

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

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  
PLAINTIFF'S MOTION TO AMEND  
ORDER PURSUANT TO  
RULE 60(a) OR 60(b)**

The United States of America respectfully requests that the Court modify or amend its order under Federal Rule of Civil Procedure 60(a) or 60(b) to include the correct debt amount owed by the Estate of Beulah E. Gallego/Galligo. In preparing to file a renewed motion for a judgment of foreclosure and decree of sale in this case, and after reviewing the file of a similar foreclosure filed in this district, the United States realized it incorrectly stated the debt amount owed to the Department of Housing and Urban Development ("HUD") by Ms. Gallego's estate. In the interest of fairness and to correct the record and ensure the United States' future filings and the Court's orders or judgments are correct, the United States now moves to amend.

The United States attempted to contact the attorney of record for the Oglala Sioux Tribe, but was not successful; thus, the United States does not

know the Tribe's position on this motion. No other named defendants have actively defended this lawsuit, and their position on the motion is also unknown.

### **FACTUAL BACKGROUND**

On September 20, 2019, the Court entered a default judgment against the Estate of Beulah E. Gallego/Galligo after the United States moved for default and other relief. Docket 17; *see also* Dockets 15, 15-1, and 16. The Court determined that the Estate's failure to appear and defend the matter amounted to conduct that would justify entry of judgment by default against it in the amount of \$69,887.89. Docket 17 at 7-8. At that time, the Court denied the United States' request for a judgment of foreclosure and decree of sale as to the real property at issue because the Oglala Sioux Tribe had raised a number of affirmative defenses, and the Court gave the United States leave to renew its motion after responding to the Tribe's affirmative defenses. *Id.* at 8.

As the United States was preparing to file its renewed motion for judgment of foreclosure and decree of sale and as it reviewed the filings of record, counsel realized that the debt amount in this action appeared to be identical to a similar HUD foreclosure also in litigation from the Pine Ridge Indian Reservation. Declaration of Ellie J. Bailey ¶ 4; *see also United States v. Two Bulls et al.*, Civ. 17-5050, Docket 1 ¶ 15. Accordingly, counsel asked HUD to review the Gallego file to determine the accurate amount of debt owed. Bailey Decl. ¶ 5.

Upon its review of the Gallego file, HUD learned that in preparing the acceleration letter to be sent to the Estate of Gallego on April 20, 2017, it

inadvertently included a paragraph from an acceleration letter from another HUD foreclosure file from the Pine Ridge Indian Reservation. Declaration of Krisa Johnson ¶ 4. As such, all amounts listed in the paragraph beginning with the phrase, “The indebtedness due is \$63,285.59 . . .” were incorrect. *Id.*; *see also* Docket 1-7. The incorrect debt amount from the acceleration letter was then utilized in the Verified Complaint. Johnson Decl. ¶ 6; *see also* Docket 1 ¶¶ 19, Wherefore ¶ 1.

Upon realization of the error, HUD reviewed the Gallego file and determined that the correct debt amount is \$59,284.42, which includes an unpaid principal balance of \$53,673.97 and unpaid interest of \$5,610.45. Johnson Decl. ¶ 7.

## **ARGUMENT**

### **I. Rule 60(a) or 60(b) Motion to Correct**

Federal Rule of Civil Procedure 60(a) provides that “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Rule 60(a) motions allow the correction of a judgment to reflect what the parties understood, intended, and what was agreed upon by the parties and the court. *See United States v. Mosbrucker*, 340 F.3d 664, 666 (8th Cir. 2003). Rule 60(b) provides that “the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;

- (2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) Any other reason that justifies relief.”

Motions to amend under Rule 60(b) “must be made within a reasonable time” and motions under 60(b)(1), (2), and (3) must be made not more than one year after entry of judgment. Fed. R. Civ. P. 60(c)(1).

It appears that the Court may amend its order under either Rule 60(a) or (b) because both appear timely when the original order was filed on September 20, 2019. Docket 17. The most appropriate avenue is likely under Rule 60(b)(1) based on mistake. Just terms exist for the amendment to lower the amount of debt actually owed by the Estate, and to create a clear and accurate record for previous and future filings. Thus, the United States asks that the Court amend its Order of Default Judgment against the Estate of Beulah E. Gallego/Galligo to correct the debt amount to reflect the actual debt of \$59,284.42, which includes an unpaid principal balance of \$53,673.97 and unpaid interest of \$5,610.45.

Upon review of the Court’s order, the only items that would need to be changed or amended are as follows:

1. On page 1, paragraph 2: the principal sum should be amended from \$69,887.89 to \$59,284.42 (along with removing the reference to Docket 15 and instead referencing the Declaration of Krisa Johnson filed herewith);
2. On page 5, paragraph 4 (fourth full paragraph): the principal sum should be amended from \$69,887.89 to \$59,284.42 (again, with a removal of the reference to Docket 15-1); and
3. On page 7, numbered paragraph 1: the principal sum should be amended from \$69,887.89 to \$59,284.42.

### **CONCLUSION**

For the reasons stated above, the United States requests that the Court modify its Order of Default Judgment against the Estate of Beulah E. Gallego/Galligo to reflect the accurate debt amount. Thereafter, the United States will renew its motion for a judgment of foreclosure and decree of sale.

Dated this 28th day of August, 2020.

RONALD A. PARSONS, JR.  
UNITED STATES ATTORNEY

/s/ Meghan K. Roche  
MEGHAN K. ROCHE  
Assistant U.S. Attorney  
P.O. Box 2638  
Sioux Falls, SD 57101-2638  
(605) 330-4400  
[Meghan.Roche@usdoj.gov](mailto:Meghan.Roche@usdoj.gov)

/s/ Ellie J. Bailey

ELLIE J. BAILEY

Assistant U.S. Attorney

P.O. Box 7240

Pierre, SD 57501

(605) 224-5402

Ellie.Bailey@usdoj.gov