APPENDIX

23CA1501 RBL Financial v Layton 08-22-2024

COLORADO COURT OF APPEALS
Court of Appeals No. 23CA1501

Boulder County District Court No. 21CV30778
Honorable Dea M. Lindsey, Judge
RBL Financial LLC, Plaintiff, v. Main 434 LLC, Defendant-Appellee,
and Concerning Angelique Layton, Other Interested Party-Appellant.

JUDGMENT AFFIRMED AND CASE REMANDED WITH DIRECTIONS
Division II
Opinion by JUDGE GROVE
Fox and Sullivan, JJ., concur
NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 22, 2024
Hatch Ray Olsen Conant LLC, Christopher J. Conant, Denver, Colorado, for Defendant-Appellee
Angelique Layton, *Pro Se*

¶1 Angelique Layton appeals remedial contempt sanctions entered against her by the district court. The court held Layton in contempt after it concluded that she filed a notice of lis pendens against a piece of real property in which she claimed an interest for the purpose of frustrating the district court's order that the property be partitioned and sold. We affirm the district court's judgment.

¶ 2 Defendant, Main 434 LLC (Main 434), requests its appellate attorney fees and costs pursuant to C.R.C.P. 107(d)(2). We grant the

request and remand the case to the district court for further proceedings.

1. Background

¶ 3 While the history of this case is complex — involving at least eight different actors and three related legal actions —it revolves around a shifting mosaic of ownership interests in 432-436 Main Street in Lyons (the property).

¶ 4 We begin with the purchase of the property by Sara Toole and Chris Mattair via a warranty deed executed by Squier Realty LLC. The purchase was financed, in part, by assuming a debt that Squier owed to Sanford and Marsha Williams (Williams Note) that was secured by a first position deed of trust (Williams DOT) encumbering the property. After closing, Toole and Mattair each owned a one-half undivided interest in the property.

¶ 5 In connection with the purchase, Toole also borrowed money from Matthew Sutton. That loan was secured by a second position deed of trust (Sutton DOT) that encumbered only Toole's one-half interest in the property. After executing the Sutton DOT, Toole became involved in significant litigation against Mattair involving the property. Layton represented Toole in that litigation.[1]

¶ 6 Toole and Mattair defaulted on the Williams DOT, and the holder of that note commenced foreclosure proceedings (the first

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[1] Layton's law license was suspended based on her conduct during the Toole-Mattair litigation. While suspended, she continued to "guide[] her former client" and engage in other acts that constituted the practice of law. *People v. Layton*, Colo. O.P.D.J. No. 22PDJ032 (Apr. 19, 2023). This conduct led to Layton's disbarment. *See id.*

foreclosure). Plaintiff, RBL Financial LLC (RBL), subsequently purchased the debt secured by the Williams DOT. Shortly thereafter, Toole filed for Chapter 7 bankruptcy.

¶ 7 In response, RBL sued Mattair, alleging that he was personally liable on the debt secured by the Williams DOT. RBL and Mattair reached a settlement under which RBL dismissed the lawsuit and released Mattair from the debt obligation in exchange for Mattair's agreement to transfer his one-half interest in the property to Main 434, an entity affiliated with RBL. Importantly, the settlement only released Mattair's liability and not RBL's claim to the debt. Additionally, the settlement agreement provided that there would be no merger of the ownership interest conveyed by Mattair to Main 434 and the lien interest in the property that RBL still held.

¶ 8 The bankruptcy court allowed Toole to repurchase her interest in the property from the Bankruptcy Trustee for $8,000. Layton provided the funds for the purchase. The order approving the purchase provided, "The sale of the Property IS NOT and SHALL NOT be considered a sale free and clear of any and all liens, claims, and encumbrances on the Property." Thus, Toole regained her one-half interest in the property —subject to the Williams DOT and the Sutton DOT. Main 434 still owned the other one-half interest.

¶ 9 RBL then recommenced foreclosure proceedings on the Williams DOT (the second foreclosure). Layton, using her own personal funds, paid RBL $125,837.91 as a cure before the foreclosure sale. In response, RBL initiated a second

foreclosure proceeding because Toole's bankruptcy constituted a nonmonetary default. Layton then paid the remaining $265,000 on the Williams DOT to RBL to cure the foreclosure.

¶ 10 While the second foreclosure was ongoing, RBL purchased from Sutton the loan secured by the Sutton DOT and commenced foreclosure proceedings (the third foreclosure). While Toole initially seemed to dispute whether she had been properly served in connection with the third foreclosure, she eventually submitted to the court's jurisdiction by filing an answer with various counterclaims. Toole also raised claims against Main 434 and Ikon Funding LLC —another entity associated with RBL.

¶ 11 Layton moved to intervene in the third foreclosure proceeding. She argued that she had an interest in the property because she and Toole formed SA Lyons LLC for the purpose of running a restaurant there. Layton claimed that the various payments she made to cure Toole's defaults were intended to be her contribution to SA Lyons, and, in return, Toole made an oral promise to transfer her one-half interest in SA Lyons to Layton. Toole never did so.

¶ 12 Layton's motion to intervene in the third foreclosure proceeding was denied because (1) she failed to attach a pleading as required by C.R.C.P. 24(c); (2) she failed to articulate why Toole could not adequately represent her interests; and (3) she had attempted to intervene in a pro se capacity in order to circumvent her suspension from practicing law. After the court denied her motion, Layton used her

own personal funds, in the amount of $371,433.55, to cure the Sutton DOT default.

¶ 13 With the default cured, the property was free and clear of all liens. Toole and Main 434 each owned a one-half undivided interest. The case was not over, however, because Toole had asserted counterclaims against RBL, and, moreover, she and Layton had possession of the property to the exclusion of Main 434 and were handling the property's upkeep and receiving its tenant's rent.

¶ 14 After repeatedly being denied access to the property, Main 434 filed a cross-claim[2] against Toole demanding a "partition and/or division" and requesting that the court appoint a commissioner to oversee the process. The district court appointed a commissioner to determine the parties' interests in the property and recommend whether partition would be appropriate under sections 38-28-103, -105, and -110, C.R.S. 2024.

¶ 15 The commissioner held a hearing at which Layton testified on her own behalf and as a witness for Main 434.[3] After considering the evidence, the commissioner found that the only parties with an interest in the property were Main 434 and Toole. As for Layton, the commissioner concluded that while she contributed significant funds to pay off the debt encumbering Toole's interest, she acquired no interest in the property.

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[2] Due to its interest in the property, Main 434 was a named defendant in the third foreclosure action along with Toole and another RBL-related entity that has not participated in this appeal.

[3] Layton did not designate the transcript of this hearing as required by C.A.R. 10(d)(3). The commissioner's order, however, makes it clear that Layton testified.

The commissioner recommended that the district court order a partition sale because a partition in kind was impracticable, and, as a tenant in common, Main 434 had an absolute right to demand partition. The proceeds of a partition sale were to be split evenly between Main 434 and Toole, with Main 434 maintaining a right of contribution from Toole. The district court adopted the commissioner's findings of fact and ordered the partition sale.

¶ 16 Before the property could be sold, Layton filed a separate lawsuit against Toole and Main 434 seeking to relitigate the issues in the original lawsuit while asserting an equitable lien on the property. Layton also recorded a notice of lis pendens on the property, which prevented the partition sale from moving forward. In response, in this case, Main 434 filed a motion for issuance of a contempt citation against Layton for preventing the partition sale that the district court had ordered. The court scheduled a hearing on the matter. At the hearing, Layton testified that she "hoped," but did not know, that the notice of lis pendens would prevent the sale of the property.[4]

¶ 17 The district court issued an order finding Layton in remedial contempt. It reasoned that Layton (1) knew of the partition order;(2) had the present ability to comply with the partition order; and (3) "interfered with the Court's administration of justice by interfering with the Court's Partition Order rendering it unable to be complied with by the parties in this matter." It then ordered Layton to

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[4] As noted above, Layton did not designate a transcript from the contempt hearing; however, the district court's order referenced her testimony.

remove the notice of lis pendens and granted Main 434 its attorney fees and costs related to the contempt proceeding.

¶ 18 This appeal followed.

II. Analysis

¶ 19 Layton raises five issues on appeal. We address each in turn.

A. Subject Matter Jurisdiction

¶ 20 First, Layton contends that the district court lacked subject matter jurisdiction to hold her in remedial contempt because the court was deprived of jurisdiction due to an alleged irregularity with the Sutton DOT (i.e., the note underlying the third foreclosure). Specifically, Layton asserts that "the DOT filed by [RBL's attorney] and used to begin the foreclosure contains pages that do not match the signature page." As a result of this alleged inconsistency, Layton argues, "[T]he [district court] may never have had in rem jurisdiction over the property." We are not persuaded.

¶ 21 We apply a mixed standard of review when determining whether the district court had jurisdiction over the underlying dispute. *Levine v. Katz*, 192 P.3d 1008, 1012 (Colo. App. 2006). We defer to the district court's factual findings but review legal conclusions de novo. *Id.*

¶ 22 Subject matter jurisdiction concerns the "court's power to resolve a dispute in which it renders judgment." *Ashton Props., Ltd. v. Overton*, 107 P.3d 1014, 1017 (Colo. App. 2004). As such, subject matter jurisdiction may be raised at any time. *McClure v. JP Morgan Chase Bank NA*, 2015 COA 117, ¶6, aff'd, 2017 CO 22. Thus, even though Layton does not appear to have raised this issue in

the district court,[5] we may review it —at least to the extent that it actually implicates the district court's subject matter jurisdiction. See *Olson v. Hillside Cmty. Church SBC*, 124 P.3d 874, 878 (Colo. App. 2005) (holding that an order issued by a court lacking jurisdiction is void).

¶ 23 However, Layton cites no authority, and we are aware of none, supporting the proposition that an evidentiary issue implicates a district court's subject matter jurisdiction. To the contrary, Layton's claim that the copy of the Sutton DOT attached to RBL's foreclosure complaint was not what it purported to be raises a question of authenticity. It does not affect either the nature of the claim or the relief sought. *See People v. Rodriguez*, 2022 COA 11,¶21 (holding that evidence susceptible of tampering is an authentication evidentiary issue). Moreover, unlike subject matter jurisdiction, evidentiary issues like authentication must be raised in the district court or else they are waived. See, e.g., *Fink v. Montgomery Elevator Co. of Colo.*, 421 P.2d 735, 738 (Colo. 1966). Thus, authentication does not implicate subject matter jurisdiction, and any evidentiary challenge to the Sutton DOT is not properly before us.

B. Contemptuous Behavior

¶ 24 Second, Layton contends that the district court exceeded its authority by finding her in

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[5] In her opening brief, Layton claims that she preserved this issue and provides general citations to two briefs she filed in advance of the contempt hearing. We could find no argument in either of those briefs that resembles Layton's appellate argument concerning the signature page on the Sutton DOT.

contempt of court for recording a notice of lis pendens concerning the property —a statutorily authorized practice. We disagree.

1.Legal Principles of Remedial Contempt

¶ 25 Generally, appellate review of a contempt order presents a mixed question of fact and law. *Hartsel Springs Ranch of Colo., Inc. v. Cross Slash Ranch, LLC*, 179 P.3d 237, 239 (Colo. App. 2007). We review questions of law de novo while deferring to the district court's findings of historical fact so long as they have some support in the record. *Id.* If the appellant fails to provide a complete record, we assume that the district court's findings are supported by competent evidence. *Hock v. N.Y. Life Ins. Co.*, 876 P.2d 1242, 1252 (Colo. 1994).

¶ 26 A district court may impose sanctions for failure to comply with court orders. See *People v. McGlotten*, 134 P.3d 487, 489-90 (Colo. App. 2005); C.R.C.P. 107. The district court has the inherent authority to issue orders that are necessary for the performance of judicial functions, including the power to enforce obedience to its orders through contempt sanctions. *Id.; Dworkin, Chambers & Williams, P.C. v. Provo*, 81 P.3d 1053, 1059 n.3 (Colo. 2003). C.R.C.P. 107(a)(1) provides, as relevant here, that contempt is the "disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court."

¶ 27 There are two types of contempt sanctions: remedial and punitive. *In re Parental Responsibilities Concerning A.C.B.*, 2022 COA 3, ¶ 21. Punitive contempt is intended to punish the contemnor and to encourage the public not to interfere with judicial proceedings. *Id.* at ¶ 23.

Remedial contempt is aimed at forcing compliance with lawful court orders. *Id.* at ¶ 24. When contemptuous behavior is committed outside the presence of the court, the court must provide notice and a hearing. C.R.C.P. 107(c). In an order holding a nonparty in remedial contempt, the court must find that the contemnor (1) was aware of the order;(2) interfered with the order; and (3) has the ability to comply with the order or remove the interference. *In re Marriage of Cyr,*186 P.3d 88, 92 (Colo. App. 2008); *In re Lopez*, 109 P.3d 1021, 1023 (Colo. App. 2004).

¶ 28 There 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.

2.Application

¶ 29 Layton attempts to argue that she was held in contempt for merely exercising her legal rights to file a notice of lis pendens on the property. However, her argument depends on false premises—that she filed the notice of lis pendens in good faith and that it was not a spurious and groundless document. The district court rejected these premises, finding that notice of lis pendens was "a spurious and groundless document." Layton contends that this finding lacked evidentiary support, but without the transcripts from the commissioner's hearing or the contempt hearing, we must assume that the district court correctly determined that Layton groundlessly filed the notice of lis pendens with the goal of frustrating a lawful order, and it was therefore a spurious document. *See Hock*, 876 P.2d at 1252.

¶ 30 We are unpersuaded by Layton's argument that she cannot be held in contempt for exercising her legal rights because she was not, in fact, held in contempt for exercising her legal rights. Layton does not argue that the filing of a spurious and groundless document is a legal right, nor does she argue that the filing of a spurious document cannot form the basis of contempt proceedings. And rightly so. It is well established that the misuse of legal proceedings can be sanctioned. *See,e.g., James H. Moore & Assocs. Realty, Inc. v. Arrowhead at Vail*, 892 P.2d 367, 373-74 (Colo. App. 1994) (improper recording of notice of lis pendens can constitute abuse of process if improper and for an ulterior motive); *In re Skinner*, 917 F.2d 444, 447-50 (10th

Cir. 1990) (creditor's suit in violation of bankruptcy stay was subject to contempt proceeding). Therefore, the district court did not err by finding Layton's misuse of a statutory proceeding that interfered with a lawful order could form the basis of contempt as a matter of law.

C. Remaining Contentions

¶ 31 Layton raises three other issues —all without merit. We address each summarily.

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

¶ 33 Layton also argues that she cannot be held in contempt of court because the partition order did not explicitly compel or enjoin her. But C.R.C.P. 107 prevents anyone from knowingly interfering with the execution of a lawful court order; its application is not limited to individuals explicitly named. *See, e.g. Lopez*, 109 P.3d at 1023 (social worker who helped remove individual subject to conservator proceedings was not compelled or enjoined explicitly). A notice of lis pendens renders title unmarketable and prevents the sale or transfer of the property until either the litigation ends or the notice is removed. *Hewitt v. Rice*, 154 P.3d 408, 412-13 (Colo. 2007). By filing the notice of lis pendens, Layton prevented the court-ordered sale of the property, and the district court found that Layton filed the notice for that very purpose. Therefore, she

knowingly interfered with the execution of the partition order —satisfying the C.R.C.P. 107 elements for contempt.

¶ 34 Finally, Layton contends that the partition order is void because the district court lacked personal jurisdiction over Toole due to improper service of the third foreclosure complaint. Even assuming that the service was deficient, any objection that the district court lacked personal jurisdiction over Toole was waived once Toole voluntarily appeared and participated in the partition proceedings. *See Gognat v. Ellsworth*, 224 P.3d 1039, 1054 (Colo. App. 2009), aff'd, 259 P.3d 497.

III. Attorney Fees

¶ 35 Main 434 requests its appellate attorney fees and costs pursuant to C.R.C.P. 107(d)(2), which, in connection with C.A.R. 38, authorizes our court to grant reasonable costs and attorney fees in connection with contempt proceedings. While Rule 107(d)(2)'s language is permissive rather than mandatory, we exercise our discretion in this case and grant Main 434's request. The district court's order noted that Layton had testified that she hoped the notice of lis pendens would prevent the partition sale. Layton's intentional misconduct informs our decision that Main 434 should not pay the cost of her actions. We are unpersuaded by Layton's argument that she had no alternative to recording the lis pendens notice. She could have corrected the procedural defects in her motion to intervene. Or, she could have sought to immediately appeal the denial of her motion to intervene. Likewise, she could have filed a motion to reconsider the denial of

her motion to intervene with the required pleading and included a developed argument explaining why Toole could not protect her interests. Simply put, Layton had a variety of options at her disposal to represent her alleged interests.

¶ 36 Layton's present appeal is an attempt to litigate a number of issues relevant to the contempt order; therefore, we conclude that the costs and fees Main 434 incurred on appeal are connected to the contempt proceeding. *See Madison Cap. Co. v. Star Acquisition VIII*, 214 P.3d 557, 562 (Colo. App. 2009). Accordingly, we grant Main 434's request to recover its reasonable appellate attorney fees and costs.

IV. Disposition

¶ 37 We affirm the judgment and remand the case to the district court for a determination of Main 434's appellate attorney fees and costs.

JUDGE FOX and JUDGE SULLIVAN concur.

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

ORDER

THIS MATTER came before the Court on Defendant, Main 434 LLC's ("Main 434") Motion for Issuance of Contempt Citation Against Angelique Layton, dated March 10, 2023 ("Motion"). The Motion was properly served on Ms. Layton on May 17, 2023. The Court advised Ms. Layton of her rights concerning remedial contempt on June 2023. The matter was briefly removed to federal district court but was returned to this Court's jurisdiction. A hearing was held on August 11, 2023, and the Court took the matter under advisement.

I.BACKGROUND

The Motion stems from Ms. Layton's alleged tangential involvement in the underlying case. The case involved property interests of Main 434 and Sara Toole. This Court ordered the appointment of a commissioner to investigate and make recommendations surrounding the facts and circumstances about the interests of the subject property ("Property") between the parties pursuant to C.R.S. §§ 38-28-103, 110, & 105. See, Order re: Main 434 LLC's Motion for Partition and Appointment of Commissioner(s), dated May 31,

2022. The Commissioner entered her Commissioner's Findings of Fact and Conclusion and Conclusions of Law Regarding Partition on November 8, 2022 ("Commissioner Findings"), adjudicating the Property, after a full trial on the merits, at which Ms. Layton testified. In relevant part the Commissioner found that "[n]o evidence was ever presented by any party that Angelique Layton has any form of interest in the Property." Commissioner Findings, p. 8. This Court adopted the Commissioner Findings as an order of this Court on November 14, 2022 ("Partition Order"). Main 434 marketed the Property for sale, as directed by the Partition Order. At one point during the case, Ms. Layton attempted to intervene in this matter alleging she "claims an interest relating to the property or transaction which is the subject of the action, and she is so situated that the disposition of that action may as a practical matter impair or impede her ability to protect that interest and [her] interests may not be adequately represented by existing parties." See Motion to Intervene, November 12, 2021.1 The Court denied the Motion to Intervene holding generally that Ms. Layton failed to comply with the requirements of C.R.C.P. 24. See Order: Motion to Intervene, dated December 9, 2021. Importantly, Ms. Layton did not appeal this Order: Motion to Intervene at the time, or at the resolution of the matter with the Court's entry of the Partition Order. Subsequently, on February 8, 2023, Ms. Layton filed a new lawsuit captioned Layton v. Toole, et al., Case No. 2023CV14, in Boulder County District Court concerning the adjudicated Property. She also recorded a notice of lis pendens as to the

Property on February 14, 2023. See, Motion, Ex. 10—Notice of Lis Pendens, filed in Case No. 2023 CV 14. Main 434 alleges that these actions were designed to "interfere with, frustrate and prevent consummation" of the Partition Order under C.R.C.P. 107. Motion, § 1, p. 2. Main 434 asserts that the cloud of the lis pendens on the Property prevents them from effectuating the Partition Order and they seek sanctions for remedial contempt.

I. LEGAL STANDARD

"Contempt" penalizes conduct which unlawfully disturbs a court's administration of justice, including "disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court." C.R.C.P. 107(a)(1). Sanctions for contempt may be either remedial or punitive. C.R.C.P. 107(a)(3), (4). Remedial sanctions for contempt must be supported by findings of fact establishing the contemnor (1) did not comply with a lawful order of the court; (2) knew of the order; and (3) has the present ability to comply with the order. See C.R.C.P. 107(d)(2); *In re Marriage of Cyr & Kay*, 186 P.3d 88, 92 (Colo. App. 2008). If a violation is shown, then the burden shifts to the alleged contemnor to show an inability to comply with the court order alleged to have been violated. *Id.* "Remedial sanctions are civil in nature." *Id.* "The burden of proof in any civil action shall be by a preponderance of the evidence." C.R.S. § 13-25-127(1) (2021). Remedial sanctions are those that are "imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform." C.R.C.P. 107(a)(5). A remedial contempt order "only describes

the means by which the contempt can be purged and the sanctions that will be in effect until the contempt is purged." *Sec. Inv'r Prot. Corp. v. First Entm't Holding Corp.*, 36 P.3d 175, 178 (Colo. App. 2001). See Eichhorn v. Kelly, 56 P.3d 124 (Colo. App. 2002); C.R.C.P. 107(d)(2). Attorney fees can be awarded under section (d)(2) only as a component of remedial sanctions. Under section (a)(1)(5), a remedial sanction must include a purge clause. See *In re Webb,* 284 P.3d 107, 110 (Colo. App. 2011).

II. FINDINGS AND ORDERS

As an initial matter, the Court finds that Ms. Layton has no interest in the Property for which a notice of lis pendens could be properly filed. The interest in the Property was properly adjudicated by the Partition Order after a hearing where Ms. Layton presented evidence of her interest in Property. The Commissioner was not persuaded, and neither is this Court. At the August 11th hearing, the Court took testimony regarding this matter. The Court heard minimal testimony from witnesses presented, however, Ms. Layton, who represented herself, testified on her own behalf and was called as a witness by Main 434. Ms. Layton repeatedly stated that the notice of lis pendens did not render the Property unsellable, but she "hoped" that it would. Ms. Layton asked that the Court consider her brief on the matter which she filed on August 8, 2023, however, any motions concerning the contempt proceedings were to be filed no later than June 27, 2023, and therefore the Court does not consider it. See Minute Order re: Hearing on Advisement, dated June 20, 2023,

¶ 4. After consideration of the evidence at the hearing in this matter Court finds Ms. Layton in remedial contempt. It is clear to the Court that Ms. Layton's intent was to resist the lawful Partition Order of this Court by creating any roadblocks or barriers with the parties' ability to comply with it. The evidence at the hearing established that: (1) Ms. Layton knew of the Partition Order; (2) Ms. Layton has the present ability to comply with the Partition Order; (3) and she interfered with the Court's administration of justice by interfering with the Court's Partition Order rendering it unable to be complied with by the parties in this matter. *In re Marriage of Cyr & Kay*, 186 P.3d at 92. Ms. Layton can certainly remove the lis pendens, which would purge the contempt in this matter. The Court further finds that the lis pendens is a spurious and groundless document for purposes of C.R.S. §§ 38-35-201, et seq. and 38-35-109(3).

III. CONCLUSION

The Court finds that Ms. Layton is in remedial contempt of Court. To purge the remedial Contempt, the Court ORDERS her to remove the record of lis pendens within seven (7) days of this Order. Within the same timeframe of seven (7) days from this ORDER, Ms. Layton is required to provide notice to the Court in Boulder Case No. 2023CV14 of the removal of the lis pendens and request an Order confirming such notice of the removal. Every day that she has not complied with this Order after seven (7) days, Ms. Layton shall be fined $1,000 per day until the contempt is purged (the lis pendens removed and the Court notified in Case No. 2023 CV 14)). Ms. Layton shall refrain from any conduct that

attempts to assert an interest in Property or that interferes with the consummation of the Partition Order in this case. Further, the Court finds that an award of reasonable attorney fees and costs is appropriate against Ms. Layton. Main 434 is to file an affidavit of attorney fees and costs and supporting documents within 14 days of today's date.
SO ORDERED this August 23, 2023.
BY THE COURT:
/s/Dea M. Lindsey
District Court Judge

COLORADO SUPREME COURT 2 East 14th Avenue Denver CO 80203	
Certiorari to the Court of Appeals, 2023CA1501 District Court, Boulder County, 2021CV30778 _____ Petitioner: Angelique Layton v. Respondent: Main 434 LLC	Case No. 2024SC614

ORDER OF THE COURT

Upon consideration of the petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals.

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 27, 2025,
JUSTICE BERKENKOTTER does not participate.

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	Date Filed 8/8/22
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

HEARING BRIEF

1. The Court cannot exercise its adjudicatory authority over Ms. Layton unless it has both the statutory authority and the constitutionally recognized power to do so. Jack H. Friedenthal, et al., Civil Procedure §3.1, at 94 (2d ed. 1993). Proper jurisdiction for contempt requires the Court to find that Ms. Layton was subject to the original order of the court and was properly served. *Bd. Wtr. Wks. v. Pueblo Emp. Local 1045*, 196 Colo. 308, 314-15 (Colo. 1978); *Weber v. Williams*, 137 Colo. 269, 275-76 (Colo. 1958); *State v. Lowry*, 100 Colo. 144, 145 (Colo. 1937).

2. C.R.C.P. Rule 107 requires proper personal service of a copy of the motion and affidavit for contempt upon the person alleged to have committed the contempt if the person is subject to the jurisdiction of the Order of the Court and was enjoined in some way by the previously issued Court Order

3. The Court cannot exercise jurisdiction over 3rd parties without some evidence that a 3rd party is subject to the Order of the Court.
4. Ms. Layton has never been served pursuant to C.R.C.P. Rule 4 joining her in any proceeding subjecting her to compliance with the Commissioner's order. Ms. Layton's participation as a subpoenaed witness in the partition hearing does not give the Court jurisdiction to include her in an order of the court as a non-party.
5. Simple awareness of a lawsuit does not convey jurisdiction over the person or the subject matter to this court.
6. As Ms. Layton is not a party, and has not been personally served with any Order which prevents her from exercising her rights to recover monies paid as a cure for the defaults on the first and second deed of trust and to recover monies spent to repair and maintain the real property, the Court does not have personal jurisdiction over her.

THE COURT'S ORDER REGARDING PARTITION IS VOID OR VOIDABLE AS TO MS. LAYTON

7. As Main 434 filed an answer after they disclaimed their interest in the matter and it was filed more than 60 days after they had "notice" of Ms. Toole's cross claim, their answer and cross claim was untimely and should have been stricken. The Court should not have assumed jurisdiction over the partition action because no defendant was ever properly served and the foreclosure action was dismissed.

8. RBL's complete failure to comply with the Colorado Rules of Civil Procedure requiring proper service of a foreclosure complaint deprives the court of personal jurisdiction and subject matter jurisdiction over the property and Ms. Layton.
9. A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair; is based on an erroneous understanding or application of the law; or misconstrues or misapplies the law. *People v. Wunder*, 2016 COA 46, ¶ 20, 371 P.3d 785, 789.
10. Subject matter jurisdiction concerns the court's authority to deal with the class of cases in which it renders judgment. *See* 1 *A. Freeman, supra* at § 337; 7 *Moore, Federal Practice* ¶ 60.25[2].
11. Therefore, in determining whether the court has such jurisdiction, reference must be made to the nature of the claim and the relief sought. *In re Marriage of Stroud*, 631 P.2d 168, 170-71 (Colo. 1981)
12. As the appointment of the commissioner was done without acknowledging that the Court was without jurisdiction over the originating complaint, the judgment was irregular.
13. .An "irregular" judgment is "one rendered contrary to the method of procedure and practice allowed by the law in some material respect." *In re Marriage of Stroud*, 631 P.2d 168, 171 n.7 (Colo. 1981)
14. The court must have jurisdiction over the parties and the subject matter over the issue to be decided if its judgment is to be valid. *Id. In re Marriage of Stroud*, 631 P.2d 168, 170 (Colo. 1981)

15. Because the Court could not have had subject matter jurisdiction over this matter without proper service, and cannot have jurisdiction over a partition action without joining all parties pursuant to statute, the order is subject to collateral attack. *Whitten v. Coit*, 153 Colo. 157, 385 P.2d 131 (1963); *McLeod v. Provident Mutual Life Insurance Co.*, 186 Colo. 234, 526 P.2d 1318 (1974); *see generally* 1 *A. Freeman, Law of Judgments* § 333 (1925)

16. In this case, the Commissioner's order simply ignored the fact that the deed by which Main 434 claimed ownership should have been voided once the entire note and deed of trust including the amount owed by Mr. Mattair/Main 434 had been paid by Ms. Layton. *Stock Yards* [*Nat'l*] *Bank v. Neugebauer,* 97 Colo. 246, 48 P.2d 813 [(1935)]; *Citywide Banks v. Armijo*, 313 P.3d 647, 650 (Colo. App. 2011)

17. A note holder does not have any rights beyond recovery of their money. Creditors can only "recover their just demands, nothing more." *Plute v. Schick*, 101 Colo. 159, 71 P.2d 802, 804 (1937); *Oakwood Holdings, LLC v. Mortg. Invs. Enters. LLC*, 410 P.3d 1249, 1254 (Colo. 2018)

18. As the portion of the first note and deed of trust related to Ms. Toole AND Main 434 was fully paid before Main 434 filed their partition action, the note and deed of trust should have been completely released. Main 434 should not have been able to be fully paid and also assert an ownership claim on the property. "The holder of a note secured by a deed of trust has a choice of independent remedies: Suit on the note only, foreclosure on the property, or joinder

of both proceedings in one action". *See, e.g., Foothills Holding Corp. v. Tulsa Rig, Reel, Manufacturing Co.*, 155 Colo. 232, 393 P.2d 749; *Foster Lumber Company, Inc. v. Weston Constructors, Inc.*, 33 Colo. App. 436, 521 P.2d 1294. *Smith v. Certified Realty Corp.*, 41 Colo. App. 170, 172 (Colo. App. 1978)

19. Opposing counsel has stressed that Ms. Layton's title documents had not been recorded during the partition hearing and emphasized that fact, perhaps in an attempt to insulate the partition action from challenge, however it does not absolve the Court of the due process requirement under the partition statute to join all parties that may have a beneficial or equitable interest in the property as the partition statute does not require a "recorded" interest in order to be joined in the litigation. C.R.S Section 38-38-104

20. The failure to record does not affect the validity of a conveyance as between the parties "and such as have notice thereof." C.R.S. Section 38-35-109

21. Ms. Toole has admitted in subsequent sworn testimony that her agreement with Ms. Layton was to convey an ownership interest in the property in return for Ms. Layton's investment. Because Ms. Toole continued to promise a transfer, but has not done so, Ms. Layton is entitled to assert her claims against Ms. Toole and to seek compensation from RBL/Main 434 for their portion of the payment of the first note and deed of trust.

22. The Court knew that Ms. Layton claimed that she had a beneficial interest in the property although title documents had not been recorded.

Cedar Lane Investments v. American Roofing Supply of Colorado Springs, Inc., 919 P.2d 879, 883-884 (1996) and the Court order acknowledged that Ms. Layton had made all the payments to cure the defaults on the first promissory note and the first and second deed of trust and made all the payments for the repairs and maintenance on the building.

23. Once Mr. Conant filed the partition action, and Ms. Layton's equitable claim and open and adverse physical possession of the property was obvious, the Court was required by statute to join Ms. Layton into the partition matter and should have realized that all parties necessary to a partition action had not been joined in the litigation. *Page v. Fees-Krey*, 617 P.2d 1188, 1194 (Colo. 1980).

24. In addition, Mr. Conant in subsequent sworn testimony acknowledged that a deed of trust holder is required to be included in a C.R.C.P. 105 action, and in this case, as he knew that Ms. Layton had paid off the first deed of trust, his failure to include Ms. Layton in the cross claim, or to alert the court that all parties necessary to the partition had not been joined should void the order as to Ms. Layton.

25. "It is beyond dispute that due process concerns pervade jurisdictional matters, particularly where substantial personal interests are at stake". See, e.g., Friedenthal, supra, § 3.19, at 166" G*ilford v. State*, 2 P.3d 120, 128 (Colo. 2000)

26. "Due process requires that a court not exercise its adjudicatory authority unless the persons whose rights will be affected have been given adequate notice and an opportunity to be heard." *Gilford v. State*, 2 P.3d 120, 126 (Colo. 2000)

27. Notice reasonably calculated to apprise interested parties of a pending partition action is necessary to preserve vital rights. *Weber v. Williams*, 137 Colo. 269, 275-76, 324 P.2d 365, 368 (1958) (quoting *Coppinger v. Coppinger* 130 Colo. 175, 274 P.2d 328 (1954)); *Bray v. Germain Investment Company*, 105 Colo. 403, 407, 98 P.2d 993, 995 (1940). See also *Federal Farm Mortgages Corp. v. Schmidt*, 109 Colo. 467, 470-71, 126 P.2d 1036, 1038 (1942)

28. All in rem cases require proper notice to interested persons. *Rael v. Taylor*, 876 P.2d 1210, 1225-26 (Colo. 1994)

29. C.R.S. Section 38-28-102 provides that in a partition action "[a]l persons having any interest, direct, beneficial, contingent, or otherwise, in such property **shall** be made parties." (emphasis added)

30. "C.R.C.P. 19(a) states that [a] person who is properly subject to service of process in the action **shall** be joined as a party in the action if: (1) In his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." *Rinker v. Colina-Lee*, 452 P.3d 161, 170 (Colo. App. 2019) (emphasis added)

31. In *Fry Co. v. Dist. Court*, 653 P.2d 1135, 1139 (Colo. 1982) the Court stated "the obvious intent of the joinder requirement in the partition

statute is that all persons having interests in the real property be represented in the partition action so that they may protect their interests and be bound by the results."

32. When substantive and procedural due process are required to protect property rights, then that protection cannot be a mere gesture.

33. Mr. Conant's claim that the Court process complied with the Rules of Civil Procedure must fail as the Court failed to join Ms. Layton. *Rael v. Taylor,* 876 P.2d 1210, 1224-25 (Colo. 1994)

34. Without a procedure reasonably designed to protect Ms. Layton's ability to be heard in the partition action, the order is void and voidable as to Ms. Layton.

35. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections....The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." *American Land Co. v. Zeiss*, 219 U.S. 47, 67 (1911)

36. In this case, Ms. Layton was not protected by the Court and her claims to the property were unrepresented by Mr. Coakley as he acted solely as Ms. Toole's attorney.

37. In any action involving title to property, diligent inquiry and notice reasonably calculated to apprise interested parties of a pending proceeding affecting such interests are required. *Weber v.*

Williams, 137 Colo. 269, 275-76, 324 P.2d 365, 368 (1958) (quoting *Coppinger v. Coppinger* 130 Colo. 175, 274 P.2d 328 (1954)); *Bray v. Germain Investment Company*, 105 Colo. 403, 407, 98 P.2d 993, 995 (1940). *See also Federal Farm Mortgages Corp. v. Schmidt*, 109 Colo. 467, 470-71, 126 P.2d 1036, 1038 (1942) *Rael v. Taylor*, 876 P.2d 1210, 1225-26 (Colo. 1994)

38. Ms. Layton's constitutional rights to due process involving property rights were violated and she was harmed by the Court's failure to include her in the partition action as the Court deprived her of her ability to protect her interest in the property.

39. The distinction between a procedural and a substantive rule is not always clear, but "legislative policy and judicial rulemaking powers may overlap to some extent so long as there is no substantial conflict between statute and rule." *McKenna*, 196 Colo. at 373, 585 P.2d at 279. It is important for the Court to recognize that rules promulgated to govern the administration of the courts are merely procedural, and the statute requiring the court to comply with proper notice is substantive. *People v. Wiedemer*, 852 P.2d 424, 436 (Colo. 1993); *see also People v. Bobian*, 626 P.2d 1132, 1134-35 (Colo. 1981); *People v. McKenna*, 196 Colo. 367, 370, 585 P.2d 275, 276-77 (1978).

40. The Commissioner's ruling, while attempting to resolve all issues, did not involve all parties claiming an interest in the property, and now Ms. Layton's only path to recovery is a separate action for ownership against Ms. Toole, and a separate action to recover funds from RBL and Main 434.

41. Therefore, the evidence and the parties before the Commissioner did not allow the Commissioner to resolve all the issues related to the ownership of the property.

42. As the Court failed to comply with the partition statute requiring all parties to be properly served and joined so that a final decision could be made with respect to all claims, the order is void or voidable as to Ms. Layton. *Lyon v. Amoco Production Co.*, 923 P.2d 350, 356 (Colo. App. 1996), *Colorado Korean Assoc. v. Korean Senior*, 151 P.3d 626, 628 (Colo. App. 2006); *Rinker v. Colina-Lee*, 452 P.3d 161, 170 (Colo. App. 2019); *Francis v. Aspen Mountain Condo. Ass'n, Inc.*, 401 P.3d 125, 131 (Colo. App. 2017)

43. In addition, Mr. Conant and his clients knew that Ms. Layton was the only person in physical possession of the property and was the only person who had a key to the premises because until Main 434 filed their answer, Main 434 had never possessed a key or asked for a key to the property from Ms. Toole or Ms. Layton.

44. Ms. Layton's work at the property involved efforts to maintain and repair the property as required under the promissory note and deeds of trust.

45. Barry Lewis, the purported manager of RBL and Main 434 was copied on communications with the city and with the professionals including the architect and structural engineer and knew that Ms. Layton was working on a daily basis at the property to maintain and repair the property including remediating the sewer flood that had been

allowed to take place [while his] receiver was in possession of the property.

46. It is well settled in Colorado that possession of real estate is sufficient to provide notice of legal or equitable claims the person or persons in open, notorious, and exclusive possession of the property may have. *See Hitchens v. Milner Land, Coal Townsite Co.*, 65 Colo. 597, 601, 178 P. 575, 576 (1919); *Colburn v. Gilcrest*, 60 Colo. 92, 94, 151 P. 909, 910 (1915); *Yates v. Hurd*, 8 Colo. 343, 344, 8 P. 575, 576 (1885); *Tiger v. Anderson*, 976 P.2d 308, 310 (Colo.App. 1998); *Martinez v. Affordable Housing Network*, 123 P.3d 1201, 1207 (Colo. 2005)

47. The Commissioner's order which deprives Ms. Layton of the use and enjoyment of property in which she claims she has an interest and in which Ms. Toole has admitted Ms. Layton has a right to violates Ms. Layton's constitutional property rights. *Krupp v. Breckenridge Sanitation Dist*, 19 P.3d 687, 695 (Colo. 2001) ("A taking unquestionably occurs when the government substantially deprives a property owner of the use and enjoyment of that property."), *Colorado Korean Assoc. v. Korean Senior*, 151 P.3d 626, 628 (Colo. App. 2006)

48. Therefore, the order is void or voidable as to Ms. Layton.

MS. LAYTON HAS DONE NOTHING TO INTERFERE WITH THE COURT ORDER OTHER THAN ASSERTING HER OWN RIGHTS IN A CIVIL COURT PURSUANT TO THE UNITED STATES AND COLORADO CONSTITUTIONS

49. If the Court does not have personal jurisdiction or subject matter jurisdiction, then the Court order is not valid to prohibit action by Ms. Layton. *In re Novak* , 932 F.2d 1397, 1401 (11th Cir. 1991)." *People ex rel K.P.*, 517 P.3d 70, 76 (Colo. App. 2022)

50. If the issuing court lacked subject-matter jurisdiction over the underlying controversy and lacks personal jurisdiction over Ms. Layton, then its order cannot prevent Ms. Layton from acting to protect her own interests in a parallel proceeding. *In re Novak* , 932 F.2d 1397, 1401 (11th Cir. 1991)." *People ex rel K.P.*, 517 P.3d 70, 76 (Colo. App. 2022)

51. "Only an order issued within a court's authority can support a finding and order of contempt." *White v. Adamek*, 907 P.2d 735, 737 (Colo. App. 1995); *Thrap v. People*, 558 P.2d 576 (1977). *See Hartsel Springs Ranch of Colo., Inc.* , 179 P.3d at 239 ("Generally, there can be no contempt unless an order or decree requires a party to do, or refrain from doing, some specific act.")

52. As Ms. Layton has taken no action contrary to the Order of this Court, and the Court cannot prevent Ms. Layton from asserting her property interests against the defendants, there can be no contempt. *McMullin v. Denver*, 125 Colo. 231, 234 (Colo. 1952)

52. The Commissioner's Order acknowledged that a claim for recovery of the cure funds from the named defendants was possible, although the Court speculated that Ms. Toole might not be the party in interest capable of pursuing that claim.

53. The Commissioner's Order did not make any reference to claims between Ms. Toole and Ms. Layton as Ms. Layton was prevented from presenting any evidence on her own behalf between herself and Ms. Toole, and therefore this Court cannot prohibit Ms. Layton from litigating the ownership interest between herself and Ms. Toole.
54. Ms. Layton has properly filed a civil court case against the defendants in this matter.
55. A notice of lis pendens only provides notice that a claim may be present on a particular property.
56. The statute expressly states: "From the time of recording, such notice of lis pendens shall be notice to any person thereafter acquiring *by, through, or under any party named in such notice,* an interest in the real property described in the notice . . . that *the interest so acquired* **may** be affected by the action described in the notice." Section 38-35-110(1), *Cooper v. Flagstaff Realty,* 634 P.2d 1013 (1981), emphasis added.
57. Ms. Layton has complied with all required statutes and rules regarding the filing of the civil suit and the filing of the lis pendens.
58. The Lis Pendens has not interfered in any way with RBL or Main 434's interest or control over the property or ability to market the property.
59. Upon information and belief, there have been several offers for purchase and therefore Ms. Layton's lis pendens has not prevented Main 434 from marketing or listing the property for sale.
60. Ms. Layton's cause of action grows out of the failure of this Court to resolve her claims against the property and the defendants and gives rise to

the claim of an equitable lien against the property which provides the basis for a valid lis pendens. *Leyden v. Citicorp Industrial Bank*, 782 P.2d 6, 13 (Colo. 1989)

61. Ms. Layton has a valid claim against the defendants in this case, and as the defendants, upon information and belief have no assets other than the property, a notice of lis pendens is appropriate as a judgment for money damages can be a lien against any real property owned by the debtor. *Martinez v. Affordable Housing Network*, 123 P.3d 1201, 1207 (Colo. 2005)

62. Unjust enrichment in the civil case asserts an equitable lien as an offset against the value of the property owned by the debtors. *Rounds v. Sullivan (In re Sullivan),* 82 B.R. 133, 135 (Bankr. D. Colo. 1988) (quoting *In re Hart,* 50 B.R. 956 (Bankr. D. Nev. 1985)).

63. Personal judgments, like foreclosure orders, can be a lien on real property. C.R.S. Section 13-52-102

64. Ms. Layton is entitled to assert a claim against the defendants in the other civil case to collect monies she paid on their behalf. *Thibodeaux v. Creditors Service, Inc.,* 551 P.2d 714, 715-716 (1976)

65. Equitable subrogation allows an individual to assert a lien on property. *Hicks v. Londre,* 125 P.3d 452, 454-458 (Colo 2006)

67. As none of the defendants in the civil case have any assets other than the property, in the event that Ms. Layton prevails in the civil suit, there cannot be any recovery without the right to assert a lien on the property.

68. To impose an equitable lien, two requirements must be satisfied. First, there must exist "a debt, duty, or obligation owing from one person to another," and second, there must be "a *res* to which the obligation would be fastened . . .:" *Leyden,* 782 P.2d at 11. *Hoxworth v. Blinder* 170 B.R. 438 (1994)

69. Under Colorado law, an equitable lien may be created either "by a written contract showing an intention to charge property with a debt or obligation, or by a court of equity, out of general considerations of right and justice, as applied to the relations of the parties and the circumstances of their dealings." *Valley State Bank v. Dean,* 97 Colo. 151, 47 P.2d 924, 927 (1935) (citations omitted). *In re Telluride Global Development,* 380 B.R. 817, 833 (Bankr. D. Colo. 2007)

70. As the Commissioner opined that a claim for monetary recovery existed from the named defendants, and all defendants have acknowledged Ms. Layton's payment of the funds for the cure of the three foreclosure actions, both prongs to establish an equitable lien exist.

71. It is ridiculous that any Court would imagine that Ms. Layton's payment of the cure funds and her work at the property which in total is in excess of $900,000 in this matter was a voluntary gift or was done without an expectation of repayment or an ownership interest in the property.

72. "A creditor who obtains a judgment may enforce it against the real property of the debtor. Section 13-52-102(1) provides: All . . . real estate of every person against whom any judgment is obtained in any court of record in this state . . . are

liable to be sold on execution to be issued upon such judgment. Colo. Rev. Stat. § 13-52-102(1)" *Clark v. Peters (In re Bryan)*, 547 F. App'x 892, 5-6 (10th Cir. 2013); *Leyden v. Citicorp Industrial Bank*, 782 P.2d 6, 10 (Colo. 1989)

73. Case law supports the filing of a lis pendens which provides notice that there is a pending litigation which "affects" title to the property. *Better Baked, LLC v. GJG Prop., LLC*, 465 P.3d 84, 87-88 (Colo.App. 2020)

74. Therefore, the filing of a civil action against the defendants in this matter and filing a notice of lis pendens is appropriate and in no way contravenes or interferes with the orders in this matter.

75. Colorado statutory provision authorizes a party to file such a document. The provision says: *After filing any pleading* in an action in any court of record of this state or in any district court of the United States within this state *wherein relief is claimed affecting the title to real property, any party* to such action *may record in the office of the county clerk* and recorder in the county or counties in which the real property or any portion thereof is situated *a notice of lis pendens* containing the name of the court where such action is pending, the names of the parties to such action at the time of such recording, and a legal description of the real property. *Id.* § 38-35-110(1) (2012) (emphasis added). "[T]he only prerequisite imposed on the action to which the notice of lis pendens pertains is that it be one affecting title to real property." *Kerns v. Kerns,* 53 P.3d 1157, 1161 (Colo. 2002) (internal quotation marks omitted).

76. The Colorado Supreme Court has interpreted the statute to effectuate its purpose, stating: "the policy that successful completion of a suit involving rights in real property should not be thwarted by permitting transfers of interests in real property to persons not bound by the outcome of the suit continues in its full vigor. *This policy would be furthered by giving an expansive interpretation to the language "affecting the title to real property" Hammersley v. District Court,* 610 P.2d 94, 96 (Colo. 1980) (en banc) (emphasis added) *Cooper v. Flagstaff Realty,*634 P.2d 1013, 1014-15 (Colo. App. 1981).

77. A notice of lis pendens is not groundless just because the underlying claim is later denied. *See Platt,* 214 P.3d at 1068. Rather, a document is "groundless" within the meaning of § 38-35-109(3) only if it is "one as to which a proponent can advance no rational argument based on evidence or law to support his or her claim." *Id. Leoff v. S & J Land Co.*, No. 11-1293, 18-20 (10th Cir. Nov. 29, 2012)

ANY PART OF THE COURT ORDER THAT AFFECTS MS. LAYTON'S CLAIMS SHOULD BE VACATED

78. When the Court has exceeded its jurisdiction, an individual is entitled to redress under C.R.C.P. 106(a)(4). *Van Huysen v. Board of Adjustment*, 550 P.2d 874 (1976). *Anchorage Joint Venture v. Anchorage Condo*, 670 P.2d 1249, 1250 (Colo. App. 1983)

79. Rule 60(b) provides that a motion to set aside a judgment or order "shall be made within a

reasonable time." Nonetheless, because a void judgment is "without effect," it "may be attacked at any time." *Burton v. Colo. Access* , 2018 CO 11, ¶ 35, 428 P.3d 208 ; *see also In re Marriage of Stroud* , 631 P.2d 168, 170 n.5 (Colo. 1981) ("[W]here the motion alleges that the judgment attacked is void, C.R.C.P. 60(b)(3), the trial court has no discretion. The judgment either is void or it isn't and relief must be afforded accordingly."). *In re J.N.*, 518 P.3d 788, 795 (Colo. App. 2022)

80. The propriety of an independent equitable action to afford relief from a prior judgment has long been recognized in Colorado, *see Jotter v. Marvin*, 63 Colo. 222, 165 P. 269, and is expressly permitted under the provisions of C.R.C.P. 60(b). Such an action seeks to invoke the court's inherent power "to prevent the use of a judgment at law by one who had obtained it against conscience." 7 *J. Moore, Federal Practice* ¶ 60.36 (2d ed.) "An independent action may provide remedies in addition to those afforded under C.R.C.P. 60(b), *see Caputo v. Indemnity Co.*, 41 F.R.D. 239, and is not restricted by the six month time limitation imposed on motions made under sub-sections (1) and (2) of C.R.C.P. 60(b) or the reasonable time requirements imposed upon motions made under sub-sections (3), (4), and (5) of that rule." *Dudley v. Keller*, 33 Colo. App. 320, 321 (Colo. App. 1974) However, Ms. Layton's request for Motion 60 relief with relation to her claims is being filed within the six month time period.

81. Because the Court expressly excluded Ms. Layton from the litigation despite all parties to the partition acknowledging Ms. Layton's payment of

the cure funds, it is unjust and unconstitutional to now deny Ms. Layton the ability to sue for reimbursement of her payment as it deprives Ms. Layton of her property without due process. *Southeastern Colorado Water Conservancy Dist. v. Cache Creek Mining Trust,* 854 P.2d 167, 175–76 (Colo.1993)).*Kelso v. Rickenbaugh Cadillac Company,* 262 P.3d 1001, 1004 (Colo. App. 2011)

82. To the extent that the Commissioner's order may control Ms. Layton's claim, it should be vacated pursuant to Ms. Layton's previous request.

83. Ms. Layton requests that this Motion be dismissed against her.

Respectfully submitted,
/s/Angelique Layton
Pro Se

CERTIFICATE OF SERVICE

I CERTIFY that I have sent a copy of this to the opposing counsels via USPS prepaid at the address in the court file.
Dated: August 8, 2023
/s/Angelique Layton

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

ORDER

Based upon the status of the pleadings, Defendant Toole clearly has notice of these proceedings. The Court hereby vacates the 01/04/2022 hearing on service. Service is about giving a party notice of the proceedings. She may file a response to the Complaint by 12/27/2021.

Issue Date: 12/13/2021

/s/ PATRICK D BUTLER

District Court Judge

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

ORDER: ORDER RE INTERVENTION

The motion/proposed order attached hereto:
DENIED.
The court has reviewed the Motion, Response, Reply, and related documents.
The motion is DENIED for the following reasons:

1. The Court denies Ms. Layton's Motion for her failure to comply with the requirements of C.R.C.P. 24. Rule 24(c) requires that any motion to intervene under Rule 24 "shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." C.R.C.P. 24(c). Ms. Layton seeks intervention under Rule 24 but she fails to specify whether she seeks intervention as of right under Rule 24(a) or permissive intervention under Rule 24(b). It appears that Ms. Layton seeks intervention only under Rule 24(a) because purported grounds for intervention is that she "claims an interest relating to the property or transaction which is the subject of the action and she is so situated that the disposition of the action may as a practical matter impair or impede her ability to

protect that interest and Ms. Layton's interest may not be adequately represented by existing parties." Indeed, any argument by Ms. Layton for intervention under Rule 24(b) is precluded because Rule 24(b) requires that the potential intervenor assert a "claim or defense" that arises out of the same transaction or occurrence alleged in the main action. C.R.C.P. 24(b). But Ms. Layton's failure to submit a proposed pleading with her Motion to Intervene as required by Rule 24(c) necessarily means that she is not asserting a "claim or defense" as required by Rule 24(b). Ms. Layton's most recent filing does not assert any cognizable legal claim.

2. Ms. Layton has not satisfied the second element of Rule 24(a)(2). Assuming arguendo that the disposition of this action may impair or impede her "interest" (whatever interest that may be), Ms. Layton has not demonstrated that Sara Toole cannot adequately represent Ms. Layton's interest. Under Rule 24(a)(2), "[i]f the interest of the absentee is not represented at all, or if all existing parties are adverse to him, then he is not adequately represented." *Feigin v. Alexa Grp., Ltd.,* 19 P.3d 23, 31 (Colo. 2001). "On the other hand, if the absentee's interest is identical to that of one of the present parties, or if there is a party charged by law with representing the absentee's interest, then a compelling showing should be required to demonstrate why this representation is not adequate." *Application for Underground Water Rights,* 2013 CO 53, ¶ 12. Rule 24(a) requires a proposed intervenor to establish that the existing parties will not adequately represent him or her as a limitation to prevent "a cluttering of lawsuits with

multitudinous useless intervenors". Id. Under this standard, Ms. Layton's allegations prove that Ms. Toole does adequately represent her interests.

3. Finally, Ms. Layton, now suspended from practice of law, was the former attorney for Defendant Sara Toole in a number of cases before this Court. Ms. Layton was the attorney for Defendant Sara Toole before this Court in Case Nos. 2020CV030365, 2019CV030866 and 2019DR030385 involving the same property at issue in the instant case. Ms. Toole was claiming the property as her marital property under her alleged common law marriage. Ms. Layton's attempt to intervene in this case as a "pro se" litigant in which her "former" client Sara Toole is a defendant, appears nothing more than a subterfuge to traverse her recent suspension from practicing law in the State of Colorado.

Issue Date: 12/9/2021
/s/ANDREW HARTMAN

District Court Judge

DISTRICT COURT, BOULDER 1777 6th Street, Boulder, CO 80302 COUNTY, COLORADO (303) 441-3750	Date Filed 127/2021
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

REPLY TO RESPONSE TO INTERVENE

Comes now, Angelique Layton, pro se and files this reply

A MOTION TO INTERVENE SHOULD BE LIBERALLY CONSTRUED

1. The Court should not deny this Motion to Intervene. The rule must be liberally construed to avoid a multiplicity of suits, so that all related controversies should as far as possible be settled in one action. *Senne v. Conley*, 133 P.2d 381 (1943); *Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC*, 37 P.3d 485 (Colo. App. 2001).

THE COURT JUDICIAL WEBSITE JDF FORM DOES NOT INDICATE ADDITIONAL DOCUMENTS ARE REQUIRED FOR A MOTION TO INTERVENE

2. Although Rule 24 indicates that a "Pleading" is required, it does not indicate that the pleading

cannot be integral to the Motion. The Court Judicial Form JDF 1704 available on the website 1 provides the form of a Motion to Intervene and it does not indicate that anything apart from the motion and the explanation for WWW.COURTS.STATE.CO.US/FORMS why the intervention is necessary.

A SEPARATE PLEADING ACCOMPANIED THE MOTION

3. The Motion to Intervene was accompanied by a pleading requesting a Preliminary Injunction on the appointment of the receiver. Therefore, Ms. Layton has satisfied the plain meaning of the Rule.
4. Until a Motion to Intervene has been granted, from the JDF form, it is not clear that any formal response or counterclaims can be filed on Ms. Layton's behalf as until she has been granted intervenor status, it would not appear that Ms. Layton would have standing to assert any claims in the above proceeding. However, a separate pleading is attached hereto as Exhibit A if the Court determines that such a pleading must be filed at this stage of the request to Intervene.

RBL LLC IS AWARE OF MS. LAYTON'S FINANCIAL INTEREST IN THE PROPERTY

5. Mr. Conant and his clients are clearly aware of a potential financial interest to be claimed by Ms. Layton. The Boulder Treasurer provided proof that the first foreclosure redemption was paid by Angelique Layton. (Exhibit B)

6. Mr. Conant's officer received a personal check signed by Ms. Layton for the payoff of the second foreclosure with a letter requesting an accounting for the payoff amount. Therefore, the allegation that Ms. Layton's interest in this property is undocumented or unknown to Mr. Conant or RBL LLC or that Ms. Layton does not have a potential claim to an interest in the property is simply ridiculous. (Exhibit C)
7. Case law indicates that a Motion to Intervene should be granted as a right when there is an allegation that property rights might not be adequately protected. *Dillon Companies, Inc. v. City of Boulder, Colo.*, 515 P.2d 627(1973)
8. Mr. Conant and his clients have personal knowledge that Ms. Layton has personally provided funding in an approximate amount of $400,000 to redeem this property from the two foreclosure actions that were filed. Therefore, Ms. Layton clearly has a substantial interest in the real property.
9. In addition, Ms. Layton has paid for equipment that is currently on site to wit: Furnace (value $5000), Duct Lift (value $2000), Restaurant Kitchen Hood (Value $10,000), Ice Cream Machine (Value $4000), Ez Pro Fryer (Value $4000), Universal Ventless Fryer (Value $1500), Wells Ventless Griddle and CookTop (Value $20,000), Gas cooktop $1000, Electric Fireplace (Value $200), Miscellaneous duct and hood work (Value $400), Tools (Value $500). All of this equipment has been seized by the receiver.
10. Ms. Layton has completed repairs to the subject property in an approximate amount of $25,000. 11. Ms. Layton has paid for additional repairs to the

subject property that are not able to be completed because the receiver has locked all parties out of the restaurant side of the building to wit: Repairs to refrigeration equipment (Value $5000), Repairs to Furnace (Value $5000), Repairs to Ventilation System (Value $10,000). None of this work has been reimbursed by Sara Toole, or Main 434 LLC.

12. Ms. Layton's personal contribution to the redemption of the two foreclosures totaling approximately $400,000, and the presence of equipment and tools and repairs that have already been completed or have not yet been completed that have been paid for demonstrates that Ms. Layton has a significant financial interest in this property.

MR. CONANT'S FAILURE TO PROVIDE AN ADDRESS FOR MS. TOOLE DEMONSTRATES THAT HE IS NOT WILLING TO PROPERLY NOTIFY MS. TOOLE OF THESE PROCEEDINGS

13. Mr. Conant claimed that he properly served Ms. Toole the complaint and Order, however, upon information and belief, Ms. Conant has taken no steps to ensure that Ms. Toole has been properly served.

14. Rule 66 requires proper service of the Order appointing the Receiver and upon information and belief, Mr. Conant has not complied.

15. Mr. Conant has not even included Ms. Toole's address on the certificate of service showing where he served his Response to Ms. Toole.

16. When Ms. Layton received Mr. Conant's response, she contacted Ms. Toole who indicated she had not received any documents from Mr. Conant.

17. Mr. Conant's certificate of service indicated that he served all parties on November 28, 2021, however, the postage on Ms. Layton's packet was dated December 1, 2021. Clearly Mr. Conant is not promptly serving or filing any of the paper documents to either Ms. Toole or Ms. Layton.
18. This fact alone should raise a concern to the court that Mr. Conant's allegation that Ms. Toole can adequately represent Ms. Layton's interest in this property is untrue.
19. Ms. Conant also did not include any of the other addresses of the other defendants which would have alerted the Court that all are represented by Mr. Conant and/or his firm or are the same individuals.
20. As Mr. Conant appears to be representing all the other individuals, both plaintiffs and defendants in some capacity, there is no assurance that any of the other named defendants are actually adverse within the reasonable interpretation of legal practice.
21. Had Mr. Conant not sent a courtesy copy of the order appointing the receiver to Ms. Layton by email, it is possible that neither Ms. Toole, nor Ms. Layton would have ever known about this proceeding in time to file a proper answer or intervene.
22. Because Ms. Conant has not demonstrated that he is willing to provide proper notice to Ms. Toole, there is a substantial likelihood that a filing deadline could be missed and Ms. Layton's interest in the property would not be preserved if she were not allowed to participate in this litigation.

MS. LAYTON IS ENTITLEDTO REPRESENT HER OWN INTERESTS AS A PROSE PARTY

23. In the interest of judicial economy, the Court should allow Ms. Layton to participate in this matter as she has a claim to the real property and the equipment inside the building as well as repairs that have been paid for by her that is separate and apart from any claim that Ms. Toole has. Ms. Layton has a prima facia financial interest in this property that is separate and apart from Ms. Toole.
24. An interest in property can exist even if the document is not recorded with the clerk's office. The only effect of an unrecorded interest is a lower priority in a foreclosure action unless there is equitable subrogation. CO Rev Stat § 38-35-109 (2016)
25. Ms. Layton's current status as a licensed attorney should have no bearing on whether or not she is able to file as a pro se litigant in this matter. Ms. Layton has the right to represent herself. https://www.courts.state.co.us/userfiles/file/lst Judicial%20District/representingyourselfincourt. pdf
26. Ms. Layton has not actively sought to avoid the prohibition against practicing law under the terms of her suspension. Instead. Ms. Layton has been forced by RBL LLC's judicial foreclosure to protect her interests in the property.
27. Ms. Layton's intervention would protect her own legitimate interest in the property. It is possible that Ms. Layton's interests may also align with Sara Toole and/or the other defendants in this matter. Nevertheless, Ms. Layton's interest is separate and apart from any of the other defendants.

MS. TOOLE CANNOT ADEQUATELY PROTECT MS. LAYTON'S INTERESTS

28. Ms. Layton conferred with Ms. Toole to alert her that Ms. Layton was filing a Motion to Intervene and provided a hand delivered copy of her pleading to Ms. Toole.
29. Ms. Layton filed her Motion to Intervene Friday afternoon, November 12, 2021.
30. Ms. Layton then suffered a severe accident and fractured her knee. Because of that, she was unable to serve Mr. Conant with his copy. Ms. Layton alerted Mr. Conant and emailed him a copy of the motion and request.
31. Ms. Toole alerted Ms. Layton that she has used Ms. Layton's pleading as a template for her own, however, Ms. Layton states affirmatively that Ms. Toole did not confer with Ms. Layton regarding her own filing, other than to alert Ms. Layton that she was filing an answer. Ms. Toole wrote her own pleading and filed it herself.
32. Ms. Toole is not represented by an attorney and upon information and belief Ms. Toole does not have the funds to hire an attorney.
33. Without an attorney, Ms. Layton does not believe that Ms. Toole is properly positioned to adequately protect Ms. Layton's interest in the property.
34. Upon information and belief, Ms. Toole was told by the Court Clerk that she had to file a request for a hearing to bring the court's attention to the problems that have been created by the appointment of the receiver. To date, it appears that Ms. Toole has not done so.
35. Because of that, Ms. Layton is concerned that Ms. Toole is unable to adequately represent Ms. Layton's financial interest in this property as the receiver has acted irrationally and his continued

management of the property seriously jeopardizes Ms. Layton's financial investment and the commercial viability of the property.
36. Ms. Toole's failure to request an emergency hearing regarding the receiver's actions jeopardizes the ability of Ms. Layton to obtain financing to redeem the pending foreclosure.
37. If the foreclosure takes place and the property is sold at a sale, and financing cannot be secured, Ms. Layton's entire investment could be lost.
38. Therefore, Ms. Layton's financial interest in this property is not currently adequately protected and cannot be adequately protected by Ms. Toole.

THE ONLY SHENANIGANS OPERATING HERE IS THE TANGLED WEB THAT MR. CONANT AND RUSSELL LANDAU AND BARRY LEWIS HAVE CREATED

39. Russell Landau and Barry Lewis appear to have been alerted to Ms. Toole's ownership of this restaurant property and financial distress by Mr. Cohen and/or Mr. Mattair. Mr. Landau and Mr. Lewis purchased the first lien in this property during Ms. Toole's bankruptcy using RBL LLC as a shell company formed at approximately the time that they bought the first lien.
40. RBL LLC also sued Mr. Mattair. (Boulder Case No. 2020CV030658) who was a co tenant in common with Ms. Toole in this property.
41. Mr. Conant represented Mr. Landau and Mr. Lewis as RBL LLC in the lawsuit against Mr. Mattair.

42. Mr. Mattair transferred his interest in the property to a new shell company, upon information and belief, created by Mr. Conant, which was Main 434 LLC.
43. Despite Mr. Mattair's position as a potential equal share tenant in common with Ms. Toole, the quit claim deed executed to RBL LLC indicates that Mr. Mattair transferred his interest for $10.
44. It appears that Main 434 LLC is a sham company as there is no evidence that it was adequately capitalized given the outstanding liens against the property they acquired through Mr. Mattair's quit claim deed.
45. The first foreclosure had been pending when Ms. Toole filed bankruptcy.
46. Initially the bankruptcy trustee proposed a straight sale of the property, but the second deed of trust holder (Matthew Sutton) objected and instead the bankruptcy trustee held an auction.
47. The property was auctioned out of the bankruptcy and in March 2021, Ms. Toole approached Ms. Layton and asked if Ms. Layton would be interested in helping her purchase her property out of the bankruptcy auction.
48. Ms. Toole was not and is not currently a legal client of Ms. Layton. Nevertheless, proper disclosures were provided to Ms. Toole and after Ms. Toole agreed in writing to the relationship. Ms. Layton and Ms. Toole agreed to form an LLC together to own and operate the property.
49. Ms. Toole, Ms. Layton and another individual worked together to purchase the property from the bankruptcy trustee.

50. Ms. Toole won the auction and was given a deed from the bankruptcy trustee.
51. After the auction, Ms. Layton contacted several financing groups who indicated that in order to assist in financing the property, they would have to be assured of a first priority lien, and therefore the terms of the financing agreement between Ms. Toole and Ms. Layton will not be recorded until alternative financing is assured for the redemption of all the liens.
52. After the auction, the first nonjudicial foreclosure filed by the first deed of trust holder and their successor in interest RBL LLC continued.
53. For the first foreclosure. Ms. Layton and Ms. Toole obtained funding, primarily from Ms. Layton's extended family, to redeem the property from foreclosure. Main 434 LLC contributed nothing to the redemption.
54. Almost as soon as the first foreclosure was redeemed. Mr. Conant and RBL LLC filed a second non-judicial foreclosure alleging that Ms. Toole's bankruptcy constituted a default under the first lien holder deed of trust. Ms. Layton and Ms. Toole obtained funding, again primarily from Ms. Layton's extended family to redeem the property from the second foreclosure and paid off the first lien entirely.
55. A request for an accounting was made to Mr. Conant for documentation of the foreclosure expenses, but no accounting has ever been provided. The non-judicial foreclosure payment request included attorney's fees, payment for insurance and other interest charges which have never been documented by Mr. Conant. The release of the lien was not filed promptly.

56. Main 434 LLC has contributed nothing to the redemption of the first and second foreclosure which preserved their interest in the property.
57. Main 434 LLC has refused to contribute anything to necessary repairs of the building, including repairs of electrical circuits, ventilation, and roof repairs.
58. A second deed of trust existed on the property and the individual who held that deed of trust, Matthew Sutton, filed a claim in Ms. Toole's bankruptcy alleging a $195,000 secured claim against the property and an unsecured claim for the balance. No release of the claim in bankruptcy has been done and the claim as secured and unsecured remains active in the bankruptcy.
59. RBL LLC purchased the second lien (Sutton deed of trust) from Matthew Sutton, and filed a third nonjudicial foreclosure alleging that Ms. Toole's bankruptcy constituted a default under the Sutton deed of trust.
60. RBL LLC has actual knowledge that the first lien was paid off and therefore the second lien has been advanced to first priority. However, it is obvious that RBL LLC only purchased the second lien after they knew that the second lien would have priority and could be satisfied entirely by the collateral because of the payment of the first lien.
61. At this time, the reasonable market price of the property is approximately $500,000 to $600,000 after all the improvements made by Ms. Layton to the property.
62. The satisfaction and release of the first lien allows RBL LLC, as the second deed of trust holder

to unjustly benefit from the complete payment of the first lien.

63. The second deed of trust would have had an unsecured dischargeable debt in the Chapter 7 Bankruptcy of approximately $200,000 which would have represented the difference between the first lien which was $400,000, the second secured claim that Mr. Sutton originally filed of $195,000 and the balance of the unsecured portion of the second lien which amounts to approximately $200,000.

64. Therefore. RBL LLC is unjustly enriched by the payment of the first lien and now has become an entirely secured creditor with an advanced first lien priority because the full amount of the first lien has been paid and the collateral's value now exceeds the amount of the second/now first lien.

65. RBL LLC is attempting to unjustly avoid the dischargeable portion of the second lien by foreclosing on the second lien and taking advantage of the fact that the first lien has been paid off which resulted in collateral that completely secures the second deed of trust.

MS. TOOLE'S BANKRUPTCY IS NOT WITHIN THE JURISDICTION OF THIS COURT

66. Ms. Toole's filed bankruptcy in 2020.

67. Ms. Layton has not represented Ms. Toole in any capacity since the filing of the bankruptcy.

68. Ms. Layton filed a proof of claim for attorney's fees in January 2021.

69. At the Creditor's meeting in bankruptcy court, Ms. Toole acknowledged that the claim filed by Ms. Layton was a valid claim.

70. The bankruptcy trustee has not disputed Ms. Layton's claim.
71. The bankruptcy filing has nothing to do with the business relationship between Ms. Layton and Ms. Toole as it relates to this property.
72. Mr. Conant speculates wildly about coercion, however, it is not his right to assert any such claim and such speculations are not properly the jurisdiction of this court.
73. However, his client's attempt to continue as secured and unsecured creditors in the bankruptcy despite the fact that their second deed of trust lien holder status at the time the bankruptcy was filed represented an unsecured claim of more than $200,000 is an attempt to circumvent the rules in bankruptcy allowing a debtor to be discharged from debt under Chapter 7.
74. RBL LLC is clearly attempting to potentially receive a double payment for their claim which is prohibited by depressing the value of the property by their receiver's action and in remaining a creditor in bankruptcy.
75. Ms. Toole is free to reaffirm any debt, or take any action to dispute Ms. Layton's claim in the bankruptcy, but it is not appropriate to litigate Ms. Layton's bankruptcy claim in this forum.

MR. CONANT AND HIS FIRM SHOULD BE DISQUALIFIED FROM REPRESENTING THE PARTIES IN THIS MATTER

76. Mr. Conant filed a non-judicial foreclosure on the first lien TWICE on behalf of RBL LLC alleging default for nonpayment. Mr. Conant filed the

nonjudicial foreclosures against Ms. Toole and Main 434 LLC, the organization which appears to have also been created and comprised of his own clients.
77. Mr. Conant, representing RBL LLC also filed the subject action as a judicial foreclosure and has also filed a nonjudicial foreclosure.
78. RBL LLC's action in filing this foreclosure clearly is adverse to the Main 434 LLC, and IKON Funding LLC interests, all representing and represented by the same individuals.
79. Mr. Conant has filed as the attorney and legal representative of RBL LLC.
80. Upon information and belief, RBL LLC is comprised of Russell Landau and Barry Lewis. Mr. Lewis appears to be the registered agent for RBL.
81. Mr. Conant has also filed as an exhibit to his Response a document purporting to be the certification of the managing partner Barry Lewis of Main 434 LLC.
82. Mr. Conant and/or his firm are listed as the registered agent of IKON FUNDING LLC. (See Exhibit D). Therefore, Mr. Conant is therefore not only representing RBL LLC as the limited liability company plaintiff, but the organizations which he is suing are comprised of at least ONE of the members of the plaintiff LLC.
83. Ms. Conant is also the registered agent for the IKON FUNDING LLC who is also listed as a defendant in this matter.
84. Mr. Conant and his firm should NOT be allowed to represent all of the plaintiffs and all of the defendants in this matter except for Ms. Toole.
85. Obviously given Mr. Conant's obvious conflict of interest, he and his clients clearly have interests on

both sides of this matter and it is unlikely that the defendants are "true" adverse parties.

86. Rules against representing individuals with a conflict of interest should prohibit Mr. Conant and his firm from continuing to represent any of the organizations or individuals named in this matter and this Court should prohibit Mr. Conant and his firm from continuing in any form of representation of the parties involved in this matter. C.R.P.C. Rule 1.7 and 1.8

87. Wherefore, Ms. Layton requests that

a. The Court grant Ms. Layton's request to intervene in this above subject matter.

b. The Court disqualify Mr. Conant and his firm as counsel in this matter.

c. The Court determine that the judicial and non-judicial foreclosure by RBL LLC as a successor in interest to the Sutton Second Deed violates the automatic stay in bankruptcy until the bankruptcy court evaluates the secured and unsecured portion of the Sutton Second Deed of trust given the redemption of the first lien;

d. Such other relief as is just and proper.

A Jury Trial is requested.
Respectfully /s/Angelique Layton

CERTIFICATE OFSERVICE

A COPY OF THE foregoing has been served on the attorney for RBL LLC, and all other defendants at their last known court address this 6th day of December, 2021
/s/Angelique Layton

DISTRICT COURT, BOULDER 1777 6th Street, Boulder, CO 80302 COUNTY, COLORADO (303) 441-3750	Date Filed 127/2021
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

CROSS CLAIM AND COUNTER CLAIM

Comes now, Angelique Layton, pro se and files this counter claim and cross claim against Main 434 LLC and RBL Financial LLC

GENERAL ALLEGATIONS

1. Main 434 LLC is a record owner of the property at 432/436 Main Street, Lyons CO having been named an owner by virtue of a quit claim deed executed by Christopher Mattair, an original obligor on the first deed of trust on the subject property.
2. Upon information and belief, Main 434 LLC is comprised of Barry Lewis and Russell Landau.
3. Upon information and belief, RBL Financial LLC (RBL LLC) is comprised of Barry Lewis and Russell Landau.
4. RBL LLC is a successor in interest to the first deed of trust on the subject property.
5. Ms. Toole is a record owner of the property at 432/436 Main Street, Lyons, CO having been the prevailing party in the bankruptcy auction. Ms. Toole received a deed from the bankruptcy trustee.

6. Main 434 LLC was a successor in interest to Christopher Mattair and an obligor on the first deed of trust which was foreclosed on twice by RBL LLC.
7. The first deed of trust obligated Main 434 LLC to pay the mortgage payments, taxes, interest and other fees associated with the deed of trust.
8. RBL LLC foreclosed on the first deed of trust twice.
9. Ms. Layton and Ms. Toole obtained personal financing and redeemed the first and second foreclosures.
10. By redeeming the foreclosures, Main 434 LLC's interest in the subject property was preserved.
11. RBL LLC then purchased the second deed of trust from Matthew Sutton.
12. RBL LLC has been unjustly enriched as their second deed of trust now stands in first priority in a foreclosure because the first deed of trust has been completely paid off.
13. Main 434 LLC has contributed nothing to the redemption of the foreclosures.
14. Main 434 LLC has contributed nothing to the repairs, maintenance, mortgage payments, taxes or insurance on the subject property.
15. Main 434 LLC as a record owner and tenant in common has a responsibility to pay for immediately necessary repairs.

FIRST CAUSE OF ACTION UNJUST ENRICHMENT-MAIN 434 LLC

16. Main 434 LLC has received a benefit namely that their interest in the subject property was preserved by the redemption of the first and second foreclosure.

17. Their interest in the property has been preserved because of Ms. Layton's contribution to the redemption of the first and second foreclosures in the amount of $400,000.
18. Main 434 LLC has benefited from the preservation of their ownership in the subject property.
19. It would be unjust to allow Main 434 LLC to remain as record owners of the property without proper reimbursement and acknowledgement of the payments made on their behalf which preserved their record ownership of the property.
20. Main 434 LLC has been unjustly enriched by Ms. Layton's work at the property which arranged for repairs, and replacement of nonfunctional equipment, and cleaning which contributed to the commercial viability of the property in an approximate amount of $40,000.
21. Main 434 LLC has been unjustly enriched by Ms. Layton's work in obtaining a tenant for the restaurant and in coordinating the tenant's occupation of the premises which has contributed to the commercial viability of the property in an amount of approximately $5000.
22. Wherefore, Ms. Layton requests that the Court enter orders against Main 434 LLC in an amount to be determined at trial.

SECOND CAUSE OF ACTION UNJUST ENRICHMENT-RBL LLC

23. RBL LLC purchased the second deed of trust from Matthew Sutton and now stands as a successor in interest to Mr. Sutton in the bankruptcy.

24. Mr. Sutton's claim in bankruptcy was only partially secured as the original value of the subject property was encumbered by a first priority lien in the amount of $400,000.
25. The value of the secured portion of the claim in bankruptcy was $195,000.
26. The value of the unsecured portion of the claim in bankruptcy is approximately $200,000.
27. Because the first lien has been completely satisfied, the subject property now has sufficient equity to satisfy the entire second deed of trust.
28. Because the first lien has been completely satisfied, the second lien holder has now become a fully secured claimant.
29. RBL LLC is unjustly enriched by the payment of the first deed of trust, which advanced their second priority lien to full collateralized position and first position in the current foreclosure.
30. RBL LLC had full knowledge that the first deed of trust had been paid as they received the payment.
31. RBL LLC purchased the second deed of trust with the knowledge that it had now advanced to first position priority through the satisfaction of the first deed of trust.
32. RBL LLC foreclosure should be subjected to equitable subrogation and any foreclosure should allow the repayment of the original first deed of trust of $400,000 prior to any payment on the second deed of trust.

Respectfully submitted,
/s/ Angelique Layton

CERTIFICATE OF SERVICE

A COPY OF THE foregoing has been served on the attorney for RBL LLC, and all other defendants at their last known court address this 7th day of December, 2021

/s/ Angelique Layton

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street, Boulder, CO 80302 (303) 441-3750	
Plaintiff: RBL Financial LLC v. Defendants: Sara Toole, Main 434 LLC, and Ikon Funding LLC	Case No. 21CV30778

NOTICE OF LIS PENDENS

Comes now Angelique Layton, pro se, and gives notice that a civil case titled above has been filed against Defendants Russell Landau, Barry Lewis, Sara Toole, RBL Financial LLC and Main 434 LLC. The property that is the subject of the civil case is known as 432/434/436 Main Street, Lyons CO 80504, with a legal description of The East 40 Feet of Lot 12, Block 30 Town of Lyons, County of Boulder, State of Colorado, except an alley across the northerly 10 feet of subject property referred to in instrument recorded November 20, 1899 in Book 137 at Page 57 and March 4, 1891 in Book 151 at Page 517. Exhibit 10 Boulder County, CO 03997286

Ms. Layton claims an equitable lien on the property, fees and costs related to repairs, equipment and professional services paid for by Ms. Layton.

Ms. Layton claims a property interest by virtual of promissory estoppel on behalf of Ms. Toole, and promissory estoppel on behalf of Russell Landau.

Ms. Layton claims a property interest by virtue of the full payment of the first note and deed of trust securing the property that was fully paid by Ms. Layton.

Ms. Layton claims a property interest by virtue of fraudulent activity in violation of C.R.S. 6-D 113 on behalf of Russell Landau, Barry Lewis, RBL Financial and Main 434. Ms. Layton claim a property ownership interest by virtue of fraud by the record owner Christopher Mattair in his conveyance of a quit claim deed to Main 434.

Ms. Layton claims a property ownership interest by virtue of her ownership interest in SA Lyons

/s/Angelique Layton
Dated February 8, 202

03997286 RF: $18.00 02/14/2023 09:13 AM DF: $0.00 Page: 1 of 2 Electronically recorded in Boulder County Colorado. Recorded as received

C.R.S. §38-35-110

- **(1)** After filing any pleading in an action in any court of record of this state or in any district court of the United States within this state wherein relief is claimed affecting the title to real property, any party to such action may record in the office of the county clerk and recorder in the county or counties in which the real property or any portion thereof is situated a notice of lis pendens containing the name of the court where such action is pending, the names of the parties to such action at the time of such recording, and a legal description of the real property. The failure to name a party or describe a portion of the real property in such notice shall not affect the sufficiency of such notice, or the sufficiency of an extension of such notice pursuant to the provisions of subsection (4) of this section, as to the interest of the parties named in such notice or in such extension in the real property described therein. From the time of recording, such notice of lis pendens shall be notice to any person thereafter acquiring, by, through, or under any party named in such notice, an interest in the real property described in the notice in the county or counties where recorded that the interest so acquired may be affected by the action described in the notice.
- **(2)**
    - **(a)** Unless a timely notice of appeal is filed while a notice of lis pendens is in effect or unless the notice of lis pendens

judgment or, if the action was dismissed, the date of such dismissal and whether such dismissal was by court order, by notice, or by stipulation. In either case, the certificate shall also state either that, as of a specified date, posttrial motions have not been filed or that posttrial motions have been filed, identifying such motions and the action, if any, taken on such motions and the date of such action. The certificate shall also state that either there is or is not an advisory copy of a notice of appeal of the action filed with the trial court.

- **(b)** Upon request by any person, the clerk of the appellate court shall issue a certificate stating, as of a specified date, either that appellate proceedings respecting the action described in such certificate have not been commenced or that such proceedings have been commenced and stating the date of such commencement. If appellate proceedings have been commenced, the certificate shall also state either that a formal mandate has or has not been issued and, if not issued, that either a judgment, an opinion of the court, and directions as to costs have not been issued or have been issued and the dates thereof.
- **(c)** Upon being recorded with the county clerk and recorder of the county or counties wherein the real property or

any portion thereof is situated, any such certificate issued by the clerk of the trial court or the clerk of the appellate court shall constitute prima facie evidence of the facts therein stated.

- **(4)** Except as provided in subsection (6) of this section, a recorded notice of lis pendens which has not ceased to be in effect as provided in subsection (2) of this section shall expire and cease to be notice to any person for any purpose six years after the date of its recording, unless an extension of the notice of lis pendens is recorded prior to its expiration. A timely recorded extension showing the information required in subsection (1) of this section, showing that such is an extension of an original notice of lis pendens, and showing the recording date of the original notice of lis pendens shall extend the effect of the original notice for six years after the date of recording the extension or to such earlier date as such notice ceases to be in effect as provided in subsection (2) of this section.
- **(5)** A new notice of lis pendens meeting all the requirements of subsection (1) of this section may be recorded at any time while the action is pending and shall be notice to the same extent as provided in subsection (1) of this section; except that such new notice shall be notice only from the time of its recording.
- **(6)** Any notice of lis pendens recorded prior to March 20, 1992, which does not cease to be in effect as provided in subsection (2) of this

section and which is not extended as provided in subsection (4) of this section shall expire and cease to be notice to any person for any purpose six years after the date of its recording or two years after March 20, 1992, whichever is later.

Amended by 2014 Ch. 208,§ 6, eff. 7/1/2014.

L. 27: p. 590, § 9. CSA: C. 40, § 115. CRS 53: § 118-6-10. C.R.S. 1963: § 118-6-10. L. 92: Entire section amended, p. 2103, § 1, effective March 20. L. 2002: (1) amended, p. 51, § 3, effective March 21. L. 2011: IP(2)(a) amended, (SB 11-264), ch. 279, p. 1251, §4, effective July 1. L. 2014: (2) amended, (HB 14-1347), ch. 208, p. 770, § 6, effective July 1.

(1) For the filing of a notice of lis pendens, see C.R.C.P. 105(f). (2) For the legislative declaration in the 2011 act amending the introductory portion to subsection (2)(a), see section 1 of chapter 279, Session Laws of Colorado 2011.

[GRAPHIC OMITTED OF CHECK DRAWN ON CHASE BANK FOR 271,000.00, FROM THE ACCOUNT OF ANGELIQUE LAYTON AND JEFFREY L. ANDERSON, ACCOUNT NUMBER REDACTED, DATED SEPTEMBER 14, 2021.]