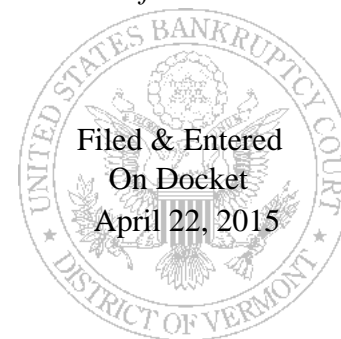


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Alan & Kim Bean
Debtors.**

**Chapter 13 Case
11-10985**

ORDER

**GRANTING DEBTORS' MOTION TO FIND CREDITOR IN CONTEMPT,
GRANTING DEBTORS' REQUEST FOR SANCTIONS,
AND SETTING HEARING FOR DETERMINATION OF FURTHER DAMAGES**

On January 9, 2015, Alan and Kim Bean (the "Debtors") filed a motion for contempt, seeking an order requiring servicer One Main Financial, acting on behalf of creditor Citifinancial, to provide monthly statements to the Debtors, in accordance with Vt. LBR 3071-1(f) (doc. # 37) (the "Motion"). The Motion also sought attorney's fees and a monetary civil sanction. On February 18, 2015, the Court conducted a hearing on the Motion, at which the Debtors appeared by counsel and One Main Financial did not appear. At that hearing, the Court denied the Debtors' request for sanctions and attorney's fees, but granted the Debtors' request for an order requiring One Main Financial to comply with Vt. LBR 3071-1(f) and to commence providing monthly statements to the Debtors by March 15, 2015. On March 2, 2015, the Court entered an order memorializing its oral ruling and setting forth in unequivocal language the directive to One Main Financial (the "Order"). The Order directed One Main financial to "send statements to the Debtors which comply with Vermont Local Bankruptcy Rule 3071-1(f)" and put One Main Financial on notice that "if [it] failed to comply with this Order, it [could] be subject to sanctions." Doc. # 42.

On March 30, 2015, the Debtors filed a second motion for contempt, alleging they had not received any communication from One Main Financial as of the date of their motion, and specifically had not received the statements the Court had directed One Main Financial to begin providing to the Debtors by March 15th (the "Second Motion"). In the Second Motion, the Debtors renewed their request for attorney's fees and a monetary sanction, and also requested the Debtors be deemed current on their mortgage obligations to Citifinancial as a result of One Main Financial's failure to provide statements – essentially an order precluding One Main Financial from claiming the Debtors are in arrears based upon that party's failure to provide information to substantiate the arrearage. See, e.g., Fed.R.Bankr.P. 7037(b).

Bankruptcy courts have the power to impose civil contempt sanctions. Bartel v. Eastern Airlines, 1998 U.S. App. LEXIS 71 (2d Cir. N.Y. Jan. 6, 1998) (citing In re Chateaugay Corp., 920 F.2d 183, 187 (2d Cir. 1990)). "[S]anctions in civil contempt proceedings may be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." Id. (citations and quotations omitted). "[P]enalties designed to compel future compliance with a court order are considered to be coercive and avoidable through compliance, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard." Id. (citations and quotations omitted). On a motion for contempt, the movant must demonstrate (1) a "knowing violation of a sufficient, specific and precise order" and (2) "knowledge of the order." In re Damon, 40 B.R. 367, 374 (Bankr. S.D.N.Y. 1984) (collecting cases); see also In re Patterson, 111 B.R. 395, 397 (Bankr. N.D.N.Y. 1989). "Willfulness is not required and intent is irrelevant because of the remedial and coercive nature of civil contempt." Damon, 40 B.R. at 374.

Here, the Court's March 2, 2015 Order met the first criteria: it was sufficient, specific and precise. There is no ambiguity as to the obligation the Court imposed on One Main Financial: One Main Financial was to send statements conforming to the Local Rules, to the Debtors, by March 15, 2015.

The record includes four indications that One Main Financial also had the requisite knowledge of the Court's March 2, 2015 Order. First, One Main Financial was properly served with the Debtors' initial motion for contempt, to which it did not respond. Second, One Main Financial had notice the Court would conduct a hearing on that motion on February 18, 2015. Third, One Main Financial was served notice of the Order through the Bankruptcy Noticing Center. See doc. # 43. Fourth, One Main Financial received proper notice of the Debtors' Second Motion,ⁱ and failed to file an objection prior to the objection deadline provided in that notice. Therefore, the Court concludes that One Main Financial was aware of, or should have been aware of, the Court's March 2, 2015 Order, which expressly provided that the Court would consider imposing sanctions if One Main Financial did not comply with the Order.

Moreover, pursuant to the various notices, One Main Financial was afforded an opportunity to be heard on both the obligation to provide the monthly statements to the Debtors and whether its failure to provide those statements warranted the imposition of sanctions.

The Debtors allege in their Second Motion that One Main Financial did not comply with the Order. One Main Financial has not responded to or disputed that allegation.

THE COURT FINDS (1) the Order was specific and precise, (2) One Main Financial was properly served with the Motion, the Second Motion and the Order, (3) One Main Financial had knowledge of the risk that sanctions might be imposed if it violated the Order and it neither appeared nor responded to either motion, and (4) One Main Financial failed to comply with the Order, and therefore sanctions are warranted.


The next question is to whom sanctions should be payable. Since the purpose of sanctions in this case is to coerce compliance, it is proper to have the sanctions payable to the Debtors. See In re McLean Industries, Inc., 76 B.R. 291, 297 (Bankr. S.D.N.Y. 1987) (holding that making sanction payable to the debtor adds to its coercive nature).

Based on the representations in the Debtors' motions, and the entire record in this case, THE COURT FURTHER FINDS One Main Financial is in contempt of this Court based upon its failure to comply with the Court's March 2, 2015 Order.

Accordingly, IT IS HEREBY ORDERED that

- 1) One Main Financial shall pay to the Debtors the sum of \$200.00 per day for each day after entry of this order that One Main Financial fails to comply with the Court's March 2, 2015 Order, with such penalties continuing to accrue until One Main Financial begins sending the required statements;
- 2) the Debtors' request for attorney's fees is granted;
- 3) the Debtors' counsel shall file an accounting of attorney's fees incurred in connection with both the Motion and the Second Motion by 5:00 p.m. on April 24, 2015, and if One Main Financial wishes to interpose an objection to the amount or reasonableness of the fees the Debtors seek, it shall file that objection by 10 am on April 28, 2015;
- 4) the Debtors and One Main Financial shall appear at a hearing on April 29, 2015, at 2:30 p.m., at the United States Bankruptcy Court in Burlington, Vermont
 - (a) to address the amount of reasonable attorney's fees to be awarded to the Debtors,
 - (b) to determine whether the Debtors suffered any losses warranting an award of compensatory sanctions (in addition to attorney's fees), and
 - (c) for One Main Financial to show cause why the Court should not declare the Debtors to be current on their mortgage as of May 1, 2015, as a further sanction for One Main Financial's failure to send statements to the Debtor pursuant to this Court's Local Rules and the March 2, 2015 Order;
- 5) if One Main Financial fails to appear at the April 29, 2015 hearing, it shall be subject to further sanctions, including but not limited to monetary sanctions; and
- 6) the Debtors' attorney shall serve a copy of this order on One Main Financial by 3:00 p.m. today.

April 22, 2015
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

ⁱ The Court additionally observes that the record contains a return receipt from a certified mailing, addressed to the party designated on One Main Financial's proof of claim, which is signed by an apparent agent or employee of One Main Financial.