UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
MORGAN, INC.	)	CASE NO. 06-40241
	)	
	)	
Debtor	)	

DECISION

At Fort Wayne, Indiana, on September 20, 2007.

Debtor is a small transportation company which filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on August 10, 2006. Its primary operating assets consisted of three trucks and five buses, all of which secured a claim held by Farmers State Bank. The bank filed a motion for relief from stay, which was resolved through an agreed entry submitted on November 8, 2006, and subsequently approved by the court, following notice to creditors, on November 30, 2006. This agreement granted the bank's motion as to two of the five buses, provided for monthly adequate protection payments on account of the six vehicles (three trucks and three buses) the debtor was retaining, which the debtor was required to insure. The agreement also provided that if the "debtor allows insurance to lapse, bank shall be entitled to file [a] verified notice and stay will be lifted, without further order as to [the] liened vehicles." Agreed Entry on Adequate Protection, ¶ 6, Approved Nov. 30, 2006. For one reason or another the insurance on the three trucks lapsed in March of 2007. As a result, pursuant to paragraph 6 of the agreed order, on June 22, 2007, the bank filed a verified notice concerning the default, thereby triggering termination of the automatic stay.

The debtor has responded to the bank's notice by filing a motion to modify the agreed order.

The motion acknowledges that the stay has terminated as to the three trucks but represents that the three buses are (and apparently always have been) insured. Consequently, the debtor would like to reduce its monthly adequate protection payments from $1,890.00 per month to $1,200.00 per month on account of its retention of the three buses, as well as recognizing its continuing obligation to insure and properly maintain them. The bank opposes the debtor's motion because, in its opinion, the automatic stay has already been terminated as to both the trucks and the buses, as a result of the lapse of insurance on the trucks and the verified notice filed on June 22. The issue presently before the court is whether the debtor can modify the agreed order concerning the bank's motion for relief from stay. That issue was submitted to the court for a decision following a pre-trial conference concerning the motion to modify.

Agreements between debtors and creditors providing for adequate protection or for the continuation of the automatic stay are no different from other types of agreements resolving pending litigation. They are contracts which have received some type of judicial approbation and are subject to the same interpretive rules. At the same time, however, such orders are not immutable and they may be changed if the circumstances upon which they were premised also change. In this regard, orders concerning adequate protection are not unlike injunctions which spell out the obligations of the parties to one another. See generally, Matter Lafayette Dial, Inc., 92 B.R. 798, 799-800 (Bankr. N.D. Ind. 1988). Although both injunctions and agreements concerning adequate protection are, where appropriate, capable of being modified it should be borne in mind that such changes only operate prospectively. In other words, they govern the rights of the parties from and after the time of the modification and do not retrospectively deprive the beneficiary of the original order of rights which have already fully vested.

It is on this latter point that the debtor's motion to modify falters. The motion is premised upon the assumption that the stay has terminated only as to the three trucks as to which insurance lapsed, and that it remains in full force and effect as to the three buses which have apparently always been insured. But that is not what the parties' agreement provided. All six vehicles were collectively defined and categorized as "liened vehicles," Agreed Entry, ¶4, and, in the event insurance lapsed, upon filing a verified notice the "stay will be lifted, without further order, as to [the] liened vehicles." Agreed Entry, ¶ 6. Consequently, in the event of a failure to insure, once the bank filed the required notice, the stay was to terminate as to all of the vehicles and not just those which had become uninsured. Since the bank has done so, the automatic stay terminated as to both the trucks and the buses when that notice was filed on June 22.

The simple act of modifying the agreed order concerning adequate protection will not resurrect an automatic stay which has already terminated. Yet, that is, in effect, what the debtor seeks to do through the motion to modify, or at least that seems to be the premise upon which the motion is based. While the court will acknowledge that it is theoretically possible to "reimpose the automatic stay," by way of an injunction, once it has terminated, see, In re Salzer, 1991 WL 119153 (Bankr. N.D. Ind. 1991), such injunctive relief requires an adversary proceeding, see, Fed. R. Bankr. P. Rule 7001(7), and not the simpler procedures associated with the court's motion practice in contested matters. Even then, however, "only proof of a substantial change in circumstances will justify changing what has been decreed." Id.; Matter of Lafayette Dial, 92 B.R. at 800. See also, Matter of Grogg Farms, Inc., 91 B.R. 482, 485 (Bankr. N.D. Ind. 1988) (discussing modification of a confirmed plan in order to avoid the agreed upon consequences of a default). In the court's opinion, when the conduct the court is asked to halt represents the natural and anticipated

consequences of exercising rights granted by a court order, it is highly doubtful that the debtor would be able to make the required showing, even if it had chosen the proper procedural vehicle. See, In re Polries Brothers, 49 B.R. 669, 673 (Bankr. D. N.D. 1985)("Post-petition agreements for adequate protection must be impressed with the highest degree of reliability.").

Since the automatic stay has already terminated with respect to both the trucks and the buses securing Farmers State Bank's claim, debtor's motion to modify the agreed entry on adequate protection will be DENIED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court