# APPENDIX "A"

# United States Court of Appeals
For the Eighth Circuit

No. 18-1007

United States of America

*Plaintiff - Appellee*

v.

Gregory Swecker, also known as Gregory R. Swecker, also known as Greg Swecker; Beverly Swecker, also known as Beverly F. Swecker

*Defendants - Appellants*

Swecks, Inc.; Palisades Collection, LLC; State of Iowa, by serving Greene County Attorney and Attorney General for the State of Iowa; Grand Junction Municipal; Unifund CCR Partners; Midland Power Cooperative; State of Iowa, Greene County Attorney

*Defendants*

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: November 15, 2018
Filed: November 20, 2018
[Unpublished]

Before BENTON, BOWMAN, and ERICKSON, Circuit Judges.

PER CURIAM.

Gregory Swecker and Beverly Swecker appeal after the district court[1] adversely granted summary judgment in a foreclosure action brought by the United States of America, and denied their Federal Rule of Civil Procedure 60(b) motion challenging the summary judgment decision. The Sweckers have also filed two motions, both asking this court to take judicial notice of documents related to a separate matter.

We first conclude that our jurisdiction is limited to reviewing the district court's order denying the Sweckers' Rule 60(b) motion. See Fed. R. App. P. 3(c)(1)(B) (notice of appeal must designate judgment, order, or part thereof being appealed); USCOC of Greater Mo. v. City of Ferguson, 583 F.3d 1035, 1040 & n.4 (8th Cir. 2009) (discussing application of Rule 3(c)). We further conclude that the district court did not abuse its discretion in denying that motion, as the Sweckers did not show with clear and convincing evidence that the government had engaged in fraud or misrepresentation preventing them from fully and fairly presenting their case, and did not show exceptional circumstances warranting relief. See Fed. R. Civ. P. 60 (describing circumstances under which court may relieve party from final judgment or order); Browder v. Dir., Dept. of Corr. of Ill., 434 U.S. 257, 263 n.7 (U.S. 1978) (Rule 60(b) ruling is reviewed for abuse of discretion); Arnold v. Wood, 238 F.3d 992, 998 (8th Cir. 2001) (Rule 60(b) motion is not vehicle for simple reargument on merits, but instead requires showing of exceptional circumstances warranting relief); see also United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 935 (8th Cir. 2006) (to prevail on Rule 60(b)(3) motion, movant must show with clear and convincing evidence that opposing party engaged in fraud or misrepresentation that prevented movant from fully and fairly presenting movant's case).

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[1]The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

Accordingly, we affirm. See 8th Cir. R. 47B. We also deny the Sweckers' pending motions, as the documents at issue would not be helpful to our review.

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# APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>GREGORY SWECKER a/k/a GREGORY R. SWECKER; BEVERLY SWECKER a/k/a BEVERLY F. SWECKER; SWECKS, INC.; PALISADES COLLECTION, LLC; STATE OF IOWA; GRAND JUNCTION MUNICIPAL UTILITIES; UNIFUND CCR PARTNERS; and MIDLAND POWER COOPERATIVE,<br><br>Defendants. | * | 4:09-cv-00013<br><br>ORDER |

Before the Court is a motion, filed by Gregory Swecker and Beverly Swecker ("Defendants") on November 28, 2016, asking the Court to set aside its summary judgment order. Clerk's Nos. 205, 208. The United States ("Plaintiff") filed a resistance on December 16, 2016. Clerk's No. 209. Defendants filed a reply on December 28, 2016. Clerk's No. 212. The matter is fully submitted.

## I. BACKGROUND

The underlying facts of this action are recounted in detail in this Court's previous order of November 10, 2016. Clerk's No. 198. In that order, this Court granted summary judgment in Plaintiff's favor against Defendants.[1] *Id.* On November 23, this Court issued its Order for Final Judgment and Decree of Foreclosure. Clerk's No. 204. Defendants thereafter filed the present

[1] Judgment was entered against all other defendants by either consent or default. *See* Clerk's Nos. 200, 202.

motion seeking relief from the November 10 order pursuant to Federal Rule of Civil Procedure 60(b).[2]

## II. ANALYSIS

Defendants argue this Court's summary judgment order "should be set aside based upon Rules 60(b)(3) and 60(b)(6)." Clerk's No. 208 at 8. Under that rule, "the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an opposing party; . . . or (6) any other reason that justifies relief." The rule "is not a vehicle for simple reargument on the merits;" therefore, a motion based solely on the underlying merits of the contested judgment must be denied. *Broadway v. Norris*, 193 F.3d 987, 990 (8th Cir. 1999); *see Arnold v. Wood*, 238 F.3d 992, 998 (8th Cir. 2001). Furthermore, "the movant must demonstrate exceptional circumstances to justify relief." *Brooks v. Ferguson-Florissant Sch. Dist.*, 113 F.3d 903, 904 (8th Cir. 1997).[3]

Defendants' claims that they are entitled to Rule 60(b) relief are primarily based on three categories of "triable issue[s] of fact which precluded the entry of summary judgment." Clerk's No. 208 at 8–18. First, they argue the nature and effect of the Shared Appreciation Agreement ("SAA") remains in dispute. Second, they argue Plaintiff's calculation of principal and interest is incorrect and the proper amount should be confirmed through a forensic accounting. Third,

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[2] On December 8, 2016, Defendants initiated a lawsuit in the United States District Court for the District of Columbia. *See* Clerk's No. 211. The case was transferred to this district on June 6, 2017. *See Swecker v. U.S. Dep't of Agric.*, No. 4:17-cv-195 (S.D. Iowa June 6, 2017). This case shares a basis in underlying facts, and therefore this order is issued contemporaneously with orders on pending motions in Defendants' new action. *See id.*

[3] In their reply brief, Defendants argue they need not show exceptional circumstances because the words "in exceptional circumstances" do not appear in the text of Rule 60(b). Clerk's No. 121 at 5. However, their misapprehension of the rule is a result of their failure to acknowledge the authority of the controlling case law that interprets the text of the rule. *See, e.g.*, *Arnold*, 238 F.3d at 998; *Brooks*, 113 F.3d at 904.

they argue Plaintiff's servicing of operating capital loans through the Farm Service Agency ("FSA")—which are entirely separate from the mortgage instrument at issue in this case—was in violation of 42 U.S.C. § 1983. They separately raise a jurisdictional argument, asserting they have pending discrimination complaints against Plaintiff before the Office of the Assistant Secretary for Civil Rights ("OASCR") under the Equal Credit Opportunity Act, 15 U.S.C. § 1691–1691f, which should divest the Court of jurisdiction in this matter.

However, all of these claims are nothing more than "reargument on the merits" of Plaintiff's summary judgment motion. *See Broadway*, 193 F.3d at 990. Defendants cannot seek Rule 60(b) relief merely by claiming that the Court's ruling on the summary judgment motion should have been different. *Id.* Therefore, Defendants' present motion requesting such relief on the basis of remaining "triable issue[s] of fact" must be and hereby is denied. Clerk's No. 208 at 11, 15, 17–18.

Even if mere reargument on the merits were a permissible ground for Rule 60(b) relief, Defendants would not be entitled to such relief in this case. First, as to their various claims regarding the SAA, their brief reveals numerous misconceptions about the effect and enforceability of that agreement and the operation of mortgage instruments generally. For example, Defendants allege the SAA "was extinguished upon the execution by [a] U.S. Attorney." Clerk's No. 208 at 13. Defendants continue to pursue an argument concerning the difference between a "write off" and a "write down" of their debt, arguing Plaintiff never documented an intent to "write down" Defendants' debt. *See id.* at 12–13. However, the SAA expressly contemplates a write *down* of Defendants' debt.[4] *See* Clerk's No. 155-5 at A-14.

[4] Contrary to Defendants' arguments, a write-down is *consistent* with the FSA's representation that a portion of the debt would be written *off*. *See* Clerk's No. 157-2 at B-2. By writing off a *portion* of the total debt, Defendants' total indebtedness was written down to a new, lower total principal.

Defendants repeatedly assert that "the parol evidence" supports their characterization of the contract. Clerk's No. 208 at 9, 11, 13, 16. They do not specify what parol evidence they rely upon, and the very nature of this argument belies their misunderstanding of the nature of parol evidence. *See Sullivan v. United States*, 363 F.2d 724, 727 (8th Cir. 1966) (providing parol evidence is generally "inadmissible to vary, alter or contradict the terms of the written instrument"). Defendants argue Plaintiff's Complaint "claimed relief for multiple mortgage instruments, a clear fraud upon the court." Clerk's No. 208 at 9. Defendant's characterization of the Complaint as fraudulent demonstrates their misunderstanding of the two mortgage instruments described therein, one of which secured the promissory note and the other of which secured the SAA itself. *See* Clerk's No. 155-5 at A-12 through A-15. The Complaint does not invoke any other previously executed mortgage, fraudulently or otherwise. *See, e.g.*, Clerk's No. 155-5 at A-3. In sum, Defendants' arguments concerning the SAA all rest on factual misapprehensions; none would have altered the outcome of the Court's summary judgment order, and none entitle them to relief on the present motion.

Second, as to Defendants' request for a forensic accounting of Plaintiff's calculation of owed principal and interest, the Court notes the present motion is the first instance in which Defendants have contested on the record Plaintiff's calculations. *Cf.* Clerk's Nos. 87, 157. Defendants had ample opportunity to raise this issue between the filing of the Complaint on January 8, 2009, and the filing of this Court's summary judgment order on November 10, 2016, but they did not do so. Clerk's Nos. 1, 198. Regardless, Plaintiff's calculation method is well documented in the affidavit of Brian Gossling, Chief Specialist of the FSA's Farm Loan Programs. Clerk's No. 155-4 at ¶ 58. Defendants have not identified or alleged any specific error in that presented calculation. *See* Clerk's No. 208 at 16–17. Instead, they simply argue

that Plaintiff "fraudulently failed to pay off the existing Mortgages from the proceeds" of their most recent promissory note. *Id.* This allegation misrepresents the nature and purpose of—and the interrelationship between—the SAA, the promissory note, and the mortgages. It does not demonstrate a need for forensic accounting of Defendants' indebtedness and does not undermine the Court's conclusion that Plaintiff is entitled to summary judgment. Defendants are not entitled to relief on this basis.

Third, Defendants again assert that their loan applications for operating capital—which were all discrete transactions from the SAA and written-down promissory note at issue in this case—have some bearing on this foreclosure action. However, they merely allege, the "FSA's denial and delay of [their] much needed loan funding has caused significant financial injury and has resulted in significant damages to [them]." *Id.* at 17. Whether Defendants suffered injury as a result of a delay or denial of an extension of credit is an immaterial question to the matter before the Court, i.e., Defendants' failure to comply with the terms of the SAA and the promissory note. The Court has not and will not rule on any question of the servicing of operating capital loans because those issues are beyond the scope of this action. Even presuming Defendants' allegations concerning the operating capital loans are true, they are not entitled to relief from summary judgment on that basis.

Lastly, Defendants argue their various civil rights complaints pursued before the OASCR created a procedural bar, which should have prevented this case from moving forward. *Id.* at 21–22. The Court has carefully reviewed the procedural history of their complaints as reflected in the OASCR's own documentation of those claims, and the Court now reaffirms that Plaintiff's pursuit of this foreclosure action complied with all statutory procedural requirements and with

the FSA's own internal policies. *See* Clerk's No. 198 at 11–12. Defendants are not entitled to relief on this basis.

## III. CONCLUSION

Defendants' motion seeking relief under Rule 60(b) merely presents reargument on the merits of the underlying summary judgment motion. On that basis alone, Defendants' motion must be denied. *See Arnold*, 238 F.3d at 998; *Broadway*, 193 F.3d at 990. Furthermore, none of their arguments on the merits of the summary judgment motion cast any doubt upon the correctness of the Court's prior disposition. *See* Clerk's No. 198.

For the reasons stated herein, Defendants' Motion to Set Aside November 10, 2016 Order Granting Plaintiff's Motion for Final Summary Judgment (Clerk's No. 205) is DENIED.

IT IS SO ORDERED.

Dated this 28th day of November, 2017.

Robert W. Pratt

ROBERT W. PRATT, Judge
U.S. DISTRICT COURT

# APPENDIX "C"

**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

No: 18-1007

United States of America

Appellee

v.

Gregory Swecker, also known as Gregory R. Swecker, also known as Greg Swecker and Beverly Swecker, also known as Beverly F. Swecker

Appellants

Swecks, Inc., et al.

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Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:09-cv-00013-RP)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 01, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

# APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 4-09-CV-00013-CRW-SBJ

vs.

GREGORY SWECKER, also known as Gregory R. Swecker, also known as Greg Swecker; BEVERLY SWECKER, also known as Beverly F. Swecker; SWECKS, INC., PALISADES COLLECTION, LLC; STATE OF IOWA; GRAND JUNCTION MUNICIPAL; UNIFUND CCR PARTNERS; MIDLAND POWER COOPERATIVE;, and STATE OF IOWA, GREENE COUNTY ATTORNEY,

ORDER

Defendants.

On April 8, 2019, the undersigned Senior U.S. District Court Judge held a hearing for about two hours to address the Sweckers' several requests for court action relating to their foreclosure action, as well as the Sweckers' several contentions that their rights have been violated since even before this lawsuit was commenced in 2009. The Government obtained a final summary judgment and decree (Docket #204), with the total due and owing by both Sweckers and *in rem* against their mortgaged property: $137, 602.09 principal on the promissory note; $152,967.30 interest on the promissory note; accrual interest on the promissory note of $24.0545 per day starting April 23, 2016, and terminating the day of the judgment; and $116,500 against the property *in rem* and *in personam* against Gregory Swecker per the terms of the shared appreciation agreement. A U.S. Marshal's foreclosure sale is scheduled to proceed on April 10, 2019.

The Sweckers have repeatedly renewed their several contentions that the government and its employees have committed fraudulent acts, have denied their rights to fair hearings, and then improperly obtained summary judgment on November 10, 2016.

On appeal, the U.S. Court of Appeals for the Eighth Circuit affirmed the summary judgment on November 20, 2018, holding and concluding that the Sweckers did not show by clear and convincing evidence that the Government "had engaged in fraud or misrepresentation

preventing them from fully and fairly presenting their case," citing three earlier Eighth Circuit cases on Rule 60 (b) and 60 (b)(3) cases.

I. The Court at the close of the hearing denied two Swecker motions to stay further proceedings (Docket #231, 232), for reasons stated on the record. The Court also denied the Sweckers' motion to take judicial notice (Docket #234) for the reason that nothing in the affidavit of Thomas E. Kalil showed he had knowledge of the facts and circumstances of the Sweckers' complaints in this case.

II. The Court now finally denies the Sweckers' motion to vacate the summary judgment entered by Judge Robert Pratt on November 20, 2016, already affirmed by the Eighth Circuit Court of Appeals on November 20, 2018, with rehearing denied shortly thereafter. The U.S. Marshal's foreclosure sale may proceed as scheduled on April 10, 2019.

This ruling is based on the records filed in this case from its inception and on the summary judgment record itself.

No additional evidence was presented at the hearing. The Sweckers both argued orally, as did Assistant U.S. Attorney William Purdy. Sweckers presented no admissible evidence of any wrongdoing by persons accused of fraudulent behavior, far short of the clear and convincing standard of Federal Rule of Civil Procedure 60 (d).

The Sweckers have not proved that Judge Robert Pratt's purchase of financial instruments in 2009, disclosed in his Financial Disclosure Report, influenced in any way the rulings he entered before and during the time he decided to grant summary judgment for the United States and against the Sweckers (and their interest in Iowa real estate). This record proves Judge Pratt was never disqualified as a judicial officer in this case; he never exhibited any bias based on any financial interest.[1]

The Court denies the Sweckers' several requests for relief and need not decide the United States' motion for miscellaneous relief, filed on March 18, 2019 (Docket #230).

IT IS SO ORDERED.

Dated this 9th day of April, 2019.

Charles R Wolle

CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT

[1]During the April 8 hearing, the Court was informed and advised the parties that the Chief Judge of the U.S. Court of Appeals for the Eighth Circuit dismissed on April 8, 2019, the Sweckers' judicial complaint against Judge Pratt. (JCP No. 08-19-cv-90003).