

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
RONNY A. BOOTH) CASE NO. 09-10397
)
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on December 3, 2009.

The motion for relief from stay and abandonment filed by DaimlerChrysler Fin. Servs. Amers. LLC in this chapter 7 case does not allege sufficient facts to state a claim showing its entitlement to the relief sought. See, In re White, 409 B.R. 491 (Bankr. N.D. Ind. 2009). See also, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991) (regarding motions filed pursuant to § 522(f)). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief “with particularity.” See, Fed. R. Bankr. P. Rule 9013. This requires the movant to allege facts – not conclusory allegations or mechanical recitations – that, if true, would establish a prima facie case. White, 409 B.R. at 494. The present motion fails to do so. For example, it does not:

- a. Provide sufficient information concerning the value of the property, the amounts due on account of the liens and encumbrances against it, and/or any exemption claimed by the debtors. This makes it impossible for the court to determine whether or not there is equity in the property. White, 409 B.R. 491. See also, In re Indian Palms Assoc., Ltd., 61 F.3d 197, 206-207 (3rd Cir. 1995) (“The classic test for determining equity under section 362(d)(2) focuses on a comparison between the total liens against the property and the property’s current value.”).
- b. Identify a sufficient “cause” for relief from the automatic stay. White, 409 B.R. 491. See also, In re Sonnax Industries, Inc., 907 F.2d 1280, 1285 (2nd Cir. 1990); In re Elmiro Litho, Inc., 174 B.R. 892, 902-03 (Bankr. S.D. N.Y. 1994). Although the motion states the debtors have not been making the payments called

for, by itself, that is not enough to warrant relief from the automatic stay. See, In re White, 409 B.R. 491, 496 (Bankr. N.D. Ind. 2009) (citing In re Szymanski, 344 B.R. 891, 897 (Bankr. N.D. Ind. 2006)). See also, United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626 (1988)(mere delay in being able to foreclose lien, without more, did not entitle creditor to adequate protection payments or relief from stay); In re Kessler, 76 B.R. 434, 437 (Bankr. E.D. Pa. 1987); In re Tashjian, 42 B.R. 968, 972-73 (Bankr. E.D. Pa. 1987); In re Capodanno, 83 B.R. 285, 288 (Bankr. E.D. Pa. 1988)(failure to make mortgage payments alone insufficient to obtain relief from stay). Additionally, although the motion alleges that the debtors have had ample time to redeem the movant's collateral and have not done so, it does not indicate whether the time for them to perform that intention has expired. See, 11 U.S.C. §§ 521(a)(2)(B), (6).

Since the motion does not state a claim for relief, it will be denied, cf., Nishimatsu Constr. Co. Ltd. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975); Weft, Inc. v. G.C. Inv. Assoc., 630 F. Supp. 1138, 1141 (E.D. N.C. 1986), aff'd sub nom Weft, Inc. v. Georgaide, 822 F.2d 56 (4th Cir. 1987); Aldabe v Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming trial court's denial of motion for default judgment and sua sponte dismissal due to the complaint's failure to state a claim for relief), see also, In re Taylor, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003), without prejudice and without further notice, unless within seven (7) days of this date, movant requests a hearing at which it will present appropriate evidence in support thereof. See, Fed. R. Civ. P. Rules 55(b)(2)(C), (D); Fed. R. Bankr. P. Rule 9014(c). The automatic stay, as it pertains to the movant, shall remain in full force and effect until further order of the court.

SO ORDERED.

/s/ Robert E. Grant

Judge, United States Bankruptcy Court