

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

KEVIN L. CHASE,

Debtor.

Case No. DK 13-01402

Hon. Scott W. Dales

Chapter 13

ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

Chapter 7 debtor Kevin Chase (the “Debtor”), through counsel, filed a Motion for Order to Show Cause to Hold Wells Fargo Bank and Its Agent, American Servicing Corporation in Contempt of Court (the “Contempt Motion,” DN 31).

The Contempt Motion alleges that Wells Fargo Bank refuses to cooperate fully with Step Forward agents, and will not accept Hardest Hit funds to bring the Debtor’s mortgage payments current. The Contempt Motion is premised on the supposed contempt of the court’s Order Granting Stipulated Motion to Permit Execution and Recording of Mortgage Note and Lien, dated October 2, 2014 (the “October Order,” DN 30).

In a civil contempt proceeding such as the one the Debtor initiated by filing the Contempt Motion, the movant must prove, by clear and convincing evidence, that the alleged contemnor “violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 550 (6th Cir. 2006) (quoting *Glover v. Johnson*, 934 F.2d 703, 707 (6th Cir. 1991)). The court’s October Order, however, simply permitted the Debtor to seek and document mortgage-related assistance through Michigan’s Hardest Hit program; it required nothing of Wells Fargo Bank. Under the circumstances, it cannot be said that Wells Fargo violated the court’s explicit mandate in any way.

This is not to say that Wells Fargo does not have a contractual, statutory or other obligation to accept the Debtor’s tender, but only that its refusal to do so, if established, would not constitute contempt of the October Order under any set of facts, given the decretal paragraphs of the order itself. The exercise of the civil contempt power,

therefore, is unwarranted, and the court has determined to withhold relief without putting the parties to the expense and delay of conducting an evidentiary hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Contempt Motion is DENIED, without prejudice to the Debtor's seeking appropriate relief other than under Fed. R. Bankr. P. 9020.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Kevin L. Chase, Paul F. Davidoff, Esq., Barbara P. Foley, Esq., and Elizabeth M. Abood-Carroll, Esq.

END OF ORDER

IT IS SO ORDERED.

Dated January 2, 2015



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge