

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

HUNTINGTON NATIONAL BANK,
a United States Banking Association,

Plaintiff,

vs.

TIMOTHY WEAVER; RENEE JERISK;
ANTHONY CICCARELLI, individuals;
and NORTHPOINTE BANCSHARES,
INC., a Michigan corporation,

Defendants.

Case No. 14-05842-CZB

HON. CHRISTOPHER P. YATES

ORDER TO SHOW CAUSE WHY DEFENDANTS TIMOTHY WEAVER AND
NORTHPOINTE BANCSHARES SHOULD NOT BE HELD IN CIVIL CONTEMPT

On June 27, 2014, the Court issued a temporary restraining order (“TRO”) enjoining all of the defendants from retaining confidential customer information from Plaintiff Huntington National Bank (“Huntington”) and soliciting customers of Huntington. On July 10, 2014, the Court entered a stipulated extension of the TRO, which narrowed the scope of the non-solicitation provision in the TRO. On July 29, 2014, the Court entered a Stipulated Order for Preliminary Injunction drafted and submitted by counsel for the parties. That stipulated injunctive order remains in effect.

Within one month of the entry of the stipulated preliminary injunction, Plaintiff Huntington submitted an *ex parte* motion to find Defendants Timothy Weaver and Northpointe Bancshares, Inc. (“Northpointe”) in civil contempt of court. That motion, filed in conformity with MCR 3.606(A), accused Weaver and Northpointe of “solicit[ing] two Huntington employees, who were managed by Weaver when he was employed at Huntington, thereby causing those employees to quit Huntington

within the last two weeks and become mortgage officers at Northpointe[.]” Given the gravity of the allegations, the Court set a schedule for briefing and oral arguments addressing Huntington’s request for an order to show cause why Weaver and Northpointe should not be held in contempt.

Michigan law affords three sanctions for contempt: “(1) criminal punishment to vindicate the court’s authority; (2) coercion, to force compliance with the order; and (3) compensatory relief to the complainant.” *In re Contempt of Dougherty*, 429 Mich 81, 98 (1987). Plaintiff Huntington has chosen to proceed under the one approach that does not involve any potential for incarceration. This approach significantly lowers the stakes for the alleged contemnors, subjecting them only to potential civil liability as “compensation for actual loss or injury caused by a contemnor’s misconduct.” *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 500 (2000). Thus, the request for contempt here is in the nature of a civil complaint against Defendants Weaver and Northpointe for compensation for the losses flowing from their purported violation of the Court’s injunctive orders. Nevertheless, the Court readily acknowledges that “[t]he power to punish for contempt is awesome and carries with it the equally great responsibility to apply it judiciously and only when contempt is clearly and unequivocally shown[.]” *People v Matish*, 384 Mich 568, 572 (1971), so the Court shall tread carefully in addressing the request for contempt.

Under the terms of the stipulated injunctive order, Defendant Weaver and anyone acting in concert with him “shall not solicit current Huntington employees for employment in the residential mortgage loan business at Northpointe or any other entity[.]” *See* Stipulated Order for Preliminary Injunction, § 6 (July 29, 2014). By all accounts, Dana Fox and Nicholas Zaluski both resigned from Huntington in August of 2014 and then promptly accepted employment with Defendant Northpointe as loan officers working with Weaver. Although Weaver and Northpointe deny soliciting either of

those two former Huntington employees, the record contains sufficient evidence to warrant further inquiry. See, e.g., Brief in Support of Ex Parte Motion to Find Defendants Weaver and Northpointe Bancshares in Civil Contempt of Court, Exhibit D (Affidavit of Deborah Herdman, ¶¶ 8-10), Exhibit G (text messages). To be sure, the Court has not yet seen enough evidence to conclusively determine that Weaver and Northpointe violated the Court's injunctive orders.¹ The Court shall reserve its final decision until after the parties have made their presentations on the matter at a show-cause hearing. But based upon the record as it stands, IT IS ORDERED that Defendants Northpointe and Weaver shall appear before the Court at a date and time to be scheduled and show cause why they should not be held in civil contempt of court for soliciting Dana Fox and Nicholas Zaluski to leave Huntington in order to work for Northpointe.²

IT IS SO ORDERED.

Dated: January 14, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

¹ As Defendants Weaver and Northpointe correctly note, they cannot be held in contempt for any activities that predate the entry of the Court's initial TRO. Accordingly, the defendants need not concern themselves with explaining or defending any conduct that occurred before June 27, 2014. In this regard, the Court notes that the text messages submitted by Plaintiff Huntington that were sent on June 26, 2014, cannot form the basis for a finding of contempt.

² Although the Court has chosen to issue an order to show cause, the Court must emphasize that neither Dana Fox nor Nicholas Zaluski faces any risk of being found in contempt of court. The Court simply must determine whether Defendants Weaver and Northpointe have violated any court order.