

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
ERIC RICHARD DUNLAP ) CASE NO. 09-14444  
 )  
 )  
Debtor )

**DECISION ON MOTION FOR RELIEF FROM STAY  
AND MOTION FOR ABANDONMENT**

At Fort Wayne, Indiana, on November 12, 2009.

This matter is before the court to consider a motion for relief from stay and abandonment, as to a 2006 Chrysler PT Cruiser VIN:3A8FY78G86T210184, filed by DaimlerChrysler Fin. Servs. Amers. LLC. The motion has been noticed out and there have been no objections to it within the time required. See, N.D. Ind. L.B.R. B-2002-2. Accordingly, so long as the motion alleges sufficient facts to state a claim for the relief sought it may be granted. See, In re White, 409 B.R. 491 (Bankr. N.D. Ind. 2009). 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); In re Taylor, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003) .

The motion alleges that the movant's collateral continues to depreciate and it is not adequately protected. Absent objection, this threat to the value of movant's collateral constitutes sufficient "cause" for relief from stay under § 362(d)(1). See, United Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assoc., 484 U.S. 365, 369-70, 108 S.Ct 626, 629-30 (1988).

As for the requested abandonment (and relief from stay pursuant to § 362(d)(2)), the motion does not fare so well. It alleges that the movant is owed \$23,811.54, but the motion contains no information about the value of the property and/or any exemption claimed by the debtor. 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.”). As a result, the facts set out in the motion do not suffice to demonstrate that the movant is entitled to abandonment under § 554.

The motion also alleges that the debtor has had a reasonable opportunity to redeem the property, but has not done so. However, the court notes that the time for the debtor to perform its stated intention regarding encumbered property has not expired, see, 11 U.S.C. §§ 521(a)(2)(B), (6), so it is questionable whether this constitutes sufficient cause for either relief from stay or abandonment.

DaimlerChrysler Fin. Servs. Amers. LLC is entitled to be relieved of the automatic stay so that it may foreclose upon or otherwise proceed against a 2006 Chrysler PT Cruiser VIN:3A8FY78G86T210184 securing payment of debtor’s obligation to it , but the request to abandon that property will be denied, without prejudice. An order doing so will be entered.

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