

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

**Honorable Christopher M. Klein**  
**Bankruptcy Judge**  
**Sacramento, California**

**December 10, 2019 at 1:30 p.m.**

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1.	<a href="#"><u>19-26416-C-13</u></a> ANGELA RUSFELDT <a href="#"><u>GB-1</u></a> W. Steven Shumway	<b>MOTION FOR RELIEF FROM AUTOMATIC STAY</b> 11-4-19 <a href="#"><u>[22]</u></a>
<b>CERTIS PN 1, LLC VS.</b>		

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 4, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

Certis PN 1, LLC ("Movant") seeks relief from the automatic stay with respect to Angela Rusfeldt's ("Debtor") real property commonly known as 5408 Iron Point Court, Rocklin, California ("Property").

Movant makes two arguments, asserting that (1) cause for relief exists pursuant to 11 U.S.C.

§ 362(d)(1) because the Debtor, having filed multiple cases, filed this case in bad faith; and (2) relief should be granted pursuant to 11 U.S.C. § 362(d)(4) because the Debtor, having filed multiple cases, filed this case in bad faith as part of a scheme to delay.

The grounds states with particularity (Fed. R. Bankr. P. 9013) upon which the assertion of bad faith is made consist of:

- A. Debtor filed the first bankruptcy case on October 24, 2016, three days before the scheduled nonjudicial foreclosure sale.
- B. Movant obtained relief from the bankruptcy stay in April 2017, in the first bankruptcy case to allow Movant to proceed with the nonjudicial foreclosure sale. The first bankruptcy case was dismissed in April 2017.
- C. The day the nonjudicial foreclosure sale was set to be conducted Debtor's spouse commenced on April 28, 2017, a bankruptcy case, the second bankruptcy case in the multiple filings, which stayed the nonjudicial foreclosure sale. The second bankruptcy case was dismissed on January 14, 2019.
- D. Movant's nonjudicial foreclosure was set to be conducted on April 19, 2019.
- E. On April 12, 2019, Debtor's non-debtor spouse filed a bankruptcy case, the third bankruptcy case in the multiple filings, which stayed the nonjudicial foreclosure sale.
- F. On June 13, 2019, Movant obtained relief from the automatic stay in the third bankruptcy case. The third bankruptcy case was dismissed on September 24, 2019.
- G. Movant's nonjudicial foreclosure sale was set to be conducted in October 2019.
- H. On October 15, 2019, on the eve of the scheduled nonjudicial foreclosure sale, Debtor commenced the current bankruptcy case, the fourth in the multiple filings.

Motion, Dckt. 22..

No allegations are made as to why the prior cases were dismissed, what Movant was paid in those cases, and what Movant has been paid during the three years of these bankruptcy cases.

## **TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 26, 2019. Dckt. 33. The Response details the treatment of Creditor's claim as a Class 1, and notes Debtor is current under the proposed plan having paid \$4,400.00. Dckt. 33.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on November 26, 2019. Dckt. 36. Debtor argues that the case history

**December 10, 2019 at 1:30 p.m.**

**Page 2 of 7**

shows a run of bad luck rather than a scheme to delay or hinder.

Debtor explains her first Chapter 13 case was filed to save her home, but was dismissed because Debtor had already received a Chapter 7 discharge within 4 years, and because Debtor was not working at that time.

The next case was filed by Debtor's non-filing spouse Abel Rusfeldt ("Debtor's Spouse"). That case was pending from April 2017 through late 2018, after Debtor's Spouse became unemployed. When Debtor's Spouse received a new job offer, he filed another case, but the offer was later rescinded leaving insufficient income to make payments.

Debtor argues that the present case was filed after Debtor secured regular notary work in early 2019, and Debtor's Spouse also found new (unspecified) employment.

Debtor notes that she is current under the plan, and that the Schedules demonstrate there is an equity cushion giving adequate protection.

## **DISCUSSION**

Creditor did not provide evidence of the Property's value. Nor is there evidence presented as to what is currently owed.

Debtor's Schedules A/B show that the Property is worth \$480,000.00. Dckt. 1. Schedule D shows Creditor's claim coming in at only \$110,000.00. Dckt. 13. Another secured claim of \$279,076.00 is listed, totaling the secured claims at \$389,076.00 and leaving \$90,924.00 in equity.

### **Debtor's Intent in Filing this Case**

Creditor has placed all its chips on a single argument (opting not to present evidence as to what amounts are owing on Creditor's claim, what the value of the property is, whether Creditor is adequately protected by equity, etc). That argument is that the present case was filed in bad faith because it is the fourth case, the three prior cases having been dismissed.

However, this argument is not supported by great factual detail. Creditor relies on the fact that (1) this is the fourth case, and (2) the three prior cases were dismissed.

Creditor's strategic choice put Debtor in an easy position to fill in the informational gaps. Debtor explains (supported by testimony (Dckts. 37, 38)) that the prior cases being dismissed was in most part due to job instability and insufficient income. Debtor then explains the present case was filed after both Debtor and Debtor's Spouse secured more reliable employment and income sufficient to fund the plan.

It is noted by Debtor, and confirmed by the Trustee, that Debtor is current on the proposed \$4,400.00 monthly payment.

### **Denial of the Motion Without Prejudice**

There is some evidence that conflicts with Debtor's illustration of the case history. For example, Case No. 19-22297 filed by Debtor's Spouse was dismissed in September 24, 2019, just a

month before the present case was filed. If the sole issue for Debtor was stable income, and Debtor and her Spouse were both employed in early 2019, then it is unclear why that case was dismissed.

But, Movant has not presented evidence or detailed argument enough to show the Motion should be granted.

Therefore, the best course is for the court to deny without prejudice the Motion so Movant may refile the Motion, supported by clear argument and admissible evidence.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Certis PN 1, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**MERCEDES-BENZ FINANCIAL  
SERVICES USA LLC VS.**

**Final Ruling:** No appearance at the December 10, 2019 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 1, 2019. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Freightliner PT126SLP (“Vehicle”). The moving party has provided the Declaration of Monica Senter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Oleg Artemov and Irina Artemova (“Debtor”).

Movant primarily argues cause for relief exists because Debtor’s proposed plan (Dckt. 2) provides for the surrender of the Vehicle. Movant also argues Debtor has not made 1 post-petition payment, with a total of \$3,249.24 in post-petition payments past due. Declaration, Dckt. 19.

**DISCUSSION**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including Debtor having provided for Creditor’s claim as a class 4 in the proposed plan. Dckt. 2.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

#### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because Debtor has indicated the Vehicle will be surrendered.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement,

loan documents granting it a lien in the asset identified as a 2019 Freightliner PT126SLP("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.