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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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10 In re) Case No. 06-90257-A-13G
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11 CLIFFORD A. ROGERS, JR., and) Docket Control No. SPS-2
12 GLENN A. ROGERS,)
13) Date: August 21, 2006
13 Debtor.) Time: 2:00 p.m.
14)
14)

15 **FINAL RULING**

16 *On August 21, 2006 at 2:00 p.m., the court considered the*
17 *motion of American General Finance requesting confirmation that*
18 *the automatic stay had been terminated pursuant to 11 U.S.C. §*
19 *362(c)(3). The motion was opposed by the chapter 13 debtors,*
20 *Clifford and Glenda Rogers, as well as by the chapter 13 trustee,*
21 *Russell Greer. The court's ruling on the motion is appended to*
22 *the minutes of the hearing. Because that ruling constitutes a*
23 *"reasoned explanation" of the court's decision, it is also posted*
24 *on the court's Internet site, www.caeb.uscourts.gov, in a text-*
25 *searchable format as required by the E-Government Act of 2002.*
26 *The official record, however, remains the ruling appended to the*
27 *minutes of the hearing.*

28 The motion will be granted in part. The court confirms that
the automatic stay expired on the 31st day after the filing of
the petition as to the debtors and the debtors' property. The
automatic stay remains intact as to property of the estate.

If an individual was a debtor in a prior case under chapter
7, 11, or 13, if that prior petition was dismissed, and if the

1 prior petition was pending within 1 year of the new petition, the
2 automatic stay with respect to a debt, property securing such
3 debt, or any lease terminates as to the debtor on the 30th day
4 after the filing of new case. See 11 U.S.C. § 362(c)(3)(A).
5 However, this limitation on the automatic stay does not apply if
6 the new case was filed under a chapter other than chapter 7 after
7 the prior case was dismissed pursuant to 11 U.S.C. § 707(b).

8 There is no dispute as to the relevant facts. This chapter
9 13 case was filed within one year of the dismissal of a prior
10 petition filed by these debtors. The debtors are individuals.
11 The prior case was not a chapter 7 petition dismissed pursuant to
12 section 707(b).

13 Because the court has not extended the automatic stay beyond
14 the 30th day after the filing of the petition pursuant to 11
15 U.S.C. § 362(c)(3)(B), the moving creditor asks the court to
16 confirm that the automatic stay has expired. Such confirmation
17 is permitted by 11 U.S.C. § 362(j).

18 The court confirms that "with respect to any action take
19 with respect to a debt or property securing such debt" has
20 terminated "with respect to the debtor...." See 11 U.S.C. §
21 362(c)(3)(A). Thus, while the debtors and their interest in
22 property is now unprotected by the automatic stay, the property
23 of their bankruptcy estate remains protected by the automatic
24 stay.

25 This is consistent with the result in In re Johnson, 335
26 B.R. 805, 806 (Bankr. W.D. Tenn. 2006), where the bankruptcy
27 court held: "[T]he plain language of § 362(c)(3)(A) dictates that
28 the 30-day time limit only applies to 'debts' or 'property of the

debtor' and not to 'property of the estate.' As a result, the automatic stay continues to protect 'property of the estate' as long as it remains 'property of the estate'." See, also In re Jones, 339 B.R. 360 (Bankr. E.D.N.C. 2006); In re Moon, 339 B.R. 668, (Bankr. N.D. Ohio 2006); In re Harris, 342 B.R. 274 (Bankr. N.D. Ohio 2006); In Re Baldassarro, 338 B.R. 178 (Bankr. D.N.H. 2006); In re Ziolkowski, 338 B.R. 543 (Bankr. D. Conn 2006) (all holding that section 362(c)(3) has no impact on the duration of the automatic stay vis a vis property of the estate).

At least two bankruptcy courts, In re Jumpp, 344 B.R. 21 (Bankr. D. Mass. 2006) and In re Jupiter, 344 B.R. 754 (Bankr. D.S.C. 2006), have disagreed with the foregoing cases and concluded that section 362(c)(3)(A) does not differentiate between property of the debtor and property of the estate.

This court agrees with the Johnson line of cases. The language of the statute is clear. The stay terminates "with respect to any action taken with respect to a debt or property securing such debt ... with respect to the debtor..." While the repeated use of the phrase "with respect to" is less than elegant, it makes clear that the termination of the automatic stay is limited in nature.

Contrast the language of section 362(c)(3)(A) to that found in 11 U.S.C. § 362(c)(4)(A)(i). The latter does not use the same phrasing. It provides that when two prior cases have been dismissed in the prior year, the automatic stay is never triggered. Section 362(c)(4)(A)(i) does not limit this result "to the debtor" or "with respect to" anyone or anything else.

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1 Therefore, the court will confirm only that the debtors and
2 their interest in property is unprotected by the automatic stay.

3 Dated: August 21, 2006
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