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7 the Lenders Protection Group
and Donna Cangelosi
8
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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 —ooOoo—

13 In re: **Case No. 2:07-cv-00892-RCJ-GWF**
14 USA COMMERCIAL MORTGAGE Bankr. Case No. 06-10725-LBR
COMPANY, Adv. Proc. No.: 07-01076-LBR
15 Debtor. **MOTION FOR SANCTIONS AND**
16 **GAG ORDER**

Hearing Date: tbd
Hearing Time: tbd

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19 _____ /
20 Donna Cangelosi (“Cangelosi”), through her counsel The Law Offices of Alan R.
21 Smith, hereby moves this Court for an Order imposing sanctions upon Compass Financial
22 Partners for acting in bad faith, vexatiously, wantonly and for oppressive reasons, in an
23 attempt to affect this litigation, influence represented Direct Lenders parties reliance on
24 their own Counsel and cause fear, confusion and distrust amongst Direct Lenders, and
25 further moves this Court for a gag-order to be imposed upon Compass to prevent
26 Compass from communicating to Direct Lenders on any subject other than the status of
27 their Loans.

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2 **I.**
3 **INTRODUCTION**

4 Subsequent to the hearings before this Court on October 1 and 2, 2007, Compass,
5 ignoring this Court's admonitions regarding Compass's own serious and substantial
6 transgressions, has boldly engaged in yet another blatant act of bad faith and
7 misrepresentations aimed toward Direct Lenders. On October 9, 2007, Compass sent a
8 direct written communication to all Direct Lenders, including those represented by
9 Counsel in this matter, and other third parties, which purportedly provides a "summary"
10 of this Court's proceedings, actions, comments and rulings. In reality, the
11 communication is blatant propaganda that paints an incomplete and inaccurate picture of
12 this Court's proceedings, and completely ignores this Court's stern rebukes regarding
13 Compass's breaches of fiduciary duty, as detailed in the numerous declarations of
14 individual Direct Lenders and borrowers. As detailed below, Compass's unabashed
15 propaganda can only be viewed as an attempt to improperly affect this litigation, influence
16 Direct Lenders' reliance on their own Counsel and to cause confusion, dissension, fear
17 and conflict amongst Direct Lenders.

18 Compass's written communications with represented parties amount to bad faith
19 and were deployed for vexatious, wanton and oppressive purposes. These
20 communications appear to be a subterfuge for Compass's counsel to communicate with
21 represented Direct Lenders for the purpose of interfering with Direct Lenders' legal
22 representation and influencing Direct Lenders' confidence in their own Counsel.

23 Rather than focusing its efforts and energy on acting as a good faith fiduciary,
24 Compass has chosen to expend its time and energy manipulating the very people to whom
25 its owes fiduciary duties, for the purpose of promoting Compass's own self-interest and
26 causing harm, confusion, panic and fear. Compass's improper conduct must be stopped
27 immediately and should be punished by this Court. For these reasons, and as more fully
28 detailed below, this Court should enter an order:

- 1 (1) imposing monetary and other sanctions upon Compass;
- 2 (2) directing Compass to send a letter to all Direct Lenders, in a form approved
- 3 by this Court and Ms. Cangelosi's Counsel, which retracts its Summary,
- 4 and informs Direct Lenders, in detail, of this Court's serious concerns
- 5 regarding Compass's breaches of fiduciary duty and bad faith; and
- 6 (3) mandating that Compass shall not make any communication with Direct
- 7 Lenders, except for specific loan updates to Direct Lenders as required
- 8 under the Loan Servicing Agreements and Nevada Law, and in particular
- 9 shall not make any unsolicited commentary to Direct Lenders on these
- 10 proceedings.

11

12 **II.**
FACTUAL BACKGROUND

13 On October 9, 2007, Compass sent a written communication to all Direct Lenders,

14 and other third-parties, which purports to provide a "Summary of October 1-2, 2007

15 District Court Hearing" and provides as follows:

16 Dear Direct Lenders:

17 At a hearing conducted on October 1-2, 2007, concerning the conduct of

18 Donna M. Cangelosi, Judge Robert C. Jones of the U.S. District Court for

19 the District of Nevada rule that Compass had shown a likelihood of success

20 on the merits in demonstrating that Ms. Cangelosi violated federal securities

21 laws and Nevada consumer trade laws by improperly soliciting direct

22 lenders' interests in deeds of trust for her management company (FDH

23 Management Company) and entering into servicing agreements with her

servicing company (Lender2Lender) without registration or other

compliance with securities laws and for, among other things, her own

personal gain. In her testimony before the Court, Ms. Cangelosi admitted

that she lied under oath in her deposition about her education, admitting that

she does not, in fact, possess a college degree or a mathematics education

from N.Y.U.

24 Judge Jones held Ms. Cangelosi in contempt of court for violations of

25 multiple orders of the U.S. Bankruptcy Court for the District of Nevada in

26 connection with her efforts to terminate and replace Compass with a loan

27 servicer affiliated with herself. Because of the above findings, Judge Jones

determined that Ms. Cangelosi has "unclean hands" and ruled that the issue

of monetary sanctions against Ms. Cangelosi will be addressed at trail in the

matter.

28 Judge Jones also ruled that he will enter a preliminary injunction in the

1 lawsuits relating to the efforts of Ms. Cangelosi, the “Lenders Protection
2 Group,” and the LLCs formed by Ms. Cangelosi to terminate Compass as
3 loan servicer, providing that, consistent with the order previously entered
4 by Bankruptcy Judge Riegle in the USA Commercial Mortgage chapter 11
5 cases, Ms. Cangelosi’s May 18, 2007 termination letters were without
6 effect and Compass remains the sole servicer of the loans that were the
7 subject of those letters with continuing authority to negotiate with borrowers
8 on payoff of defaulted loans. Additionally, in response to suggestions by
9 the Court, Compass has volunteered to put in place a Nevada-licensed
10 subservicer. The details of the preliminary injunction were set forth in the
11 summary of the September 10, 2007 hearing posted by Compass on its
12 website.

13 A copy of Compass’ October 9, 2007, correspondence to Direct Lenders is attached
14 hereto as Exhibit A.

15 **III.**
16 **LEGAL AUTHORITY AND ARGUMENT**

17 As explained by the Supreme Court, certain implied powers must necessarily result
18 to a District Court. Chambers v. NASCO, Inc., 501 U.S. 32, 43 111 S.Ct. 2123, 2132
19 (1991). Courts are universally acknowledged to be vested, by their very creation, with
20 powers to impose silence, respect and decorum and submission to their lawful mandates.
21 Id. Federal Courts also have inherent power to sanction parties and their lawyers for
22 litigation abuses, and particularly where a party acts in bad faith, vexatiously, wantonly
23 or for oppressive or improper purposes. Fink v. Gomez, 239 F.3d 989, 991-992 (9th Cir.
24 2001).

25 The Court’s inherent power to impose sanctions extends to the full range of
26 litigation abuses, but requires that the sanctioned party engaged in bad faith. Fink, 239
27 F.3d at 992. Bad faith includes a broad range of willful improper misconduct. Id.
28 Notably, bad faith includes acts for an improper purpose, even if the act consists of
making truthful statements.

In the present case, Compass’s October 9, 2007, communication to Direct Lenders
was made in bad faith, for the improper purpose of causing fear, confusion, distrust,
dissension and conflict amongst Direct Lenders. The October 9th communication was not
an ordinary course of business servicing communication, but can only be viewed as a

1 directed attempt to gain an improper advantage in the preset litigation. Contrary to its
2 subject line, the communication is not a good faith attempt to provide a “Summary” of
3 this Court’s proceedings. Rather, the Communication is a targeted attempt to affect this
4 litigation by influencing Direct Lenders reliance on their own Counsel and attempting to
5 erode the organized opposition to Compass. The communication attacks Ms. Cangelosi
6 and other Direct Lenders, while making no attempt to paint a full picture by
7 “summarizing” this Court’s stern comments by this Court regarding Compass’s own
8 conduct and breaches of fiduciary duty, as detailed in the numerous declarations submitted
9 to this Court by Direct Lenders and borrowers. These breaches of fiduciary duty include:

- 10 (1) Compass’s failure make accurate and complete disclosures to Direct
11 Lenders/Compass’s concealment;
- 12 (2) Compass’s failure to communicate with Direct Lenders; and
- 13 (3) Numerous Compass’s actions taken in its own best interest, and to
14 the detriment of Direct Lenders.

15 Compass’s incomplete communication to Direct Lenders yet another instance in
16 Compass’s history of manipulations and misconduct. Indeed, this Court specifically
17 admonished Compass on its failure to make full, accurate and complete disclosures to
18 Direct Lenders. Rather than taking this Court’s concerns to heart, Compass has
19 recklessly disregarded them and set out to manipulate Direct Lenders by communicating
20 an incomplete and inaccurate picture.

21 It is disturbing that Compass, while wholly failing to fulfill their fiduciary and
22 statutory obligation to timely keep Direct Lenders informed on the status of their loans
23 and payoffs, was able to saturate Direct Lenders with its half-truth propaganda a week of
24 this Court’s hearing. Clearly, Compass places causing fear, confusion and mistrust
25 among Direct Lenders, as a priority over its fiduciary, contractual and statutory duties of
26 a loan servicer. While this is certainly troubling to Direct Lenders, it may also amount
27 to yet another breach of Compass’s fiduciary duties.

28 Compass’s actions far exceed the bounds of fair play. Moreover, to the extent

1 Compass's communications are drafted or directed by Compass's Counsel, they violate
2 the spirit, if not the letter, of Nevada Rules of Professional Conduct, Rule 3.4 (Fairness
3 to Opposing Party and Counsel); Rule 3.6 (Trial Publicity); Rule 4.1 (Truthfulness in
4 Statements to Others); Rule 4.2 (Communications With Persons Represented By Counsel);
5 and Rule 4.4 (Respect for Rights of Third Persons). This October 9th communication
6 appears to be a mere subterfuge to allow Compass's counsel to influence and
7 communicate with represented Direct Lenders, in hopes of disrupting Direct Lenders'
8 legal representation and erode organized opposition to Compass.

9
10 **IV.
CONCLUSION**

11 Based on Compass's willful and intentional acts of bad faith, which were
12 undertaken vexatiously, wantonly and for oppressive purposes, this Court should enter
13 an order:

14 (1) sanctioning Compass for its improper communications to represented
15 Direct Lenders;

16 (2) directing Compass to send a letter to all Direct Lenders, in a form
17 approved by this Court and Ms. Cangelosi's Counsel, which retracts its October 9th
18 Summary, and informs Direct Lenders, in detail, of this Court's serious concerns
19 regarding Compass's breaches of fiduciary duty and bad faith; and

20 (3) mandating that Compass shall not make any communication with
21 Direct Lenders, except for specific loan updates to Direct Lenders as required under the
22 Loan Servicing Agreements and Nevada Law, and in particular shall not make any
23 unsolicited commentary to Direct Lenders on these proceedings.

24 DATED this 12th day of October, 2007.

25 LAW OFFICES OF ALAN R. SMITH

26 *s/ Kevin A. Darby*

27 By _____

ALAN R. SMITH, ESQ.

KEVIN A. DARBY, ESQ.

Attorneys For Donna M. Cangelosi