

No. 24-1128

IN THE
Supreme Court of the United States
ANGELIQUE LAYTON,

ORIGINAL

Petitioner,

v.
RBL FINANCIAL ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does Colorado's current expansive interpretation of C.R.C.P. Rule 107 violate constitutional rights of non-parties by interpreting the Rule to apply to anyone living anywhere while disallowing the defenses of governmental immunity and expanding contempt to include even legal actions by the non-party?
2. Does lack of proper service and improper underlying documents in a foreclosure case deprive the court of personal and subject matter jurisdiction *ab initio*?
3. Does C.R.C.P. Rule 105 violate substantive and procedural due process?
4. Does Justice Rice's decision as Commissioner in this case violate Petitioner's due process rights by excluding her from the partition hearing and depriving her of her property rights in violation of her own authored opinions in *Colantuno v. A. Tenenbaum & Company, Inc.*, 23 P.3d 708 (2001) and *Kerns v. Kerns*, 53 P.3d 1157 (Colo. 2002)

PARTIES TO THE PROCEEDINGS BELOW

RBL Financial, LLC (hereinafter “RBL”) was the initiating party who filed a foreclosure against Sara Toole (hereinafter “Toole”), Main 434, LLC (hereinafter “Main”) and Ikon Funding LLC (hereinafter “IKON”). Christopher Conant represented both Petitioner RBL and Main and IKON the two listed defendants. Angelique Layton (hereinafter “Petitioner”) filed a motion to intervene but it was denied. After RBL dismissed the foreclosure, Main filed a citation for contempt against Petitioner claiming her separate case seeking reimbursement of her funds paid to cure the foreclosure violated the court partition order. By issuing the citation, the lower court exercised jurisdiction over her, despite denying her the opportunity to intervene or making her a party to the partition hearing. *Fiscus v. Liberty Mortg. Corp.*, 373 P.3d 644, 651-52 (Colo. App. 2014) Petitioner appealed the contempt order in her own name.

STATEMENT OF RELATED CASES

Layton v. Toole et al, No. 23CA1500, Colorado Court of Appeals. (hereinafter “23CA1500”) This is the appeal of 23CV14. The Court has not yet issued a ruling.

Layton v. Toole et al, No. 23CV14, Boulder District Court Case. (hereinafter “23CV14”) A timely appeal was filed. The case seeks reimbursement of the money paid to cure the foreclosures in an approximate value of \$1,000,000.00, return of personal property seized by the defendants, for

ownership based on the promises made by Toole and Russell Landau a member of RBL and for fraud. The Boulder court dismissed Petitioner's case without a hearing on Main's 12(b)(5) motion which claimed that the partition order in this case constituted collateral estoppel despite the fact that Petitioner was not joined in the proceeding and none of the parties represented Petitioner or introduced any evidence supporting Petitioner's position contrary to *Taylor v. Sturgell*, 553 U.S. 880, 881 (2008).

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PETITION FOR CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the Colorado Court of Appeals in 23CA1501 and Colorado Supreme Court 23SC614 denying certiorari.

OPINIONS BELOW

The opinion of the Colorado Court of Appeals is unreported. Appendix 1 The Colorado Supreme Court decision denying certiorari is unreported. Appendix 3

JURISDICTION

Petitioner seeks review of Colorado Court of Appeals Case No. 23CA1501. A timely petition for review was filed with the Colorado Supreme Court and was denied on January 27, 2025. (24SC614) This petition is timely filed within 90 days of the issuance of the denial. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

C.R.S. §38-35-110 allows a party who files a law suit affecting property to file a Notice of Lis Pendens when a corresponding case affecting that property is filed.

C.R.S. §38-28-102 requires all parties claiming an interest in real property to be joined in a partition action.

C.R.C.P. Rule 105 allows courts to bind a non-party to an order affecting real estate.

C.R.C.P. Rule 107 is the state rule regarding contempt.

INTRODUCTION

“Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries.” *Bloom v. Illinois*, 391 U.S.194, 208 (1968) This case is a test of whether the courts follow the rule of law or if they believe that they are a law unto themselves. Separation of powers is fundamental to our form of government and dates back to some of the earliest US Supreme Court cases. *Marbury v. Madison*, 5 U.S. 137 (1803); The Federalist No. 47 (James Madison) (“No political truth is ... stamped with the authority of more

enlightened patrons of liberty than the separation of powers”). Kevin Russell, *Judge Gorsuch on separation of powers and federalism*, SCOTUSblog (Mar. 15, 2017, 3:22 PM) “Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.” *Ibid.*

Traditionally, a court could only issue orders applicable to those who were properly made parties to the case. *Richards v. Jefferson County*, 517 U.S. 793, 805 (1996) Courts have expanded jurisdictional rules to non-parties under a myriad of differing due process standards. Most federal circuits require non-parties to act in privity with a party before they have the ability to hold a non-party in contempt, *Havens v. James*, 76 F.4th 103, 108 (2d Cir. 2023) but there is clearly confusion around the protections that must be afforded a non-party throughout the United States. Joel M. Androphy and Keith A. Byers, Federal Contempt of Court, <https://www.bafirm.com/publication/federal-contempt-of-court/> Case law is sparse and largely unsettled. Mintz Insights, November 12 2019, <https://www.mintz.com/insights-center/viewpoints/2196/2019-11-federal-courts-should-rethink-personal-jurisdiction.> Some jurisdictions require that the language of the order must be clear and precise, *and* the behavior of the person must clearly violate the order. *Kane v. Sanders*, 232 So.3d 1107, 1110-11 (Fla. 3d DCA 2017) This case presents a Colorado expansion of the power of contempt over non-parties to ANY person

who is “aware” of ANY order. This expansion includes legal actions by non-parties and allows no defense of immunity for state or government workers. *In re Lopez*, 109 P.3d 1021 (Colo.App. 2004)

STATEMENT OF THE CASE

This case involves a controversy over Petitioner’s property interests which exceed ONE million dollars. Toole and Christopher Mattair (hereinafter “Mattair”) purchased a restaurant property in Lyons, Colorado as tenants in common. It was subject to a first note and deed of trust and a second deed of trust. Mattair has never denied that the proceeds from the second deed of trust were used to purchase the property.¹ The original first lienholder filed a non-judicial foreclosure against Mattair and Toole and then assigned the note in violation of the non-assignment clause² to RBL. Toole filed bankruptcy.³ As Toole and Mattair were jointly obligated on the note, RBL filed a civil suit against Mattair for the entire amount of the debt.⁴ To settle the civil case against him, Mattair assigned his interest in another property and the restaurant property in violation of the note’s non-assignment clause to Main, an LLC RBL created specifically to take possession of Mattair’s share of the property.

¹ Boulder District Court Case No. 20CV30365, *Sutton v. Toole and Mattair*. Boulder District Court Case No. 19CV30866, *Mattair v. Toole*.

² *Malouff v. Midland Fed. Sav. and Loan Ass’n*, 509 P.2d 1240, 1243 (Colo. 1973)

³ *In re: Sara Elizabeth Toole Debtor* Colorado Bankruptcy Court Case No. 20-16095 MER

⁴ Boulder County Court Case No. 20CV30658

After RBL settled the case and received the deed from Mattair, RBL filed a claim in Toole's bankruptcy for the entire amount of the same note.⁵ Toole's interest in the property was auctioned out of bankruptcy. Toole asked Petitioner to help her purchase her interest in the property from the bankruptcy trustee in return for a promise of shared ownership.

With full written disclosure to Toole, Petitioner paid the trustee the entire amount to purchase the property from the bankruptcy estate with a personal check. The trustee gave the keys to Petitioner. After Petitioner received the keys, RBL concealed their agreement with Mattair and resumed the first foreclosure. The cure figures submitted by RBL included the entire amount of the first note in violation of C.R.S. §§13-50-101, 102, 103 plus fraudulent charges including improperly calculated interest, duplicated court fees, and attorney fees for work on behalf of both RBL and Main in violation of their settlement agreement with Mattair. *Padilla v. Ghuman*, 183 P.3d 653, 657 (Colo. App. 2008) Colorado does not provide a mechanism for a debtor to audit or object to a cure statement until after the cure is paid. C.R.S. §38-38-104 (2)(a)(1)(B) However, once receipts were provided to Toole and Petitioner, Conant admitted that the cure statement contained **thousands of dollars** of fraudulent charges but refused to refund them contrary to C.R.S. §38-38-104. Both the public trustee and the Boulder District Attorney indicated they have no authority to pursue charges against RBL. A separate civil suit appears the only option to

⁵ The trustee reported RBL for fraud.

recover those funds. Jay Pickard, Colorado Lawyer
Partition Comes of Age, December 2021,
<https://cl.cobar.org/features/partition-comes-of-age/>

As soon as RBL received the payment for the first deed of trust, without divulging that the lien had been paid or filing a release, RBL immediately purchased the second deed of trust at a steep discount. Main signed a deed of trust with IKON, another alter ego they created so that they, (IKON) would have the power of redemption after the foreclosure sale. Conant then filed a judicial foreclosure against Toole, and Main and IKON, his own clients. Conant knew that Petitioner was waiting for the release of the lien to be filed to have a clean title before she filed her documents. Conant used that knowledge to thwart Petitioner's claim to the property because unrecorded interests are not allowed to redeem the property after the sale. C.R.S. §38-38-104 RBL filed an affidavit of service claiming Toole had been served by "refusal". The court then allowed RBL to appoint a receiver.⁶ RBL emailed Petitioner an order barring her from the property. Petitioner filed a Motion to Intervene on 11/12/2021 and a response to RBL's Objection to Intervene and attached a crossclaim and a counterclaim⁷ on 12/7/2021. The court denied intervention and claimed Toole could represent Petitioner, "whatever her interests might be".⁸ The court also accused Petitioner of subterfuge in attempting to represent

⁶ While the foreclosure was pending, RBL had possession of the property and allowed the sewer system to flood the restaurant causing more than \$10,000 of damage.

⁷ Appendix 7

⁸ Appendix 6, p.43a, ¶2

Toole and continued “Ms. Toole does adequately represent [Petitioner’s] interests”. Without entering an appearance, Toole filed an objection to the affidavit of service on 11/12/2021 and stated it was false. The court initially scheduled a hearing on service, but then inexplicably vacated it and indicated Toole “may file a response” because she was “aware” of the case.⁹ Although she was never served a copy of the complaint and exhibits, Toole filed an answer and counterclaims on 12/27/2021 and a Notice of Appeal. She continued to object to the false affidavit of service. RBL never served any of the defendants¹⁰ nor did RBL nor any defendant file a timely answer to Toole’s claims. Toole filed a Motion for Default against RBL on 1/31/2022. Conant filed disclaimers on behalf of Main and Ikon under C.R.C.P. Rule 105 on 2/3/2022.

In order to avoid losing all the money she had paid for the first note to the trustee and RBL¹¹ Petitioner used a personal check to pay the entire amount of the second note to the Public Trustee.

By that time, Petitioner paid all liens from personal funds. She reasonably expected to have sole ownership of the property based on the promises from Toole and Russell Landau, one of the members of RBL. *Oakwood Holdings, LLC v. Mortg. Invs. Enters. LLC*, 410 P.3d 1249, 1253-54 (Colo. 2018) RBL then filed a motion to dismiss the foreclosure on 2/23/2022 which was granted. Even though the

⁹Appendix 5

¹⁰ Court issued a delay prevention order on 1/5/2022

¹¹ Appendix 1, p.3a, ¶9, The Court of Appeals demonstrates clear lack of attention to the facts as Appendix 10 p.73 as RBL received \$271,000.

foreclosure had been dismissed, and Main had filed a disclaimer, the court allowed Main to file an untimely answer to Toole's counterclaims against RBL. Main's answer raised completely new claims by requesting partition. The court appointed a Commissioner.

It is undisputed that Petitioner personally paid every penny of the liens, made or paid for all the repairs to the property, had purchased all the equipment in the property, obtained all the permits, and was the only person with keys and in possession of the property from February 2021 to July 2022. Nevertheless, Petitioner was never joined in the partition proceedings as required under C.R.S. §38-28-102. *Johnson v. Ortiz*, 23CA2047, ¶17, Decided 11-21-2024¹² Instead, Main subpoenaed Petitioner and treated her as a hostile witness, making it appear as if Petitioner was able to fully participate in the hearing.¹³ Even though Main had done

¹² “A party with an interest in real property may bring a claim for the division and partition of the property. § 38-28-101, C.R.S. 2024. *All persons with any interest, whether it be direct, indirect, beneficial, or contingent in such property must be made parties to the action.* § 38-28-102, C.R.S. 2024. The court must completely adjudicate the rights of all parties to the property, § 38-28-103, C.R.S. 2024 and may make any such orders that it deems necessary “to promote the ends of justice to completely adjudicate every question and controversy concerning the title, rights, and interest of all persons . . .” §38-28-110, C.R.S. 2024” *Johnson v. Ortiz*, ¶17, 23CA2047, Decided 11-21-2024 (emphasis added)

¹³ Appendix 1a, p.5a ¶15. Although Petitioner did not attach a transcript, it should be obvious from the case caption that petitioner was never joined as a party.

nothing to preserve their interest in the property, the Commissioner's order stated the following:

Consistent with the Order appointing the Commissioner, the Commissioner hereby concludes and recommends that the District Court enter a final order on Main 434 LLC's partition cause of action declaring and ordering as follows:

1. Declare that Main 434 LLC is a 50% owner of the Property; Declare that Sara Toole is a 50% owner of the Property;
2. Declare that partition of the Property be made by sale;
3. Declare that Main 434 LLC and Sara Toole are each entitled to 50% of the proceeds from said sale after accounting for the costs of the sale, including, without limitation, customary closing costs, broker's commissions, payment of outstanding real estate taxes, payment of the Commissioner's fees and costs, all as permitted by C.R.S. §§ 38-28-108, 109.
4. Order that Main 434 LLC may designate and retain a licensed real estate broker to market the Property for sale and be permitted access thereto in furtherance thereof. Said real estate broker will communicate all offers for the Property and related information to Main 434 LLC and Ms. Toole. If Main

434 LLC and Ms. Toole cannot agree on the acceptance of one or more offers to purchase the Property made through the designated broker, the Commissioner may accept whichever offer the Commissioner believes the most appropriate and the Commissioner will thereafter be designated by the Court to consummate such sale pursuant to C.R.S. §§ 38-28-107, 108.

5. Order and find that there is no just reason to delay in making the District Court's order adopting the recommendations set forth herein a final judgment pursuant to C.R.C.P. 54(b).

SO ORDERED this 8th day of November, 2022. Commissioner, Justice Nancy Rice

Justice Rice's decision allowed RBL to keep all of Petitioner's money and allowed Main to keep the property contrary to her own opinion in *Colantuno v. A. Tenenbaum & Company, Inc.*, 23 P.3d 708 (2001), *Kerns v. Kerns*, 58 P.3d 1157 (Colo.2002) and generally accepted law in Colorado. *Plute v. Schick*, 71 P.2d 802 (1937). Jay Pickard, Partition Law Comes of Age, Colorado Lawyer, December 2021 <https://cl.cobar.org/features/partition-comes-of-age/>

To the extent that Rule 105¹⁴ was used as an excuse to prevent the joinder of Petitioner in the partition case, it is violative of the statute and constitutes a taking of property in violation of the 14th amendment. *Taylor v. Sturgell*, 553 U.S. 880, 881 (2008)

Toole's counterclaims were dismissed without prejudice with the understanding between Toole's attorney and Conant's partner, Brian Ray, that Toole was not the proper party in interest under C.R.C.P. Rule 19¹⁵ to assert the financial claims against RBL/Main. *Rinker v. Colina-Lee*, 452 P.3d 161, 170 (Colo. App. 2019)

Nearly 5 months after Main had already selected a realtor and the property had been listed for sale, and ONLY after Toole's attorney had told Petitioner Toole intended to convey her interest to Petitioner, Petitioner filed Boulder District Court Case No.23CV14 and Notice of Lis Pendens on 2/14/2021¹⁶ in conformance with C.R.S. §38-35-110, *Kerns* at 1165 and *Better Baked, LLC v. GJG Prop., LLC*, 465 P.3d 84, 87-88 (Colo. App. 2020) An interest in property can exist even if the document is not recorded with the clerk's office. C.R.S. § 38-35-109 (2016)

It seeks reimbursement for the cure payments Petitioner made, for her personal property that was seized when Main took over the property, for

¹⁴ “[N]o person claiming any interest under or through a person named as a defendant need be made a party unless his interest is shown of record in the office of the recorder of the county where the real property is situated....” C.R.C.P. Rule 105(b)

¹⁵ *Sheffield Services Co. v. Trowbridge*, 211 P.3d 714, 721 (Colo. App. 2009);

¹⁶ Appendix 8

ownership based on the promises Toole and Russell Landau, an owner of RBL, had made in return for full payment of the liens, and for fraud with regard to the cure statements.¹⁷

Main filed a contempt action against Petitioner on March 28, 2023 claiming her Lis Pendens violated the court order and was preventing a sale even though his partner acknowledged almost 1 month later in a status hearing in 21CV30778 that no offers had been received.

Petitioner filed a hearing brief stating that the contempt citation lacked jurisdiction over her and the property.¹⁸ Even if the Commissioner's order were proper when issued, after Toole's attorney told Petitioner that Toole intended to transfer her interest to Petitioner, Petitioner's claim to the property became lawful.¹⁹ *Fastenau v. Engel*, 129 Colo. 440, 441 (Colo. 1954)

¹⁷ Money is property so even if Petitioner doesn't have the right to the real estate, she is still entitled to present a case for why her money should be returned. *Kerns* at 1165.

¹⁸ Appendix 4

¹⁹ Petitioner admits her license to practice law had been suspended in June 2021. At a subsequent ethics hearing brought about because Conant filed a complaint claiming Petitioner was only advancing Toole's interest and not her own in this case, Toole testified that she had agreed to sign a deed and admitted her attorney had told her to record a deed of trust after the foreclosure case was dismissed. She also admitted to agreeing to sign a deed of trust in the answer to 23CV14. She testified that Petitioner was not acting as her legal counsel in this case. Petitioner's suspension should not deprive her of her legal rights to represent herself nor should it be used to prejudice the court against her.

REASONS FOR GRANTING REVIEW

1. This Petition Should Be Granted Because Colorado's Expansive Interpretation of C.R.C.P. Rule 107 Unconstitutionally Expands Judicial Power.

Colorado has taken an unconstitutionally expansive position with respect to non-party indirect contempt actions. Colorado's position violates the separation of powers and infringes on constitutional due process rights. Court orders have traditionally been applicable only to parties. *City of Westminster v. Phillips-Carter-Osborn, Inc.*, 435 P.2d 240, 243 (1967) While there is no question that a Court should be empowered to ensure smooth administration of court proceedings through direct contempt, when it entertains a citation for indirect contempt that implies that ANY order issued is applicable to ANYONE under Rule 107 forever, it violates separation of powers. This Court has stated recently “[n]o court may “lawfully enjoin the world at large.”” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 44 (2021) When a state court issues an order to the parties, it exercises its judicial power and the parties are required to obey. When it determines the order is applicable forever to anyone who is aware of its order, it becomes a legislative body in violation of the separation of powers. When it executes on the order by issuing a contempt citation and imposes punishment, it exercises the powers of the executive. When that order takes away legal rights, it is unconstitutional. The Court of Appeals stated

“[t]here is no categorical limitation on the type of conduct that may constitute contempt and trigger sanctions; instead, C.R.C.P 107 renders any behavior that is disorderly or disruptive to the execution of a lawful order contemptuous. *See generally People v. Aleem*, 149 P.3d 765, 781 (Colo. 2007). So long as the conduct interferes with a lawful court order, otherwise legal conduct may be contemptuous. *See Lopez*, 109 P.3d at 1023 (nonparty’s conduct in aiding person who was subject of a conservatorship proceeding to leave the state was contemptuous); *see generally Cook v. Baca*, 625 Fed. Appx. 348, 355 (10th Cir. 2015) (federal courts have inherent power to regulate litigation activities with sanctions if processes are being misused or abused). Likewise, there is no limitation on who may be held in contempt of court; parties and nonparties alike must not interfere with lawful court business — otherwise, they may be held in contempt. *See, e.g., Lopez*, 109 P.3d at 1023.”²⁰....“Layton contends that the court lacked jurisdiction to hold her in contempt of court because she was a nonparty. A division of our court has addressed this issue previously and concluded that the broad language of C.R.C.P. 107 —“any person” —

²⁰ Appendix 1a, p.10a, ¶28

encompasses nonparties and parties alike. *Lopez*, 109 P.3d at 1023. We see no reason to depart from this holding.”²¹

This interpretation includes anyone anywhere anytime and includes even **LEGAL** conduct! It has no limits and applies to ANY non-party regardless of domicile. If this decision remains law in Colorado and is applied federally in the 10th circuit, personal jurisdiction becomes irrelevant and immunity will not be a defense to contempt. Colorado will allow a court to convict someone of contempt if they were “aware” of the order, no matter how that came about, and if any action the non-party might take can be interpreted as “resistant” or “impeding” the order in ANY way, even if the non-party has a legal right to do what was done.

The contempt power could even be extended to overseas non-parties. Because of our current political climate, this question “will keep coming until the Court ... suppl[ies] an answer.” *Fulton v. Philadelphia*, 593 U.S. ___, 141 S. Ct. 1868, 1931 (2021) (Gorsuch, J., concurring). In a family law case, a school, teacher, girl scout leader, or other child care worker could be subjected to a contempt citation for releasing a child to the incorrect party if the court determined that they were “aware” of a parenting order and their actions resulted in the release of the child contrary to the order. Doctors treating patients could be held in contempt if they were “aware” that an order existed regarding

²¹ Appendix 1a, p.12a, ¶32

medical treatment of a child whether or not the doctor had a legal right to treat the patient.²²

Contempt could be brought whenever there is “**disobedience or resistance by any person** to or interference with any lawful writ, process, or order of the court.” C.R.C.P. Rule 107 (emphasis added) Private school administrators could be held in contempt if they express “resistance” to a court order regarding private school enrollment and they are aware of the order even if they have no “duty” to accept a student. It could be applied even if the school is out of state as the rule does not specifically limit jurisdiction over non-parties to residents of Colorado. An individual could be held in contempt if they closed the door on a social worker or ICE agent. Police could be sued for damages if they “resist” taking action to enforce a court order.

This court would certainly have decided *Castle Rock v. Gonzales*, 545 U.S. 748 (2005) differently if the attorney had filed under C.R.C.P. Rule 107 instead of 42 U.S.C. §1983. As the police clearly were “aware” of the order and resisted complying with it and *Lopez* does not allow an immunity defense, not only would the department be guilty of contempt, but individual officers could be held personally liable. This case precedent literally opens anyone in the world to personal liability for contempt for any reason as long as they are aware of a court order.

²² This is especially relevant as Colorado has specific statutes regarding gender affirming and reproductive health care for minors.

2. This Petition Should Be Granted Because Colorado's Expansive Interpretation Invites Fraud.

Colorado's interpretation of Rule 107 invites fraud. As happened in this case, plaintiff can file a sham case against themselves, and then argue that the decision should apply broadly to anyone who might be affected, even if they were not joined in the case. Because Colorado prevents redemption of any unrecorded interests, individuals who are unable to record their interests before a foreclosure is filed can lose their rights. In this case, RBL knew that if they rushed to the court and filed their foreclosure before Petitioner was able to record her interest, her ability to redeem as a lower priority lienholder would be lost. They executed a sham deed of trust in IKON's favor so that they had all their bases covered and they were ensured a way to take the property no matter what happened. While Petitioner's lien was not recorded, they could foreclose on the second deed of trust, exclude her from the proceeding, take the entire property and also keep all of Petitioner's payment of the first note.

This interpretation could be expanded to hold non-party medical professionals in contempt. Right or left wing groups could file a proceeding against a straw man, enter a default or consent decree and then file contempt against any non-party that "resists" the orders entered. Because Colorado allows a minor to seek medical care without notice to a parent, if a court issued an order preventing a minor from seeking therapy or reproductive care, a therapist or doctor could be held in contempt, even if

the Colorado law allows the medical professional to treat the minor. Because anything a non-party could do to protect their rights including a separate lawsuit seeking an order to allow care would lack standing and could be viewed as “resistant” to the original order, it could subject them to contempt. Therefore, Colorado’s interpretation of Rule 107 is overbroad and is “repugnant to the guaranty of liberty contained in the Fourteenth Amendment.” *Stromberg v. California*, 283 U.S. 359, 360 (1931)

3. This Petition Should Be Granted Because a Non-Party Should Only Be Held In Contempt if They Have a Duty to Obey the Order or Act In Privity With A Party

A non-party should only be held in contempt if they have a responsibility to obey the order or act in privity with one of the parties who has a duty to obey the specific terms of the order. *Gemco Latinoamérica, Inc. v. Seiko Time Corp.*, 61 F.3d 94, 98 (1st Cir. 1995); *Powerlift Door Consultants, Inc. v. Shepard*, 21-cv-1316 (WMW/ECW), 11 (D. Minn. Sep. 20, 2021) Toole’s attorney emailed Conant and told him Petitioner did not control or direct his litigation strategy. Toole’s position is clearly adversarial to Petitioner’s. He asked Conant to withdraw the allegation that he was acting in privity with Petitioner but Conant refused.

4. This Petition Should Be Granted Because Due Process Requires That The Order's Language Be Clear

If the order is not specifically addressed to the non-party and does not specify exactly what can and cannot be done by a non-party, a contempt citation does not provide proper due process. *Hartsel Springs v. Cross Slash*, 179 P.3d 237, 239 (Colo. App. 2007); *Gilday v. Dubois*, 124 F.3d 277, 282 (1st Cir. 1997) The proceedings should be "so devised and applied as to ensure that those present are of the same class as those absent and that the litigation is so conducted as to ensure the full and fair consideration of the common issue." *Richards v. Jefferson County*, 517 U.S. 793, 801 (1996) When it is founded upon a decree "too vague to be understood, it can be a deadly one." *Longshoremen v. Marine Trade Assn*, 389 U.S. 64, 76 (1967) The contemnor should be "able to ascertain from the four corners of the order precisely what acts are forbidden." *Gilday* at 282 "[A] judge cannot base contempt upon noncompliance with *something an order does not say*." *Kovic v. Kovic*, 336 So. 3d 22, 26 (Fla. 4th DCA 2022) (alteration in original) A finding of contempt should require the violation of the letter of an order—not its spirit. *Reder v. Miller*, 102 So. 3d 742, 744 (Fla. Dist. Ct. App. 2012)

In this case, the order stated that Main was to select a realtor and list the property for sale. It stated how the proceeds should be divided. Petitioner could have NO role in either *facilitating OR effectuating* Main's actions. The order merely commanded the parties to divide the property by sale

rather than continue to share it. The order makes no mention of the Petitioner or her rights, either positive or negative. Therefore, how could Petitioner be sure that the Order applied to her legal rights to return of her money and personal property?

Unless the order clearly and definitely makes the non-party aware of the court's command and ensures that the ACTIONS violate the specific wording of the order, it is a violation of due process to find contempt. *Kane v. Sanders*, 232 So. 3d 1107, 1110-11 (Fla. Dist. Ct. App. 2017) "When the order that forms the basis for the contempt does not 'expressly' require the action by the party, the trial court fundamentally errs when finding that party in contempt for failure to do that action." *Id.* "Although a court's prior ruling 'may be taken to inherently mean that the court intended [for a certain action by the party], such 'implied or inherent provisions of [an order] cannot serve as a basis for an order of contempt.'" *T.W. v. T.H.*, 355 So. 3d 499, 503 (Fla. Dist. Ct. App. 2023)

5. This Petition Should Be Granted Because Due Process Requires An Opportunity To Participate in Proceedings in a Meaningful Time and Manner

Main served Petitioner with a subpoena and called her as a hostile witness which obviously confused the Court of Appeals. Because the Commissioner made reference to Petitioner's testimony, the lower court and the Court of Appeals mistakenly stated that Petitioner had a chance to represent her own interests. It is symptomatic of the

universal lack of judicial oversight that the Court of Appeals mistook references to Petitioner's witness testimony in the lower court as if she had been able to present her own evidence or argue the merits of her claims.²³ When the lower court indicated Petitioner had "testified", it should have acknowledged that being called as a hostile witness is not the same as presenting your own case.

Petitioner cannot go back in time and join the case. Therefore, a hearing on contempt when the court has already made a decision about her rights is a sham. "When a contempt involves the prior conduct of an isolated, prohibited act, the resulting sanction has no coercive effect....[T]he defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense." *Mine Workers v. Bagwell*, 512 U.S. 821, 829 (1994)

Colorado can issue a contempt against a non-party with no other evidence than if the non-party was "aware" of the order and if they "demonstrated resistance". However, as the citation already alleges that the order has been violated, "[t]he mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law." *Fayerweather v. Ritch*, 195 U.S. 276, 298 (1904) What the Constitution does require is "an opportunity . . . granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added)

Petitioner's defense is that the Commissioner's order took her property without due

²³ Appendix 1a, p.5a ¶15. Department of Justice website.
<https://www.justice.gov/usao/justice-101/discovery>

process. When in this process did she have an opportunity to argue that point?

The contempt order quotes the Commissioner stating “[n]o evidence was ever presented by any party that Angelique Layton has any form of interest in the Property.” Commissioner Findings, p. 8”” It is undisputed that Toole admitted she promised to sign a deed of trust in Petitioner’s favor in her answer to 23CV14. **Once that was admitted, Petitioner had an absolute right to file the lis pendens.** Colorado Lawyer January 2021, “Enforcing Oral Contracts”, <https://cl.cobar.org/features/enforcing-oral-contracts/> *Cooper v. Flagstaff Realty*, 634 P.2d 1013, 1015 (1981) Clearly Toole’s attorney was under no obligation to represent Petitioner as that would have undermined his own client’s claim to ownership and would have been unethical. Neither Main nor Toole benefited from protecting Petitioner’s interests and therefore would have no reason to present any evidence to support Petitioner. Petitioner’s claim is for return of her money, for fraud, personal property and a claim for promissory estoppel based on Toole’s promise of an ownership interest in the property. Because Petitioner’s million dollar investment was not even mentioned in the Commissioner’s order, the ONLY option was a separate suit.

6. This Petition Should Be Granted Because the Lower Court Did a Bait And Switch

Petitioner filed a pleading conforming to C.R.C.P. Rule 5 in her response to the objection to intervene, and the court stated whatever rights she

had, Toole could represent her. Petitioner intended to cure the foreclosure and did so within a week of the deadline for filing an appeal. **The instant the payment was made, any appeal would have been moot.** *Bertoia v. Denver Gateway LLC*, No. 23COA76, ¶23 (Colo. App. 2023)

After it was too late, the court did a “bait and switch” and ruled that Toole could not represent Petitioner’s interest because Toole was not the actual payor of the cure. Petitioner never could have anticipated the court would allow Main to motion for partition **after it had filed a Rule 105 disclaimer** and the foreclosure was dismissed. However, as Petitioner personally paid all the funds to cure the foreclosure and satisfy all the liens, nothing should prevent Petitioner’s separate suit for recovery as she is the proper party in interest under C.R.C.P. 19. *FSDW, LLC v. First National Bank*, 94 P.3d 1260, 1263 (Colo. App. 2004)

7. This Petition Should Be Granted Because a Non-Party Should Not Be Punished For Their Thoughts

The contempt order states that Petitioner “hoped” that her action would prevent a sale of the property.²⁴ However merely hoping that something might happen and punishing those thoughts without further inquiry into whether those actions actually violated the specific language of the order should be held unconstitutional. *Goya Foods, Inc., v. Wallack Management Co. et al.*, 290 F.3d 63 (1st Cir. 2002); *See also, Counterman v. Colorado*, 600 U.S. 66 (2023)

²⁴ Appendix 2, p.18a, ¶1

Conant asserted that the lis pendens prevented a sale. However, he failed to disclose that two other lis pendens and a deed of trust also clouded the title. Colorado has made it clear that a lis pendens only binds a purchaser to the outcome of the pending litigation and does not in and of itself prevent a sale. *Hammersley v. District Court*, 610 P.2d 94 fn 2 (1980) No evidence was presented that a sale was actually prevented and Conant's partner admitted nearly a month after the Contempt was filed that no offers had been received. Because it is a "drastic remedy," civil contempt must be proved by clear and convincing evidence. *N.L.R.B. v. Blevins Popcorn Co.*, 659 F.2d 1173, 1183-84 (1981)

This Court should make clear that unless the nonparty's actions actually interfered with the order, contempt cannot be based on mere "intent". Gabriel Mendlow, *Why Is It Wrong To Punish Thought?* University of Michigan Law School, University of Michigan Law School Scholarship Repository, Faculty Scholarship 2018, <https://repository.law.umich.edu/articles/1996>

8. This Petition Should Be Granted Because Excluding Petitioner From This Case Violated Her Fourteenth Amendment Rights

Petitioner has been deprived of her property rights without due process.²⁵ She had no standing to intervene or appeal the order before the contempt hearing as she was not a named party. If a non-party is not joined in a case, and therefore does not have

²⁵ *Bertoia v. Denver Gateway LLC*, No. 23COA76 ¶30 (Colo. App. 2023)

standing to appeal the findings,²⁶ forcing her to comply with the order violates due process. *Marino v. Ortiz*, 484 U.S. 301, 304 (1988) “[A] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Richards v. Jefferson County*, 517 U.S. 793, 798 (1996) “It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.... and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require.” *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940)

Without notice and the ability to influence the issuance of the order prior to the issuance of the contempt citation, the non-party has to guess whether their actions might subject them to contempt and can only find out they have violated the order during the contempt hearing. “Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a “legal system,” social organization and cohesion are virtually impossible....” *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) Colorado does not even have to

²⁶ Only parties can seek a declaratory judgment. *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988)

find that the order provides ACTUAL notice to the non-party or that the non-party's actions ACTUALLY impede the proceedings. This has significant impacts and creates avenues for parties to use the contempt power as a workaround—one which promotes coercion that would otherwise be unconstitutional. *Chase National Bank v. City of Norwalk*, 291 U.S. 431, 436 (1934) Plaintiffs can seek contempt even though the non-party was never joined. "The driving consideration must be whether the proceeding bears the mark of fundamental fairness to the accused, both in fact and in appearance." *People v. Jones*, 262 P.3d 982, 990 (Colo. App. 2011)

9. This Petition Should Be Granted Because Courts Cannot Take Away A Non-Party's Constitutional Rights

"A State has control of the procedure in its courts but cannot deprive citizens of fundamental rights." *Fastenau v. Engel*, 270 P.2d 1019 (Colo. 1954) "Property interests are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Burella v. Philadelphia*, 501 F.3d 134, 141 (3d Cir. 2007) Despite the fact that Petitioner had a statutory and legal right to file the lis pendens, (C.R.S. §38-35-110, *Kerns v. Kerns*, 53 P.3d 1157, 1165 (Colo. 2002), *Better Baked, LLC v. GJG Prop., LLC*, 465 P.3d 84,

87-88 (Colo. App. 2020)) the court held her in contempt for exercising her legal rights. *Martinez v. Martinez*, 638 P.2d 834, 836-37 (Colo. App. 1981) In this case, the legislative branch gave Petitioner the right to take the action that she did, the judicial branch punished her for doing so.

10. This Petition Should Be Granted Because the Lower Court Deprived Petitioner of Due Process

Colorado has deprived Petitioner of her property without due process by forcing her to remove her lis pendens or face contempt and penalties of \$1000 per day. “[I]n a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen.” *Chi., Burlington & Quincy R.R. v. City of Chicago*, 166 U.S. 226, 236 (1897) (quoting 2 Story Const. § 1790). In this case, the court refused Petitioner’s petition to intervene, but then made a decision that purports to deprive her of property rights and then held her in contempt for seeking a separate forum for resolution of those rights, effectively banning her from **any recourse in any forum**. A rule that allows the taking of private property without compensation “sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights.” *U.S. v. Lee*, 106 U.S. 196, 221 (1882).

Because Colorado refused to allow her to intervene, did not include her when the statute

required her participation in the partition hearing (CRS § 38-28-102) and then held her in contempt for filing a separate case, Colorado has deprived Petitioner of all avenues of protecting her property rights. *Koontz v. St. Johns River Water Mgmt. Dist.*, ___ U.S. ___, 133 S.Ct. 2586, 2594 (2013) Colorado has coerced Petitioner into giving up her legal rights and violated “the unconstitutional conditions doctrine,”--a principle that prevents the government from coercing people into giving up their legal rights.” *Id.* This Court should make clear that courts may not punish a non-party who acts independently and whose rights have not been adjudged according to law. *Additive Controls Mst. Sys. v. Flowdata*, 96 F.3d 1390, 1394-95 (Fed. Cir. 1996)

11. This Petition Should Be Granted Because The Partition Statute Requires Petitioner’s Joinder

Colorado law is clear that a person with a beneficial interest must be joined in a partition hearing. C.R.S. §38-28-102 If a party is not joined, there is no reason to believe that the order should prevent a separate suit to protect the neglected party’s interest. *Taylor v. Sturgell*, 553 U.S. 880, 881 (2008)

Partition is an action “for the division and partition of *real* or *personal property* or *interest therein* . . . maintained by any person having an

interest in such property.”²⁷ Even if Petitioner was not a proper party when the foreclosure was pending, when the court began the partition case, it was clear from Petitioner’s previous filings that she claimed an interest in the property.²⁸ Because Petitioner was excluded from the case, the Court’s finding of contempt is even more egregious as the court not only prevented Petitioner from protecting her property rights in the foreclosure case, but it also deprived her of her ability to protect her rights in the separate case she filed. Colorado has completely denied Petitioner to all mechanisms to seek a return of her money. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991) “Because the basic procedural protections of the common law have been regarded as so fundamental, very few cases have arisen in which a party has complained of their denial.” *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 430 (1994) The rare court that does deviate from, or abrogate, such procedures risks violating litigants’ due process rights....[E]liminating the basic common law protections against an arbitrary deprivation of property violates due process.” *Id.*

12. This Petition Should Be Granted Because the Lower Court Did Not Have Personal or Subject Matter Jurisdiction

A Court should only take jurisdiction over people and property if it ensures that it has the

²⁷ Jay Pickard, Partition Comes of Age, Colorado Lawyer, December 2021, <https://cl.cobar.org/features/partition-comes-of-age>

²⁸ Appendix 7, p.45a-64a.

proper authority to do so. "In fact, "the personal jurisdiction inquiry under Colorado law collapses into the traditional due process inquiry." *Rome v. Reyes*, 401 P.3d 75, 81 (Colo. App. 2017) Moreover, the Due Process Clause "is the only source of the personal jurisdiction requirement...." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 n.10 (1982). It gives a "degree of predictability to the legal system" so as to enable persons to anticipate where their conduct will render them subject to legal process. Due process essentially concerns procedural fairness. Hence, it is reasonable to require that a court's personal jurisdiction over a non-party should be consistent with due process principles. In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) The test of reasonableness balances multiple facts around the "fair play and substantial justice" element of due process. This same analysis should be done in evaluating a non-party's right to fair play and substantial justice in a contempt proceeding.

Colorado case law is clear that proper service in a foreclosure is required. *C & C Invs. v. Hummel*, 514 P.3d 328 (Colo. App. 2022)²⁹ "Where the court is without jurisdiction over the subject matter or the parties or lacks power to make the order in the particular case, it cannot punish for contempt or disobedience of such order." *Hansberry v. Lee*, 311 U. S. 32, 40 (1940) It is axiomatic that a person must be served with process prior to being subject to the court's jurisdiction. *People ex rel. K.S-E.*, 497 P.3d 46, 54 (Colo. App. 2021); 25 Am. Jur. 213 § 93 Sadly, it is almost certain that if Toole had simply ignored

²⁹ Conant was also counsel in C&C.

the entire case, the foreclosure order would have had to be voided for lack of proper service as Conant never properly served Toole or the other defendants. However, without entering an appearance, Toole filed an objection to the affidavit of service claiming fraud. Instead of requiring that RBL serve the defendants properly, the court found that Toole was "aware" of the case and therefore was not entitled to personal service and vacated the hearing it had set to hear that argument.³⁰ No proper affidavits of service were ever filed in the case. The Court of Appeals claimed that Toole "voluntarily" entered her appearance, however, when a court ignores a fraudulent affidavit and requires a party to respond, their appearance should not be ruled voluntary.³¹ This court should make clear on a **national level** that mere "awareness" of a foreclosure case without proper service under the rules of civil procedure violates procedural due process for personal jurisdiction *ab initio*. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice. *D.D. v. M.T.*, 550 A.2d 37, 48 (D.C. 1988). Judicial foreclosures are unique because the court must have personal jurisdiction over the person AND subject matter over the property, in order to enter an order for sale. Improper documents underlying a foreclosure should bar subject matter jurisdiction *ab initio*.

The Court of Appeals found that the jurisdictional argument raised regarding the improper deed of trust was only "evidentiary" and did not deprive the court of jurisdiction. However,

³⁰ Appendix 5

³¹ Appendix 1, p.31a, ¶35

egregious violations of foreclosure law, most significantly in 2014. Megan Gallegos, Colorado Whacks Foreclosure Attorneys Hard, Courthouse News, July 17, 2014 <https://www.courthousenews.com/colorado-whacks-foreclosure-attorneys-hard/> (“**Defendants get away with this extensive fraud by taking advantage of the inherent lack of oversight in the foreclosure process.**”) (emphasis added) Despite the millions of dollars collected by Colorado in the lawsuits in 2014, the guard rails around foreclosure have not improved.³³ Because their dockets are overloaded, courts routinely rely on the foreclosing attorneys without reviewing the complaints and documents themselves. If this court does not make clear the judicial branch’s responsibility to ensure that legal rights of all the parties are protected, **this type of fraud will continue.** *Murray v. Bum Soo Kim*, 461 P.3d 624, 628 (Colo. App. 2019) The factual mistakes made by the lower court in this case are examples of the typical problems that take place. Courts should be expected and required to accurately determine who has actually participated in the litigation and what their interests are and what is in the court record. When a court struggles to understand basic legal principles and the facts of the case, people lose their legal rights and get hurt.

Most individuals who are subject to foreclosure do not have the resources to hire an attorney and are not familiar enough with court proceedings to recognize flaws in documents filed with a foreclosure complaint. Once a foreclosure is

³³ Morris B. Hoffman, *Partial Redemption in Colorado*, January 1990, University of Denver Law Review, Vol. 67, Issue 1

started, it becomes a hinderance to a refinance or sale of the property which affects property rights in a manner different from any other civil case. It should be the duty of a reviewing judge to ensure that documents filed by plaintiffs including the note or deed of trust and affidavit of service are proper.

The Court should make clear that “[c]ivil contempt requires subject matter jurisdiction over the underlying controversy”. *U.S. v. Straub*, 508 F.3d 1003, 1008-10 (11th Cir. 2007) “If the court does not have personal or subject matter jurisdiction over the parties to it, “its order may be violated with impunity.” *In re Green*, 369 U.S. 689. 693 (1962) Without jurisdiction, “the original order is deemed a nullity, and the accused contemnor cannot be fairly punished for violating nothing at all”. *In re Novak*, 932 F.2d 1397, 1401 (11th Cir. 1991) Petitioner requests that this Court find that the contempt citation against Petitioner violates her substantive and procedural due process rights. Any proceedings without jurisdiction should be ruled “invalid”. C.R.S. §38-28-104; *Paine, Webber v. Adams*, 718 P.2d 508, 513 (Colo. 1986)

CONCLUSION

This case is unique as Petitioner is unaware of any case which addresses what should happen if proper service and documents are not present in a foreclosure, an assignment by both the lienholder and one of the debtors is done contrary to the non-assignment clause of the original note and the Court continues the proceeding after a dismissal has been filed and allows a party that has filed a disclaimer to

demand a partition after one of the other defendants has arranged for payment of the liens and has promised a clear beneficial interest in the property to a 3rd party. However, because it is unique, it provides a perfect vehicle for wide ranging clarity regarding substantive and procedural due process in foreclosure and contempt cases.

As numerous parties and government officials have indicated that they will refuse to obey court orders, this case allows the court to clearly elucidate the range of authority a court has to hold a party and a non-party in contempt and the evidentiary findings that must be made to satisfy due process in a non-party indirect contempt action.

Wherefore, Petitioner prays that this Court grant her petition as this petition poses a fundamental constitutional question. *Donziger v. United States*, — U.S.—, 143 S. Ct. 868, 215 L.Ed.2d 288 (2023) (Gorsuch, J., dissenting, joined by Kavanaugh, J.).

RESPECTFULLY SUBMITTED:

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