UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID HUMP, and KAREN HUMP, Individually, and d/b/a BEAR COAT BISON, f/k/a Bear Coat Bison LLC, Defendants.	3:19-CV03020-RAL **UNITED STATES' MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND DECREE OF SALE**

INTRODUCTION

The United States, by and through the United States Department of the Interior (DOI), Office of Indian Energy and Economic Development (OIEED), Division of Capital Investment (DCI), seeks to recover the balance of a loan guaranteed under the provisions of the Indian Financing Act's (IFA's) Indian Loan Guaranty and Insurance program (Program). 25 U.S.C. § 1481, et al.

STATEMENT OF THE CASE

The United States holds a promissory note secured by a mortgage to real property held in trust and located on the Cheyenne River Sioux Reservation. The Defendants defaulted on the debt, so the United States seeks to sell the real property, apply the proceeds of the sale to the debt, and obtain a judgment for any remaining deficiency. Docket (DE) 1. Defendants filed an Answer. DE 3. The United States moves for Summary Judgment pursuant to Fed. R. Civ. P. 56.

STATEMENT OF FACTS

The United States submits a separate Statement of Undisputed Material Facts (SUMF) in support of its Motion for Summary Judgment, so recites only the basic facts here.

On or about May 29, 2008, Defendants made, executed, and delivered a Commitment Order and a $1,000,000 Promissory Note, in favor of the United States, with six percent (6%) interest accruing per annum on $874,250 amortized over 27 years, payable annually until paid in full, and a balloon payment of $125,750 (without interest accrual) by 2034. SUMF 11. As part of the security for the note, Defendants made, executed and delivered a real estate mortgage on several tracts to the United States. SUMF 12. The mortgage was approved, because the mortgage is on real estate held in trust for David Hump, a member of the Cheyenne River Sioux Tribe (CRST). SUMF 3. The location of the several tracts secured by the Mortgage are described in the mortgage. SUMF 12 (DE 1-4).

The last partial payment on the debt owed to DOI was made on December 30, 2014. SUMF 17. In 2018, the DOI accelerated the note and declared all remaining debt immediately due and payable. SUMF 19. Defendants were notified that the loan was in default and the entire indebtedness was due. *Id.* Defendants failed to cure the default or pay off the debt. The amount due as a result of the Defendants' default is $1,211,782.16. SUMF 20.

ARGUMENT AND AUTHORITIES

A. STANDARD FOR SUMMARY JUDGMENT

The Supreme Court has instructed that "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy, and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Summary judgment is proper when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, "shows that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56

In determining whether summary judgment should issue, the Court must view the facts—and any inferences from those facts—in the light most favorable to the nonmoving party, and the burden is placed on the moving party to establish both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In determining whether a genuine issue of material fact exists, the Court views the evidence presented based upon which party has the burden of proof under the underlying substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *Anderson*, 477 U.S. 242 at 256. Such an issue

of fact is a genuine issue if it reasonably can be resolved in favor of either party. *Id.* at 250-251. Conversely, if, on the state of the record on the motion, a directed verdict or judgment N.O.V. would have to be granted to the moving party at trial, there is no genuine issue requiring trial. *Id.* at 253-254; *First National Bank v. Cities Service*, 391 U.S. 253, 288-289 (1968).

Once the moving party has met this burden of demonstrating no genuine issue of material fact, the nonmoving party may not rest on the allegations in the pleadings, but by affidavit or other evidence must set forth specific facts showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e). A non-moving party who bears the burden of proof at trial to an element essential to its case must make a showing sufficient to establish a genuine dispute of fact with respect to the existence of that element of the case or be subject to summary judgment. *Celotex*, 477 U.S. at 322. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," and "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587. Mere disagreement or the bald assertion that a genuine issue of material fact exists no longer precludes the use of summary judgment. *Harper v. Wallingford*, 877 F.2d 728 (9th Cir. 1989); *Famous Brands, Inc. v. David Sherman Corp.*, 814 F.2d 517, 522 (8th Cir. 1987).

B. THE INDIAN FINANCING ACT

The United States Congress enacted the Indian Financing Act (IFA) to provide capital on a reimbursable basis to help American Indian tribes and individuals achieve economic development. 25 U.S.C. § 1451. The IFA authorized the Secretary of the Interior to create a Loan Guaranty and Insurance Fund to guarantee loans, up to 90% of the unpaid principal and interest, made to an American Indian tribe or individual. 25 U.S.C. § 1481. With respect to matters arising out of the loan guaranty program, the Secretary may cancel the uncollectable portion of any obligation, to which he has an assignment or a subrogated right, 25 U.S.C. § 1491, and shall then take such further collection action as may be warranted, 25 U.S.C. § 1492.

Pursuant to 25 U.S.C. § 1496, the Secretary of the Interior may

> (e) purchase at any sale, public or private, upon such terms and for such prices as he determines to be reasonable, and take title to property, real, personal, or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of such property; and
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> (f) complete, administer, operate, obtain, and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to the guaranty or insurance program authorized by this subchapter.

C. THE UNITED STATES HAS A VALID DEBT

The United States has shown via a verified complaint and attached exhibits that Defendants mortgaged their interest in real property to secure a promissory note. DE 1-1 (Note) and DE 1-4 (Mortgage). Defendants admit

that they executed and delivered these documents. SUMF 11; DE 3, ¶ 14. They admit that their last payment on the note was made in December 2014. SUMF 17. Defendants are in default because they have failed to make payments as required by the terms of the note. SUMF 18. Under the terms of the Note, when Borrowers are in default the holder of the note may accelerate the debt. DE 1-1. The Mortgage similarly allows acceleration and foreclosure in the event of default by the borrowers. DE 1-4. The debt has been accelerated. SUMF 19. The amount owed is $1,211,782.16. SUMF 20.

Defendants assert affirmative defenses as obstacles to foreclosure. Specifically, Defendants allege the following: 1) this Court does not have jurisdiction, the CRST Tribal Court has jurisdiction; 2) Plaintiff has a "conflict of interest;" 3) the debt has been cancelled, nullified and satisfied; and 4) Plaintiff has failed to mediate as required by SDCL 54-13-10. DE 3.

For the reasons set forth herein, Defendants' arguments are without merit and the United States is entitled to summary judgment and foreclosure of the real property securing the debt.

1. This Court Has Jurisdiction Pursuant To 28 U.S.C. § 1345

District courts have original jurisdiction of all civil actions, suits or proceedings commenced by the United States. 28 U.S.C. § 1345; *United States v. American Horse*, 352 F. Supp. 2d 984, 987 (D.N.D. 2005) (citing *United States v. Mosbrucker*, 340 F.3d 664, 666 (8th Cir. 2003) (holding that district court had jurisdiction to order foreclosure)). In this case, the United States

seeks repayment of federal funds paid to Defendants' original lender as a result of a guarantee issued in accordance with federal law.

Defendants contend that this Court does not have jurisdiction over this case and that the CRST Tribal Court has jurisdiction, because its code asserts jurisdiction over claims arising on the reservation.[1] DE 3, ¶¶ 1, 38. Contrary to Defendants' assertions, the Tribal Code recognizes that the Tribal Court has no jurisdiction over land which the United States holds in trust. *See* CRST Tribe Code, Title X, Sec. 10-1-2 (1978).[2]

Tribal courts may decide certain controversies involving Indian members and commercial creditors. *See*, *Northwest South Dakota Prod. Credit Ass'n v. Smith*, 784 F.2d 326, 325 (8th Cir. 1986). However, Congress has not vested tribal courts with jurisdiction over foreclosures involving Indian trust land brought by the United States. *United States v. American Horse*, 352 F.Supp.2d 984, 990 (D.N.D. 2005); *United States v. Vanderwalker*, No. CIV 10-3008-RAL, 2010 WL 5140476, at *3 (D.S.D. Dec. 10, 2010) (action by United States to foreclose tribal member's interest did not involve tribal-related activities so as to require tribal exhaustion). As in *American Horse* and *Vanderwalker*, this

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1 Defendants do not contend that the tribe's substantive foreclosure law applies. They only reference South Dakota foreclosure law. DE 3, ¶¶ 28, 41.

2 Sec. 10-1-2 provides: "There can be one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on *non-trust real or non-trust personal property* situated or located on the Reservation which action must be in accordance with the procedures outlined herein." (Emphasis added).

case presents no issue regarding the rights of the tribe in its relationship with the federal government. The tribe has no connection to the debt owed to the United States, did not sign the promissory note or the mortgage, and has no other direct interest.

Although the United States has a special relationship to the American Indian, tribal courts do not have jurisdiction over the United States merely because one is a party to the litigation. Because the United States is a party, this Court has exclusive jurisdiction. § 1345.

2. An American Indian's Ability To Incur Debt Secured By Mortgage

Real property that the United States holds in trust for an individual American Indian may be considered restricted fee status. However, Congress created a statutory framework for individual American Indians having an interest in a tract of land held in trust by the United States, to secure financing for several purposes, including business development and home construction. 25 U.S.C. § 5135 (formerly 25 U.S.C. § 483a) provides:

> (a) The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All

> mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.
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> (b) In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.

Thus, so long as the mortgage is approved, an American Indian may mortgage restricted fee land. As set forth in § 5135(a), when restricted fee land is mortgaged, "[s]uch land shall be subject to foreclosure or sale pursuant to the terms of such mortgage...." and "[f]or the purpose of any foreclosure or sale proceeding, the Indian owners will be regarded as vested with an unrestricted fee simple title to the land." *See also*, 25 CFR 152.34.[3] Thus, for purposes of foreclosure Congress has expressly extinguished the restricted nature of the title.

3. <u>There is No Conflict Of Interest</u>

Defendants argue that the United States may not foreclosure on land held in trust because it is the "trustee," and thus "has a conflict of interest." DE 3, ¶¶ 1, 38. Defendants do not explain this argument and cite no legal authority for their position. Nothing about this foreclosure action is prohibited by statute. 25 U.S.C. § 5135(a) does not restrict the statute to private

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3 25 C.F.R. § 152.34 provides, in part: "[a]ny individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. . . Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands[.]"

creditors or except the United States. A mortgage to any creditor is clearly contemplated by the statute and the effectiveness of the statute should not be destroyed by carving out an exception that Congress has not explicitly made. Under the terms of the statute, trust land may be treated as non-restricted fee status for purposes of foreclosure. The statute provides that the United States (and therefore, the DOI/BIA) does not have to be made a part of a foreclosure action, and thus the United States does not defend the interest of the Indian landowner in such actions.

In 1974, Congress enacted the Indian Financing Act (IFA) and created the Indian Loan Guaranty program. 25 U.S.C. §§ 1451, 1481. The IFA is consistent with 25 U.S.C. § 5135(a). Both statutes permit the liquidation of collateral. When a lender suffers a loss on a loan guaranteed thereunder, it may submit a claim to the DOI. Upon reimbursement to the lender, the note evidencing the debt is assigned to the United States. 25 U.S.C.A. § 1492. "The Secretary shall then take such further collection action as may be warranted, or may cancel the uncollectable portion of any debt assigned pursuant hereto." *Id.*

The federal government has an obvious interest in collecting debts owed to the government. *See* 31 CFR Parts 900-904. When American Indians fail to make payments on a debt secured by a mortgage, a foreclosure may be initiated to recover government losses. After foreclosure, any interest in the land will no longer belong to the American Indian and unless the property is

purchased by another Indian or tribe, it will lose its trust or restricted status and the DOI/BIA will cease administrative responsibility over the land. § 5135(b). There is no real or seeming incompatibility of interests between the United States' rights as a creditor and its fiduciary duties. American Indians who voluntarily incur debt, whether it be from a commercial creditor or the United States, are not entitled to later insist that they keep an interest in the mortgaged land when the debt is not repaid, thus frustrating the intent of federal law. For these reasons, Defendants' argument is without merit.

4. The Debt Has Not Been Cancelled, Nullified Or Satisfied

A cancelation of a promissory note requires a voluntary and intentional act to extinguish the obligation or a separate agreement to modify, supplement or nullify an instrument to pay. *See e.g.* SDCL 57A-3-117. Because cancellation of a promissory note and release of the security requires a creditor's consent, any unintentional stamping "paid," accidental destruction, or mistaken communication is ineffective "since the requisite intent to cancel is lacking." 11 Am. Jur. 2d Bills and Notes § 348. Additionally, "charging off" or "writing off" a loan is not the legal equivalent of forgiving a debt. *Ibson v. United Healthcare Servs., Inc.*, 877 F.3d 384, 388 (8th Cir. 2017). These terms are essentially an accounting practice that amounts to a ledger book reclassification. The process has nothing to do with demanding the total debt be paid. It is strictly a bookkeeping procedure.

Defendants contend that the United States has cancelled, nullified or satisfied the debt by issuing an Internal Revenue Service (IRS) Form 1099. DE 3, ¶ 17. The majority of courts that have addressed this issue have found that an IRS Form 1099 alone is not sufficient evidence that a debt has been cancelled. *See e.g. In re Washington*, 581 B.R. 150, 156 (Bankr. D.S.C. 2017); *Bononi v. Bayer Emps. Credit Union (In re Zilka)*, 407 B.R. 684, 688 (Bankr. W.D. Pa. 2009) (stating that regardless of the reason why Forms 1099s were issued, they neither constitute an admission nor demonstrate that the creditor discharged the Debtor from further liability). The majority position relies principally on the language of the IRS regulations and the IRS's interpretation of the regulations.[4] Thus, when the sole evidence put forth is a Form 1099, there is no genuine issue of material fact regarding cancelation as a matter of law.

There is a reasonable explanation for the 1099s issued to Defendants. During the Defendants' bankruptcy, their $1,411,362.45 debt owed to the

4 *See*, I.R.S. Info. 2005–0207, 2005 WL 3561135 (Dec. 30, 2005) and I.R.S. Info. 2005–0208, 2005 WL 3561136 (Dec. 30, 2005). In the first, the IRS addressed a creditor's concern that filing the Form 1099–C would constitute a written admission that it had discharged the debt and would therefore make debtors unwilling to pay on their obligations. Citing regulations, the IRS responded that it "does not view a Form 1099–C as an admission by the creditor that it has discharged the debt and can no longer pursue collection." I.R.S. Info. 2005–0207. In the second, the IRS assured a concerned creditor that filing a Form 1099–C satisfies the reporting requirements of statute and implementing regulations, neither of which "prohibit collection activity after a creditor reports by filing a Form 1099–C." I.R.S. Info. 2005–0208.

Farmers State Bank was assigned to the DOI. SUMF 8- 9. One million of that debt was memorialized with a new loan. Johnson Declaration ¶ 8; SUMF 11-13. Essentially, a portion of the original debt was reaffirmed and refinanced pursuant to bankruptcy proceedings.[5] Defendants then defaulted on the bankruptcy plan payments and their bankruptcy was dismissed. SUMF 16. Because the Defendants' 2008 Promissory Note and mortgage replaced the original three loans assigned by Bank, the uncollectable portion, totaling $450,642.69, was reported to the IRS, as required by IRS regulation. Johnson Declaration ¶ 13. Because the amounts listed on the Form 1099s represent the uncollectable portion of the original obligation assigned to the DOI under the terms of its guarantee, not an intentional decision by the agency to cancel, nullify or satisfy the entire debt, the Form 1099–C does not prohibit collection on the 2008 note.

After filing the IRS Form 1099, the United States continued to seek payment of the debt verified by the 2008 promissory note. A notice of acceleration and demand for payment was made. SUMF 19. The United States' demand is evidence that it had not intended to cancel or forgive the entire debt. The 2008 promissory note and mortgage have not been returned, delivered or surrendered to Defendants or marked cancelled or released by the

5 Refinancing is the replacement of an existing debt obligation (asset backed security) with another debt obligation under different terms. The specific terms of the May 2008 mortgage included the terms in the Defendants' confirmed bankruptcy plan.

United States. Except for the IRS Form 1099, Defendants point to no evidence that the note has been cancelled, nullified or otherwise discharged. Thus, there is no genuine issue as to any material fact, and summary judgment is appropriate.

5. The Application of State Law

State law is commonly applied in litigation involving federal property interests. However, when federal court jurisdiction is founded upon the United States being a plaintiff, the Court is not obligated to apply state law, but is free to fashion a federal rule of decision. *See, United States v. Little Lake Misere Land Co., Inc.*, 412 U.S. 580, 604 (1973) (State law may be an acceptable choice, except a rule of law which is not wholly in accord with the federal program should not be applied.) If it is an appropriate means to implement and fulfill federal policies, state substantive law may be applied in federal mortgage foreclosure actions. *United States v. Thompson*, 438 F.2d 254, 257 (8th Cir. 1971) (federal laws will be applied to determine what remedies are available to the Government to enforce its security interest).

a. State Redemption Laws Do Not Apply to the United States

There is no right to redemption clearly stated in the mortgage at issue in this case. DE 1-4. Thus, no state redemption law should be applied here. Numerous policy reasons have been advanced for the proposition that state statutory rights of redemption do not exist after foreclosure of federal loans. "Paramount among these reasons are the differences in the law governing post-

foreclosure redemption from state to state." *United States v. Victory Highway Vill., Inc.*, 662 F.2d 488, 498 (8th Cir. 1981) (Defendants may avail the right to redemption at any time prior to foreclosure by paying the entire amount due on the notes and under the mortgages, but once the United States forecloses on the mortgage, redemption rights are extinguished.)

The application of a state law redemption period to a foreclosure authorized under federal law is repugnant to the best interests of the United States and contrary to federal law. *See*, Art. VI, Clause 2, Constitution of the United States (Supremacy Clause), 7 U.S.C. § 1989, 7 U.S.C. § 1983.

b. Mandatory Mediation Statute Does Not Apply to the United States

Defendants contend that SDCL 54-13-10 requires mandatory mediation and this foreclosure case may not proceed until the United States receives a mediation release. DE 3, ¶¶ 28, 41. Although Defendants quote a substantial portion of the state statute, they omit the salient provision: "*Dismissal of a bankruptcy proceeding, . . . shall have the effect of a mediation release.*" SDCL54-13-10 (Emphasis added). Defendants' Chapter 12 Bankruptcy was dismissed for failure to make plan payments. SUMF 16. Thus, if the statute applies, which the United States disputes,[6] the mandatory mediation is not required in this case because Defendants bankruptcy proceeding was dismissed. SUMF 16.

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6 The same policy reasons advanced for the proposition that state statutory rights of redemption do not apply to federal loans, are advanced with regard to South Dakota's law regarding mediation.

In sum, the legal defenses advanced by Defendants lack merit. Their disagreement or unsupported assertion of disputed material fact does not preclude summary judgment in this case. Accordingly, the United States requests that the Court enter summary judgment against the Defendants, joint and several, in the amount certain of $1,211,782.16, which is the principal and interest due on the defaulted note. SUMF 20. The United States also requests a decree of sale as to the mortgaged real property. DE 1.

D. DECREE OF SALE

The Mortgage specifically provides that in the case of default in payment of the note, "this mortgage maybe foreclosed by action, or by advertisement as provided by statute or rules of practice." DE 1-4. The United States is requesting that Defendants' interest in the real property located in Ziebach County, South Dakota, and described in the mortgage be foreclosed and sold in favor of the United States.

At a foreclosure sale, the United States is able to bid an amount less than the debt owed on the promissory note, provided it determine such price be reasonable. 25 U.S.C. § 1496. The United States provides appraisals for the separate tracts of real property. *See* Declaration of Theodore Martin. Accordingly, the United States requests the Court set the fair and reasonable value of the subject property as follows:

EXH	TRACT	LEGAL DESCRIPTION	ACRES	VALUE
1	X596A	SW1/4 Sec 4, T9N, R18E	160	$ 140,000
2	X297-A	SE1/4 Sec 5, T9N, R18E	160	$ 144,000
3	X1727A	S1/2NE1/4, Lot 1, Lot 2, Sec 5, T9N, R18E	160.22	$ 132,000
4	X1292	SE1/4, Sec 6, T9N, R18E	160	$ 144,000
5	X1881	SW1/4NE1/4, Lot 2, Sec 6, T9N, R18E	80.12	$ 68,000
6	X1881-A	SE1/4NE1/4 Lot 1, Sec 6, T9N, R18E	80.18	$ 68,000
7	X774A	E1/2 E1/2 SW1/4 NE1/4 (10 acres); E1/2 E1/2 W1/2 E1/2 SW1/4 NE1/4 (2.5 acres); and SE1/4 NE1/4 (40 acres); all in Sec 7, T9N, R18E	52.5	$ 43,000
8	X1367A	E1/2 SE1/4, Sec 7, T9N, R18E	80	$ 70,000
9	5072A	W1/2 SE1/4 Sec 7, T9N, R18E	80	$ 64,000
10	1220	SW1/4 Sec 8, T9N, R18E	160	$ 144,000
11	X1290-A	NE1/4 Sec 8, T9N, R18E	160	$ 136,000
12	3697A	SE1/4 Sec 8, T9N, R18E	160	$ 128,000
TOTAL				**$1,281,000**

The total value of the 12 parcels is estimated to be $1,281,000, which should be sufficient to satisfy the debt and expenses of sale. The United States requests that the Court authorize the United States Marshals Service (USMS) to foreclose on the described property, to use reasonable force, if necessary, to enter upon and take possession of the property by posting it, and that the USMS be authorized to sell the property in a commercially reasonable manner, public auction, or at its discretion, to contract with a real estate or brokerage firm or auctioneer in order to maximize the sale of the property.

The verified complaint requests the sale of the property be free of any redemption period. DE 1. Under federal law, no statutory right of redemption exists after foreclosure. *Victory Highway,* 662 F.2d at 498. There is no right

to redemption in the mortgage. DE 1-4. While Defendants may avail themselves of the right to redemption at any time prior to foreclosure sale by paying the entire amount due on the notes, any right to regain the property should be extinguished once the sale occurs.

All other requested relief is expressed in the proposed order filed contemporaneously with this motion.[7]

CONCLUSION

This debt has been in litigation since 2005. Bankr.No. 05-30175. There were substantial negotiations during Defendants' bankruptcy, resulting in a new loan. The specific terms of the Defendants' new loan were confirmed in bankruptcy plan and evidenced by a May 2008 promissory note and mortgage. The amount determined to be uncollectable at the time of the bankruptcy was reported on IRS Form 1099. Defendants have failed to offer probative evidence that the remaining debt, verified by the 2008 promissory note, has been canceled. Defendants have failed to pay the debt after notice of acceleration. Accordingly, the United States is entitled to summary judgment, foreclosure and decree of sale.

7 There are no known encumbrances or liens prior to the United States' mortgage. After any foreclosure sale occurs, the United States requests permission to return to the Court to request a deficiency judgment against the Borrowers if the sale does not produce sufficient proceeds to satisfy Borrowers' debt and expenses of sale.

Dated this 30th day of September, 2020.

RONALD A. PARSONS, JR.
United States Attorney

/s/ Cheryl Schrempp DuPris
Cheryl Schrempp DuPris
Assistant United States Attorney
P.O. Box 7240
Pierre, SD 57501
(605) 945-4553
Fax: 605.223.8305
Cheryl.Dupris@usdoj.gov