

IT IS SO ORDERED.



Dated: April 10, 2007
03:29:18 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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| IN RE: | * | |
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| DIANA BARBER, | * | |
| | * | CASE NUMBER 03-40045 |
| Debtor. | * | |
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| MARK A. BEATRICE, TRUSTEE, | * | |
| | * | ADVERSARY NUMBER 03-4162 |
| vs. | * | |
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| COUNTRYWIDE HOME LOANS, INC. | * | |
| et al., | * | |
| | * | HONORABLE KAY WOODS |
| Defendants. | * | |
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ORDER DENYING DEFENDANTS COUNTRYWIDE HOME LOAN, INC.
AND AMERICA'S WHOLESALE LENDER'S
MOTION FOR PARTIAL RECONSIDERATION

Before the Court is Defendants Countrywide Home Loans, Inc. and America's Wholesale Lender's Motion for Partial Reconsideration ("Motion for Reconsideration") (Doc. # 177) filed on April 9, 2007 by Countrywide Home Loans, Inc. and America's Wholesale Lender (collectively, "Countrywide"). Countrywide seeks reconsideration of this Court's April 3, 2007 Memorandum Opinion Regarding

Trustee's Motion for Sanctions ("April 3 Opinion") (Doc. # 172) and Order ("April 3 Order") (Doc. # 173), which provide for the following sanctions against Defendant The Mortgage Zone, Inc. ("TMZ"): (i) imposition of monetary sanctions in an amount to be determined to compensate Trustee for having to file the Motion to Compel (Doc. # 127) and the Motion for Sanctions (Doc. # 141); and (ii) "to the extent Trustee is not able to produce evidence concerning any element of a cause of action because TMZ failed to respond to the document request, Trustee will be deemed to have carried its burden of proof on such issue." (April 3 Order at 2.) Countrywide only objects to the second sanction in the April 3 Order.

Countrywide's Motion for Reconsideration is entirely misplaced.¹ "Countrywide requests that this Court refrain from imposing any sanctions against Countrywide as a result of TMZ's discovery conduct." (Motion for Reconsideration at 6.) However, this Court has not imposed any sanctions against Countrywide. The only party sanctioned by the Court's April 3 Order was TMZ. As a result, there is no relief this Court can provide Countrywide in response to the Motion for Reconsideration.

At the hearing on the Motion for Sanctions, counsel for Trustee requested, as a sanction, that the facts be deemed admitted. Countrywide opposed this request. Although Trustee's requested sanction could have been imposed by the Court, the Court chose not to do so. As a consequence, Countrywide's complaint that

¹ The Court directs Countrywide's attention to the March 7, 2007 Memorandum regarding Motions for Reconsideration, which is posted on the Court's website at www.ohnb.uscourts.gov.

it was not afforded warning and notice before imposition of sanctions against TMZ has no merit. The sanction in the April 3 Order is limited to punishing TMZ because of TMZ's willful disregard for legitimate discovery requests and this Court's December 29, 2006 Order Granting Motion of Trustee for Order Compelling Defendant The Mortgage Zone to Produce All Requested Documents ("December 29 Order") (Doc. # 138).

As this Court previously stated, "the purpose of imposing sanctions is accountability." (April 3 Opinion at 8.) This Court attempted to craft a sanction that would make Trustee whole and hold TMZ accountable for its willful abuse of the discovery process. The Court believes that it has accomplished those purposes in the sanctions set forth in the April 3 Order. Countrywide also laments that the "sanction ordered by the Court may be difficult to implement." (Motion for Reconsideration at 5.) The Court believes that, difficult or not, the sanction is workable and can be properly implemented.

Countrywide postulates that it may be harmed as a result of the sanctions imposed by the Court on another defendant. Countrywide argues that since it has produced more than 500 pages of documents and Co-Defendant Liberty Title Insurance Agency, Inc. ("Liberty") has produced another 164 pages of documents, "[i]t is likely that any document that TMZ, the broker of the subject loan, could produce has already been produced by Liberty, the title company that handled the closing of the Loan, and/or Countrywide, the lender." (Motion for Reconsideration at 4.) If Countrywide's argument is correct, Countrywide has no reason to fear that it will be harmed or prejudiced. If Trustee can establish the elements of

its case by documents he has in his possession or those that have been produced by other parties, he will do so. It is only if Trustee is precluded from establishing an element of his case because of TMZ's willful abuse of the discovery process and disregard for this Court's December 29 Order that those elements will be deemed to be established.

Countrywide's argument is circular, at best. If it (or Liberty) has produced documents that can establish a defense and defeat one or more of Trustee's causes of action, neither of those defendants have been prejudiced or harmed. We will never know if TMZ has or previously had documents that duplicate what has been produced by Countrywide and Liberty (as Countrywide suggests). We lack this information because TMZ flaunted the Court's December 29, 2006 Order compelling it to produce documents.

Countrywide offers no alternative sanction in place of the sanction imposed by the Court that it deems objectionable. Countrywide seemingly suggests that TMZ should not be sanctioned at all (except for imposition of attorney's fees) despite TMZ's discovery abuses and willful misconduct. This Court is obligated to hold TMZ accountable rather than reward TMZ for its misconduct.

Countrywide has no basis to seek reconsideration of the April 3 Order, which imposed sanctions upon a co-defendant rather than itself. On one hand, Countrywide hypothesizes that it may be harmed as a result of the sanctions imposed upon TMZ and, on the other hand, Countrywide conjectures that either it or Liberty has produced all documents that TMZ could have produced. Any injury to Countrywide is speculative, at best, at this juncture. This Court has not sanctioned Countrywide for TMZ's misconduct; only TMZ has

been sanctioned. Accordingly, the Motion for Reconsideration is denied.

IT IS SO ORDERED.

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