

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY**

In re:)	
)	
GERALDINE V. AUBREY)	CASE NO. 04-36950
)	CHAPTER 7
Debtor(s))	
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MEMORANDUM ON MOTION MODIFY THE AUTOMATIC STAY

This matter comes before the Court on the Motion for Relief From Stay filed by ABN AMRO Mortgage Group, Inc. (hereinafter “Movant”). In the motion, Movant requests the automatic stay be modified so as to permit it to proceed with its state court remedies for the debtor’s alleged failure to make payments on a promissory note and mortgage on real property located at 4629 South L&N Turnpike, Magnolia, Kentucky 42757. The debtor responded alleging that she is current with her payments.

The Court notes that the debtor filed this case on October 28, 2004. The debtor’s Statement of Intention indicated she intended to reaffirm this debt pursuant to 11 U.S.C. § 524(c). Pursuant to § 521(2)(B), within 45 days after filing the notice of intent, debtors must perform their intention. Accordingly, the debtor should have filed a reaffirmation agreement with the Movant no later than December 12, 2004, extended to December 13, 2004, by operation of Fed. R. Bank. P. 9006(a). A review of the file in this case indicates that no reaffirmation agreement has been filed. *In re Bell*, 700 F.2d 1053 (6th Cir. 1983); *In re Burr*, 160 F.3d 843 (1st Cir.1998); *In re Johnson*, 89 F.3d 249 (5th Cir. 1996); *In re Taylor*, 3 F.3d 1512 (11th Cir.1993); *In re Edwards*, 901 F.2d 1383 (7th Cir. 1990) (all holding a debtor who wishes to retain collateral must either redeem the property or reaffirm the debt). *See also In re Smith*, 167 B.R. 850 (Bankr. W.D. Ky. 1994); *In re Davenport*, 266 B.R. 787, 789 (Bankr. W.D. Ky. 2001); *In re Goins*, 0340675 (Bankr. W.D. Ky. May 23,

2003); and *In re Garmon*, 03-32351(Bankr. W.D. Ky. May 27, 2003) (wherein this Court ruled in similar circumstances). By itself, the failure to perform a debtor's statement of intention within the time allowed in § 521 serves as a ground to warrant termination of the automatic stay.

The debtor responds that she is current on her payments and apparently believes that lack of default suffices to warrant denial of the stay motion. This misguided defense is simply not relevant. As stated already, when retaining property, a debtor must either redeem with one lump sum payment or make payments pursuant to a reaffirmation agreement. Current payments may positively influence a creditor but otherwise have no bearing on stay relief in a Chapter 7 case. Redemption does not involve payments. Reaffirmation involves payments, assuming the creditor consents to a reaffirmation. In either event, if the creditor accepts or collects the money without obtaining relief from the stay that creditor would be violating the stay and subject to sanctions.

In summary, and for the sake of emphasis, the Court reiterates that termination of the automatic stay does NOT prohibit a debtor from executing a reaffirmation agreement. In actuality, relief from the stay merely grants the debtor and the creditor freedom to negotiate a resolution. The debtor can either redeem, reaffirm, or return the collateral and the creditor can accept money or the collateral without violating the stay. During this negotiation debtors very often may voluntarily send a regular payment which the creditor usually accepts in contemplation of finalizing a reaffirmation. The debtor benefits by reducing the balance and the creditor receives adequate protection. Of course, if the parties reach no agreement, either may pursue remedies in state court upon obtaining relief from the stay. The Court shall enter an Order this same date in accordance with this Memorandum.

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ORDER

Pursuant to the Court’s Memorandum entered this same date and incorporated herein by reference, and the Court being otherwise sufficiently advised,

IT IS ORDERED that the that the automatic stay against ABN AMRO Mortgage Group, Inc., is terminated.