362(j) provides for the Court to issue "comfort orders" to confirm that the automatic stay has terminated under certain limited circumstances, *i.e.*, only when the automatic stay has terminated as set forth in § 362(c). "On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j) (West 2006). Section 363(c) specifically excludes § 362(h). See 11 U.S.C. § 362(c) ("Except as provided in subsections (d), (e), (f), and (h) of this section . . .").

"[T]he provisions of Section 362(j) [do] not mandate the entry of comfort orders" when a debtor has "failed to timely take any action to reaffirm, redeem, or surrender . . . as required by Sections 521(a)(2) and (6) of the Bankruptcy Code." *In re Hill*, 364 B.R. 826 at 827-28 (Bankr. M.D. Fla. 2007). See also, *In re Manahan*, Case. No. 07-31405, 2007 Bankr. LEXIS 3227, at *1 (Bankr. N.D. Ohio Sep. 19, 2007) (finding "persuasive the reasoning of those cases that have interpreted § 362(j) as applying only to requests for orders confirming the termination of the automatic stay under § 362(c)."); *In re Collyer*, Case No. 07-50460, at 3 (Bankr. N.D. Ohio July 18, 2007) (unpublished) (available at www.ohnb.uscourts.gov) ("Section 362(c) specifically excludes subsection h from its scope. Therefore, entry of a 'comfort order' under § 362(j) is not appropriate when the stay allegedly has been terminated under 11 U.S.C. § 362(h)."); *In re Ermi*, Case. No. 06-60167, 2006 Bankr. LEXIS 1998, at *5 (Bankr. N.D. Ohio Aug. 3, 2006) ("comfort orders are only authorized for situations arising under 11 U.S.C. § 362(c)."). This Court adopts the reasoning of the decisions, set forth above, and holds that § 362(j) does not require issuance of a comfort order when the movant relies upon § 362(h).

Despite referencing § 362(c) of the Bankruptcy Code in the Motion, the gravamen of the relief sought by Daimler Chrysler is that the automatic stay has terminated based on § 362(h)¹ on the

¹Section § 362(h) states in its entirety:
(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal

grounds that Debtors failed to timely follow through with their statement of intent. Although § 362(j) does not mandate that the Court issue a comfort order, a court may do so in its discretion.

Therefore, in a case in which a party has failed to timely file a statement of intention stating the collateral would be retained, redeemed or surrendered, or to perform the required action, the issuance of a comfort order is not mandatory, but within a court's discretion pursuant to Bankruptcy Code Section 105(a).

In re Hill, 364 B.R. at 829. However, despite such discretion, "factual issues will preclude routine entry of such comfort orders." *Id.* at 831.

In the present case, DaimlerChrysler has not established that the automatic stay has terminated pursuant to § 362(h). Although

property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

DaimlerChrysler alleges that "Creditor has not [e]ntered into a reaffirmation agreement with the Debtors[,]" (Mot. ¶ 8.), that is not accurate. Instead, although the parties entered into a reaffirmation agreement, the Court did not approve it. DaimlerChrysler and Debtors entered into a reaffirmation agreement (Doc. # 15) filed January 9, 2008, which contained certain deficiencies. The Court issued a deficiency notice (Doc. # 18) on January 14, 2008. DaimlerChrysler and Debtors filed a second reaffirmation agreement (Doc. # 20) on January 25, 2008. The Court held a hearing on the reaffirmation agreement on February 8, 2008, at which time the reaffirmation agreement was disapproved because it failed to satisfactorily rebut the presumption of undue hardship. Order Disapproving Reaffirmation Agreement (Doc. # 31) was entered February 29, 2008.

Because Debtors filed their statement of intention and executed a reaffirmation agreement, this Court finds that the automatic stay remains in place.

Section 521(a)(6)(A) only requires that the debtor "enter into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property." Like Section 362(h)(1), it does not require that the Court approve the reaffirmation agreement. Consequently, a debtor who has timely entered into a reaffirmation agreement which the Court declines to approve, has nevertheless performed his or her duty under section 521(a)(6).

* * *

The Court finds and concludes that the Debtor fully complied with the deadline of

Sections 521(a)(2), 521(a)(6) and 362(h) by filing timely the statement of intention and by signing timely the Reaffirmation Agreement. Because the Court finds and concludes that the Debtor fully complied with all of the pertinent requirements of Sections 362(h) and 521 of the Bankruptcy Code, the automatic stay remains in place with respect to the vehicle, the vehicle remains property of the estate, the debtor is not obligated to turn over possession of the vehicle, and the lender may not exercise remedies as a result of default under the *ipso facto* clause under the loan agreement.

In re Chim, 381 B.R. 191, 198 (Bankr. D. Md. 2008). See also *In re Husain*, 364 B.R. 211 (Bankr. E.D. Va. 2007); *In re Stevens*, 365 B.R. 610 (Bankr. E.D. Va. 2007); and *In re Moustafi*, 371 B.R. 434 (Bankr. D. Ariz. 2007).

As set forth above: (i) the Court is not required to enter the requested comfort order, and (ii) DaimlerChrysler has failed to establish that the automatic stay has terminated pursuant to § 362(h). As a consequence, DaimlerChrysler's Motion for Entry of Order Confirming Termination of Automatic Stay Pursuant to 11 U.S.C. § 362(j) is hereby denied.

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