

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE ESTATE OF BEULAH E. GALLEGO/GALLIGO; LYNN GALLEGO a/k/a LYNN (LEONA) GALLIGO-RANDALL, as Administrator of the Estate of Beulah E. Gallego/Galligo, FRANKIE WHITE DRESS, THE OGLALA SIOUX TRIBE, and ANY PERSON IN POSSESSION, Defendants.	CIV. 17-5091-LLP BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT, JUDGMENT OF FORECLOSURE, AND REQUEST FOR DECREE OF SALE
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The United States of America, by and through its undersigned attorneys, United States Attorney Ronald A. Parsons, Jr., and Assistant United States Attorney Meghan K. Roche, and requests this Default Judgment in an amount certain against the Estate of Beulah Gallego/Galligo pursuant to Federal Rule of Civil Procedure 55(b) and also requests a Judgment of Foreclosure and Decree of Sale as to the real property discussed in the Verified Complaint.

ANALYSIS

Rule 55 provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, a clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). After the clerk has entered a party into default, Rule 55(b)

provides that the Court or Clerk may enter a default judgment against a defendant “who has been defaulted for not appearing” and is not incompetent or a minor.

Defendants, the Estate of Beulah E. Gallego/Galligo, Frankee White Dress, and Any Person in Possession, have failed to plead or otherwise defend or appear in the instant action as provided for, and within the timeframe required by, the Federal Rules of Civil Procedure. See Docket 11 ¶¶ 3-7 (Declaration of Meghan K. Roche filed contemporaneously with Motion for Clerk’s Entry of Default). The Oglala Sioux Tribe has appeared in this matter, but the United States has no personal action against the Tribe, when its interest in this matter is in a right of first refusal to acquire the Borrower’s interest in the property upon default, which interest was not exercised in this case. Docket 1 ¶ 23; Docket 6.

Because the Borrower was Beulah E. Gallego/Galligo, who is deceased, Plaintiff respectfully requests that the Court enter its default judgment against the Estate of Beulah Gallego in the amount certain of \$69,887.89, which is the amount of principal, interest, and fees that were due on Ms. Gallego’s defaulted mortgage. Docket 11 ¶ 9; Docket 1 ¶ 15. Frankee White Dress and Any Person in Possession were named to provide notice of the foreclosure matter given potential occupancy or possessory interests, but the United States has no personal claim against either individual. Docket 1 ¶¶ 4-7.

Additionally, the United States is requesting judgment of foreclosure and a decree of sale as to the leasehold interest in the real property, which in the Verified Complaint is described as:

70'X100' SQ FT IN LOT 3, BAKER HILL LOCATED W/IN NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 12, TOWNSHIP 35N., RANGE 45W., 6TH P.M., CONTAINING .16 ACRES, MORE OR LESS.

Also known as 3 Baker Hill, Pine Ridge, SD 57770

And would include:

All of Beulah Gallego's right, title, and interest in and to lease agreement number 01-294 through assignment (document number 2z1514-00-24) from Ernabelle Skye to Beulah Gallego, for an original term of 25 years, dated November 28, 2000, and approved by the BIA on March 9, 2004, automatically extended for an additional term of 25 years, between the Oglala Sioux Tribe as lessor and owner, and Ernabelle Skye and to Beulah Gallego, as lessees, including any extensions and renewals thereof.

See Docket 1 ¶¶ 11-12. Plaintiff requests that judgment be entered against the above stated leasehold interest in the amount of \$69,887.89 in principal, together with interest as provided by law, plus any additional sums advanced, costs incurred and accruing in relation to this action. Furthermore, the United States requests that any party's interest in the property be found to be junior and inferior to the United States' interest in its leasehold mortgage. Docket 1 ¶ 23; Docket 1, Request for Relief ¶¶ 3-4.

Plaintiff also requests a decree of foreclosure and sale as to the above described leasehold interest in the real property per the terms of the promissory note and mortgage and pursuant to South Dakota law. Docket 1 ¶¶ 14-15, 17;

Docket 1, Request for Relief ¶ 2. In Plaintiff's Verified Complaint in this matter, Plaintiff requested it be allowed to bid the debt due on the date of sale, with costs and disbursements taxed in the action in which the sale is made, and costs and expenses of the sale. Docket 1, Request for Relief ¶ 6.

CONCLUSION

For the reasons stated above, Plaintiff requests a default judgment against the Estate of Beulah E. Gallego/Galligo in the amount of \$69,887.89 and a decree of foreclosure and for sale against the real property described herein and within the Verified Complaint. The United States has provided a proposed order, judgment, and decree of sale for the Court's review.

Dated this 11th day of October, 2018.

RONALD A. PARSONS, JR.
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