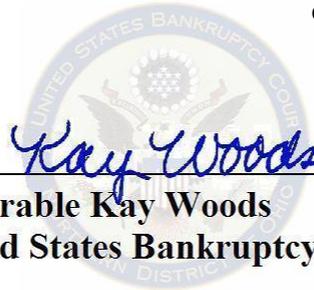


IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	CASE NUMBER 07-43074
	*	
THOMAS BLAIR FERGUSON, SR.	*	CHAPTER 7
a/k/a THOMAS B. FERGUSON,	*	
	*	HONORABLE KAY WOODS
	*	
Debtor.	*	

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 11, 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 "Debtor has not performed the stated intention with respect to the personal property securing Creditor's claim" because Debtor has not: (i) entered into a reaffirmation agreement, (ii) filed a motion to redeem, or (iii) returned the collateral. (Mot. ¶¶ 7, 8.) Debtor Thomas Blair Ferguson, Sr. a/k/a Thomas B. Ferguson ("Debtor") has 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 Sept. 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) (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. 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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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.

11 U.S.C. § 362(h) (West 2006).