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2 UNITED STATES BANKRUPTCY COURT
3 EASTERN DISTRICT OF CALIFORNIA
4 SACRAMENTO DIVISION
5

6 In re)
7) Case No. 07-20505-A-7
8 MARK and MARIE MANDRIK,)
9) Docket Control No. SW-1
10 Debtors.)
11) Date: April 9, 2007
12) Time: 9:00 a.m.
13)
14)
15)
16)

17 On April 9, 2007 at 9:00 a.m., the court considered the a
18 motion for relief from the automatic stay filed by Wachovia
19 Dealer Services, Inc. The court's ruling on the motion is
20 appended to the minutes of the hearing. Because that ruling
21 constitutes a "reasoned explanation" of the court's decision, it
22 is also posted on the court's Internet site,
23 www.caeb.uscourts.gov, in a text-searchable format as required by
24 the E-Government Act of 2002. The official record, however,
25 remains the ruling appended to the minutes of the hearing.

26 **FINAL RULING**

27 The motion will be dismissed as moot.

28 The movant, Wachovia Dealer Services, seeks relief from the
automatic stay with respect to a 2005 Mercedes-Benz C240. The
movant alleges lack of equity on the basis that the value of the
vehicle is \$27,000, whereas the secured claim totals \$31,590.11.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7
debtor to file a statement of intention with reference to
property that secures a debt. The statement must be filed within
30 days of the filing of the petition or by the date of the
meeting of creditors, whichever is earlier. The debtor must
disclose in the statement whether he or she intends to retain or
surrender the property, whether the property is claimed as

1 exempt, and whether the debtor intends to redeem such property or
2 reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A).

3 The petition here was filed on January 26, 2007 and a
4 meeting of creditors was first convened on March 6, 2007.
5 Therefore, a statement of intention that refers to the movant's
6 collateral and debt was due no later than February 25. The
7 debtors filed a statement of intention on October 5, 2006,
8 indicating that they intend to reaffirm the debt secured by the
9 vehicle.

10 11 U.S.C. § 521(a)(2)(B) requires that a chapter 7
11 individual debtor, within 30 days after the first date set for
12 the meeting of creditors, perform his or her intention with
13 respect to such property.

14 If the property securing the debt is personal property and
15 an individual chapter 7 debtor fails to file a statement of
16 intention, or fails to indicate in the statement that he or she
17 either will redeem the property or enter into a reaffirmation
18 agreement, or fails to timely surrender, redeem, or reaffirm, the
19 automatic stay is automatically terminated and the property is no
20 longer property of the bankruptcy estate. See 11 U.S.C. §
21 362(h).

22 Here, although the debtors indicated that they intend to
23 reaffirm the debt secured by the vehicle, they did not move to
24 reaffirm within the 30-day deadline after the March 6, 2007
25 meeting of creditors. No reaffirmation agreement has been filed
26 in this case. Nor have the debtors sought extension of the 30-
27 day period. As a result, the stay automatically terminated on
28 April 5, 2007, 30 days after the first meeting of creditors.

1 The trustee may avoid automatic termination of the automatic
2 stay by filing a motion within whichever of the two 30-day
3 periods set by section 521(a)(2) is applicable, and proving that
4 such property is of consequential value or benefit to the estate.
5 If proven, the court must order appropriate adequate protection
6 of the creditor's interest in its collateral and order the debtor
7 to deliver possession of the property to the trustee. If not
8 proven, the automatic stay terminates upon the conclusion of the
9 hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

10 The trustee in this case has filed no such motion and the
11 time to do so has expired. The court also notes that the trustee
12 filed a "no-asset" report on March 16, 2007, indicating that he
13 does not intend to administer the vehicle or any other assets.

14 Therefore, even without this motion being filed, the
15 automatic stay terminated on April 5, 2007.

16 Nothing in section 362(h)(1), however, permits the court to
17 issue an order confirming the automatic stay's termination. 11
18 U.S.C. § 362(j) authorizes the court to issue an order confirming
19 that the automatic stay has terminated under 11 U.S.C. § 362(c).
20 See, also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not
21 implicate section 362(c). Section 362(h) is applicable and it
22 does not provide for the issuance of an order confirming the
23 termination of the automatic stay. Therefore, if the movant
24 needs a declaration of rights under section 362(h), an adversary
25 proceeding seeking such declaration is necessary. See Fed. R.
26 Bankr. P. 7001.