

FILED

Samuel L. Kay, Clerk
United States Bankruptcy Court
Savannah, Georgia
By Carrie Ramirez at 8:48 am, Mar 11, 2009

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

IN RE:)	CHAPTER 7 CASE
SHAWN BUCHHEIT)	NUMBER <u>08-41236</u>
TERESSA A BUCHHEIT)	
)	
Debtors)	
_____)	
)	
DAIMLERCHRYSLER FINANCIAL)	
SERVICES AMERICAS, LLC,)	
successor by merger to)	
DAIMLERCHRYSLER SERVICES)	
NORTH AMERICA, LLC)	
)	
Creditor/Movant)	
)	
vs.)	
)	
SHAWN BUCHHEIT)	
TERESSA A BUCHHEIT)	
Debtors)	
)	
and)	
)	
JAMES L. DRAKE, JR.)	
Ch. 7 Trustee)	
)	
Respondents)	

ORDER

This matter comes before me on the motion ("Motion") of
DaimlerChrysler Financial Services Americas, LLC

("DaimlerChrysler") for issuance of a comfort order under 11 U.S.C. § 362(j), confirming the termination of the automatic stay as to a 2004 Dodge Durango. The Motion is denied, because the Bankruptcy Code does not authorize the issuance of a comfort order under the subsection that DaimlerChrysler has advanced for termination of the stay.

DaimlerChrysler contends that the stay terminated as to the Dodge Durango under § 362(h)(1) as a result of the Debtors' failure to perform as required under § 521 (a)(2).¹ But DaimlerChrysler seeks a comfort order under § 362(j), which by its terms does not apply in association with § 362(h).

Section 362(j) provides that "the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j). "[S]ubsection (c),"

¹ Section 521(a)(2) provides in relevant part that

if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier . . . the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable . . . that the debtor intends to reaffirm debts secured by such property;

(B) within 30 days after the first date set for the meeting of creditors under section 341(a) . . . the debtor shall perform his intention with respect to such property

11 U.S.C. § 521(a)(2)(A)-(B).

however, specifically excludes § 362(h) from its scope. See 11 U.S.C. § 362(c). Accordingly, no comfort order is authorized where, as here, the creditor contends that the stay has terminated by operation of § 362(h).² See In re Grossi, 365 B.R. 608 (Bankr. E.D. Va. 2007); In re Conley, 358 B.R. 337 (Bankr. N.D. Ohio 2006); In re Dienberg, 348 B.R. 482 (Bankr. N.D. Ind. 2006).

The Motion for Order under § 362(j) Confirming the Termination of the Automatic Stay is therefore **ORDERED DENIED.**



JOHN S. DALIS
United States Bankruptcy Judge

Dated at Brunswick, Georgia,
this 10th day of March, 2009.

² In addition to contending that the Debtor failed to perform under § 521(a)(2), thereby invoking § 362(h)(1), DaimlerChrysler also contends that the automatic stay terminated by operation of § 521(a)(6). That argument is without merit, however, because § 521(a)(6) applies only when a creditor has an allowed secured claim. See 11 U.S.C. § 521(a)(6). In this no-asset chapter 7 case, no claims have been filed to be considered as allowed secured claims. Thus, § 521(a)(6) does not apply.