



1 No facts are in dispute. Resolution of the issue turns  
2 on the language of 11 U.S.C. § 362(c)(3)(A). That subsection  
3 provides in relevant part:

4 (3) if a single or joint case is filed by or  
5 against debtor who is an individual in a case  
6 under chapter 7, 11, or 13, and if a single or  
joint case of the debtor was pending within the  
preceding 1-year period but was dismissed, . . . -

7 (A) the stay under subsection (a) with  
8 respect to any action taken with respect to a  
debt or property securing such debt . . .  
9 shall terminate with respect to the debtor on  
the 30<sup>th</sup> day after the filing of the later  
10 case . . . .

11 Subparts (B) and (C) of § 362(c)(3) provide a mechanism through  
12 which a debtor can seek an extension of the stay, as well as  
13 standards that have to be met to prevail on such a motion.  
14 Debtor has not made a motion to extend the stay so subparts (B)  
15 and (C) are not at issue. The sole question is whether the  
16 phrase "shall terminate with respect to the debtor" also  
17 terminates the stay with respect to property of the estate, or  
18 whether it is limited to the debtor, only.

19 As we all know, 11 U.S.C. § 541(a) provides in relevant  
20 part:

21 (a) The commencement of a case under section 301,  
22 302, or 303 of this title creates an estate. Such  
estate is comprised of all the following property,  
23 wherever located and by whomever held.

24 (1) . . . all legal or equitable interests  
of the debtor in property as of the  
25 commencement of the case.

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1 Debtor's car is clearly property of the bankruptcy estate created  
2 upon the filing of the instant case. With respect to a case  
3 under Chapter 13, 11 U.S.C. § 1306(b) provides: "Except as  
4 provided in a confirmed plan or order confirming a plan, the  
5 debtor shall remain in possession of all property of the estate."

6 Two schools of thought have emerged from the cases which  
7 have addressed the question. The minority view is that the  
8 language of § 362(c)(3) is ambiguous as to whether it also  
9 reaches property of the estate, as well as the debtor. Because  
10 of that ambiguity, those courts conclude they can look to  
11 legislative intent. They look to HR Rep. No. 31, 109<sup>th</sup> Cong.,  
12 1<sup>st</sup> Sess. (2005) and invoke Congress' words:

13 "Discouraging Bad Faith Repeat Filings. Section  
14 302 of the Act amends section 362(c) of the  
15 Bankruptcy Code to terminate the automatic stay  
16 within 30 days in a chapter 7, 11, or 13 case  
17 filed by or against an individual if such  
18 individual was a debtor in a previously dismissed  
19 case pending within the preceding one-year period.

20 See In re Curry, 362 B.R. 394, 401-02 (Bankr. N.D. IL 2007).

21 Minority courts find further support in 11 U.S.C. § 362(j),  
22 which states:

23 (j) On request of a party in interest, the court  
24 shall issue an order under subsection (c)  
25 confirming that the automatic stay has been  
26 terminated.

27 This "comfort order" provision would be of little utility in  
28 § 362(c)(3) circumstances if the stay was terminated only as to  
29 the debtor but not also property of the estate. It is almost  
30 always creditors with claims secured by real property or personal

1 property who seek comfort orders, for assistance in obtaining  
2 title insurance, satisfying foreclosure trustees, or auctioneers.

3 More fundamentally, the minority courts observe, reading  
4 § 362(c)(3) to terminate the stay only as to the debtor largely  
5 eviscerates the provision. It would be a very rare instance  
6 when an individual debtor would need to seek an extension of the  
7 stay under § 362(c)(3)(B) because all of the property of the  
8 estate would continue to be protected without doing so. Under  
9 § 1306(b), the debtor would remain in possession of the property  
10 of the estate and would have full use and enjoyment of it, and  
11 would have no need for any broader stay in most cases. One of  
12 the few exceptions might be where a debtor is a defendant in  
13 litigation. If property of the estate was not involved, there  
14 would be no stay of the litigation after 30 days from filing the  
15 second case unless the debtor sought an extension.

16 Yet another argument suggesting that Congress intended the  
17 stay to terminate in its entirety after 30 days pursuant to  
18 § 362(c)(3) is the language of subpart (B). It provides:

19 (B) on the motion of a party in interest for  
20 continuation of the automatic stay and upon notice  
21 and a hearing, the court may extend the stay in  
22 particular cases as to any or all creditors . . .  
only if the party in interest demonstrates that  
the filing of the later case is in good faith as  
to the creditors to be stayed; . . .

23 If, as the majority argues, § 362(c)(3)(A) only terminates the  
24 stay as to the debtor, and the stay remains in effect as to all  
25 property of the estate, the stay extension mechanism of (B) could

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1 have been much more narrowly tailored than extending it "to any  
2 or all creditors".

3 It should also be noted that Congress, in the same part of  
4 the legislation aimed at serial filings, adopted § 362(c)(4),  
5 which provides that if there were two or more cases pending and  
6 dismissed in the preceding year "the stay under subsection (a)  
7 shall not go into effect upon the filing of the later case;  
8 . . . ." If the majority's view were adopted, the huge gap in  
9 remedy for frequent filing would range from termination of the  
10 stay after 30 days as against the debtor only, to no stay at all.  
11 Particularly when one considers that termination of the stay as  
12 to a debtor-only in Chapter 13 is virtually no remedy at all,  
13 the majority view makes little sense in light of Congress'  
14 avowed purpose of discouraging repeat filings by terminating the  
15 stay after 30 days.

16 The majority view finds no ambiguity in § 362(c)(3).  
17 In re Holcomb, 380 B.R. 813 (10<sup>th</sup> Cir. BAP 2008); In re Stanford,  
18 373 B.R. 890 (Bankr. E.D. Ark. 2007); In re Jumpp, 356 B.R. 789  
19 (1<sup>st</sup> Cir. BAP 2006). Judge Small summed up the majority view:

20 Section 362 (c)(3)(A) as a whole is not free  
21 from ambiguity, but the words, "with respect to  
22 the debtor" in that section are entirely plain; a  
23 plain reading of those words makes sense and is  
24 entirely consistent with other provisions of § 362  
and other sections of the Bankruptcy Code.  
Section 362 (c)(3)(A) provides that the stay  
terminates "with respect to the debtor." How  
could that be any clearer?

25 Section 362(a) differentiates between acts  
26 against the debtor, against property of the debtor  
and acts against property of the estate. Section

1 362(a)(1) stays actions or proceedings "against  
2 the debtor;" § 362(a)(2) stays enforcement of a  
3 judgment "against the debtor or against property  
4 of the estate;" 362(a)(3) stays "any act to obtain  
5 possession of property of the estate or of  
6 property from the estate;" § 362(a)(4) stays "any  
7 act to create, perfect, or enforce any lien  
8 against property of the estate; § 362(a)(5) stays  
9 "any act to create, perfect, or enforce against  
10 property of the debtor any lien" to the extent  
11 it secures a prepetition claim; and § 362(a)(6)  
12 stays any act to collect, assess, or recover a  
13 claim against the debtor . . . ."

8 Section 362(c) also distinguishes between  
9 the stay of acts against property of the estate  
10 and the stay of any other acts. Section 362(c)  
11 (1) provides that "the stay of an act against  
12 property of the estate under subsection (a) of  
13 this section continues until such property is  
14 no longer property of the estate," and § 362(c)(2)  
15 provides for the termination of the stay of "any  
16 other act" prohibited by § 362(a).

13 Section 521 of the Bankruptcy Code also  
14 distinguishes between property of the estate  
15 and property of the debtor. Section 521(a)(6)  
16 provides that the automatic stay is terminated  
17 "with respect to the personal property of the  
18 estate or of the debtor" if the debtor does not  
19 reaffirm or redeem property within 45 days after  
20 the first meeting of creditors. If Congress had  
21 intended that the automatic stay would terminate  
22 under § 362(c)(3)(A) as to property of the estate,  
23 it would have specifically said so, as it did in  
24 § 521(a)(6).

20 In re Jones, 339 B.R. 360, 363-64 (Bankr. E.D. N.C. 2006).

21 Notwithstanding the strength of many of the points advanced  
22 by the minority view, this Court finds that Congress recognized  
23 the difference between the phrases "with respect to the debtor",  
24 "property of the debtor", and "property of the estate". In  
25 § 362(c)(3)(A) they chose to provide that the stay "shall  
26 terminate with respect to the debtor", not "against the debtor

1 or against property of the estate" as they used the latter in  
2 § 361(a)(2). This court agrees with the majority of courts that  
3 have concluded that is the plain reading of § 362(c)(3)(A).

4 That analysis and conclusion does not end the inquiry,  
5 however. The Supreme Court has instructed: "The plain meaning  
6 of a statute should be conclusive, except in the "rare cases  
7 [in which] the literal application of a statute will produce a  
8 result demonstrably at odds with the intentions of the drafters."  
9 United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242  
10 (1989). That Court has further indicated that a court may depart  
11 from the literal reading of the statutory language when the  
12 legislative history indicates the plain reading does not give  
13 effect to the legislative purpose. See Malat v. Riddell, 383  
14 U.S. 569, 571-72 (1966). The Ninth Circuit Court of Appeals has  
15 instructed that a court must look beyond the express language of  
16 a statute where a "literal interpretation would thwart the  
17 purpose of the over-all statutory scheme or lead to an absurd  
18 result." In re Cervantes, 219 F.3d 955, 960 (9<sup>th</sup> Cir. 2000).

19 This Court believes the minority view makes stronger  
20 arguments for a reading that gives effect to the intent of  
21 Congress. If this Court were afforded the opportunity to choose  
22 which reading better serves the discernible intent of Congress  
23 in enacting § 362(c)(3)(A), this Court would choose the minority  
24 view. But in the face of a plain language reading, with the  
25 rational arguments advanced by the majority, this Court is not  
26 free to simply choose sides. Instead, the Court must show that

1 the majority reading thwarts "the purpose of the over-all  
2 statutory scheme" or leads "to an absurd result." The majority's  
3 reading does not thwart the purpose, nor does it lead to an  
4 absurd result. It does not promote that purpose to the degree  
5 the Court thinks the minority reading would advance it, but  
6 whether the minority view is the better choice in the face of the  
7 statute's plain language is not the test this Court is authorized  
8 to apply in these circumstances.

9 Accordingly, the Court finds and concludes that failure of  
10 a debtor to timely obtain an extension of the automatic stay  
11 pursuant to § 362(c)(3)(B) results in the termination of the stay  
12 under § 362(c)(3)(A) as to the debtor only, and not also as to  
13 property of the estate.

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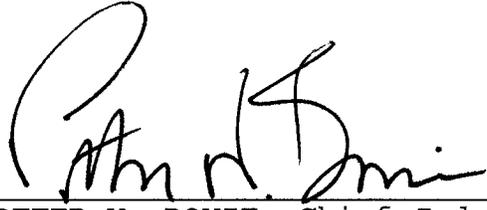
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1           Therefore, the subject vehicle remained property of the  
2 bankruptcy estate after termination of the stay against the  
3 debtor in accordance with § 362(c)(3)(A). Further, the automatic  
4 stay remained in force and effect as to the subject vehicle, and  
5 creditor's repossession of the vehicle after the stay terminated  
6 only as to the debtor violated the automatic stay. The creditor  
7 must forthwith return the vehicle to the debtor without charge, or  
8 fees, or costs associated with the repossession, storage, or  
9 return.

10           IT IS SO ORDERED:  
11           DATED:   MAY 11 2010  

  
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13           PETER W. BOWIE, Chief Judge  
14           United States Bankruptcy Court

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