IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	CASE NO. 02-00092-W
Vannie Williams, Jr., and Jenny Louise Cook-Williams, Debtor(s).	Chapter 7 **ORDER**

THIS MATTER comes before the Court upon a Motion for Relief from Stay (the "Motion") filed by DaimlerChrysler Services North America, LLC (the "Movant") on December 2, 2003 regarding a 1998 Mercedes Benz S320W (the "Vehicle") and an Objection filed by Vannie Williams, Jr. and Jenny Louise Cook-Williams (the "Debtors") on December 12, 2003.

Movant seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1) for cause by alleging a lack of adequate protection and Debtors' failure to pay installments due under the purchase contract between the parties. Debtors assert that they are current in payments which are due under the terms of a prior Consent Order agreed to by the parties in this case and entered by the Court on January 8, 2003 (the "Settlement Order") after notice pursuant to Bankruptcy Rule 4001. Furthermore, Debtors assert that there is equity in the Vehicle.

The Chapter 7 Trustee did not file an Objection to the Motion. However, the Movant has reached an agreement with the Chapter 7 Trustee whereby the Movant, after a commercially reasonable sale, shall return the amount of equity exceeding its lien to the estate.

Initially, Movant argues that the Settlement Order was entered in Debtor's

Chapter 11 case before conversion to Chapter 7 and that the agreed payment terms contained therein are no longer applicable because the Settlement Order contemplated a plan of reorganization which is not available in Chapter 7. Movant also contends that that the agreed upon payment terms contained in the Settlement Order are no longer applicable because § 521(2)(A) only permits Debtors to surrender, redeem or reaffirm their debts.

Upon a review of the language in the Settlement Order, which appears to have been drafted by an attorney representing Movant, it appears that the agreed upon terms of the Settlement Order which include revised payment terms were not limited to Chapter 11 or in some other way contingent upon a plan of reorganization being filed. There is no clear limitation language in the Settlement Order. To the contrary, the Settlement Order contemplates that the new payment terms would continue and be made permanent through a plan and the confirmation process. Therefore, the Court finds that the payment terms expressed in the Settlement Order are binding on the parties throughout Debtors' case despite conversion to Chapter 7. Debtors have complied with the payment terms expressed in the Settlement Order and therefore do not appear in default of its terms.

Secondly, Movant argues that § 521(2)(A) provides a requirement that Debtor either surrender or redeem the Vehicle or reaffirm the indebtedness owed it. In the Fourth Circuit, a debtor may retain collateral if the debtor is current in his secured consumer loan installment payments. In Re Belanger, 962 F.21 345 (4th Cir. 1992). "A debtor who is not in default may elect to retain the property and make the payments specified in the contract with the creditor." Id. at 347. However, it appears that Debtors in this case were not current in the installment contract with Movant, but Debtors are

current under the Settlement Order.

Several courts in this circuit have analyzed Belanger when considering situations in which a debtor was in default at various stages, pre-petition or post-petition. In In Re Doss, 203 B.R.57 (Bankr. W.D. Va 1996), the Bankruptcy Court indicated that a defaulting debtor may choose to retain property and comply with § 521(a) by doing so. In In Re Dejournette, 222 B.R. 86 (W.D. Va. 1998), the District Court denied a debtor the right to retain property under Belanger when the debtor was in default post-petition under the creditor's contract at the time of the hearing. The court in that case also indicated the same result would apply had debtor been in default at the time of the petition. In In Re Cooper, 296 B.R. 410 (Bankr. E.D. Va. 2003), the Bankruptcy Court applied Belanger and allowed the retention of property when the debtors were not in default at the time the petition was filed, and despite falling behind during the course of the case, had caught up and were current at the time of the hearing.

Debtors argue that whatever default may have existed pre-petition has been waived by Movant's agreement as represented by the Settlement Order. However, whether default was waived or whether the Settlement Order meets the requirements of a modification of contract according to South Carolina law was not fully addressed by the parties at the hearing. See Sauner v. Public Service Authority of South Carolina. 581 S.E.2d 161 (2003).

In addition, based upon the Certification of Facts filed by the parties, it appears that the equity in the Vehicle significantly exceeds Movant's lien. The Certification values the Vehicle at the time the case was filed at approximately $24,000 retail and $20,000 wholesale. The Certification also indicates that Movant's debt balance is

$8,402.68. At the hearing, there was some discussion of a recent appraisal of the Vehicle by a dealer who set a present value of approximately $14,000. Even after considering applicable exemptions, there appears to be significant equity for the benefit of the estate. However, it appears the Chapter 7 Trustee, who was represented at the hearing, has not objected to the Motion nor presently intends to liquidate the Vehicle. Instead, the Chapter 7 Trustee relies on Movant's agreement to return any equity. The Court is perplexed by the Trustee's position in this matter considering this case is apparently an asset case in which the Trustee is actively working. Further, the Court questions the wisdom of relying on a process of returning value to the estate via a non-bankruptcy method. Nevertheless, for purposes of the Motion, the existence of this significant equity cushion provides adequate protection for Movant's interest in the Vehicle at this time.

In this ruling, the Court also must consider its prior ruling in the case of In Re Knox, C/A No. 02-13517-W, slip op. (Bankr. D.S.C. Jan. 17, 2003). The Knox case was a no asset case in which the equity in the property subject to the motion was marginal or de minimis. In that case, the Trustee's failure to object was understandable. However, in the present case, the presence of significant equity would not only benefit the estate in this asset case, but would also provide adequate protection which may defeat the Motion pursuant to § 362(d)(1).

Therefore, since Debtors have complied with the terms of payment to secure the indebtedness agreed upon by the parties in the Settlement Order in this case, because there is significant equity in the vehicle which may be of benefit to the estate, and because the parties have failed to address by evidence the issue of modification of the contract, the Motion should be denied at this preliminary hearing. Thus, a final hearing

shall be held pursuant to § 362(e) **on February 10, 2004 at 9:00a.m. in Columbia, South Carolina at the J. Bratton Davis U. S. Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina 29201.**

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 21, 2004