

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

CASE NO.: 3:06-bk-308-3F7

JAMES L. ESPEY
RENA SUE ESPEY,

Debtors.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

This case is before the Court on DaimlerChrysler Financial Services Americas, L.L.C.'s, successor by merger to DaimlerChrysler Services North America, L.L.C., ("DaimlerChrysler") Motion to Set Aside Order Denying Motion to Confirm Absence of the Automatic Stay ("Motion"). A hearing was held on July 19, 2006 (the "Hearing"). Debtors and Debtors' counsel were not present at the Hearing. DaimlerChrysler presented legal argument in support of its Motion. The Court opted to take the matter under advisement.

FINDINGS OF FACT

On April 13, 2001, Debtors entered into a Retail Installment Contract (the "Contract") for the purchase of a 2004 Chrysler PT Cruiser (the "Vehicle"), which was assigned to DaimlerChrysler for value and good faith. Under the Contract, Debtors granted a security interest in the Vehicle to DaimlerChrysler. DaimlerChrysler's security interest is evidenced by the Certificate of Title issued by the Department of Motor Vehicles for the State of Florida.

On February 3, 2006, Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. In conjunction with the voluntary petition, Debtors filed a Statement of Intentions indicating that Debtors were to reaffirm the Vehicle pursuant to § 521(a)(2)(A).

On March 9, 2006, the Chapter 7 Trustee held Debtor's first meeting of creditors. Debtors failed to enter into a reaffirmation agreement with DaimlerChrysler or redeem the Vehicle within thirty days or forty-five days of the Meeting of Creditors. On May 4, 2006, DaimlerChrysler filed a Motion to Confirm the Absence of the Automatic Stay pursuant to 11 U.S.C. § 362(j) ("Motion to

Confirm"). On May 11, 2006, Debtors filed an Objection to the Motion to Confirm Absence of the Automatic Stay ("Objection"). On May 15, 2006, the Court entered an Order Denying Motion to Confirm Absence of Stay ("Order Denying Motion to Confirm"). According to the Order Denying Motion to Confirm, DaimlerChrysler failed to provide any authority under the Code for the entry of such an order. In addition, the Order Denying Motion to Confirm provides that the Court was unable to fine any Code provision permitting the entry of such an order. On June 29, 2006, Debtors entered into a reaffirmation agreement with DaimlerChrysler.

CONCLUSIONS OF LAW

Section 521(a)(2)(A) of the Bankruptcy Code states that an individual debtor must file a statement of intention regarding property of the estate for secured debts within 30 days after filing bankruptcy, which must include the debtor's intention of surrendering, redeeming or reaffirming such property. Once the debtor has stated this intention, pursuant to §521(a)(2)(B) the debtor must then perform his intention within 30 days of the §341 meeting of the creditors. If the debtor fails to state his intention under §521(a)(2)(A), or if the debtor fails to act under §521(a)(2)(B), then the automatic stay imposed by §362(a) is terminated pursuant to §362(h)(1)(A) or §362(h)(1)(B). The stay will not be terminated pursuant to this section, however, if the trustee filed a motion before the expiration of time, and the court determined after notice and hearing that such property is of consequential value or benefit to the estate.

In addition, § 362(h) provides that the automatic stay is terminated where debtor fails to either timely file the statement of intention, or fails to otherwise timely act on the statement of intention. Likewise, § 362(j) provides that if a party in interest so requests, the court shall issue an order confirming that there is no stay in effect under § 362(c). Finally, § 362(c)(1) states that the automatic stay continues until property is no longer property of the estate.

The Northern District of Florida recently entered an order granting a motion to confirm the termination or absence of stay pursuant to § 362(j). In *In re Brown*, No. 05-35011-LMK, 2006 Bankr. LEXIS 561, at *1, 2006 WL 871284, at *1 (Bankr. N.D. Fla. January 20, 2006), the creditor filed a motion to confirm that the automatic stay had been terminated under § 362(h)(1)(A), because the debtor failed to timely file a statement of intention required under § 521(a)(2)(A), thus terminating the automatic stay. In denying the debtor's motion for rehearing, the court noted that pursuant to § 362(j), when a party in interest makes a request for an order confirming

termination of the automatic stay, “the court *shall* issue an order under subsection (c) confirming that the automatic stay has been terminated.” *Id.* Thus, the court granted the creditor’s motion under § 362(j).

The enactment of § 362(j) created a means by which a creditor could move a court to confirm the termination or absence of the automatic stay under § 362(c). Likewise, § 362(c)(1) provides that the automatic stay continues until the property is no longer property of the estate. Although § 362(c) contains provisions dealing with multiple filers, these provisions must be read to be mutually exclusive of each other. Otherwise, a debtor would be able to obtain additional time before the automatic stay would be deemed terminated, a result that Congress most likely did not intend.

In this case, Debtors failed to enter a reaffirmation agreement with DaimlerChrysler within thirty days of the first meeting of creditors. As a result, the stay automatically terminated pursuant to § 362(h)(1)(B). However, Debtors entered into a reaffirmation agreement with DaimlerChrysler after the stay had terminated.

The Court conducted a thorough analysis of the applicable statutes, and after such review, the Court recedes from its previous decision. According to § 362(c)(1), the stay only continues as long as the property is property of the estate. Once the property is no longer property of the estate, as is the case when the stay terminates pursuant to § 362(h), a party in interest may move the Court for an order confirming that the stay is terminated under § 362(j). At that point, the party is free to seek any appropriate state court remedies.

In order to obtain relief requested pursuant to § 362(j), whether *ex parte* or not, the party must prove that all conditions are satisfied under § 362(h)(1)(A) or (B). To wit, the party will have to prove: 1) the specific date when time ran on the debtor’s statement of intention, so that he could not have amended the ambiguity; 2) that the debtor did not, in fact, amend his statement of intention to more accurately reflect what he intended to do with the secured property; and 3) that the trustee did not, in fact, file a motion to determine that the property is of consequential value or benefit to the estate. The aforementioned information need not be certified.

CONCLUSION

Thirty days after the first § 341 meeting of creditors, Debtors failed to act on their Statement of Intentions as specified in § 521(a)(2)(B).

Therefore, thirty days after filing the Statement of Intentions, the stay automatically terminated pursuant to § 362(h)(1)(B). DaimlerChrysler satisfactorily proved that Debtors did not fulfill their duties under § 521(a)(2)(B), and under its Motion, it is entitled to relief requested. However, DaimlerChrysler has chosen to forego its requested relief from stay and has reaffirmed the debt between it and Debtors. Nevertheless, the Court will enter a standard order confirming that the automatic stay has been terminated. An order in accordance with these findings of fact and conclusions of law will be separately entered.

DATED this 24 day of July, 2006 in
Jacksonville, Florida.

/s/Jerry A. Funk
JERRY A. FUNK
United States Bankruptcy Judge

Copies furnished to:

Brad W. Hissing, Movant’s Attorney
Debtors
Clive N. Morgan, Debtor’s Attorney
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