

APPENDIX

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeal
Tenth Circuit

June 2, 2020

Christopher M. Wolpert
Clerk of Court

LNV CORPORATION,

Plaintiff - Appellee,

v.

JULIA HOOK,

Defendant - Appellant,

and

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

DAVID L. SMITH; PRUDENTIAL HOME MORTAGAGE COMPANY, INC.; SAINT LUKES LOFTS HOMEOWNER ASSOCATION, INC.; DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of Denver, Colorado,

Defendants.

No. 19-1131
(D.C. No. 1:14-CV-00955-RM-SKC)
(D. Colo.)

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).* The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **BRISCOE, LUCERO, and HARTZ**, Circuit Judges.

Julia Hook, an attorney representing herself, appeals from the district court's final judgment in a foreclosure action. Exercising jurisdiction under 28 U.S.C. § 1291, we dismiss this appeal as frivolous and deny Hook's Motion to Proceed *In Forma Pauperis* On Appeal.

LNV Corporation brought an action against Hook in the District Court for the City and County of Denver, Colorado, seeking to foreclose a deed of trust on a piece of real property she owned—a home. In addition to Hook, LNV named as defendants several other parties potentially holding interests in the property, including the Internal Revenue Service. LNV asked the court to determine the priorities of those interests and to order a foreclosure sale of the property.

The United States (on behalf of the IRS) removed the action to the United States District Court for the District of Colorado. LNV filed an amended complaint, and in its answer the United States asserted a claim asking the district court to consider its tax liens against the property when determining the priority of all liens and to distribute any proceeds of the foreclosure sale in accordance with those relative priorities. Hook and her husband, co-defendant David Smith, filed counterclaims against LNV contesting, in relevant part, LNV's right to foreclose on the home. They also advanced claims against the United States, contesting their tax liability and the tax liens.

The district court ultimately dismissed all of Hook's claims and ruled in favor of LNV on its claims against Hook and Smith, leaving to be decided only the manner of judicial foreclosure and the amount of the judgment.

Although Hook and Smith filed a Chapter 7 bankruptcy petition, requiring the district court to administratively close this case, the bankruptcy court granted LNV relief from the automatic bankruptcy stay so the district court could proceed, and it denied Hook and Smith's motion to vacate the relief order. On the same day it denied the motion to vacate, the bankruptcy court entered a discharge order relieving Hook and Smith of their personal liability for certain debt but allowing "a creditor with a lien [to] enforce a claim against [Hook and Smith's] property subject to that lien unless the lien was avoided or eliminated." U.S. Supp. App. at 254.¹

After reopening the case the district court eventually entered a final judgment in favor of LNV and the United States and against Hook and Smith. The court also ordered foreclosure and judicial sale of Hook and Smith's home. Only Hook appeals.

Hook's arguments on appeal, which for the most part contend that the district court lacked jurisdiction and denied her due process, are wholly frivolous. As an attorney, she should have known that they lacked any merit before she argued them; and in large part, the appellees' briefs make that perfectly clear. We see no need to further educate Hook.

¹ The discharge order did not end the bankruptcy case, but that case was eventually closed.

We add only a word about Hook's suggestion that the district judge was hostile to and biased against her, in violation of her due-process rights. "To demonstrate a violation of due process because of judicial bias, a claimant must show either actual bias or an appearance of bias." *Bixler v. Foster*, 596 F.3d 751, 762 (10th Cir. 2010) (internal quotation marks omitted). But "[a]dverse rulings alone do not demonstrate judicial bias." *Id.* Hook's bias argument relies solely on the district court's adverse rulings and therefore is devoid of merit.

Because this appeal is frivolous, *see Ford v. Pryor*, 552 F.3d 1174, 1180 (10th Cir. 2008) ("An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." (internal quotation marks omitted)), we dismiss the appeal and deny Ms. Hook's Motion to Proceed *In Forma Pauperis* On Appeal, *see* 28 U.S.C. § 1915(e)(2)(B)(i) (requiring dismissal of frivolous appeal filed by party seeking to proceed IFP); *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991) (grant of IFP requires "a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal"). Consequently, Ms. Hook must pay all appellate filing and docketing fees (\$505.00) immediately to the United States District Court for the District of Colorado.

Entered for the Court

Harris L Hartz
Circuit Judge

APPENDIX B

06/02/2020 [10744339] Order filed by Judges Briscoe, Lucero and Hartz, as found in the order and judgment, denying Attorney motion for leave to proceed in forma pauperis filed by Appellant Ms. Mary Julia Hook. Appellant is directed to immediately pay the filing fee in full. [text only entry - see case termination for order and judgment] [19-1131] [Entered: 06/02/2020 08:44 AM]

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 30, 2020

Christopher M. Wolpert
Clerk of Court

LNV CORPORATION,

Plaintiff - Appellee,

v.

JULIA HOOK,

Defendant - Appellant,

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

DAVID LEE SMITH, et al.,

Defendants.

No. 19-1131
(D.C. No. 1:14-CV-00955-RM-SKC)
(D. Colo.)

ORDER

Before **BRISCOE**, **LUCERO**, and **HARTZ**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular

active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

ORDER

This matter is before the Court on Plaintiff LNV Corporation's Motion for Award of Attorney's Fees and Costs (the "Motion") (ECF No. 414), seeking an award in the amount of \$245,000.00 as of May 31, 2018 (plus fees and expenses incurred after May 31, 2018), incurred in connection with this case, the associated foreclosure sale, and any appeals taken from the orders of this Court. Defendants Hook and Smith (collectively, "Defendants") have filed a response ("Defendants' Response") in opposition, to which Plaintiff has filed a Reply. (ECF Nos. 417, 419.) The United States filed a non-opposition statement to Plaintiff's Motion (ECF No. 416); no other party filed any paper addressing the Motion.

After reviewing the above briefs, the Court issued a Minute Order directing Plaintiff to address an issue raised in Defendants' Response. Plaintiff did so in its response ("Plaintiff's Response"). (ECF Nos. 420, 421.) The Motion is ripe for resolution.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties are well versed with the lengthy history which precedes the Motion so it will not be repeated here. Suffice to say that only a few issues remain in this case, including the Motion before the Court. The bottom line is this: the Court entered summary judgment in favor of Plaintiff and against Defendant Hook on its Fifth Claim for Money Judgment and determined the amounts that are owed under the terms of the Promissory Note and/or the Deed of Trust. Thereafter, among other filings by one or more parties, Plaintiff filed the Motion seeking the fees and costs at issue, asserting they are owed under the Promissory Note.

Defendants' Response raises the following arguments in opposition to the Motion: (1) Plaintiff's Motion allegedly violates the automatic stay, the discharge order, and/or the discharge injunction in Defendants' Chapter 7 bankruptcy case, and any judgment against them personally will be void; (2) Plaintiff lacks standing; (3) the attorney's fees and costs referenced in the Promissory Note are required to be proved at trial as an element of damages; (4) Plaintiff fails to specify any fee-shifting provision of law which would allow a recovery of fees under Fed. R. Civ. P. 54(d)(2)(B); (5) pursuant to Fed. R. Civ. P. 54(d)(2)(B), the Court should order the disclosure of the terms of any agreement about fees for the services for which the claim is made; and (6) an evidentiary hearing should be had under Fed. R. Civ. P. 54(d)(2)(C). The Court addresses such arguments in turn.

II. DISCUSSION

A. Alleged Bankruptcy Violations and Standing

As Plaintiff argues, Defendants' arguments concerning alleged violations of bankruptcy law and Plaintiff's lack of standing have been raised and rejected on more than one occasion. The Court will not address them again. Such arguments are rejected here for the same reasons they were rejected before.

B. Argument that Fees and Costs are an Item of Damages

Defendants assert, albeit cursorily, that the requested amounts are required to be proved at trial as an element of damages. Although the Court could have deemed such a cursory argument, without legal support, waived, the Court directed Plaintiff to address this argument. Plaintiff did so in Plaintiffs' Response arguing the substantive law (here, Colorado law) does not require the requested fees to be proved as an item of damages. The Court finds otherwise.

Rule 54(d)(2)(A) provides that “[a] claim for attorney’s fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.” Under Colorado law, whether Defendants are entitled to have a jury decide the attorney’s fees issue depends on whether such fees are “properly characterized as costs or damages.” *Chartier v. Weinland Homes, Inc.*, 25 P.3d 1279, 1281 (Colo. App. 2001). Consideration of whether fees are damages is “by its very nature, a fact – and context – sensitive one, which rests within the sound discretion of the trial court.” *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936, 941 (Colo. 1993). The Colorado Supreme Court has stated, as relevant here:

Such discretion should be guided by the nature of the requested attorney fees. If attorney fees are part of the substance of a lawsuit, that is, if the fees being sought are “the legitimate consequences of the tort or breach of contract sued upon,” ... such as in an insurance bad faith case, then such fees are clearly damages. If, on the other hand, attorney fees are, as here, simply the consequence of a contractual agreement to shift fees to a prevailing party, then they should be treated as “costs[.]”

Ferrell, 848 P.2d at 941.¹ See also *Farmers Reservoir& Irr. Co. v. City of Golden*, 113 P.3d 119, 134 (Colo. 2005) (same, citing *Ferrell, supra*); *Chartier*, 25 P.3d at 1281 (same, citing *Ferrell, supra*).

In this case, the Promissory Note provision upon which Plaintiff relies for its request for attorney’s fees and costs states that: “If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney’s fees.” (ECF No. 3, page 10.)² By its terms, the costs and expenses recoverable – and sought by Plaintiff here – are the consequences of the breach of the Promissory Note sued upon. As such, they are an item of damages.

This is further supported by Plaintiff’s argument that the attorney’s fees are not subject to the ““element of damages’ exception” as the fees sought were not allegedly “incurred in a separate action.” (Plaintiff’s Response, p. 4.) On the contrary, even a cursory review of the fees statements shows requests are made for fees charged by two other law firms (neither of whom

¹ Plaintiff’s apparent assertion that where a request for fees is based on a “contractual provision” or agreement such fees are to be treated as costs is disingenuous where the cases it cites specifically provide it is so where the provision or agreement is for “shift[ing] fees to a prevailing party.” *Chartier*, 25 P.3d at 1281; *Ferrell*, 848 P.2d at 941.

² The page reference is to the page number assigned to the document through the CM/ECF system, found at the upper right-hand corner of the document.

have ever entered their appearance in this matter) apparently related to another foreclosure proceeding against Defendant(s), and for fees incurred in Defendants' bankruptcy proceedings. As such, the requested attorney's fees and costs are "damages." The inquiry, of course, does not end here.

C. Summary Judgment on Fees and Costs Request

Plaintiff contends that even if the attorney's fees and costs are an element of damages, the Court has already determined all issues on summary judgment and nothing remains for a jury. On this record, the Court agrees, mainly.

In its prior order, the Court stated that "Section 7(E) allows LNV to recover all 'costs and expenses in enforcing the Note' such as reasonable attorneys' fees," but found Plaintiff failed to show the amount it requested on summary judgment fell within this section. (ECF No. 320, p. 12.) Thus, while the Court found reasonable attorney's fees may be recoverable under Section 7(E), there was no determination that any fees Plaintiff may request are covered under this section or the amount of any such fees. In the Court's view, that is what Plaintiff currently seeks in its Motion – and Defendants' argument that the Motion seeks fees as damages comports with this view. That is not to say, however, that Plaintiff may not do so by motion.

As Plaintiff argues, summary judgment may be had on the amount of damages. *See J.R. Simplot v. Chevron Pipeline Co.*, 563 F.3d 1102, 1117 (10th Cir. 2009). Indeed, the Tenth Circuit has stated a "district court could grant summary judgment *sua sponte* on any and all aspects of [a party's] claim, including damages, if there were no genuine issues of material fact, *see Fed. R. Civ. P. 56(d)*, and [opposing party] had notice of its duty to proffer all evidence." *J.R.*

Simplot, 563 F.3d at 1117. Accordingly, the Court construes the Motion as one for summary judgment. *See Fed. R. Civ. P. 56(b)* (“Unless a different time is set by local rule *or the court orders otherwise*, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.” (emphasis added)); *Fed. R. Civ. P. 1* (The rules of civil procedure “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

The issue, however, is whether Defendants had sufficient notice of their duty to proffer all their evidence in opposition to the Motion. The Court finds they have. Here, Defendants argue the damages issue is a factual one, but fail to provide any evidence in opposition to Plaintiff’s Motion. Further, Defendants raise several challenges, but none as to the reasonableness or necessity of the fees sought or the rates charged. Accordingly, the Court evaluates whether Plaintiff has shown it is entitled to summary judgment. *Reed v. Bennett*, 312 F.3d 1190, 1194 (10th Cir. 2002) (“Summary judgment is not proper merely because [the nonmoving party] failed to file a response. Before the burden shifts to the nonmoving party to demonstrate a genuine issue, the moving party must meet its ‘initial responsibility’ of demonstrating that no genuine issue of material fact exists and that it is entitled to summary judgment as a matter of law.”) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

The Promissory Note at issue provides that Plaintiff has the right to recover from Defendant Hook “all of its costs and expenses in enforcing the Note” and “those expenses include, for example, reasonable attorney’s fees.” (ECF No. 3, p. 10.) And, here, Plaintiff presents billing statements and the affidavit of current counsel (Mr. Barber), which stands

unrefuted, that (1) the billing rates of the legal assistants/paralegals and attorneys who worked on the case are customary and are at or below the rates of legal assistants/paralegals and attorneys with similar experience in the Denver area; (2) all the services performed were necessary and directed related to the representation of Plaintiff's collection and foreclosure efforts to enforce the Promissory Note and Deed of Trust and in defending against Defendants' related defenses and counterclaims; (3) the amount of fees and costs incurred were reasonable to accomplish the tasks necessary; and (4) the total amount of fees is \$259,244.00 and the total amount of costs is \$20,370.18. The Court finds this record sufficient for Plaintiff to meet its burden in the first instance as to the fees and costs incurred by the firm of current counsel, i.e., Biegning Shapiro & Barber LLP n/k/a Shapiro Biegning Barber Otteson LLP, but not of *other* counsel.

Plaintiff's other counsel are Robert J. Hopp & Associates and Aronowitz & Mecklenburg, LLP. While the statements of such other counsel have been submitted for the Court's consideration, Mr. Barber's affidavit fails to sufficiently show he has personal knowledge concerning the fees and costs of other counsel. For example, Mr. Barber refers to billing rates but the record shows he was referring to rates of *his* law firm. Indeed, from the "block" time billing submitted, the billing rates of those other counsel are unknown. Thus, those fees and costs will not be awarded. Those amounts are \$2,372.50 in fees and \$3,117.50 in costs, totaling \$5,490.00.

Based on the foregoing, after reducing the fees and costs from other counsel from Plaintiff's requested fees and costs, the amount due under the Promissory Note is \$239,510.00 (\$245,000.00-\$5,490.00). The Court finds there are no genuine issues of material fact and that

Plaintiff is entitled to summary judgment as matter of law that the amount owed under the Promissory Note as of March 18, 2018 is \$239,510.00. As the Tenth Circuit has stated:

[W]here contracting parties have agreed that a breaching party will be liable for attorneys' fees, the purpose of the award is to give the parties the benefit of that bargain, and the court's responsibility is to enforce that bargain. Normally, where the court is merely enforcing a contractual provision authorizing attorneys' fees, the fees are routinely awarded and the contract is enforced according to its terms.

J.R. Simplot, 563 F.3d at 1119 (quoting *United States ex rel. C.J.C., Inc. v. Western States Mechanical Contractors, Inc.*, 834 F.3d 1533, 1548 (10th Cir. 1987)). Accordingly, the Motion is granted.

D. Defendants' Other Arguments

Defendants' three remaining arguments under Rule 54(d)(2) merit little discussion. Such arguments are unavailing as Rule 54(d) is inapplicable where the Court has found the requested fees and costs are an element of damages. 10 Charles Alan Wright et al., *Federal Practice & Procedure* § 2680 (4th ed. 2018) (The Rule 54(d) procedures "do not apply...to fees that under governing law are recoverable as an element of damages.").

E. Defendants – or Defendant Hook only?

The parties' briefing did not distinguish between Defendants versus Defendant Hook, but the Court finds it is necessary to do so: Defendant Hook is the only signatory on the Promissory Note. This does not, however, change the amount owed under the Promissory Note. The Court is well acquainted with this case and finds that no apportionment or reduction in the amount is necessary because Defendants filed their papers jointly³ and such fees were incurred in enforcing

³ There were only a few instances where a paper was filed only by Defendant Hook or Defendant Smith.

the Promissory Note.

III. CONCLUSION

Based on the foregoing, the Court ORDERS

- (1) That Plaintiff LNV Corporation's Motion for Award of Attorney's Fees and Costs (ECF No. 414), construed as a motion for summary judgment, is GRANTED in that the amount of \$239,510.00 is owed under the Promissory Note as of May 31, 2018;
- (2) That Plaintiff is entitled to reasonable attorney's fees and expenses incurred after May 31, 2018, in connection with this case and the associated foreclosure sale if they fall within the terms of the Promissory Note, and that Plaintiff make seek the same after such fees and costs are incurred; and
- (3) That Plaintiff's request for any fees and costs associated with any appeals taken from the orders of this Court are denied without prejudice as premature.

DATED this 5th day of March, 2019.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

ORDER

This matter is before the Court on the following matters: (1) Plaintiff's Motion to Enjoin Further Pro Se Pleadings or, in the Alternative, to Withdraw the Reference or Stay Adversary Proceeding (the "Motion to Enjoin") (ECF No. 427); (2) Defendants Hook and Smith's Motion to Strike, for Sanctions and for Order to Show Cause (the "Motion to Strike") (ECF No. 428); (3) Plaintiff's Request for a Status Conference (the "Motion for Conference") (ECF No. 430); (4) Defendants Hook and Smith's Motion for Sanctions against Plaintiff LNV Corporation and its Counsel, Duncan E. Barber and Julie A. Trent (ECF No. 431); (5) Defendants Hook and Smith's Motion for Sanctions against the United States of America and its Counsel at the U.S. Department of Justice in Washington, DC (ECF No. 432)¹; and (6) Defendants Hook and Smith's Request for Evidentiary Hearing on Motions for Sanctions (the "Motion for Hearing") (ECF No. 433). The

¹ The motions for sanctions are collectively referred to herein as "Motions for Sanctions."

Court has considered the motions and any responses thereto; taken judicial notice of the court record as well as the record before the Bankruptcy Court in Adversary Proceeding No. 18-1250-TBM (Bankr. D. Colo.) (the “Adversary Proceeding”); and is otherwise fully advised concerning the matters at issue. Upon being fully informed the Court finds and orders as follows.

I. The Motions

A. Motion to Enjoin and Motion to Strike

Defendants Hook and Smith (hereafter, collectively, “Defendants”) have filed the Adversary Proceeding against Plaintiff LNV, using their Verified Answer filed in this action (14-cv-955) as their complaint in the Adversary Proceeding (Adv. Proc. ECF No. 1 & No. 1-1). Not surprisingly, Plaintiff requests this Court to enjoin Defendants from filing further *pro se*² pleadings in this case or any other case (including the Adversary Proceeding) arising from the same facts and claims before this Court. In the alternative, Plaintiff requests this Court to withdraw the reference or stay the Adversary Proceeding.

Defendants’ response consists of their Motion to Strike. In that motion, Defendants argue the Motion to Enjoin should be stricken, and sanctions entered, because (1) Plaintiff’s continuation of this litigation allegedly violates the Bankruptcy Court’s automatic stay, discharge order, and discharge injunction; (2) Plaintiff’s Motion to Enjoin was improperly filed during Defendant Hook’s appeal; (3) Plaintiff’s Motion to Enjoin allegedly falsely accuses Defendants of filing a frivolous proceeding; and (4) Plaintiff’s request for withdrawal of reference should have been filed in the Bankruptcy Court. The Court agrees with Defendants’ last argument, but rejects the rest as specious, and frivolous.

First, Defendants’ argument concerning any alleged violations of the Bankruptcy Court’s

² Defendants are lawyers who appear *pro se*.

rules or orders have been *repeatedly rejected*. Defendants simply refuse to accept the Court’s ruling, without any legal or factual basis. Next, the Tenth Circuit Court of Appeals dismissed Defendant Hooks’ appeal on August 28, 2018; Plaintiff’s Motion to Enjoin was filed *thereafter* on September 17, 2018. (ECF Nos. 426, 427.) Third, Plaintiff’s argument concerning Defendants’ filing of the Adversary Proceeding is far from false. On the contrary, Defendants are improperly seeking to have the Bankruptcy Court hear and decide what this Court has already decided.

This leads the Court to Defendants’ last argument – where Plaintiff’s request for the withdrawal of the reference should have been filed. This District’s Local Rules do provide that a motion of withdrawal of reference – although to be heard by the district court – is to be filed with the clerk of the bankruptcy court, D.C.COLO.LCivR 84.1(d)(1), but the Court finds that failure to be insufficient to strike the request. Regardless, 28 U.S.C. § 157(d) also allows the Court to withdraw a reference on its own motion. And, upon consideration of the record, the Court agrees that good cause exists for the withdrawal of the reference to the Bankruptcy Court. Thus, in this instance, the Court need not consider Plaintiff’s other argument that filing restrictions should be entered.³ The Court denies that request without prejudice.

B. The Motion for Conference

Plaintiff requests a status conference to address the order of foreclosure and pending motions. The pending motions, however, have now all been addressed and, as set forth in Order on Attorney’s Fees and Costs issued concurrently with this Order, the Court is prepared to issue the Order of Foreclosure and Judicial Sale forthwith upon the resolution of the remaining issue in this case. Thus, this motion is denied as moot.

³ The Court recognizes Plaintiff admits its Motion to Enjoin which seeks filing restrictions may need to be a standalone motion and, if so, withdraws the alternate relief of withdrawing the reference or staying the Adversary Proceeding. However, the Court finds withdrawal of the reference is the appropriate remedy in this instance.

C. The Motions for Sanctions and Motion for Hearing

Defendants' Motions for Sanctions merit no discussion. The Court finds Defendants' legal contentions are not warranted under existing law, or by any nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. The Court further finds that any evidentiary contentions, which are virtually nonexistent, are not warranted based on the record. Accordingly, they are summarily denied. As, as they are denied, Defendants' Motion for Hearing on their Motions for Sanctions is moot.

II. CONCLUSION

Defendants' papers continue to argue the same matters about their bankruptcy, its alleged effect, and Plaintiff's and the United States' alleged violations of the Bankruptcy Court's rules and orders, all of which this Court has repeatedly rejected. The record at hand shows Defendants have a lengthy and abusive filing history, as demonstrated by, *inter alia*, their two adversary proceedings filed before the Bankruptcy Court which consist of nothing more than that which this Court has already decided against them in this case. This Order puts Defendants on notice that if this conduct continues, the Court will *sua sponte* consider entering appropriate sanctions (including, but not limited to, filing restrictions and dismissing duplicative filings and actions) to preclude Defendants from continuing to abuse the judicial process, waste scarce judicial resources, and prejudice the other parties with their groundless and frivolous filings. *Andrews v. Heaton*, 483 F.3d 1070, 1077 (10th Cir. 2007) (Federal courts have inherent authority to regulate abusive litigants "by imposing carefully tailored restrictions in appropriate circumstances.").

Based on the foregoing, it is therefore ORDERED

- (1) That Plaintiff Motion to Enjoin Further Pro Se Pleadings or, in the Alternative, to

Withdraw the Reference or Stay Adversary Proceeding (ECF No. 427) is GRANTED in that the Court will withdraw the reference of Adversary Proceeding No.

18-125-TBM, but is DENIED WITHOUT PREJUDICE as to Plaintiff's request to enjoin further pro se filings;

- (2) That Defendants Hook and Smith's Motion to Strike, for Sanctions and for Order to Show Cause (ECF No. 248) is DENIED;
- (3) That Plaintiff's Request for a Status Conference (ECF No. 430) is DENIED AS MOOT;
- (4) That Defendants Hook and Smith's Motion for Sanctions against Plaintiff LNV Corporation and its Counsel, Duncan E. Barber and Julie A. Trent (ECF No. 431) is DENIED;
- (5) That Defendants Hook and Smith's Motion for Sanctions against the United States of America and its Counsel at the U.S. Department of Justice in Washington, DC (ECF No. 432) is DENIED;
- (6) That Defendants Hook and Smith's Request for Evidentiary Hearing on Motion for Sanctions (ECF No. 433) is DENIED; and
- (7) That the Clerk shall forthwith notify the Clerk of the Bankruptcy Court of this Order.

DATED this 4th day of April, 2019.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

APPENDIX F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

ORDER ON ATTORNEY'S FEES AND COSTS

The Court is prepared to issue the Order for Foreclosure and Judicial Sale in this matter. It is also prepared to issue final judgment. But, before it may do so one matter remains pending which requires resolution. Specifically, by Order dated March 5, 2019, the Court awarded Plaintiff certain fees and costs but left open the issue of any additional recovery of such items incurred after May 31, 2018. That issue remains unresolved.

Accordingly, the Court **ORDERS** that on or before April 11, 2019:

- (1) Plaintiff shall file a notice stating that it seeks no additional attorney's fees and costs, in which case the Order of Foreclosure and Judicial Sale shall issue forthwith and final judgment shall enter; **OR**
- (2) Plaintiff shall file its motion setting forth the remaining attorney's fees and costs it

seeks, showing that such amounts are recoverable under the relevant document(s). If Plaintiff files such motion, any other party may file a response within five (5) days of the service of the motion. No further briefing will be allowed. Upon the resolution of this issue, the Order of Foreclosure and Judicial Sale shall issue forthwith and final judgment shall enter.

DATED this 4th day of April, 2019.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO Judge Raymond P. Moore

Civil Action No. 14-cv-00955-RM-KHR

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Notice Regarding Attorney's Fees and Costs (ECF No. 440) advising the Court that Plaintiff seeks no additional attorney's fees and costs under its claims. Accordingly, the Court finds all claims (however denominated) and issues in this case are resolved, and that Final Judgment and the Order of Foreclosure and Judicial Sale may enter.

There being no matters pending, it is ORDERED

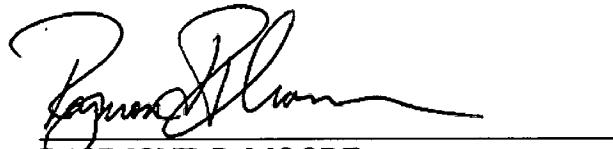
- (1) That the Clerk shall enter final judgment in favor of Plaintiff LNV Corporation and against Defendants as set forth in this Court's Orders dated March 13, 2017 (ECF No. 301); March 14, 2017 (ECF No. 303); June 28, 2017 (ECF No. 320); June 21, 2018 (ECF No. 404); and March 5, 2019 (ECF No. 436);
- (2) That the Clerk shall enter final judgment in favor of Defendant United States of

America and against Defendant Hook as set forth in this Court's Order dated December 4, 2015 (ECF No. 218);

- (3) That in accordance with the Orders issued in this case, the Order of Foreclosure and Judicial Sale shall enter; and
- (4) That this case shall remain open pending the Court's order confirming the judicial sale and distributing the proceeds from the sale.

DATED this 5th day of April, 2019.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the Order (Doc. 441) by Judge Raymond P. Moore dated April 5, 2019, it is

ORDERED that pursuant to the Order dated March 13, 2017 (Doc. 301) summary judgment is entered in favor of Plaintiff LNV Corporation as follows: (1) on its first claim for determination of interests - against Defendants Smith, St. Luke's, and the United States; (2) on its second claim for judicial foreclosure – against all defendants; and (3) on its fifth claim for money judgment – against Defendant Hook. It is

FURTHER ORDERED that pursuant to the Order dated March 13, 2017 (Doc. 301) summary judgment is entered in favor of Plaintiff LNV Corporation and against Defendants M. Julie Hook and David L. Smith on their counterclaims based on the Loft Property. It is

FURTHER ORDERED that pursuant to the Order dated March 14, 2017 (Doc. 303) summary judgment is entered in favor of Defendant United States of America as to Plaintiff's first claim for determination of interests. It is

FURTHER ORDERED that pursuant to the Order dated June 28, 2017 (Doc. 320) summary judgment is entered in favor of Plaintiff LNV Corporation, and against Defendants The Prudential Home Mortgage, Inc.; Debra Johnson, in her official capacity; and M. Julia Hook. Plaintiff is owed the following: \$610,243.49 in principal; \$1,192.92 in unpaid late charges; \$33.00 in recording fees; and \$955.00 in inspection fees. It is

FURTHER ORDERED that pursuant to the Order dated June 21, 2018 (Doc. 404) judgment shall enter in favor of Plaintiff LNV Corporation as follows: (1) Interest from August 2, 2009 through May 1, 2018, totaling \$390,810.34; (2) Per diem interest of \$121.21; (3) Real property taxes paid of \$50,945.93; (4) Property (hazard) insurance premiums paid of \$30,191.75; and (5) City and County of Denver water/sewer fees, and related late fees, paid of \$543.12. It is

FURTHER ORDERED that pursuant to the Order dated March 5, 2019 (Doc. 436) Plaintiff LNV Corporation is awarded attorney's fees and costs in the amount of \$239,510.00, which is owed under the Promissory Note as of May 31, 2018. It is

FURTHER ORDERED that pursuant to the Order dated December 4, 2015 (Doc. 218) judgment is entered in favor of Defendant United States of America and against Defendant M. Julia Hook. It is

FURTHER ORDERED that this case shall remain open pending the Court's order confirming the judicial sale and distributing the proceeds from the sale.

Dated this 5th day of April, 2019.

FOR THE COURT:
JEFFREY P. COLWELL

By: s/C. Pearson
C. Pearson, Deputy Clerk

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,
THE PRUDENTIAL HOME MORTGAGE, INC.,
UNITED STATES OF AMERICA,
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of
Denver, Colorado, and
DAVID L. SMITH, an individual,

Defendants.

ORDER OF FORECLOSURE AND JUDICIAL SALE

Based on the findings, conclusions, and orders issued in the Court's previous Orders (ECF Nos. 301, 303, 320, 404, 436) (collectively, "Orders"), the Court enters this Order of Foreclosure and Judicial Sale pursuant to the provisions of 28 U.S.C. §§ 2001 & 2002. In accordance with the foregoing, the Court hereby ORDERS as follows:

1. This Order of Foreclosure and Judicial Sale pertains to a parcel of real property and improvements located in the City and County of Denver, State of Colorado, and more particularly described as Lot 1, Block 1, Crestmoor Park, City and County of Denver, State of Colorado, commonly known as 5800 East 6th Avenue, Denver, Colorado 80220 (the "Property").

2. Plaintiff LNV Corporation ("LNV") has a valid first priority lien on the Property, arising from the Deed of Trust dated May 8, 2002 and recorded on May 16, 2002 in the real

property records of the City and County of Denver, State of Colorado, under Reception No. 2002090105 (the “Deed of Trust”). (See Orders dated March 13, 2017 (ECF No. 301); March 14, 2017 (ECF No. 303); June 28, 2017 (ECF No. 320); and June 21, 2018 (ECF No. 404).)

3. The United States has valid federal tax liens against Defendants M. Julia Hook and David L. Smith (“Hook and Smith”) as set forth in the Court’s March 14, 2017 Order (ECF No. 303), which are second in priority to LNV’s Deed of Trust against the Property.

4. Pursuant to this Court’s Orders, the Deed of Trust is to be foreclosed under 28 U.S.C. §§ 2001 and 2002 and in accordance with this Order of Foreclosure and Judicial Sale. The United States Marshal, or his or her representative, is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Property free and clear of all right, title, lien, claim, and interest in or to the Property.

5. This Order of Foreclosure and Judicial Sale shall act as a special writ of execution and no further orders or process from the Court shall be required.

6. Upon entry of this Order of Foreclosure and Judicial Sale, the United States Marshal, or his or her representative, is authorized to have free access to the Property and to take all actions necessary to preserve the Property, including, without limitation, retaining a locksmith or other person to change or install locks or other security devices on any part thereof, until a deed thereto is delivered to the ultimate purchaser(s).

7. The terms and conditions of the sale are as follows:

a. Except as otherwise stated herein, the sale of the Property shall be by public auction to the highest bidder, free and clear of all right, title, lien, claim, and interest in or to the Property, including, but not limited to, all parties to this

action. The United States Marshal (sometimes referred to herein as “Marshal”), or his or her representative, shall sell the Property and any personal property (as set forth in Paragraph 9) “AS IS,” without any warranties, general or implied.

- b. The sale shall be subject to all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the premises, and easements and restrictions of record, if any.
- c. The sale shall be held at the United States District Court for the District of Colorado, on the Property’s premises, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time announced by the United States Marshal, or his or her representative.
- d. Notice of the sale shall be published once a week for at least four consecutive weeks before the date fixed for the sale in at least one newspaper regularly issued and of general circulation in the City and County of Denver, Colorado, and, at the discretion of the Marshal, or his or her representative, by any other notice that it may deem appropriate. State or local law notice requirements for foreclosures or execution sales do not apply to this sale under federal law, and state or local law regarding redemption rights do not apply to this sale. The notice of sale shall describe the Property and shall contain the material terms and conditions of sale in this Order of Foreclosure and Judicial Sale.
- e. The minimum bid will be set by LNV as a credit bid on the amounts owed

LNV as set forth in the Court’s Orders of June 28, 2017 (ECF No. 320), June 21, 2018 (ECF No. 404), and March 5, 2019 (ECF No. 436) (collectively, the “Money Judgment”). LNV is authorized and permitted to credit bid at the sale against the Money Judgment.

- f. Bidders (other than LNV) shall be required to deposit, at the time of sale with the Marshal, or his or her representative, a minimum of 10 percent of the bid, with the deposit to be made by a certified or cashier’s check payable to the United States District Court for the District of Colorado. Before being permitted to bid at the sale, bidders shall display to the Marshal, or his or her representative, satisfactory proof of compliance with this requirement.
- g. The balance of the purchase price of the Property in excess of the deposit tendered shall be paid to the Marshal, or his or her representative, within 30 business days after the date the bid is accepted, by a certified or cashier’s check payable to the United States District Court for the District of Colorado. If the successful bidder or bidders fail to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be applied as described herein, below. The Property shall be again offered for sale under the terms and conditions of this Order of Foreclosure and Judicial Sale or, in the alternative, sold to the second-highest bidder, as determined by the Marshal, or his or her

representative. LNV may bid as a credit against the Money Judgment without tender of cash.

- h. The sale of the Property shall not be final until confirmed by this Court. The Marshal, or his or her representative, shall file a report of sale with the Court within 15 days from the date of receipt of the balance of the purchase price.
- i. Upon confirmation of the sale by order of this Court, the Marshal, or his or her representative, shall promptly execute and deliver a deed of judicial sale conveying the Property to the purchaser(s).
- j. Upon confirmation of the sale by order of this Court, all right, title, lien, claim, and interest in or to the Property including, but not limited to, those held or asserted against the Property by any of the parties to this action and any successors in interest or transferees of those parties shall be discharged and extinguished, except as otherwise provided by applicable ordinance or regulation of the City and County of Denver, State of Colorado, with respect to liens in favor of such City and County.
- k. The sale is ordered pursuant to 28 U.S.C. § 2001. Redemption rights under state or local law shall not apply to this sale under federal law.
- l. Upon confirmation of the sale by the Court, the purchaser or purchasers are responsible for having the Recorder of Deeds cause the transfer of the Property to be reflected in the county real property records.

8. Until the Property is sold, M. Julia Hook and David L. Smith (hereafter, "Hook and

Smith") shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures, and appurtenances thereon) including, without limitation, maintaining fire and casualty insurance policies on the Property. Hook and Smith shall keep current in paying real property taxes as they are assessed. Hook and Smith shall not commit waste against the Property, nor shall they cause or permit anyone else to do so. Hook and Smith shall not do anything that tends to reduce the value or marketability of the Property, nor shall they cause or permit anyone else to do so. Hook and Smith shall not record any instruments, publish any notice, or take any other action that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public sale, nor shall they cause or permit anyone else to do so. Violation of this paragraph shall be deemed a contempt of Court and punishable as such.

9. All persons occupying the Property shall leave and vacate permanently the Property no later than 15 days after the entry of this Order of Foreclosure and Judicial Sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances) when leaving and vacating. If any person fails or refuses to leave the Property by the time specified in this Order of Foreclosure and Judicial Sale, the United States Marshal is authorized to take whatever action it deems appropriate, including using reasonable force to enter into the Property and forcibly remove or eject such person or persons from the premises. The United States Marshal is further authorized and directed to arrest and/or evict from the premises any and all persons who obstruct, attempt to obstruct, or interfere or attempt to interfere in any way with the execution of this Order of Foreclosure and Judicial Sale. If any person fails or refuses to remove his or her personal property from the Property by the time

specified herein, the personal property remaining at the Property thereafter is deemed forfeited and abandoned, and the United States Marshal, or his or her representative, is authorized and directed to remove and dispose of it in any manner they see fit, including sale, in which case the proceeds of sale are to be applied first to the expenses of sale and the balance to be paid into the court registry for further distribution.

10. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale of the Property is confirmed by this Court, the Property remains occupied, a writ of assistance may, without further notice, be issued by the Clerk of Court pursuant to Rule 70 of the Federal Rules of Civil Procedure to compel delivery of possession of the Property to the purchaser or purchasers thereof.

11. If Hook and Smith or any other person occupying the Property vacate the Property prior to the deadline set forth in Paragraph 9, above, such person shall notify counsel for LNV no later than two (2) business days prior to vacating the Property of the date on which he or she is vacating the Property. Notification shall be made by email to attorney Duncan Barber at dbarber@sbbolaw.com.

12. The Marshal shall deposit the amount paid by the purchaser into the registry of the Court within 15 days of receipt.

13. All funds tendered to the Court for deposit shall comply with Fed. R. Civ. P. 67 and D.C.COLO.LCivR 67.2.

13. Upon stipulation of the parties or by appropriate motion by LNV for disbursement and confirmation of sale, filed in accordance with D.C.COLO.LCivR 67.2 within 30 days of the completion of the sale of the Property, the Court will issue an order to disburse the funds in the

following order of preference until these expenses and liens are satisfied:

- (a) To LNV for allowed costs and expenses of sale, including any commissions due under 28 U.S.C. §1921(c) and including an amount sufficient to cover the costs of any steps taken to secure or maintain the Property pending sale and confirmation by the Court;
- (b) To LNV to satisfy or partially satisfy the amounts owed LNV as set forth in the Court's Orders of June 28, 2017 (ECF No. 320), June 21, 2018 (ECF No. 404), and March 5, 2019 (ECF No. 46);
- (c) To the United States of America to satisfy or partially satisfy the outstanding federal tax liabilities of Hook and Smith, which are liens against the Property as set forth in the Court's March 14, 2017 Order (ECF No. 303); and
- (d) Any proceeds remaining after the above payments shall be held by the Clerk until further of the Court upon motion filed by the parties.

SO ORDERED.

DATED this 5th day of April, 2019.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

Information to identify the case:

Debtor 1 **David Lee Smith**
 First Name Middle Name Last Name

Debtor 2 **Mary Julia Hook**
 (Spouse, if filing) First Name Middle Name Last Name

Social Security number or ITIN **xxx-xx-8123**
 EIN
 Social Security number or ITIN **xxx-xx-3612**
 EIN

United States Bankruptcy Court **District of Colorado**Case number: **17-16354-TBM****APPENDIX J**

12/15

IT IS ORDERED: A discharge under 11 U.S.C. § 727 is granted to:

David Lee Smith
 aka David L. Smith, Attorney at Law

11/8/17

Mary Julia Hook
 aka M. Julia Hook, Attorney at Law

By the court: Thomas B. McNamara
 United States Bankruptcy Judge

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

For more information, see page 2 >

Some debts are not discharged

Examples of debts that are not discharged are:

- ◆ debts that are domestic support obligations;
- ◆ debts for most student loans;
- ◆ debts for most taxes;
- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.