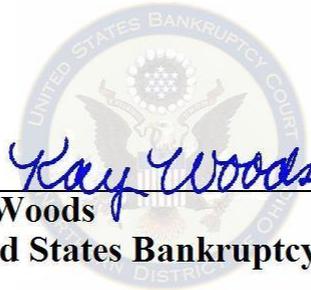


**IT IS SO ORDERED.**



**Dated: May 31, 2011  
11:58:30 AM**

**Kay Woods  
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

**IN RE:**

**GIOVANNI BONANNO and  
KATHRYN BONANNO,**

**Debtors.**

\*  
\*  
\* **CASE NUMBER 10-41036**  
\*  
\* **CHAPTER 7**  
\*  
\* **HONORABLE KAY WOODS**  
\*

\*\*\*\*\*  
**ORDER (i) HOLDING BANK OF AMERICA AND BAC HOME LOANS  
SERVICING, LP IN CONTEMPT AND (ii) IMPOSING SANCTIONS**  
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This cause is before the Court on Order to Appear and Show Cause ("Show Cause Order") (Doc. # 24) issued by the Court on April 4, 2011. On February 24, 2011, Debtors Giovanni Bonanno and Kathryn Bonanno ("Debtors") filed Motion for an Order to Appear and Show Cause ("Motion") (Doc. # 20), which urged the Court to require a representative of Bank of America and BAC Home Loans Servicing, LP (collectively, "Bank of America") to appear and show cause why Bank of America should not be found to have violated the discharge injunction and why the Debtors should not be entitled to sanctions

and recoveries.

The Motion alleged: (i) the Debtors filed a voluntary chapter 7 petition on March 26, 2010; (ii) Bank of America was notified of the Debtors' chapter 7 case; (iii) Bank of America was served with Notice of Abandonment of Property dated April 28, 2010 (Doc. # 11), whereby the Chapter 7 Trustee abandoned the real property known for street numbering purposes as 519 Vaqueros Avenue, Rodeo, CA 94572 ("Real Property"); (iv) Bank of America was served with the Order of Discharge dated July 27, 2010 ("Discharge Order") (Doc. # 15), which provided the Debtors with a discharge in the instant bankruptcy case; and (v) counsel for the Debtors, Bruce R. Epstein, Esq., sent Bank of America correspondence dated December 7, 2010, which reiterated the status of the Debtors' bankruptcy case and discharge and further stated that, as a consequence, Bank of America had been free for some time to foreclose on the Real Property. Despite being served with the various pleadings and orders as well as being notified by the Debtors and the Debtors' counsel of the abandonment of the Real Property and the Debtors' discharge, Bank of America has sent the Debtors numerous correspondence indicating that the Debtors' account is past due for multiple payments.

The Show Cause Order was the second Order to Appear and Show Cause issued by the Court to Bank of America, the first such order (Doc. # 22) having been entered on February 28, 2011. The Court held a hearing on the first order on March 31, 2011, at which the Court expressed concern that Bank of America may not have been

properly notified of the Order to Appear and Show Cause. As a consequence, the Show Cause Order was reissued.

The Show Cause Order was served on Bank of America at the following addresses: (1) BAC Home Loans Servicing, LP, Attn: Customer Service, CA6-919-01-41, P.O. Box 5170, Simi Valley, CA 93062-5170; (2) Bank of America, P.O. Box 15019, Wilmington, DE 19886-5019; (3) Bank of America, BAC Home Loans, P.O. Box 9048, Temecula, CA 92589-9048; (4) Bank of America, P.O. Box 8239, Van Nuys, CA 91409-8239; (5) BAC Home Loan Servicing LP, P.O. Box 15222, Wilmington, DE 19886-5222; (6) Bank of America, BAC Home Loan Servicing LP, Customer Service, P.O. Box 6170, Simi Valley, CA 93062-5170; and (7) Bank of America, BAC Home Loans Servicing, LP, P.O. Box 660694, Dallas, TX 75266-0694. These addresses were obtained from correspondence received by the Debtors or the Debtors' counsel from Bank of America and/or the proof(s) of claim filed by Bank of America in the Debtors' bankruptcy case. The Court finds that service of the Show Cause Order on Bank of America was appropriate and sufficient.

Despite being served with the Show Cause Order, Bank of America failed or refused to appear at the hearing on April 28, 2011 ("Hearing"). Accordingly, the Court hereby finds Bank of America to be in contempt of court for failure to comply with this Court's Show Cause Order.

Mr. Epstein appeared at the Hearing on behalf of the Debtors and represented that he had received no communication from Bank of

America subsequent to issuance of the Show Cause Order.<sup>1</sup> However, Mr. Epstein represented that, subsequent to issuance of the Show Cause Order, the Debtors had received additional correspondence from Bank of America. At the Court's request, on April 29, 2011, Mr. Epstein filed that document, which is styled "Notice of Intent to Accelerate" ("Acceleration Notice") (Doc. # 26). The Acceleration Notice, which is dated April 18, 2011, states that the Debtors' loan secured by the Real Property ("Loan") is in "serious default" and requires the Debtors to pay \$53,659.32 on or before May 18, 2011, to cure the default and avoid foreclosure. (Acceleration Notice at 2.) In addition, the Acceleration Notice states, "BAC Home Loans Servicing, LP will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by May 18, 2011 as outlined above will result in the acceleration of your debt." (*Id.* at 3.)

On May 6, 2011, Mr. Epstein filed Fee Application Relative to Motion to Appear and Show Cause (Doc. # 27), which detailed 3.2 hours at the hourly billing rate of \$225.00. As a result, Mr. Epstein requested \$720.00 in attorney's fees associated with Bank of America's alleged violation of the discharge injunction. On May 11, 2011, the Debtors filed Status Report (Doc. # 28), which

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<sup>1</sup> Scott R. Belhorn, Esq., on behalf of Daniel M. McDermott, the United States Trustee for Region 9 ("UST"), was present at the Hearing. Mr. Belhorn expressed the UST's concern that Bank of America was engaged in this type of post-discharge communication with the Debtors and urged the Court to take appropriate action.

indicated that Mr. Epstein was contacted by counsel for Bank of America and that discussions to resolve the instant dispute were ongoing.

The Debtors and Bank of America jointly filed Motion to Approve Stiuplation [sic] and Stiuplation [sic] (collectively, "Stipulation") (Doc. # 30) on May 26, 2011. The parties request the Court to incorporate the terms of the Stipulation in resolution of the Show Cause Order. The terms of the proposed Stipulation are as follows: (i) Bank of America shall cease any further collection activity regarding the Debtors' discharged Loan; (ii) Bank of America shall pay the Debtors \$2,000.00 for damages and Mr. Epstein \$720.00 for attorney's fees, totaling \$2,720.00; and (iii) the Debtors shall execute a release of Bank of America covering all actions through the date of the Stipulation - *i.e.*, May 26, 2011.

The Court hereby incorporates the terms of the Stipulation as sanctions for Bank of America's contempt of court. The Court hereby imposes the following sanctions:

1. Bank of America and BAC Home Loans Servicing, LP shall cease any and all collection activity concerning the Debtors' discharged Loan;
2. Bank of America and BAC Home Loans Servicing, LP, jointly and severally, shall pay Mr. Epstein the sum of \$720.00, as and for attorney's fees, which the Debtors have incurred in pursuing Bank of America and BAC Home Loans Servicing, LP's alleged discharge violation. Bank of

America and BAC Home Loans Servicing, LP shall remit this amount to Bruce R. Epstein, Esq., 5500 Market Street, Suite 101, Boardman, OH 44512, no later than fourteen (14) days after entry of this Order; and

3. Bank of America and BAC Home Loans Servicing, LP, jointly and severally, shall pay the Debtors damages in the amount of \$2,000.00 no later than fourteen (14) days after entry of this Order. This amount shall be sent to the Debtors care of Bruce R. Epstein, Esq. at the address referenced in paragraph 2, above.

**IT IS SO ORDERED.**

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